2007

North Carolina Legislation

A summary

of legislation

in the 2007

General Assembly

of interest to

North Carolina

public officials

Edited by Martha H. Harris and Christine B. Wunsche

UNC
SCHOOL OF GOVERNMENT

School of Government
University of North Carolina

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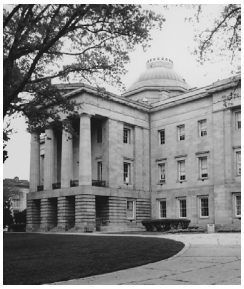

On the cover: The front cover photograph shows the second Capitol building, built in 1840 to replace the first Capitol, which was destroyed by fire in 1831. The photograph on the title page shows the current State Legislative Building, designed by Edward Durrell Stone and completed in 1963. Both photographs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

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Editor's Preface

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

North Carolina Legislation 2007 is the forty-fourth of these summaries and deals with newly enacted legislation of interest and importance to state and local government officials. It is organized by subject matter and divided into twenty-nine chapters. In some instances, to provide different emphases or points of view, the same legislation is discussed in more than one chapter. Each chapter was written by a School of Government professional staff or faculty member with expertise in the particular field addressed.

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

Albeit comprehensive, this book does not summarize every enactment of the 2007 legislative session. For example, some important legislation that does not have a substantial impact on state or local governments is not discussed at all. Local legislation, if addressed, often is treated only briefly. Readers who need information on public bills not covered in this book may wish to consult Summaries of Substantive Ratified Legislation for 2007, which contains brief summaries of all public laws enacted during the session. This compilation is published by the General Assembly's Research Division and posted on the Internet at the General Assembly's website at www.ncleg.net under the Research Division section of the Legislative Publications page. A list of General Statutes and Session Laws affected by 2007 legislation, prepared by the General Assembly's Bill Drafting Division, is online at the same site under the Bill Drafting Division section of the Legislative Publications page.

The School of Government also publishes a separate report, the *Index of Legislation*, that provides additional information with respect to public and private bills considered in 2007, including (1) status reports for all public bills and resolutions; (2) status reports for all ratified public bills and resolutions, which are arranged by General Statutes chapter or special category; (3) an index of public bills, arranged by number; (4) status reports for local bills, arranged by counties affected; (5) an index of local bills, arranged by bill number; and (6) a chronological listing of all bills (public and local) and resolutions ratified in 2007. This publication can be purchased through the School of Government

Publications Sales Office (telephone: 919.966.4119; e-mail: sales@sog.unc.edu; website: http://shopping.netsuite.com/s.nl/c.433425/it.A/id.1123/.f?sc=7&category=4157).

Each day the General Assembly is in session, the School of Government's Legislative Reporting Service publishes the *Daily Bulletin*. The *Daily Bulletin* includes summaries written by School of Government professional staff and faculty members of every bill and resolution filed in the state House of Representatives and Senate; summaries of all amendments, committee substitutes, and conference reports adopted by the House or Senate; and a daily report of all legislative action taken by both chambers. The *Daily Bulletin* is available by paid subscription, with delivery via e-mail and on the Web. For information about subscriptions, contact the School of Government Publications Sales Office (telephone: 919.966.4119; e-mail: sales@sog.unc.edu; website: http://shopping.netsuite.com/s.nl/c.433425/sc.7/category.27/.f).

Throughout the book, references to legislation enacted during the 2007 session are cited by the Session Law number of the act (for example, S.L. 2007-245), followed by a parenthetical reference to the number of the Senate or House bill that was enacted (for example, H 1231). Generally the effective date of new legislation is not noted if it is before the production date of this book. References to the General Statutes of North Carolina are abbreviated as G.S. (for example, G.S. 105-374).

Martha H. Harris

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The General Assembly

The 2007 General Assembly convened on January 24 and adjourned on August 2. The session was one of the shorter long sessions, which is remarkable considering the high number of bills introduced and enacted. This chapter provides an overview of the 2007 session, including the organization of each house, major legislation enacted, and unfinished business.

Overview

The 2007 long session was a record-breaking session. More bills were filed in 2007 than in any year since 1987, when 3,723 bills were filed. The 3,645 bills introduced in 2007 is a 22 percent increase over the 2,984 introduced in 2005, and the 551 laws enacted this year is a 19 percent increase over the 463 enacted in the 2005 long session. Despite the large increase in the number of bills to consider, the General Assembly concluded its business a full month earlier than it did in 2005.

Legislators returned to Raleigh for two days in September for reconvened and extra sessions to address Governor Easley's veto of House Bill 1761, the Job Maintenance and Capital Development Fund.

The House of Representatives

The November 2006 election resulted in the election of sixty-eight Democrats and fifty-two Republicans to the House of Representatives, increasing the Democrats' majority by five members beyond the majority in the 2005 General Assembly. Joe Hackney was elected Speaker of the House, ending James Black's four-term reign as Speaker.

The demographics of the 2007 House can be broken down as follows:[1]

- Thirty-seven women, five more than in 2005
- Eighty-three men
- Twenty African Americans, one more than in 2005

1. These statistics reflect House membership as of the end of the 2007 session and take into account the resignation or death of any members and the appointment of replacement members.

- One Native American
- One person of Hispanic ancestry

The House membership underwent many changes as the year progressed. Representative Howard Hunter died in January and was replaced by Annie W. Mobley, and Representative Ed Jones resigned to take a Senate seat and was replaced by Angela R. Bryant. Perhaps the most well-known change was the resignation of Jim Black in February and the appointment of Tricia Ann Cotham, the youngest member of the General Assembly, to fill the vacancy. Finally, Ken R. Furr was appointed on August 15, after the session adjourned, to replace David Almond, who resigned in July after media reports that a complaint was filed against him by a legislative employee.

Table 1-1 lists the 2007 House officers.

Table 1-1. Officers of the 2007 House of Representatives

Joe Hackney, Chatham, Moore, and Orange counties, Speaker
William L. Wainwright, Craven and Lenoir counties, Speaker Pro Tempore
Hugh Holliman, Davidson County, Democratic Leader
Paul Stam, Wake County, Republican Leader
Larry M. Bell, Sampson and Wayne counties, Jean Farmer-Butterfield, Edgecombe and Wilson counties, Deborah K. Ross, Wake County, and Larry D. Hall, Durham County, Democratic Whips
Bill McGee, Forsyth County, Republican Whip
Denise Weeks, Principal Clerk
Robert L. Samuels, Sergeant-at-Arms

The Senate

The November 2006 election also increased the majority held by the Democrats in the Senate. The 2007 Senate was made up of thirty-one Democrats, two more than in 2005, and nineteen Republicans. The demographics of the 2007 Senate can be broken down as follows:[2]

- Seven women, the same as in 2005
- Forty-three men
- Eight African Americans, one more than in 2005

The 2007 session saw the death of two senators. Senator Robert Lee Holloman died in January and was replaced by former Representative Ed Jones. Senator Jeanne Hopkins Lucas, the state's first female African-American senator, died in March and was replaced by Floyd B. McKissick Jr.

The 2007 Senate officers and leadership are largely unchanged from the 2005 session and are shown in Table 1-2.

Table 1-2. 2007 Senate Officers and Leadership

Beverly Perdue, Lieutenant Governor, President
Marc Basnight, Dare**,** Beaufort, Camden, Currituck, Hyde, Pasquotank, Tyrell, and Washington counties, President Pro Tempore
Charlie Smith Dannelly, Mecklenburg County, Deputy President Pro Tempore
Tony Rand, Bladen and Cumberland counties, Majority Leader
Phil Berger, Guilford and Rockingham counties, Minority Leader
Tom Apodaca, Buncombe, Henderson, and Polk counties, Deputy Minority Leader
Katie G. Dorsett, Guilford County, Majority Whip
Jerry W. Tillman, Montgomery and Randolph counties, Minority Whip
R. C. Soles Jr., Brunswick, Columbus, and Pender counties, Chair, Democratic Caucus

2. These statistics reflect Senate membership as of the end of the 2007 session and take into account the resignation or death of any members and the appointment of replacement members.

Charles W. Albertson, Duplin, Lenoir, and Sampson counties, Secretary, Democratic Caucus
Phil Berger, Guilford and Rockingham counties, Republican Leader
Tom Apodaca, Buncombe, Henderson, and Polk counties, Deputy Republican Leader
Jean Preston, Carteret, Craven, and Pamlico counties, Chair, Republican Policy Committee
Janet Pruitt, Principal Clerk
Cecil Goins, Sergeant-at-Arms

Statistical Comparison

Table 1-3 compares the 2007 session with other odd-year sessions of the past ten years. The 3,645 bills introduced is 22 percent higher than the 2005 total of 2,984 and 53 percent higher than the 2003 total of 2,368.

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

	1997	1999	2001	2003	2005	2007[a]
Date convened	Jan. 29	Jan. 27	Jan. 24	Jan. 29	Jan. 26	Jan. 24
Date adjourned	Aug. 28	Jul. 21	Dec. 6	Jul. 20	Sept. 2	Aug. 2
Senate legislative days	123	101	173	102	126	111
House legislative days	123	103	179	102	125	113
Senate bills introduced	1,089	1,175	1,109	1,028	1,184	1,573
House bills introduced	1,245	1,489	1,478	1,340	1,800	2,072
Total bills introduced	2,334	2,664	2,587	2,368	2,984	3,645
Session Laws Enacted	528	462	519	433	463	551
Vetoes	0	0	0	2	2	1
Joint resolutions ratified	33	22	36	32	58	68
Simple resolutions adopted	11	24	10	19	26	7
Total measures passed	572	508	565	484	547	626
Percentage of measures passed	24.5%	19.0%	21.8%	20.4%	18.3%	17.2%

[a]These numbers do not reflect activities occurring during the 2007 reconvened session or 2007 extra session.

Major Legislation Enacted in 2007

The 2007 General Assembly enacted a number of significant pieces of legislation, a few of which are listed below.

Contempt by Juveniles

S.L. 2007-168 (H 1479) amends Chapter 5A and Chapter 7B to address how judges may handle juveniles who disrupt court or engage in other conduct for which an adult would be held in contempt. A further discussion of contempt by juveniles can be found in Chapter 4, "Children and Juvenile Law."

Energy

A number of bills were enacted by the General Assembly in 2007 aimed at achieving greater energy efficiency. The most comprehensive and controversial piece of legislation was S.L. 2007-397 (S 3), which established a renewable energy and energy efficiency portfolio

standard. By the year 2012, electric utilities in North Carolina are required to derive 3 percent of their retail sales from renewable energy resources and energy efficiency measures; that percentage is phased up, rising to 12.5 percent by the year 2021. Electric membership corporations and municipalities also start at a 3 percent requirement in 2012, but their standard is capped at only 10 percent in 2018 and beyond. The legislation allows power producers to recover their costs for renewable energy investments and energy efficiency measures from their rate base through an annual rider on electric bills. It also allows electric utilities to begin recovering the cost of construction of new coal and nuclear fueled power plants before they are completed and put online. More information on this and other energy efficiency legislation can be found in Chapter 12, "Environment and Natural Resources."

Eyewitness Identification and Interrogation Reform

Two important pieces of criminal procedure legislation were enacted this year. First, S.L. 2007-421 (H 1625), creates the Eyewitness Identification Reform Act. The act requires state and local law enforcement officers to follow specific procedures when conducting lineups. The second, S.L. 2007-434 (H 1626), enacts a new article, "Electronic Recording of Interrogations," requiring interrogations to be electronically recorded in certain cases. More information about these acts can be found in Chapter 7, "Criminal Law and Procedure."

High Risk Pool

S.L. 2007-532 (H 265) establishes the North Carolina Health Insurance Risk Pool, a new nonprofit entity that makes health insurance available to and relatively affordable for individuals who are considered "high risks" by other insurers, such as individuals with certain diagnoses, medical conditions, or risk factors. A discussion of the new high risk insurance pool can be found in Chapter 14, "Health."

Highway Funding from Local Governments

S.L. 2007-428 (S 1513) encourages counties and municipalities to help cover the costs of major highway construction by authorizing counties to participate in the cost of construction and improvement of roads on the state system and to make improvements to portions of the state system. Municipalities are also allowed to elect to use Powell Bill funds for a project on the Transportation Improvement Program list. Further discussion of this legislation can be found in Chapter 5, "Community Planning, Land Development, and Related Topics."

Legal Expense Funds

S.L. 2007-349 (H 1737) enacts a new Article regulating legal expense funds. An individual in public office or seeking public office in North Carolina is required to create a legal expense fund if the individual is given a contribution by someone other than a spouse, parent, or sibling to fund an existing or potential legal action taken by or against the individual in his or her official capacity. Further discussion of this legislation can be found in Chapter 9, "Elections."

Local Option Taxes

A provision in the budget, S.L. 2007-323 (H 1473), authorizes county boards of commissioners to levy a land transfer tax of up to 0.4 percent or an additional one-quarter cent sales and use tax, subject to approval by the voters of the county. Counties may adopt one but not both of the new taxes. The county would retain the entire amount of the tax and may use it for any lawful purpose.

Sixteen counties sought voter approval for a transfer tax on their November 2007 ballots, and all sixteen measures failed by a wide margin. Voters also rejected the proposed sales tax in eleven

of the sixteen counties that proposed it in 2007. Other counties are considering whether to seek approval for the new taxes in future years. A discussion of the local option taxes can be found in Chapter 18, "Local Taxes and Tax Collection."

Medicaid

One of the most controversial issues of the session was how to relieve counties of their share of Medicaid costs. The issue was resolved as a part of the budget, S.L. 2007-323, by creating a comprehensive Medicaid relief package in which the state incrementally assumes the full county Medicaid share and provides counties additional revenue-raising options in exchange for a portion of the counties' sales tax revenue. A more thorough discussion of Medicaid relief can be found in Chapter 16, "Local Finance."

Mental Health

S.L. 2007-268 (H 973) amends G.S. Chapter 58 to require health insurers to offer benefits for the care and treatment of mental illness that are no less favorable than benefits for physical illness generally. More information on this legislation can be found in Chapter 19, "Mental Health."

Forfeiture of Pensions for Corruption or Fraud

S.L. 2007-179 (S 659) requires elected officials convicted of state or federal felonies related to corruption or election law fraud to forfeit their pensions. The offense must have been committed while the individual was serving in the applicable office and the conduct on which the offense is based must be directly related to the individual's service. For discussion of this legislation, see Chapter 13, "Ethics and Lobbying."

Formal Bid Limits for Public Construction Contracts

S.L. 2007-446 (H 73) increases the formal bidding threshold for construction or repair contracts from $300,000 to $500,000. This change affects when informal bidding procedures apply to construction and repair work as well as when advertisement and sealed bids requirements apply to contracts. Discussion of this legislation can be found in Chapter 23, "Public Purchasing and Contracting."

Public Financing of Campaigns

S.L. 2007-540 (H 1517) enacts the Voter-Owned Elections Act. The act creates the North Carolina Voter-Owned Elections Fund to provide public financing for campaign costs incurred by candidates for State Auditor, Superintendent of Public Instruction, and Commissioner of Insurance. More information can be found about the act in Chapter 9, "Elections."

Same Day Voting Registration

S.L. 2007-253 (H 91) allows a person who is qualified to register to vote to register and vote at the same time at county "early voting" one-stop absentee voting sites. Same-day registration and voting is limited to the early voting period. A discussion of this legislation can be found in Chapter 9, "Elections."

Smoking

In 2006 smoking was prohibited in all legislative buildings. In 2007 the General Assembly considered several bills to expand the smoking ban. Some efforts to regulate smoking failed, but several pieces of legislation were approved by the General Assembly. Legislators gave approval to

S.L. 2007-193 (H 24), prohibiting smoking in state government buildings and allowing local governments to regulate smoking in local government buildings. Additional legislation regulated smoking at elementary and secondary schools and on UNC's grounds and in its facilities. S.L. 2007-459 (H 1294) prohibits smoking in long-term care facilities and requires licensed home care agencies to prohibit their employees from smoking in patients' homes. A more thorough discussion of the smoking bans considered by the General Assembly this year can be found in Chapter 14, "Health."

Solid Waste Disposal

In 2006 the General Assembly approved a moratorium on new landfills. With the moratorium expiring on August 1, 2007, the General Assembly revisited the solid waste disposal issue in the hotly debated S.L. 2007-550 (S 1492). Generally, the act makes changes in (1) technical requirements that must be met by new landfills, (2) siting considerations for new landfills, (3) processes for permitting new landfills, (4) fees for solid waste disposal, and (5) other aspects of solid waste handling. A detailed discussion of this legislation can be found in Chapter 12, "Environment and Natural Resources."

Speeding

In the spring of 2007, *The News & Observer* published a series examining the treatment of individuals ticketed for speeding, which found that a very low percentage of drivers were convicted as charged. S.L. 2007-380 (S 925) responded by providing that a violation of the statute requiring motor vehicles to be equipped with a working speedometer is not a lesser-included offense of charges of speeding in excess of 25 mph over the posted speed limit. The legislation also provides that a driver charged with speeding more than 25 mph over the posted speed limit is ineligible for a disposition of prayer for judgment continued. Further discussion can be found in Chapter 21, "Motor Vehicles."

Tax Relief for Elderly or Disabled Homeowners

S.L. 2007-497 (H 1499) provides expanded property tax relief for elderly or disabled homeowners by creating a property tax exclusion for a permanent residence that is owned and occupied by a North Carolina resident whose income is less than the income eligibility limit and who is at least sixty-five years old or is totally and permanently disabled. The amount excluded from taxation is increased beginning in the 2008–09 tax year to the greater of 50 percent of the value of the residence or $25,000. S.L. 2007-1499 also creates a new property tax "circuit breaker" benefit for elderly or disabled homeowners. This new benefit will be available for a permanent residence owned and occupied for at least five years by a North Carolina resident who is at least sixty-five years old or is totally and permanently disabled with income less than 150 percent of the income eligibility limit. Further information on this legislation can be found in Chapter 18, "Local Taxes and Tax Collection."

Unfinished Business

With the large number of bills introduced this session, there were many that were not enacted during the 2007 session. While some bills made it through at least one house, there were also high profile issues that saw very little action.

Studies

As in 2003 and 2005, the omnibus studies bill was not passed, although numerous studies were authorized in individual pieces of legislation. The bill remains eligible for consideration in 2008. Because the study bill was not enacted to authorize issues to be studied before the short session, the Legislative Research Commission or the leadership of the House or Senate may establish committees and decide the issues to be studied.

Death Penalty

Although several pieces of legislation were introduced concerning the death penalty, these bills saw very little movement during the session. As in 2003 and 2005, legislation was introduced calling for a moratorium and study of the death penalty. The issue became even more controversial in January when the North Carolina Medical Board adopted the position that any physician engaging in any physical or verbal activity during an execution was subject to discipline for violating medical ethics. The state's last execution occurred in August 2006; the medical board's position effectively created a death penalty moratorium, as no physicians were willing to attend executions as required by G.S. 15-190. In March the Department of Corrections sued the medical board arguing that the medical board's position and threat of punishment made it impossible to find doctors willing to participate in executions. In October the Wake County district court ruled against the medical board, declaring that the medical board was trumped by the statute and stating that the intent of the legislation was for doctors to attend executions and provide medical assessments. The court further found that executions were beyond the medical board's reach because executions are not a medical event or procedure. S.L. 2007-346 amended several laws relating to the practice of medicine, including defining the practice of medicine, but failed to address the overall issue. The medical board is currently appealing the district court's decision.

House Bill 1691 would have suspended executions for two years while reforms were considered. House Bill 1526 would have amended the aggravating circumstances for capital cases and required a case to be declared noncapital if the court did not find substantial evidence of first-degree murder or of an aggravating circumstance at a hearing conducted before the pretrial conference. As the session progressed, both bills were amended in committee to also require a study of the costs of the state's current death penalty system and the potential savings from making more cost-effective decisions about whether a first-degree murder case may be tried as a capital case. Despite being discussed in the House Judiciary I Committee, neither of these bills made it to the floor for a vote. House Bill 341 would require the North Carolina Supreme Court, when conducting the required proportionality review for a death sentence, to consider factually similar cases in which the defendant was sentenced to life in prison in addition to capital cases in which the death penalty was imposed. This bill passed the House and is eligible for consideration during the 2008 session.

Dorothea Dix Hospital

The future of the Dorothea Dix Psychiatric Hospital Campus in Raleigh has been the subject of controversy in recent years. House Bill 1644 and Senate Bill 1541 both provide that if the state ceases to use the hospital for the provision of mental health services, the General Assembly must examine the possibility of creating a park on the campus that is to be financed with local public revenues and private contributions. Each bill also provides for the renovation of buildings on the campus and states that the intended uses provided for in the bill must continue to support mental health services. Each bill passed its respective house and is eligible for consideration in 2008.

Transportation

Senate Bill 1352 would provide gap funding for projects authorized by the Turnpike Authority, by requiring an annual appropriation of $20 million from the General Fund to the

Turnpike Authority. Instead of the appropriation, an earlier version of the bill proposed an $8 increase in the registration fees for private vehicles and property-hauling vehicles, with the additional fees being credited to the Turnpike Authority to be used to provide debt service on bonds issued for Authority projects. The version of the bill with the appropriation passed second and third reading in the House and was not taken up again by the Senate.

After the session adjourned, the media reported that some legislators felt a special session was needed to examine transportation funding issues. Instead of seeking a special session, Senate President Pro Tempore Basnight and House Speaker Hackney formed the 24-member 21st Century Transportation Committee. The committee is charged with studying a number of issues over the next year, including improving the transportation system, traditional and nontraditional transportation financing methods, mass transit, fuel and energy conservation, and the use of innovative technology as applied to the transportation system. The committee must submit a final report to the General Assembly by December 31, 2008.

Navy Outlying Landing Field

For many years, environmental advocates, citizens of eastern North Carolina, and others have been fighting the Navy's efforts to build an outlying landing field (OLF) in Washington County near the Pocosin Lakes National Wildlife Refuge. House Bill 1906 is a joint resolution urging the Navy to find a location other than Washington, Beaufort, or Perquimans County for the OLF and urging the state's congressional delegation to withhold funding for the proposed OLF in Washington County until a more suitable location is found. The resolution was passed by the House and is eligible for consideration during the 2008 session.

School Bullying

One of the bills receiving the most public attention and resulting in some interesting debates was House Bill 1366, the School Violence Prevention Act, which would enact a new Article 29B, "School Violence Prevention," in G.S. Chapter 115C. The new article would prohibit bullying and harassing behavior, impose an affirmative duty to report instances of bullying and harassing, and prohibit retaliation against individuals reporting the behavior. Schools would also be directed to implement strategies for school violence prevention. Much of the controversy centered around how to define bullying and harassing behavior. The bill is in its fifth edition; each chamber passed a different version of the bill, and it is now back in the House on the issue of concurrence with the Senate version.

The Governor's Veto

The 2007 session found the General Assembly in the unusual situation of coming back for simultaneous reconvened and extra sessions. Governor Easley vetoed only one bill, House Bill 1761, the Job Maintenance and Capital Development Fund, claiming in his veto message that the bill would set a dangerous precedent for the state's economic development policy and that it was unfair to taxpayers. The bill would have created a fund in the Department of Commerce to provide a grant to a private business if it invested a minimum amount in a facility in a development tier one county, employed and maintain at least 2,000 full-time employees or equivalent full-time contract employees at the facility, and satisfied other specified conditions. The bill would have allowed grants for up to five businesses for a total cost of $40 million. The bill did not name a specific company, but it was widely believed that it was intended for Fayetteville's Goodyear Tire Company.

House Bill 1761 was ratified on August 2 and vetoed on August 30. The General Assembly reconvened on September 10, but it did not act on House Bill 1761 during the reconvened session. Instead, the Governor convened the General Assembly for an extra session on September 10 to

consider alternative legislation. During the extra session, three bills were introduced. The General Assembly ultimately gave its approval to a reworked version of the Job Maintenance and Capital Development Fund, S.L. 2007-552 (Extra Session H 4). This version increases the maximum total cost of grants that may be paid to $60 million, sets wage standards, and addresses employee retention. The new act also appears to allow Bridgestone Firestone, a Goodyear Tire competitor, to qualify for a grant. Both the reconvened and extra sessions adjourned on September 11. A more detailed analysis of House Bill 1761 and S.L. 2007-552 can be found in Chapter 8, "Economic and Community Development."

The Legislative Institution

Legislative Interns

S.L. 2007-201 (S 167) expands the category of students eligible to participate in the legislative intern program to include students enrolled in community colleges that offer college transfer programs. The program was limited to students enrolled in four-year colleges and universities.

Senate Coat of Arms

S.L. 2007-354 (S 371) enacts new G.S. 120-271 making it a Class 2 misdemeanor to use, manufacture, reproduce, or sell any likeness of the Senate seal or coat of arms unless directed by the Senate or the Senate Principal Clerk. The seal may be used for manufacture or sale of an item for the state's official use.

Information Sharing

S.L. 2007-103 (S 940) amends G.S. 120-32.01 to require the Department of State Treasurer Retirement Systems Division to provide the Fiscal Research Division with online access to active and retired member information or records.

Program Evaluation Division

S.L. 2007-78 (S 1132) enacts new Article 7C of G.S. Chapter 120, establishing the Program Evaluation Division to assist the General Assembly in overseeing government functions by providing information to be used in evaluating whether public services are being delivered in an effective and efficient manner. The division's duties include examining state agency programs and activities and evaluating their merits and effectiveness, developing measures to determine the cost of activities performed and services provided, and making recommendations to improve the efficiency and effectiveness of state agencies. The act also establishes the eighteen-member Joint Legislative Program Evaluation Oversight Committee. The committee's duties include reviewing requests for evaluations to be performed by the division, establishing the division's annual work plan, and recommending to the General Assembly any changes needed to implement a recommendation that has been included in a report from the division and endorsed by the committee.

The 2008 Session

The adjournment resolution, Res. 2007-68 (S 1573), as amended by Res. 2007-70 (S 1575), provides that the 2008 regular session of the General Assembly will convene at noon on May 13, 2008. Only the following may be considered during that session:

- Bills introduced by May 27, 2008, directly affecting the budget.
- Bills amending the North Carolina Constitution.
- Bills introduced in 2007 that passed third reading by May 24, 2007, in the house in which the bill was introduced and that were not unfavorably disposed of by the other house.
- Bills and resolutions introduced by May 21, 2008, implementing the recommendations of various commissions and committees.
- Noncontroversial local bills that are introduced by May 28, 2008, and are accompanied by a certification that no public hearing will be required and that the bill is approved for introduction by each member of the relevant house whose district is affected by the bill.
- Bills making a selection, an appointment, or a confirmation of members of state boards and commissions.
- Bills concerning matters authorized by joint resolution passed during the 2008 session by a two-thirds majority in each house and joint resolutions authorizing consideration of these bills.
- Bills introduced by May 28, 2008, affecting state or local pension or retirement systems.
- Resolutions authorized under Senate Rule 40(b) or House Rule 31, primarily relating to deceased persons.
- Adjournment resolution.
- Bills disapproving administrative rules.

The adjournment resolution prohibits blank bills from being introduced in the House of Representatives during the 2008 session. The adjournment resolution also authorizes the Speaker of the House or the President Pro Tempore of the Senate to allow committees or subcommittees to meet when the General Assembly is not in session to review matters related to the 2007–09 budget, prepare reports, and consider other matters as appropriate, other than resolutions, bills, or proposed committee substitutes that originated in the other house. Conference committees may also meet with approval from the Speaker or President Pro Tempore.

Christine B. Wunsche

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The State Budget

This chapter summarizes the budget process and fiscal provisions of the 2007–08 state budget. Some of the chapters that follow include more detailed information regarding budget provisions affecting specific state departments and agencies. This chapter also outlines two 2007 acts that provide for stronger fiscal control in state government.

The Budget Process

The North Carolina state government operates on a fiscal year that begins July 1 and ends June 30. During regular sessions in odd-numbered years, the General Assembly adopts a state budget that makes appropriations for the following two fiscal years (the fiscal biennium). In even-numbered years, the legislature conducts a short session to make adjustments to the state budget for the second year of the biennium.

In each odd-numbered year, at the beginning of the regular session of the General Assembly, the Governor, director of the budget by virtue of the state constitution, begins the biennial budget process by submitting budget recommendations for the next two fiscal years to the legislature. These budget recommendations include consensus estimates of the amount of revenues available for appropriations, estimates of the appropriations needed to continue existing programs at current levels, and recommended appropriations for expansion of existing programs, for new programs, and for capital improvements. In 2007 Governor Mike Easley released his budget proposal on February 22.

Although the House and Senate appropriations subcommittees usually meet jointly to review the Governor's budget proposal, the House of Representatives and the Senate each develop their own versions of the budget. In recent years the House and the Senate have alternated from biennium to biennium the responsibility for initially passing an appropriations bill for continuing operations, expansion, and capital improvements for state departments and agencies. In 2007 the House of Representatives was responsible for taking the lead in preparing the budget. It passed an appropriations bill (House Bill 1473) on May 11, 2007, that was received by the Senate on May 14. The Senate passed its version of House Bill 1473 on May 31. The House did not concur with the Senate's proposed changes to House Bill 1473, and a conference committee was appointed to negotiate compromises where the two bodies differed.

The budget negotiators were unable to reach an agreement by June 30, the end of the fiscal year. As a result, a temporary spending plan, the 2007 Continuing Budget Authority (House Bill 2044), was enacted on June 29 as S.L. 2007-145, authorizing continuation of state appropriations at the level in effect as of June 30. The act also appropriated funds for increases in average daily membership, extended some provisions that were due to expire, and delayed the effective dates of others. The conference committee finally reached agreement on a compromise bill, which was adopted by roll-call reading on three separate days in each chamber in late July. The Current Operations and Capital Improvements Appropriations Act of 2007 was signed by the Governor on July 31, 2007, and became law as S.L. 2007-323. Following the enactment of the budget bill, the General Assembly adopted the 2007 Budget Technical Corrections Act (House Bill 714), making technical corrections and some substantive changes to the budget. On August 6, the Governor signed this bill into law as S.L. 2007-345.

The 2007 budget negotiations lasted approximately two months. The large number of bills filed this session, a total of 3,645, approaching the record of 3,700 set in the 1980s, no doubt prolonged the entire legislative process. However, much of the lengthy budget conference activity focused on the dramatic disparities between the House and Senate versions of the budget, which differed by $263 million on roughly $20 billion in spending. In addition, the House budget included tax and fee increases while the Senate budget increased only fees. The House sought to provide one-time allocations to help counties with Medicaid costs and to fully repay the state pension system—both provisions absent from the Senate proposal. While the House budget authorized borrowing almost $450 million for capital improvements, the Senate proposed borrowing over $1.2 billion for capital improvements. Another complication was introduced when updated revenue figures showed more availability than had previously been estimated.

Taxes were also a major conference topic. There was intense debate over the proposed inclusion of a local option land transfer tax to help provide Medicaid relief for counties. Opponents of the tax argued that it would deter buyers from purchasing homes and negatively affect the real estate business. Another debate centered on providing an earned income tax credit (EITC) to give tax relief to low-income residents, and there was prolonged discussion regarding whether to extend the 8 percent income tax rate and the additional one-fourth percent increase in the state portion of the sales tax or to allow these provisions, adopted in 2001 as temporary revenue raising measures, to sunset July 1. Further complicating the budget negotiation process was a shortfall in the expected revenues from the State Education Lottery, resulting in an effort to include in the budget appropriations from the General Fund to maintain smaller class sizes in grades K–3 and expand the More at Four Program.

Ultimately, the conferees reached compromises on the disputed provisions and presented a budget that includes the local option transfer tax, the EITC, and a reduction in the 8 percent income tax rate and makes the one-fourth percent sales tax increase permanent. The budget also provides monies from the General Fund to offset the education lottery shortfall and includes relief for counties from Medicaid responsibilities. Notably, the budget also authorizes the largest amount of new nonvoted debt ever, approximately $550 million for capital improvements and $120 million for land conservation.

The 2007–08 Budget

S.L. 2007-323 (H 1473) appropriates approximately $20.7 billion (including capital improvements appropriations) from the General Fund for fiscal year 2007–08. The General Assembly appropriates monies from the General Fund to support most areas of state government ranging from education, to economic development initiatives, to health and human services, to public safety. Money in the General Fund comes from three main sources: (1) tax revenues; (2) federal funds such as block grants and matching funds for certain programs; and (3) receipts such as tuition, fees paid for certain government services, and investment income. The General

Assembly makes smaller appropriations for specific purposes from the Highway Fund and the Highway Trust Fund.

The General Fund availability used in developing the budget for fiscal year 2007–08 is as follows:

- Beginning unreserved fund balance $ 1,173,100,000
- Tax revenues 18,643,100,000
- Nontax revenues 874,690,000
- Adjustments 237,951,810

Several of the adjustments to the General Fund availability were tax related, including the following:

- Maintaining state sales and use tax rate at 4.25 percent $258,400,000
- Corporate tax earmarking adjustments 44,700,000
- Long-term care insurance tax credit (7,000,000)
- Adoption tax credit (3,000,000)
- Privilege tax on software publishers (2,800,000)
- Reserve for manufacturers' and farmers' energy tax provisions (10,000,000)
- Nonprofit energy tax credit (500,000)
- Reserve for work opportunity tax credit (3,000,000)
- Firefighter/EMS income tax deduction (1,000,000)

Appropriations

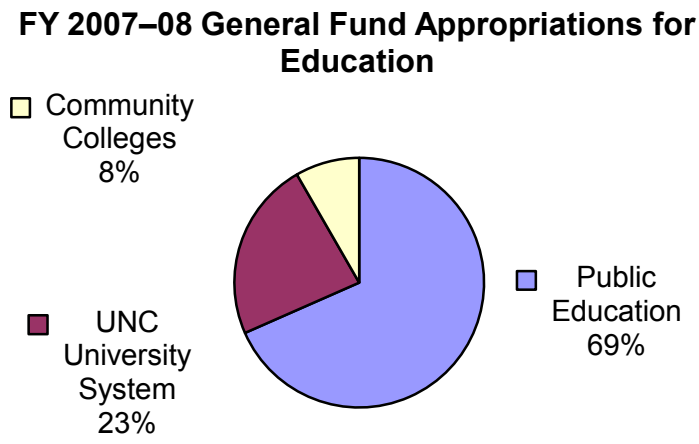
The General Assembly made the following appropriations for fiscal year 2007–08:

- Total General Fund $20,658,337,712
- Highway Fund 1,832,110,000
- Highway Trust Fund 1,128,280,000

For purposes of documenting General Fund appropriations, the budget bill groups functions and agencies within state government into seven main categories:

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

As in previous years, education and health and human services received the largest share of the General Fund operations appropriations. The appropriation for education was $11.3 billion or 55 percent of the budget, and the appropriation to the Department of Health and Human Services was $4.6 billion or 22 percent of the budget for fiscal year 2007–08. Combined, education and health and human services account for 77 percent of the appropriations. The education appropriations are further divided among the public school system (elementary, middle, and high schools, including public charter schools), the community college system, and the UNC college system, as the following graph illustrates.



Also included in the 2007–08 appropriations were revenues from the Education Lottery. Although actual revenues were less than projected, total revenues transferred from the State Lottery Fund for fiscal year 2007–08 equaled $350 million. Pursuant to G.S. 18C-164(d), the appropriations made from the Education Lottery are as follows:

- Class size reduction $ 90,364,291
- More at Four 84,635,709
- Public school building capital fund 140,000,000
- Scholarships for needy students 35,000,000

The General Fund appropriations also included funding for capital improvements totaling $230,741,000. Capital improvements include constructing, repairing, or renovating state buildings, utilities, and other capital facilities and acquiring sites, buildings, and land for state government purposes. Appropriations for fiscal year 2007–08 also include $20 million for water resource development projects. These projects will be located in multiple counties and cities across the state.

The Highway Fund includes a provision that authorizes additional rail service to some parts of the state. The fund appropriates $3,850,000 for fiscal year 2007–08 to relocate or construct new tracks and rail interchange facilities to improve rail access to various areas as a more cost effective alternative to new highway construction.

General Fund Budget Highlights

Following are some highlights of the $20.7 billion 2007–08 state spending plan. The figures reflect expenditures or, in the case of taxes and fees, an increase or decrease in revenues.

Salaries and Benefits

- Average 5 percent salary increase for public school teachers, 5 percent for community college and university faculty and judges, and 4 percent for most state employees: $490.3 million
- Additional 31-year salary step for public school teachers: $9.9 million
- Cash influx to cover projected shortfall in state employee health plan and elimination of indemnity plan in July 2008: $110.2 million
- Fifth and final installment to repay retirement funds intercepted in 2001 to reduce budget shortfall: $45 million
- Cost-of-living increase of 2.2 percent for state retirees: $35.7 million

Public Education

- Provide more funding for low-wealth school districts and schools with at-risk students: $23 million

- Provide additional money to help small-county school districts: $2.1 million
- Expand More at Four prekindergarten program by 10,000 slots, and increase money per slot: $56 million
- Deliver college courses electronically to high school students through Governor Mike Easley's Learn and Earn Online program: $11.5 million
- Upgrade public school broadband connectivity: $12 million
- Establish district dropout prevention competitive grant program: $7 million
- Fund pilot program for five school districts with teacher recruitment and retainment bonuses, teacher mentoring, and science and math assistance: $4.4 million

University of North Carolina System

- Restore funding for projected fall university enrollment: $6 million
- Provide operating, equipment, and faculty startup funds for UNC programs at North Carolina Research Campus in Kannapolis: $16.5 million
- Begin Education Access Rewards North Carolina Scholars program, which will provide grants to low-income college students: $27.6 million
- Fund Wake Forest Institute for Regenerative Medicine at Wake Forest University to attract federal investment to Piedmont Triad Research Park: $8 million
- Provide General Fund support for UNC Hospitals cancer research: $5.6 million

Community Colleges

- Funding for enrollment of additional 2,300 students: $3.3 million
- Increase in community college tuition by 6.3 percent: ($7.5 million)
- Additional funds for Allied Health programs: $5.6 million
- Improvements in community college broadband connectivity: $3.8 million
- Purchase of instructional equipment: $10 million
- Competitive grant program for campuses for facility and equipment needs: $15 million
- Advanced planning of capital projects and master plans: $8 million

Health and Human Services

- Reduce county share of Medicaid from 15 percent of nonfederal share to 11.25 percent in October 2007 and to 7.5 percent in July 2008: $86.2 million
- Fully fund N.C. Health Choice program: $7.5 million
- Open and fund new central regional psychiatric hospital in Butner: $62.4 million
- Transfer half of forensic unit beds from Dorothea Dix Hospital to Broughton Hospital in Morganton: $4.7 million
- Fund competitive grant program for rural health centers: $5 million
- Remove 643 children from child-care subsidy waiting list and increase lagging subsidy rates: $8.4 million
- Fund state match to purchase more than 634,000 treatment courses of antivirals for use in case of pandemic flu and create climate-controlled storage space: $8.3 million
- Fund HIV prevention and related activities, including counseling and testing: $2 million
- Hire 54 public school nurses: $2.7 million

Natural and Economic Resources

- N.C. Rural Economic Development Center funds for water and sewer system grants to local governments: $100 million
- Expansion of N.C. Rural Economic Development Center Economic Infrastructure Fund and creation of the Rural Economic Transition Program: $19 million
- N.C. Agricultural Development and Farmland Preservation Trust Fund, designed to prevent loss of farmlands: $8 million
- Creation of the Biofuels Center of North Carolina, which will encourage growth in biomass production and development in keeping with legislative-mandated study: $5 million
- One North Carolina Fund for economic development: $14 million
- One North Carolina Small Business Fund for economic development: $4.8 million

- Creation of incentives for broadband in rural areas and distribution of funds for cable access channels through e-NC authority: $4 million

Justice and Public Safety

- Modernize technology in court system: $9.8 million
- Hire 77 court personnel, including new assistant district attorneys, DA investigators, and legal assistants: $4.2 million
- Fund 150 new deputy clerks of court positions: $4.6 million
- Raise hourly rate for privately assigned attorneys for indigent defendants in non-capital cases: $4.1 million
- Hire more sworn agents, staffers, and technicians at State Bureau of Investigation and fund startup costs for Triad regional crime laboratory: $1.5 million
- Provide funding for gang prevention, intervention, and suppression initiative grants: $4.8 million

Other Agencies and Funds

- State Energy Office operations: $7.7 million
- Expansion of N.C. Arts Council grants, the Grassroots Arts Program, and the public school arts project: $3 million
- N.C. Housing Trust Fund, including money to build apartments for people with disabilities: $12.5 million
- Continuation of the home foreclosure protection pilot program: $1.5 million

Reserves and Capital Projects

- Special indebtedness for construction projects, including prison additions, university projects, and Tryon Palace visitors' center, issued over four years: $550 million
- Special indebtedness for land conservation, with repayments likely from parks and natural heritage trust funds: $120 million
- Resources building for and expansion of the Museum of Natural Sciences in Raleigh: $25 million
- East Carolina University dental school: $25 million
- UNC–Chapel Hill dental school addition: $25 million
- N.C. State University Centennial Campus library: $17 million
- UNC–Charlotte energy production infrastructure center: $19 million

Tax Provisions

- State portion of sales tax made permanent at 4.25 percent: ($258.4 million)
- Counties held harmless in Medicaid tax swap: $19.3 million
- Renewal of long-term insurance tax credit: $7 million
- Adoption tax credit equal to 50 percent of federal credit: $3 million
- Reserves for energy tax phaseout provisions and work opportunity tax credits: $13 million
- Sales tax refund for aircraft parts manufacturers: $800,000
- Increase in judicial fees, dedicated to court system technology and staff upgrades: ($35.5 million)

S.L. 2007-323 provides that "[t]he Joint Conference Committee Report on the Continuation, Expansion, and Capital Budgets, dated July 27, 2007 . . . shall indicate action by the General Assembly on this act and shall therefore be used to construe this act, as provided in the State Budget Act, Chapter 143C of the General Statutes, or the Executive Budget Act, Article I of Chapter 143 of the General Statutes, as appropriate, for these purposes shall be considered a part of this act . . . ." The report, which was prepared by the Fiscal Research Division of the General Assembly, is available on the General Assembly's website at: www.ncleg.net/sessions/2007/budget/budgetreport7-27.pdf. This report specifies in detail how the appropriations made in the act are to be allocated and expended. Each year the Fiscal Research Division also publishes an overview of the budget, which can be found on its website at www.ncleg.net/fiscalresearch/frd_reports/frd_reports.shtml.

Fiscal Control

S.L. 2007-520 (H 1551) enacts new Chapter 143D of the General Statutes to require each state agency to create and maintain a system of internal control in accordance with standards and policies to be established by the State Controller. The new law applies to every entity for which the state has oversight responsibility, including universities, hospitals, community colleges, and clerks of court. The act defines *internal control* as a process "designed to provide reasonable assurance regarding the achievement of objectives related to the effectiveness and efficiency of operations, reliability of financial reporting, and compliance with applicable laws and regulations." Each state agency must maintain documentation and submit periodic certified financial reports to the State Controller. A state employee's willful or continued failure to comply with the new law is sufficient cause for disciplinary action, including dismissal.

S.L. 2007-424 (H 1401) enacts new Article 79 of G.S. Chapter 143 to require certain state agencies to establish an internal auditing program. The new law applies to state agencies that have an annual operating budget of more than $10 million, have more than 100 full-time equivalent employees, or receive and process more than $10 million in a fiscal year. The term *state agency* includes each department created pursuant to G.S. Chapter 143A or 143B, the judicial branch of state government, the University of North Carolina, and the Department of Public Instruction. The internal auditing program must, among other things, provide an effective system of internal controls that safeguards public funds and assets and minimizes incidences of fraud, waste, and abuse. The new law sets out requirements and standards for internal auditing programs and the minimum qualifications of internal auditors. The act establishes the Council of Internal Auditing, which will be supported by the Office of State Budget and Management and consist of five ex-officio members as well as the State Auditor, who is a nonvoting member. The council's duties include developing guidelines and best audit practices, administering a peer review system for audits, and conducting hearings regarding effectiveness of or interference with internal auditing.

Sheria Reid

3

Alcoholic Beverage Control

The 2007 session was a quiet one for changes in the alcoholic beverage control (ABC) law. Only a handful of bills were enacted and none altered the structure of the ABC system or significantly affected the kinds of permits that can be obtained or what they allow. The Carolina Panthers may now begin selling beer earlier on Sundays, permit holders were given some leeway on recycling deadlines, and more violators of ABC laws will lose their driver's licenses. Attempts to increase alcohol taxes and to commence a study of the ABC laws were unsuccessful.

ABC Violations and Drivers' Licenses

Since 1983 underage persons who buy alcohol, attempt to do so using fraudulent identification, or help someone else buy illegally can lose their drivers' licenses for a year, in addition to whatever punishment results from the ABC violation. The same applies to someone over twenty-one who lends a driver's license or ID card to an underage person to be used for purchasing alcohol. In S.L. 2007-537 (H 1277) the General Assembly expanded these provisions, partly in response to some highly publicized incidents in Wake County in which parents furnished alcohol to minors at parties for high schoolers. A minor could lose his or her license in these circumstances, but the parents who provided the alcohol would not.

The new legislation amends G.S. 18B-302 in several ways. It creates a separate offense [G.S. 18B-302(a1)] making it a crime to give alcohol to a person under twenty-one (current law treats sales or gifts in a single offense, but with this change selling and giving are made into separate offenses). The clerk of court must report to the Division of Motor Vehicles (DMV) convictions of any violations of the new gift offense and any convictions of aiding and abetting the purchase of alcohol by a minor when the offender is over twenty-one (previously only offenders under twenty-one would be reported). S.L. 2007-537 makes violation of the new gift provision a Class 1 misdemeanor, and if the court does not impose an active sentence it must include as a condition of probation a minimum $250 fine and 25 hours of community service for a

first offense and a $500 fine and 150 hours of community service for a second offense that occurs within a four-year period. The act amends G.S. 20-17.3 to require DMV to revoke for one year the driver's license of a person convicted of giving alcohol to or aiding and abetting the purchase of alcohol by a minor when the person convicted is over twenty-one. The revocation may not run concurrently with any other revocation already in effect. A judge may grant a limited driving privilege to any person whose license is revoked as a result of a conviction of one of these offenses. (This act does not change the current law that revokes the driver's license of minors convicted of an illegal purchase or attempt to purchase. In addition, current law does not revoke a driver's license for conviction of illegal sale to a minor or of illegal consumption or possession by a minor; these provisions also remain unchanged.)

The act is effective for offenses occurring on or after December 1, 2007.

Permit Changes

The regulatory changes affecting permit holders were minimal. Current law provides that issuance of off-premises beer and wine permits is lawful automatically in *townships* that have approved the sale of mixed drinks. One section of S.L. 2007-402 (H 267) extends that provision to any incorporated *municipality* that has approved mixed drinks, regardless of whether there is a contrary local act.

In 2005 the General Assembly enacted G.S. 18B-1006.1 requiring all on-premises permit holders to separate and recycle beverage containers starting January 1, 2008. S.L. 2007-402 modifies the 2005 law by specifying that each on-premises permit application must include a plan for recycling containers but that failure to recycle is not grounds for revoking a permit. The 2007 act allows a permit holder to apply to the ABC Commission for a one-year stay of the recycling requirement if the holder cannot find a recycler. The commission will grant the postponement if the Division of Pollution Prevention and Environmental Assistance in the Department of Environment and Natural Resources certifies that recycling is not available for that permit holder.

A winemaking permit is available to a business that provides equipment and ingredients to individuals who come to that location to make their own wines for personal use. S.L. 2007-402 authorizes licensed wineries to allow winemaking by individuals on their premises as well. It is not clear if these wineries must obtain a separate winemaking permit to sell ingredients and allow individuals to make their own wine or if the winery permit now automatically authorizes that activity.

Sales at Panthers Games

Under general state ABC law, sales of any kind of alcoholic beverage, on-premises or off-premises, may not begin before noon on Sunday. Tucked into this year's budget [S.L. 2007-323 (H 1473)], enacted at session's end, was a provision in Section 6.25 authorizing sales to begin one hour earlier on Sunday for the holders of permits for "in-stand" sales under G.S. 18B-1009. That statute allows the sale of beer in the stands of stadiums with a seating capacity of 60,000 or more in cities with a population of more than 450,000. The only venue to which the statute applies is the Carolina Panthers professional football stadium in Charlotte. Panthers fans at Bank of America Stadium can now start warming up at 11:00 a.m. for those early kickoffs.

Elections

Only one minor change was made in the law concerning ABC elections. Under current law a city located in more than one county may hold a mixed drink election if that city has at least 500 voters (the general requirement for all municipal mixed drink elections) and one of the counties in

which the city is located already operates ABC stores. (The ABC store requirement stems from the fact that mixed drink permit holders must purchase their liquor from a local store.) Under S.L. 2007-386 (S 661) a city in more than one county may hold a mixed drink election if either one of the counties *or* any other municipality in one of the two counties operates ABC stores. Presumably the legislation was designed to benefit a particular municipality, but its identity is not specified.

Criminal Offenses

Other chapters in this publication address new criminal offenses that involve alcohol or affect alcohol-related businesses. An increase in punishment and other changes affecting dealers in used metals, as enacted in S.L. 2007-301 (H 367), are of interest to those in the beer business because of the rapidly growing problem of theft of beer kegs as the price of metal increases. Another act, S.L. 2007-134 (S 125), makes it unlawful to make, sell, use, or possess an alcohol vaporizing device, a device used for inhaling alcohol vapor. Both of these acts became effective December 1, 2007.

Legislation Not Enacted

A variety of other bills affecting alcohol use and sales were introduced but did not make sufficient progress to be eligible for consideration in 2008. These included legislation to allow breweries and wineries to offer discount coupons directly to customers, an increase in the volume of beer a brewpub can manufacture and continue to be its own wholesaler, and a bottle deposit bill. None of the several bills to increase or adjust alcohol taxes were considered at any length. Legislation creating a study commission to review and revise the ABC laws was proposed but not enacted. The last general revision of the ABC laws occurred in 1981, prompted largely by the enactment of mixed drink legislation several years earlier, and some confusion and clutter has crept into G.S. Chapter 18B since then. Much of the difficulty has resulted from nominally statewide legislation intended to solve local problems, enacted because the state constitution prohibits local acts regulating trade. The bill authorizing new studies got caught in the rush to adjournment, however, and the ABC study was among those not enacted.

James C. Drennan

4

Children and Juvenile Law

In its 2007 session, the General Assembly addressed a variety of subjects relating to children and juvenile law. Two areas stand out in particular, though, because the new laws were written on relatively clean slates. For the first time the General Assembly established a nonjudicial procedure through which adults who were adopted as children and the adults' birth relatives may contact each other when all parties involved are in agreement. The new law authorizes county social services departments and licensed child-placing agencies to act as "confidential intermediaries" to obtain and share confidential adoption information and facilitate contact between individuals pursuant to the individuals' written consent. The second notable enactment provides guidance to courts with respect to holding juveniles in contempt. The new law creates "contempt by a juvenile" as a new category of contempt and establishes procedures for dealing with it summarily when it is direct contempt and through the juvenile court process when it is indirect contempt.

Child Welfare

Termination of Parental Rights Review Hearings

G.S. 7B-908 requires the juvenile court to conduct post-termination of parental rights review hearings every six months after a child's parents' rights have been terminated when the child is in the custody of a county department of social services or a licensed child-placing agency. Previously hearings were required only until the juvenile was placed for adoption and an adoption petition was filed. S.L. 2007-276 (H 698) rewrites G.S. 7B-908(b) and (e) to require the court to continue holding these hearings until a final order of adoption is entered. The act makes a comparable change to G.S. 7B-909 for hearings conducted when children have been relinquished to an agency for adoption.

The act also amends

- G.S. 7B-506(b) to state that at hearings on the need for continued nonsecure custody, the guardian ad litem, the juvenile, and the juvenile's parent, guardian, or custodian have a

right, rather than just an opportunity, to introduce evidence, be heard, and question witnesses
- G.S. 7B-901 to provide that at dispositional hearings, the juvenile and the juvenile's parent, guardian, or custodian have a right, rather than just an opportunity, to present evidence
- G.S. 7B-906(a), 7B-907(a), and 7B-908(b)(1) to state that no foster parent, relative, or preadoptive parent is deemed a party to the proceeding based solely on receiving notice and the right (formerly, an opportunity) to be heard at a review, permanency planning, or post-termination of parental rights review hearing

S.L. 2007-276 rewrites the definition of *criminal history* for purposes of various criminal record checks required in relation to foster care and adoption by amending G.S. 48-1-101(5b), 48-3-309, 131D-10.2(6a), 131D-10.3A(e), and related statutes.

These changes became effective October 1, 2007.

Disclosure of Conviction of Sex Offense in Custody Proceedings

Effective for actions or proceedings filed on or after October 1, 2007, S.L. 2007-462 (H 1328) adds G.S. 50-13.1(a1) to require any person instituting an action or proceeding for custody ex parte who has been convicted of a sexually violent offense as defined in G.S. 14-208.6(5) to disclose the conviction in the pleadings. A *sexually violent offense* is the principal type of conviction that requires a person to register as a sex offender under North Carolina's sex offender registration law.

Termination of Parental Rights and Adoption

Jurisdiction over Out-of-State Parents

The North Carolina Court of Appeals has held that in a civil action to terminate a parent's rights, a court in this state may terminate the rights of an out-of-state parent only if that parent has minimum contacts with North Carolina, unless the parent
- submits to the state's jurisdiction,
- is served with process while physically in the state, or
- is the father of a child born out of wedlock and has not established paternity, legitimated the child, or provided substantial support or care to the child and mother.

See In re Trueman, 99 N.C. App. 579, 393 S.E.2d 569 (1990); *In re* Finnican, 104 N.C. App. 157, 408 S.E.2d 742 (1991), *cert. denied*, 330 N.C. 612, 413 S.E.2d 800, *overruled in part on other grounds*, Bryson v. Sullivan, 330 N.C. 644, 412 S.E.2d 327 (1992); *In re* Dixon, 112 N.C. App. 248, 435 S.E.2d 352 (1993); and *In re* Williams, 149 N.C. App. 951, 563 S.E.2d 202 (2002).

S.L. 2007-152 (H 866) is titled An Act to Expand the Reach of North Carolina Courts in Proceedings to Terminate the Parental Rights of Nonresident Parents of Resident Children. It amends G.S. 7B-1101 to provide that the district court has jurisdiction to terminate the parental rights of a parent, regardless of the parent's state of residence, if (1) the court has nonemergency jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA, G.S. Chapter 50A) and (2) the parent has been served with a summons pursuant to G.S. 7B-1106.

This change makes the termination of parental rights statute more nearly consistent with the UCCJEA, which provides in G.S. 50A-201(c) that personal jurisdiction over a parent is not necessary in order for a court in this state to exercise jurisdiction in a child-custody proceeding, which may include an action to terminate a parent's rights. However, in the decisions cited above, the court of appeals held that "minimum contacts" are required as a matter of constitutional law in order for a North Carolina court to terminate the rights of some out-of-state parents. Some states' courts have adopted a "status" exception to the minimum-contacts rule for certain domestic actions—for example, the Alaska Supreme Court in *S.B. v. State of Alaska*, 61 P.3d 6 (Alaska 2002) (holding that personal jurisdiction is not required for status determinations under the

UCCJEA) and the Wisconsin Supreme Court in *In re Thomas J.R.*, 262 Wis.2d 217, 663 N.W.2d 734 (2003). One cannot predict whether the legislature's amendment of G.S. 7B-1101 will lead North Carolina's appellate courts to do the same.

The amendment became effective October 1, 2007, and applies to petitions and motions in the cause filed on or after that date.

Termination Ground to Facilitate Out-of-State Adoptions

S.L. 2007-151 (H 865) addresses cases in which a child is freed for adoption in North Carolina but the adoption proceeding takes place in another state, generally where the adoptive parents reside. Sometimes a parent's consent to adoption or relinquishment of a child to a child-placing agency for adoption under North Carolina law is not sufficient to satisfy the prerequisites for adoption in another state. S.L. 2007-151 creates a new ground for termination of parental rights that applies when the parent's North Carolina consent or relinquishment has become irrevocable, termination of the parent's rights is necessary in order for the adoption to occur in another state, and the parent does not contest the termination of parental rights. The new ground, in G.S. 7B-1111(a)(10), became effective for termination petitions and motions filed on or after October 1, 2007.

Adoption Jurisdiction

S.L. 2007-151 expands North Carolina's jurisdiction in adoption proceedings to include (1) cases in which the child to be adopted has lived in the state either since birth or for the six consecutive months preceding the filing of the adoption petition, regardless of the adoptive parents' domicile and (2) cases in which a social services department or licensed child-placing agency in the state has legal custody of the child when the adoption petition is filed.

The act also provides that North Carolina may exercise jurisdiction in an adoption proceeding even if another state is properly exercising jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act when the adoption petition is filed if that state either dismisses its proceeding or releases its exclusive continuing jurisdiction within sixty days after the adoption petition is filed in North Carolina.

These amendments to G.S. 48-2-100 are effective for adoption petitions filed on or after October 1, 2007.

Access to Adoption Information

North Carolina has been slower than many states to offer adult adoptees and the biological parents of adult adoptees assistance in identifying and contacting each other without court involvement. S.L. 2007-262 (H 445) represents a major change in that respect. It rewrites various sections of the adoption law, G.S. Chapter 48, to allow county social services departments and licensed child-placing agencies in the state to agree to act as "confidential intermediaries" for purposes of obtaining and sharing confidential adoption information and facilitating contact between individuals when there is written consent by all parties to the contact or information sharing. Agencies may charge a reasonable fee for the service. The act does not create an adoption registry or provide details about how the process will work, but it requires the state Division of Social Services to develop guidelines for confidential intermediary services.

Those who may seek and consent to information sharing, contact, or both through a confidential intermediary include an adoptee who has reached the age of twenty-one, an adult lineal descendant of a deceased adoptee, and a biological parent of an adoptee. An agency also may act as a confidential intermediary for the adoptive parents of a minor adoptee for purposes of obtaining and sharing nonidentifying birth-family health information.

The act is effective January 1, 2008.

Delinquent Juveniles

Impaired Driving Offenses

Section 31 of S.L. 2007-493 (S 999) rewrites G.S. 7B-1903(b) to allow the court to order that a juvenile be placed in secure custody when

1. the juvenile is alleged to be delinquent for violating G.S. 20-138.1 (impaired driving) or G.S. 20-138.3 (driving by person less than twenty-one years old after consuming alcohol or drugs),
2. the court finds a reasonable factual basis to believe the juvenile committed the alleged offense, and
3. the juvenile has demonstrated that he or she is a danger to persons.

This amendment applies to offenses committed on or after December 1, 2007.

Section 32 of S.L. 2007-493 authorizes the Legislative Research Commission to study dispositional alternatives for juveniles adjudicated delinquent for violations of G.S. 20-138.1 or G.S. 20-138.3. The act also directs the commission to determine (1) whether these violations should be classified as violent, serious, or minor offenses and (2) the appropriate delinquency history level points to be assigned to them. The commission may make an interim report to the 2008 regular session and is required to make a final report to the 2009 General Assembly upon its convening.

Polygraph Use

S.L. 2007–294 (H 1810) enacts new G.S. 15A-831.1 to prohibit a juvenile justice (as well as a criminal justice) agency from requiring a person who claims to be a victim or witness in a sexual assault case to submit to a polygraph as a precondition to the agency's conducting an investigation. An agency wanting to perform a polygraph examination of such a person must inform the person that

1. taking the polygraph examination is voluntary,
2. the results of the examination are not admissible in court, and
3. the person's decision to submit to or refuse a polygraph examination will not be the sole basis for any decision by the agency not to investigate the matter.

If the agency declines to investigate an alleged case of sexual assault after an individual decides not to submit to a polygraph examination, upon request the agency must provide the person a written statement of the reasons the agency did not pursue the investigation.

The act is effective December 1, 2007, and applies to sexual assault offenses alleged to have been committed on or after that date.

Restraint of Juveniles in Courtroom

S.L. 2007-100 (H 1243) adds to the Juvenile Code a new section, G.S. 7B-2402.1, which applies to any hearing involving a juvenile who is alleged or has been adjudicated to be delinquent or undisciplined. The judge may require that the juvenile be physically restrained in the courtroom, but only after finding that the restraint is reasonably necessary to

- maintain order,
- prevent the juvenile's escape, or
- provide for the safety of the courtroom.

When possible, the court must give the juvenile and the juvenile's attorney an opportunity to be heard before ordering the use of restraints. The judge must make findings of fact to support any order that a juvenile be restrained. The act is effective for hearings conducted on or after October 1, 2007.

Release of Information about Escaped Juveniles

S.L. 2007-458 (H 1148) repeals G.S. 7B-2102(d1), which dealt with the release of photographs of juveniles who escaped from custody or from a juvenile facility. The act adds a new section, G.S. 7B-3102, which requires the Department of Juvenile Justice and Delinquency Prevention (DJJDP) to maintain a photograph of every juvenile in the department's custody and establishes requirements for releasing information about juveniles who escape.

DJJDP must release information to the public within twenty-four hours after a juvenile escapes

- from a detention facility, if the juvenile is alleged to have committed a Class A, B1, B2, C, D, or E felony; or
- from a youth development center, if the juvenile has been adjudicated delinquent for a felony or a Class A1 misdemeanor.

The information DJJDP must release in those cases is the juvenile's first name, last initial, and photograph; the name and location of the institution from which the juvenile escaped; and a statement of the level of concern the department has with respect to the juvenile's threat to himself or herself or others. DJJDP is authorized, but not required, to release the same kind of information to the public when a juvenile who escapes from custody has been adjudicated delinquent for a Class 1, 2, or 3 misdemeanor.

In any case, if the juvenile who escaped is returned to custody before the required or permitted disclosure is made, DJJDP may not make the disclosure.

The act also rewrites G.S. 7B-2102 to require county detention facilities to photograph all juveniles who are committed to the facility and to require county detention facilities and the State Bureau of Investigation to release any photograph generated under that section to DJJDP upon request. The act became effective October 1, 2007.

Program Evaluations

Juvenile Crime Prevention Councils. Subsections 6.21(c) and (g) of S.L. 2007-323 (H 1473) require the Department of Juvenile Justice and Delinquency Prevention (DJJDP), by February 1, 2008, to submit a written report on the Juvenile Crime Prevention Councils (JCPCs) to the Appropriations Committees of the Senate and House of Representatives. The report must include all of the following:

- A description of the program and the recipients of its services, information on services it provides, and resource requirements
- Program performance measures and information about whether the program is meeting these measures
- The rationale for continuing, reducing, or eliminating funding
- The consequences of discontinuing program funding
- Recommendations for improving services
- Recommendations for reducing costs
- Policy issues that should be brought to the attention of the General Assembly

Subsection 6.21(h) requires the appropriations committees to determine whether to continue, reduce, or eliminate funding for the JCPCs, in accordance with a continuation review program that was established pursuant to S.L. 2007-78 (S 1132).

JCPC-funded programs. Section 18.2 of S.L. 2007-323 rewrites G.S. 143B-519 to require DJJDP to report by April 1 each year on the effectiveness of programs that receive JCPC grant funds. The section specifies factors DJJDP must assess in evaluating program effectiveness and requires DJJDP to withhold the fourth quarter payment for local JCPC grants pending receipt of the annual effectiveness report. The report must be made to the chairs of the appropriations committees of the Senate and House of Representatives; the chairs of the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee; and the Fiscal Research Division.

Project Challenge and the Juvenile Assessment Center. Section 18.3 of S.L. 2007-323 requires Project Challenge North Carolina Inc. to report by April 1 each year to DJJDP and to the chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety on the program's operation and effectiveness in providing alternative dispositions and services to delinquent and undisciplined juveniles. It also requires the Juvenile Assessment Center to report to the same committee chairs and to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the center's effectiveness by April 1 each year.

Wilderness camps, teen courts, Boys and Girls clubs, Support Our Students, Governor's One-on-One programs, and multipurpose group homes. Section 18.4 of S.L. 2007-323 requires DJJDP to evaluate the Eckerd and Camp Woodson wilderness camp programs, teen court programs, the program that grants funds to local Boys and Girls clubs, the Support Our Students Program, the Governor's One-on-One programs, and multipurpose group homes. The act specifies some of the information that must be included in some of the reports. DJJDP must report on the evaluations to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee; the chairs of the House and Senate appropriations committees; and the chairs of the Subcommittees on Justice and Public Safety of the House and Senate appropriations committees by March 1 of each year.

Eckerd Family Focus on Rehabilitative Treatment. Section 18.10 of S.L. 2007-323 requires DJJDP and Eckerd Family Youth Alternatives Inc. to report quarterly, beginning April 1, 2008, to the chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety and to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the progress of the Eckerd Family Focus on Rehabilitative Treatment (EFFORT) project.

Detention centers. Section 18.8 of S.L. 2007-323 requires DJJDP to study the nine state-operated juvenile detention centers. The study must include information specified in the act, and DJJDP must report its findings to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and to the chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety by March 1, 2008.

Tarheel Challenge. Section 16.1 of S.L. 2007-323 requires the Department of Crime Control and Public Safety to report to the chairs of the House and Senate appropriations committees and chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety by March 1 of each year on the operations and effectiveness of the National Guard Tarheel Challenge Program. The act specifically requires the department to report on the program's effectiveness in preventing juveniles from becoming undisciplined or delinquent and on its role in improving participants' individual skills and employment potential.

Youth Development Centers

With respect to youth development centers operated or planned by DJJDP, Section 18 of S.L. 2007-323 requires the department to do the following:

- Continue making quarterly reports on the implementation of the treatment staffing model at the Samarkand and Stonewall Jackson youth development centers and progress in implementing the model at other youth development centers
- With the Department of Correction, report quarterly, beginning October 1, 2007, to the chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety and to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the departments' joint use of the Swannanoa Valley Youth Development Center
- Implement the staffing treatment model presented to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee as part of DJJDP's November 14, 2006, report regarding the joint use with the Department of Correction of the Swannanoa Youth Development Center campus

- Cap staffing levels of the new youth development centers at 66 for a 32-bed facility and 198 for the 96-bed facility for the 2007–09 fiscal biennium and limit staffing ratios to no more than 2.1 staff per every juvenile committed at every other existing youth development center
- By April 1, 2008, make a recommendation on whether the staffing and budget for youth development centers should be modified to reflect the results of the pilot treatment programs
- With assistance from the Office of State Construction and the Capital Improvement Section of the Office of State Budget and Management, report quarterly during the 2007–09 fiscal biennium, beginning October 1, 2007, to the chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety and to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on DJJDP's progress in the planning, design, and construction of new youth development centers

Prevention of Gang Activity

Section 16.8 of S.L. 2007-323 requires the Governor's Crime Commission to study gang activity in the state and to report its findings and recommendations by March 15, 2008, to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and the chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety.

Section 16.5 of the act directs that of funds appropriated to the Governor's Crime Commission in the Department of Crime Control and Public Safety for fiscal year 2007–08, more than $4.7 million must be used to provide grants for street gang violence prevention, intervention, and suppression programs.

Juvenile Contempt

The Juvenile Code (G.S. Chapter 7B) authorizes the court to find an undisciplined juvenile in contempt and impose limited sanctions after appointing counsel for the juvenile, conducting a hearing, and finding that the juvenile has violated the terms of protective supervision. Otherwise the Juvenile Code and other statutes (including G.S. Chapter 5A, the contempt statute) have been silent with respect to contemptuous behavior by juveniles, leaving judges unsure how to deal appropriately with a juvenile who disrupts court or engages in other conduct for which the court would hold an adult in contempt. S.L. 2007-168 (H 1479) amends both Chapter 5A and Chapter 7B of the General Statutes to fill that gap. The act is effective December 1, 2007, and applies to acts occurring or offenses committed on or after that date.

Meaning of *Contempt by a Juvenile*

New G.S. 5A-31 describes the conduct that constitutes contempt by a juvenile. When done by an unemancipated minor who is at least six years of age, is not yet sixteen years of age, and has not been convicted of any crime in superior court, each of the following is contempt by a juvenile:

1. Willful behavior committed during court and directly tending to interrupt the court's proceedings
2. Willful behavior committed during court, in the court's presence and immediate view, and directly tending to impair the respect due the court's authority
3. Willful disobedience of, resistance to, or interference with a court's lawful process, order, directive, or instruction or its execution
4. Willful refusal to be sworn or affirmed as a witness, or, when sworn or affirmed, willful refusal to answer any legal and proper question without legal justification
5. Willful or grossly negligent failure to comply with the court's schedules and practices, resulting in substantial interference with the business of the court

6. Willful refusal to testify or produce other information upon the order of a judge acting pursuant to Article 61 of G.S. Chapter 15A, Granting of Immunity to Witnesses
7. Willful communication with a juror in an improper attempt to influence the juror's deliberations
8. Any other act or omission specified in another chapter of the General Statutes as grounds for criminal contempt

This list includes most, but not all, of the conduct listed in G.S. 5A-11, which specifies conduct that may constitute criminal contempt by persons age sixteen or older (or emancipated or previously convicted in superior court). Contempt by a juvenile, for example, does not include willful refusal to comply with a condition of probation, probably because the Juvenile Code already specifies the possible consequences of a violation of probation in a delinquency case.

The act does not provide for the use of contempt to coerce compliance with a court order, as civil contempt is used in cases involving adults who willfully fail to comply with court orders. Contempt by a juvenile is neither civil contempt nor criminal contempt. It is an altogether new category of contempt. Its use is not limited to proceedings in juvenile court. Conduct of a juvenile who is a party in a domestic violence action or a juvenile who is simply observing a court proceeding of any type may constitute contempt by a juvenile.

The procedures for responding to contempt by a juvenile and sanctions that are available to the court depend on whether the contempt is direct or indirect.

Direct Contempt by a Juvenile

Contempt by a juvenile is direct contempt by a juvenile when all three of the following conditions are met:

1. The act is committed within the sight or hearing of a presiding judicial official.
2. The act is committed in, or in immediate proximity to, the room where court proceedings are being held.
3. The act is likely to interrupt or interfere with matters then before the court.

The procedures for addressing direct contempt by a juvenile are set out in G.S. 5A-32. Because direct contempt by a juvenile often requires an immediate response, the statute provides for summary proceedings similar to those that apply when an adult is in direct criminal contempt. A judicial official may act summarily when necessary to restore order or maintain the court's dignity and authority and when acting substantially contemporaneously with the juvenile's contempt. Before imposing any sanction summarily, however, the judicial official must do all the following:

1. Give the juvenile summary notice of the contempt allegation and a summary opportunity to respond
2. Appoint an attorney to represent the juvenile and allow time for the juvenile and attorney to confer
3. Make findings, based on facts established beyond a reasonable doubt, to support the summary imposition of sanctions in response to contempt by a juvenile

In some situations proceeding summarily will not be necessary, and the court is never required to proceed summarily. Instead, the court may appoint counsel for the juvenile and order the juvenile to appear in juvenile court at a later time and show cause why he or she should not be held in direct contempt.

A judicial official alleging that a juvenile is in direct contempt may orally order that the juvenile be taken into custody and restrained sufficiently to assure the juvenile's presence for summary proceedings or for notice of a later show cause hearing.

After the court finds that a juvenile is in direct contempt—regardless of whether the finding is made in a summary proceeding or after issuance of a show cause order and a hearing in juvenile court—the court's response to direct contempt by a juvenile is limited to ordering one or more of the following:

- That the juvenile be detained in a juvenile detention facility for up to five days
- That the juvenile perform up to thirty hours of supervised community service as arranged by a juvenile court counselor
- That the juvenile undergo any evaluation necessary for the court to determine the juvenile's needs

Before ordering any of these, the court must find that the juvenile's conduct was willfully contemptuous or that it was preceded by a clear warning by the court that the conduct was improper. The act amends G.S. 143B-536 to specify that a judicial official imposing sanctions for direct contempt by a juvenile may direct a juvenile court counselor to assist in implementing the court's order. After imposing one or more sanctions for direct contempt, if warranted by the juvenile's conduct and the ends of justice, a judicial official at any time may reduce or terminate a period of detention or eliminate or reduce the number of hours of community service ordered.

Direct contempt by a juvenile is not a delinquent act and is not subject to the procedures that apply to acts of delinquency. When the court chooses not to address direct contempt summarily but issues a show cause order for a hearing in juvenile court, that hearing is simply a contempt hearing. It does not involve a juvenile petition or summons—just the court's order to show cause. The juvenile is either found in direct contempt or not. The juvenile is not adjudicated delinquent or undisciplined, and the only options available to the court after finding the juvenile in direct contempt are the three listed above. Appeal from an order finding a juvenile in direct contempt is to the court of appeals.

Indirect Contempt by a Juvenile

Any act of contempt by a juvenile that is not direct contempt is indirect contempt by a juvenile. Indirect contempt by a juvenile *is* a delinquent act and is subject to the same intake, diversion, petition, adjudication, disposition, and other procedures that apply in other delinquency cases. Indirect contempt by a juvenile is a minor offense. However, no points are assigned for a prior adjudication for indirect contempt. Dispositions available to the court for a juvenile who is adjudicated delinquent for indirect contempt are the same as for any other minor offense, considering the juvenile's delinquency history level.

Child Safety

Expansion of "Safe Zones"

The punishment for certain drug offenses is enhanced if the offense occurs within a specified distance of a child care center, a school, or a playground in a public park. S.L. 2007-375 (S 8) rewrites G.S. 90-95(e) to increase that distance from 300 feet to 1,000 feet and to apply these provisions to all public parks, not just those with playgrounds. The act is effective December 1, 2007, and applies to offenses committed on or after that date.

False Reports of Mass Violence at School

S.L. 2007-191 (S 812) creates a new criminal offense—making a false report concerning a threat of mass violence on educational property. New G.S. 14-277.5 makes it a Class H felony for a person to make a report, by any means of communication to any person that an act of mass violence is going to occur on educational property or at a curricular or extracurricular activity sponsored by a school, knowing or having reason to know that the report is false. The act defines *mass violence* as "physical injury that a reasonable person would conclude could lead to permanent injury (including mental or emotional injury) or death to two or more people." A person convicted of the offense may be ordered to pay restitution, including damages resulting from the disruption of the normal activities that would have occurred but for the false report. The act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

Child Passenger Restraints

G.S. 20-137.1 requires that all motor vehicle passengers under age sixteen be properly secured or restrained. Effective June 1, 2007, S.L. 2007-6 (H 61) amends that statute to delete an exception that applied during times that someone was attending to the child's personal needs. The title of the bill indicates that the change was made to ensure compliance with federal regulations.

S.L. 2007-191 directs the Child Fatality Task Force to study issues relating to requiring the installation and use of passenger safety restraint systems on school buses and school activity buses. The task force must report its findings and recommendations to the 2008 regular session of the 2007 General Assembly by May 1, 2008.

Tobacco Use at School or School Events

S.L. 2007-236 (S 1086) rewrites G.S. 115C-407 to require local boards of education, by August 1, 2008, to adopt written policies prohibiting the use of tobacco products not only in school buildings, but also in school facilities, on school campuses, and in or on any other school property owned or operated by the local school administrative unit. The policy also must prohibit the use of tobacco products by anyone attending a school-sponsored event at any other location when in the presence of students or school personnel or in an area where smoking is otherwise prohibited by law.

Mobile Telephone Use by School Bus Operator

S.L. 2007-261 (H 183) enacts a new statute, G.S. 20-137.4, which makes it a Class 2 misdemeanor to use a mobile telephone for any purpose, other than communicating an emergency, while operating a school bus on a public street or highway or public vehicular area if the bus is in motion. The definition of *school bus* includes, in addition to other school buses, a school activity bus and any vehicle transporting public, private, or parochial school students for compensation. The offense is punishable by a fine of not less than $100. The act is effective December 1, 2007, and applies to offenses committed on or after that date.

Duty to Report Image of Child Engaged in Sexual Activity

S.L. 2007-263 (H 27) imposes a reporting requirement on any photographic image processor or any computer technician who, in the course of employment, sees an image of a minor (or a person who reasonably appears to be a minor) engaging in sexual activity. The report must be made to the Cyber Tip Line at the National Center for Missing and Exploited Children, the appropriate local law enforcement official, or someone designated by the employer as the person responsible for making the report to the tip line or law enforcement. The new statute, G.S. 66-67.4, provides civil and criminal immunity for a person who makes a report in good faith. It does not address the consequences of failing to make a report required by the section. The act became effective September 1, 2007.

Programs and Studies

Program Continuations

Section 10.9 of S.L. 2007-323 (H 1473), the Current Operations and Capital Improvements Appropriations Act of 2007, continues the School-Based Child and Family Team Initiative to provide for agency collaboration in identifying and providing services for children at risk of school failure or out-of-home placement. Section 10.10 of the act directs the Department of Health and Human Services to continue the Comprehensive Treatment Services Program, in consultation with other agencies, to provide appropriate and medically necessary nonresidential and residential

treatment alternatives for children at risk of institutionalization or other out-of-home placement. Section 10.33 continues the Intensive Family Preservation Services Program.

Child Welfare Postsecondary Support Program

Section 10.34 of S.L. 2007-323 provides funding, from both the General Fund and the Escheat Fund, for a child welfare postsecondary support program to provide scholarships and case management services for two categories of youth—those who age out of the foster care system and those with special needs who are adopted from foster care after the age of twelve. The funds may be used only for youth who attend public institutions of higher education in the state. Most of the funds appropriated by the section must be allocated to the North Carolina State Education Assistance Authority, and the act requires the Department of Health and Human Services to collaborate with the authority to develop policies and procedures for distributing the funds.

Legislative Study Commission on Children and Youth

Section 10.10(i) of S.L. 2007-323 rewrites Article 24 of G.S. Chapter 120 to make the following changes in the Legislative Study Commission on Children and Youth:

- It requires the commission, in its study of the needs of children and youth, to determine the adequacy and appropriateness of services to children and youth served by the Mental Health, Developmental Disabilities, and Substance Abuse Services system.
- It changes the membership of the commission by adding one additional member of the House of Representatives and one additional member of the Senate; requiring that there be at least one member who also serves on each of several specified legislative committees; requiring that one member be the parent of a child at risk for behavioral, social, health, or safety problems or academic failure; and requiring that one member be a representative of a local board of education.

A new statute, G.S. 120-221, creates the Task Force on the Coordination of Children's Services within the commission and specifies its membership. The task force must study collaboration and coordination among agencies that serve children and families with multiple service needs and make recommendations to the commission, the Governor, and the General Assembly. The act sets out numerous specific duties relating to the task force's study and recommendations and requires the task force to report at least annually to the commission and on April 1 each year to specified legislative committees.

Miscellaneous

Safe Surrender Education

S.L. 2007-126 (H 485) amends G.S. 115C-47 to require local boards of education to adopt policies to ensure that students in grades nine through twelve receive information annually on the procedure through which a parent may lawfully abandon a newborn baby with a responsible person. That procedure, set out in G.S. 7B-500, applies only during the first seven days of a child's life. (A parent who follows the procedure is immune from criminal prosecution for child abandonment. However, nothing about the procedure affects a county social services department's duty to respond as it would in the case of any other abandoned child, including filing a juvenile court proceeding and attempting to identify and locate the infant's parents.)

The act amends other statutes to create comparable requirements with respect to other schools:

- G.S. 115C-238.29F(a), to impose the same requirement on the state Department of Public Instruction with respect to charter schools
- G.S. 115C-548 and 115C-556, to require the Division of Nonpublic Education in the Department of Administration to ensure that information is available to private church

schools, schools of religious charter, and qualified nonpublic schools so that they can provide information on the manner in which a parent may lawfully abandon a newborn baby

- G.S. 115C-565, to require the Division of Nonpublic Education to provide the same information to home schools and to specify that it may do so electronically or on the division's Web page

The act was effective June 27, 2007, and applies beginning with the 2008–09 school year.

Family Resource Centers

Part 5B of Article 3 of G.S. Chapter 143B establishes the Family Resource Center Grant Program. S.L. 2007-130 (H 696) amends G.S. 143B-152.10 to restate the program's purpose as implementing research-based family support programs that have been evaluated for effectiveness (was, establishing family support centers) and that provide services to children from birth through age seventeen (was, through elementary school age) and their families. It also adds to the types of services provided those that "prevent child abuse and neglect by implementing program models that have been evaluated and found to improve outcomes for children and families." The act became effective June 27, 2007.

Bills That Did Not Pass

Post-Adoption Contact

House Bill 68 and Senate Bill 90 would have permitted court-approved agreements between prospective adoptive parents and a child's birth relatives providing for post-adoption contact between the adopted child and the child's birth relatives. These agreements could be enforced, modified, or terminated in a subsequent civil court action. In an action to terminate a parent's rights, any post-adoption contact agreement would be one of the factors the court should consider in determining whether termination of the parent's rights is in the child's best interest.

Neither bill is eligible for consideration in the 2008 session.

Interstate Compact on Placement

House Bill 1302 and Senate Bill 1505 would have adopted a new Interstate Compact for the Placement of Children, which would become effective when thirty-five states have adopted the compact. Neither bill is eligible for consideration in the 2008 session.

Unattended Children in Vehicles

House Bill 1562, which passed in the House, would make it a criminal offense to leave an unattended child under the age of nine in a motor vehicle. The bill is eligible for consideration in the 2008 session.

Juvenile Age

House Bill 492 and Senate Bill 1445 would have amended the Juvenile Code to provide that juveniles who violate criminal laws when they are sixteen or seventeen are delinquent juveniles and would no longer automatically be prosecuted as adults.

Neither bill is eligible for consideration in the 2008 session.

Delinquency Provisions

House Bill 1253, which passed in the House, would amend the Juvenile Code to (1) allow a juvenile who is alleged to have substantially violated the conditions of probation or post-release supervision to be placed in secure custody, (2) make changes relating to delinquency history levels and dispositional limits, (3) amend the court's options following a finding that a juvenile violated probation, and (4) clarify the meaning of prior adjudication. The bill is eligible for consideration in the 2008 session.

Janet Mason

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Community Planning, Land Development, and Related Topics

In 2007 the General Assembly addressed specific land use issues, unlike the 2005 session in which comprehensive statutory revisions were adopted. A trend this year was for the state to set specific standards for how local regulations treat some types of land uses. The most vigorously debated of these was a bill limiting local regulation of wireless telecommunication facilities. Other land uses getting attention were landfills, parking lots, solar panels, and amateur radio antennas. Standards were also adopted for local ordinances requiring maintenance of nonresidential buildings. Transportation issues, particularly those related to funding road projects, also received substantial attention in 2007.

Zoning

Wireless Telecommunication Facilities

The use of wireless telecommunication systems has dramatically expanded in the past decade. Projections are for the growth in use to continue at an accelerated rate in coming years. The widespread use of mobile devices for telephone calls, text messaging, Internet access, and other data transmission creates a demand for more infrastructure to support these uses.

While the demand for reliable and convenient access to wireless services grows, concern about the aesthetic impacts of cell towers and antennae grows as well. This is particularly true as new towers are proposed to be located in residential areas, historic districts, downtowns, and rural scenic areas. Many local ordinances limit the location of telecommunication towers to certain zoning districts, set height limits, require security fencing and landscaping, encourage collocation of multiple providers on a single tower, encourage use of existing structures (water towers, church

steeples, tall buildings) for antenna location, encourage use of camouflaging for towers (use of "stealth" designs), and include provisions for removal of abandoned towers.

Industry concern about restrictive local regulation of wireless communication facilities led to proposals for both federal and state preemption of local regulation. At the federal level, the Telecommunications Act of 1996 allows local regulation of the location of wireless facilities but sets some limitations. The act provides that local regulations may not unreasonably discriminate among providers of functionally equivalent services, may not prohibit or have the effect of prohibiting the provision of personal wireless services, and may not be based on the environmental health effects of radio frequency emissions. Local governments are required to act on permit requests within a reasonable time. Permit denials must be in writing and supported by substantial evidence.

In 2007 the wireless industry sought greater state preemption of local regulation. Senate Bill 831 was proposed to restrict local authority to use land use regulations to limit construction of wireless telecommunication facilities. As introduced, the bill would have set strict time limits for local permit decisions, limited the fees that could be charged for permit reviews, limited the duration of moratoria on wireless facilities, limited surety requirements for removal of unused facilities, limited technical information that could be required for permit reviews, prohibited blanket prohibition of new towers in residential districts, prohibited fixed separation requirements between towers, and limited zoning reviews of collocation applications. Cities and counties, as well as advocates representing planners, historic preservation, and scenic protection interests, opposed this degree of proposed state preemption.

After considerable negotiation, a compromise bill was enacted. S.L. 2007-526 (S 831), effective December 1, 2007, enacts G.S. 160A-400.50 to 160A-400.53 and G.S. 153A-349.50 to 153A-349.53. These provisions allow local government regulation of wireless telecommunication facilities based on "land use, public safety, and zoning considerations." Local governments are expressly authorized to address "aesthetics, landscaping, land-use based location priorities, structural design, setbacks, and fall zones." The act expressly provides that it does not limit local historic district or landmark regulations. Local governments may not, however, require information on an applicant's "business decisions," specifically including information about customer demand or quality of service. This distinction poses some inherent conflict, as it is not uncommon for an ordinance to allow new towers in sensitive areas (a land use consideration) only upon a showing that existing facilities are unavailable to provide adequate service (which some might consider a business decision). The act addresses this tension by specifying the information that can be required and considered in permit reviews. A local government may consider whether an existing or previously approved structure can reasonably be used to provide service; whether residential, historic, and designated scenic areas can be served from outside the areas; and whether the proposed tower height is necessary to provide the applicant's designated service. A local government may also evaluate the feasibility of collocating new antennas and equipment on existing structures.

Local governments are required to provide streamlined processing for qualified collocation applications. Decisions on these applications must be made within forty-five days after receipt of a completed application (and decisions on all other applications must be made within a reasonable time consistent with other land use applications). Notice of any deficiencies in a collocation application must be provided within forty-five days after it is submitted. Qualified collocation applications may be reviewed for conformance with site plan and building permit requirements but are not otherwise subject to zoning requirements. Applications entitled to this streamlined review include those for new antennas on towers previously approved for collocation facilities if the installation is within the terms of the original permit. Other collocations entitled to this streamlined process include those that meet a set of specified conditions, including no increase in the height or width of the supporting tower, no increase in ground space for the facility, and new equipment being within the weight limits for the structure.

Local governments are prohibited from requiring that wireless facilities be located on city- or county-owned towers or facilities but may provide expedited processing for applications for wireless facilities proposed to be located on city- or county-owned property.

Two other key issues addressed by this act are the fees required for permit review and the construction of speculative towers. Local governments may charge a permit application fee that includes fees for consultants to assist in the review of the applications. These fees must be fixed in advance of the application and may not exceed the usual and customary costs of services provided. Local governments may add a condition to zoning approvals for new towers that building permits for the tower will not be issued until the applicant provides documentation of parties intending to locate facilities on the tower (but the zoning permit itself may not be denied due to the lack of documentation of a committed user). Zoning permits can require that permitted facilities be constructed within a reasonable time, but not less than twenty-four months.

Amateur Radio Antennas and Solar Collectors

Two bills were enacted in 2007 to limit local zoning restrictions as applied to particular uses—amateur radio antennas and solar collectors for single-family residences.

S.L. 2007-147 (H 1340) amends the city and county zoning statutes to require that ordinances regulating the placement, screening, or height of antennas and their support towers or structures "reasonably accommodate" amateur radio communications and be the "minimum practical regulation" to accomplish city or county purposes. This general standard is substantially similar to the limited federal preemption approved by the Federal Communications Commission [Amateur Radio Preemption, 101 FCC2d 952 (1985)]. Cities and counties may not restrict the height of an antenna or support structure to 90 feet or less unless the restriction is necessary to achieve a clearly defined health, safety, or aesthetic objective. This law became effective October 1, 2007.

S.L. 2007-279 (S 670) provides that cities and counties may not prohibit solar collectors on detached single-family residences. This law applies to solar collectors used for water heating, active space heating, passive heating, or electricity generation. Ordinances may regulate the location or screening of solar collectors and may prohibit collectors that are visible from the ground if they are located on a façade facing an area open to common or public access, on a roof facing down toward such an area, or within an area between such façades and a public area. The law similarly restricts the use of deed restrictions and private restrictive covenants that would limit the use of solar collectors. Unlike most statutes affecting governmental land use restrictions, this statute allows the court to award costs and attorney fees to the prevailing party in civil actions arising under these provisions. This law became effective October 1, 2007 (and the limitations on deed restrictions apply only to those recorded after that date).

Parking Lots

The 2007 appropriations act (S.L. 2007-323, H 1473) included a special provision on stormwater management that will affect the design of parking lots across the state. Section 6.22 of S.L. 2007-323 enacts G.S. 143-214.7(d2) to require that as of October 1, 2008, all surface parking lots have no more than 80 percent built-upon area. The remaining 20 percent of the parking area must either have permeable pavement or meet other design requirements for stormwater management (such as having grass or other permeable surfaces, bioretention ponds, or other water retention devices). Any permeable pavement or stormwater retention system used must comply with standards set by the Department of Environment and Natural Resources. Covered parking areas and multilevel parking decks are not covered by this requirement. The new law applies to applications for building permits, rezonings, and plat approvals made on or after October 1, 2008. Section 6.22 also directs the Environmental Review Commission to study issues associated with pervious surfaces for parking and allocates $25,000 for the study. The commission is authorized to report its findings and recommendations to the 2008 legislative session.

Local Acts Affecting Zoning

Four local laws were enacted in 2007 that affect individual cities and counties.

Three municipalities secured legislative approval to substitute electronic notice of public hearings for newspaper publication of these notices. S.L. 2007-86 (S 350) provides that Apex, Garner, and Knightdale may provide notice of public hearings through electronic means. The new law does not supersede the laws requiring mailed or posted notice nor does it alter the schedule for making the notices. Similar local legislation in 2003 allowed electronic rather than newspaper-published notice for Cabarrus County, Raleigh, and Lake Waccamaw.

Adoption of land use regulations can be controversial, particularly in rural areas that have not previously adopted zoning. Local governments in these areas have occasionally considered submitting the question of whether to adopt regulations to a public vote. Because there is no statutory authority for a local government to conduct a referendum of this type, individual authorization is needed to do so. S.L. 2007-137 (S 654) allows Rutherford County to conduct an advisory referendum on "high impact land-use zoning, such as heavy industry use."

A simmering dispute over construction of a new state government parking deck in downtown Raleigh led to the adoption of S.L. 2007-482 (S 1313). This law amends G.S. 143-345.5 to provide that local zoning does not apply to any state-owned building built on state-owned land that is within six blocks of the state capitol unless the Council of State consents.

S.L. 2007-257 (S 649) removes the exemptions to height limits adopted in 2006 for Hendersonville and narrows the application of the height limits to a smaller specified area in the city.

Judicial Review of Quasi-Judicial Decisions

The General Assembly has for several years considered legislation to codify various aspects of the procedures for judicial review of local government quasi-judicial land use approvals—appeals of decisions on special and conditional use permits, enforcement actions, variances, and some plats. In 2005 the Senate approved Senate Bill 970 to address these issues, but the bill was not taken up in the House of Representatives in 2005 or 2006. A slightly updated version of the bill, Senate Bill 212, was introduced in 2007 and again passed the Senate. It is eligible for consideration by the House of Representatives in 2008. Among the topics addressed by the bill are the content of the judicial petition used to start the appeal, standing to bring an appeal for individuals and groups, parties that must be named in the appeal and the process for others to intervene, specification of material to be included in the record to be submitted to the court, the scope of review by the courts and the degree of deference to the local decision-making board, and the judicial remedies available.

Land Subdivision Control and Development Fees

Interest on Illegal Developer Exactions

In *Durham Land Owners Association v. County of Durham*, 177 N.C. App. 629, 630 S.E.2d 200 (2006), the North Carolina Court of Appeals invalidated the county's school impact fee program because the county lacked legal authority to adopt it. However, it also ruled that that the county was not liable to pay interest on the illegally collected fees that the court ordered refunded. In reaction to this decision, S.L. 2007-371 (S 1152) enacted G.S. 153A-324(b) and G.S. 160A-363(e) to require local governments to pay 6 percent annual interest on illegally enacted taxes, fees, or monetary contributions not specifically authorized by law.

Ban on Unauthorized Development Fees

Senate Bill 1180, a related bill supported by the development community, provides that a local government may not impose a tax, fee, or monetary contribution for development that is not specifically authorized by law. It is intended to apply to any of the types of planning and land development regulations and development agreements authorized for cities by Article 19 of

G.S. Chapter 160A and for counties by Article 18 of G.S. Chapter 153A. But it is unclear whether the proposed prohibition is intended to apply to administrative fees for reviewing development-related applications, many of which are not expressly authorized by statute, or whether it is restricted to fees intended to defray the costs of public facilities made necessary by new development. Because of its reference to monetary contributions, the act appears intended to ban those contributions collected by local governments with adequate public facility ordinances intended to "advance capacity." These contributions serve to speed up the construction of public facilities and break through development permission logjams. Senate Bill 1180 has passed the Senate and awaits action in the House of Representatives.

Local Legislation: Land Subdivision Regulation

Several local acts adopted in 2007 expand the scope of local government authority to regulate land subdivision. S.L. 2007-237 (H 1143) applies only to Stanly County. It amends existing local legislation defining the scope of subdivision regulation by deleting an exemption for lots of at least 20,000 square feet with frontage on a states road of at least 100 feet. S.L. 2007-207 (H 1120) applies only to Pasquotank County. It repeals a local act defining "subdivision" that provided more exemptions than G.S. 153A-335 (the corresponding state enabling statute). The effect of the repeal is to bring Pasquotank County under the general statute. A third local act, S.L. 2007-339 (S 609), amends G.S. 153A-349.6, a statute authorizing development agreements, as it applies to Chatham County. The act authorizes the county under such an agreement to require a developer to provide funds to the county for the development and construction of recreational facilities to serve one or more developments within an area chosen by the county. G.S. 160A-372 allows municipalities, under the authority to regulate land subdivisions, to require developers to provide funds in lieu of dedicating land for recreational purposes. S.L. 2007-321 (H 1213) allows the Town of Cary to impose the same requirements when approving multifamily residential developments that do not involve the subdivision of land.

Historic Preservation

Historic Rehabilitation Tax Credit

Since 1994 North Carolina tax law has allowed income tax credits for the rehabilitation of historic buildings. Currently a taxpayer may claim either 20 percent of rehabilitation expenditures that qualify for a companion federal credit or 30 percent of eligible rehabilitation expenditures that do not qualify for the federal credit. The state credits may be used by "pass-through" entities such as partnerships, limited liability companies, and Subchapter S corporations so that the tax benefits are allocated directly to and used by the entity's owners, who report the income and credits as owners on their own income tax returns. For most state tax credits, a pass-through entity must allocate the credit among its owners in the same proportion that other items, such as the federal rehabilitation credit, are allocated under the Internal Revenue Code. The 20 percent tax credit provides for the separate sale of the credit, however, by allowing a pass-through entity to allocate the tax credit among its owners at its discretion as long as each owner's adjusted basis is at least 40 percent of the amount of credit allocated to that owner. This provision was set to expire January 1, 2008. S.L. 2007-461 (H 1259) removes the sunset, making the allocation provision permanent.

Local Legislation: Demolition of Historic Structures

S.L. 2007-66 (H 827) is a local act that allows the towns of Cary and Wake Forest to regulate the demolition of certain historic structures within their jurisdictions. Among the historic structures that may be regulated are (1) state, local, and national landmarks; (2) structures listed in national, state, or county registers of historic places; and (3) certain structures that "contribute" to the historic district in which they are located. However, the act expressly provides that

G.S. 160A-400.14, which allows a city to delay the effective date of a certificate of appropriateness for a proposed demolition up to 365 days after it is approved, continues to apply to locally designated landmarks and structures within locally designated historic districts.

A related act, S.L. 2007-32 (H 303), applies only to the City of New Bern. It, too, allows the city to regulate the demolition of certain historic structures within the city. The act does not list the kinds of historic structures to which it applies. It allows the city to adopt an ordinance defining them. However, the act expressly provides that the power to regulate demolition applies "notwithstanding the provisions of G.S. 160A-400.14." It is possible that this authority may be used to delay demolition indefinitely.

Planning Jurisdiction, Annexation, and Incorporation

A number of bills were introduced that would have significantly altered state law on annexation and extraterritorial planning jurisdiction. None of these were enacted.

A substantial number of local bills on these topics were enacted. Specific areas were annexed into the following cities: Columbia (S.L. 2007-140, H 1144); Dallas (S.L. 2007-160, S 382); Earl (S.L. 2007-53, H 1041); Landis (S.L. 2007-139, H 1163); Morrisville (S.L. 2007-324, H 562); Ramseur (S.L. 2007-110, H 1193); and Sunset Beach (S.L. 2007-141, H 1153 and S.L. 2007-160, S 382). Navassa was authorized to enter into agreements for payments in lieu of annexation (S.L. 2007-314, H 1217). A substantial number of cities also secured approval to increase the permissible area within satellite annexations. These include: Ahoskie (S.L. 2007-311, S 220); Columbus (S.L. 2007-311); Cramerton (S.L. 2007-62, S 570); Durham (S.L. 2007-225, H 1250); Four Oaks (S.L. 2007-17, H 180); Green Level (S.L. 2007-26, H 326); Kannapolis (S.L. 2007-344, H 842); Mt. Pleasant (S.L. 2007-342, S 546); Norwood (S.L. 2007-71, H 537); Roanoke Rapids (S.L. 2007-311); Sanford (S.L. 2007-43, S 284); Watha (S.L. 2007-62), and Weldon (S.L. 2007-311). Specific areas were deannexed from Beech Mountain (S.L. 2007-74, H 621) and Greensboro (S.L. 2007-256, S 432). Annexation standards were modified for Oak Island (S.L. 2007-319, H 398).

Extraterritorial planning jurisdiction was authorized for River Bend (S.L. 2007-334, S 616) and extended to a specified area for Magnolia (S.L. 2007-40, H 407).

Three new municipalities were incorporated: Butner (S.L. 2007-269, H 986); Eastover (S.L. 2007-267, H 1191); and Hampstead (subject to approval in a referendum) (S.L. 2007-329, S 15).

Community Appearance/Public Nuisances

A number of local acts were adopted by the General Assembly in 2007 designed to streamline and expand municipal enforcement of overgrown vegetation, public nuisance, and junked motor vehicle ordinances. It should be noted that at least some of these local acts risk violating Article 2, Section 24(1)(a) of the North Carolina Constitution, which prohibits the General Assembly from enacting any local legislation "relating to health, sanitation, and the abatement of nuisances."

- S.L. 2007-31 (H 579) is a local act that applies only to the City of Greensboro and the Town of Spring Lake. It allows those municipalities to take summary action to remedy violation of their overgrown vegetation ordinances without giving further notice to a chronic violator during the same year. It also makes the expense of abating the nuisance a lien against the property. A chronic violator is one against whom the city has already taken remedial action three times.
- S.L. 2007-258 (S 652) accomplishes essentially the same thing as the immediately preceding act but applies only to the cities of Eden, Reidsville, and Rockingham.
- S.L. 2007-220 (S 608) applies only to the City of Durham. It amends existing local legislation and applies to both the city's overgrown vegetation ordinance and its refuse

and debris ordinance. Under the act the city must have taken prior remedial action at least two times (was, three times) during the previous calendar year before having the authority for expedited removal.

- S.L. 200-73 (H 217) is a variation on the same theme that applies only to the towns of Cornelius and Davidson. It allows those municipalities to take summary action to remedy violation of their public nuisance ordinances without giving further notice to a chronic violator during the same year. It also makes the expense of abating the nuisance a lien against the property. A chronic violator is one against whom the city has already taken remedial action three times.
- S.L. 2007-254 (S 227) amends the Cornelius/Davidson act to extend its coverage to the City of Wilmington and New Hanover County.
- S.L. 2007-327 (S 181) tracks the Cornelius/Davidson act but applies only to the Town of Clayton.

Transportation

Highway Construction Projects

S.L. 2007-551 (H 1005) reflects the General Assembly's continuing concern about the state's highway construction needs. First, it amends G.S. 142-101(d) to direct the Debt Affordability Advisory Committee to make specific recommendations concerning the state's capacity for debt that is supported by the Highway Fund and the Highway Trust Fund. Second, it directs the North Carolina Department of Transportation (NCDOT) to review the state's Transportation Improvement Program (TIP) project planning, development, and priority-setting process to determine if legislation is needed to meet established transportation network performance targets and to study alternative funding sources. NCDOT's recommendations to the Joint Legislative Transportation Oversight Committee (JLTC) were due October 1, 2007. Third, it directs the Office of State Budget and Management (OSBM) to develop a statewide logistics plan to address long-term economic, mobility, and infrastructure needs. The study must identify priority commerce needs and the multimodal transportation infrastructure necessary to support industries vital to the state's economic growth. The act authorizes NCDOT to use up to $1 million from the Highway Fund to pay for OSBM's study, which is to be delivered to the JLTC by April 1, 2008. Fourth, it amends G.S. 136-44.7D (Bridge construction guidelines) to provide that bridges crossing rivers and streams in watersheds must be constructed to accommodate the hydraulics of the water level for a 100-year flood. It directs that these bridges be built without regard to the riparian buffer zones established by the Division of Water Quality, Department of Environment and Natural Resources, and it prohibits any memorandum of agreement or agency rule that would contradict this mandate. Finally, it enacts G.S. 136-44.7E to provide that under federal law NCDOT is the co-lead agency with the U.S. Department of Transportation and all other federal, state, or local agencies are either participating or cooperating agencies. NCDOT is thus designated the authority for determining the need for the projects and for determining viable alternatives. Conflicts between agencies must be resolved by NCDOT "in favor of the completion of the project in conflict."

NCDOT Design-Build Construction Contracts

S.L. 2007-357 (H 610) amends G.S. 136-28.11 to liberalize the use of design-build construction contracts by NCDOT. The act first clarifies that up to twenty-five of these contracts may be awarded each fiscal year. Also, NCDOT must now present to the JLTC information on the scope, nature, and justification of any project that costs more than $40 million. The floor for this reporting requirement was formerly $100 million. However, the act deletes the requirement that NCDOT also report on these projects to the Joint Legislative Commission on Governmental Operations.

Local Government Funding of State Highways

The issue of whether and how local governments may contribute to or "participate" in the costs of highway improvement projects that are part of the TIP has been debated for some time. In 1987 a coalition of legislators representing rural areas and small towns was successful in securing legislation that limited the ability of local governments to contribute to state highway projects because of their concern that such "participation" warped the state's highway priorities. In 2001, however, G.S. 136-66.3 was rewritten to provide that municipalities could participate in the right-of-way and construction costs of state projects as long as other state projects were not jeopardized. In 2004 G.S. 136-18(38) was enacted to allow NCDOT to receive funds from local governments and nonprofit corporations for the purpose of advancing the construction schedule of a project identified in the TIP and to provide for the reimbursement of these "loans" in certain circumstances.

Legislation adopted in 2007 further encourages local governments to help shoulder the costs of major highway construction and opens the door for the first time to county financial participation. S.L. 2007-428 (S 1513) affects both counties and cities. First, it amends G.S. 136-51 (first adopted in 1931) and makes conforming changes to G.S. 136-98 to authorize counties to participate in the cost of rights-of-way, construction, reconstruction, and improvement of roads in the state system under agreement with NCDOT. Furthermore, counties are expressly allowed to acquire land by dedication and acceptance, negotiated purchase, and eminent domain and to make improvements to portions of the state system located both inside and outside the county. The legislation does not, however, authorize counties to maintain, operate, or pay for a "county roads" system.

Second, the act makes a similarly remarkable change in the law affecting municipalities. It enacts new G.S. 136-41.4 to allow a municipality to elect to have some or all of its Powell Bill funds "reprogrammed" for a project on the TIP-approved project list. The project may be located either within the municipality's corporate limits or within "the area of any metropolitan planning organization or rural planning organization." This latter feature of the act became effective October 1, 2007.

Finally, the act amends G.S. 136-18(29a) concerning the coordination of highway improvements associated with new or expanded public and private schools. For several years this subsection directed NCDOT to provide a written evaluation and written recommendations concerning how school driveway and access points tie into adjacent state roads, providing that it does not require schools "to meet" NCDOT's recommendations. S.L. 2007-428 qualifies this language with a proviso that schools are not required to do so, except with respect to "those highway improvements that are required for safe ingress and egress to the State highway system." Thus, the exception nearly engulfs the rule.

Traffic Impact Analysis for Sanitary Landfills and Transfer Stations

Section 8 of S.L. 2007-550 (S 1492), the comprehensive solid waste act, adds a surprising provision that concerns traffic impact analysis. It enacts new G.S. 130A-295.5 to require applicants for permits for sanitary landfills and transfer stations to conduct a traffic study of the impacts of the proposed facility. Perhaps more important, it directs the Department of Environment and Natural Resources to include as a permit condition a requirement that the permit "mitigate adverse impacts identified by the traffic study." The study must be wide-ranging enough to include analysis of traffic and road capacity from the nearest limited access highway used to access the site to the site itself. The study must analyze road conditions and other potential adverse impacts of the increased traffic associated with the proposed facility. However, an applicant may satisfy the requirement by obtaining certification from the division engineer of NCDOT that the proposed facility "will not have a substantial impact on highway traffic."

The traffic impact study requirement applies to permit applications pending on the act's effective date, August 1, 2007, but not to modifications of certain permits issued on or before June 1, 2006. It also does not apply to permits for certain sanitary landfills managed by investor-owned

utilities and permits determined by the Secretary of Environment and Natural Resources to be necessary to respond to an imminent hazard to public health or to a natural disaster.

Passenger Buses on Public Streets and Highways

Buses used for public transportation are increasingly being designed in two sections that serve to increase the size of the bus. S.L. 2007-499 (H 514) enacts new G.S. 20-116(*l*) to provide expressly that a passenger bus owned and operated by a local government on public streets and highways as a single vehicle may be up to 45 feet in length. However, NCDOT may prevent the operation of these buses if it would present a hazard to bus passengers or to the motoring public.

Exemption of Certain Charlotte ETPJ Streets from NCDOT Approval

Although S.L. 2007-440 (S 1482) is a general law, its reach is narrow. It applies only to subdivision plats with public streets in the extraterritorial planning jurisdiction (ETPJ) of municipalities with a population of at least 500,000 (Charlotte). Generally speaking, G.S. 136-102.6 establishes four requirements with respect to subdivision plats for unincorporated areas that include streets offered for public dedication: (1) if the streets are to be offered for public dedication, they must be so designated on the plat; (2) the right-of-way and design of the streets must meet the street standards adopted by NCDOT; (3) the subdivider must deliver to each lot purchaser a subdivision streets disclosure statement disclosing the status of the streets and whose responsibility it is to maintain them; (4) the plat must be approved by the NCDOT Division of Highways before it is recorded. S.L. 2007-440 effectively exempts from the requirements of G.S. 136-102.6 certain public streets in the City of Charlotte's ETPJ that were approved for construction by Charlotte before June 1, 2007, if they met Charlotte's street standards but not those of NCDOT. However, the act requires the subdivider to deliver an applicable subdivision streets disclosure statement to those buying lots in the subdivision.

Oyster Shells and Highway Beautification

S.L. 2007-84 (S 1453) enacts new G.S. 136-123(b) to prohibit NCDOT or any other governmental unit from using oyster shells as ground cover for a landscaping or highway beautification project. It further directs that if a governmental unit comes into possession of oyster shells, it must make them available to the Department of Environment and Natural Resources, Division of Marine Fisheries, which uses them in oyster bed revitalization programs.

Transportation Bills Eligible for Consideration in 2008

House Bill 1576 began as a bill to require NCDOT, municipalities, and metropolitan planning organizations to devise and implement a comprehensive traffic control plan to coordinate traffic signals to reduce energy consumption. The plan would apply to traffic signal patterns on state highways as they run through municipalities. A committee substitute adopted later in the House of Representatives would authorize but not require those governmental units to undertake such an effort. House Bill 1576 awaits action in the Senate.

House Bill 1559 would authorize operators of transit systems to erect certain "transit amenities" within public road rights-of-way. These may include transit shelters and benches along with trash and recycling receptacles, even commercial advertising displays. These transit amenities would have to be approved by NCDOT if they were located within a state- or federal-aid primary road right-of-way or approved by a municipality if within a municipal street right-of-way. The authority would expire if compliance with the terms of this law would jeopardize federal funding or would be inconsistent with federal law.

Regulation of Junked Motor Vehicles

G.S. 160A-303(b2) and G.S. 160A-303.2(a) both define junked motor vehicles for purposes of local regulation and towing. One element of the definition in both statutes is the requirement that such vehicles be more than five years old and worth less than $100. However, both statutes also include subparts that redefine this latter requirement as it applies to certain named municipalities so that vehicles with values up to $500 may be regulated and towed. S.L. 2007-208 (S 426) extends the coverage of these subparts to the towns of Ayden, Cornelius, Davidson, Huntersville, and Spring Lake, and the cities of Eden, Greensboro, High Point, and Reidsville.

Vegetation Removal and Billboards

North Carolina's outdoor advertising control program regulates signs along certain federal and state highways. North Carolina is one of a minority of states that allow the clearing of trees and other vegetation from the right-of-way for the express purpose of allowing outdoor advertising displays beyond the right-of-way to be more visible from the highway. Even so, the state has been plagued over the years with a rash of incidents that appear to involve unauthorized vegetation removal in the vicinity of these signs.

Senate Bill 150 would expand the area along the right-of-way within which vegetation removal is authorized by permit, but it would increase the fees associated with permits and establish a more elaborate system for enforcing laws pertaining to unauthorized vegetation removal from the right-of-way. The bill has passed the Senate and is eligible for consideration by the House of Representatives in 2008.

Real Property Acquisition

Notice to Local Governments before Land Acquisition

The North Carolina Department of Administration (NCDOA) acquires land on behalf of state agencies, with the approval of the Governor and the Council of State. If the land is appraised at more than $25,000 and is acquired for other than a transportation purpose, the land may be acquired only after NCDOA gives written notice to the Joint Legislative Commission on Governmental Operations. S.L. 2007-396 (S 1167) expands the scope of this duty to include gifts of land. It also requires that this advance notice be given to the board of county commissioners and county manager of the county where the land is located and to the city council and the city manager if the land is within a city's corporate limits. Notice must be provided to the chairs of a local governing board at least thirty days before the acquisition. Local elected officials, or the governing board as a whole, may provide written comments to NCDOA, which must forward them to the Governor and the Council of State.

Eminent Domain

In the case of *Kelo v. City of New London*, 545 U.S. 469 (2005), the United States Supreme Court held that a Connecticut city's use of eminent domain strictly for economic development purposes and in the absence of blight was constitutional. In 2006, and in reaction to the *Kelo* decision, the General Assembly amended several statutes to ensure that North Carolina local governments lacked any authority to use eminent domain in the circumstances found in *Kelo*.

House Bill 878, introduced in 2007, would call for a statewide voter referendum to consider an amendment to Section 19 of Article I of the North Carolina Constitution to reinforce the ban on eminent domain for economic development purposes. The bill seems intended to allow the use of eminent domain in the context of urban redevelopment, but the language in the bill in its present form makes its scope unclear. It has passed the House of Representatives and awaits further action in the Senate in 2008.

Code Enforcement

Standards for Code-Enforcement Officials

S.L. 2007-120 (H 700), initiated by the Department of Insurance, makes some technical changes in the statutes governing the certification of those officials who interpret and enforce the North Carolina State Building Code. Many of the changes simply conform the statutes to the classifications and rules for Code-enforcement officials that have been adopted by the North Carolina Code Officials Qualification Board (COQB). For the first time the statutes provide for five different types of Code-enforcement officials: (1) building inspectors, (2) electrical inspectors, (3) mechanical inspectors, (4) plumbing inspectors, and (5) fire inspectors. Similarly the statutes would for the first time provide for Level I, Level II, and Level III certificates for each of the five categories of inspectors.

Perhaps the most significant change concerns the sanctions that COQB may impose in disciplinary actions involving a Code-enforcement official. Under the act the board may (1) suspend, (2) revoke, (3) demote to a lower level, or (4) refuse to grant any or all of certificates that the disciplined Code-enforcement official holds. This amendment to G.S. 143-151.17 is in reaction to a decision by the North Carolina Supreme Court [Bunch v. North Carolina Code Officials Qualification Bd., 343 N.C. 97, 468 S.E.2d 55 (1996)] that held that any sanction imposed by the board had to apply to all of the certificates that a disciplined Code-enforcement official holds, not simply to the certificate that applied to the work that the inspector was performing at the time of the alleged misconduct.

The bill was effective December 1, 2007, and applies to offenses committed on or after that date.

Master Meters in Condo Conversion Projects

G.S. 143-151.42 prohibits the use of master meters in multifamily residential units that are normally rented or leased for a month or more, including apartment buildings, residential condominiums, and townhouses. The use of individual meters is designed to encourage each occupant to be responsible for his or her own conservation of electricity and gas. The statute specifically makes the law inapplicable to hotels, motels, dormitories, rooming or nursing houses, or homes for the elderly. S.L. 2007-98 (S 1178) amends G.S. 143-151.42 to exempt hotels and motels that have been converted into condominiums. In these instances the conversion of a master meter system to a system of individual meters for each dwelling unit can be rather costly.

Insulation of Hot Water Pipes

S.L. 2007-542 (H 1702) amends G.S. 143-138(b) to allow the State Building Code to be amended to include rules concerning energy efficiency. The rules may require all hot water plumbing pipes that are larger than one-quarter inch to be insulated. This authorization is effective January 1, 2008, and applies to all new construction for which permits are issued on or after that date. In addition, the act directs the North Carolina Building Code Council to study the extent to which hot water lines should be insulated to achieve greater energy efficiency and to amend the North Carolina State Building Code as necessary to achieve those ends. The Council must report its findings and actions to the Environmental Review Commission and the 2008 Regular Session of the General Assembly by April 1, 2008.

Exemption of Industrial Machinery from Building Code

It has never been entirely clear what regulatory powers the Engineering Division of the North Carolina Department of Insurance (DOI) and local electrical inspectors have over electrical appliances and equipment. Article 4 of G.S. Chapter 66 concerning electrical materials, devices, appliances, and equipment, authorizes the Commissioner of Insurance to evaluate these goods

when they are to be sold or installed in this state. The Commissioner may approve national standards and suitable qualified testing laboratories to determine whether particular goods may be approved and labeled. What has been less clear is how this evaluation process should work, particularly when DOI is directed to "specify any alternative evaluations which safety requires." Although the role of the local electrical inspector in evaluating electrical equipment was diminished by legislative amendments in 1989, the electrical inspector may still "initiate any appropriate action to proceedings to prevent, restrain, or correction any violation" of the relevant statutes.

S.L. 2007-529 (S 490) provides that the State Building Code does not apply to the regulation of the design, construction, location, installation, or operation of "industrial machinery." That term does not include equipment that is permanently attached to or a component part of a building and related to services such as ventilation, heating, and cooling, plumbing, fire suppression or prevention, and general electrical transmission. The act provides that if an electrical inspector has "any concerns" about the electrical safety of a piece of industrial machinery, the electrical inspector may refer the matter to the Occupational Safety and Health Division in the North Carolina Department of Labor. The inspector, however, may not withhold the certificate of occupancy nor mandate third-party testing of the industrial machinery.

Limits for License Classes for General and Electrical Contractors

Effective October 1, 2007, S.L. 2007-247 (H 1338) raises project value limits for certain general contractor licenses and electrical contractor licenses. It first amends G.S. 87-10(a) to raise the project limit for a limited general contractor license from $350,000 to $500,000 and for an intermediate general contractor license from $700,000 to $1 million.

The act also raises the project value limit for a limited electrical contractor's license from $25,000 to $40,000 and the limit for an intermediate electrical contractor's license from $75,000 to $110,000. Additionally, the act also delegates to the State Board of Examiners of Electrical Contractors the power to modify these project value limitations upward to a maximum of $100,000 (for a limited license) and $200,000 (for an intermediate license). However, these "adjustments" may be adopted by the board no more than once every three years and must be based upon an increase or decrease in the project cost index for electrical projects in North Carolina.

County Pyrotechnic Displays

G.S. 14-410(a) and G.S. 14-413 allow boards of county commissioners to issue permits for both outdoor and indoor public events involving pyrotechnics (fireworks). If the pyrotechnics are used indoors, then the county board may issue the permit only if the local or state fire marshal has certified that adequate fire suppression is available, that the structure is safe, and the building has adequate egress based on the size of the expected crowd. (This special review of pyrotechnic exhibitions stems from a deadly Rhode Island fire in a night club several years ago.)

S.L. 2007-38 (H 189) amends these two statutes to allow a board of county commissioners to adopt a resolution delegating to a city the authority to approve the use of pyrotechnics if the site is within the city limits. If the pyrotechnics are to be used indoors, the certification from a fire marshal is still required for these city permit reviews, however.

Threshold for Fire Safety Review of Public Construction Plans

G.S. 58-3140(b) requires construction plans for certain buildings proposed for use by a county, city, or school district to be reviewed by the Commissioner of Insurance for fire safety. S.L. 2007-303 (H 735) amends that subsection to make the law applicable only to those buildings that include 20,000 square feet or more; the previous threshold was 10,000 square feet. The act became effective October 1, 2007, with respect to plans submitted to the commissioner on or after

that date. The legislation was recommended by the House Select Committee on Public School Construction as a means of streamlining the construction plan review process.

Reduction of Building Permit Fee for Energy Efficiency

S.L. 2007-381 (S 581) enacts new G.S. 153A-340(i) and G.S. 160A-381(f) to authorize (but not require) counties and cities to reduce the permit fees or provide rebates for construction projects using sustainable design principles to achieve energy efficiency. These financial incentives may be extended to buildings that are certified as meeting (1) the LEED certification standard (Leadership in Energy and Environmental Design), or a higher standard, as adopted by the U.S. Green Building Council; (2) a "One Globe" or higher standard, as adopted by the Green Building Initiative; or (3) any other national certification or rating that is equivalent to or that establishes a standard greater than either of the first two.

The act, effective August 2, 2007, provides expressly for authority some North Carolina local governments thought they already had.

Local Act: Building Permits and Unpaid Taxes

S.L. 2007-38 (S 624) applies only to Gates County and amends an existing local act. It allows the county to withhold a building permit for real property for which property taxes are delinquent. Similar laws also apply to Davie, Greene, Lenoir, Lincoln, Iredell, Wayne, and Yadkin counties.

Nonresidential Maintenance Code for Cities and Counties

For many years some local governments have expressed interest in adopting a local commercial and industrial property maintenance code. Such a code would set forth "minimum standards of maintenance, sanitation, and safety" for nonresidential buildings that are not necessarily so unsafe that they are fit for condemnation. In this regard such an ordinance would be similar to a minimum housing ordinance, except that it would apply to nonresidential properties. 2007 proved to be the year that these hopes began to be realized.

S.L. 2007-414 (S 556) authorizes the adoption of nonresidential maintenance codes by enacting two new statutes, G.S. 160A-439 and G.S. 153A-372.1, that closely track the procedures outlined in the minimum housing statutes. Any city or county is authorized to adopt a commercial maintenance code of its choice.

One important feature of the legislation is that a local government acting under a commercial maintenance code, as under a minimum housing ordinance, is authorized to arrange for the work on the property to be done if the owner fails to do so. It may also establish a lien on the property for the expenses incurred. S.L. 2007-414 also expressly provides that a local government may impose a civil penalty for violation of an ordinance adopted under the act.

The new act also includes a procedure for dealing with owners that vacate and close their buildings and "abandon the intent to repair." It tracks a similar procedure in the housing code statutes. However, under this nonresidential maintenance act, the local government must typically wait two years before following up with an order to repair or demolish (under the minimum housing statutes a period of only one year is required). Furthermore, in the case of vacant manufacturing facilities or industrial warehouse facilities, the buildings must have been vacated and closed for a period of five years before the governing board may take further action.

Probable Cause for Periodic Inspections

Senate Bill 1507 is a potentially significant bill that has passed the Senate and is eligible for further consideration in 2008. It addresses several issues involving unsafe buildings. First, it would affect the circumstances in which a city or county inspector may make periodic inspections for unsafe, unsanitary, or otherwise unlawful conditions in buildings. (Note that periodic inspections of work in progress would not be affected.) Periodic inspections to check for

compliance with fire prevention regulations, minimum housing ordinances, and conditions giving rise to condemnation would be strictly limited. A city or county could require periodic inspections as an effort to respond to "blighted or potentially blighted conditions" in a target area designated by the local government or within a community development block grant target area designated by certain other state or federal agencies. Otherwise, inspectors could make periodic inspections only when there is "probable cause." According to the bill, probable cause would mean (1) the owner has a history of more than one verified violation of a housing ordinance within a twelve-month period, (2) there has been a complaint that substandard conditions exist or an occupant has requested that the building be inspected, or (3) the inspections department has actual knowledge of unsafe conditions within the building acquired as a part of "routine business activities conducted by government officials."

Senate Bill 1507 also would make a fundamental change to the minimum housing statutes. It would amend G.S. 160A-443(3)(a) to provide that if a dwelling unit can be repaired or improved, the inspector could so require and would not have to allow the owner to comply by vacating and closing the dwelling. The proposed change is a remarkable one because there are increasing complaints about owners who simply board up houses to avoid repairing them.

Finally, the bill proposes a series of changes to residential landlord-tenant law. Senate Bill 1507 spells out a series of building conditions that would be considered "inherently dangerous conditions." It would provide that if a landlord has knowledge or notice of these conditions but failed to remedy them within a reasonable period of time, the landlord would be deemed to have breached an implied covenant with the tenant.

Environment

Landfill Siting

Faced with several proposals to site major new landfills in the state, a moratorium on permitting new landfills was enacted by the General Assembly in 2006. In 2007 the General Assembly set new standards for landfill siting and design. Legislation enacted in the closing days of this session substantially updates and strengthens both the process and standards for permitting new landfills. S.L. 2007-550 (S 1492) makes a number of changes to state laws that are discussed in more detail in Chapter 12, "Environment and Natural Resources." Of particular note in respect to planning and development regulation are several siting and permit review procedures. New landfills must be (1) 200 feet from perennial streams or wetlands, (2) outside the 100-year floodplain, (3) five miles from the boundary of a National Wildlife Refuge, (4) one mile from the boundary of a state gameland, and (5) two miles from the boundary of a state park. Landfills must be consistent with state and local solid waste management plans. Traffic studies and traffic mitigation measures may be imposed on landfills and transfer stations. Continuation and even some expansion of landfills existing as of June 1, 2006, are not subject to most of these requirements.

Energy

A number of bills were enacted to enhance energy efficiency and promote use of renewable energy sources. The major bill, S.L. 2007-397 (S 3), largely affects power suppliers and is reviewed in detail in Chapter 12, "Environment and Natural Resources." Several other bills on this topic affect local governments and community planning. S.L. 2007-381 (S 581) allows cities and counties to charge reduced building permit fees and provide fee rebates for building construction and renovation that meets nationally recognized sustainable building standards. S.L. 2007-241 (H 1097) allows Asheville, Carrboro, Chapel Hill, Charlotte, and Wilmington to grant density bonuses, adjust development regulations, and provide other incentives to developers of projects that make a significant contribution to the reduction of energy consumption. S.L. 2007-542 (H 1702) authorizes changes in the state building code to require insulation of hot water pipes.

Miscellaneous

A 2006 fire at an Apex hazardous waste facility led to a study commission on the issue of regulation of these facilities. The outgrowth of this attention was the adoption of S.L. 2007-107 (H 36). Among other provisions this act strengthens the role of local governments in mandatory contingency plans for dealing with mishaps at these facilities.

At the conclusion of a ten-year moratorium on new swine farm waste lagoons, the General Assembly adopted S.L. 2007-523 (S 1465) to substantially update and revise the standards for swine waste handling.

A study commission on assuring continued access to the waterfront for traditional users led to the enactment of a package of recommendations on this topic. S.L. 2007-485 (S 646) allows for use value property taxation of "working waterfront" property (commercial fishing piers and commercial fishing operations and fish houses) for tax years beginning on and after July 1, 2009; creates an Advisory Committee for Coordination of Waterfront Access within the Department of Environment and Natural Resources; directs the Department of Transportation to expand public access to coastal waters in its road planning and construction program; provides for waiving permit fees for emergency permits under the Coastal Area Management Act; and directs the Division of Emergency Management in the Department of Crime Control and Public Safety to study ways to facilitate construction and repair of water dependent structures (such as fish houses) located in flood hazard areas.

S.L. 2007-518 (H 820) addresses the issue of interbasin water transfers. It authorizes a substantial study of surface water allocation in the state and revises the process for securing approval to make interbasin transfers.

These bills are discussed in more detail in Chapter 12, "Environment and Natural Resources."

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Courts and Civil Procedure

The 2007 legislative session was a significant one for the North Carolina General Court of Justice. For many years the legislative concerns of the courts have focused on monetary resources, primarily a perceived lack of personnel for the trial courts and the lack of money and people to update the court's computer systems. In this session the legislature responded to those needs in two ways. It appropriated the largest amount of expansion funding since the uniform court system was established in the late 1960s. The total amount of expansion funding was $21 million in fiscal year 2007–08 and $38 million in 2008–09. That does not include an additional $5 million in 2007–08 and $9 million in 2008–09 for indigent defense. It was a systemic infusion of funds for the entire court system. To put the increase in perspective, the courts budget (not including indigent defense) going into the session was $407 million. But to fund that expansion, court costs and fees were raised by a similar amount—$35 million in 2007–08 and $38 million in 2008–09. To put that increase in perspective, the fees collected without that increase would be around $172 million. Historically, relying on fees to support court operations has not been the preferred approach of court leaders, although it has increasingly been the approach taken by the legislature in recent years.

Another important legislative priority for the court system—an enhancement of its budgetary powers vis-à-vis the governor—was addressed but not enacted in the form sought by the court system.

Judicial Administration

Appropriations for personnel

The 2007 appropriations act (S.L. 2007-323, H 1473) provides 386 new positions in the courts in fiscal year 2007–08. It provides an additional 286 positions in 2008–09. Those positions include the following.

District attorneys. Seventy-seven positions were added in district attorneys' offices in 2007–08, with an additional seventy-five in 2008–09. Fifty-eight of the new positions are assistant district attorneys, and the remainder will be support staff. All the positions will be allocated by the Administrative Office of the Courts (AOC), except for twenty-eight assistant district attorneys that the legislature will allocate in 2008. The 2007 allocation procedure for assistant district attorneys is a departure from the traditional practice of allocating assistant district attorney positions by statute. The AOC is to use "caseload and criteria" to support its recommendations and report those to the legislature.

Clerks of Superior Court. Over the 2007–09 fiscal biennium, the appropriations act authorizes an additional 300 deputy clerk positions, 150 to be created during each fiscal year. They are to be allocated by the AOC based on its caseload and workload studies.

Magistrates. Forty-two magistrate positions were created (twenty-one in each year of the biennium) to be allocated to counties as specified in the appropriations act. The allocations follow the recommendations of a caseload and workload study conducted by the AOC.

District Court. The appropriations act also creates nine district court judges over the two-year biennium. Six of the judges are added effective January 1, 2008, in districts 10 (Wake), 11 (Johnston, Harnett, and Lee), 12 (Cumberland), 18 (Guilford), 21 (Forsyth), and 26 (Mecklenburg). The remaining three are added effective January 15, 2009, in districts 5 (New Hanover and Pender), 10 (Wake), and 26 (Mecklenburg). These positions are allocated by statute, but the allocation follows the recommendations of a caseload and workload study conducted by the AOC. The governor in office at the time the judgeships become effective will make the initial appointments to the positions. In addition, sixteen new district court support staff positions (nine in 2007–08 and seven in 2008–09) were created and will be allocated by the AOC.

Family courts have become an accepted part of the district court. Nearly every legislative session, the appropriations act includes funds to add additional districts to the program. (Although all district courts hear and decide family law cases, "family courts" have specialized staff members, and the judges receive specialized training and tend to work nearly all of their time in family court. In that sense, "family court" refers to the specialized programs that are in place in several court districts.) The 2007 appropriations act includes funds for eight positions to expand family court into two more districts, which will be selected by the AOC.

Superior Court. Continuing a recent trend, the increase in the superior court bench comes from newly created special superior court judgeships. Special judgeships are filled by gubernatorial appointment for five-year terms, and the appointee need not reside in any particular district. In contrast, regular superior court judgeships are allocated to a specific district and are filled by election by the voters of that district for eight-year terms. The 2007 appropriations act adds two additional special superior court judgeships, effective January 1, 2008. There are also funds for five support positions in superior court (two in 2007–08 to support the new superior court judgeships, and three in 2008 to be allocated by the AOC.)

Court of Appeals. Two support positions were created to help the court deal with an expanding caseload. In addition, each judge whose permanent residence is more than fifty miles from Raleigh is entitled to reimbursement for one weekly round trip to Raleigh during weeks in which the person is in Raleigh on state business.

Other programs. Several other programs also received new personnel. The Guardian Ad Litem program, which provides volunteer advocates for children in abuse and neglect cases, received fifteen new positions. The Drug Treatment Court program received funds to continue fourteen and three-quarters positions funded previously by grants set to expire in 2007. The Judicial Standards Commission received funds to establish investigator and counsel positions to assist the commission in its duties. The AOC itself received funding for eighty-two new positions, all but four of which will be allocated to its Information Technology Division.

Other Funding Increases

There are several other funding increases that will affect court operations. The rate paid to retired judges who are temporarily called back into service was raised from $300 to $400 per day.

The hourly rate for attorneys working in the Guardian Ad Litem program was raised from $45 to $65. Another step was added to the salary longevity program for elected and senior appointed officials (judges, district attorneys, clerks of court, public defenders, and assistant public defenders and prosecutors). Formerly, the program provided these officials 4.8 percent in salary increases for each five years of creditable service, but the increases stopped at 20 years. The 2007 appropriations act adds a 25-year step. Finally, public defenders (including the appellate defender, the capital litigation defender, and the juvenile defender) are now included in the Judicial Retirement System. That system provides substantially more benefits than the state employees' retirement system and, before this change, included only judges, district attorneys, clerks of court, and the AOC Director. The change does not include the senior executive in the Indigent Defense System (the director of the Indigent Defense Services Office).

DA, Clerk's Conference Funding

S.L. 2007-323 moves the funding for District Attorneys and Clerk's Conferences from recurring funds to nonrecurring funds and requires the AOC to study whether and on what conditions the funding should be continued.

New Public Defenders

S.L. 2007-323, for the first time, allows the Indigent Defense Services Commission not only to add additional positions in existing public defender offices, but also to create additional public defender offices in 2008 without further legislative approval, subject to certain conditions. It also creates new public defender offices in District 5 (New Hanover) and District 29B (Henderson, Polk, and Transylvania).

Costs and Fee Increases and Statutory Changes

S.L. 2007-323 adds or raises the following fees, which collectively generate the additional $35 million in revenue appropriated for courts for the 2007–08 fiscal year.

1. Raises the General Court of Justice fee imposed in criminal court by $10, with one of the additional dollars to be sent to the North Carolina State Bar to fund legal services programs;
2. Raises the failure to appear fee from $50 to $100 and assesses the fee when a person fails to appear within twenty days instead of when the clerk sends a failure to appear (FTA) notice to the Division of Motor Vehicles (DMV), thereby imposing the fee on all FTAs and not just motor vehicle FTAs, and eliminating the fee imposed on reports to DMV of failures to comply with orders to pay fines or costs;
3. Raises the General Court of Justice fee in civil court by $14 in superior court, $9 in district court, and $10 in small claims and estates cases, with $1 of the additional amount to be paid to the State Bar for legal aid funding;
4. Raises the base fee assessed in foreclosure cases from $60 to $75, and raises from $300 to $500 the maximum amount of the additional amount that is based on the amount of the sale under a power of sale;
5. Raises the fee to provide a criminal record check from $10 to $15;
6. Raises the appearance fee for out-of-state attorneys from $125 to $225;
7. Raises the costs for civil revocations (CVRs) under G.S. 20-16.5 from $50 to $100, with half allocated to the General Fund, one-fourth to pay for the state's chemical testing program, and one-fourth to counties to fund jail costs in enforcing impaired driving cases; and
8. Establishes a new fee of $100 for the issuance of any limited driving privilege under G.S. Chapter 20 [see S.L. 2007-345 (H 714) for an amendment to this provision].

In a related policy change, effective July 1, 2008, S.L. 2007-323 amends G.S. 7A-317 to eliminate the exemption previously conferred on local governments from advancing fees in civil cases.

Finally, S.L. 2007-323 also authorizes the AOC to assess a collection assistance fee on amounts remaining unpaid after thirty days by people not on supervised probation. The amount of the fee may not exceed the average cost of collection or 20 percent. The AOC may also use collection agencies or use Setoff Debt Collection statutes, but if the AOC imposes a collection assistance fee or uses a collection agency, it may not also impose a collection fee pursuant to G.S. 115C-437 (which can be deducted from the amount paid to school boards as clear proceeds of fines or forfeitures).

Interpreters

S.L. 2007-323 amends the statutes specifying who is entitled to receive state-paid foreign language interpreter services and to authorize the AOC to pay for interpreters' services in criminal or domestic violence cases where necessary for the efficient transaction of business. The act also allows the AOC to create full-time positions for interpreters where justified by the volume of business.

Telephones

In what might appear on the surface to be a minor change, S.L. 2007-323 amends G.S. 7A-302 to require counties to provide properly functioning telephones as part of their obligation to provide adequate local court facilities for the operation of the courts. The AOC may require that the phones meet certain specifications. For many years the AOC has been providing phone systems, and it has recently been investing resources in an effort to shift the courts' phone service to new computer-based technologies called Voice over Internet Protocol (VoIP). In recent years the General Assembly has been funding the capital costs of new telephone systems when new courthouses are built. This provision represents a change in policy, and it is in some ways inconsistent with the AOC's efforts to have standardized VoIP based-phones in all courthouses. This change is effective in the 2008–09 fiscal year.

Judicial District Splits

A legislative session is now unusual if it does not include a division of an existing district into two or more smaller districts. The 2007 appropriations act includes one such change in Judicial District 22. That district, which is comprised of Davidson, Davie, Iredell, and Alexander counties, was one of the larger districts, and it was one of the few districts that had not been changed since the districts were set during the court reform efforts of the 1960s. The act divides the district into two two-county districts, effective January 1, 2009. When fully implemented, the annual cost of the district realignment will be approximately $1.3 million.

Alexander and Iredell counties will be District 22A and Davidson and Davie counties will be District 22B. Fourteen positions are added to accomplish the division, including two new district court judges, a new superior court judge, and a new district attorney. The new superior court judge will be assigned to District 22B (22A already has two judges residing in the district), and the position will be filled in the 2008 election for a term to begin January 1, 2009. The two new district judges will be assigned to District 22A, which will have a residency requirement for candidates. Two of the five district court seats assigned to District 22A must be filled by residents of Alexander County, and the other three must be filled by Iredell County residents. The six judgeships assigned to District 22B have a similar residency requirement, with four judges required to reside in Davidson County and two to live in Davie County. This continues a trend that has recently been applied to the 11th and 13th districts. Like those changes, this provision raises the issue of whether a county residency requirement is consistent with Article IV, Section 10 of the North Carolina Constitution, which specifies that "[e]very district judge shall reside in the

district for which he is elected." Adding a requirement of residency in a specific county may impose an additional qualification to run for the office of district judge that the constitution does not authorize. Adding additional qualifications to hold elective office has in at least one instance been held to be beyond the authority of the General Assembly. *See* Moore v. Knightdale Board of Elections, 331 N.C. 1, 413 S.E.2d 541 (1992). District court residency requirements have not been challenged in litigation to date.

S.L. 2007-484 (S 613) illustrates a difficulty with the establishment of ever-smaller districts. Two years ago, Union County was removed from what was then a five-county district court district (District 20). The resulting new one-county district was further subdivided into two districts that serve only as units of election and are combined for administrative purposes. As a result, Union County has Districts 20B and 20C for district court purposes. After that split, the General Assembly created a new district court seat for Union County. The placement of that seat, which determines which voters in Union County are eligible to vote for that judge, has been the subject of legislation in the last two sessions. It was originally placed in the new one-county district before that was further subdivided, and by the time the seat was filled, the one-county district no longer existed. Putting the seat in either of the existing subdistricts would create serious population imbalances among the voters. S.L. 2007-484 creates yet another district in Union County, district 20D, which consists of the entire county. Now Union County is a set of districts for district court comprised of District 20B (one judge elected in part of Union County), 20C (two judges elected in part of Union County), and 20D (one judge elected countywide). No other district court district has such a configuration of subdistricts and countywide elections existing simultaneously.

Study of District Attorneys' Offices

The 2007 appropriations act directs the Legislative Research Commission to contract for an independent study that assesses the availability of resources for prosecution and the use of those resources, including the resources of the Conference of District Attorneys. The report of the study is to be submitted to the General Assembly by March 15, 2008. Pending the outcome of the study, all the funding for the Conference of District Attorneys was moved from recurring to nonrecurring funding.

The study must include the following items:

1. Current prosecutorial resources
2. Services provided by the State's district attorneys and the Conference of District Attorneys and the recipients of those services
3. Funding of prosecutorial services, adequacy of supplies, equipment, and working space, and allocation of prosecutorial resources
4. The current role of the Conference of District Attorneys and district attorneys in assessing the needs of the public with regard to prosecutorial services and providing assistance in meeting those needs, including whether the role of the conference in interacting with the General Assembly should be modified
5. The state of automation of prosecutorial services
6. Cost-management practices of district attorneys and their staffs, especially out-of-pocket costs like expert witness and travel costs
7. Caseload management, including the effect of caseload management practices on jail population and timeliness of prosecution of serious crimes
8. How the current management and use of prosecutorial resources affect the following:
    a. Access to justice
    b. Day-to-day functioning of the prosecution service
    c. Case management, including the development of case-screening mechanisms and protocols for diversion
    d. Timely resolution of caseloads
    e. Reduction of any backlogs that exist and the jail population
    f. The capacity to handle specialized or complex crimes

g. The effectiveness of district attorneys and their staffs in responding to domestic violence and other crimes of violence
h. Services and support provided to victims
i. Accountability to the public

Judicial Branch Budget Flexibility

One of the main priorities of the Chief Justice of the Supreme Court for the 2007 session was to clarify and expand the budgetary authority of the judicial branch of government with respect to the legislative and executive branches. S.L. 2007-393 (S 1130) addresses that issue, although it does not contain the provision the court system wanted the most—the power to make budget transfers from one purpose to another without executive or legislative approval. S.L. 2007-393 amends G.S. 143C-3-2, the State Budget Act, to make it clear that the governor's budget must include estimates of financial needs of the judicial branch as submitted by the Chief Justice and must specify where the governor has changed those requests. It also requires the governor to consult with the Chief Justice to implement expenditure reductions in the court's budget. Finally, it authorizes the AOC director to analyze use of contractor positions and, after consultation with the Joint Legislative Commission on Governmental Operations, to create permanent state positions as appropriate.

The Office of Magistrate

The General Assembly made two changes that will affect the magistrate's office. S.L. 2007-393 deletes a requirement that basic training for magistrates must be held in Asheville but retains a requirement that continuing education be held at locations convenient for magistrates. S.L. 2007-484 prohibits magistrates who are licensed to practice law in North Carolina from engaging in the private practice of law. Many magistrates who are licensed to practice law have done so on their off hours in matters unrelated to their work (estate planning, for example), to supplement their salaries, which is substantially less than the salaries received by judges and other lawyers who serve in the court system.

Alternative Dispute Resolution

District court criminal mediation. S.L. 2007-387 (S 728) intends to encourage and standardize the provision of mediation services in district court criminal cases. Typically those services are conducted by volunteers associated with community mediation centers, also known as dispute resolution centers. The act specifically allows a district attorney to delay prosecutions in order for mediation to take place. It authorizes local community mediation centers to (1) assist the court in administering a program for mediation services and in the screening and scheduling of cases for mediation and (2) provide certified staff to conduct criminal court mediations. The Supreme Court must adopt rules by January 1, 2008, to implement criminal district court mediations, and those rules must include provisions specifying qualifications for mediators.

Medical malpractice arbitration. S.L. 2007-541 (H 1671) adds a new Article to G.S. Chapter 90 establishing a detailed procedure for voluntary arbitration of claims of injury allegedly resulting from negligent health care. The act received support from both the medical and legal communities, a unification of forces rarely observed in recent years in tort reform discussions. The new law allows parties to agree at any time after a claim arises to submit the case to an arbitrator for a decision binding on both parties. Arbitration is triggered by filing a stipulation to arbitrate with the clerk of superior court in the county in which the alleged negligence occurred. This action tolls the statute of limitation and vests the superior court with jurisdiction to enforce the procedure. The parties may select an arbitrator by agreement; their failure to agree within forty-five days after filing the stipulation will result in selection of an arbitrator from a list of emergency superior court judges who have agreed to serve. The act limits

the number of expert witnesses that may be used by each party, the amount of allowable discovery, and the time frame within which discovery must be completed and the hearing held. Significantly, the maximum amount of damages that an arbitrator may award is $1 million. The decision of the arbitrator may be challenged on appeal only for fraud, bias, serious procedural irregularity, arithmetic miscalculation, or other reasons set out in G.S. 1-569.23 and 1-569.24 of the Revised Uniform Arbitration Act, regarding vacating or modifying an award. No *de novo* review of the merits of the arbitrator's decision is allowed. A health care provider who attempts to contractually bind a patient to arbitration under S.L. 2007-541 in the event of a later claim of injury will receive short shrift; the law declares such anticipatory agreements void and unenforceable. The new law specifically excludes from this declaration agreements for arbitration not governed by the new procedure.

Marriage by Judges

Virtually every legislative session receives a request from a judge to amend the state's marriage laws to allow the judge to conduct marriage ceremonies for a narrow window in time (usually a week). That kind of legislation must be done by general law, so the mechanism to allow these personal requests to be honored is to amend the state law on marriage to allow all judges to conduct marriage ceremonies and to repeal that amendment a week after it becomes effective. S.L. 2007-61 (S 1131) allows district judges to perform marriages between June 4 and June 8, 2007. Some legislators in the recent past have attempted to make a change to the marriage law permanent, but those attempts have not yet been successful. Under the general law, only magistrates (and clergy members) can conduct marriage ceremonies, which is something that the vast majority of judges would not like to see changed.

Removal and Discipline of Elected Judicial Officials

Much important legislation in the 2006 and 2007 sessions of the General Assembly was in response to various ethical or criminal violations by prominent elected officials. Judicial officials also figured into the overall debate, and, in 2007, three acts addressed various aspects of ethics and discipline of court officials. The first, S.L. 2007-104 (S 118), deals with situations in which judges or district attorneys lose the right to practice law while they are serving. (The state constitution requires judges and district attorneys to be licensed to practice law to be eligible for election, but until this act there had been no provision dealing with the consequences of losing that license.) S.L. 2007-104 amends G.S. 7A-410 and G.S. 7A-410.1 to provide that the governor must declare the office of a judge or district attorney vacant when the holder of the office is no longer authorized to practice law. The act also provides that the salary of a judge or district attorney is suspended immediately when an order of disbarment or suspension of license becomes effective. During the 2007 legislative session, one district court judge and one district attorney were disbarred, and while the new law does not apply to either of them, it establishes a procedure for such cases in the future.

The second act, S.L. 2007-179 (S 659), deals with the effect of felony convictions on the ability of elected officials to receive governmental retirement benefits. No court officials were convicted of felonies during this session, but sitting and former legislators were. This act applies to elected governmental officials, including judges, district attorneys, and clerks of superior court. It provides that elected officials lose retirement benefits for certain felony convictions. The offenses that trigger this loss of benefits are specified state and federal corruption offenses. The conduct must occur while the person is serving in an elected office and must be directly related to the person's service in that office. Officers vested as of July 1, 2007, are not entitled to any creditable service that accrued after that date if they commit one of the designated offenses after that date. Officials not vested as of July 1, 2007, forfeit all benefits if they commit one of the designated offenses after that date.

The final act, S.L. 2007-29 (S 184), modifies 2006 ethics legislation as it applies to judicial officials. The 2006 legislation required elected judicial officials (and many others) to file annual

statements of economic interest with the State Ethics Commission. Many court officials were concerned about including their home addresses in the filings, given the nature of their work. S.L. 2007-29 allows judicial officers to use a business address on their statements of economic interest, but they must provide their home address to the commission in a separate filing, which is not a public record. S.L. 2007-29 also allows judicial officers to use only the initials of any unemancipated children in their statements of economic interest, if they concurrently provide the commission with the names of the unemancipated children. The act also provides that a judicial candidate must file a statement of economic interest at the same place and in the same manner as the candidate's notice of candidacy.

Jury System

One persistent problem for counties preparing the master jury list that is used to summon jurors for a two-year period is the quality of the list of names that they begin with. The list is prepared by DMV and includes voters and driver's license lists. Quite often the raw list has many names of deceased people, poor addresses, and otherwise unusable names. S.L. 2007-512 (H 943) addresses that problem in a modest way. It requires the State Registrar to assist jury commissions in updating juror lists by providing to each county's jury commission (the body responsible for preparing the two-year list for the county) the names and addresses of all residents of the county who have died in the previous two years before July 1 of each odd-numbered year. It also requires local jury commissions to remove from the jury list names of residents who are deceased based on that information supplied by the State Registrar. Finally, it addresses the issue of bad driver's license addresses by directing DMV to refrain from including in the lists they provide to counties any names of formerly licensed drivers whose licenses have expired and not been renewed for eight or more years

S.L. 2007-393 (S 1130) authorizes the AOC to operate a pilot program in one judicial district allowing jurors to waive their daily compensation for jury service. Any compensation that is waived would be designated by the juror to be used for various specified programs operating in the county. If the juror does not designate a program, the fees waived go to the Crime Victims Compensation Fund.

Domestic Violence

In 2005 the General Assembly established a permanent sixteen-member Joint Legislative Committee on Domestic Violence. In 2007 the committee's recommendations resulted in two new pieces of legislation. First, S.L. 2007-15 (H 46) requires the clerk of superior court, upon request of a victim of domestic violence, to coordinate with the county sheriff to provide the victim a segregated secure area within the courthouse to await the hearing of the victim's case. The clerk must also notify the presiding judge of the victim's presence in the secure area. The General Assembly recognized that providing a secure area in every county courthouse may be challenging: S.L. 2007-15 imposes this requirement only "where practical," and it requires the AOC to report to the committee in 2008 on progress in identifying a secure area in each courthouse.

Another piece of legislation recommended by the committee was approved in the form of S.L. 2007-116 (S 30), which amends G.S. 101-2, the statute governing name change. The new law exempts victims of domestic violence and certain others from the usual requirement that applications for name change be posted at the courthouse door. To qualify for the exemption, an individual must either participate in the address confidentiality program outlined in G.S. Chapter 15C or provide evidence that the applicant is a victim of domestic violence, stalking, or sexual offense. S.L. 2007-116 requires an applicant to present governmental records or files in support of a claim of eligibility as a victim, or (in the case of domestic violence) documentation from a program funded by the Domestic Violence Center Fund. An earlier version of the bill would have allowed an applicant to establish eligibility by documentation from a religious,

medical, or other professional, but this provision was deleted prior to the bill's passage. In addition to relieving the applicant of the publication requirement, the new law requires that the entire record of court proceedings relating to the name change be secured from public inspection. A court order or written consent of the applicant is required for access to the record.

S.L. 2007-116 also requires the clerk of superior court to provide individuals obtaining a protective order under G.S. Chapter 50B with written information identifying available services for victims of domestic violence and sexual assault, as well as information about victims' compensation, legal aid, address confidentiality, and the right to apply for a concealed handgun permit. The law directs the AOC to develop an information sheet to be handed out by clerks. The AOC currently provides such a form, but this act codifies the requirement that the form be provided.

Civil No-Contact Orders

In 2004 the General Assembly enacted new G.S. Chapter 50C allowing victims of stalking or nonconsensual sexual conduct to obtain a civil no-contact order similar to those available to victims of domestic violence under G.S. Chapter 50B. The 2004 law defined stalking in part as "following on more than one occasion or otherwise harassing as defined in G.S. 14-277.3(c)." G.S. 50C-1(6). While similar to the language in G.S. 14-277.3 (criminal stalking), the new statute reorganized the wording, creating a question about whether a single instance of harassment would be included in the conduct addressed by G.S. Chapter 50C. In *Williams v. Vonderau*, 181 N.C. App. 18, 638 S.E.2d 644 (2007), the North Carolina Court of Appeals considered but did not answer this question. A dissenting opinion, which did answer the question, propelled the case into the North Carolina Supreme Court, where it was pending when S.L. 2007-199 (H 1482) was enacted. The law amends the language of G.S. 50C-1(6) to conform to the criminal offense in G.S. 14-277.3, thereby clarifying that more than one instance of harassment is required.

The Family Court Advisory Committee requested the General Assembly to prohibit Chapter 50C actions against children under the age of sixteen because of two concerns. First, a large number of Chapter 50C orders were being sought because of minor incidents between school children. Second, use of criminal contempt against juveniles to enforce Chapter 50C orders was problematic. S.L. 2007-199 amends G.S. 50C-1(7) to provide that the unlawful conduct leading to a no-contact order is limited to acts committed by a person sixteen years or older. The General Assembly addressed more generally the issue of contempt and juveniles by enacting S.L. 2007-168 (H 1479), establishing a procedure for holding juveniles in contempt. The act is discussed in Chapter 4, "Children and Juvenile Law."

Civil Procedure

Awarding Court Costs

S.L. 2007-212 (H 21) was recommended by a House of Representatives select committee charged with resolving confusion about a trial judge's authority to award court costs. The confusion arose out of two statutes: G.S. 6-20, which gives the trial judge discretion to award costs, and G.S. 7A-305(d), which lists specific expenses that may be recovered as part of costs. Some appellate cases held that expenses are recoverable only if listed in the statute, some held that the trial judge had discretion to award other expenses as well, and some limited expenses to those either listed in the statute or recognized at common law prior to 1983. S.L. 2007-212 puts an end to the confusion by amending G.S. 6-20 to specify that the trial judge has discretion to award costs only if they are specifically listed in G.S. 7A-305(d), subject to limitations set out in that statute. The act also amends G.S. 7A-305(d) to add to the list of recoverable costs (1) fees of mediators, (2) reasonable and necessary fees for recording and transcribing depositions, and (3) reasonable and necessary fees of expert witnesses for time spent testifying. Finally, the act specifies that the

amendments do not affect the trial court's authority under G.S. 1A-1, Rule 26(b) and Rule 37 to award fees and expenses related to pretrial discovery.

Peremptory Challenges

S.L. 2007-210 (H 244) amends G.S. 9-20 to authorize a trial judge to apportion peremptory juror challenges between multiple plaintiffs. Prior to this amendment, the statute gave a trial judge discretion, in a civil case involving multiple defendants with antagonistic interests, to either apportion eight peremptory challenges among the defendants or to increase the number of challenges to six per defendant. The new law extends the judge's authority to plaintiffs with antagonistic interests as well. The law also authorizes a judge who has increased the number of challenges available to one side under this provision to grant an equal increase to the other, even if additional challenges would not otherwise be permitted. Finally, the amendment deletes language providing that the judge's decision regarding the nature of interests and number of challenges "shall be final." This language was relied upon by the North Carolina Supreme Court in *State ex rel. Freeman v. Ponder*, 234 N.C. 294, 67 S.E.2d 292 (1951), to dismiss as untenable an assignment of error challenging the trial court's determination of antagonistic interests. It is unclear whether this deletion was intended to render the trial court's decision, while entitled to deference as an exercise of discretion, more available to challenge on appeal.

Subpoenas

Lawsuits involving multiple parties also prompted amendment of G.S. 1A-1, Rule 45, governing use of subpoenas in civil actions. S.L. 2007-514 (H 316) amends Rule 45 to provide that any party who wishes to inspect and copy material received pursuant to a subpoena must be allowed a reasonable opportunity to do so.

Subpoenas of a different sort received legislative attention in 2007 in S.L. 2007-251 (S 1432). Prior law authorized the Employment Security Commission and the Property Tax Commission to issue subpoenas and provided enforcement mechanisms for failure to comply with subpoenas, but made no mention of a procedure for challenging a subpoena. S.L. 2007-251 amends G.S. 96-4 and G.S. 105-290 to establish such a procedure. The new law provides for a hearing by the relevant administrative agency on a motion to quash and allows immediate judicial review of a denial of a motion in the Superior Court of Wake County or in superior court in the county where the person subject to the subpoena resides.

Complex Business Cases

In 2005 the General Assembly established a procedure for certain complex business cases to be heard by a special superior court judge designated by the Chief Justice of the Supreme Court. Now there are three special superior court judges designated to hold "Business Court," one residing in Mecklenburg County, one in Guilford County, and one in Wake County. S.L. 2007-491 (S 242) amends G.S. 7A-45.4 to add actions involving tax refunds or assessments (as discussed in newly amended G.S. Chapter 105, Article 9) as a new category of complex business case eligible for "Business Court". The new law provides that an aggrieved taxpayer must follow Business Court statutory procedures when seeking judicial review of an adverse decision by the Office of Administrative Hearings or wishing to challenge the constitutionality of statutes. It also requires these cases to be heard in Wake County Superior Court.

Use of Evidence by Jury

S.L. 2007-407 (S 1117) enacts G.S. 1-181.2, a new statute that comprehensively addresses whether a jury may access evidence during its deliberations in a civil case. The new law provides that if the jury asks to review testimony or other materials admitted into evidence, the judge has discretion to grant the jury's request in open court after giving the parties notice and an

opportunity to be heard. If the judge fears that review of the evidence specifically requested may give that evidence undue prominence, the law authorizes the court to require review of other evidence relevant to the same factual issue. This new legislation governing civil cases is identical to that applicable to criminal cases (see G.S. 15A-1233), with the exception of the provision giving parties an opportunity to be heard, which is not required in criminal cases.

The new law dramatically departs from both criminal law and prior civil case law. However, it gives the trial judge discretionary authority to allow the jury's request to take certain types of evidence into the jury room without first obtaining the consent of the parties. While the statute requires that parties have an opportunity to be heard, the new law makes clear that their consent is no longer required for the jury to take into the jury room exhibits that jury members were allowed to examine during the trial, as well as photographs and illustrative exhibits used by witnesses in testifying. On the other hand, evidence prepared during the course of trial by a party, such as summaries of testimony or lists, may not be sent into the jury room. Finally, depositions and any exhibits not falling into the first category may be sent into the jury room only with the consent of all parties.

Civil Procedure in Context of Predatory Lending Practices

In December 2006 a divided North Carolina Supreme Court decided two cases limiting the ability of homeowners to challenge lending practices in connection with foreclosure proceedings. Less than four months later, the General Assembly responded by enacting legislation specifically overturning the results in both cases. In *Skinner v. Preferred Credit*, 361 N.C. 314, 638 S.E.2d 203 (2006), the court was confronted with a common situation in which North Carolina homeowners were challenging terms of a loan that had been sold by the original lender to an out-of-state corporation, which placed the loan into a trust. The court held that there were insufficient contacts between the trust and North Carolina under the long-arm statute to permit the homeowners to bring an action here. S.L. 2007-351 (H 1374) amends the long-arm statute, G.S. 1-75.4(6), to mandate a different result. Under the new law, an action may be brought in this state if (1) the loan was made to a resident of this state; (2) the loan was incurred primarily for personal, family, or household purposes; and (3) the loan is secured by real property including a residential dwelling in this state.

The companion case to *Skinner* was *Shepard v. Ocwen Federal Bank*, FSB, 361 N.C. 137, 638 S.E.2d 197 (2006). In *Shepard*, the Supreme Court held that the statute of limitations on a claim for usury based on a loan origination fee began to run at closing, rejecting plaintiff's claim that the statute of limitations should apply to each individual loan payment. The court acknowledged that the loan origination fee was usurious and that the plaintiff had paid the origination fee out of loan proceeds. The court rejected, however, the argument that the fact that the fee was financed as part of the loan justified a different analysis of when a cause of action accrued for statute of limitations purposes. Again, the General Assembly responded in S.L. 2007-351, amending G.S. 1-53(2) to specify that in an action alleging usury based on points, fees, or other charges, the two-year statute of limitations begins to run anew with each individual payment made and accepted.

Matters of Particular Interest to Clerks

Abandoned Cemeteries

The House Study Committee on Abandoned Cemeteries recommended the legislation enacted as S.L. 2007-118 (H 107), which replaces several sections of G.S. Chapter 65 with a new Article 12, addressing a number of issues pertaining to abandoned and neglected cemeteries. From the clerk's point of view, the new law makes only minor changes to existing procedure for funding perpetual maintenance of graves and cemeteries. The most important change is an increase in the minimum amount that may be deposited with the clerk from $100 to $5,000. Another significant

modification is that the clerk is no longer required to make an annual report of how income from the fund has been used; S.L. 2007-118 instead requires only that a copy of the accounting be placed in the file. Finally, the old provision requiring annual payment of a 10 percent commission to the clerk has been removed. The new law applies only to trusts created on or after July 1, 2007. Trusts created before that date will continue to be governed by the former statutory provisions.

Uniform Simultaneous Death Act

S.L. 2007-132 (H 775) adopts in large part the most recent version of the Uniform Simultaneous Death Act (USDA). The act is a legislative resolution of a problem most easily understood by example. Imagine a married couple with no children where each spouse has a will leaving everything to the other spouse and they die together in an automobile accident. In that situation, the property of the first to die would pass to the surviving spouse and, upon the death of the spouse, then to the heirs of the spouse. In the case of simultaneous death, however, determining how property should be distributed is difficult. The USDA, adopted in one form or another in most states, deals with this problem by providing that in these circumstances neither person inherits from the other. The property of each person is treated as if that person outlived the other. Under the original version of the USDA, however, this "legal fiction" did not apply in cases with "sufficient evidence that the persons have died otherwise than simultaneously." The result was often protracted litigation as one set of potential beneficiaries strove to establish that one party survived the other, even if only for a few seconds. In 1991 the National Conference of Commissioners on Uniform State Laws modified the USDA to extend the presumption to cases in which the relevant persons die within 120 hours of each other. With the enactment of S.L. 2007-132, North Carolina joins a number of states adopting this presumption. Under the amended version of G.S. Chapter 28A, Article 24, one person will acquire property upon the death of another only if clear and convincing evidence demonstrates that person survived the other for at least 120 hours.

The General Assembly also included language specifying the manner in which death and the time of its occurrence may be demonstrated. Under the new law, death is considered to have occurred upon declaration by a physician under G.S. 90-323 or pursuant to the statutory procedure established in G.S. Chapter 28C, which governs missing persons. Acceptable evidence of the time of death includes a death certificate, a report of a governmental agency, or other clear and convincing evidence.

S.L. 2007-132 leaves unchanged the right to avoid application of the act by use of specific language in a will or other legal document. Furthermore, S.L. 2007-132 contains a specific provision, not found in the USDA, that a victim is presumed to have survived the death of a slayer if that presumption operates to allow the victim some right or benefit, absent demonstration by clear and convincing evidence that the slayer survived the victim by at least 120 hours. Finally, the new law adopts the language of the USDA extending protection to payors and other third parties who rely on a survivor's apparent entitlement to property before receiving notice to the contrary. Upon receiving notice of a claimed lack of entitlement, a payor or other third party may avoid potential liability by depositing with the clerk of superior court funds or other property pending the clerk's determination of the person entitled to the property.

Priority of Health Care Agent Over Personal Representative

S.L. 2007-502 (H 634) concerns health care powers of attorney. The provision that is of particular interest to clerks amends G.S. 28A-13-1, the statute governing the duties and powers of a personal representative. The new law clarifies that a duly authorized health care agent under G.S. 32A-19(b) takes precedence over a personal representative in making arrangements related to a decedent's body, funeral, and burial.

Foreclosures

Modified Notice of Foreclosure Hearing

S.L. 2007-351 amends G.S. 45-21.16 to increase the amount of information a debtor is entitled to receive in connection with foreclosures. In 1999 the General Assembly required the notice of a foreclosure hearing to confirm that notice has been sent to the debtor within the previous thirty days and that the debtor was informed of the amount of principal and interest owed. The new law adds to that requirement a provision that the debtor must be supplied with a detailed written statement of all amounts alleged to be due, including "any other fees, expenses, and disbursements." Further, the notice of foreclosure must set out whether the debtor has requested detailed information about the loan within the last two years, as well as identifying the response to any requests. Finally, the new law requires the notice to contain specific information, identified in detail in the statute, concerning the debtor's rights and possible consequences of the debtor's response to the notice. S.L. 2007-351 also adds a new Article to G.S. Chapter 45, imposing specific requirements on a loan servicer and creating a cause of action on behalf of a debtor injured by a servicer's failure to comply with the statutory requirements.

Protection of Tenants in Foreclosure Proceedings

Under the law prior to enactment of S.L. 2007-353 (H 947) tenants might learn that their leased property is going through foreclosure only upon receiving a notice after the foreclosure sale informing them that they must vacate the property within ten days. In fact, a close reading of the statute reveals that a tenant was not even entitled to that notice, although in actual practice, tenants were typically provided with some advance warning of their upcoming ouster. The new law provides a tenant with more time to find alternate housing. Under G.S. 45-21.17 as amended, persons occupying the property are added to the list of those required to be given notice that the property is to be sold at a foreclosure proceeding. This provision applies, however, only if the property is residential and contains less than fifteen rental units. The new law requires that the notice of sale include information about the order for possession likely to be issued following the sale. In addition, the notice must inform tenants of their right to terminate the lease upon ten days' written notice to the landlord. The provision for early termination of the lease is set out in G.S. 42-45.2 and states that tenants are responsible for payment of prorated rent up to the date the tenant has stated that the lease ends. Finally, G.S. 45-21.29 is amended to allow an order for possession to be issued for residential property containing fifteen or more rental units if parties remaining in possession have received at least thirty—instead of ten—days' notice that they must vacate the property.

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Criminal Law and Procedure

As in past years, the General Assembly passed numerous acts in the field of criminal law and procedure, touching on an array of issues. The most significant acts in the 2007 session concerned procedure. In three initiatives intended to help guard against conviction of innocent people, the General Assembly established new requirements for pretrial eyewitness identification procedures and interrogations and revised the requirements for DNA testing and preservation of evidence containing DNA. The General Assembly also revised the open-file discovery law passed in 2004, contracting it in minor respects and reinforcing it in others. In another major act, the General Assembly addressed the procedures for requiring sex offenders to enroll in the satellite monitoring program, established during the 2006 legislative session. These and other criminal law and procedure acts are discussed in this chapter. Legislation related to criminal law and procedure that deal with court administration, motor vehicles, and juvenile delinquency proceedings are discussed in the applicable chapters on those subjects.

Innocence Initiatives

Two companion bills address investigative procedures in criminal cases. One, S.L. 2007-421 (H 1625), creates a new Article 14A in G.S. Chapter 15A (G.S. 15A-284.50 through 15A-284.53), called the Eyewitness Identification Reform Act, to address lineup procedures. The second, S.L. 2007-434 (H 1626), creates a new Article 8 in G.S. Chapter 15A (G.S. 15A-211), Electronic Recording of Interrogations, to address interrogations in homicide cases. Both acts are an outgrowth of efforts to assure the reliability of convictions, reflected in, among other things, the passage of open-file discovery requirements in 2004 and the creation of the Innocence Inquiry Commission in 2006. The purpose statements of the two acts reflect their origins. *See* G.S. 15A-284.51 (the purpose of the eyewitness identification procedures is "to help solve crime, convict the guilty, and exonerate the innocent in criminal procedures"); G.S. 15A-211(a) (the purpose of requiring electronic record of interrogations is "to eliminate disputes about

interrogations, thereby improving prosecution of the guilty while affording protection to the innocent and increasing court efficiency").

Lineups

Coverage. Due Process prohibits identification procedures that are impermissibly suggestive. To implement Due Process protections, the U.S. Supreme Court has held that courts must look at the totality of the circumstances to determine whether the identification procedure was improper and subject to suppression, but the court has not required that officers follow any particular procedures.[1] Concerns have been voiced, however, about the reliability of eyewitness identification procedures. In 1999 the U.S. Department of Justice issued a research report suggesting that certain procedures—such as "double-blind, sequential" lineups, described below—could improve the reliability of eyewitness identification. *See* "Eyewitness Evidence: A Guide for Law Enforcement" at 8-9, posted at www.ncjrs.gov/pdffiles1/nij/178240.pdf. In 2006 the North Carolina Actual Innocence Commission, established by former North Carolina Supreme Court Chief Justice I. Beverly Lake, likewise recommended the use of double-blind, sequential lineups. *See* North Carolina Actual Innocence Commission Recommendations for Eyewitness Identification, posted at www.ncids.org/News%20&%20Updates/Eyewitness%20ID.pdf. Consistent with these recommendations, the Eyewitness Identification Reform Act ("Eyewitness Act"), S.L. 2007-421, supplements existing Due Process protections and requires state and local law enforcement officers to follow specific procedures when conducting lineups. The procedures must be followed beginning with offenses committed on or after March 1, 2008.

The term *lineup* includes live lineups and photo lineups. A *live lineup* is defined as a procedure in which a group of people is displayed to an eyewitness for the purpose of determining whether the eyewitness is able to identify the perpetrator of a crime. A *photo lineup* is defined as a procedure in which an array of photographs is displayed to an eyewitness for the same purpose. The Eyewitness Act does not mention "show-ups"—that is, the presentation of a single suspect to an eyewitness for possible identification. This procedure is frowned upon because it is particularly suggestive, but it has been permitted under the Due Process clause when necessary for law enforcement objectives—for example, when the show-up is held shortly after the crime was committed and an immediate identification is needed to solve a crime quickly.[2] The omission of show-ups from the Eyewitness Act suggests that they may be permissible when necessary and when not employed to avoid the new lineup requirements.

Requirements. The requirements for lineups under the Eyewitness Act are contained in G.S. 15A-284.52. The principal ones are as follows:

- A lineup must be conducted by an independent administrator, defined as a person who is not participating in the investigation of the criminal offense and who is unaware of which person in the lineup is a suspect [G.S. 15A-284.52(a)(3), 15A-284.52(b)(1)]. This procedure is known as a double-blind lineup because neither the witness nor the officer conducting the lineup knows who the suspect is. For photo lineups, certain alternative methods may be used instead of an independent administrator, such as an automated computer program. G.S. 15A-284.52(c).

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1. *See* Manson v. Brathwaite, 432 U.S. 98 (1977); Neil v. Biggers, 409 U.S. 188 (1972). A person also has a Sixth Amendment right to have counsel present at a live lineup when held at or after adversary judicial proceedings have begun. *See* Kirby v. Illinois, 406 U.S. 682 (1972).

2. *See* ROBERT L. FARB, ARREST, SEARCH, AND INVESTIGATION IN NORTH CAROLINA 212 (3d ed. 2003) (noting that a show-up is a suggestive identification procedure that normally should be avoided but that it may be permissible in an emergency or soon after a crime is committed); Stovall v. Denno, 388 U.S. 293, 302 (1967) ("The practice of showing suspects singly to persons for the purpose of identification, and not as part of a lineup, has been widely condemned. However, a claimed violation of due process of law in the conduct of a confrontation depends on the totality of the circumstances surrounding it . . . .").

- Individuals or photos in a lineup must be presented to witnesses sequentially, with each individual or photo presented to the witness separately and then removed before the next individual or photo is presented. A sequential lineup may reduce the possibility, present in lineups in which a group of people is shown at the same time, that the witness will compare the people in the lineup and pick the person who most closely matches the suspect. The combination of an independent administrator and sequential presentation is known as a double-blind, sequential lineup.
- Before a lineup is conducted, the eyewitness must receive certain instructions, including that the perpetrator may or may not be present in the lineup and that the investigation will continue whether or not an identification is made. The eyewitness must acknowledge receipt of the instructions in writing and, if the eyewitness refuses to sign, the lineup administrator must note the refusal.
- At least five fillers (non-suspects) must be included in lineups and, if the eyewitness has previously viewed a photo or live lineup in connection with the identification of another suspect in the case, the fillers in the lineup containing the current suspect must be different from the fillers in prior lineups.
- If the eyewitness identifies a person in the lineup as the perpetrator, the lineup administrator must seek and document a clear statement from the eyewitness about the eyewitness's confidence level that the person is the perpetrator. The eyewitness may not be provided any information concerning the person before the lineup administrator obtains the eyewitness's confidence statement.
- Unless it is not practical, a video record of live identification procedures must be made. If a video record is not practical, the reasons must be documented, and an audio record must be made. If an audio record also is not practical, the reasons must be documented, and the lineup administrator must make a written record of the lineup.
- Whether the record is by video, audio, or writing, the record must include specified information, including the identification or nonidentification results, confidence statement, the names of everyone present at the lineup, and the words used by the eyewitness in any identification.

Remedies. G.S. 15A-284.52(d) sets forth the remedies for a violation of the Eyewitness Act. First, failure to comply with any of the requirements of G.S. 15A-284.52 "shall be considered by the court in adjudicating motions to suppress eyewitness identification." Thus the court must take a violation into account, but a violation does not necessarily require suppression. It appears that the court is to consider whether a violation constitutes a substantial statutory violation, requiring suppression under G.S. 15A-974. The court also may consider whether a failure to follow the specified procedures affects the reliability of the identification, requiring suppression under the Due Process "totality of the circumstances" test. The statute does not explicitly address the question, but presumably the court also may consider whether a failure to follow the lineup requirements tainted a subsequent identification, rendering that identification inadmissible.[3]

Second, the failure to comply with any requirement is admissible in support of any claim of eyewitness misidentification as long as the evidence is otherwise admissible. Thus as part of the case at trial, a defendant may offer evidence of a failure to follow the requirements to show that an eyewitness's identification is unreliable.

Third, when evidence of compliance or noncompliance has been presented at trial, the jury must be instructed that it may consider credible evidence of compliance or noncompliance to determine the reliability of an eyewitness identification. This provision suggests that, in support of an eyewitness identification, the state may present evidence at trial that it complied with the

3. *See generally* Simmons v. United States, 390 U.S. 377 (1968) (stating constitutional standard for determining whether impermissible pretrial identification procedure affected later identification—that is, pretrial procedure must have been "so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification").

eyewitness identification procedures (if the evidence is otherwise admissible under the Confrontation Clause and North Carolina Rules of Evidence).

Training and reference materials. G.S. 15A-284.53 directs the North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission, in consultation with the Department of Justice, to create educational materials and conduct training programs on how to conduct lineups in compliance with the new Eyewitness Act.

Interrogations

The Fifth Amendment prohibits involuntary confessions, which the courts treat as inherently unreliable, the product of unacceptable police practices, and inadmissible. To help ensure that confessions are voluntary, the courts have required *Miranda* warnings at the outset of custodial interrogations. Some state courts and state legislatures have also required that interrogations be electronically recorded as a matter of state law,[4] but electronic recording is not among the protections that have been recognized under the U.S. Constitution.[5] Effective for interrogations on or after March 1, 2008, S.L. 2007-434 requires that interrogations be electronically recorded in certain cases as a matter of North Carolina law.

Coverage. G.S. 15A-211, the only section in the new article on electronic interrogations, provides that the new article applies to "custodial interrogations in homicide investigations at any place of detention." This phrase imposes four preconditions for the recording requirement—the person must be in "custody," presumably within the meaning of the constitutional definition of custody (arrest or its functional equivalent); the person must be "interrogated," again presumably within the meaning of the constitutional definition of interrogation (for example, routine booking questions ordinarily would not constitute interrogation); the investigation must be a "homicide" investigation, which presumably includes any level of homicide (murder, manslaughter, or death by vehicle); and the interrogation must take place at a place of detention, defined in G.S. 15A-211(c) as a jail, police or sheriff's station, correctional or detention facility, holding facility for prisoners, or other facility where persons are held in connection with criminal charges. In light of this last requirement, an interrogation at a person's home or other location that does not constitute a place of detention would not be subject to the electronic recording requirement even if the person was under arrest or otherwise in custody.

Recording. If an interrogation of a suspect meets the above criteria, an electronic recording must be made of the entire interrogation. An electronic recording may be an audio or visual recording. If the recording is visual, the camera must be placed so that it films both the interrogator and the suspect. The recording must begin with the officer's advice of the person's constitutional rights and end only when the interview has completely finished. Brief recesses,

4. *See, e.g.,* Stephan v. State, 711 P.2d 1156, 1158 (Alaska 1985) (unexcused failure to electronically record custodial interrogation conducted in place of detention violates suspect's right to due process under Alaska Constitution, and any statement thus obtained is generally inadmissible); State v. Scales, 518 N.W.2d 587, 592 (Minn. 1994) ("in the exercise of our supervisory power to insure the fair administration of justice, we hold that all custodial interrogation including any information about rights, any waiver of those rights, and all questioning shall be electronically recorded where feasible and must be recorded when questioning occurs at a place of detention"); 725 ILL. COMP. STAT. § 5/103-2.1 (under Illinois statute, statement of accused as result of custodial interrogation at police station or other place of detention is presumed inadmissible as evidence in criminal proceeding for homicide unless electronic recording is made of custodial interrogation and recording is substantially accurate and not intentionally altered); TEX. CODE CRIM. PROC. ANN. art. 38.22, § 3 (subject to certain exceptions, Texas statute provides that no oral statement of an accused made as result of custodial interrogation is admissible against the accused in a criminal proceeding).

5. *See* United States v. Montgomery, 390 F.3d 1013 (7th Cir. 2004) (recognizing that U.S. Supreme Court has not required recording of electronic interrogations as matter of federal constitutional law).

requested by the person in custody or the officer, need not be recorded, but the recording must reflect the starting time of the recess and resumption of the interrogation.

Remedies. G.S. 15A-211 contains several provisions on the effect of compliance or noncompliance with the recording requirements. First, the statute describes the effect on the admissibility of statements that were not recorded. These provisions are similar to the provisions in the Eyewitness Act, discussed above. A failure to comply "shall be considered" by the court in adjudicating a motion to suppress a statement made by the defendant; a failure to comply is admissible in support of a claim that the defendant's statement was involuntary or unreliable if the evidence is otherwise admissible; and when evidence of compliance or noncompliance has been presented at trial, the jury must be instructed that it may consider credible evidence of compliance or noncompliance in determining whether the defendant's statement was voluntary and reliable. (This last provision probably does not mean that the jury decides whether the statement was "voluntary" within the meaning of the Fifth Amendment requirement of voluntariness, which is a question of law for the court to determine in ruling on a motion to suppress.)

Second, the new statute describes the effect of noncompliance on subsequent statements. It states that if the court finds that the defendant was subjected to a custodial interrogation that was not electronically recorded as required, any statements subsequently made by the defendant that are recorded may be questioned concerning their voluntariness and reliability.

Third, the statute provides that in a homicide prosecution, the state may present as evidence against the defendant a statement that was recorded as required if the statement is otherwise admissible. It is not clear how this provision adds to the state's right to introduce statements of the defendant that are otherwise admissible.

Fourth, the statute provides that if the state failed to comply with the recording requirements, it may show by clear and convincing evidence that the statement was voluntary and reliable and that the officer had good cause for not electronically recording the interrogation in its entirety. Good cause includes, among other things, the suspect's refusal to have the interrogation recorded and unforeseeable equipment failures.

Last, the statute provides that it does not preclude the admission of certain listed statements, such as spontaneous statements not made in response to questioning and statements made during arrest processing in response to routine questions.

Retention of recording. The state must retain the electronic recording of a defendant convicted of an offense related to the interrogation until one year after the completion of all appeals of the conviction, including the exhaustion of any appeal of any motion for appropriate relief under state law or habeas corpus proceeding under federal law. This provision may not establish a definite time limit on retention because under G.S. 15A-1415 some claims may be raised in a motion for appropriate relief at any time. *Compare* S.L. 2007-539 (H 1500), discussed below, which sets specific time limits on retention depending on the type of offense.

DNA Testing

In 2001 the General Assembly enacted legislation giving criminal defendants the right to obtain DNA tests, analysis of DNA tests, and biological evidence on which DNA tests could be conducted. *See* John Rubin, *2001 Legislation Affecting Criminal Law and Procedure,* ADMINISTRATION OF JUSTICE BULLETIN No. 2002/02 at 4–5 (Jan. 2002), posted at www.sog.unc.edu/programs/crimlaw/aoj200202.pdf. Effective March 1, 2008, S.L. 2007-539 (H 1500) revises those provisions to clarify various issues, including when a defendant may obtain DNA testing, who must maintain evidence on which testing may be conducted, and how long authorities must retain evidence.

G.S. 15A-267(c) has provided that the court may order the State Bureau of Investigation (SBI) to perform DNA tests on the defendant's motion before trial if the biological material was not previously DNA tested and certain other conditions are met. S.L. 2007-539 expands the opportunity of a person to obtain DNA testing by providing that the biological material must not have been previously tested *or* more accurate testing procedures are now available that were not

available at the time of the previous testing and there is a reasonable possibility of a different result.

G.S. 15A-268 has directed the government entity that collected evidence containing DNA to preserve a sample of the evidence for the period of time that a defendant convicted of a felony is incarcerated. The act revises that section in several ways. First, it adds a broad definition of *biological evidence*, which includes any item containing blood, semen, hair, saliva, skin, tissue, or other identifiable biological evidence, whether present on clothing, bedding, or other evidence or on a slide, swab, test tube, or similar item. Second, the revised statute requires that any government entity "in custody of evidence shall preserve any physical evidence that is reasonably likely to contain any biological evidence collected in the course of a criminal investigation or prosecution." Previously, the statute required the government entity that "collects" the evidence in the course of a criminal investigation to preserve a "sample." This change clarifies that clerks of court who have custody of exhibits or other evidence must preserve the evidence. It also requires that all physical evidence that contains biological evidence be preserved, not just a sample of the evidence, which ensures that complete and accurate testing can be done if it becomes necessary. Third, the revised statute requires that the evidence be preserved in a manner that is reasonably calculated to prevent contamination or degradation, that maintains a continuous chain of custody, and that is secure, with sufficient documentation to locate the evidence. Fourth, the revised statute specifies different lengths of time that biological evidence must be preserved depending on the type of case and plea. For example, for felonies other than those requiring sex offender registration, the evidence must be preserved for three years after the date of conviction if the defendant was convicted on a guilty plea. Previously, the evidence had to be preserved in all felony cases for the period the defendant was incarcerated.

G.S. 15A-268 also has specified a procedure for government entities to follow if they wished to destroy evidence before the end of the required period of preservation. Under that procedure, the government entity had to notify various persons, including the defendant, and the defendant had ninety days to request that the material not be destroyed for one of a number of specified reasons. The act revises that section to require the government entity to follow the notice procedures *and* to petition the court for an order allowing early destruction of the evidence. The court may order early destruction following a hearing and the finding of specified facts (for example, the material has no significant value for biological analysis and is of a size, bulk, or physical characteristic not usually retained by the governmental entity and cannot practically be retained by the governmental entity). The statute does not specify, but presumably the petition is heard in the court of conviction, which will usually be the superior court because the DNA provisions apply to felonies only. The revised statute does not specify whether the defendant has a right to have counsel appointed for the hearing. [The notice provisions in G.S. 15A-268(b) state that notice of the petition must be given to the defendant's current counsel of record, but the defendant may not have counsel if proceedings are no longer pending. The notice provisions also state that the Office of Indigent Defense Services must be given notice but do not specifically authorize appointment of counsel. *See* G.S. 7A-498.3 (Office of Indigent Defense Services is responsible for providing legal services in cases in which appointment of counsel is constitutionally or statutorily required).] New G.S. 15A-268(f) provides that the court's order regarding disposition of evidence is appealable, and the government entity may not dispose of the evidence while an appeal is pending.

G.S. 15A-269 allows the defendant to make a postconviction motion for DNA testing and requires the court to grant the motion if certain conditions are met, including that there is a reasonable probability that the verdict would have been more favorable to the defendant if the requested DNA testing had been conducted on the evidence. S.L. 2007-539 adds an additional requirement for relief under this section—namely, the defendant must sign a sworn "affidavit of innocence." The DNA provisions do not contain a definition of "innocence," and it is not clear whether the defendant must swear to complete innocence or may swear to partial innocence—for example, that the defendant was an accomplice and not the perpetrator of the crime, which could be relevant in a capital case in which a defendant was sentenced to death, or that the defendant participated in one offense (burglary) but not another (sexual assault of the victim). If the

condition is interpreted as requiring the defendant to assert complete innocence, the condition would seem inconsistent with the existing requirement that the defendant show only that the verdict would have been more favorable had DNA testing been conducted. That requirement suggests that the defendant may obtain DNA testing to show reduced culpability.[6] A claim of complete innocence is explicitly required under the statutes governing the Innocence Inquiry Commission, established in 2006 by the General Assembly to review claims of factual innocence outside traditional court channels. Those statutes, in contrast with this new legislation, state that a person seeking relief must assert "complete innocence" for the crime for which he or she was convicted, including any reduced level of criminal responsibility relating to the crime. *See* G.S. 15A-1460(1).

Last, new G.S. 15A-270.1 gives the defendant the right to appeal an order denying a motion for DNA testing, including by interlocutory appeal. Thus if the court denies a motion for DNA testing before trial, the defendant has the right to appeal the court's interlocutory order.

Sex Offender Registration and Satellite Monitoring

Satellite Monitoring

Background. The sex offender registration program in North Carolina has undergone several changes since its introduction in 1996. The General Assembly significantly expanded the program in 2006, requiring satellite-based monitoring via a global positioning system (GPS) for two basic types of offenders. First, a person who commits an "aggravated offense," is a "recidivist," or is classified as a "sexually violent predator" as defined in North Carolina's sex offender registration statutes—that is, a person who is required to register for life—is required to submit to lifetime satellite monitoring. Second, a person who commits an offense involving "physical, mental, or sexual abuse" of a minor may be required to submit to satellite monitoring for up to the period of registration, although when this requirement has been imposed, the monitoring usually has been for the period of supervised probation. The legislation requiring satellite monitoring appeared to make the court responsible for determining whether a person should be subject to either period of satellite monitoring. *See* Section 15 of S.L. 2006-247 [providing in G.S. 14-208.33(a), renumbered by codifier of statutes as G.S. 14-208.40(a), that court orders satellite monitoring]. Several questions arose, however, about the procedures to follow. For example, some offenders already had been sentenced by the court before enactment of the satellite monitoring requirement, but under the effective-date language of the act, they still were potentially subject to satellite monitoring. Was the court responsible for determining whether those individuals had to submit to satellite monitoring? If not, who would make that determination and under what evidence standards?

The 2007 revisions to the satellite monitoring program, in S.L. 2007-213 (H 29) (hereinafter "2007 Sex Offender Act"), seek to respond to these issues. Most importantly, new G.S. 14-208.40A explicitly directs the court at sentencing to determine whether the defendant is subject to satellite monitoring. That provision applies to sentences entered on or after December 1, 2007. New G.S. 14-208.40B provides that if a court has not determined whether an offender should be required to submit to satellite monitoring, the case must be returned to the court for a determination. That provision was effective December 1, 2007, and is referred to below as the

6. *Cf.* Innocence Project, Benjamin N. Cardozo School of Law, "Model Legislation, 2007 State Legislative Sessions: An Act Concerning Access to Post-Conviction DNA Testing," (recommending the following as one of conditions for motion for postconviction DNA testing: "A reasonable probability that the petitioner would not have been convicted or would have received a lesser sentence if favorable results had been obtained through DNA testing at the time of the original prosecution."), www.innocenceproject.org/docs/Model_Statute_Postconviction_DNA.pdf.

"bring-back" procedure. The details of these two new procedures, as well as other aspects of the 2007 Sex Offender Act, are discussed below. To provide context for the changes made in the latest legislation, the discussion also describes significant features of the sex offender registration program. The discussion does not attempt to cover legal issues that may be raised about satellite monitoring and other incidents of North Carolina's sex offender registration program. *See, e.g.,* Usategui v. Easley (E.D.N.C., filed Nov. 2, 2007) (pending lawsuit challenges various incidents of North Carolina's satellite monitoring program). Nor does it cover the federal Adam Walsh Act, which requires states to implement additional registration requirements by July 27, 2009, or potentially forfeit 10 percent of the federal funds they otherwise would receive through the Edward Byrne Memorial Justice Assistance Grant Program.[7]

Determining the offender's status. To determine whether an offender is subject to satellite monitoring, either at initial sentencing or under the bring-back procedure, the court essentially must take three steps. First, the court must determine whether a person has a "reportable conviction" as defined by G.S. 14-208.6(4). Second, the court must determine whether the person is within one of the four aggravated categories triggering satellite monitoring—aggravated offense, recidivist, sexually violent predator, or offense involving physical, mental, or sexual, abuse of a minor. Third, the court must determine whether the person is subject to satellite monitoring. Each of these steps is briefly reviewed below. For additional information about these steps, *see* John Rubin, *Determining the Defendant's Registration Obligations under the Revised Sex Offender Laws* (Jan. 2008) (hereinafter *Determining the Defendant's Registration Obligations*), posted at www.sog.unc.edu/programs/crimlaw/200710Sex%20offender.pdf.

Determining whether a person has a reportable conviction. To determine whether a person must submit to satellite monitoring, the court first must ascertain that the offense is a "reportable conviction." Only a person with a reportable conviction is subject to sex offender registration requirements, and only a person subject to sex offender registration requirements is potentially subject to satellite monitoring. An offense is a "reportable conviction" if it is a "sexually violent offense," an "offense against a minor," or one of certain "peeping offenses," as defined in G.S. 14-208.6. That statute lists the offenses that are within those categories, and the court has little discretion in making this initial determination. If an offense is on the statutory list of offenses, the person must register as a sex offender. If the offense is not on the list, the person is not subject to sex offender registration requirements. For a list of the offenses that constitute reportable convictions, and the dates that those offenses became subject to registration requirements, *see Determining the Defendant's Registration Obligations, supra,* at pp. 5–10. For a few of the listed offenses (aiding or abetting a sexually violent offense or offense against a minor, and peeping), the court must make the additional determination that registration is necessary before the offense constitutes a "reportable conviction." *See* G.S. 14-208.6(4)a, d.

Determining whether a person is in one of the four aggravated categories. Once the court determines that a person has a reportable conviction, it next must determine whether the person is within one of the four aggravated categories. Only a person within one of those categories may be ordered to submit to satellite monitoring. If the offense is a reportable conviction, the 2007 Sex Offender Act requires the prosecutor to present to the court any evidence that the defendant is within one of those categories; the prosecutor "has no discretion" to withhold any such evidence. *See* G.S. 14-208.40A. The defendant has the right to present any contrary evidence. The court, not the jury, makes the findings at sentencing. New G.S. 14-208.40A does not specify the burden of

7. States must implement the additional requirements by the later of three years after July 27, 2006, the date the Adam Walsh Act was enacted, or one year after the U.S. Attorney General creates software for states to use in operating uniform sex offender registries and Internet websites. *See* Adam Walsh Child Protection and Safety Act of 2006, P.L. 109-248, codified at 42 U.S.C. 16901 *et seq.*; *see also* Proposed National Guidelines for Sex Offender Registration and Notification, 72 Fed. Reg. No. 103 (May 30, 2007) (proposed guidelines interpreting requirements of Adam Walsh Act), posted on website of Sex Offender, Sentencing, Monitoring, Apprehending, Registering & Tracking (SMART) Office, Office of Justice Programs, U.S. Department of Justice at www.ojp.usdoj.gov/smart/proposed.htm.

proof, but presumably the state has the burden by at least a preponderance of the evidence. The new statute does not require that the state allege in an indictment or other notice that the defendant is within one of the four aggravated categories (except for sexually violent predator, discussed below).

The term "aggravated offense," one of the four aggravated categories, is defined in G.S. 14-208.6(1a). It means a criminal offense involving (1) vaginal, anal, or oral penetration with a victim of any age through the use of force or the threat of serious force or (2) vaginal, anal, or oral penetration with a victim who is less than twelve years old. One question is whether for an offense to be an aggravated offense, the definition of that offense must include the elements of the above definition. In other words, is the court supposed to look at the elements of the offense for which the defendant was convicted or the specific facts of the offense committed by the defendant?

If an elements approach is used, only certain offenses in North Carolina would constitute aggravated offenses—those that involve a sexual act involving penetration and either the use of force or threat of serious force or a victim under the age of twelve. The difficulty is that the aggravated offense definition, which derives from federal law, does not track North Carolina's offense definitions. The North Carolina offenses that most closely resemble the federal definition are rape and sexual offense, but the match is not exact. For example, penetration is a requirement for both subcategories of aggravated offense. Under North Carolina law, penetration is an element of rape, which involves vaginal intercourse, and sexual offense based on anal intercourse or the insertion of an object into another's genital or anal opening, but penetration is not an element of sexual offense based on the oral sex acts of fellatio, cunnilingus, or analingus. *See* JESSICA SMITH, NORTH CAROLINA CRIMES: A GUIDEBOOK ON THE ELEMENTS OF CRIME 168 (6th ed. 2007). Other North Carolina offenses that are reportable convictions, such as indecent liberties and sexual battery, do not specify vaginal, anal, or oral sex acts (with or without penetration) as elements.

If instead a factual approach is used, a court may look at the facts of the offense committed by the defendant to determine whether they meet the definition of aggravated offense. Thus a conviction of indecent liberties with a child might constitute an aggravated offense if the offense involved a sexual act of penetration by force or against a child under the age of twelve. The offense resulting in a conviction would still have to be a reportable conviction under this approach—if the defendant is convicted of a non-reportable offense, such as crime against nature, the underlying acts could never elevate the offense to an "aggravated offense."

The question of whether to use an elements or factual approach is initially one of legislative intent. The "aggravated offense" category was adopted in 2001 in North Carolina to require those persons within that category to register as a sex offender for life. The definition of the category was not changed with the adoption of satellite monitoring in 2006. There appear to be no North Carolina appellate opinions that have considered how to apply the term, however. In practice, trial courts generally had not been determining whether an offense constitutes an aggravated offense, and it does not appear that any case has reached the appellate courts.[8] In support of the argument that courts must look at the facts of the offense is the requirement in new G.S. 14-208.40A(a) that the "district attorney shall have no discretion to withhold any evidence required to be submitted to the court pursuant to this subsection." The statute also provides that the defendant may present contrary "evidence." This language suggests that the General Assembly intended for the court to make a factual determination based on the evidence presented. On the other hand, the new section states that the court must determine whether "the *conviction offense* was an aggravated offense," which may suggest that the controlling question is whether the offense for which the defendant was convicted is an aggravated offense. *See* State v. Mastne, 725 N.W.2d 862 (Neb. Ct. App.

8. In many cases, the practice up to now has been that the sheriff of the county where the defendant must register has determined whether a conviction met the definition of aggravated offense. It appears that sheriffs have been considering the facts of the particular offense, as evidenced by the court record and other information, and not the elements alone. Any legal issues involved in such post-sentence determinations are beyond the scope of this discussion.

2006) (holding that court should look at definition of offense, not specific facts, to determine whether defendant has been convicted of "aggravated offense"; definition of aggravated offense in that jurisdiction is similar to definition adopted by North Carolina); *see also generally* Taylor v. United States, 495 U.S. 575, 599-602 (1990) (in determining whether to impose sentence enhancement for federal offense based on prior state conviction, trial court must use categorical approach—that is, trial court generally may look only at fact of conviction and statutory definition of prior offense and not facts underlying prior conviction; court bases holding on Congress's intent but also discusses some of practical difficulties of factual approach); Leocal v. Ashcroft, 543 U.S. 1, 7 (2004) (in determining whether state conviction constituted deportable offense under immigration law, court holds that language of federal statute "requires us to look to the elements and the nature of the offense of conviction, rather than to the particular facts relating to petitioner's crime").

The second aggravated category, "recidivist," is more straightforward. *Recidivist* is defined as a person who has "a prior conviction for an offense that is described in G.S. 14-208.6(4)," the provision defining *reportable conviction*. Thus a person with a prior conviction for indecent liberties may be considered a "recidivist" if convicted a second time of indecent liberties or another offense subject to registration requirements. A lingering question is whether a person could be considered a "recidivist" if the prior conviction was not subject to registration requirements at the time. For example, if a person was convicted of indecent liberties and completed his or her sentence before 1996 when the registration requirements first took effect, would the person be considered a recidivist if convicted of indecent liberties again? The statutes do not provide a clear answer.

The third aggravated category is "sexually violent predator." New G.S. 14-208.40A states that at sentencing for a reportable conviction the district attorney must present evidence of, and the court must determine, whether the offender is classified as a sexually violent predator pursuant to G.S. 14-208.20. The latter statute requires the district attorney and the court to follow certain procedures in classifying a person as a sexually violent predator; among other things, the district attorney must have given notice to the defendant before trial of the intent to have the defendant classified as a sexually violent predator and the court must have sent the defendant for an evaluation by a board of experts following trial. Unless these procedural requirements are followed, it would appear that the court could not consider whether the defendant is a sexually violent predator and subject to satellite monitoring on that ground.

The fourth aggravated category is an offense that involved "physical, mental, or sexual abuse of a minor." There is no statutory definition of the term. This language also has provided the basis for certain mandatory conditions of probation and post-release supervision, such as restrictions on living with a minor during the period of supervision [*see* G.S. 15A-1343(b2) and 15A-1368.4(b1), enacted in 1996 in S.L. 1996-18, Sec. 20.14(b), (c) (2d extra session, H 53)] and the new provisions on warrantless searches, discussed below. No statutory definition is provided in that context either.

Monitoring consequences. If a person has a reportable conviction and is within any of the first three aggravated categories—aggravated offense, recidivist, or sexually violent predator—the court must order the offender to submit to satellite monitoring for life. *See* G.S. 14-208.40A(c). The court does not make any additional findings. (The offender also must register as a sex offender for life by virtue of being in one of those categories and must re-verify his or her registration information with the sheriff every ninety days, rather than every six months as with offenders subject to the regular sex offender registration program.) Lifetime satellite monitoring may be terminated by the Post-Release Supervision and Parole Commission under G.S. 14-208.43. There is no provision for termination of the lifetime registration requirement.

If the person is not within one of those categories but the offense involved physical, mental, or sexual abuse of a minor, the court must order the Department of Correction (DOC) to do a risk assessment and report the results to the court within thirty to sixty days of the court's order. The statute does not specify whether the court should continue the sentencing of the defendant while awaiting the DOC's report. *Compare* G.S. 14-208.20(b) (providing that if prosecutor has sought classification of defendant as sexually violent predator pursuant to statutory procedures, court

orders evaluation of defendant prior to sentencing). If the court finds based on the DOC risk assessment that the offender requires the highest possible level of supervision and monitoring, the court must order the offender to submit to satellite monitoring for the period of time specified by the court. The statutes do not explicitly set an outside limit on monitoring; however, the period of monitoring could be for no longer than the period during which the person is "required to register," a precondition for satellite monitoring. *See* G.S. 14-208.40(a). In practice, courts have tended to impose satellite monitoring in these cases for the term of supervised probation. The new statute does not specify the procedure for the court to follow after it receives the DOC risk assessment. Presumably, the court must hold an additional hearing, at which the state and defendant may be heard as to the report's findings and the appropriateness of satellite monitoring. Monitoring of sex offenders is discussed further in Chapter 26, "Sentencing, Corrections, Prisons, and Jails."

Bring-back procedure. New G.S. 14-208.40B provides a procedure for returning to court an offender who has been convicted of a reportable offense if a court has not determined whether the offender must submit to satellite monitoring. In those instances, DOC must initially determine whether the offender falls into one of the four aggravated categories described above. If DOC determines that the offender falls into one of those categories, it must schedule a hearing in the court of the county where the offender resides. DOC must notify the offender of its preliminary determination and the date of the scheduled hearing by certified mail. The hearing may be no sooner than fifteen days from the date notice was mailed.

The hearing procedure is the same as under new G.S. 14-208.40A. Thus the district attorney presents evidence of the appropriate designation, the defendant presents contrary evidence, and the court determines whether the offender falls into one of the aggravated categories. The court must obtain a DOC risk assessment for cases involving "physical, mental, or sexual abuse" of a minor.

The new statute does not specifically address whether the defendant has the right to have counsel appointed at these "bring-back" hearings. If the court makes the satellite monitoring determination at the sentencing hearing in the case, the defendant will be represented by any counsel that he or she had for the trial of the case. The defendant may have the same right to counsel if a satellite monitoring determination was not made at the initial sentencing hearing and a further hearing has to be scheduled under new G.S. 14-208.40B.

The bring-back procedures became effective December 1, 2007 [pursuant to S.L. 2007-484, Sec. 42 (S 613)]. Thus beginning December 1, 2007, DOC must schedule hearings in all cases in which it determines that satellite monitoring is appropriate and in which there has been no court determination. This hearing requirement appears to encompass cases in which DOC previously placed a person on satellite monitoring without a court determination. The satellite monitoring provisions took effect August 16, 2006, and pursuant to those provisions, DOC began placing offenders on satellite monitoring January 1, 2007.

Enforcement of monitoring requirements. The 2007 Sex Offender Act makes several changes to assist DOC, which is principally responsible for administering the satellite monitoring program, in enforcing the monitoring requirements. Unless otherwise indicated, these provisions are effective December 1, 2007.

New G.S. 14-208.40C requires offenders who receive an active sentence and who are required to enroll in the program to report to the Division of Community Corrections to receive the appropriate equipment immediately upon release from the Division of Prisons. Offenders subject to the program who receive a probationary sentence must report immediately upon sentencing and, if necessary, must return at a time designated by the Division of Community Corrections to receive the appropriate equipment.

The act deletes from G.S. 14-208.42 the provision placing an offender on unsupervised probation for life when placed on lifetime satellite monitoring. Instead, the revised statute provides that DOC has the authority to contact the offender at the offender's residence or to require the offender to appear at a specific location as needed for purposes of enrollment in the satellite monitoring program, receipt and maintenance of equipment, and other steps necessary to complete the requirements for satellite monitoring.

Effective for offenses committed on or after December 1, 2007, the act revises G.S. 14-208.44(b) to make it a Class E felony to intentionally interfere with the proper functioning of a device (as well as to intentionally tamper with, remove, or vandalize a device, which has been prohibited by that statute). New G.S. 14-208.44(c) makes it a Class 1 misdemeanor if a person required to enroll in a satellite-monitoring program fails to provide necessary information to DOC or to fail to cooperate with DOC guidelines and regulations for the program.

Reports. Section 17.14 of the 2007 appropriations act, S.L. 2007-323 (H 1473), requires DOC to report by March 1 of each year to various legislative committees on the number of sex offenders subject to satellite monitoring, the caseloads of probation officers assigned to offenders subject to satellite monitoring, the number of violations, the number of absconders, the projected number of offenders to be enrolled by the end of that year, and the total cost of the program, including a per-offender cost. (G.S. 14-208.45 provides that a person required to submit to satellite monitoring must pay a one-time fee of $90, unless the court waives the fee for good cause. This provision indicates that the person may not be required to bear other costs associated with satellite monitoring.)

Other Sex Offender Changes

Warrantless searches and other conditions. Effective for persons placed on probation on or after December 1, 2007, the 2007 Sex Offender Act (S.L. 2007-213) revises G.S. 15A-1343(b2) to provide that a person convicted of a reportable offense or of an offense involving physical, mental, or sexual abuse of a minor must submit at reasonable times to warrantless searches by a probation officer of the probationer's person and of the probationer's vehicle and premises while the probationer is present. The searches must be for purposes specified by the court and reasonably related to the probation supervision, and the probationer may not be required to submit to a search that is otherwise unlawful. The revised provision also states that warrantless searches of the probationer's computer or other electronic mechanisms that may contain electronic data are considered reasonably related to the probation supervision. Amendments to G.S. 15A-1374(b)(11) and 15A-1368.4(b1) make similar changes for parolees and people on post-release supervision.

Other consequences. The 2007 Sex Offender Act revises G.S. 14-208.9(a) to require offenders who are required to register and who move from one county to another to report in person to the sheriff of the new county (as well as to the sheriff of the previous county) and to provide written notice to each sheriff of the new address within ten days of the change of address. This provision was initially set to take effect on December 1, 2007 (*see* Section 15 of S.L. 2007-213), but a technical corrections bill changed the effective date to July 11, 2007. *See* Section 42(b) of S.L. 2007-484 (S 613). Since the technical corrections bill did not take effect until August 30, 2007, the above requirement likely applies beginning on that date.

G.S. 14-208.16 prohibits a person who is required to register from residing within 1,000 feet of a school as defined in that section. Subsection (d) provides that the restriction does not apply if the residence was established before the nearby property was turned into a school. This exception includes situations in which the offender resides with an immediate family member who established residence before a change in the ownership or use of the nearby property. Effective July 11, 2007, the act revises the exception to define *immediate family member* as a child or sibling who is eighteen years of age or older, or a parent, grandparent, legal guardian, or spouse of the offender.

Disclosure of certain reportable convictions in child custody proceedings. Effective for actions or proceedings filed on or after October 1, 2007, S.L. 2007-462 (H 1328) adds G.S. 50-13.1(a1) to require any person instituting an action or proceeding for custody ex parte who has been convicted of a sexually violent offense as defined in G.S. 14-208.6(5) to disclose the conviction in the pleadings. A *sexually violent offense* is the principal type of conviction that requires a person to register as a sex offender under North Carolina's sex offender registration law.

Funds. The 2007 appropriations act appropriates approximately $210,000 in recurring funds for each year of the 2007–09 fiscal biennium for a staff position and operating funds for the sex

offender registry. *See* Joint Conference Committee Report on the Continuation, Expansion and Capital Budgets, Section I, Justice.

Criminal Discovery and Related Procedures

In 2004 the General Assembly rewrote the criminal discovery provisions and significantly expanded the statutory rights of criminal defendants to obtain information from the state about the prosecution against them. The collection of revised statutes is commonly known as the "open-file discovery" law. *See* S.L. 2004-154 (S 52); John Rubin, *2004 Legislation Affecting Criminal Law and Procedure,* ADMINISTRATION OF JUSTICE BULLETIN No. 2004/06 (Oct. 2004), at www.sog.unc.edu/programs/crimlaw/aoj200406.pdf. In the 2007 session, the General Assembly passed three acts making minor modifications to those provisions as well as other acts giving the parties in criminal cases access to information.

Open-File Discovery Changes

Law enforcement's obligation to provide evidence to prosecuting attorney. As part of the 2004 revisions to the criminal discovery laws, the General Assembly required law enforcement officers to make available to the state (that is, the prosecutor) on a timely and continuing basis all materials and information acquired in the course of the investigation of a felony. This provision was added to enable the state to comply with its obligation under revised G.S. 15A-903(a) to make available to the defendant the complete files of all law enforcement agencies involved in the investigation. The problem with the provision was that it was added to a statute that was easily overlooked—G.S. 15A-501(6), in Article 23 of G.S. Chapter 15A, Police Processing and Duties Upon Arrest. S.L. 2007-183 (H 786) reinforces law enforcement agencies' obligations by placing a similar provision in new G.S. 15A-903(c), a part of the criminal discovery statutes. The new subsection provides that on the state's request, law enforcement agencies (and prosecutorial agencies) must make available to the state a complete copy of the complete files related to the investigation of the crimes committed or the prosecution of the defendant. The act applies to cases where the trial date set pursuant to G.S. 7A-49.4 is on or after December 1, 2007. For cases before that date, law enforcement still has an obligation to provide its investigative files to the state under G.S. 15A-501(6).

Oral statements by witnesses. In 2004 the General Assembly significantly expanded the state's obligation to provide statements of witnesses to the defendant. Before that change, the state was required to provide witness statements to the defendant only if the statements met certain criteria (for example, they were signed or otherwise formally adopted by the witness) and only after the witness had testified. The state also was required to reduce to written or recorded form oral statements by the defendant and any co-defendant being tried jointly with the defendant. The General Assembly deleted those provisions in 2004 and required in revised G.S. 15A-903(a)(1) that the state provide to the defendant all witness statements and reduce to written or recorded form and provide to the defendant all oral statements. In *State v. Shannon,* the Court of Appeals recognized that these provisions require prosecuting attorneys and their legal staff, as well as law enforcement officers, to memorialize oral statements made to them by witnesses and provide them to the defendant in discovery. The court rejected the state's argument that prosecuting attorneys are exempt from the requirement of memorializing oral statements by witnesses. *See* State v. Shannon, 182 N.C. App. 350, 642 S.E.2d 516 (2007) (state petitioned North Carolina Supreme Court to review Court of Appeals' decision but, in light of legislation below, state withdrew its petition).

In S.L. 2007-377 (S 1009), the General Assembly reaffirmed its approach to oral witness statements, with minor modifications, effective for cases pending on or after August 19, 2007. Revised G.S. 15A-903(a)(1) continues to require the state to reduce all oral statements to written or recorded form and provide them to the defendant except in the following circumstances: (1) the

oral statement was made to a prosecuting attorney outside the presence of a law enforcement officer or investigatorial assistant and (2) the oral statement does not contain significantly new or different information from a prior statement made by the witness. (The classification of investigatorial assistant is described in G.S. 7A-69.) Thus if the specified personnel are present when a witness speaks to a prosecutor, any statements by the witness must be reduced to writing; if the prosecutor is alone or with someone other than the specified personnel, any statements also must be reduced to writing unless the statements contain no significantly new or different information.

Certain information not subject to disclosure. Before the 2004 revisions to the discovery law, the state had the right to withhold a broad range of information from discovery. The then-existing "work product" provision, in G.S. 15A-904(a), provided that unless disclosure was otherwise required by the discovery statute or constitutional principles, the state could withhold reports, memoranda, and other documents made by the state in the investigation and prosecution of the case as well as statements made by witnesses and prospective witnesses. The 2004 open-file discovery legislation rewrote the work product provision in G.S. 15A-904(a) to focus on protecting prosecuting attorneys' mental impressions and conclusions about the case while ensuring that the defendant had access to factual information, whether obtained by a prosecuting attorney or law enforcement officer. Thus revised G.S. 15A-904(a) allowed the state to withhold written materials drafted by the prosecuting attorney or the prosecuting attorney's legal staff for their own use at trial (such as voir dire questions or closing arguments) and other materials that they drafted to the extent the materials contained their opinions, theories, strategies, or conclusions. Under G.S. 15A-908, prosecutors (as well as defendants) could apply to the court for a protective order if they wanted to withhold information that otherwise would have to be disclosed.

S.L. 2007-377 leaves these provisions in place but revises G.S. 15A-904, effective for cases pending on or after August 19, 2007, to allow the state to withhold two additional types of information without seeking a protective order. First, under new G.S. 15A-904(a1), the state is not required to disclose the identity of a confidential informant unless the disclosure is otherwise required by law. Thus to obtain the identity of a confidential informant, a defendant would have to make a motion to the court for disclosure based on constitutional or statutory grounds. *See, e.g.,* Roviaro v. United States, 353 U.S. 53 (1957); G.S. 15A-978. Second, under new G.S. 15A-904(a2), the state is not required to provide any personal identifying information of a witness (such as a social security number) beyond the witness's name, address, date of birth, and published phone number unless on the defendant's motion the court determines that the defendant needs additional information to accurately identify and locate the witness.

Meaning of "prosecutorial agency." As revised in 2004, G.S. 15A-903(a)(1) requires the state to make available to the defendant the files of all law enforcement and prosecutorial agencies involved in the investigation of the crimes committed or the prosecution of the defendant. In effect, this provision requires the prosecuting attorney to obtain the files of these agencies and provide them to the defendant. A lingering question has concerned which agencies' files the prosecuting attorney must obtain and provide to the defendant. Certainly, the district attorney's office that is prosecuting the case would be a covered agency, and the prosecuting attorney would have to disclose information in that office's possession. Likewise, the files of investigating law enforcement agencies must be disclosed. (To assist prosecutors in complying with that obligation, another act from the 2007 legislative session requires law enforcement agencies to provide their files to the prosecuting attorney on request. *See* S.L. 2007-183, discussed above.)

What if an entity is not a law enforcement or prosecutorial agency itself but obtains information on behalf of a law enforcement or prosecutorial agency? For example, suppose the prosecuting attorney uses a private lab for DNA testing in a criminal case. Few would dispute that the prosecuting attorney would have to disclose that information. If the prosecuting attorney obtained the lab report, it would be considered part of the prosecutor's file and therefore would be subject to statutory discovery requirements. Even if the prosecutor did not actually take possession of the report, he or she would have the right to obtain it and would be obligated to disclose it to the defendant. *See* State v. Pigott, 320 N.C. 96, 102 (1987) (court holds under prior discovery statute

that a prosecutor is obligated to turn over discoverable information in possession of "those working in conjunction with him and his office"); *see also* Martinez v. Wainwright, 621 F.2d 184, 188 (5th Cir. 1980) (in case applying Brady v. Maryland, which deals with prosecutors' constitutional obligation to disclose evidence, court held that a prosecutor could not avoid disclosing evidence "by the simple expedient of leaving relevant evidence to repose in the hands of another agency while utilizing his access to it in preparing his case for trial").

S.L. 2007-393 (S 1130) makes the prosecutor's obligations explicit with respect to outside agencies. Effective October 1, 2007, G.S. 15A-903(a)(1) provides that "the term 'prosecutorial agency' includes any public or private entity that obtains information on behalf of a law enforcement agency or prosecutor in connection with the investigation of the crimes committed or the prosecution of the defendant." This language clearly would cover information developed by the private lab in the above example. There still may be some gray areas, however. For example, in connection with allegations of abuse and neglect, a county Department of Social Services (DSS) may investigate the same conduct as charged in a criminal case. Under the new language in G.S. 15A-903(a)(1), it seems unlikely that DSS would be considered a "prosecutorial agency" just because it had investigated the same conduct and, therefore, unlikely that its files would automatically be subject to the statutory discovery provisions. *See* State v. Pendleton, 175 N.C. App. 230 (2005) (interpreting 2004 version of G.S. 15A-903(a)(1), court finds that DSS did not act in the capacity of a prosecutorial agency where DSS referred matter to police for investigation, the police gathered their own evidence, and a DSS employee sat in on an interview by police of a child victim). In some instances, however, DSS or other outside agencies could become so involved in a criminal investigation that they could be considered to be acting in a law enforcement or prosecutorial capacity, and the portion of their files pertaining to the case could be subject to the statutory disclosure requirements. *See generally* State v. Morrell, 108 N.C. App. 465, 424 S.E.2d 147 (1993) (social worker assigned to case of allegedly abused child acted as a law enforcement agent in interviewing the defendant, rendering inadmissible custodial statements made to social worker without *Miranda* warnings). Regardless of whether an outside agency would be considered a "prosecutorial agency" under the new language, the state would still have to disclose information it obtains from an outside agency, just as it would have to turn over information obtained from any other source. The defendant also would have the right in some circumstances to obtain the information directly from the outside agency by motion to the court or subpoena. *See generally* Pennsylvania v. Ritchie, 480 U.S. 39 (1987) (describing defendant's right to obtain records in possession of third parties).

Other Discovery Mechanisms

Subpoenas for documents. Rule 45 of the North Carolina Rules of Civil Procedure governs the use of subpoenas in civil cases and, for the most part, in criminal cases as well. G.S. 15A-801 and 15A-802 state that Rule 45 applies to criminal cases except for one subsection of the rule—the provision that requires the subpoenaing party to serve a copy of the subpoena on the other parties to the case and not just on the person or entity being subpoenaed. In 2003 the General Assembly made numerous revisions to Rule 45, prompted primarily by concerns from civil practitioners. Because of the language of G.S. 15A-801 and 15A-802, those changes appeared to apply to criminal cases as well.[9]

In the 2007 legislative session, Rule 45 was revised in a more limited fashion but again apparently in response to concerns in civil cases. Effective for actions filed on or after October 1, 2007, S.L. 2007-514 (H 316) adds new subsection (d1) to Rule 45 to require a party who has

9. For a discussion of the changes to Rule 45 and subpoena practice in general, *see* John Rubin and Aimee Wall, *Responding to Subpoenas for Health Department Records,* HEALTH LAW BULLETIN No. 82 (Sept. 2005), posted at www.sog.unc.edu/pubs/electronicversions/pdfs/hlb82.pdf. Although this bulletin was written to assist health departments in responding to subpoenas, the information about subpoena requirements is generally applicable to all proceedings.

obtained material in response to a subpoena to serve on all other parties a notice of receipt of the material. The party must serve the notice of receipt within five business days after receipt and if requested must provide other parties an opportunity to inspect and copy the materials at the inspecting party's expense.

The act does not specifically exempt criminal cases from this requirement, although somewhat paradoxically the subpoenaing party in a criminal case need not give notice of the service of a subpoena in light of the above provisions of G.S. Chapter 15A. The new subpoena provisions are also in tension with G.S. 15A-905 and 15A-906, which essentially provide that a criminal defendant is only obligated to disclose to the state evidence that he or she intends to use at trial. If the new notice and inspection requirements do apply to criminal cases, a party may have grounds to seek a protective order under G.S. 15A-908 to withhold the records from disclosure. Alternatively, instead of using a subpoena, a party may move for a court order for production of records, which is not governed by Rule 45.[10]

Access to confidential school personnel files by state. Effective July 8, 2007, S.L. 2007-192 (H 550) revises G.S. 115C-321 to create an exception to school employees' right to confidentiality in their personnel files. New G.S. 115C-321(a1) provides that information in an employee's personnel file that is relevant to certain crimes may be made available to law enforcement and the district attorney. New G.S. 115C-321(a2) provides that the employee must be given five working days' written notice of any disclosure so that the employee may apply to the district court to determine whether the information is relevant to any criminal misconduct. Failure of the employee to apply for review waives any right to relief. The statute does not specify who must give the employee notice. New G.S. 115C-321(a3) provides that statements or admissions made by the employee and produced under subsection (a1) are not admissible in any subsequent criminal proceeding against the employee.

Domestic Violence

Felony Violation of Domestic Violence Protective Order

Ordinarily, a violation of a domestic violence protective order (DVPO) is a Class A1 misdemeanor under G.S. 50B-4.1(a). The 2001 General Assembly revised G.S. 50B-4.1 to add two felony offenses—committing a felony knowing that a DVPO prohibits that conduct, punishable as a felony one class higher than the felony committed, and violating a DVPO after three convictions under G.S. Chapter 50B, a Class H felony. Effective for offenses committed on or after December 1, 2007, S.L. 2007-190 (H 47) creates a new felony offense. Under new G.S. 50B-4.1(g), a person is guilty of a Class H felony if he or she

- while in possession of a deadly weapon on or about or within close proximity of his or her person
- knowingly
- violates a valid DVPO
- by failing to stay away from a place or person as directed by the DVPO.

Pretrial Release for Domestic Violence Offenses

G.S. 15A-534.1 contains a special procedure, known as the "48-hour law," for determining pretrial release conditions for defendants charged with certain domestic violence offenses. Under that statute, only a judge may determine pretrial release conditions during the first forty-eight hours after arrest. Effective for offenses committed on or after December 1, 2007, S.L. 2007-14

10. *See* 1 NORTH CAROLINA DEFENDER MANUAL § 4.7A, at 35–38 (May 1998) (discussing grounds and procedures for obtaining records in possession of third parties), posted at www.ncids.org.

(H 42) revises that statute to make the offense of stalking subject to the "48-hour law" if the offense is against a spouse or former spouse of the defendant or against a person with whom the defendant lives or has lived as if married.

Separate Waiting Area for Domestic Violence Victims

Effective April 12, 2007, S.L. 2007-15 (H 46) provides that where practical, the clerk of superior court in each county must work with the county sheriff to make available to domestic violence victims a secure area, segregated from the general population of the courtroom and available on the victim's request, where they may await hearing of their court case. The Administrative Office of the Courts (AOC) must report to the Joint Legislative Committee on Domestic Violence by May 1, 2008, on the progress of providing space in each courthouse.

Victims' Rights for Protective Order Violations

The Crime Victims' Rights Act (Article 46 of G.S. Chapter 15A) provides specific protections to victims of certain crimes, such as notice of court proceedings from the district attorney's office if requested by the victim. Included in the definition of *victim* in G.S. 15A-830(a)(7) are victims of certain misdemeanors when the defendant has a personal relationship with the victim as defined in G.S. 50B-1(b). Effective October 1, 2007, S.L. 2007-116 (S 30) revises G.S. 15A-830(a)(7) to add as a covered victim a victim of a violation of a valid domestic violence protective order under G.S. 50B-4.1.

The act also revises G.S. 50B-3(c1) to provide that when a protective order is filed with the Clerk of Superior Court, the clerk must provide to the applicant an informational sheet developed by the AOC containing a list of various agencies and services available to the applicant.

Firearm Notification Requirements

S.L. 2007-294 (H 1810) requires the AOC, in cooperation with the North Carolina Coalition against Domestic Violence and the North Carolina Governor's Crime Commission, to develop a form to comply with the criminal case firearm notification requirements of the federal Violence Against Women Act of 2005. Effective January 1, 2008, the court must provide a copy of the form to all defendants convicted of crimes subject to the firearm notification requirements.

Domestic Violence Homicide Reporting

Beginning July 1, 2007, S.L. 2007-14 (H 42) requires the North Carolina Attorney General's office to develop a reporting system and database reflecting the number of homicides in North Carolina involving an offender and victim who had a personal relationship as defined by G.S. 50B-1(b). The database must include the type of personal relationship between the offender and victim, whether the victim had obtained a protective order pursuant to G.S. 50B-3, and whether the offender was on pretrial release pursuant to G.S. 15A-534.1 (the "48-hour law"). All state and local law enforcement agencies must report all cases to the Attorney General's office that meet the criteria for the new reporting system.

Weapons

Possession of Weapons in Courthouse by Judges and Detention Officers

G.S. 14-269.4 forbids the possession of a deadly weapon, whether openly or concealed, on state property and in courthouses except by certain personnel, such as law enforcement officers. Effective August 21, 2007, S.L. 2007-412 (H 573) amends that section to permit district and

superior court judges to possess a handgun in courthouses if they are in the building to discharge their official duties and they have a concealed handgun permit; and effective August 29, 2007, S.L. 2007-474 (H 1707) amends that section to allow detention officers employed by the sheriff to carry firearms in a courthouse if authorized by the sheriff.

Concealed Handgun Permits for Retired Law Enforcement Officers

Effective for offenses committed on or after December 1, 2007, S.L. 2007-427 (H 1231) amends several provisions in G.S. Chapter 14, Article 54B, to allow qualified retired law enforcement officers [as defined in new G.S. 14-415.10(4a)] to carry a concealed handgun without obtaining a concealed handgun permit if they obtain certification (as provided in new G.S. 14-415.26) from the North Carolina Criminal Justice Education and Training Standards Commission. A willful and intentional misrepresentation on an application for certification is a Class 2 misdemeanor, results in immediate revocation of any certification, and renders the person ineligible to obtain a certification or concealed carry permit. The act also exempts from obtaining a permit certain law enforcement and retired law enforcement officers authorized to carry a concealed handgun under federal law (as described in new G.S. 14-415.25).

Carrying of Weapon by Certain Armed Security Guards on School Property

Effective August 30, 2007, S.L. 2007-511 (S 854) amends G.S. 14-269.2, the statute prohibiting carrying a weapon on educational property, to allow armored car service and armed courier service guards to carry weapons with the permission of the college or university, and armed security guards to carry weapons at hospitals or health care facilities on educational property with the permission of the college or university. The guards must be registered under G.S. Chapter 74C, which regulates private protective services. (This change was also made in S.L. 2007-427, effective August 23, 2007.)

Drug Offenses

"Safe Zones" Near Child Care Centers, Schools, and Parks

Under G.S. 90-95(e)(8) and 90-95(e)(10), it has been a Class E felony for a person twenty-one years of age or older to manufacture, sell, deliver, or possess with intent to sell or deliver a controlled substance in violation of G.S. 90-95(a)(1) within 300 feet of a child care center, elementary or secondary school, or public park. Effective for offenses committed on or after December 1, 2007, S.L. 2007-375 (S 8) amends G.S. 90-95(e)(8) and (10) to increase the distance to 1,000 feet. It also amends G.S. 90-95(e)(10) to delete the requirement that the public park contain a playground. The two subdivisions continue to provide that the transfer of less than five grams of marijuana for no remuneration does not a constitute a delivery in violation of G.S. 90-95(a)(1).

Ethyl Alcohol

G.S. 90-113.10 through 90-113.12 prohibit inhaling certain substances for the purpose of inducing intoxication; possessing these substances for the purpose of inhaling; and selling, delivering, or possessing with the intent to sell or deliver these substances. Effective for offenses committed on or after December 1, 2007, S.L. 2007-134 (S 125) revises those statutes to add ethyl alcohol to the list of covered substances. The act also adds G.S. 90-113.10A, effective the same date, to prohibit knowingly manufacturing, selling, delivering, or possessing an "alcohol

vaporizing device" as defined in the new statute. A violation of any of these statutes is a Class 1 misdemeanor.

Pretrial Release Restrictions Involving Methamphetamine Offenses

Effective August 30, 2007, Section 4 of S.L. 2007-484 (S 613) recodifies G.S. 15A-736.1 as G.S. 15A-534.6. Because the original statute was located within the extradition statutes, it could have been construed as applying to offenders in extradition cases only—that is, offenders arrested in North Carolina for offenses committed outside North Carolina. The recodification places the statute among the pretrial release statutes and makes it clear that it applies to any offender arrested in North Carolina.

G.S. 15A-534.6 authorizes judicial officials to deny pretrial release for certain methamphetamine offenses under certain conditions. The section provides that a rebuttable presumption arises that no conditions of release would assure the safety of the community if the state shows by clear and convincing evidence that

- the defendant is charged with a violation of G.S. 90-95(b)(1a) (manufacture of methamphetamine) or 90-95(d1)(2)b. (possession of precursor chemical knowing that it will be used to manufacture methamphetamine) and
- the defendant is dependent on or regularly uses methamphetamine and the violation was committed or attempted to maintain or facilitate the defendant's dependence or use.

Underage Drinking

G.S. 18B-302 addresses alcohol offenses involving underage persons. It prohibits, among other things, selling or giving alcohol to a person under twenty-one years old and makes this offense a Class 1 misdemeanor under the punishment provisions in G.S. 18B-302.1. Effective for offenses committed on or after December 1, 2007, S.L. 2007-537 (H 1277) amends G.S. 18B-302 to separate the offense of giving alcohol to a person under twenty-one [recodified in new G.S. 18B-302(a1)] from the offense of selling alcohol [in current G.S. 18B-302(a)]. The criminal punishment for these offenses remains the same, but a person convicted of the giving offense will have his or her driver's license revoked for one year under revised G.S. 18B-302(g) and revised G.S. 20-17.3. A selling offense does not result in a driver's license revocation under these provisions. The act also amends these statutes to require a one-year driver's license revocation for *any person* convicted of aiding and abetting a violation of G.S. 18B-302(a) (selling to underage person), (a1) (giving to underage person), or (b) (purchasing, possessing, or consuming by underage person). Previously, the revocation applied only to an underage person convicted of aiding and abetting those offenses. Revised G.S. 20-17.3 provides that a person whose driver's license is revoked for a giving offense or an aiding and abetting offense is eligible for a limited privilege under G.S. 20-179.3.

Offenses of a Sexual Nature

Testing of Person Charged with Sex Offense for Sexually Transmitted Infection

G.S. 15A-615 requires that a person charged with certain sex offenses must be tested for sexually transmitted infections following a finding of probable cause by a judge or issuance of an indictment by a grand jury. Effective for offenses committed on or after December 1, 2007, S.L. 2007-403 (H 118) amends that statute to specify that a defendant ordered to be tested must be tested within forty-eight hours after the date of the court order. The revised statute states that a HIV test must use the HIV-RNA Detection Test.

Reporting of Film or Photograph Containing Image of Minor Engaged in Sexual Activity

Effective September 1, 2007, S.L. 2007-263 (H 27) adds G.S. 66-67.4 to place reporting obligations on processors of photographic images and on computer technicians (as defined in the new section) if in the course of their employment they observe an image of a minor or person who reasonably appears to be a minor engaged in sexual activity. In that instance, the processor or technician must report the name and address of the person requesting the processing of the film or the owner or person in possession of the computer to the Cyber Tip Line at the National Center for Missing and Exploited Children or to the appropriate law enforcement official in the county or municipality. Employees of a processor or technician also may report the information to a person designated by the employer, who then must report the information as provided above. The new section grants immunity from civil or criminal liability to a person who makes such a report in good faith.

Polygraph Examinations of Victims of Sexual Assault

Effective for offenses committed on or after December 1, 2007, S.L. 2007-294 adds G.S. 15A-831.1 to provide that a criminal or juvenile justice agency may not require a person claiming to be a victim of a sexual assault or a witness to a sexual assault, to submit to a polygraph or similar examination as a precondition of the agency investigating the matter. If an agency wishes to perform a polygraph examination, the agency must inform the person that the examination is voluntary, that the results are not admissible in court, and that a refusal to take the examination will not be the sole basis for a decision by the agency not to investigate the matter.

Pretrial Release Restrictions Involving Sex Offenses and Crimes Against Children

G.S. 15A-534.4 has authorized judicial officials to impose certain pretrial release conditions (stay away from home, school, or place of employment of the alleged victim; not communicate or attempt to communicate with the victim; and not assault or harm the victim) when the defendant is charged with any of the sex offenses or crimes against children specified in that section. Effective for offenses committed on or after December 1, 2007, S.L. 2007-172 (S 17) revises that section to *require* the judicial official to impose the indicated conditions; however, the judicial official may waive the "stay away" and "no communication" conditions if the judicial official makes written findings of fact that it is not in the best interest of the alleged victim that the condition be imposed.

Theft Offenses

Larceny Changes

Effective for offenses committed on or after December 1, 2007, S.L. 2007-373 (S 1270) revises the offenses of receiving or possessing stolen goods in G.S. 14-71, creates a new felony offense of larceny from a merchant in G.S. 14-72.11, and creates new felony offenses involving "organized retail theft" in new Article 16A of G.S. Chapter 14 (G.S. 14-86.5 and 14-86.6).

Revised G.S. 14-71 provides that if a person knowingly receives or possesses property that was in the custody of a law enforcement agency and that was explicitly represented as stolen to the person by an agent of the law enforcement agency, the person is guilty of a Class H felony. Before this change, a person could not be convicted of receiving or possessing stolen goods because stolen goods that have been recovered by law enforcement (or that were never stolen in the first place) lose their status as "stolen" property and therefore did not satisfy the element of the offense requiring that the goods be stolen. A person could still have been convicted before this change of an attempt to receive or possess stolen goods, punishable under structured sentencing as a Class I

felony (one class lower than the completed offense). *See* State v. Hageman, 307 N.C. 1, 296 S.E.2d 433 (1982) (finding that a defendant could be convicted of attempt to receive stolen property that had lost its status as stolen even though it was impossible for the defendant to have committed the completed crime of receiving stolen property).

New G.S. 14-72.11 makes it a Class H felony for a person to commit larceny against a merchant in any of the following four circumstances:

1. When the property has a value of more than $200, by using an exit door meeting the criteria in the new section;
2. By removing, destroying, or deactivating a component of an antishoplifting or inventory control device;
3. By affixing a product code for the purpose of fraudulently obtaining goods or merchandise at less than the actual price;
4. When the property is infant formula as defined in 21 U.S.C. 321(z) and has a value of more than $100.

New G.S. 14-86.6 creates two new felony offenses under the general rubric of "organized retail theft." G.S. 14-86.6(a)(1) makes it a Class H felony for a person to

- conspire with another person
- to commit theft of retail property from a retail establishment
- with a value of more than $1,500 aggregated over a ninety-day period
- with the intent to sell that retail property for monetary or other gain and
- take or cause that retail property to be placed in the control of a retail property fence or other person in exchange for consideration.

G.S. 14-86.6(a)(2) makes it a Class H felony for a person to

- receive or possess retail property
- that has been taken or stolen in violation of G.S. 14-86.6(a)(1)
- knowing or having reasonable grounds to believe the property is stolen.

G.S. 14-86.6(b) provides that an interest acquired or maintained in violation of the new statute is subject to forfeiture as provided in G.S. 18B-504.

Chop Shops

Effective for offenses committed on or after December 1, 2007, S.L. 2007-178 (H 1354) creates four new offenses involving "chop shop" activities. Under new G.S. 14-72.7, a person is guilty of a Class H felony if he or she knowingly does any of the following:

1. Alters, destroys, dismantles, or stores a motor vehicle or motor vehicle part that the person knows to be illegally obtained.
2. Permits a place to be used for activity prohibited by G.S. 14-72.7 if the person owns or has legal possession of the place and knows the place is being used for a prohibited activity.
3. Purchases, disposes of, sells, receives, or possesses a motor vehicle or part knowing that the vehicle identification number has been altered, counterfeited, destroyed, or removed.
4. Purchases, disposes of, sells, receives, or possesses a motor vehicle or part to or from a person engaging in an activity prohibited by G.S. 14-72.7 knowing that the person is engaging in that activity.

The statute identifies certain activities as "innocent" and exempt from the statute, such as purchasing a vehicle in good faith and without knowledge of previous illegal activity.

G.S. 14-72.7 provides the following additional remedies for violations. First, it authorizes the criminal court to assess a civil penalty, in addition to or in lieu of a fine, of up to three times the assets obtained by the defendant as a result of the violation, to be remitted to the Civil Penalty and Forfeiture Fund in Article 31A of G.S. Chapter 115C. [Penalties remitted to that fund are distributed on a pro rata basis to public schools throughout North Carolina, while criminal fines go to the public schools in the county in which the violation occurred. *See generally* North Carolina School Boards Ass'n v. Moore, 359 N.C. 474, 614 S.E.2d 504 (2005).] Second, a person

aggrieved by a violation may file a civil action for damages. Third, any instrumentality used in a prohibited activity is subject to seizure and forfeiture under G.S. 14-86.1 (seizure and forfeiture cases involving larceny and similar crimes), and the real property used for a prohibited activity is subject to the abatement and forfeiture provisions in G.S. Chapter 19 (abatement of nuisances).

Food Stamp Fraud

Effective June 20, 2007, S.L. 2007-97 (S 836) renames the food stamp program to reflect the use of electronic benefit transfer cards. In several statutes, including the statutes dealing with food stamp fraud (G.S. 108A-53 and 108A-53.1), the act replaces the term "food stamps" with "electronic food and nutrition benefits." The act makes no substantive changes.

Offenses Related to Animals

Exceptions to Prohibition on Dog Fighting and Baiting

G.S. 14-362.2 prohibits dog fighting and baiting. Effective for offenses committed on or after December 1, 2007, S.L. 2007-180 (S 1424) provides that G.S. 14-362.2 does not prohibit the use of dogs in earthdog trials sponsored by entities that are approved by the Commissioner of Agriculture and meet standards that protect the health and safety of the dogs. (Earthdogs are terriers, dachshunds, and miniature schnauzers trained to hunt underground quarry, such as raccoons.) Effective July 5, 2007, S.L. 2007-181 (S 21) provides that G.S. 14-362.2 does not apply to the use of herding dogs engaged in the working of domesticated livestock for agricultural, entertainment, or sporting purposes.

Law Enforcement Agency Animals and Assistance Animals

G.S. 14-163.1 has made it a crime to assault a law enforcement agency animal or assistance animal as defined in that section. The punishment depends on the seriousness of the assault. Effective for offenses committed on or after December 1, 2007, S.L. 2007-80 (S 34) adds a new subsection (a1) to that statute, making it a Class H felony for a person who knows or has reason to know that an animal is a law enforcement agency animal or assistance animal to willfully kill the animal. The act also adds G.S. 15A-1340.16(d) making it an aggravating factor at sentencing for a felony if the offense was committed against or proximately caused serious harm (as defined in G.S. 14-163.1) or death to a law enforcement agency animal or assistance animal (also defined in G.S. 14-163.1) while the animal was engaged in the performance of its duties.

Starvation and Other Animal Cruelty Changes

Effective for offenses committed on or after December 1, 2007, S.L. 2007-211 (H 995) adds G.S. 14-360(a1) to make it a Class A1 misdemeanor if a person

- maliciously
- kills or causes or procures to be killed
- any animal
- by intentional deprivation of necessary sustenance.

Effective July 11, 2007, the act also revises G.S. 14-360(c) to exempt from the animal cruelty statute the physical alteration of livestock or poultry for the purpose of conforming with breed or show standards.

Immunity for Veterinarians Who Report Animal Cruelty

Effective October 1, 2007, S.L. 2007-232 (H 1359) adds G.S. 14-360.1 to give veterinarians immunity from civil liability, criminal liability, and professional disciplinary action for reporting animal cruelty, or for participating in an investigation or testifying in a judicial proceeding arising from a report of animal cruelty. The statute also provides that these actions are not in breach of any veterinarian-patient confidentiality. The statute's protections do not apply if the veterinarian acted in bad faith or with a malicious purpose. The statute also provides that a failure to report animal cruelty is not grounds for disciplinary action.

Hunting Offenses

Effective for offenses committed on or after October 1, 2007, S.L. 2007-96 (S 1246) adds G.S. 113-294(r) making it a Class 2 misdemeanor to place processed food products, as defined by that subsection, as bait in any area of the state where the Wildlife Resources Commission has established an open season for taking black bears. Effective for acts committed on or after October 1, 2007, S.L. 2007-401 (S 1464) amends G.S. 113-291.8(a) to require any person hunting deer during a deer firearms season to wear hunter orange and amends G.S. 113-291.11 to prohibit intentionally feeding alligators outside of captivity.

Regulatory Offenses

Telephone Records Privacy Protection Act

Effective for offenses committed on or after December 1, 2007, S.L. 2007-374 (S 1058) enacts the Telephone Records Privacy Protection Act as new Article 19D of G.S. Chapter 14 (G.S. 14-113.30 through 14-113.33). G.S. 14-113.31 creates three different sets of violations:

1. Obtaining or attempting to obtain by any means a telephone record that pertains to a telephone service customer who is a resident of North Carolina without the customer's consent by doing certain acts, such as making a false statement to a representative of a telephone service provider or to a telephone service customer.
2. Knowingly purchasing, receiving, or soliciting another to purchase or receive a telephone record pertaining to a customer without prior authorization of the customer or if the purchaser knows or has reason to know that the record was obtained fraudulently.
3. Selling or offering to sell a telephone record that was obtained without the customer's prior consent or if the person knows or has reason to know that the telephone record was obtained fraudulently.

G.S. 14-113.33 makes all of the above violations Class H felonies. It allows a criminal proceeding to be brought in the county where the customer resides, where the defendant resides, or where any part of the offense took place, or in any other county instrumental to the completion of the offense, regardless of whether the defendant was ever present in that county. It also provides that a violation is a violation of G.S. 75-1.1 (unfair or deceptive acts or practices affecting commerce) and allows a customer to obtain damages in a civil suit in the circumstances specified.

Mortgage Fraud

Effective for offenses committed on or after December 1, 2007, S.L. 2007-163 (H 817) enacts the Residential Mortgage Fraud Act as new Article 20A of G.S. Chapter 14. The act creates four separate offenses in G.S. 14-118.12. A person is guilty of residential mortgage fraud when, for financial gain and with the intent to defraud, he or she does any of the following:

1. Knowingly makes or attempts to make a material misstatement in the mortgage lending process with the intent that others involved in the process (such as a lender or borrower) rely on it.

2. Knowingly uses or attempts to use any misstatement in the mortgage lending process with the intent that others involved in the process rely on it.
3. Receives or attempts to receive any funds in connection with a residential mortgage closing that the person knew or should have known resulted from a violation in 1. or 2., above.
4. Conspires with or solicits another to violate 1., 2., or 3., above.

Under new G.S. 14-118.15, a violation involving a single mortgage loan is a Class H felony, and a violation involving a pattern of residential mortgage fraud (as defined in G.S. 14-118.11) is a Class E felony. Under G.S. 14-118.6, all real and personal property used or derived from a violation is subject to forfeiture as provided in G.S. 14-2.3 (forfeiture of gain acquired through felony) and G.S. 14-7.20 (forfeiture involving continuing criminal enterprise). The forfeiture provision provides exceptions for a lender who has obtained a security interest in the property in good faith or an owner who has made a bona fide purchase of the property. G.S. 14-118.16 also provides that the court may order restitution to any person who suffered a financial loss as a result of a violation. Venue for prosecution of a violation is as provided in new G.S. 14-118.13.

Rate Evasion Fraud

Effective for applications for motor vehicle insurance made on or after January 1, 2008, S.L. 2007-443 (H 729) creates the offense of rate evasion fraud. Under new G.S. 58-2-164, it is a Class 3 misdemeanor for any person, with intent to deceive an insurer, to present or cause to be presented a written or oral statement in support of an application for auto insurance or vehicle registration knowing that the application contains false or misleading information that states the applicant is an eligible risk when the applicant is not. Assisting, abetting, soliciting, or conspiring with a person to prepare or make such a statement is also a Class 3 misdemeanor. A violation is punishable by a fine of up to $1,000. New G.S. 58-2-164(h) provides further that in a civil suit based on a claim for which a person has been convicted of the new offense, the conviction may be entered into evidence against the defendant and establishes the defendant's liability as a matter of law for any damages, fees, or costs that may be proved and allowed.

Pawnbrokers

G.S. Chapter 91A regulates pawnbrokers. Effective for goods pawned on or after October 1, 2007, S.L. 2007-415 (S 806) amends G.S. 91A-10 to prohibit a pawnbroker from selling, exchanging, bartering, or removing pawned goods before the earlier of seven days after the date the transaction is electronically reported to the sheriff of the county or chief of police of the municipality or thirty days after the transaction, except in certain circumstances. Previously, the pawnbroker had to hold the goods for forty-eight hours.

Offenses by Accountants

Effective for offenses committed on or after December 1, 2007, S.L. 2007-83 (S 777) revises G.S. 93-13 to increase the punishment for violations of certain accounting laws (G.S. 93-3, 93-4, 93-5, 93-6, and 93-8) from a Class 3 misdemeanor, punishable by a fine only from $100 to $1,000, to a Class 1 misdemeanor.

Dealing in Regulated Metals

Effective for offenses committed on or after December 1, 2007, S.L. 2007-301 (H 367) revises the obligations of secondary metals recyclers in dealing with regulated metals. Revised G.S. 66-11 imposes additional record-keeping requirements, limitations on purchases or receipt of regulated metals, and retention periods before sale or alteration of regulated metals by a person who has previously been convicted of certain violations. A first violation of G.S. 66-11 remains a Class 1 misdemeanor. A subsequent violation is a Class I felony. The act also adds G.S. 66-11.2

providing for the forfeiture of vehicles used or intended for use in conveying, transporting, or facilitating the conveyance or transportation of unlawfully obtained regulated metals.

Law Practice

G.S. 84-2 has prohibited various court personnel, such as judges, full-time district attorneys, public defenders, and clerks, from engaging in the private practice of law. A violation is a Class 3 misdemeanor, punishable by a fine only of $200. Effective for offenses committed on or after December 1, 2007, Section 28(a) of S.L. 2007-484 (S 613) revises that statute to prohibit magistrates, whether full-time or part-time, from engaging in the private practice of law.

Other Criminal Offenses

Audiovisual Recordings of Motion Pictures

Effective for offenses committed on or after December 1, 2007, S.L. 2007-463 (H 1094) modifies the punishments for the unauthorized copying of motion pictures. G.S. 14-440.1(b) has prohibited the use of an audiovisual recording device to transmit, record, or copy a motion picture without the theater owner's consent. Revised G.S. 14-440.1(c) will make such a violation a Class I felony, with a minimum fine of $2,500 for a first offense and a minimum fine of $5,000 for a second or subsequent offense. Under new G.S. 14-440.1(a1), it will be a Class 1 misdemeanor to use a photographic camera to record, copy, or transmit a part of a motion picture not greater than one image without the written consent of the motion picture theater owner. The forfeiture provisions in G.S. 14-440.1(c) apply to both felony and misdemeanor offenses under G.S. 14-440.1.

Pyrotechnics

G.S. 14-410(a) has allowed boards of county commissioners to issue permits for the use of pyrotechnics, which otherwise would be prohibited, at public exhibitions. Effective May 11, 2007, S.L. 2007-38 (H 189) modifies G.S. 14-410(a) and G.S. 14-413 to allow a board of county commissioners to authorize the governing body of any city in the county to issue permits for the use of pyrotechnics at public exhibitions. All local acts granting such authority to a city expire one year after the effective date of S.L. 2007-38.

Desecration of Graves

G.S. 14-148 and 14-149 address offenses involving damage to graves. Effective for offenses committed on or after December 1, 2007, S.L. 2007-122 (H 105) reorganizes those two sections, clarifies the offenses that they cover, and modifies the punishment for some of the offenses. The distinguishing element of each offense is underlined below.

Under revised G.S. 14-148, it is a Class 1 misdemeanor to willfully do any of the following if the damage is less than $1,000, and a Class I felony if the damage is more than $1,000:

1. Throw, place, or put <u>refuse, garbage, or trash</u> in or on a cemetery.
2. Take away, disturb, vandalize, destroy, or change the location of any <u>stone, brick, iron, or other material or fence enclosing a cemetery</u> without authorization of law or consent of the surviving spouse or next of kin.
3. Take away, disturb, vandalize, destroy, or tamper with <u>shrubbery, flowers, plants, or other articles</u> planted or placed within a cemetery without authorization of law or consent of the surviving spouse or next of kin.

Under G.S. 14-149(a), it is a Class I felony, regardless of the monetary value of any damage, to knowingly and willfully do any of the following without authorization of law or consent of the surviving spouse or next of kin:

1. Open, disturb, destroy, remove, vandalize, or desecrate a casket or other repository of human remains.
2. Take away, disturb, vandalize, destroy, tamper with, or deface a tombstone, headstone, monument, grave marker, grave ornamentation, or grave artifact erected or placed within a cemetery.

Last, under G.S. 14-149(a1), it is a Class H felony to knowingly and willfully disturb, destroy, remove, vandalize, or desecrate any human remains interred in a cemetery without authorization of law or the consent of the surviving spouse or next of kin.

Assault on Patient

Effective for offenses committed on or after December 1, 2007, S.L. 2007-188 (H 554) revises G.S. 14-32.2(b)(4) to increase from a Class A1 misdemeanor to a Class H felony the offense of patient abuse in violation of G.S. 14-32.2(a) if the conduct causes bodily injury or death. All violations of G.S. 14-32.2 are now felonies.

False Report of Mass Violence at School

Effective for offenses committed on or after December 1, 2007, S.L. 2007-196 (H 1347) adds new G.S. 14-277.5 making it a Class H felony for a person to:

- by any means of communication
- to any person or groups of persons
- make a report
- that an act of mass violence (as defined in the new statute) is going to occur either
  - on educational property (as defined in G.S. 14-269.2) or
  - at a curricular or extracurricular activity sponsored by a school (also defined in G.S. 14-269.2)
- knowing or having reason to know the report is false.

G.S. 14-277.5(c) authorizes the court to order a person convicted under the statute to pay restitution, including costs and consequential damages resulting from the disruption of normal activity on the premises.

Damage to Wireless, Cable Telecommunications, Telephone, and Electric-Power Equipment

G.S. 14-154 has prohibited a person from damaging any telegraph, telephone, or electric-power-transmission pole, wire, insulator, or other fixture or apparatus attached to a telegraph, telephone, or electric-power-transmission line. Effective for offenses committed on or after December 1, 2007, S.L. 2007-301 revises that section to expand its coverage to cable telecommunications and wireless communications equipment. The revised section also specifies in more detail the types of equipment covered, such as insulators, transformers, and transmission equipment. A violation related to any covered device is raised from a Class 1 misdemeanor to a Class I felony.

Demonstrations on Roads or Highways

Effective for offenses committed on or after August 17, 2007, S.L. 2007-360 (H 563) adds G.S. 20-174.2 authorizing municipalities and counties to adopt ordinances regulating the time, place, and manner of gatherings, picket lines, or protests by pedestrians on state roadways and highways.

Misuse of 911 System

Effective for offenses committed on or after January 1, 2008, Section 1(b) of S.L. 2007-383 (H 1755) adds new G.S. 14-111.4 creating two offenses involving misuse of the 911 system. A person is guilty of a Class 3 misdemeanor if he or she

- is not seeking public safety assistance, providing 911 service, or responding to a 911 call and
- knowingly accesses or attempts to access the 911 system
- for a purpose other than an emergency communication.

A person is guilty of a Class 1 misdemeanor if he or she

- knowingly accesses or attempts to access the 911 system
- for the purpose of avoiding a charge for voice communications service (as defined in new G.S. 62A-40) and
- the value of the charge exceeds $100.

The new offenses are part of a much larger act reorganizing the administration of the state's 911 system.

Mediation in District Criminal Court Cases

G.S. 7A-38.5 has directed chief district court judges and district attorneys to encourage mediation in district court criminal cases. Under that statute, community mediation centers (also known as dispute settlement centers or dispute resolution centers) have been authorized to receive referrals to mediate such cases. S.L. 2007-387 (S 728) continues to encourage, in new G.S. 7A-38.3D, the use of mediation in district court criminal cases. It provides, among other things that prosecutors may delay prosecutions so that mediation may take place. It also directs community mediation centers to assist courts in administering mediation programs for district criminal court, to assist in screening and scheduling cases for mediation, and to provide certified mediators to conduct district court criminal mediations.

G.S. 7A-38.3D also seeks to standardize mediation practices. It directs the North Carolina Supreme Court to adopt rules for mediations in district court criminal cases, certification requirements for district court criminal mediators, requirements for training programs for mediators, and rules regulating the conduct of mediators and trainers of mediators. The act directs the Supreme Court to adopt rules for the certification of mediators by January 1, 2008, and provides that the act is effective on or after the date the Supreme Court adopts such rules. In addition to the rules to be adopted by the Supreme Court, the new statute establishes some basic requirements for district court criminal mediations. Among other things, G.S. 7A-38.3D gives mediators the authority to permit or exclude any person from attending and participating in a mediation and allows lawyers for the participants to attend and participate; gives mediators judicial immunity; makes certain materials maintained by mediators and community mediation centers confidential, such as memoranda, work notes, and products of a mediator; provides that evidence of statements or conduct during a mediation are not subject to discovery and are not admissible in any proceeding in which the mediation arose, subject to certain exceptions; and precludes a mediator from being compelled to testify or produce evidence about the mediation, subject to certain exceptions (most significantly, in trials of a felony, the presiding judge may compel the disclosure of any evidence arising out of a mediation, other than a statement by the defendant, if the evidence is to be introduced at trial, the judge determines that introduction of the evidence is necessary to the proper administration of justice, and the evidence cannot be obtained from any other source).

Any agreement reached in a mediation must be reduced to writing under the new statute. When the agreement provides for dismissal of the case, the defendant must pay to the clerk the $60 dismissal fee specified in G.S. 7A-38.7, unless the agreement provides for payment of the fee by another person or the judge waives the fee for good cause.

Law Enforcement

Jurisdiction of Law Enforcement Officers

G.S. 15A-402(e) provides that county law enforcement officers may arrest a person anywhere in North Carolina when the arrest is for a felony committed within the officer's territorial jurisdiction (that is, the officer's county or property owned by the county). Effective May 16, 2007, S.L. 2007-45 (H 343) revises G.S. 15A-402(e) to provide that county law enforcement officers include officers of consolidated county-city law enforcement agencies—for example, officers of the Charlotte-Mecklenburg Police Department.

Investigations of Use of Deadly Force by Law Enforcement Officers

Effective for acts occurring on or after October 1, 2007, S.L. 2007-129 (H 1617) adds G.S. 147-90 to provide that when a law enforcement officer kills a private citizen with a firearm in the line of duty, the district attorney in the prosecutorial district in which the death occurred must request the SBI to investigate the incident if the surviving spouse or next of kin so requests within 180 days after the death. New G.S. 147-90 provides that statements prepared by or on behalf of a district attorney are not public records under G.S. 132-1 and may be released by the district attorney only "as provided by G.S. 132-1.4 or other applicable law." [G.S. 132-1.4(g) and (h) indicate that records that are not public records are subject to disclosure under G.S. Chapter 15A, which includes the criminal discovery statutes.]

Fingerprinting and Photographing for Offenses Involving Impaired Driving, Driving While License Revoked for Impaired Driving, and Other Chapter 20 Violations

G.S. 15A-502 identifies the circumstances in which a law enforcement agency may and must fingerprint and photograph a person upon arrest. Effective for offenses committed on or after October 1, 2007, S.L. 2007-370 (S 1211) revises G.S. 15A-502 to require the arresting law enforcement agency to fingerprint and photograph a person charged with an offense involving impaired driving [as defined in G.S. 20-4.01(24a)] or driving while license revoked for an impaired driving revocation (as defined in G.S. 20-28.2) if the person arrested cannot be identified by a valid form of identification.

G.S. 15A-502(b) forbids the taking of photographs or fingerprints when the charged offense is a Class 2 or 3 misdemeanor under G.S. Chapter 20. Effective for offenses and violations committed on or after December 1, 2007, S.L. 2007-534 (H 454) revises that subsection to allow law enforcement to take a photograph of a person who operates a motor vehicle on a street or highway if the person is cited by a law enforcement officer for a motor vehicle moving violation, the person does not produce a valid driver's license, and the officer has a reasonable suspicion concerning the true identity of the person. The revised subsection states that it does not authorize a photograph for offenses listed in the third paragraph of G.S. 20-16(c) for which no points are assessed or for equipment violations specified in G.S. Chapter 20, Article 3, Part 9. New G.S. 15A-502(b1) details how photographs are to be taken and retained—for example, the photograph may be taken of the driver only and must be destroyed after disposition of the charge.

Bail Bonds

The General Assembly made a number of changes in pretrial release conditions for specific offenses—domestic violence, methamphetamine offenses, and offenses of a sexual nature and against children. Those changes are discussed in the pertinent parts of this chapter discussing those offenses. The provisions below apply to bail bonds and bail bondsmen.

Bond Forfeitures

When a defendant fails to appear for trial and the court enters an order forfeiting the security posted to assure the defendant's appearance, the surety (bail bondsman) or defendant may move to set aside the forfeiture for the reasons described in G.S. 15A-544.5(b). Subdivision (b)(6) of that statute has required that a forfeiture be set aside if the defendant was incarcerated in a state or federal prison in North Carolina at the time of the failure to appear. Effective for forfeitures entered on or after October 1, 2007, S.L. 2007-105 (S 880) revises that provision to allow proof by electronic records of the defendant's incarceration. It also expands the grounds for setting aside a forfeiture by adding new G.S. 15A-544.5(b)(7), which requires that a forfeiture be set aside if the defendant was incarcerated in a local, state, or federal jail, prison, or detention center anywhere within the United States at the time of the failure to appear—that is, when the defendant is incarcerated in places other than a state or federal prison in North Carolina. The district attorney for the county in which the charges are pending must be given notice as provided in new subdivision (b)(7). The act also adds G.S. 15A-544.5(d)(8) to authorize the court to impose monetary sanctions against a surety for submitting fraudulent documentation in support of a motion to set aside a forfeiture or for intentionally failing to attach the required documentation.

Circumstances Under Which Surety Is Not Required to Return Bail Bond Premium

G.S. 58-71-20 requires the surety on a bail bond to return the full premium on the bond when the surety surrenders the defendant before there has been a breach of the bond (a failure to appear by the defendant). The statute allows the defendant to be surrendered without returning the premium in certain circumstances. Effective August 21, 2007, S.L. 2007-399 (S 1327) amends G.S. 58-71-20 to add two more exceptions to the requirement that the premium be returned—(1) when the defendant fails to disclose information or provides false information regarding any previous failure to appear, any felony conviction within the past ten years, or any pending criminal charges or (2) when the defendant knowingly provides the surety with incorrect personal identification or uses a false name or alias.

Requirements for Licensure as Bail Bondsmen and Runners

Effective for applications for licensure on or after October 1, 2007, S.L. 2007-228 (S 881) revises G.S. 58-71-50(b) to require applicants for a license as a bail bondsman or runner to hold a valid North Carolina drivers license or identification card issued by the Division of Motor Vehicles (DMV). The act also requires that the applicant be a "resident" of North Carolina, defined in new G.S. 58-71-1(8a) as a person who has lived in North Carolina for at least six consecutive months before applying for licensure. In applying for licensure, the applicant must present at least two of the types of documentation of residency specified in G.S. 58-71-50(c)—for example, a utility bill showing the applicant's residential address or a written lease agreement for a residence in North Carolina.

Sentencing and Other Consequences

No Death Penalty for Person Under 18

In *Roper v. Simmons,* 543 U.S. 551 (2005), the United States Supreme Court held that it was unconstitutional to put a person to death for a crime committed when the person was under the age of eighteen. North Carolina law has barred the execution of a person under the age of seventeen at the time of the crime except in specified circumstances. Effective June 14, 2007, S.L. 2007-81 (H 784) revises the applicable statute, G.S. 14-17, to conform with *Roper* and bar execution of a person under the age of eighteen in all circumstances.

New Aggravating Factor in Felony Sentencing

See Offenses Related to Animals (law enforcement agency animals and assistance animals), above.

Expunction of Civil Revocation of Drivers License

G.S. 15A-145 and 15A-146 have allowed a person to obtain an expunction of a conviction or a dismissal of criminal charges in certain circumstances. Effective October 1, 2007, S.L. 2007-509 (S 301) amends those statutes to provide that if the court orders an expunction of a conviction or dismissal, it also must order expunction of any civil revocation of a driver's license as the result of the criminal charge. The revised statutes provide that these new expunction provisions do not apply to civil or criminal charges based on the civil revocation or to civil revocations under G.S. 20-16.2, which deals with revocations of a driver's license for impaired driving and certain other alcohol-related offenses. The act also directs the AOC, in consultation with the DMV, to review any offenses expunged pursuant to G.S. 15A-145 and 15A-146 before October 1, 2007. If the expunged offense resulted in a civil driver's license revocation and that revocation would be subject to expunction under revised G.S. 15-145 or 15A-146, the AOC must expunge the revocation from the court records and notify DMV to expunge the revocation from its records.

Access to Social Security Number for Recoupment of Attorneys Fees

G.S. 20-7(b2) provides that the Social Security number of an applicant for a driver's license is not a public record and may not be disclosed by DMV unless otherwise authorized. Effective July 20, 2007, S.L. 2007-249 (S 1287) revises that section to permit DMV to disclose to the Office of Indigent Defense Services (IDS) the Social Security number of a license applicant to verify the identity of a client who has received legal services at state expense and to enforce a court order to reimburse the state for those services. The form order for requiring repayment of attorneys fees requests the Social Security number of the client, but the number is sometimes omitted or is inaccurate, impeding the ability of IDS to recover attorneys fees.

Immigration and Related Issues

Determination of Immigration Status of Person Jailed on Felony or Impaired Driving Charge

Effective January 1, 2008, S.L. 2007-494 (S 229) adds new G.S. 162-62 to require the administrator of a jail or other detention facility to seek to determine whether a person who is in custody awaiting trial on a felony or impaired driving offense is a legal resident of the United States. Being charged with a criminal offense is generally not grounds for removal (deportation) of a person who is not a legal resident of the United States, but being present in the United States without proper authorization would be grounds for removal. The new statute directs the administrator or other person in charge of the facility to make this determination by inquiring of the prisoner, examining any relevant documents, or doing both. If the administrator cannot determine whether the prisoner is a legal resident of the United States, he or she must make a query through the Division of Criminal Information system to the Law Enforcement Support Center of Immigration and Customs Enforcement of the United States Department of Homeland Security.

The new statute does not describe the process for an administrator's questioning of prisoners about their immigration status. A person has a Fifth Amendment right not to answer questions that may incriminate him or her and could lead to criminal prosecution. Because criminal penalties may be imposed for some immigration violations, including entering the U.S. without inspection (that is, entering the country illegally in violation of 8 U.S.C. § 1325), a prisoner would have the

right to refuse to answer such questions. Because a prisoner is necessarily in custody, any information a prisoner provides in response to an administrator's inquiry may be inadmissible in any criminal proceeding unless the prisoner received *Miranda* warnings. A prisoner's response may be used in immigration proceedings, however, including proceedings to deport the person, because the courts have held that these proceedings are civil and a violation of *Miranda* does not require exclusion of the response in those proceedings. *See* Busto-Torres v. INS, 898 F.2d 1053 (5th Cir. 1990) (*Miranda* warnings are not required prior to questioning of person about information used to deport him or her because deportation proceedings are civil, not criminal in nature; deportation proceedings still must conform to Due Process standards, and involuntary statements are inadmissible).

The new statute also states that it should not be construed as denying bond to a prisoner or to prevent a prisoner from being released from confinement when that prisoner is otherwise eligible for release. This provision affirms existing North Carolina and federal law. Under North Carolina law, a person arrested on criminal charges has the right to have pretrial release conditions set except in limited circumstances (for example, the person is charged with capital murder). Under federal law, Immigration and Customs Enforcement (ICE) may issue a detainer for a person held in a state detention facility awaiting trial, directing the facility to hold the person for up to forty-eight hours (excluding Saturdays, Sundays, and holidays) after the person meets the pretrial release conditions imposed by state authorities. *See* 8 C.F.R. 287.7. After forty-eight hours, the person must be released if he or she has met the pretrial release conditions and has not been picked up by ICE.

Protections for Victims of Human Trafficking

Effective for offenses committed on or after December 1, 2007, S.L. 2007-547 (S 1079) amends G.S. 14-43.11 to provide that a victim of human trafficking who is not a legal resident of North Carolina is eligible for public benefits and services of any state agency if the victim otherwise qualifies for them. The act also adds G.S. 15A-832(h) to the Crime Victims' Rights Act to require the district attorney's office to notify the Office of Attorney General and Legal Aid of North Carolina when a person is a victim of human trafficking and is entitled to services under revised G.S. 14-43.11. (Revised G.S. 7A-474.2(1) and 7A-474.3 authorize Legal Aid to assist human trafficking victims in obtaining these services, and the 2007 appropriations act provides $50,000 in nonrecurring funds for fiscal year 2007–08 for legal assistance for human trafficking victims. *See* Joint Conference Committee Report on the Continuation, Expansion and Capital Budgets, Section I, Justice.) S.L. 2007-547 also amends G.S. 15A-830(7) to clarify that a victim of human trafficking is a "victim" within the meaning of the Crime Victims' Rights Act. Last, the act amends various provisions in G.S. Chapter 15C, the address confidentiality program, to cover victims of human trafficking.

Interpreters

Section 14.23 of S.L. 2007-323 amends G.S. 7A-314(f) to explicitly authorize courts to use foreign language interpreters, payable from funds appropriated to the AOC, when necessary in criminal or G.S. Chapter 50B cases to assist the court in the efficient transaction of business.

Funding for Technical Assistance and Training

The 2007 appropriations act appropriates $750,000 for fiscal year 2007–08 for a Governor's Crime Commission grant to the North Carolina Sheriff's Association for technical assistance and training associated with immigration enforcement. *See* Joint Conference Committee Report on the Continuation, Expansion and Capital Budgets, Section I, Crime Control and Public Safety.

John Rubin

8

Economic and Community Development

The most noteworthy economic development legislation of 2007 was a new grant program designed to provide up to $60 million of incentives for private companies that make large investments in their facilities but do not increase employment in the state. The legislation was in the news because an earlier act was vetoed by the Governor before the General Assembly enacted a compromise version of the program. The legislation was groundbreaking in that it provided substantial government funding to a private business without requiring the business to increase jobs, increase payroll, or take the incentive in the form of a tax benefit.

As in 2006, the General Assembly substantially increased the amount of authorized grants for 2007 under the Job Development Investment Grant program. It also appropriated funds for other economic development grant programs and for rural development. Other economic development legislation in 2007 included expanding existing tax incentives and providing new tax incentives for specific industries and specific businesses. The General Assembly also extended the sunset on the tax credit for qualified business investments and appropriated $2 million for Johnson and Wales University in Charlotte.

The 2007 legislative session included community development initiatives that focused on housing and environmental needs of communities across the state, particularly in rural areas. There was also an emphasis on expanding access to technology to North Carolina's rural communities.

Grants to Retain Existing Industry

On August 2, 2007, the General Assembly ratified House Bill 1761 and presented it to the Governor. The bill would have created the Job Maintenance and Capital Development Fund in the Department of Commerce. The fund was to provide a grant to a private business if the business invested a minimum amount in a facility in a development tier one county, employed and maintained at least 2,000 full-time employees or equivalent full-time contract employees at the facility, and satisfied specified conditions relating to employee health insurance, safety and health programs, and environmental compliance. The bill would have allowed grants for up to five businesses for a total cost of $40 million. Although the bill did not name a specific company, news reports indicated that it was intended for Goodyear Tire & Rubber in Fayetteville. The legislation was unusual in that it provided an incentive to a company that would not increase its payroll or number of jobs within North Carolina, but would merely agree not to move out of the state. In addition, it was reported that the incentive took the form of a grant rather than a tax credit because Goodyear pays so little tax to North Carolina that a proposal to reduce its tax liability would not have been a sufficiently generous incentive.

Governor Mike Easley vetoed House Bill 1761 on August 30, 2007. According to news reports, the Governor's office was contacted by numerous other businesses expressing a desire to receive public money for continuing to do business in North Carolina. In addition, Goodyear's rival, Bridgestone Firestone of Wilson, complained that the subsidy would put it at a competitive disadvantage and was unfair because Bridgestone was also investing a substantial amount in its North Carolina facilities. The Governor's veto message stated:

> House Bill 1761 would set a dangerous precedent for North Carolina's economic development policy and is not fair to her taxpayers. It calls for the state to give up to $40 million in cash to an existing company in one county with little or no regard for how much the company actually pays in state and local taxes, what wages it pays now or in the future, or whether it lays off nearly 25% of its workforce.

On September 6, 2007, the Governor issued a proclamation reconvening the General Assembly on September 10 to reconsider House Bill 1761. When it reconvened, the General Assembly did not vote on the question of whether to override the veto. Instead, after negotiations with the Governor's office, it considered new legislation in an extra session convened by the Governor at the same time. The resulting act, S.L. 2007-552 Extra Session (H 4), is similar to the vetoed bill. Effective retroactively to July 1, 2007, it too creates the Job Maintenance and Capital Development Fund but this time with an increase in the maximum total cost of grants that may be paid, from $40 million to $60 million. The new act also appears to allow Bridgestone Firestone to qualify for a grant. Unlike House Bill 1761, the act requires grant recipients to meet a wage standard: they must pay full-time employees and equivalent contract employees an average weekly wage of at least 140 percent of the county average. S.L. 2007-552 also addresses the Governor's concern that a grant recipient might lay off up to 25 percent of its employees. The act provides that if the employment level at the facility drops, the amount of the grant will be reduced proportionally and will be reduced to zero for any year that the employment level is less than 80 percent of the required level. Thus a grant recipient may lay off up to 20 percent of its employees without losing the grant. S.L. 2007-552 requires the Department of Commerce to monitor the grants and report quarterly to the Joint Legislative Commission on Governmental Operations. It also directs the Joint Select Committee on Economic Development Incentives to report on all economic development incentives offered by the state, whether in the form of tax breaks, grants, loans, or appropriations.

Job Development Investment Grant Program

The 2007 appropriations act, S.L. 2007-323 (H 1473), increases from $15 to $25 million the maximum amount of grant liability the state may incur in 2007 for the Job Development Investment Grant (JDIG) program. Under the JDIG program, agreements entered into in one calendar year may result in annual grant payments for the succeeding twelve years. Therefore, this increase of $10 million for 2007 could have a fiscal impact of up to $120 million over a twelve-year period.

Expansion of Existing Tax Incentives

Qualified Business Investment Tax Credit

The qualified business investment tax credit is allowed for an individual taxpayer who purchases the equity securities or subordinated debt of a qualified business venture, a qualified grantee business, or a qualified licensee business directly from that business. Although the credit was enacted in 1987 to promote economic development for North Carolina businesses, it was later modified to allow credits for investments in qualified businesses regardless of whether they are headquartered or operating in North Carolina. The change was made in response to a concern that the provision may have violated the interstate commerce clause of the federal constitution, which forbids discrimination against out-of-state businesses. S.L. 2007-422 (H 1598) extends the sunset on the tax credit from January 1, 2008, to January 1, 2011. One of the purposes of the sunset is to allow the credit to expire if the state determines that it is being used for investments in non-North Carolina businesses. The act also extends the deadline for applying for a qualified business investment tax credit from September 15 to October 15 of the year following the year the investment was made.

Research and Development Tax Credits

Section 31.8 of S.L. 2007-323 amends G.S. 105-129.55 to increase the amount of the tax credits for various types of research and development conducted in North Carolina. The increased credit amounts are effective beginning with 2007 tax year. Thus, rather than operating solely as an incentive for future economic activity, the increase in the credit may reward 2007 investments that were made without regard to the increase.

Renewable Fuel Facilities

G.S. 105-129.16D(b1) provides an income tax credit for a taxpayer's investment in constructing and equipping three or more commercial facilities for processing renewable fuel in North Carolina. The taxpayer must invest at least $400 million; the credit is equal to 35 percent of the construction and equipment costs. Effective beginning with the 2007 tax year, Section 31.9 of S.L. 2007-323 amends the statute to (1) allow the credit to be taken against a taxpayer's franchise tax and (2) remove a provision that made a taxpayer whose credit expired ineligible for the credit under 105-129.16D(b) (construction of a single facility) for the same property.

Aircraft Parts Manufacturer Sales Tax Refund

Section 31.10 of S.L. 2007-323 amends G.S. 105-164.14(j)(3)b. to extend the sales tax refund for aircraft manufacturers to include manufacturers of certain aircraft parts, effective for purchases made on or after July 1, 2007.

Project Development Financing

S.L. 2007-395 (S 1196) makes three important modifications to the Project Development Financing Act. First, it amends G.S. 159-103(a) to add a few purposes for which project development financing (tax increment financing) debt instruments may be issued—(1) financing the capital costs of providing certain parks and recreation facilities; (2) financing the capital costs of providing community colleges facilities; and (3) financing the capital costs of providing school facilities, including school buses and other necessary vehicles. It also clarifies that the proceeds of the project development financing debt instruments may be used for any service or facility to be provided in a municipal service district without having to actually create the district.

Second, the S.L. 2007-395 amends G.S. 159-103(a) to allow a city or a county to issue project development financing debt and use the proceeds for one or more of the specified purposes for which either unit of government may issue general obligation bonds. For example, as amended, G.S. 159-103(a) allows either a city or county to issue project development financing debt to fund the capital costs of providing streets and sidewalks even though, pursuant to G.S. 159-48(d)(5), only a city may issue general obligation debt to fund these projects.

Finally, the act eliminates the requirement that the base valuation be increased during each revaluation to reflect projected increases due solely to the revaluation of the property values of the district as they existed on the January 1 immediately preceding the effective date of the district. Thus, unless the unit amends its development financing plan to expand the district or remove property from the district, the base valuation will remain constant during the lifetime of the development financing district.

New Tax Incentives

Section 31.7 of S.L. 2007-323 reduces the tax on purchases by software publishers of certain capital machinery and equipment used for research and development. Effective July 1, 2007, the act amends G.S. 105-187.51B to impose a privilege tax on these purchases at the rate of 1 percent of the sales price, with a maximum of $80 per item. Items subject to the privilege tax are exempt from state and local sales tax, which would otherwise be roughly 7 percent (depending on the applicable county rate).

Section 31.20 of S.L. 2007-323, as amended by S.L. 2007-345 (H 714) allows an annual refund for a portion of the sales tax paid by laboratories engaged in analytical services. The refund is allowed for the greater of (1) 50 percent of the amount by which the sales tax the taxpayer paid on purchases of supplies used in analytical services in a fiscal year exceeds the tax the taxpayer paid on these purchases in 2006-07 or (2) 50 percent of the amount of sales tax it paid in the fiscal year on medical reagents.

Section 31.22 of S.L. 2007-323 reduces the tax on purchases by certain data centers of capital machinery and equipment used for data center services or electric power generation or management. A data center is a facility that provides infrastructure for hosting or data processing services. To be eligible, a data center must invest at least $150 million of private funds at a facility in development tier one or at least $300 million at a facility in another tier. It must also meet other conditions relating to its power and cooling systems, the wages it pays its employees, and providing health insurance for its employees. Effective October 1, 2007, the act enacts G.S. 105-187.51C to impose a privilege tax on these purchases at the rate of 1 percent, up to a maximum of $80 per article. Items subject to the privilege tax are exempt from state and local sales tax, which would otherwise be roughly 7 percent (depending on the applicable county rate). If the required level of investment is not timely made or the machinery and equipment is not located and used at the datacenter, the rate of tax is forfeited and the taxpayer is liable for past sales taxes avoided as a result of the provision. The provision expires July 1, 2013.

Section 31.23 of S.L. 2007-323, as amended by Section 14.7 of S.L. 2007-345, enacts new Article 3K of G.S. Chapter 105 to provide a tax credit of 50 percent for a taxpayer's payments for the construction of an eligible railroad intermodal facility. To be eligible, the facility must cost

more than $30 million to construct. An intermodal facility is a facility where freight is transferred from one mode of transportation to another. The credit is allowed against the taxpayer's income or franchise tax each tax year and may not exceed 50 percent of the tax against which it is claimed. Any excess may be carried forward for ten years. The new credit was effective January 1, 2007, and continues in effect until the 2038 tax year. The practical effect of the new credit is that the state is paying interest on the thirty-year debt incurred by a private taxpayer for construction of a facility, despite the fact that the state could finance the same facility at a lower cost to taxpayers by issuing its own debt at a lower interest rate.

Effective January 1, 2007, Section 31.23 also amends G.S. 105-164.13 and G.S. 105-164.14 to exempt owners of railroad intermodal facilities from sales tax on sales of cranes, trucks, and locomotives. Owners of railroad intermodal facilities will receive a sales tax refund for materials and equipment that become a part of their facilities.

One North Carolina Fund/Small Business Fund

S.L. 2007-323 appropriates $14 million in nonrecurring funds for the One North Carolina Fund and an additional $4.8 million in nonrecurring funds for the Small Business Fund within the One North Carolina Fund. The act diverts $650,000 of the funds appropriated to the One North Carolina Fund, however, to the Department of Environment and Natural Resources, Division of Information Technology Services, for a Tier II hazardous chemicals inventory database and Web-based access application. The One North Carolina Fund provides businesses creating new jobs with incentive grants for infrastructure, repair and renovation, and machine and equipment purchases. The Small Business Fund provides incentive funds for small businesses to apply for federal innovation grants.

NC Green Business Fund

Section 13.2 of S.L. 2007-323 enacts new Part 2B of Article 10 of G.S. Chapter 143B, creating the "NC Green Business Fund" in the Department of Commerce to promote a green economy by making grants to small and medium-sized businesses, nonprofits, and government agencies. The grants must focus on (1) developing the biofuels industry, (2) developing the green building industry, and (3) supporting investments and entrepreneurial growth in environmentally conscious clean technology and renewable energy products and businesses. The Department of Commerce must develop and publish guidelines governing administration of the fund and selection of grant recipients. It must also report annually in disbursements from the fund. The act appropriated $1 million in nonrecurring funds for the new program.

Minority Economic and Community Development Appropriations

The 2007 appropriations act, S.L. 2007-323, appropriates $1.5 million in each year of the fiscal biennium to the N.C. Institute of Minority Economic Development for economic development projects and initiatives. The act also appropriates $3 million in each fiscal year to the North Carolina Minority Support Center for credit unions.

Community Development Appropriations

The 2007 appropriations act, S.L. 2007-323, made significant appropriations to programs and initiatives to assist local communities in meeting the needs of their residents. These appropriations

included (1) $3 million in recurring funds to the N.C. Community Development Initiative to provide funding for grants, loans, technical assistance, and administration for community economic development projects; (2) $100 million in nonrecurring funds to the Rural Economic Development Center, Inc., for water and sewer system grants to local governments; and (3) $5 million in recurring funds to the Housing Trust Fund to finance affordable housing for families in the state.

Regional Development Appropriations

S.L. 2007-323 requires regional councils of government to use funds appropriated to them by the act only to assist local governments in grant applications, economic development, community development, support of local industrial development activities, and other appropriate activities. As in past years, the appropriations act appropriates funds to be distributed to the seven regional economic development commissions. The funds for 2007–08 are at the same level as the previous year, but are reduced 5 percent and made nonrecurring for 2008–09. The act directs the Performance Evaluation Division of the General Assembly to study the structure and funding of the regional economic development commissions and report by May 1, 2008. The act also directs the Department of Commerce to report by September 1, 2007, on its success in implementing 2006 legislation requiring the department to develop uniform financial standards, personnel practices, and purchasing procedures, which the commissions must follow as a condition of receiving state funds. Finally, the act also specifies that no more than $120,000 in state funds may be used for the annual salary of any one employee of a regional economic development commission.

Rural Development Appropriations

S.L. 2007-323 appropriates $19 million to the Rural Economic Development Center, Inc., to (1) expand the N.C. Rural Economic Infrastructure Fund with targeted priority to severely distressed rural areas and (2) establish a Rural Economic Transition Program providing grants and equity investments to carry out transformative economic development and agricultural enhancement projects.

In addition, of the funds appropriated in the 2007–08 fiscal year to the Rural Economic Development Center, Inc., $1 million was designated for allocation in community development grants to support development projects and activities within the state's minority communities, and $19.5 million was allocated (1) to continue the N.C. Infrastructure Program, which provides money to local governments to address critical water and wastewater facility needs; (2) for matching grants to local governments in distressed areas; and (3) for economic development research and demonstration grants.

Foreclosure Protections

Concerns for the foreclosure blight that has spread across the state were reflected in the 2007 session. S.L. 2007-323 appropriated $1.5 in nonrecurring funds to continue the Home Protection Pilot Program, which provides short- or long-term loans to qualifying homeowners in twenty-six counties, who are at risk of losing their homes due to job loss. S.L. 2007-351 (H 1374) provides homeowners with legal protections that are intended to reduce foreclosures. Enacted in response to two North Carolina Supreme Court decisions from December 2006, *Shepard v. Ocwen Federal Bank, FSB et al., 261 NC 137, 638 S.E. 2d 197 (2006)* and *Skinner v. Preferred Credit et al., 361 NC 114, 638 S.E. 2d 203 (2006)*, S.L. 2007-351 (1) expands the amount of information that trustees must provide to debtors during foreclosures, (2) extends the amount of time that

borrowers have to file usury claims based on allegedly illegal closing fees and charges, and (3) subjects mortgage-holding trusts to the personal jurisdiction of North Carolina's courts. S.L. 2007-352 (H 1817) provides protections for homebuyers from predatory lending practices, imposing requirements on lenders to have a reasonable basis for belief that the borrower can afford to repay the loan.

North Carolina also joins other states in making residential mortgage fraud a felony. S.L. 2007-163 (H 817) enacts new Article 20A of G.S. Chapter 14, making it a felony to make or use a deliberate misstatement, misrepresentation, or omission during the mortgage lending process for loans secured by residential real property or manufactured homes with the intention to induce a mortgage lender, broker, borrower, or other person to rely on it. S.L. 2007-163 also permits courts to order restitution and contains a forfeiture provision, stating "[a]ll real and personal property of every kind used or intended for use in the course of, derived from, or realized through a violation" of the act is subject to forfeiture.

The General Assembly also provided protections for renters living in properties subject to foreclosure proceedings. S.L. 2007-353 (H 947) requires that a notice of sale in a foreclosure proceeding be sent to tenants who are residing in the property to be sold and allows for early termination of the rental agreement.

Access to Housing

Also addressed in the 2007 legislative session was the need for affordable housing across the state. S.L. 2007-548 (S 1466) directs the N.C. Housing Finance Agency (NCHFA) to study the need for low-cost financing for the construction and rehabilitation of housing for the state's migrant workers and to report its findings to the Joint Legislative Committee on Government Operations by July 1, 2008. The 2007 appropriations act, S.L. 2007-323, appropriates $500,000 for the 2007–08 fiscal year to fund locally hosted residential substance abuse programs with a vocational component. S.L. 2007-323 also calls for additional housing assistance for individuals with mental health, developmental, or substance abuse disabilities, directing the Department of Health and Human Services (DHHS) and NCHFA to collaboratively develop a plan for the most efficient and effective use of state resources in local communities to develop additional independent and supportive-living apartments for this population.

Health Care and Wellness

In addition, the 2007 session was characterized by community-focused initiatives aimed at health care and wellness. S.L. 2007-323 appropriated $2.5 million for the 2007–08 fiscal year to DHHS for the Community-Focused Eliminating Health Disparities Initiative, to be used for grants-in-aid to local public health departments, American Indian tribes, and faith-based and community-based organizations to focus on the use of preventive measures to support healthy lifestyles to close the gap in the health status of African-Americans, Hispanics/Latinos, and American Indians as compared to the status of Caucasians. S.L. 2007-323 also appropriated $2 million to assist small rural hospitals. The funds may be used for the capital and operation needs of the hospitals and to support pilot programs that address the long-term survivability of small rural hospitals. A $2 million appropriation in recurring funds for Community Health Grants will support programs and organizations that provide primary and preventative medical services to community members who are uninsured or medically indigent. Two appropriations support communities in having access to clean drinking water: $300,000 to provide county grants to adopt local programs to enforce statewide private well construction standards and $615,000 to test private wells for contamination and to pay for alternative drinking water supplies.

Access to Technology

The 2007 appropriations act, S.L. 2007-323, appropriates $4 million in nonrecurring funds to the e-NC Authority to increase access to Internet connectivity in underserved areas of the state, to provide additional funding for general operations, and to expand funding for new and existing e-NC Business and Technology Centers. The funds may be used to create incentives for broadband in rural areas and to distribute funds for cable access channels through e-NC Authority. Of the appropriated funds, the act directs that $290,000 be transferred to WOW e-Community Development Corporation to implement a two-year pilot program to establish the Windows on the World Technology Center as the northeastern North Carolina regional technology resource center for indigent rural low-wealth communities.

Community Development Block Grant Funds

S.L. 2007-323 appropriates $45 million in federal community development block grants (CDBG) for housing programs, community revitalization, and economic development. The allocation amount will be affected by any increases or decreases in federal funds. The act provides for capacity increasing grants to nonprofit organizations that engage in CDBG-eligible activities in partnership with local government units. The act also directs the Department of Commerce to operate a small business/entrepreneurship program in coordination with micro-lending programs and other small business assistance groups in the state. The Department of Commerce may award up to $1 million in grants to local governments to provide assistance to low-to-moderate income persons for small business and entrepreneurship development. Appropriations from federal block grant funds are made for the 2007–08 fiscal year as follows:

1.	State Administration	$ 1,000,000
2.	Urgent Needs and Contingency	1,000,000
3.	Scattered Site Housing	13,200,000
4.	Economic Development	7,710,000
5.	Small Business/Entrepreneurship	1,000,000
6.	Community Revitalization	13,500,000
7.	State Technical Assistance	450,000
8.	Housing Development	2,000,000
9.	Infrastructure	5,140,000

Miscellaneous

Transportation Projects for Economic Development

Section 27.3 of the appropriations act, S.L. 2007-323, allocates $14 million of Department of Transportation funds for economic development projects; each of the fourteen highway divisions is to receive $1 million. The projects are to be recommended by the board of transportation member representing the division where the project is to be constructed, in consultation with the division engineer, and must be approved by the full board of transportation. Funds not needed for economic development may be used for spot safety or for transportation improvement programs

Executive Aircraft

Section 13.3 of S.L. 2007-323 enacts new G.S. 143B-437.011 to provide that the use of executive aircraft by the Department of Commerce for economic development purposes takes

precedence over all other uses. Use by the Governor is the second priority. The act also provides for an increase in the rates charged for use of the aircraft.

Northeastern N.C. Regional Economic Development Commission

S.L. 2007-93 (S 1248) changes the name of the Northeastern North Carolina Regional Economic Development Commission in G.S. 158-8.2 to North Carolina's Northeast Commission.

Johnson and Wales University

S.L. 2007-323 appropriates $2 million in nonrecurring funds to Johnson and Wales University in Charlotte.

Martha H. Harris

Sheria Reid

9

Elections

In 2007 the General Assembly was active in elections legislation. In its three most noteworthy acts, it permitted, for the first time in the state's history, potential voters to register and vote at the same time; it established a public financing program for candidates for three Council of State offices who choose to participate; and it enacted regulations on the legal defense funds of candidates.

Conduct of Elections

Registration and Voting at Same Time

To be eligible to vote in a North Carolina election, a voter must be registered. Traditionally, the registration books have closed twenty-five days before the election, so that a person who registered close to the election was not eligible to vote in that election, but had to wait until the next election to vote for the first time.

S.L. 2007-253 (H 91) works a major change to the registration requirement. It adds new G.S. 163-82.6A providing that a person who is qualified to register to vote may register and vote at the same time at "early voting" one-stop absentee voting sites in the county in the early voting period leading up to the election. Same-day registration and voting are not extended to the regular election day.

To register and vote on the same day at a one-stop absentee site, the person completes the regular voter registration form (which includes an attestation that the person meets all voter eligibility requirements, with falsification constituting a Class I felony), presents proof of residence, and casts a ballot. Residence may be proved with a North Carolina driver's license; a government-issued photo ID; a current utility bill; a bank statement, government check, paycheck, or other government document; or another document as designated by the State Board of Elections.

The ballot is a retrievable absentee ballot. Within the next two days, the county board of elections, in conjunction with the State Board of Elections, verifies the voter's driver's license number or Social Security number and updates the statewide voter registration database to include

the new voter. If the county board determines, as a result of this process, that the applicant is not qualified to vote, the ballot is retrieved and not counted.

Already-registered voters may also use this process at early voting sites to update and change registration information other than party affiliation.

An individual may submit the registration application on one day during the early voting period and return later within the early voting period to vote at that same one-stop site or another one-stop site in the county.

Voting Tabulation Districts and Precinct Boundaries

S.L. 2007-391 (H 1743) amends several sections of Article 12A (Precinct Boundaries) of G.S. Chapter 163, introducing the concept of the "voting tabulation district." It directs the Executive Director of the State Board of Elections to report to the U.S. Bureau of the Census the state's voting precincts (as they stand on January 1, 2008) as the state's voting tabulation districts. From that time, the precinct boundaries as of January 1, 2008, remain the state's voting tabulation districts even if precinct boundaries change, and county boards of elections have no power to change voting tabulation districts.

County boards are to report all election returns using voting tabulation districts. By sixty days after election day, the county boards must be able to report returns by voting tabulation district for all voting residents of the district, regardless of the voting tabulation district or precinct in which they actually cast their ballot.

County boards of elections may, with the approval of the executive director, change precinct boundaries, as long as they remain able to make the report of election returns by voting tabulation district.

Combination of Ballot Items

Some provisions of the general law and some provisions in local acts require that particular races or referendum questions be placed on separate ballots for voting. S.L. 2007-391 provides that, notwithstanding these provisions, ballot items may be combined on the same official ballots with the approval of the State Board of Elections.

Confidentiality of Ballots

G.S. 163-165.1 provides that voted ballots and paper records of individual voted ballots are confidential and are to be accessed only by elections officials performing their duties. S.L. 2007-391 amends the statute to (1) include electronic records of individual voted ballots as well as paper records and (2) make it a Class 1 misdemeanor to knowingly disclose an official voted ballot or record in violation of its confidentiality. A corresponding change is made in G.S. 163-274.

Confidentiality of Certain Voter Registration Information

G.S. 163-82.10(a) provides that dates of birth, full or partial Social Security numbers, and driver's license numbers held in voter registration records are confidential. S.L. 2007-391 amends the statute to add that the identity of the public agency at which an individual registered is also confidential. The statute has provided that electronically captured images of signatures of voters are confidential. The act replaces that provision with a specification that signatures of voters, whether on paper or electronic, may be viewed by the public but may not be traced or copied, except by election officials. A copy made by election officials is not a public record.

Correction of Information on Voter Registration Forms

G.S. 163-82.4(e) has provided that an applicant for registration who fails to indicate on the voter registration application form that he or she is a citizen of the United States is to be given an opportunity to complete the form. S.L. 2007-391 amends the statute to provide that an applicant who fails to complete any required item on the application is to be given the opportunity to complete the form. If the applicant completes the form and is determined by election day to be eligible, he or she is to be permitted to vote. If the determination is made between election day and 5:00 p.m. on canvass day, the voter is to be permitted to vote a provisional ballot, and the ballot is to count for all races in which the voter is eligible.

Space for Write-Ins on Ballots

G.S. 163-165.5, in its instructions on ballot preparation, provides that a ballot must have space in which a voter may write in a name that does not appear on the ballot. S.L. 2007-391 amends the statute to clarify that this space is to be provided only in instances in which write-in votes are allowed.

Re-Voting in Certain Circumstances

G.S. 163-182.12 permits the State Board of Elections to authorize a county board of elections to allow recasting of ballots if there is a known group of voters whose cast votes were lost beyond retrieval. S.L. 2007-391 amends the statute to also permit recasting if a known group of voters was given an incorrect ballot. The statute has provided that when the recasting is authorized, it is to take place during a period of two weeks after the election. The amendment changes the period to two weeks after the canvass.

Buffer Zones at One-Stop Voting Sites

G.S. 163-166.4 specifies a space to be maintained between the entrance to a voting place and the area in which electioneering activities may take place, called the "buffer zone." S.L. 2007-391 amends the statute to make clear that the same provisions apply with respect to one-stop absentee voting sites.

Political Activities by Election Board Employees

Article 4A of G.S. Chapter 163 provides that members of county boards of elections may not make statements intended for general distribution in support of or opposition to a candidate or referendum proposal nor solicit contributions for a candidate, political committee, or referendum committee. S.L. 2007-391 expands those provisions to employees of county boards as well as to the members. The act provides that violation is a ground for dismissal of an employee.

Eligibility of Voter When Identification Numbers Do Not Match

S.L. 2007-391 adds new G.S. 163-166.12(b2) providing that if an individual has provided with the voter registration form a driver's license number or the last four digits of a Social Security number and the computer validation conducted under G.S. 163-82.12 does not result in a match, the person may still vote by providing identification of the type otherwise acceptable for voting by individuals who registered by mail, unless the board of elections determines that the person is otherwise ineligible to vote.

Observers and Runners at the Polls

Under G.S. 163-45, parties (and others in certain circumstances) may appoint observers to watch the proceedings at the polls and runners to collect lists of voters during election day. S.L. 2007-391 amends the statute to specify times for naming observers and runners.

Photography at the Polls

S.L. 2007-391 amends G.S. 163-166.3 to provide that no one may take still or moving pictures within the voting enclosure on election day or at a one-stop site, except with the permission of both the voter and the chief judge. The permission of the chief judge is not required if the voter is a candidate. The act provides also that no one may record the image of a voted ballot for any purpose not otherwise permitted by law.

County Maintenance of Voting Equipment

G.S. 163-165.9 specifies that county boards of elections must comply with all State Board of Elections requirements regarding support of their voting equipment. S.L. 2007-391 amends the statute to specify that counties must also comply with all specifications of the vendor for ballot printers and must maintain software license and maintenance agreements necessary to maintain warranties on the equipment. The act provides that counties may contract with noncertified ballot vendors as long as the vendor meets all specifications and all quality assurance requirements set by the State Board.

Voter Registration upon Restoration of Citizenship

Conviction of a felony deprives a person of the rights of citizenship, including the right to vote. After serving the sentence required by law, a felon's citizenship rights are restored. S.L. 2007-391 adds new G.S. 163-82.20A directing the State Board of Elections, the Department of Correction, and the Administrative Office of the Courts to develop and implement procedures by which a felon whose rights are restored may be educated about the right to register to vote and may register.

Absentee Voter Assistance Teams

S.L. 2007-391 amends G.S. 163-226.3(a)(4) to direct each county board of elections to train and authorize multipartisan teams composed of board members, board employees, and volunteers to assist voters with absentee ballots. The act provides that activities by team members are not violations of the statute's criminal provisions.

Voter List Maintenance Schedule

G.S. 163-82.14 requires a uniform program by which county boards of elections undertake steps to remove the names of ineligible voters from their registration lists. S.L. 2007-391 amends the statute to provide that county boards are to complete their list maintenance mailing program by April 15 of every odd-numbered year, unless the State Board of Elections approves a different date for the county.

One-Stop Voting Satellite Sites

G.S. 163-227.2(g) has provided that satellite one-stop absentee voting sites must be in buildings that a county board of elections could demand and use as a regular voting place. S.L. 2007-391 amends the statute to remove the prohibition on use of other sites and authorize the State Board of Elections to approve another site on a finding that alternatives are not available and

that the site will not unfairly advantage or disadvantage geographic, demographic, or partisan interests.

Candidacy

Felony Convictions Disclosures

S.L. 2007-369 (S 1218) adds new G.S. 163-106(a1) requiring all candidates for elective office to answer this question, to be found on a form provided by the State Board of Elections: "Have you ever been convicted of a felony?" A candidate who answers "Yes" must provide information regarding the conviction and information indicating that citizenship rights have been restored so that the candidate is in fact eligible for election. The form is a public record. Failure to answer the question results in cancellation of the candidacy. A false answer is a Class I felony. This requirement does not apply to candidates who are already required to file a statement of economic interest under the State Government Ethics Act in G.S. Chapter 138A.

Presidential Candidates on the Primary Ballot

G.S. 163-213.4 has provided that the State Board of Elections must place on the ballot in each party's Presidential Preference Primary the names of all individuals associated with that party who have become eligible for matching payments under the federal Presidential campaign financing law. S.L. 2007-391 amends the statute to replace that provision with a completely new one. Under the new provision, the chair of each political party provides to the State Board of Elections, by the first Tuesday in February of presidential election years, a list of its candidates to be placed on the ballot. The list is to include all candidates whose candidacies are generally advocated and recognized in the news media throughout the United States or North Carolina. An individual may file with the chair an affidavit stating without qualification that he or she is not a candidate; that name is to be omitted. The list is to be published by the State Board of Elections, and those names are to go on the ballot.

Campaign Finance

Public Financing for Campaigns for Three Statewide Executive Offices

S.L. 2007-540 (H 1517) enacts the Voter-Owned Elections Act (Article 22J of G.S. Chapter 163), which applies to elections for State Auditor, Superintendent of Public Instruction, and Commissioner of Insurance. The act creates the North Carolina Voter-Owned Elections Fund (the "Fund") and provides for public financing of campaign costs incurred by candidates who choose to participate.

Participation. An individual who wishes to become a candidate for one of these offices may choose whether to participate in public financing through the fund. To participate, the individual must not have raised or spent more than $20,000 for campaign expenditures between August 1 in the year before the election and the filing of the notice of intent to participate. The individual must file a notice of intent to participate and obtain contributions from at least 750 registered North Carolina voters as a demonstration of support. Each contribution must be in an amount between $10 and $200. A candidate who wishes to participate but raised or spent more than $20,000 before filing the notice of intent may pay the excess into the Fund and participate. A candidate may revoke his or her decision to participate within the time constraints set by the act.

Fundraising before the primary. From the filing of the notice of intent through the primary, a participating candidate may accept only qualifying contributions (that is, those between $10 and $200), contributions from North Carolina voters under $10, in-kind party contributions, and

contributions from the candidate's parents, children, brothers, and sisters, of up to $1,000 each. Total contributions in this period may not exceed 200 times the filing fee for the office.

Fundraising between the primary and the general election. After the primary, a participating candidate must cease all campaign-related fund-raising activities and may spend only funds provided from the Fund.

Amount to be distributed from the Fund. For the general election, a participating candidate receives an amount from the Fund that is the average amount of campaign-related expenditures made by all winning candidates for the office in the immediately preceding three general elections, with a minimum of $300,000. No funds are distributed in an uncontested general election. One-third is to be distributed within five days after the candidate is certified to appear on the general election ballot and the remainder is to be distributed on August 1 before the general election.

Possibility of distribution of additional amounts. Nonparticipating candidates who have a participating opponent (and entities making independent expenditures) must report within twenty-four hours when their expenditures reach a certain level—80 percent of what is known as the "trigger for matching funds." The amount of the "trigger" is different for a contested primary than for a contested general election. For a primary, the trigger equals the maximum qualifying contributions for a candidate—200 times the filing fee for the office. For a general election, the trigger is twice the regular amount to be distributed to a participating candidate. Once the nonparticipating candidate reaches 80 percent of the trigger, he or she must meet an expedited reporting schedule of contributions. When the trigger is reached, additional funds are made available to the participating candidate from the Fund. The matching funds equal the excess reported by the opponent over the trigger amount, up to certain limits.

Limitation on late contributions to nonparticipating candidate. A nonparticipating candidate with a participating opponent may not accept a contribution in the twenty-one days before a general election if that contribution would cause the candidate to exceed the trigger.

Other provisions. Participation is permitted for unaffiliated candidates and for new-party candidates. The State Board of Elections may assess civil penalties for violations of the act. The board is to prepare a voter guide to explain the functions of the offices involved and provide candidate information in races with participating candidates. The act appropriates $1 million for 2007–08 and $3,580,000 for 2008–09 from the General Fund to the State Board of Elections to implement the act.

Regulation of Candidate Legal Expense Funds

S.L. 2007-349 (H 1737) adds new Article 22M (Legal Expense Funds) to G.S. Chapter 163, effective January 2008. The new article regulates accounts established to assist a candidate or former candidate in pursuing or defending against a legal claim in a court or other forum. This regulation supplements a comprehensive set of statutory provisions regulating how money can go into and be spent from campaign finance accounts.

Formal establishment of fund. If a candidate receives contributions from anyone other than himself or herself or a spouse, parent, brother, or sister, to cover expenses of an existing legal action or to fund a potential legal action taken by or against the candidate, the candidate must establish a legal expense fund and appoint a treasurer, who must receive training from the State Board of Elections.

Reports regarding the fund. The treasurer must keep detailed accounts, current within seven days after making an expenditure or receiving a contribution, and file reports with the State Board of Elections. It is a Class I felony to make statements on the reports knowing them to be untrue. An organizational report is required, giving specific information on the fund, including account numbers. Quarterly reports are required to show, with respect to each contribution in excess of $50 to the fund, the contributor's name, mailing address, and principal and the amount of the contribution. Quarterly reports must also show, with respect to expenditures, the name and address of the payee, amount paid, purpose of payment, and date payment was made.

Requirements regarding contributions. All contributions in excess of $50 must be made by check, draft, money order, credit card charge, or other noncash payment subject to written verification. Each payment must contain a specific designation indicating to whom it is contributed. Contributions from a corporation, labor union, insurance company, professional association, or business entity are capped at $4,000 per calendar year.

Limitations on use of funds. Money from the legal expense fund may be used only for reasonable expenses actually incurred by the candidate or former candidate in a legal action or prospective legal action brought by or against the candidate in relation to the candidate's campaign for public office or holding of public office. Money from the legal expense fund may not be used for campaign expenditures.

Matching (Formerly "Rescue") Funds for Publicly Funded Judicial Campaigns

The North Carolina Public Campaign Financing Fund provides public funds to participating candidates for seats on the North Carolina Supreme Court and the Court of Appeals, in exchange for the agreement by those participating candidates to limit their fundraising and campaign spending in ways set out in the applicable statutes. The statutes specify the amount of funds that are to be available to participating candidates, and they provide for additional funds to be made available when funds are raised by a nonparticipating opponent through traditional fundraising, or when independent expenditures made in support of the opponent reach certain levels. These additional funds have been termed "rescue" funds.

S.L. 2007-510 (H 1828) amends G.S. 163-278.62, 163-278.66, 163-287.67, and 163-278.110 and several other sections of the campaign finance statutes to make two changes. First, it deletes the term "rescue" funds from the statutes and substitutes the term "matching" funds. Second, it provides that the trigger for matching funds includes not only expenditures beyond a certain level by the opposing candidate and independent expenditures made in support of the opponent, but also electioneering communications made in opposition to the participating candidate or in support of the opposing candidate. The term *electioneering communications* has the same meaning as in the campaign finance laws generally: a broadcast, cable, or satellite communication that refers to an identified candidate, is targeted at the relevant electorate, and is made within a certain number of days before the election. In this case, the time frame begins thirty days before absentee ballots become available for a primary and sixty days before absentee ballots become available for a general election.

The act provides that, in the case of electioneering communications, the State Board of Elections is to determine which candidate, if any, is entitled to matching funds, and matching funds are to be made available only if the communication is susceptible to no reasonable interpretation other than as an appeal to vote for or against a specific candidate. In making that determination, the State Board of Elections is to consider no evidence external to the communication itself.

Penalty for Intentionally Late Filings

G.S. 163-278.34(a) provides penalties for delinquency in filing required campaign finance reports. S.L. 2007-391 authorizes additional penalties if the State Board of Elections finds by clear and convincing evidence that the delinquency constitutes a willful attempt to conceal contributions or expenditures. The civil penalty may not exceed three times the amount of the concealed contributions or expenditures plus costs of investigation, assessment, and collection.

Identifying Purpose in Expenditure

The provisions of the campaign finance regulatory statutes apply differently to certain expenditures depending on whether or not the expenditures have as a major purpose "to support or oppose the nomination or election of one or more clearly defined candidates." G.S. 163-278.6(14)

has provided that an entity is presumed to have such a purpose in its expenditures during an election cycle if it contributes or expends more than $3,000 and that this presumption can be rebutted by a showing that the contributions and expenditures were not a major part of the activities of the organization. S.L. 2007-391 removes the presumption from the statute altogether.

Miscellaneous

Jury Lists

Under G.S. 163-82.11, the State Board of Elections periodically sends to the county jury commission of each county a list of all registered voters in the county, for use in preparing the lists of potential jurors. S.L. 2007-512 (H 943) amends the statute to provide that the list sent by the State Board of Elections is not to include any registered voter who has been inactive for eight years or more.

Felony to Help a Non-Citizen Register

S.L. 2007-391 amends G.S. 163-275 to make it a felony to instruct or coerce a person known not to be a citizen of the United States to register to vote or to vote.

New Misdemeanors in Connection with Voter Registration

G.S. 163-82.6 makes it a Class 2 misdemeanor for an individual (such as one on a voter registration drive) to fail to turn in a voter registration application after communicating to the person who fills it out that it will be turned in, or to sell a completed voter registration form or to condition its delivery on payment. S.L. 2007-391 amends the statute to add the following as Class 2 misdemeanors: (1) changing the information on another person's form before turning it in, (2) coercing a person into marking a party affiliation other than the one the person desires, and (3) offering to a person a form with the party registration premarked, unless the person requests so requests. The act makes a parallel change in G.S. 163-274.

Public Financing of Campaigns in Chapel Hill

S.L. 2007-222 (H 483), a local act applicable to the Town of Chapel Hill only, authorizes Chapel Hill to adopt a program that offers support for campaigns of candidates for elective office within the town, if the following conditions are met: (1) the candidates participating in the program must demonstrate public support and voluntarily accept fund-raising spending limitations as set out in the program; (2) the requirements of the program must meet the public purpose of free and fair elections and must not discriminate on the basis of race, creed, position on issues, incumbency, or party affiliation; (3) public funds are restricted to uses permitted by the State Board of Elections; and (4) unspent funds are returned to the town. The town may appropriate funds for candidate use consistent with the program. The act expires July 1, 2012.

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Elementary and Secondary Education

The General Assembly enacted no major changes in public school law in 2007. It continued to show its concern with the high dropout rate and with students and schools not performing as well as expected under two accountability programs: the state's ABCs Program and the federal No Child Left Behind Act. New programs and supplemental funds were targeted to students, schools, and school units that need extra assistance or resources.

Appropriations

Section 2.1 of the 2007 appropriations act [S.L. 2007-323 (H 1473)] appropriates $7.714 billion for 2007–08 and $7.708 billion for 2008–09 to the Department of Public Instruction (DPI). The act earmarks funds for familiar programs and groups such as ABCs bonuses, small and low-wealth school units, disadvantaged students, and programs to reduce the dropout rate and help students succeed in school.

Enrollment and Attendance

Kindergarten Entry Age

North Carolina has some of the youngest children in the country entering public kindergarten. Currently, a child who turns five on or before October 16 of the school year is automatically entitled to enroll. Based on the General Assembly's assumption that slightly older and more mature kindergartners will be more likely to succeed in school, S.L. 2007-173 (H 150) amends Section 115C-364 of the North Carolina General Statutes by pushing that date back to August 31. To give families time to plan for this change, the new age limit will not go into effect until the 2009–10 school year. Exceptions to the standard entry age for enrollment in G.S. 115C-364

remain the same, as do the age requirements for children with disabilities in Article 9 of G.S. Chapter 115C.

Students with Disabilities

G.S. 115C-366 identifies students who are entitled to enroll in a school administrative unit without payment of tuition. Students may enroll in a school unit where they are "domiciled," that is, living with a parent or guardian in a home the adult considers his or her primary home and in which the adult intends to remain. Students who are no longer minors may establish their own domicile. Students who fit into to the domicile exceptions in G.S. 115C-366 or G.S. 115C-366.3—such as homeless students—are also entitled to enroll.

A different standard formerly applied to students with disabilities. A student with a disability was entitled to enroll without payment of tuition wherever the student (or parent or guardian) *resided*—that is, happened to live at the time of enrollment. This standard allowed students with disabilities to enroll under circumstances in which students without disabilities could not automatically do so. For example, a student with a disability who resided with an aunt in a North Carolina school unit has had the right to enroll without paying tuition, even though the student's parents were domiciled in South Carolina and were fully capable of caring for the child. A student without a disability in the same situation has not had that right.

S.L. 2007-292 (H 18) amends several sections of Article 9 of G.S. Chapter 115C, including G.S. 115C-106.3, to apply the same standard to all children. It defines "residence" or "reside" to mean the place where a child with a disability is entitled to be enrolled in a North Carolina public school under G.S. 115C-366—the domicile standard.

To avoid disrupting a disabled child's free appropriate public education, this new standard does not apply to children with disabilities who were (1) enrolled in a particular school administrative unit on the last day of the 2006–07 school year or (2) were enrolled in and attending a school in a particular school unit on August 1, 2007, of the 2007–08 school year. These students may enroll in that school administrative unit for as long as they live in the unit and are continuously enrolled.

Children of Military Personnel

In response to the large military population in the state and the current overseas deployment of many military personnel, the General Assembly identified another group of children entitled to enroll in a local school unit without payment of tuition. S.L. 2007-283 (H 1357) amends G.S. 115C-366(a3) to allow a child to enroll in a school unit if he or she resides with an adult domiciled in the school unit because the child's parent or legal guardian is on active military duty and deployed out of the school unit in which the child resides. Evidence of the deployment must be provided to the school. This exception to the domicile requirement does not apply when the parent or guardian is participating in an active duty training period of less than thirty days.

Excused Absences for Pages

Children subject to the compulsory attendance law are expected to attend school unless they are out for a reason identified by the State Board of Education (State Board) as an excused absence. S.L. 2007-186 (H 1464) amends G.S. 115C-379, which makes the State Board responsible for formulating rules and regulations to enforce the compulsory attendance laws. The State Board now must adopt rules providing for excused absences from school for any student who serves as a legislative page or a governor's page.

Efforts to Improve Student Success and Reduce Dropouts

Suspended Students

G.S. 115C-391 allows a principal or the principal's delegate to suspend a student for ten days or less for a willful violation of the school board's policy regulating student conduct. Students serving these short-term suspensions have long had the right to take any quarterly, semester, or grading period examinations missed during the suspension. S.L. 2007-466 (H 1739) amends G.S. 115C-391 to give students two additional rights to help them keep up with their schoolwork. Students now may take textbooks home and may inquire about homework assignments for the duration of the suspension. Before this change in the law, individual school units, schools, or teachers were free to offer students these same options. Now all students in North Carolina public schools have a statutory right to them. (Other provisions of S.L. 2007-466 are discussed below in the section on "School Board Responsibilities.")

Dropout Prevention

Section 7.32 of S.L. 2007-323 describes the state's dropout rate as "unacceptable" and notes that in 2005–06 North Carolina's schools recorded 22,180 dropout events—a nearly 10 percent increase over 2004–05 and the highest number since 1999–2000. Large school administrative units accounted for a disproportionate share of the increase, and black male students accounted for a disproportionate share of the overall increase. The General Assembly, recognizing that differing local needs and resources require development of locally generated responses to this situation, enacted new Section 7.32. Its provisions "focus attention and resources on innovative programs and initiatives that succeed in keeping students in school when other conflicting factors are pushing them to drop out before they are prepared to further their postsecondary education or enter the workforce."

Funds for dropout prevention grants will be available for local initiatives. A new fifteen-member Committee on Dropout Prevention will determine which school units, schools, agencies, and nonprofits will receive dropout prevention grants; the amount of each grant (maximum of $150,000); and eligible uses of grant funds. Grants will be provided to innovative programs and initiatives that (1) target students at risk of dropping out; (2) demonstrate the potential to become effective, sustainable, and coordinated dropout prevention and re-entry programs in middle and high schools; and (3) serve as effective models for other programs. Programs and initiatives are to be based on "best practices" for preventing dropouts or increasing the high school completion rate of students who have already dropped out. Grants must be distributed geographically throughout the state.

Section 7.32 also creates the sixteen-member Joint Legislative Commission on Dropout Prevention and High School Graduation. The commission is assigned specific responsibilities, including:

- evaluating initiatives and programs (including those implemented through the grants);
- reviewing research on factors related to student success;
- studying the emergence of major middle and high school reform efforts; and
- examining strategies, programs, and support services that should be provided if the compulsory school attendance age is raised.

The commission is also authorized to study any other issue it considers relevant and appropriate.

ROPE Scholars Program

Results of accountability programs and a high dropout rate have highlighted the need for additional assistance to some students and some schools. In a new effort to provide that help, S.L. 2007-277 (S 1030) directs the State Board, in cooperation with the University of North Carolina (UNC) Board of Governors and the State Board of Community Colleges, to develop a framework for the Reaching One's Potential for Excellence (ROPE) Program. Its purpose is to

strengthen middle grades education and thereby reduce the high school dropout rate, increase high school and college graduation rates, and decrease the need for remediation in postsecondary educational institutions.

The program is intended to accomplish five goals:

1. Reduce class size to one teacher for every seventeen students
2. Provide annual salary incentives of up to $5,000 to teachers certified in any high-need subject or to support personnel
3. Provide a coordinator position at each participating school to assist in community and parental support
4. Encourage participating students to meet specified academic standards and take certain standardized tests
5. Provide scholarships to students who are successful participants in the program

The State Board must use a competitive process to select three school units, including one urban and one rural unit, from different geographic areas to participate in a pilot program that will begin with the 2009–10 school year. The State Board also must develop a process to evaluate the program's effectiveness.

High-Need Schools

In some instances it is not only individual students who need additional assistance and support but also schools themselves. S.L. 2007-445 (S 1479) is designed to provide support to "high-need" schools—schools so designated by the State Board based on criteria related to teacher turnover, student performance, and the percentage of students eligible for free or reduced-price lunches. To help these schools, beginning with the 2008–09 school year, teachers certified by the National Board for Professional Teaching Standards (NBPTS) who serve as mentors, literacy coaches, or in other nonadministrative instructional leadership positions at these schools will retain the 12 percent salary increment they earned by NBPTS certification. (G.S. 115C-296.2 would otherwise prohibit payment of this increment.) In addition, National Board-certified teachers, teachers of the year, and other categories of accomplished teachers designated by the State Board must be given "academic freedom at these schools to use research-based practices in the classroom that go beyond the standard course of study."[1] The State Board must consider strategies—including additional teacher positions, incentives to National Board–certified teachers, and employment of teachers for eleven months—to ensure that these schools have the staff and support they need.

No-Cost Remediation

G.S. 115C-105.41 prohibits school boards from charging students at risk for academic failure tuition or fees for activities designed to help them improve their academic performance. Section 7.26 of S.L. 2007-323 requires local school units to formally notify at-risk students and their parents that school units may not charge for the student's participation in any intervention activities or practices or for transportation to the activity. In addition, school units must formally communicate that tuition and fees may not be charged for summer school courses required for remediation or for meeting graduation requirements.

Learn and Earn Online Program

The Learn and Earn Online Program will allow high school students to enroll in college courses through the University of North Carolina or the community colleges to qualify for college

1. This provision is striking in that it creates a statutory right to academic freedom for a small set of teachers. Courts have held that teachers in North Carolina have no First Amendment right to academic freedom (that is, to participate in decisions about the development and means of delivery of the curriculum). Lee v. York County Sch. Div., 484 F.3d 687 (4th Cir. 2007); Boring v. Buncombe County Bd. of Educ., 136 F.3d 364 (4th Cir. 1998) (en banc), *cert. denied*, 525 U.S. 813 (1998).

credit. Section 7.27 of S.L. 2007-323 details the State Board's responsibilities for the program and defines acceptable uses of program funds. It also enacts G.S. 115D-1.2 to allow public school students in grades 9, 10, 11, or 12 who are participating in the program to enroll in online courses through a community college and to earn college credit. Students may enroll in any of the program's courses regardless of the college service area in which they reside.

School Connectivity Initiative

Section 7.28 of S.L. 2007-323 requires that funds earmarked for enhancing schools' technology infrastructure must be used to implement a State Board–approved plan to support the use of technology for teaching and learning in the classroom. The State Board must contract with an entity to serve as an administrator of the School Connectivity Initiative and may use up to $1 million to establish eight regional positions to assist local school units in implementing the initiative or may contract for such services regionally.

The Education Cabinet, defined in G.S. 116C-1, has new responsibilities; they include developing a plan to coordinate E-learning activities at all levels of education and establishing a clear purpose and goals for the North Carolina Virtual Public School.

School Board Responsibilities and Authority

Tobacco Use

Tobacco has been a significant part of North Carolina's history and economic growth, as well as a product enjoyed by many individuals. Nonetheless, in recent decades new knowledge about the health effects of tobacco have led to a dramatic shift in laws regulating its use. S.L. 2007-236 (S 1086) is the latest, and perhaps final, step in banning tobacco use on public school property and at school activities.

Every local board of education must adopt, implement, and enforce a written policy prohibiting the use of any tobacco product (not just cigarettes) at all times by any person in school buildings, in school facilities, on school campuses, or in or on any other property owned or operated by the school board. All policies must prohibit the use of all tobacco products by persons attending a school-sponsored event at any location when in the presence of students or school personnel or in any area where smoking is otherwise prohibited by law. Policies must provide for adequate notice to students, parents, school personnel, and the public and must require school personnel to enforce the policy. Signs prohibiting tobacco use on school property must be posted. School boards have until August 1, 2008, to meet the act's requirements.

The North Carolina Health and Wellness Trust Fund Commission must assist local school boards, including providing information regarding smoking cessation and prevention resources.

S.L. 2007-236 is not inconsistent with S.L. 2007-193 (H 24) (discussed in Chapter 14, "Health"), which deals with smoking in state buildings and restrictions on smoking imposed by local governments.

Student Reassignment Appeals

G.S. 115C-369 gives parents who are dissatisfied with their child's assignment to a particular school a right to appeal that assignment to the local board of education. The board is responsible for making the final determination on that appeal. S.L. 2007-501 (H 488) amends G.S. 115C-369 to provide the board with procedural options to follow before reaching its decision. The board may establish initial hearings prior to its decisions, either by using a hearing panel composed of at least two board members or by designating a hearing officer to hear appeals for fact-finding and make a recommendation; or the board may use both of these methods. If both are designated, the parents select the entity to hear the appeal. A hearing panel must submit a recommendation to the board,

and a hearing officer must submit both recommended findings of fact and a recommendation for final action.

Parents appealing an assignment are entitled to a prompt and fair hearing. Once the board has reached a decision, it must give the parents notice of the decision by mail, telephone, telefax, email, or any other method designed to achieve notice. The former version of the law required that notice be delivered by registered or certified mail.

Notice of Suspension

S.L. 2007-466 (H 1739) changes the notice requirements for a student suspension or expulsion. When a student is suspended for no more than ten days, the principal or the principal's delegate must give the student's parent or guardian notice of the suspension and of the student's rights. Notice may be provided by telephone, telefax, email, or any other method reasonably designed to achieve actual notice. When a student is suspended for more than ten days, or is expelled, the school board must notify the parent or guardian of the disciplinary action and of the student's rights. Notice may be delivered by any of the methods listed above or by certified mail.

Educational Services and Homebound Instruction for Students with Disabilities

Students with disabilities are entitled to a free appropriate education, which is to be delivered in the least restrictive environment. Students are entitled to their own individualized education program (IEP), which sets out the special education and related services the school will provide. Student placements range from the regular classrooms to special classes to homebound instruction and, occasionally, to a residential school setting. In certain limited circumstances a student's placement may be changed under the discipline procedures of the federal Individuals with Disabilities Education Act. For some students the placement may be changed to homebound instruction. S.L. 2007-429 (H 20) defines "homebound instruction" as educational services provided to a student outside the school setting.

S.L. 2007-425 (H 14) amends G.S. 115C-107.7 by adding new requirements when such a change in placement occurs. A local educational agency may assign a student to homebound instruction because of discipline problems only after the student's IEP team—which develops the child's IEP and includes the student, teachers and parents, and others familiar with the student—determines that homebound placement is the least restrictive alternative environment for that student. The team must then meet to identify the educational services that will be provided. In addition, the head of the IEP team must evaluate the continued appropriateness of homebound instruction on a monthly basis.

S.L. 2007-429 amends G.S. 115C-106.3 to define "educational services" for children with disabilities as (1) the necessary instructional hours per week in the form and format determined by the child's IEP team and consistent with state and federal law, (2) related services specified in the IEP, and (3) behavior intervention services designed to prevent a recurrence of the behavior violation that caused a disciplinary change of placement.

Disability History and Awareness

S.L. 2007-274 (S 753) enacts new G.S. 103-11 designating every October as Disability History and Awareness Month in North Carolina. An amendment to G.S. 115C-81 requires local boards of education to provide instruction on disability, people with disabilities, and the disability rights movement in conjunction with Disability History and Awareness Month. The instruction is to be incorporated into the standard curriculum. Local school boards are encouraged to incorporate individuals with disabilities or knowledgeable guest speakers from the disability community into the delivery of this instruction.

Information on Vaccines

Local school boards often provide information to parents on topics outside the educational program. S.L. 2007-59 (S 260) amends G.S. 115C-47 to make it a duty of local boards to provide information concerning cervical cancer, cervical dysplasia, human papillomavirus, and the vaccines available to prevent these diseases. The information must explain the causes and symptoms of the diseases, their means of transmission, and the use of vaccinations, including their benefits and possible side effects. The school board must also identify places where parents may obtain additional information and vaccinations. Information must be provided at the beginning of each school year to parents and guardians of children entering grades 5–12.

S.L. 2007-59 makes similar amendments to G.S. 115C-238.29F (charter schools), G.S. 115C-548 (private church schools and schools of religious charter), G.S. 115C-556 (qualified nonpublic schools), and G.S. 115C-565 (home schools) to ensure that this information is provided to parents and guardians of students enrolled in these schools.

The Division of Public Health in the Department of Health and Human Services must make available sample educational materials that can be provided to parents. Materials must be provided to local school units for public schools other than charter schools; to DPI for charter schools; and to the Division of Nonpublic Education, Department of Administration, for nonpublic schools (including home schools).

Information on Lawful Abandonment of a Baby

G.S. 7B-500 sets out the manner in which a parent may lawfully abandon a newborn baby with a responsible person. S.L. 2007-126 (H 485) amends G.S. 115C-47 to require local school boards to adopt policies ensuring that students in grades 9–12 receive information annually on the lawful abandonment of a newborn. These policies must be adopted no later than August 1, 2008.

S.L. 2007-126 makes similar amendments to G.S. 115C-238.29F (charter schools), G.S. 115C-548 (private church schools and schools of religious charter), G.S. 115C-556 (qualified nonpublic schools), and G.S. 115C-565 (home schools) to ensure that this information is provided to students enrolled in these schools.

American Sign Language

S.L. 2007-154 (H 915) amends G.S. 115C-81.3 to direct the State Board to encourage local boards of education to offer American Sign Language (ASL) in high schools as a modern foreign language. The State Board must adopt and implement standards for the certification of ASL teachers and for teacher preparation programs that prepare students for certification as ASL teachers.

Food Service Equipment Contracts

Local school boards have long had the authority to enter lease purchase or installment purchase contracts for purposes listed in G.S. 115C-528. S.L. 2007-519 (H 705) amends that statute by adding food service equipment to that list.

Miscellaneous

Removal of School Board Members

S.L. 2007-498 (H 349) repeals G.S. 115C-39(a), which required a cumbersome procedure for removing a local board of education member that involved both the State Board and the local board.

School Funding Disputes

The School Budget and Fiscal Control Act (Article 31 of G.S. Chapter 115C) has a procedure for resolving funding disputes between a board of county commissioners and a local board of education. This procedure may be used by the school board to challenge a county's appropriation to the school capital outlay fund, the current expense fund, or both.

The statute calls for a joint meeting and mediation as means to resolve the dispute. If no agreement is reached, the school board may file an action in superior court, and the court's decision can be appealed. S.L. 2007-92 (H 1519) amends the provisions of G.S. 115C-431 related to these appeals. Notice of appeal must be given in writing within ten days after entry of judgment. Once the appeal is pending, the conclusion of the school or fiscal year may not be deemed to resolve the issue. Any final judgment will be legally binding on the parties at the conclusion of the appellate process. If the school board prevails and the county pays it a final judgment, the county may not, as a way of offsetting the payment, consider the payment a prepayment or use it to deny or reduce appropriations to the school unit in fiscal years following the one at issue.

These changes delete provisions relating to a county's appropriations to the school board's current expense fund during the appeal and solve the problem of mootness in these appeals.[2]

Child Nutrition Standards

G.S. 115C-264.3 makes the State Board responsible for setting nutrition standards in schools. These standards are to be implemented first in elementary schools. Section 7.36A of S.L. 2007-323 amends the statute to give elementary schools an additional year to meet a "basic level" by postponing the date for compliance from the end of the 2007–08 school year to the end of the 2008–09 school year.

Diesel Fuel for School Buses

According to S.L. 2007-465 (H 1912) diesel emissions are associated with severe and multiple health risks to the citizens of North Carolina. The United States Environmental Protection Agency (EPA) has issued new fuel and engine emission standards that will significantly reduce the harmful particulate matter in diesel fuel. New technology that makes possible 90 percent reductions from new engines can be retrofitted onto existing engines.

S.L. 2007-465 directs the Department of Environment and Natural Resources, in consultation with DPI, the Department of Transportation, and stakeholders, to develop a pilot program to award grants to retrofit school buses to reduce diesel emissions in any county located in an area designated by the EPA as "nonattainment or maintenance for ozone or particulate matter." Local school boards in these areas may apply for a grant for bus retrofitting.

S.L. 2007-423 (S 1452) amends G.S. 115C-240, G.S. 115C-249, and G.S. 115C-253 to require that public school buses or other vehicles for student transportation capable of operating on diesel fuel be capable of operating on diesel fuel with a minimum biodiesel concentration of B-20, as defined in G.S. 143-58.4. These requirements apply to vehicles transferred or purchased on or after June 1, 2008.

School Finance Officer Fidelity Bond

S.L. 2007-85 (S 772) raises the minimum fidelity bond required of school finance officers from $20,000 to $50,000 and removes the maximum amount of the bond, which was $250,000.

2. *See* Cumberland County Bd. of Educ. v. Cumberland County Bd. of Comm'rs, 113 N.C. App. 164, 438 S.E.2d 424 (1993) (appeal under G.S. 115C-431 was moot because the school year for which funds were disputed had ended).

Property Subject to a Capital Lease

S.L. 2007-477 (H 63) amends G.S. 105-275 to exclude from property tax any real or personal property that is subject to a capital lease with a school administrative unit pursuant to G.S. 115C-531.

Construction Plan Review Process

Fire safety is an obvious concern in public school construction. Plans for buildings over a certain size that will be used by school units must be approved for safety from fire. S.L. 2007-303 (H 735) amends G.S. 58-31-40(b) to require approval of the plans by the Commissioner of Insurance if the building comprises 20,000 square feet or more. The former standard was 10,000 square feet.

False Report of Mass Violence

A report of potential mass violence at school is a serious matter and requires a major response. A false report may lead to fear, confusion, and a significant waste of resources. S.L. 2007-196 (H 1347) enacts new G.S. 14-277.5 to make it a Class H felony to communicate a report—knowing or having reason to know that the report is false—that an act of mass violence will occur on educational property or at a curricular or extracurricular school-sponsored event. A court may order a person convicted under this statute to pay restitution, including the costs and consequential damages resulting from disruption of normal activities by the false report.

Surplus Property

S.L. 2007-430 (H 1060) authorizes cities and counties to donate surplus personal property to another governmental unit, including a local board of education.

Medicaid Costs Phased Out for Counties

Section 10.36 of S.L. 2007-323 phases out the counties' share of Medicaid costs over the next three years. This change is discussed in detail in Chapter 27, "Social Services." Although the act says nothing about using the additional funds that counties will have available for any particular purpose, school boards across the state view this change as an opportunity to get increased funding for school construction.

Local Option County Taxes

Counties continue to need more revenue, and the General Assembly has given them two new options for raising funds. Subject to approval by the voters of the county, a county may use either of these options, but not both. Section 31.17 of S.L. 2007-323 enacts two new articles in G.S. Chapter 105. Article 60 is the County Land Transfer Tax Act. This act authorizes counties that follow its procedures to levy a transfer tax when title to real property in the county is transferred. The maximum tax rate is 0.4 percent of the value of the real property. New Article 46, the One-Quarter Cent County Sales and Use Tax, authorizes counties that meet the act's requirements and follow its procedures to increase the local sales and use tax by 0.25 percent. A more detailed discussion of these options is in Chapter 18, "Local Taxes and Tax Collection." The use of the additional tax revenue is not specified. School boards may consider it a potential source of funds from counties, especially for school construction needs.

School Employment

Salaries

S.L. 2007-323 sets provisions for the salaries of teachers and school administrators. For teachers the act sets a salary schedule for 2007–08 that ranges from $29,750 for a ten-month year for new teachers holding an "A" certificate to $64,160 for teachers with thirty-one or more years of experience, an "M" certificate, and national certification. For school-based administrators (principals and assistant principals), the ten-month pay range is from $37,300 for a beginning assistant principal to $82,680 for a principal in the largest category of schools with more than forty years of experience. Of course, many school-based administrators are employed not for ten but for eleven or twelve months, which adds a proportionate amount to their salaries.

In addition, beginning teachers on the first step of the salary range will receive a one-time bonus payment of $250 at the end of the school year.

For central office administrators (assistant superintendents, associate superintendents, directors/coordinators, supervisors, and finance officers), the ten-month range is $32,170 to $81,130, and many are employed for more than ten months. For superintendents, the twelve-month range is $55,128 to $130,752.

Noncertified public school employees paid with state funds will recieve a salary increase of 4 percent.

Funds provided in the act allow payment of incentive awards under the ABCs of Public Education program up to the following amounts: $1,500 per teacher and $500 per teacher assistant in schools that achieve higher than expected improvements and $750 per teacher and $375 per teacher assistant in schools that meet expectations.

Alternative Salary Plan Pilots

Teachers throughout the state are paid salaries from state funds that are set by the state salary schedule. The state-paid salary of an individual teacher is determined, according to the schedule, by the teacher's years of service and educational level. Most school administrative units add small amounts to teachers' salaries through local supplements.

S.L. 2007-453 (H 966) directs the State Board of Education to establish a pilot program, with up to five participating school administrative units, for the development of alternative teacher salary plans. Instead of the lockstep structure of the salary schedule, teachers would be rewarded through performance pay plans or paid extra for teaching in positions that are hard to fill, as in particular subject areas. The goal is to improve student performance through differentiated teacher pay.

To participate in the pilot, a local school administrative unit must submit a business plan detailing, among other things, the ways in which the alternative plan will accomplish improvements in student performance, the structure of the plan, the laws or other regulations that must be waived to implement the plan, and relevant benchmarks and timelines.

Before submitting an application to participate, the school administrative unit must conduct a verifiable secret ballot among all teachers. A majority of the teachers in schools that would participate in the plan must vote to approve participation.

The State Board is empowered to grant waivers of laws and other regulations that are necessary to implement approved plans. The board and the Department of Public Instruction are to report to the Joint Legislative Education Oversight Committee of the General Assembly by June 30, 2010, regarding the effectiveness and performance of all pilots.

Certification Renewal Requirements

All teachers, in order to keep their certificates in current status, must complete professional development activities that earn renewal credits within specified periods of time throughout their teaching careers. S.L. 2007-409 (S 1292) adds a requirement that three of the credits in every five-year renewal cycle must be in a teacher's academic subject area.

Lifetime Teaching Certification

G.S. 115C-296(b) provides that initial teacher certificates are for three years, and subsequent certificates are for periods of five years, renewed throughout a teacher's career. S.L. 2007-478 (H 1308) adds to the statute a provision that after fifty years of teaching, a teacher receives a lifetime certificate.

Community College Lateral Entry Program

Through lateral entry, an individual with a bachelor's degree from an accredited institution of higher education may begin teaching without a regular certificate and earn a certificate by meeting certain academic requirements while teaching. G.S. 115C-296(c1) permits the community college system to provide the academic offerings needed to meet the requirements. The statute formerly provided that lateral entry teachers participating in the community college program must, in addition to holding a bachelor's degree, (1) have completed the bachelor's degree at least five years previously and (2) be currently employed as a lateral entry teacher in a school unit. S.L. 2007-166 (H 583) removes both of these requirements, leaving only the requirement of a bachelor's degree.

Pilot Lateral Entry Certification Programs

As described in the paragraph above, individuals may begin teaching without a regular certificate and earn a certificate by meeting certain academic requirements while teaching. Those academic requirements are met through programs approved by the State Board of Education. S.L. 2007-376 (S 1115) authorizes the State Board to approve pilots for "innovative" programs for certification of lateral entry teachers, to be operated by a school administrative unit, a community college, a college, or a university. The statute does not specify requirements for the pilot programs, but it does provide that if a teacher leaves a unit with an approved program before completing the program and is hired by another unit in the state, the teacher is to receive credit for work completed in the program. The State Board is to report to the Joint Legislative Education Oversight Committee of the General Assembly by October 15, 2010, regarding the effectiveness of the pilot programs.

Accumulation and Use of Teacher Personal Leave

G.S. 115C-302.1(d) authorizes teachers to earn personal leave at a rate of five days a school year. S.L. 2007-378 (S 914) amends the statute to make some changes in the way teachers' personal leave is accumulated and stored. Formerly, personal leave could be accumulated to a maximum of five days, after which further accumulation was forfeited. Now, accumulated personal leave of more than five days converts to sick leave. Formerly, if a teacher requested personal leave at least five days in advance, no inquiry as to the purpose of the request could be made. Now, if the request is made at least five days in advance, not only may no inquiry be made but the request must be automatically granted, subject to the availability of a substitute teacher. A request for personal leave on a day scheduled for state testing, however, must be approved by the principal.

Access to Personnel Records

S.L. 2007-508 (S 1546) amends G.S. 115C-320, which specifies what information in a school employee's personnel file is public. The statute has provided that salaries are public information. The new language makes it clear that the term *salary* includes benefits, incentives, bonuses, and deferred and other forms of compensation paid by the school system—not just straight pay. The act also specifies that the terms of any employment contract, "whether written or oral, past or current," are public records.

In addition, S.L. 2007-192 (H 550) amends G.S. 115C-321, adding three new subsections; they specify that information in a school employee's personnel file that is relevant to possible

criminal conduct may be made available to law enforcement personnel and the district attorney investigating a principal's report of certain criminal acts on campus or reports by anyone regarding arson, theft, embezzlement, or destruction of school system property. An employee must be given written notice five working days before the disclosure to allow time to apply to the court for review of the disclosure decision. Statements or admissions by the employee that are contained in the file are not admissible in any subsequent criminal proceeding.

Retired Teachers Returning to Teach

Under the provisions of the Teachers and State Employees' Retirement System, covered employees may retire, begin to draw retirement benefits, and then return to work, drawing both salary and retirement benefits. For most covered employees, retirement benefits for a retiree who returns to work are suspended at the point in the year when the retiree's earnings reach 50 percent of his or her pre-retirement annual salary. This limitation is commonly referred to as the "salary cap." Faced with severe teacher shortages, the General Assembly, beginning in 1998, amended provisions of the retirement statutes as they related to teachers to permit retired teachers, under certain circumstances, to return to teaching and collect full salary for teaching while drawing full retirement benefits—that is, the salary cap did not apply to retired teachers returning to teach.

S.L. 2007-326 (H 956) amends G.S. 135-3(8)c (in the retirement system statutes) and G.S. 115C-325(a)(5a) (in the public school statutes) to provide that, for individuals retiring on October 1, 2007, or later, the opportunity to return to teaching outside the salary cap applies only to teachers who have retired at age sixty-five or greater, at age sixty or greater with twenty-five years of service, or at any age with thirty years of service.

Administrator Preparation

S.L. 2007-517 (H 536) enacts new G.S. 115C-284(c2), directing the State Board of Education to adopt new standards for school administrator preparation programs in North Carolina universities. Such standards must mandate, among other things, that programs require all degree candidates to complete a year-long internship and that the university have written agreements with local school administrative units to govern their shared responsibility for the recruitment and preparation of school administrators and, once employed, for their success.

Service on the Professional Teaching Standards Commission

G.S. 115C-295.1 provided that members of the Professional Teaching Standards Commission serve two-year terms. S.L. 2007-174 (H 1449) extends the terms to four years and directs that terms be staggered so that a quarter of the terms on the commission end each year. The act specifies the length of terms for future new appointments that will result in staggered four-year terms.

Studies

Public School Funding Formulas

Section 7.31 of S.L. 2007-323 creates the Joint Legislative Study Committee on Public School Funding Formulas. The committee is charged with studying the funding formulas for children with disabilities, children with limited English proficiency, academically or intellectually gifted students, and disadvantaged students, and for at-risk student services/alternative schools, improvements in student accountability, low-wealth and small counties, and pupil transportation. The committee must also study the State Board's model for projecting average daily membership.

Services for High School Students with Disabilities

S.L. 2007-295 (H 17) directs DPI to identify the models currently being used to deliver educational and other services to children with disabilities in the state's high schools. DPI must consider the efficacy of these models and review the research to identify best–practice models used in other states.

Teacher Preparation

S.L. 2007-284 (H 26) directs the UNC Board of Governors, in consultation with the State Board, to study how effectively current teacher education programs prepare teachers for educating students with disabilities.

Textbook Costs

S.L. 2007-275 (H 232) directs the Joint Legislative Education Oversight Committee to study strategies for recovering the costs related to damaged and lost textbooks.

Bus Passenger Safety Restraints

S.L. 2007-191 (S 812) directs the North Carolina Child Fatality Task Force to study and analyze the feasibility of using safety restraints for passengers on school buses and school activity buses.

Bills Not Passed

Among the controversial bills that did not pass were:

- House Bill 1740, creating an independent taxing authority for boards of education,
- House Bill 1366, mandating school board policies prohibiting bullying or harassing behavior,
- House Bill 359, allowing local flexibility for school calendars,
- Senate Bill 808, allowing sales and use tax exemption for local school administrative units, and
- House Bill 30, raising the cap on the number of charter schools.

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Emergency Management

Although the creation of the Joint Study Committee on Emergency Preparedness and Disaster Management Recovery in 2006 was one of the most significant developments in this area, the committee did not make any recommendations for legislative action during the 2007 session. While in the past the General Assembly gave a significant amount of attention to hurricane recovery and disaster preparedness and response, much of the legislation enacted in 2007 focused on emergency response systems and emergency personnel.

Highlights in emergency management legislation included a series of changes to the administration of the 911 system, expanding authority to conduct background reviews on emergency medical services (EMS) personnel and other emergency personnel, consolidation of regulations on ATV use by municipal employees, and exceptions to oversized vehicle laws for fire-fighting vehicles.

Emergency Services

Universal 911 System

Under G.S. Chapter 62A the Wireless 911 Board administers a statewide wireless enhanced 911 system and local governments administer wireline enhanced 911 systems for their local jurisdictions. A desire to consolidate these systems, establish a uniform service charge, and create a more level playing field for competing voice communication technologies resulted in S.L. 2007-383 (H 1755), which repeals Articles 1 (Public Safety Telephone Service) and 2 (Wireless Telephone Service) and enacts new Article 3 of G.S. Chapter 62A. Effective January 1, 2008, the new article establishes the seventeen-member 911 Board (formerly known as the Wireless 911 Board), which is authorized to develop a comprehensive state plan for communicating enhanced 911 call information. The act imposes a uniform monthly service charge of 70 cents on all voice communication service connections capable of accessing the 911 system.

The 911 Board is authorized to administer the charge and must reduce the rate if the charge generates more revenue than is needed. The charge does not become effective for prepaid wireless telephone service until 2009; the Joint Legislative Utility Review Committee is directed to determine the best method for collecting the charge from prepaid wireless telephone service subscribers and report to the 2008 legislative session. Previously, a charge was levied only on wireless company customers; other voice communications service provider customers may have paid different charges to local governments, or may not have paid any charges. The proceeds of the new service charge are credited to the 911 Fund to be used for administrative expenses, to reimburse Commercial Mobile Radio Service (CMRS) providers for their costs of complying with the enhanced 911 service requirements, for monthly distributions to public safety answering points (PSAPs) for specified purposes, and for grants to PSAPs in rural and high-cost areas.

S.L. 2007-383 also enacts new G.S. 14-111.14, making it a Class 3 misdemeanor to access the 911 system for a purpose other than reporting an emergency and a Class 1 misdemeanor to knowingly access the 911 system to avoid a charge of more than $100 for voice communications service.

Hospital Use as Emergency Shelters

S.L. 2007-444 (H 772) amends several statutes concerning hospital licensure, criminal background checks of mental health facility employees, and adult care homes. Article 5 of G.S. Chapter 131E contains the Hospital Licensure Act governing hospital licensing requirements that provide for the development, establishment, and enforcement of patient care and treatment standards in hospitals. S.L. 2007-444 enacts new G.S. 131E-84 allowing the Division of Health Services Regulation to temporarily waive any of the North Carolina Medical Care Commission's rules during a declared disaster or emergency as necessary to allow a hospital to provide temporary shelter and services requested by an emergency management agency. The Division may also waive rules during a declared disaster or emergency at the request of an emergency management agency. The statute allows the Division to rescind such a waiver and requires emergency management agencies to provide notice of requests for temporary shelter or services. The Division is authorized to identify rules that may need to be waived upon the declaration of a disaster or emergency in advance of such a declaration taking place. A more detailed discussion of the remaining provisions of S.L. 2007-444 can be found in Chapter 14, "Health."

Prescription Refills During a State of Emergency or Disaster

S.L. 2007-133 (H 748) enacts new G.S. 58-3-228 requiring health benefit plans, the Teachers' and State Employee's Comprehensive Major Medical Plan, other optional plans or program, and stand-alone prescription plans to waive time restrictions on filling or refilling prescriptions for one refill for individuals living in counties in which a declared state of disaster or emergency has been declared. These provisions are triggered when the Commissioner of Insurance issues an advisory bulletin notifying insurance carriers of a declared state of emergency or declared state of disaster and the time period for the refill time waiver may be extended by the Commissioner in thirty day increments.

Emergency Data Sharing

G.S. 130A-480 requires the State Health Director to establish a hospital emergency department surveillance program in order to detect and investigate public health threats from terrorist incidents or from an epidemic or infectious, communicable, or other disease. S.L. 2007-8 (H 123) amends G.S. 130A-480 to allow the State Health Director to share with the Centers for Disease Control and Prevention (CDC) this emergency department data that is reported by hospitals. The Department of Health and Human Services (DHHS) is required to enter into a confidentiality agreement with the CDC to protect the confidentiality of the data that CDC receives.

Emergency Personnel Criminal Background Review

Criminal Background Review

Effective October 1, 2007, S.L. 2007-411 (H 535) amends G.S. 131E-159 to require an individual who holds, is applying for, or is renewing EMS credentials to undergo a criminal background review by DHHS. The Emergency Medical Services Disciplinary Committee, at the request of DHHS, must review an individual's background information and make a determination as to the individual's eligibility. The Medical Care Commission is required to adopt rules for implementation including rules to establish a fee for the costs of obtaining the background information. S.L. 2007-411 also enacts new G.S. 114-19.21 authorizing the Department of Justice to provide DHHS with requested background information for individuals holding, applying for, or renewing EMS credentials.

Authority to Request Criminal Background Reviews

S.L. 2007-479 (H 1322) amends G.S. 114-119.12 to authorize a local fire chief, a county fire marshal, or an emergency services director to request from the Department of Justice the criminal history of a person applying for a paid or volunteer position with a fire department or an emergency medical service. Prior law authorized only requests for the criminal history of individuals applying for positions with a fire department in a local government and required the request to be made by the Homeland Security director or by the local law enforcement agency if no director was designated.

Transportation in Emergency Situations

All-Terrain Vehicles

Effective October 1, 2007, S.L. 2007-433 (H 767) enacts new G.S. 20-171.23 allowing law enforcement officers and fire, rescue, and emergency medical services personnel to operate all-terrain vehicles (ATVs) that are owned or leased by the department or agency or under the direct control of the incident commander on (1) public highways where the speed limit is 35 mph or less and (2) at higher speeds on access highways in order to travel from a speed zone to an adjacent speed zone where the speed limit is 35 mph or less.

S.L. 2007-433 also enacts new G.S. 20-171.24 providing the same authority to county and municipal employees in specified towns, cities, and counties. Most of the local governments to which the new statute applies previously had the same authority to use ATVs pursuant to various local acts and G.S. 20-114.3, which were repealed by S.L. 2007-433. The only newly included municipalities are Ansonville, Davidson, Franklin, Murphy, and Sylva.

Vehicle Weight and Size Exemption

G.S. 20-118 sets limitations on the size and weight of vehicles operating on the state's highways. The statute includes an exemption for vehicles owned by a municipality or rural fire department and designed specifically for fire fighting. S.L. 2007-290 (H 1321) enacts new G.S. 20-118.4 exempting from the size and weight restrictions certain oversize vehicles owned and operated by the state, a local government, or a cooperating federal agency when the vehicle is (1) responding to a fire under the authority of a forest ranger, (2) responding to a county's request for forest protection, or (3) responding to a request for assistance under a state of emergency or a declared disaster.

New G.S. 20-118.4 also authorizes the Department of Transportation (DOT) to issue annual or single oversize or overweight vehicle permits for commercial vehicles responding to a fire or to

a request for assistance from a person authorized to direct emergency operations. The act amends G.S. 21-119 to authorize DOT to issue a single trip overweight and oversize permit for a vehicle responding to an emergency event that is a result of a disaster as determined by the Secretary of Crime Control and Public Safety or the Secretary of Transportation.

Emergency Access to Gated Communities

Effective December 1, 2007, S.L. 2007-455 (H 976) enacts new G.S. 20-158.3 requiring gated communities to provide emergency service vehicles immediate access to controlled access systems, except where pre-empted by federal law. The definition of public vehicular area in G.S. 20-4.01 is also amended to specifically include roads in or leading to a gated or non-gated subdivision or community, whether or not the roads have been offered for dedication to the public.

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Environment and Natural Resources

The 2007 session of the General Assembly passed major environmental legislation affecting animal waste management, energy, water resources, and solid waste disposal. Both proponents and opponents of the energy and solid waste bills called them the most significant legislative changes in those areas in the past twenty years. Intense lobbying efforts by conservation organizations and supporters of water and wastewater infrastructure failed to produce a dedicated source of revenue for land and water conservation or for water and wastewater infrastructure.

Agriculture

In 1997 the General Assembly enacted S.L. 1997-458, creating a two-year moratorium on new or expanded swine waste operations that used the lagoon and sprayfield method of waste management. The purpose of the moratorium was to allow counties to pass ordinances regulating the siting of large swine farms and to provide time to study the technical and economic feasibility of alternative swine waste management methods. The moratorium was extended in 1998 and 2003 and set to expire in 2007. Ten years after the original moratorium, S.L. 2007-523 (S 1465) finally creates a framework for conversion to environmentally superior swine waste management methods and makes the temporary moratorium on traditional lagoon and sprayfield methods permanent.

The act sets up performance standards for swine waste handling that generally track the standards used in a large study of alternative waste systems conducted under the leadership of Dr. Michael Williams at N.C. State University over the last eight years. With few exceptions, the standards limit permits for large swine waste systems to those systems that

1. eliminate the discharge of animal waste via direct discharge, seepage, or runoff to surface water and groundwater;
2. substantially eliminate atmospheric emission of ammonia;

3. substantially eliminate the emission of odor that is detectable beyond the boundaries of the parcel or tract of land on which the swine farm is located;
4. substantially eliminate the release of disease-transmitting vectors and airborne pathogens; and
5. substantially eliminate nutrient and heavy metal contamination of soil and groundwater.

The most important exception is that farms with permits for lagoon and sprayfield treatment issued before September 1, 2007, are grandfathered. Existing farms with lagoons that become "imminent hazards" are allowed, under conditions set out in the act, to replace the hazardous lagoons. Thus, the act does not provide for the phase-out of existing swine farms.

The act sets up a voluntary program for existing farms to convert to environmentally superior waste technologies. It creates a grant program, administered by the Division of Soil and Water Conservation in the Department of Environment and Natural Resources (DENR) through the Agricultural Cost Share Program, to provide financial assistance with this process. Unlike traditional state agricultural cost-sharing, the grants are to be given to applicants having a limited ability to pay. The act sets out other criteria for the grants. The amount of grant funding is capped at $500,000 for each applicant, with the ceiling ramping down after 2012 to $450,000 and after 2017 to $400,000. The grants are subject to the funding of a new Swine Farm Waste Management System Conversion Account, which received $2 million in nonrecurring funds in the 2007 budget.

A late addition to the swine waste conversion act focused on using methane from lagoons for energy production. Up to fifty swine farms are authorized to participate in a pilot program to capture methane from lagoons or other waste systems. The program requires electric utilities serving these farms to buy electricity produced by the farms and creates a process for setting a rate for energy purchase, with a cap at 18 cents per kilowatt hour (a rate substantially above current rates, which range between 4 and 5 cents per hour). Many persons who have participated in the study of environmentally superior swine waste technology believe that the sale of by-products from waste technology, especially energy sources, is critical to the economic feasibility of the new technologies. S.L. 2007-397 (S 3), the renewable energy portfolio standard act, contains a provision requiring electric power suppliers in the state to ramp up to at least 0.2 percent of the total electric power sold to retail customers to be generated from swine waste by the year 2018. The same act requires at least 900,000 megawatt hours of electricity to be generated from poultry waste by the year 2014.

S.L. 2007-536 (H 810) addresses several other problems in the current system of swine waste regulation. It authorizes county employees and employees of soil and water conservation districts to continue to plan, design, and implement swine waste management systems, overturning an objection by the engineering licensing board that such work constituted engineering and must be supervised by a professional engineer. The act extends until 2009 a "pilot" program in four counties with major swine operations in which the Division of Soil and Water Conservation, rather than the Division of Water Quality, is primarily responsible for inspection of those operations. The act also clarifies that the regular enforcement provisions for water quality—including civil penalties, injunctions, and criminal penalties—apply to violations of rules for animal waste management systems.

Air Quality

S.L. 2007-296 (H 1646) raises the maximum civil penalty for air pollution violations from $10,000 to $25,000 per day.

S.L. 2007-465 (H 1912) creates a pilot program to fund the conversion of school buses in nonattainment areas to cleaner diesel technology. The act creates an account within DENR that can be used to pay the 20 percent local match required for federal funds available for diesel conversion and also directs the Department of Transportation to allocate $2 million of these federal funds for school bus diesel emissions reductions. The General Assembly appropriated $500,000 for the new account within DENR, providing a funding method for clean diesel for

metropolitan planning organizations that include this approach to emissions reductions in their transportation improvement plans and for school districts in nonattainment areas prepared to retrofit their buses.

Climate Change

The Commission on Global Climate Change continued to meet; its reporting deadline had been extended by the 2006 session of the General Assembly to April 15, 2008. While no comprehensive climate change legislation was enacted in 2007, several bills addressing energy efficiency did pass. See the section entitled "Energy," below.

Coastal Resources

In the 2007 appropriations act, S.L. 2007-323 (H 1473), the General Assembly authorized the use of up to $32.5 million in certificates of participation for the construction of facilities for a Coastal Studies Institute. The act also authorizes waterfront access as a permitted use of up to $120 million in certificates of participation for the Land for Tomorrow conservation effort.

Contaminated Property Cleanup

S.L. 2007-530 (S 1362) makes numerous changes to the Dry-Cleaning Solvent Cleanup Act so that the cleanup program is carried out by contractors hired by the Environmental Management Commission (EMC) rather than by contractors hired by parties responsible for dry-cleaning solvent contamination. In addition, the act broadens the definition of *dry-cleaning solvent* to include all halogenated hydrocarbon solvents. It also simplifies and lowers the financial responsibility amounts a responsible party must pay but imposes a new $1,000 application fee for anyone applying for coverage under the program. It also authorizes DENR to use up to 1 percent of the Dry-Cleaning Solvent Cleanup Fund in each fiscal year to investigate sites where it is believed, but not known, that dry-cleaning solvents have contributed to the contamination. The act includes a novel provision authorizing temporary rules for risk-based cleanup of dry-cleaning solvents that varies from the standard process under the Administrative Procedures Act.

Energy

S.L. 2007-397 (S 3) is groundbreaking legislation that commits the state to a renewable energy and energy efficiency portfolio standard (REPS) and includes a small set-aside for solar energy. North Carolina thus became the first southeastern state (but by no means the first state nationally) to pass a REPS. By the year 2012, electric utilities in North Carolina must derive 3 percent of their retail sales from renewable energy resources and energy efficiency measures, and that percentage rises to 12.5 percent by the year 2021. Electric membership corporations and municipalities also start at a 3 percent requirement in 2012, but must phase up to only 10 percent by 2018 and beyond. The act requires that at least 0.2 percent of total retail sales of electricity be derived from certain specified solar energy technologies by 2018. The act also commits the state to the generation of part of its electric power from swine and poultry waste. The act does not set up a trading system for renewable energy, but it permits power suppliers to purchase credits for up to 25 percent of the REPS. The EMC is directed to determine the best available control technologies for emissions from the REPS power sources and is also authorized to set standards for qualifying renewable energy sources.

S.L. 2007-397 allows power producers to recover the costs of renewable energy investments and energy efficiency measures from their rate base through an annual rider on electric bills, with

caps on the per-account charges. The Utilities Commission is directed to develop rules for the charges and is also authorized to modify or delay the REPS if the Commission considers doing so to be in the public interest. The act also allows electric utilities to begin recovering the cost of construction of new traditionally fueled (coal and nuclear) power plants before the plants are completed and online.

Some environmental groups pledged to continue to work to change some of the provisions of S.L. 2007-397, and the Governor, in signing the bill, noted that it was very ambitious in its goals for renewable sources and might require scaling back in future legislative sessions.

Several other bills collectively commit the state to greater energy efficiency in state buildings. S.L. 2007-546 (S 668) directs the Department of Administration to oversee an ambitious program of energy efficiency in the building, purchase, and renovation of state buildings and to audit and report on the results. Starting in 2008 (with a sunset in 2010), all state construction of buildings larger than 20,000 square feet and all renovations costing at least 50 percent of the building's insurance value must significantly exceed specified standards of the American Society of Heating, Refrigerating and Air-Conditioning Engineers Inc. and must meet certain water conservation standards. The act requires measurement and verification of energy use and water consumption over the year following completion of the construction project. The Department of Administration must also study developments in standards for energy efficiency and report periodically to the legislature on its findings, including a performance review of the program described above for 2008 to 2010. S.L. 2007-546 does not include in its sunset the requirements for all State buildings, including the university system, to implement energy conservation measures, including LED and compact fluorescent lighting, water conservation technologies and management measures, HVAC and minor equipment review, and miscellaneous other measures such as the purchase of only Energy Star–rated office equipment. The act codifies a goal of reducing energy consumption in state buildings 20 percent per square foot by 2010 and 30 percent by 2015, using a 2003–04 baseline.

S.L. 2007-542 (H 1702) authorizes rules in the State Building Code requiring insulation on all hot water pipes larger than a quarter inch in diameter.

S.L. 2007-476 (H 177) authorizes the trustees of the Community College System to enter into loans under the State's Energy Improvement Loan Program.

Another set of laws seek to advance the use of biodiesel and other alternative motor fuels. S.L. 2007-524 (S 1272) exempts from the motor fuels tax homemade biodiesel made for one's personal vehicle. S.L. 2007-423 (S 1452) requires, as of June 2008, that diesel school buses in the state be capable of running on B-20 (20 percent biodiesel) fuel, and that at least 2 percent of the total volume of bus fuel purchased statewide be B-20. S.L. 2007-420 (S 1277) requires, as of January 2008, that every diesel vehicle purchased by the state be warrantied to run on B-20.

S.L. 2007-82 (S 567) allows the dispensing of ethanol blends of up to 85 percent ethanol from gasoline pumps and other equipment if the manufacturer has certified that the equipment is safe for use with ethanol blends, the equipment meets any additional state standards, the manufacturer has begun having the equipment certified by an independent laboratory, and the equipment is clearly labeled as dispensing an ethanol blend.

Environmental Finance

S.L. 2007-153 (S 1472) adjusts the allocation of funds from the tax on tires, raising the amount distributed to counties for handling scrap tire cleanups and nuisance abatement from 68 to 70 percent of the tax proceeds. The act also raises from 5 to 8 percent the amount of the proceeds retained by the state in the Solid Waste Management Trust Fund. These increases are funded by reducing the amount of tax retained in the state's Scrap Tire Disposal Account.

Marine Fisheries

The state has been attempting to collect oyster shells to use in reestablishing oyster habitat in the sounds. However, it has been difficult to gather enough shells without buying them on the open market. S.L. 2007-84 (S 1453) prohibits the Department of Transportation and other units of government from using oyster shells for landscaping or other ground cover purposes, requiring instead that the shells be turned over to the Division of Marine Fisheries.

State Parks, Natural Areas, and Land Conservation

Despite a well-organized "Land for Tomorrow" campaign and other efforts of land conservation proponents, the General Assembly failed to enact a dedicated source of revenue for land and water conservation. The budget does, however, authorize the issuance of $120 million in certificates of participation for the acquisition of state parklands, conservation areas, and land to promote waterfront access. The debt is to be paid from revenues in the Parks and Recreation Trust Fund and the Natural Heritage Trust Fund.

S.L. 2007-307 (H 1724) is the nearly annual act adjusting properties in and outside of the state park system. The act references the following recent major additions to the park system: Chimney Rock State Park, Carvers Creek State Park, Haw River State Park, the Lower Haw River State Natural Area, Mayo River State Park, Mountain Bog State Natural Area, and Sandy Run Savannas State Natural Area. S.L. 2007-437 (S 1431) authorizes the addition of Deep River State Trail to the park system. It also expands the membership of the North Carolina Parks and Recreation Authority, adding four members: two appointed by the Governor and one each by the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

S.L. 2007-449 (S 1383) allows cyclists to use state public lands, unless another law prohibits bicycle use or bicycle use would cause substantial harm to the land. The act applies not just to land owned in fee by the state, but also to land purchased or leased with state funds. A usage agreement must be negotiated between the land manager and local cycling groups before access is granted. The Department of Transportation must keep a registry of the public lands open to cyclists and provide this information on request. Any land made available to cyclists is also open to hikers.

S.L. 2007-456 (H 862) amends the Plant Protection and Conservation Act to clarify the language, change the membership of the scientific committee that oversees endangered plant listings, and change the penalties for violation of the act to a Class 2 misdemeanor (from a Class 3 misdemeanor with stated limits on the penalties).

Solid Waste

Many controversial environmental bills in the last decade of the North Carolina General Assembly have been negotiated by stakeholder groups, facilitated by staff from the legislature, that meet in Room 605 of the Legislative Office Building. This method of working out the details of environmental bills has become so pervasive that the term "605 process" has passed into the legislative parlance as the standard method for handling difficult legislation. Room 605, however, holds only about forty people. The number of interested parties assembled to negotiate the details of Senate Bill 1492, the solid waste disposal bill, grew into the hundreds, so that the 605 process had to be moved to Room 643, the large appropriations hearing room in the Legislative Office Building. Industry representatives and their attorneys, local government officials, environmental groups, trade associations, and state agency experts met in Room 643 to debate the proposed laws that would affect disposal of solid waste. The catalyst for the debate was the moratorium placed on permitting new landfills by S.L. 2006-244, which had been triggered by five pending landfill permit applications for large landfills in the coastal plain.

As enacted (there were over thirty versions of the bill released and debated by the stakeholders during the session), S.L. 2007-550 (S 1492) makes changes in (1) technical requirements for new landfills, (2) siting considerations for new landfills, (3) processes for permitting new landfills, (4) fees for solid waste disposal, and (5) other miscellaneous aspects of solid waste handling in North Carolina. However, the main compromise that led to passage of the bill at the end of the session was the grandfathering of existing landfills: landfills permitted as of June 1, 2006, are allowed to continue their operations and expand horizontally, vertically, and within their existing facility boundaries without complying with most of the new requirements. The net effect of the legislation, therefore, will be to make the siting of new landfills in the state much more expensive and thus to raise the value and solidify the strategic position of existing landfills.

Technical Requirements

Despite recently upgraded rules for construction and demolition debris landfills, the act mandates a synthetic liner system for these facilities. Other sanitary landfills must now have four feet of separation between the post-settlement bottom of the landfill liner and the seasonal high water table and bedrock. The act also requires new waste screening procedures. Leachate collection systems are more rigorously regulated as well. The act requires camera inspection of leachate collection lines, and they must be designed to make these inspections possible. Secondary containment of pipes with leachate outside the liner is also required. Finally, the act mandates capacity, height, and disposal area limits for all new landfills.

Siting Considerations

Solid waste disposal facilities in North Carolina historically have been exempt from the environmental review process of the State Environmental Policy Act. S.L. 2007-550 requires a study meeting all the requirements of that act (but codified in the solid waste statutes) for any new proposed landfills. In addition to any mitigation requirements that might arise from this environmental review process, the act requires significant buffers for new landfills: 200 feet from perennial streams or wetlands, with an exception allowed for "critical needs"; outside of the 100-year floodplain; five miles from the outer boundary of a National Wildlife Refuge; one mile from the outer boundary of a state game land; and two miles from the outer boundary of a state park.

Permitting Processes

S.L. 2007-550 rewrites G.S. 130A-294(a)(4) to make numerous changes in the process for getting a solid waste disposal permit. At the outset the language of this statute is changed to state that DENR must deny an application for a permit if it finds one or more of several conditions. Some of these conditions are straightforward translations of past permit requirements; others are less clear and will require interpretation by DENR. For example, applicants will now have to show consistency with state and local solid waste management plans, which include a hierarchy that places reuse, recycling, and reduction ahead of disposal. Applicants will also have to demonstrate the lack of any disproportionate impact on low-income or minority communities. The act provides for "financial responsibility requirements" including both "financial qualifications" to pay design, build, operations, and closure costs for the life of the landfill and "financial assurance" to pay for potential assessment and cleanup of releases. The financial qualification requirements are left to rule making and the discretion of DENR, while financial assurance is required to be at least $3 million. The act broadens the review of the environmental compliance of an applicant to include all affiliated parties, including individuals involved in businesses applying for permits, and to include activities other than solid waste. Permit holders are placed under an ongoing duty to notify DENR of any changes in their business structures or in the business structures of affiliated entities that might affect the permit holder's financial qualifications. Liability is extended beyond owners and operators of facilities to include any business entities with majority ownership in the site

owner or operator and any entities whose assets are used to meet the financial qualification tests. Applicants for landfill and transfer station permits can now be required to conduct a traffic study and to mitigate any adverse effect on traffic as a condition of receiving a permit. The act sets out an explicit process for determining when a permit application is "complete" and requires action on an application (a draft permit decision) after it is complete and within a year. Transfer of permits now explicitly requires DENR approval.

Fees

S.L. 2007-550 creates a $2 per ton excise tax on municipal solid waste and construction and demolition waste that is disposed of in the state or delivered to a transfer station in the state for ultimate out-of-state disposal. The state will retain 50 percent of the tipping tax proceeds to use in cleaning up old unlined landfills; 37.5 percent will be returned to local government units that provide solid waste services directly to citizens, on a per capita basis, to use for solid waste management. The remaining 12.5 percent will go to the state Solid Waste Management Trust Fund to help local recycling programs and for the management of difficult-to-manage waste, such as mobile homes. The act sets up an extensive range of permit fees, intended (for the first time) to help fund state solid waste regulators. For example, new municipal solid waste landfill applications have a fee of from $25,000 to $50,000, depending on the size of the landfill; permit amendments cost up to $30,000. New construction and demolition landfill fees range from $15,000 to $30,000. Annual fees run from $3,500 for municipal solid waste landfills to $500 for land-clearing and inert debris landfills. The authority of counties to charge availability fees to customers that have private waste collection but whose private providers do not offer all the services the county offers is clarified.

Other Provisions

The tipping tax funds that remain with the state for assisting with the problem of old, unlined landfills carry some liability-relief provisions for local governments and private parties. When the state prioritizes and develops a remedial action plan for those landfills, the act prohibits the state from seeking cost recovery for its expenditures if the potentially responsible parties cooperate with the investigation.

S.L. 2007-550 also provides that manufacturers of computer equipment that sell more than 1,000 computers in North Carolina per year must pay an initial $10,000 fee and an annual $1,000 fee to DENR and must develop a plan for the reuse or recycling of the computers they sell. The intent of this provision is for manufacturers to "take back" their dead computers and arrange for recycling and reuse, thus freeing citizens and local government units from the decentralized management of this increasingly large waste stream. Computer equipment is added to the list of materials banned from landfills and incinerators by G.S. 130A-309.10(f) and (f1). The act also provides that DENR must develop a plan for recycling florescent lamps.

Civil penalties for violations of solid waste laws are increased from a maximum of $5,000 to $15,000 per day for nonhazardous waste and from $25,000 to $32,500 per day for hazardous waste. In addition, DENR is expressly authorized to recover its investigation, inspection, and monitoring costs in any civil penalty action. The Secretary of Environment and Natural Resources and local public health directors now have expanded powers to enjoin operations at landfills. The act includes special provisions for landfills dedicated to combustion by-products from coal-fired electric power plants. Cities and counties are authorized to hire local landfill liaisons to monitor private landfill operations. The Environmental Review Commission is to study local franchising of solid waste management and the transportation of solid waste by barge and rail, issues that were dealt with in earlier drafts of the bill but were never resolved.

S.L. 2007-543 (S 6) makes further changes in the statutes amended by S.L. 2007-550. The act specifies that the setback requirements for National Wildlife Refuges, state game lands, and state parks apply at the earliest of (1) the acquisition of the land or an option on the land by the permit holder or applicant, (2) the application for a franchise agreement, or (3) the date of the permit

application. It also clarifies some transitional and effective date provisions for facilities currently in the permit process and includes a procedure for reimbursement of some expenses for facilities in the application process that are no longer eligible for permits. Finally, it revises the formula for distribution of tipping tax proceeds by splitting the 37.5 percent allocated to local governments evenly between counties and cities.

S.L. 2007-142 (H 1758) makes changes to the law requiring the removal of mercury switches from vehicles before they are scrapped. In 2006 the United States Environmental Protection Agency announced the National Vehicle Mercury Switch Recovery Program, and the changes in this act conform the existing state program with the new national one.

A fire at a hazardous waste storage facility in Apex, North Carolina, in October 2006 forced the evacuation of 17,000 people and led to a study commission review of hazardous waste regulation. The resulting legislation, S.L. 2007-107 (H 36), makes changes in the state's regulation of hazardous waste facilities. It amends G.S. 130A-295 to impose financial responsibility requirements on applicants for hazardous waste storage permits (in place of the financial responsibility rules formerly made by the Commission for Health Services and in addition to the permit and annual fees required under G.S. 130A-294.1 and the federal Resource Conservation and Recovery Act [42 U.S.C. § 6924(t)]). The act also requires more formal input from local governments and emergency response providers on the contingency plans that hazardous waste facility owners are required to have. Applicants for new hazardous waste facilities must notify the county in which they are located and any municipalities with planning jurisdiction over them, along with any emergency management entities having a role under the contingency plan, about their proposed operations. The local governments and emergency management entities are to respond in writing within sixty days after receiving this information. Facility owners must maintain an off-site repository of information about the facility, including waste generators and types of waste stored, and make that repository available to DENR, local governments, and emergency responders. S.L. 2007-107 requires a notice to every person who lives or owns property within one-quarter mile of a proposed facility, describing the wastes to be stored and emergency response plans. Commercial hazardous waste facility owners must notify DENR annually of any changes in "sensitive land uses,"—meaning residential housing, places of assembly, places of worship, schools, day care providers, and hospitals—within one-quarter mile of the facility. These changes may trigger more frequent inspections under rules to be made by the Commission for Health Services for "special purpose commercial hazardous waste facilities." The act requires commercial hazardous waste facilities to have security and surveillance systems that work seven days a week, twenty-four hours a day, and wind monitors that can be remotely accessed in real time. Permits for commercial hazardous waste facilities are limited to five years. The act adds a new defined term in G.S. 130A-290, *hazardous waste transfer facility,* and sets up a regulatory scheme for these places where hazardous waste is stored for a short time (more than twenty-four hours, less than ten days). The act amends the statute preempting local hazardous waste ordinances to assert that local zoning and land use ordinances that generally regulate development are presumed to be valid, absent a finding to the contrary by the Secretary of Environment and Natural Resources. The act authorizes additional cost recovery for emergency responses to hazardous waste releases. It clarifies the confidentiality of municipal 911 and reverse 911 systems. It sets up task forces to review the state building code as it pertains to hazardous materials and to examine permanent funding options for State Medical Assistance Teams. Finally, it requires DENR to set up an online chemical information database, requires the Department of Health and Human Services to create a model plan for public health response to events like the Apex fire, and authorizes the UNC System to set up a research program on disaster response.

Technical Corrections

S.L. 2007-495 (S 844), the 2007 environmental technical corrections act, makes technical and clarifying corrections to the state's environmental laws and repeals some agency reports to the

General Assembly. It also makes the following small but significant policy changes: (1) an application for a construction permit for a private drinking water well to be located on a site on which a wastewater system is located may be accompanied by a site plan rather than a plat; (2) proof of completion of any mandatory professional development is required for renewal of a well contractor certificate; (3) the transplant of seed clams and seed oysters of a certain size that originate from an aquaculture operation permitted by the Secretary of Environment and Natural Resources is lawful; (4) members of the Advisory Commission for the North Carolina State Museum of Natural Sciences will serve four-year staggered terms; (5) the exemption for certain well contractors from continuing education requirements is extended for two years; and (6) draft fishery management plans are no longer required to be submitted to the Environmental Review Commission for review.

Water Supply

In the wake of controversy over a proposed interbasin transfer of water from the Catawba River basin to the Yadkin River basin and at the request of the cities of Concord and Kannapolis, S.L. 2007-518 (H 820) calls for a major study of surface water allocation in North Carolina, to be completed by 2009, and rewrites the process and standards for interbasin transfer certificates. The study is assigned to the Environmental Review Commission, which is authorized to hire independent consultants. The study must analyze technical matters relating to interbasin transfers but must also evaluate formal and informal methods for making future water allocation decisions. The act also calls for review of a comprehensive system for regulating surface water withdrawals for nonconsumptive and consumptive uses. The bill also directs DENR, through its Division of Water Resources, to redraw the official map of river basins in the state and to note on the map the extent of river basins outside North Carolina with waters that either flow into or out of the state.

The revised process for interbasin transfer certificates begins with a notice of intent to file a petition, followed within ninety days by two public meetings upstream and downstream of the proposed diversion in the source basin and one public meeting downstream in the receiving basin. The notice and public meetings are to be expressly designed to generate comment on the scope of the environmental documents to be prepared regarding the transfer. Notice of the meetings must be given very broadly, including to all counties downstream, whether in North Carolina or an adjacent state and to all upstream and downstream holders of wastewater discharge permits. (The act does not expressly limit this requirement to adjacent states.)

S.L. 2007-518 requires a full environmental impact statement for every proposed interbasin transfer from one major river basin to another. A public hearing on the draft statement is required, and the adequacy of the statement may be challenged in a contested case on the ultimate decision whether to grant a certificate. The act sets out a much more explicit and lengthy list of details that must be included in a petition for an interbasin transfer. It provides for a mediation process between the petitioner and any parties interested in the transfer. The new process requires a draft determination on the petition within ninety days after the environmental document is complete or the application is filed, whichever is later, and then more public hearings on the draft determination within sixty days after the draft determination is issued. The act then specifies nine factors to be considered in making a final determination on the petition, with a burden of proof on the petitioner, and requires taking into account a declared policy that "the reasonably foreseeable future water needs of a public water system with its service area located primarily in the receiving river basin are subordinate to the reasonably foreseeable future water needs of a public water system with its service area located primarily in the source river basin." If the transfer is allowed, the act specifies seven required conditions, including limitations on resale, mandatory water conservation measures, a drought management plan, and reopeners to reduce the permitted transfer if new sources are found in the receiving basin or the applicant's projected water needs decline. The new process allows the Secretary of Environment and Natural Resources to authorize emergency transfers for up to six months, with one extension of six months, without having to file

the notices, hold the hearings, or make the findings required of a nonemergency transfer. There is a delayed effective date, until January 2011, for transfers to supplement ground water supplies limited by the Central Coastal Plain Capacity Use Area.

Water Quality

Erosion and Sedimentation Control

The 2007 budget, [S.L. 2007-323 (H 1473), Section 30.1(a)], authorizes a fee increase of $15 per acre of disturbed land for erosion and sedimentation control plan reviews, to create revenue necessary for additional inspectors.

Stormwater

The 2007 appropriations act includes a special provision (Section 6.22) that changes parking lot designs to improve stormwater quality. This provision is discussed in more detail in Chapter 5, "Community Planning, Land Development, and Related Topics."

Nutrient Reduction and Mitigation

S.L. 2006-215 legislatively repealed a rule of the EMC raising the prices for nutrient offset payments that developers can use in the Neuse and Tar-Pamlico river basins to increase the density of development and the extent of impervious surface. The 2006 legislation called for a study of the actual costs of nutrient offsets. As a result of that study, S.L. 2007-438 (H 859) raises the offset payment amounts, but not as high as the EMC rule would have, until the year 2009. The new payment schedule is $28.35 per pound of nitrogen in the Neuse basin, $21.67 per pound of nitrogen in the Tar-Pamlico basin, and $28.62 per tenth of a pound of phosphorus in the Tar-Pamlico basin. The act directs the Ecosystem Enhancement Program to convert the nutrient offset program by September 2009 from a fee-based program to one based on the actual cost of providing credits.

Soil and Water Conservation

The 2007 budget appropriates $250,000 to DENR to expand the Conservation Reserve Enhancement Program beyond the limited watersheds in which the program currently applies. The Division of Soil and Water Conservation in DENR also received $200,000 to continue funding research and development of new management practices and technology for poultry waste, with priority given to grants to small producers with limited ability to pay for new technology themselves. Finally, the Division of Soil and Water Conservation received $2 million to implement a Community Conservation Assistance Program, an effort to convert soil and water conservation from a purely agricultural program to one that is administered in urban areas as well.

Clean Water Management Trust Fund

S.L. 2007-549 (S 1468) allows the Clean Water Management Trust Fund to be used to fund "innovative efforts, including pilot projects, to improve stormwater management, to reduce pollutants entering the State's waterways, to improve water quality, and to research alternative solutions to the State's water quality problems."

S.L. 2007-185 (H 1370) clarifies that the Clean Water Management Trust Fund can make planning and technical assistance grants for wastewater projects regardless of whether they are intended for areas with high unit costs.

Richard Whisnant

13

Ethics and Lobbying

After substantially reforming ethics and lobbying laws in 2006, the General Assembly in 2007 made a series of changes to the State Government Ethics Act, the Legislative Ethics Act, and lobbying laws. In response to media reports surrounding legislative scandals, it enacted new laws requiring the public disclosure of contributors to legal defense funds and requiring elected officials convicted of certain crimes to forfeit their pensions.

Continuing Ethical Scandals

The enactment of the State Lottery in 2005 brought to light questionable conduct by a number of participants. In 2006 much of the focus was on the activities of lottery commissioner Kevin Geddings, who had worked as a consultant for Scientific Games, one of two vendors competing for the lottery contract. The media reported that Geddings failed to disclose the $24,500 he had been paid by the vendor in 2005 on a statement of financial interest he filed with the North Carolina Board of Ethics. Geddings resigned from the Lottery Commission and in 2007 was sentenced to four years in federal prison and fined $25,000 for five counts of mail fraud in addition to being convicted of state charges. Also brought to light was the questionable conduct of lobbyist Meredith Norris, a former member of Speaker of the House Jim Black's legislative staff and his campaign's unpaid political director. In 2006 Norris was found guilty of a misdemeanor lobbying law violation for failing to register as a lobbyist for Scientific Games.

The investigations surrounding the State Lottery uncovered wrongdoing in other areas as well, including former Representative Michael Decker's receipt of "blank payee" campaign contributions, his personal use of campaign contributions, and his dealings with Speaker Black. Decker was sentenced in April 2007 to four years in prison for soliciting and accepting $50,000 from Speaker Black and a job for Decker's son in return for agreeing to switch from the Republican to the Democratic Party in early 2003.

As more information came to light, 2007 brought more scrutiny of Speaker Black's conduct. Black allegedly accepted cash from three chiropractors and deposited the funds into his personal account while advancing legislation the chiropractors supported. S.L. 2007-24 (H 502) repeals a law that resulted from a provision Black inserted into the 2005 budget prohibiting an insurer from

charging a co-payment for visits to a chiropractor that was higher than the co-payment charged for a visit to a primary care physician for comparable treatment.

In February, Black resigned from the House of Representatives and pled guilty to public corruption. In July, he was sentenced to five years and three months in federal prison as well as eight–to–ten months in prison on state corruption charges, to be served concurrently with his federal sentence.

These events undoubtedly motivated the passage of legislation aimed at the conduct of public officials. New laws enacted during the 2007 session addressed (1) public disclosure of contributors to legal defense funds; (2) forfeiture of pensions by elected officials convicted of state or federal felonies related to corruption or election law fraud; and (3) amendment of existing ethics legislation and current laws, including giving the public greater access to ethics complaint hearings.

Policy Changes to Ethics and Lobbying Laws

S.L. 2007-348 (H 1111) makes both clarifying and substantive changes to the State Government Ethics Act (G.S. Chapter 138A), the Legislative Ethics Act (Article 14 of G.S. Chapter 120), and the lobbying laws (G.S. Chapter 120C).

Interpretation of Lobbying Laws

Under the 2006 reform of the ethics and lobbying laws, the State Ethics Commission administered ethics laws, and the Legislative Ethics Committee governed legislative ethics. The State Ethics Commission interpreted lobbying laws while the Secretary of State's Office administered lobbying laws.

Some of the most controversial changes involved the scope of the duties of the Secretary of State's Office, versus those of the State Ethics Commission. Effective July 1, 2007, S.L. 2007-348 amends G.S. 120C-101 to require the commission to adopt rules and definitions necessary to interpret the lobbying laws and to adopt rules necessary to administer the lobbying laws, with the exception of the laws concerning lobbyist registration (Article 2), reporting (Article 4), and miscellaneous provisions including the reporting of expenditures made by individuals exempted from the chapter (Article 8). The duty to adopt rules for and to administer these articles now lies with the Secretary of State. G.S. 120C-102 was also amended to allow the State Ethics Commission staff to share information related to requests for advisory opinions with the Secretary of State's staff. The commission is now also required to provide an unedited copy of each advisory opinion to the Secretary of State at the time the opinion is provided to the individual requesting the opinion.

Public Disclosure

Under the 2006 reforms, G.S. 120-103.1(i)(3) and G.S. 138A-12(i)(4) provided that hearings held by the Legislative Ethics Committee and the State Ethics Commission were held in closed session unless the public servant requested an open hearing. S.L. 2007-348 amends these statutes to require hearings to be open to the public, with the exception of hearings for matters that would be considered in closed session under the Open Meetings law, matters involving minors, and matters involving a personnel record. The act also amends the laws concerning the confidentiality of documents arising from an ethics complaint that is before the committee or commission. G.S. 120-103.1 now provides that once a Legislative Ethics Committee hearing begins, the complaint, the response, the committee's report to the House of Representatives or Senate, and other documents at the hearing that are not otherwise confidential are public records. If a hearing is not held, then the complaint, response, and committee report become public when the committee recommends sanctions to the house of which the legislator is a member.

G.S. 138A-12(n) now provides that once a State Ethics Commission hearing begins, the complaint, response, and other documents at the hearing that are not otherwise confidential are public records. If a hearing is not held, at the time that the commission recommends sanctions to the employer, the complaint and response are made public.

The Legislative Ethics Committee is also required to redact advisory opinions for publication purposes and is allowed to distribute redacted opinions before the opinions are published by the State Ethics Commission under amended G.S. 120-104. S.L. 2007-348 amends G.S. 120-104 and G.S. 120C-102 to allow an individual requesting an advisory opinion from the Legislative Ethics Committee or the State Ethics Commission to withdraw the request at any time before an advisory opinion is issued.

Lobbyists

Effective October 1, 2007, S.L. 2007-348 amends the definition of *lobbyist* to remove the requirement that the individual be "employed by a person for the intended purpose of lobbying." Under amended G.S. 120C-100(a)(10)d., whether an employee is considered a lobbyist depends on whether a significant part of an employee's duties includes direct lobbying as well as goodwill lobbying.

The act also amends G.S. 120C-700(3) to specifically include individuals appointed as county or city attorneys as employees of the county or city, thereby exempting those individuals from the lobbying laws when acting on matters related to their office.

Gift Ban

S.L. 2007-348 amends G.S. 120C-303 effective December 1, 2007, to provide that the ban on gifts from lobbyists and lobbyists' principals applies to knowingly giving gifts. The gift ban is also expanded to include knowingly giving a gift to a third party, intending that the gift be given to a designated individual. G.S. 138A-32 is amended accordingly to prohibit public servants, legislators, and legislative employees from accepting gifts from a third party, knowing that the third party obtained the gift from a registered lobbyist or lobbyist's principal and that the lobbyist or principal intended the individual to be the recipient of the gift. G.S. 120C-303 also exempts gifts given by a lobbyist or lobbyist principal to a nonpartisan state, regional, national, or international legislative or executive branch organization. Effective October 1, 2007, S.L. 2007-348 amends G.S. 120C-401 to exclude from reporting requirements any gift that has been paid for or returned within the reporting period. If the gift is reported, the payment or return of the gift is required to be reported by the lobbyist or lobbyist's principal on the next report due. The definition of *gift* in G.S. 138A-3 is amended to exclude the following expressions of condolence: (1) a sympathy card, letter, or note; (2) flowers; (3) food or beverages for immediate consumption; and (4) donations up to $200 per death per donor to a religious organization, charity, or the state.

Statements of Economic Interest

S.L. 2007-348 amends G.S. 138A-3 to exclude blind trusts from vested trusts that must be disclosed on statements of economic interest. A trust is blind if (1) the covered person and the person's immediate family know nothing about the trust's income and (2) the trustee, who has sole discretion over the management of the trust, is independent of the covered person and the person's immediate family. G.S. 138A-3 is also amended to expand the definition of *business with which associated* to include businesses for which the covered person, or a member of the covered person's immediate family, is a lobbyist.

Technical Changes to Ethics and Lobbying Laws

S.L. 2007-347 (H 1110) makes various technical corrections and clarifying changes to G.S. Chapter 138A (the State Government Ethics Act), Article 14 of G.S. Chapter 120 (the Legislative Ethics Act), and G.S. Chapter 120C (Lobbying). The act recodifies G.S. 120C-302, campaign contributions prohibition, from the lobbying law into Article 22A of G.S. Chapter 163, regulating contributions and expenditures in political campaigns. Effective October 1, 2007, it amends G.S. 120C-500 to add community colleges and to exempt agencies and boards with no staff from the requirement that liaison personnel be designated for lobbying. G.S. 138A-3 is amended to clarify that the definition of *nonprofit corporation or organization with which associated* does not include a state or local government entity. G.S. 138A-14 now requires legislative employees to attend refresher ethics education every two years, which is already required for lobbying education and for other covered persons. S.L. 2007-347 also amends G.S. 138A-23 to clarify that statements of economic interest of persons confirmed by the General Assembly to appointment as public servants are public when the appointment is announced and that statements of economic interest of public servants elected to positions by the General Assembly are not public records until the public servant is sworn into office. The act enacts new G.S. 138A-38(b), providing that the exceptions to the conflict of interest laws under the State Government Ethics Act do not permit actions that are otherwise prohibited by law.

Legal Expense Funds

Contributions to political committees controlled by candidates are regulated and disclosed according to Article 22A of G.S. Chapter 163. In general, only individuals and political committees are allowed to contribute to candidate campaign funds. Contributions are limited to $4,000 per election cycle; contributions in an amount more than $50 are required to be made by check or a non-cash method, and the contributor's information is reported to the State Board of Elections. Contributions to legal expense funds, however, have not been regulated or required to be disclosed. Effective January 1, 2008, S.L. 2007-349 (H 1737) enacts new Article 22M of G.S. Chapter 163 to regulate legal expense funds. Violations of the new article are a Class 1 misdemeanor.

New Article 22M requires an elected officer, defined as an individual in public office or seeking public office in North Carolina, to create a legal expense fund if the individual is given a contribution by someone other than a spouse, parent, or sibling to fund an existing or potential legal action taken by or against the elected officer in the officer's official capacity. Once a legal expense fund is required, contributions from family members must also be reported. The following are not considered contributions: (1) the provision of legal services to an elected officer by the state or any of its political subdivisions when those services are authorized or required by law or (2) the provision of free or pro bono legal advice or legal services, as long as any costs incurred or expenses advanced for which clients are liable under other provisions of law are considered contributions. A legal action is defined to include formal disputes in judicial, legislative, or administrative forums as well as an investigation conducted before any formal proceedings begin. The requirement to establish a legal expense fund does not apply to contributions that are made to the state or any of its political subdivisions.

Only one legal expense fund can be created by or for an elected officer for the same legal action; actions arising out of the same set of transactions are considered the same legal action. A legal expense fund created for one legal action or potential legal action may be kept open for subsequent legal actions or potential legal actions.

Legal expense funds must have an appointed treasurer, who is trained by the State Board of Elections. The treasurer is required to keep accounts of contributions and expenditures and file organizational and quarterly reports with the State Board of Elections. Reports that show a total of more than $5,000 in contributions or expenditures for the quarter must be filed electronically. The

quarterly report must report all expenditures and contributions totaling more than $50 in the quarter. Contributions of more than $50 must be made by non-cash methods. For each contribution totaling more than $50 for the quarter from any one individual, the treasurer must include the name, mailing address, and occupation of the contributor, the amount contributed, and the date the contribution was received. The quarterly report must also include a separate record of all loan proceeds. It is a Class I felony to sign a report knowing that it is false.

Legal expense funds are prohibited from accepting contributions exceeding $4,000 per calendar year from a corporation, labor union, insurance company, professional association, or business entity. A legal expense fund also may not accept contributions from any affiliated corporations, labor unions, insurance companies, or professional associations, that when totaled, would exceed the annual contribution limits for that legal defense fund.

When a legal expense account is closed, the treasurer is required to distribute the remaining funds as follows: (1) to the Indigent Persons' Attorney Fee Fund, (2) to the North Carolina State Bar for the provision of civil legal services for indigents, (3) as contributions to a charitable organization described in section 170(c) of the Internal Revenue Code (unless the candidate or the candidate's spouse, children, parents, brothers, or sisters are employed by the organization), (4) as a refund of all or a portion of a contribution to the contributor, or (5) to the Escheat Fund.

S.L. 2007-349 also makes conforming changes to the duties of the State Board of Elections in G.S. 163-278.22. G.S. 163-278.5 and G.S. 163-278.23 are amended to include the new Article 22M in provisions of the campaign finance act limiting the scope of coverage to North Carolina elections and governing the authority of the Executive Director of the Board of Elections to issue requested advisory opinions that protect the individual making the request from prosecution. The act repeals G.S. 163-278.36, which required reporting of donations to, and payments from, any "booster fund," "support fund," and "unofficial office account."

Pension Forfeiture by Felons

Effective for offenses committed on or after July 1, 2007, S.L. 2007-179 (S 659) requires elected officials convicted of state or federal felonies related to corruption or election law fraud to forfeit their pensions. New G.S. 120-4.33, G.S. 128-38.4, G.S. 135-18.10, and G.S. 135-75.1 prohibit the board of trustees from paying retirement benefits, other than a return of contributions, to individuals convicted of specified felonies while in office if the individual is (1) an elected official who is a member of the Legislative Retirement System, (2) an elected official who is a member of the Local Governmental Employees' Retirement System, (3) an elected official who is a member of the Teachers' and State Employees' Retirement System, or (4) a member of the Judicial Retirement System. The offense must also have been committed while the individual was serving in the applicable office and the conduct on which the offense is based must be directly related to the individual's service.

The covered offenses are as follows:

Federal offenses:

- 18 U.S.C. § 201 (Bribery of public officials and witnesses)
- 18 U.S.C. § 286 (Conspiracy to defraud the Government with respect to claims)
- 18 U.S.C. § 287 (False, fictitious or fraudulent claims)
- 18 U.S.C. § 371 (Conspiracy to commit offense or to defraud United States)
- 18 U.S.C. § 597 (Expenditures to influence voting)
- 18 U.S.C. § 599 (Promise of appointment by candidate)
- 18 U.S.C. § 606 (Intimidation to secure political contributions)
- 18 U.S.C. § 641 (Public money, property, or records)
- 18 U.S.C. § 666 (Embezzlement and theft)
- 18 U.S.C. § 1001 (Statements or entries generally)
- 18 U.S.C. § 1341 (Frauds and swindles)
- 18 U.S.C. § 1343 (Fraud by wire, radio, or television)

- 18 U.S.C. § 1503 (Influencing or injuring officer or juror generally)
- 18 U.S.C. § 1951 (Interference with commerce by threats or violence)
- 18 U.S.C. § 1952 (Interstate and foreign travel or transportation in aid of racketeering enterprises)
- 18 U.S.C. § 1956 (Laundering of monetary instruments)
- 18 U.S.C. § 1962 (Prohibited activities)
- Section 7201 of the Internal Revenue Code (Attempt to evade or defeat tax)

State felony offenses:

- Article 29, 30, or 30A of G.S. Chapter 14 (Relating to bribery, obstructing justice, and secret listening)
- G.S. 14-228 (Buying and selling offices)
- Part 1 of Article 14 of G.S. Chapter 120 (Code of Legislative Ethics)
- Article 20 or 22 of G.S. Chapter 163 (Relating to absentee ballots, corrupt practices and other offenses against the elective franchise, and regulating of contributions and expenditures in political campaigns)

Offenses related to perjury or false information:

- Perjury committed under G.S. 14-209 in falsely denying the commission of an act that constitutes a covered state felony offense.
- Perjury under Article 22A of G.S. Chapter 163.
- Subornation of perjury committed under G.S. 14-210 in connection with the false denial of another regarding either of the above.

Forfeited money goes to the Civil Penalties and Forfeiture Fund. S.L. 2007-179 amends G.S. 120-4.12, G.S. 128-26, G.S. 135-4, and G.S. 135-56 to provide that members who have not vested in the respective retirement systems on July 1, 2007, and who are convicted of a covered offense committed after July 1, 2007, forfeit all retirement benefits. Members who have vested as of July 1, 2007, and are convicted of a covered offense committed after July 1, 2007, are not entitled to creditable service that accrues after July 1, 2007.

Christine B. Wunsche

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Health

The General Assembly considered a wide range of significant and complex health-related issues during the 2007 session. It enacted controversial legislation that prohibits smoking in state government buildings, establishes a high risk insurance pool, amends and harmonizes several state laws addressing end-of-life decision-making, and overhauls the laws governing the practice of medicine. This chapter summarizes all of the above, as well as the 2007 appropriations act provisions affecting public health and other noteworthy legislation including new laws affecting disclosure of confidential medical information, environmental health, and regulation of various health professions and health care facilities.

Public Health

Budget

The 2007 appropriations act, S.L. 2007-323 (H 1473), provides funding to the Division of Public Health within the North Carolina Department of Health and Human Services (DHHS) to expand and continue several significant public health programs. Recurring funding was appropriated as follows:

- $2.7 million to fund an additional 54 school nurse positions in 2007–08 and $3.3 million to support an additional 66 school nurse positions in 2008–09. These new positions are in addition to the almost 200 new school nurse positions funded by the General Assembly since the School Health Nurse Initiative was launched in 2004.
- $2 million in direct aid to local health departments to support the delivery of the ten essential services of public health.
- $2 million to the Breast and Cervical Cancer Control Program to support additional screening and diagnostic services.
- $2 million for HIV counseling and testing, to be distributed to local health departments, historically black colleges and universities, and other community organizations for counseling, testing, and early medical intervention. Some of the funding will also be used to implement community-based harm reduction programs and to support peer-to-peer counseling efforts.

- $280,000 dedicated to food-borne and tick-borne diseases, which includes funding for two new consultant positions and tick control demonstration projects in both the Division of Public Health and the Division of Environmental Health within the Department of Environment and Natural Resources (DENR).
- $235,000 to the Public Health Laboratory to support expanded testing for Human Papillomavirus (HPV), food-borne diseases, tick-borne diseases, and HIV testing for pregnant women.
- $200,000 to fund the collection and surveillance of clinical data on birth defects and the linking of that data to other relevant data, such as vital statistics, newborn screenings, and children's health services. Three new positions associated with the existing birth defects monitoring registry were also established.
- $200,000 to provide funding for family planning services for uninsured women.

Responding to recommendations of the Justus-Warren Heart Disease and Stroke Prevention Task Force, the General Assembly provided funding to several stroke-related projects: $390,000 in recurring funds is dedicated to increasing hospital participation in the North Carolina Collaborative Stroke Registry; $150,000 in recurring funds will go towards training health care providers regarding medical services for stroke victims, and $360,000 in nonrecurring funds will support the continued work of the Task Force as well as a stroke public awareness campaign and a survey of the gaps and needs in the prevention and treatment of strokes.

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

- $8.25 million to purchase antivirals to treat influenza, with the expectation that the federal government would pay for 25 percent of the cost of purchasing the medications.
- $5 million to fund competitive community health grants, which are available to local health departments, community and rural health centers, free clinics, and school-based clinics. The grant program was first funded in 2005 ($2 million in recurring funds) and is designed to increase access to preventive and primary care services by uninsured or medically indigent patients, establish new health care services, and increase capacity to provide health care services.
- $4 million in recurring funding for Child Development Service Agencies (CDSAs) was replaced with nonrecurring funding of $4 million in 2007–08 and $3 million in 2008–09. The CDSAs are expected to increase receipts from Medicaid and other insurance to offset the reductions.
- $1 million to the Healthy Carolinians program in order to provide funding to local health departments to establish and maintain necessary infrastructure to reduce rates of diabetes, cancer, heart disease, obesity, injury, and infant mortality.
- $500,000 to the Community-Focused Eliminating Health Disparities Initiative. The money is used for providing grants to local health departments, American Indian tribes, and faith-based or community-based organizations, to improve minority health status. This initiative received $2 million in funding in both 2005 and 2006.
- $200,000 to support a mobile dental provider to deliver services to the frail elderly and persons with disabilities in unserved areas.

Other programs, including the Safe-Sleep Awareness Campaign and Prevent Blindness North Carolina also received some nonrecurring funding in 2007–08.

In 2006 the General Assembly appropriated nearly $10 million to the Division of Public Health to fund the development and implementation of the Health Information System (HIS), which is intended to replace the outdated Health Services Information System (HSIS). The purpose of HIS is to provide an automated means of capturing, monitoring, reporting, and billing services provided by local health departments, children's developmental services agencies, and the state public health laboratory. S.L. 2007-323 allocates an additional $4.2 million in nonrecurring funds as well as $775,000 in recurring funds to complete and implement HIS.

The Division of Environmental Health within DENR received nonrecurring funding to continue some of the work that it began in 2006 related to new statewide regulation of private

drinking water wells. First, it received $300,000 to fund additional incentive grants for counties that are adopting local programs for enforcing the forthcoming statewide well construction standards. The statewide rules are expected to go into effect in July 2008. Second, the General Assembly added $615,000 to the Emergency Drinking Water Fund, which was initially funded in 2006 with $300,000 in nonrecurring funds. The fund is to be used to notify private well users of contamination, test private wells for contamination, and pay for alternative drinking water supplies.

Smoking Regulation

Since 1993, the state has had several laws in place (G.S. Chapter 143, Article 64) that, subject to some exceptions, (1) require state and local government buildings to provide for smoking areas inside the buildings and (2) limit the ability of local governments to regulate smoking in public places (such as restaurants and bars) within their jurisdictions. Over the last several years, the General Assembly has made a few relatively minor changes to these laws. For example, in 2005, a bill passed allowing local governments to prohibit smoking in buildings housing local health departments and departments of social services and on the grounds surrounding those buildings (S.L. 2005-19; S.L. 2005-168). In 2006 smoking was prohibited in all legislative buildings (S.L. 2006-76).

Also in 2006, the U.S. Surgeon General concluded that "there is no risk-free level of exposure to secondhand smoke."[1] Perhaps in response to the Surgeon General's report, the General Assembly considered a flurry of bills in 2007 addressing exposure to secondhand smoke and regulation of smoking. The bill that received the most attention was House Bill 259, which would have prohibited smoking in most restaurants, lodging facilities, places of employment, and state government buildings and would have restored the authority of local governments to regulate smoking in public places and places of employment. The proposal failed, but several other less comprehensive bills passed.

S.L. 2007-193 (H 24), as amended by S.L. 2007-484 (S 613, sec. 31.7), is perhaps the most far-reaching of the bills that passed. It establishes a new Article 23 in the public health chapter of the General Statutes (Chapter 130A) to prohibit smoking in state government buildings and allow local governments to regulate smoking in local government buildings. The prohibition on smoking in state government buildings is effective January 1, 2008, and affects (1) buildings owned by the state, (2) buildings leased by the state as lessor (i.e., landlord), and (3) the area of any building leased and occupied by the state as lessee (i.e., tenant). With respect to implementation, the law requires the posting of signs and also directs the Commission for Public Health (formerly the Commission for Health Services; *see* discussion below) to adopt rules. Unlike violations of most other public health laws, a violation of this prohibition is not punishable as a misdemeanor. The Secretary of Health and Human Services and the jurisdiction's local health director do, however, have the authority to request an injunction for any violations of the law (G.S. 130A-18).

As of January 1, 2008, local governments will have new authority to regulate smoking in the following places:

- Buildings owned by the local government,
- Buildings leased as lessor (i.e., landlord) by the local government,
- Areas of buildings leased as lessee (i.e., tenant) and occupied by the local government.

In addition, local governments retain their existing authority to regulate smoking in other places, including public transportation vehicles, libraries, museums, and buildings housing local health departments and departments of social services and the grounds (up to 50 feet) surrounding those

1. U.S. Surgeon General, *The Health Consequences of Involuntary Exposure to Tobacco Smoke* 11 (June 27, 2006), *available at* http://www.surgeongeneral.gov/library/secondhandsmoke/report/chapter1.pdf (last visited August 13, 2007).

buildings.[2] Under the new law, the term local government is defined to include "any local political subdivision of this State, any airport authority, or any authority or body created by any ordinance, joint resolution, or rules of any such entity." Therefore, this authority is available to a wide range of local government bodies including boards of county commissioners, city councils, and boards of health.

While the new prohibition on smoking in state government buildings applies to buildings that are part of the University of North Carolina (UNC) system, a separate bill also passed this session that allows UNC to prohibit smoking in its facilities and on its grounds (S.L. 2007-114, S 862). Many of the provisions of the UNC bill are irrelevant now that smoking is prohibited pursuant to S.L. 2007-193, but a few provisions will likely affect UNC's operations in a way that is unique as compared to other state government buildings. First, the UNC bill authorizes UNC to prohibit smoking on the "grounds" of its facilities, which includes the area located and controlled by state government within 100 linear feet of a building owned and occupied by the state, owned by the state but leased to a third party, or owned by a third party and leased to state government. Second, the UNC bill allows the UNC and East Carolina University medical facilities to prohibit smoking on their grounds and walkways. Finally, most UNC institutions will be permitted to provide some smoking rooms in residence halls until the 2008–09 academic year.

Elementary and secondary schools are governed by a different set of tobacco-related state laws, found in G.S. Chapter 115C. Specifically, G.S. 115C-407 was enacted in 2003 to allow local boards of education to adopt policies governing the use of tobacco products in schools and at school events. This year, S.L. 2007-236 amends G.S. 115C-407 to require local boards of education to adopt policies prohibiting the use of tobacco at all times:

- in school buildings,
- in school facilities,
- on school campuses,
- in or on any other property owned by the local school administrative unit, and
- at school-sponsored events at other locations when in the presence of students or school personnel.

Local boards must adopt and implement these policies by August 1, 2008.

The final bill related to smoking in public places governs long-term care facilities, including nursing homes, adult care homes, and rest homes. S.L. 2007-459 (H 1294) prohibits smoking in all such facilities and authorizes DHHS to impose fines on facilities that fail to implement and enforce the prohibition. The law also requires licensed home care agencies to prohibit their employees from smoking in patients' homes.

Environmental Health

In 2006 legislation was enacted that significantly expanded the authority of state and local public health officials to embargo unsafe food and drink (S.L. 2006-80). Previously, the North Carolina Department of Agriculture and Consumer Services retained almost exclusive authority to embargo most types of food or drink in the state. This session, the General Assembly made a few relatively minor changes to the new law. First, it clarified that public health officials' authority extends to any type of establishment regulated under either the public health statutes in G.S. Chapter 130A or rules issued by the Commission for Public Health. Previously, public health officials' authority was limited to establishments regulated pursuant to G.S. Chapter 130A. By expanding the authority to encompass establishments regulated by the Commission, the authority of public health officials now reaches those establishments inspected pursuant to statutory authority found in other chapters of the General Statutes, such as local jails (Chapter 153A) and child care facilities (Chapter 110). The law was also amended to expand the list of individuals who have the authority to allow embargoed items to be removed or disposed of. Now, in addition to

2. Local governments have the authority to regulate smoking in other places as well. For more information regarding the authority of local governments to regulate smoking, *see* http://www.ncphlaw.unc.edu/SmokingRegulation/index.htm.

representatives of the Department of Agriculture and Consumer Services, regional environmental health specialists, and the court, local health directors and the Director of the Division of Environmental Health or the director's designee have this authority.

Under current law, local environmental health specialists are required to conduct inspections of housing facilities for migrant agricultural workers in conjunction with the preoccupancy inspection conducted by the North Carolina Department of Labor (NCDOL). [G.S. 95-226(a)]. Typically, an operator requests an inspection from NCDOL and NCDOL notifies the local health department that an inspection has been requested. The health department's role is limited to evaluation of the housing facility's collection, treatment, and disposal of sewage and its water sanitation and quality (15A NCAC 18A .2117). S.L. 2007-548 (S 1466) amends G.S. 95-226(a) to allow an operator who has received a perfect compliance score (100 percent) for two consecutive years on NCDOL preoccupancy inspection to conduct a self-inspection in the third year. Although the NCDOL may not need to conduct its inspection in that third year, local health departments' duties continue. Therefore, any operator who plans to conduct a self-inspection must notify the health department in writing and the health department must conduct its inspection.

Child Safety

In 2006 the National Highway Traffic Safety Administration (NHTSA) denied funding to North Carolina because the state's child restraint law, G.S. 20-137.1, did not require young children to be secured in a child restraint system "when the child's personal needs [were] being attended to." With the passage of S.L. 2007-6 (H 61), the General Assembly amended the law to remove that exemption and, as a result, the state expects to have federal NHTSA funding restored.

Communicable Disease

In 2006 the U.S. Food and Drug Administration approved the first vaccine targeting certain types of human papillomavirus, a sexually transmitted virus that has been found to cause cervical cancer. S.L. 2007-59 (S 260) directs local boards of education and the Department of Public Instruction to ensure that schools provide parents and guardians of children in grades 5 through 12 with information about cervical cancer, cervical dysplasia, human papillomavirus, and the vaccines available to prevent these diseases. In addition, the Department of Administration is required to make this information available to nonpublic schools, including persons engaged in home schooling. The Division of Public Health within DHHS is required to make sample educational materials available for the schools and educators to use as part of this effort. These materials must be made available in the 2007–08 school year.

G.S. 15A-615 authorizes a court to order HIV testing of a defendant who is charged with a sex offense. S.L. 2007-403 (H 118) amends the law to provide that once such an order is issued, the test must be carried out within forty-eight hours. It further specifies the particular test (HIV-RNA Detection Test) that must be used.

S.L. 2007-99 (S 982) clarifies the state law requiring that people attending colleges or universities comply with certain immunization requirements. The amendments to the law clarify the exceptions, which are students (1) attending community colleges or (2) residing off campus and registering for any combination of off-campus course, evening course, weekend course, and up to four traditional day credit hours in on-campus courses.

Public Health Authorities

Under current state law, counties are required to provide public health services within their jurisdictions. Counties may provide these services in various ways, including through a single county health department, a district (multi-county) health department, or a public health authority. S.L. 2007-229 (H 1132) amends the laws governing public health authorities to allow board members to receive per diems in addition to reimbursement for subsistence and travel. The county commissioners who are members of the board (one from each county) are authorized to establish

the per diem, subsistence, and travel amounts. S.L. 2007-229 also amends the state's contracting laws to allow public health authorities, like many other local government units, to enter into installment contracts for the purchase of real or personal property.

Medical Examiners

County medical examiners are typically physicians appointed by the Chief Medical Examiner (CME). In some jurisdictions, a physician may not be available or willing to accept an appointment. S.L. 2007-187 (S 583) amends the statute governing appointment of medical examiners (G.S. 130A-382) to revise the list of individuals eligible to serve as acting medical examiners in these instances. Under the new law, the CME may appoint as acting examiner a physician from another county, a physician assistant, a nurse, a coroner, or a person who has taken a course of training approved by the CME. Acting examiners may not perform autopsies.

S.L. 2007-187 also includes new language in G.S. 130A-381 requiring every county to provide or contract for an appropriate facility for the examination and storage of bodies that are under the CME's jurisdiction.

Other Public Health Issues

- *Name changes:* The DHHS Division of Facility Services was renamed the Division of Health Services Regulation. In addition, the Commission for Health Services, which is an appointed body that promulgates regulations governing public health issues such as communicable disease control and restaurant sanitation, was renamed the Commission for Public Health. [S.L. 2007-182 (H 720)].
- *Private drinking water wells:* In 2006 legislation established a new state permitting system for private drinking water wells. S.L. 2007-495 (S 844) amends the law to provide that if a proposed well is to be situated on property that includes an onsite wastewater system, the application may include either a plat or a site plan. This change harmonizes the well application process with the onsite wastewater application process in G.S. Chapter 130A, Article 11.
- *Tort claims:* When state public health agencies, local environmental health specialists, and others are sued in connection with enforcing the state's public health laws, the claims may be filed under the State Tort Claims Act (G.S. Chapter 143, Article 31A). Until this session, the limit on claims filed under the Act was $500,000. S.L. 2007-452 (H 22) raised the limit on claims to $1 million. The new limit applies to torts committed on or after August 2, 2007.
- *Injury prevention:* S.L. 2007-187 enacts new G.S. 130A-224, directing DHHS to establish and administer a statewide injury prevention program. While an injury prevention program already exists within the Division of Public Health, this new law provides some guidance regarding the scope of the program's responsibilities.

Health Information

Public Health Disclosures

For many years, G.S. 130A-5(2) authorized the Secretary of DHHS to obtain access to confidential health information if the Secretary concluded that the information was necessary to investigate a disease or health hazard that presented a clear danger to the public health. Under that law, however, the Secretary was required to obtain a physician's or facility administrator's agreement in many circumstances. S.L. 2007-115 (H 353) removes that authority from G.S. 130A-5 and establishes a new section, G.S. 130A-15 to address this same issue, but in a slightly different way.

New G.S. 130A-15 does not change the general principle of the law—the Secretary may demand access to confidential health records in some situations. It does, however, remove the requirement that the Secretary obtain agreement from a physician or administrator. The new law directs all health care providers and persons in charge of health care facilities and laboratories to permit the Secretary to examine, review, and obtain a copy of confidential information that the Secretary considers necessary to prevent, control, or investigate a disease or health hazard that may present a clear danger to the public health. Any information collected by the Secretary under this authority is now subject to its own confidentiality protections. The information is not a public record and may be released only to public health officials, a court, or law enforcement officials in conjunction with public health activities. The new law retains language from former G.S. 130A-5(2) granting immunity to any person who permits the Secretary to access records pursuant to this law.

G.S. 130A-480 requires the State Health Director to implement a surveillance program that collects certain information from emergency departments in order to detect and investigate public health risks related to potential disease threats or terrorist incidents. The state must comply with significant restrictions on the use and disclosure of information collected pursuant to this program. S.L. 2007-8 (H 123) amends G.S. 130A-480 to allow the State Health Director to share the information with the federal public health agency, the Centers for Disease Control and Prevention (CDC). The state is required to enter into a confidentiality agreement with CDC requiring CDC to protect the confidentiality of the data it receives.

Disclosures to Law Enforcement and for Treatment, Payment and Health Care Operations

S.L. 2007-115 amends G.S. 90-21.20B in an attempt to harmonize state and federal confidentiality law by allowing health care providers to disclose health information in certain situations permitted under federal law. Under the federal privacy regulation promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA Privacy Rule, 45 C.F.R. Parts 160 and 164), regulated health care providers are allowed to disclose protected health information without patient permission in a variety of circumstances. States are, however, allowed to have more protective state laws in place. Interpretation and implementation of North Carolina's confidentiality laws has been uneven and somewhat confusing over the years, primarily because it has not been clear whether the state's physician-patient privilege (G.S. 8-53) was more protective of privacy than the HIPAA Privacy Rule. Many health care providers erred on the side of caution by concluding that the privilege was more protective. Therefore, many providers refused to disclose protected health information without patient permission or a court order in circumstances in which the HIPAA Privacy Rule would have allowed disclosure.

S.L. 2007-115 addresses this ambiguity in part by adding new language to G.S. 90-21.20B authorizing health care providers to ignore the privileges and disclose information for (1) law enforcement purposes as permitted by a specific section of the HIPAA Privacy Rule, 45 C.F.R. 164.512(f) and (2) treatment, payment, and health care operations purposes as permitted by another section of the federal rule, 45 C.F.R. 164.506. Health care providers must still comply with any state law that "specifically" prohibits disclosure of particular information, such as information identifying a person who has or may have a reportable communicable disease, which is protected under G.S. 130A-143. Overall, this change in the law is rather significant in that it opens the door for health care providers to share information with each other and with law enforcement officials as permitted by the HIPAA Privacy Rule without concern regarding potential violations of the privileges recognized in state law.

High Risk Pool

One of the most significant policy changes affecting safety net providers such as public hospitals and local health departments is the General Assembly's decision to establish a new high risk insurance pool. S.L. 2007-532 (H 265) enacts Part 6 of G.S. Chapter 58, Article 50, to establish the risk pool as a new nonprofit entity. The pool is designed to make health insurance available to and relatively affordable for individuals who are considered "high risks" by other insurers, such as individuals with certain diagnoses, medical conditions, or risk factors. The risk pool will operate much like an insurer but will be subject to unique requirements and restrictions.

The risk pool will be governed by a board of directors, to be appointed by the Governor, the General Assembly, and the Commissioner of Insurance. The risk pool will contract with an insurer to serve as the administrator for the pool. The administrator will carry out functions such as verifying eligibility, collecting premiums, and paying claims. The claims will be paid out of a Special Fund established in new G.S. 58-50-225. The Special Fund will be funded through various sources including:

- premiums,
- appropriations,
- premium taxes charged to other insurers and collected by the state pursuant to new G.S. 105-228.5B,
- a $1.50 per member per year surcharge on the Teachers' and State Employees' Comprehensive Major Medical Plan, and
- a one-time contribution of $5 million from the Health and Wellness Trust Fund.

The risk pool must offer at least two types of plans, including at least one preferred provider organization and one health savings account. It may charge premiums but the premiums must not be more than 150 percent to 200 percent of the standard risk rate charged by other insurers offering health insurance to individuals. The risk pool is authorized to provide premium discounts in conjunction with incentive programs and to impose a premium surcharge on smokers. Employers and insurers are not allowed to refer an individual to the pool in order to avoid that person's inclusion in an employer-sponsored group health insurance plan.

The law identifies several categories of individuals who are eligible for risk pool coverage, including a person who is denied insurance coverage for health reasons or is being charged a higher premium than that charged by the risk pool. In addition, the risk pool's board of directors is authorized to identify certain diagnoses that trigger eligibility.

End-of-Life Decision-Making

North Carolina has several laws related to the issue of consenting to health care at the end of life. These laws were drafted at different times, are found in different chapters of the General Statutes, and address different aspects of the decision-making process. As a result, attorneys and health care providers often struggled with language differences and potential conflicts. This session, the General Assembly considered all of these laws together and made significant revisions. S.L. 2007-502 (H 634) amends and clarifies the laws governing health care agents, advance directives, and informed consent. It also enacts a comprehensive law related to organ and tissue donation.

Health Care Agents

A person may appoint a health care agent by executing a health care power of attorney. The health care power of attorney may authorize the agent to make certain kinds of health care decisions, including end-of-life decisions, for the individual in the event of incapacity. G.S. Chapter 32A, Article 3 outlines one method for appointing a health care agent and includes a statutory health care power of attorney form. S.L. 2007-502 amends Article 3 by harmonizing the

law with the guardianship laws, making some technical changes, and replacing the statutory power of attorney form with a new form.

The law also now refers to the health care agent's authority to make decisions with respect to *life prolonging measures* rather than *life sustaining procedures*. The new term is defined as "medical procedures or interventions which in the judgment of the attending physician would serve only to postpone artificially the moment of death by sustaining, restoring, or supplanting a vital function, including mechanical ventilation, dialysis, antibiotics, artificial nutrition and hydration, and similar forms of treatment."

S.L. 2007-502 amends G.S. 32A-24, which extends some liability protection to health care providers that rely on health care powers of attorney. The amendments clarify that the liability protections apply to any valid health care power of attorney, not only to those using the statutory form.

Advance Directives and Natural Death

Article 23 of Chapter 90 of the General Statutes recognizes an individual's right to control decisions related to the rendering of medical care at the end of life. It includes a statutory "living will" form that allows individuals to provide advance instructions about their desires related to withholding or discontinuing care at the end of life. S.L. 2007-502 amends Article 23, including the living will form, in part to harmonize it with the revisions to the health care power of attorney changes described above. For example, this law now also refers to *life prolonging measures* and specifically addresses how the directions in a living will interact with the authority granted to a health care agent.

Under the previous version of the law, a physician was permitted to honor a declaration. S.L. 2007-502 now *requires* physicians to follow the instructions in a declaration in many circumstances. A physician may refuse to honor a declaration if doing so would violate either the physician's conscience or a conscience-based policy of the facility, but the physician must cooperate with an attending physician who is willing to honor the declaration. A physician may also refuse to honor a declaration if, after a reasonable inquiry, there are reasonable grounds to question the validity of the declaration. As with health care powers of attorney, providers acting in reliance upon valid living wills are afforded some liability protection, regardless of whether the statutory form is used.

If a person does not have a living will, G.S. 90-322 provides some guidance regarding when an attending physician may decide to withhold or discontinue certain care. S.L. 2007-502 amends that law to harmonize many of the provisions with the other changes to the end-of-life laws. In general, a physician will have some discretion to withhold or discontinue life-prolonging measures if the person is permanently incapacitated and either (1) has an incurable or irreversible condition that will result in death within a relatively short period of time or (2) is unconscious and, to a high degree of medical certainty, will never regain consciousness. Prior to withholding or discontinuing life-prolonging measures, the physician must attempt to obtain agreement from one of several identified people, including a guardian, a health care agent, a spouse, parents, children, siblings, and others.

Chapter 90 of the General Statutes also allows physicians to issue "Do Not Resuscitate" (DNR) orders with the consent of the patient or the patient's representative. S.L. 2007-502 amends G.S. 90-21.17 to make the language compatible with the other end-of-life statutes and also to authorize physicians to issue a new type of order, a Medical Order for Scope of Treatment (MOST). While the term is not defined, it appears that a MOST is an order that identifies agreed-upon treatment beyond resuscitation, such as the use of antibiotics and the availability of artificial nutrition and hydration. The law directs DHHS to develop a MOST form and specifies that the form must explain that a MOST may suspend conflicting directions in other advance directives, a health care power of attorney, or another legally recognized instrument.

Informed Consent

S.L. 2007-502 also takes steps to harmonize the state law governing informed consent with all of the changes made to the end-of-life statutes. The previous version of the informed consent law, G.S. 90-21.13, included a list of persons who were authorized to consent to care on behalf of another person. The revisions provide a more comprehensive and detailed list of authorized persons. This new list mirrors the list of individuals authorized to agree to a physician's decision to withhold or discontinue life-prolonging measures pursuant to G.S. 90-322. If none of these individuals is available to provide informed consent, the physician may provide care to the patient if another physician agrees or if the delay in obtaining agreement from another physician would endanger the life or seriously worsen the condition of the patient. Note that this change in the law applies to informed consent in all health care situations, not just end-of-life situations.

Organ and Tissue Donation

In 2006 the National Conference of Commissioners on Uniform State Laws (Conference) adopted a Revised Uniform Anatomical Gift Act. S.L. 2007-538 (H 1372) incorporated the model into North Carolina Law by adding a new Part 3A to G.S. Chapter 130A. According to the Conference, the act is "designed to encourage the making of anatomical gifts" and also "honor and respect the autonomy interest of individuals to make or not to make an anatomical gift of their body or parts."[3]

The law provides several methods for allowing a person to make a gift before death, such as including the gift in a will, registering with a donor registry, authorizing a symbol to appear on a driver's license, and, in the event of a terminal illness or injury, by communicating the donor's wish to at least two adults, at least one of whom is a disinterested witness. The law also provides several options for refusing to make a gift and also amending or revoking a gift.

Separate provisions of the law address anatomical gifts from decedents. The law outlines who has the authority to make a gift of a decedent's body or body part and the process that must be followed for making such a gift. It also lists persons and entities who may receive such gifts, including hospitals, medical schools, organ procurement organizations, eye and tissue banks, and even specific individuals. If the donor does not specifically designate an intended recipient of the gift, the law specifies who is entitled to receive it.

S.L. 2007-538 also revises G.S. 20-43.2, the law requiring the Department of Transportation Division of Motor Vehicles to establish and maintain the state's organ donor registry. The amendments to the law require that organ procurement organizations and eye banks must be able to have access to the registry at all times. It also requires that personally identifiable information maintained by the registry be protected from unauthorized disclosure.

Health Care Professions

Medicine

S.L. 2007-346 (H 818) makes significant changes to the laws governing the practice of medicine found in Chapter 90, Article 1 of the General Statutes. First and foremost, it establishes a new definition of the practice of medicine in G.S. 90A-1A. The new definition encompasses the prescription and administration of medicine, the treatment of disease, illness, pain, or defect (including the management of pregnancy and birth), and the performance of surgery. The law still provides for a long list of exceptions, including a new temporary exception for physicians and surgeons providing health care services to a sports team visiting the state.

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3. National Conference of Commissioners on Uniform State Laws, *Prefatory Note to the Revised Uniform Anatomical Gift Act* (Oct. 13, 2006), *available at* http://www.anatomicalgiftact.org/DesktopDefault.aspx?tabindex=1&tabid=63 (last visited Aug. 30, 2007).

S.L. 2007-346 completely overhauls the process for appointing members of the North Carolina Medical Board. Previously, the North Carolina Medical Society played a major role in the selection of seven of the twelve members of the board. This change in the law may have been in response to a lawsuit that was filed in early 2007 alleging that the state improperly delegated the authority to make appointments to a single private entity, the Medical Society.[4] Beginning in January 2008, an independent review panel will evaluate the applicants for most of the physician, physician assistant, and nurse practitioner positions on the board. The nine-member review panel will include four representatives from the Medical Society and one representative each from five other professional societies. The review panel will make recommendations to the Governor, who will then make appointments based upon those recommendations.

S.L. 2007-346 adds several new sections to G.S. Chapter 90, Article 1 regarding licensure requirements for physicians, graduates of foreign medical schools, physician assistants, and anesthesiologist assistants (*see* discussion of anesthesiologist assistants below). The law now requires that the public have access to much of a licensee's information, such as educational background and training, contact information, criminal history, final disciplinary actions that result in the suspension or revocation of privileges, and certain malpractice related information. It also empowers the N.C. Medical Board to develop and implement methods for identifying physicians who are not performing up to standards (termed "dyscompetent").

One of the Medical Board's key functions is disciplining licensees. Under current law, hearings may be conducted by hearing committees comprised of three or more board members. The act amends the hearing committee requirements to provide that the nonmembers may also be appointed as hearing officers. S.L. 2007-346 also amends G.S. 90-14.6, which governs admissibility of evidence in a disciplinary proceeding, to provide that witnesses called from other states must not only have training and experience in the same field of practice as the individual under investigation, but must also be familiar with the standard of care among members of the same profession in North Carolina. If the board receives a complaint regarding the care of a patient, it is now required to report to the complainant at the conclusion of its inquiry and explain its disposition of the inquiry. This may involve sharing a copy of the licensee's written response to the complaint.

Beginning in October 2007, the Medical Board will have the authority to regulate the retention and disposition of medical records held by individuals licensed by the board. This authority also extends to records maintained by individuals who are not licensed by the board but only if the individual is not licensed under other state law. The board does not have the authority to regulate medical records maintained in the normal course of business by a licensed health care institution. The board will likely exercise its rulemaking authority to adopt regulations governing retention and disposition.

A separate bill, S.L. 2007-418 (H 1381), also makes several amendments to G.S. Chapter 90, Article 1. The act authorizes the North Carolina Medical Board to issue four new categories of licenses. The first is a *resident's training license,* which may be granted to an otherwise unlicensed physician while he or she is participating in a graduate medical education training program (G.S. 90-12.01). The second new category is a *military limited volunteer license*, which is available to applicants who are licensed and in good standing in another state and are authorized to treat military personnel or veterans (G.S. 90-12.1A). This category of licensee is allowed to practice medicine or surgery only at clinics that specialize in the treatment of indigent patients. Under the third category, the board is authorized to issue a *special purpose license* to any applicant who holds a full and unrestricted license in another jurisdiction and does not have any disciplinary action pending against him or her (G.S. 90-12.2A). The statute does not set out any further restrictions on a person holding a special purpose license, but it authorizes the board to adopt rules to implement the law. The final new category of license is a *medical school faculty license*. The physician must hold a full-time appointment at one of the state's four medical schools

4. *See* Sarah Ovaska, *Doctor takes on Medical Society; suit says power shields wrongdoers*, Raleigh News & Observer (Mar. 1, 2007). The lawsuit was dropped after the legislation was enacted. *Plaintiffs drop medical lawsuit: Board, society had been targets*, Raleigh News & Observer (Aug. 22, 2007).

and not be subject to a disciplinary order or other action in another state or jurisdiction. A person holding a medical school faculty license may practice medicine or surgery only within the confines of the medical school or an affiliate of the medical school.

Nursing

The North Carolina Board of Nursing is charged with administering the Nursing Practice Act in Chapter 90, Article 9A of the General Statutes. S.L. 2007-148 (S 376) grants new powers to the board, including the power to acquire property and designate one or more of its employees to serve papers or subpoenas issued by the board. It also allows the board to designate committees empowered to conduct disciplinary hearings and submit recommended decisions to the full board.

Dentistry and Dental Hygiene

S.L. 2007-346 (H 818) amends the laws governing the practice of dentistry to allow a dentist who is not licensed in North Carolina to provide dental services on a voluntary (i.e., uncompensated) basis. New G.S. 90-37.2 allows the North Carolina State Board of Dental Examiners to issue these temporary volunteer permits to any dentist who graduated from a dental school approved by the North Carolina State Board of Dental Examiners, passed an exam substantially similar to North Carolina's licensing exam, and holds an unrestricted license issued by another state. The temporarily permitted dentist must practice at certain types of facilities and under the supervision or direction of a dentist licensed in North Carolina. The temporary permits may be valid for up to one year but may be renewed indefinitely.

Another new law, S.L. 2007-124 (S 1337), amends the Dental Hygiene Act in G.S. Chapter 90, Article 16 to authorize dental hygienists to perform dental hygiene functions, such as cleaning teeth and taking x-rays, outside the direct supervision of a dentist. This new authority applies only if (a) the hygienist meets certain requirements related to experience, training and continuing education and (b) the dentist examined and evaluated the patient within the previous 120 days, provided a written treatment plan for the patient, and directed the hygienist to perform the functions. In addition, the new authority extends only to services provided in specific types of settings, including long-term care facilities, rural and community clinics, and certain facilities serving dental access shortage areas. Dentists who order hygienists to perform such unsupervised work must submit annual reports to the North Carolina State Board of Dental Examiners.

Social Work

Licensure of social workers is addressed in G.S. Chapter 90B and is governed by the North Carolina Social Work Certification and Licensure Board. Under current law, the board is authorized to issue a two-year provisional social work license in some circumstances. S.L. 2007-379 (S 1090) amends G.S. 90B-7(f) to limit the term of the provisional license. Under the new law, a provisional licensee must pass the board's qualifying clinical examination within two years and complete all requirements for licensure within six years. The licensing law was also amended to remove two categories of individuals who were exempt from the requirements applicable to licensed clinical social workers. The exemptions applied to certain individuals who were practicing social work before 1992 and to employees engaged as clinical social workers exclusively for hospitals, adult care homes, nursing homes and facilities licensed under G.S. Chapter 122C (mental illness, developmental disabilities, and substance abuse facilities).

S.L. 2007-379 also amends the law related to record keeping. Under revised G.S. 90B-6(i), any agency employing a licensed social worker must maintain records for a minimum of three years from the date the social worker terminated service to the client and the client's record is closed.

Other Professions

- *Anesthesiology assistants*: S.L. 2007-146 (H 1492) authorizes the North Carolina Medical Board to license anesthesiologist assistants and imposes limitations on the services that a licensed assistant may provide. While S.L. 2007-146 initially placed the licensure criteria in G.S. 90-11, section 9.1 of S.L. 2007-346 (H 818) transferred the criteria to a new G.S. 90-9.4.
- *Chiropractic:* G.S. Chapter 90, Article 8 governs the licensure of chiropractic physicians. S.L. 2007-525 (S 864) amends Article 8 to require all applicants to consent to criminal background checks and directs the North Carolina Department of Justice to facilitate requests for such requests. S.L. 2007-525 also adds new G.S. 90-154.4, which prohibits chiropractors from offering enticements to patients (i.e., incentives to enter treatment) in certain situations.
- *Laser hair practitioners:* The practice of hair removal or reduction through the use of laser technology is now subject to oversight by the Board of Electrolysis Examiners. S.L. 2007-489 (H 726) amends the Electrolysis Practice Act in G.S. Chapter 88A to require licensure for laser hair practitioners and laser hair practitioner instructors. It also increases the penalty for practicing electrolysis or laser hair removal without a license from a Class 2 misdemeanor to a Class I felony.
- *Respiratory care:* S.L. 2007-418 (H 1381) authorizes the respiratory care board to raise application, license and other related fees.
- *Recreational therapy:* S.L. 2007-389 (S 768) amends the North Carolina Recreational Therapy Licensure Act to exempt from licensure requirements any person employed in recreational therapy by DHHS as long as the therapy services are provided solely under the direction and control of DHHS. The exemption expires in June 2010.
- *Psychologists*: S.L. 2007-468 (H 1488) is addressed in Chapter 19, "Mental Health."

Health Care Facilities

Hospitals

The state now has expanded statutory authority to discipline licensed hospitals. S.L. 2007-444 (H 772) amends G.S. 131E-78 to provide DHHS with new authority to suspend the admission of new patients to a hospital or suspend specific services of a hospital when the hospital has failed to comply with state law and, as a result, conditions exist that are dangerous to the health or safety of the patients. As with any adverse action on its license, a hospital has the right to contest the action in accordance with the Administrative Procedure Act (G.S. Chapter 150B).

State officials also have new authority to relax hospitals' regulatory burdens in certain emergency situations. S.L. 2007-444 enacts new G.S. 131E-84, authorizing the DHHS Division of Health Service Regulation to temporarily waive any applicable rules for a hospital that is providing temporary shelter and temporary services requested by an emergency management agency. The new statute also authorizes DHHS to "preapprove" the waiver of rules such that the emergency management agency may automatically assume a waiver exists if a disaster or emergency has been declared in accordance with state law.

The 2005 General Assembly considered a bill (S 391) that would have required hospitals to report to the state certain information about nosocomial infections (infections acquired in the hospital). Under the proposed legislation, the data would have been available to the public. While that proposal was not enacted, the legislature did pass a law this year that lays the foundation for introducing such a reporting requirement in the future. S.L. 2007-480 (H 1738) establishes the Advisory Commission on Hospital Infection Control and Disclosure (Advisory Commission). The Advisory Commission is charged with preparing state agencies, hospitals and the public for a mandatory reporting law, which the General Assembly intends to have in place by 2010. S.L. 2007-480 directs the Advisory Commission to submit to the General Assembly by January

2009 recommendations and draft legislation related to public disclosure of the data. The act includes detailed guidance regarding the process needed for reviewing, adjusting, and validating any data disseminated to the public.

Other Facilities

Under current law, a person or organization interested in providing certain types of health care services or opening certain types of health care facilities must apply to the state for a "certificate of need" or CON. S.L. 2007-473 (H 1685) directs DHHS to establish an expedited review process that would apply in limited circumstances. It would be available only when a person or organization who holds a current CON for an adult care home or a nursing home seeks to relocate from one facility or campus to another facility or campus within the same county. The expedited process would be available only if the relocation will not result in an increase in the total number of beds in the facility.

Other legislation related to adult care homes and home care agencies is addressed in Chapter 25, "Senior Citizens."

Health Care Personnel Registry

DHHS currently maintains a health care personnel registry pursuant to G.S. 131E-256. The registry is designed to track individuals who are working in a health care facility and have been found by DHHS to have mistreated a resident of the facility, misappropriated property at the facility, or diverted drugs. S.L. 2007-544 (S 56) makes three significant changes to the registry law. First, it amends the definition of *health care personnel* to include all individuals who are not licensed but who have direct access to a health care facility's residents or clients or to their property in the course of working in the facility. Second, it expands the list of health care facilities covered to include several additional types of providers, including certain unlicensed community-based providers of services for the mentally ill, the developmentally disabled, and substance abusers. Third, it expands the list of activities that must be registered to include diversion of drugs belonging to a patient or client of the health care facility and fraud against a patient or client.

Miscellaneous

- *Medical malpractice:* Many medical malpractice claims allege negligence and seek damages for personal injury or wrongful death. S.L. 2007-541 (H 1671) establishes a statutory framework governing voluntary arbitration of such claims. This new law is discussed in Chapter 6, "Courts and Civil Procedure."
- *Pharmacy records*: S.L. 2007-248 (H 1369) makes two significant changes to the laws governing pharmacy records. It amends G.S. 90-85.26(a) and G.S. 90-412(a) to allow certain records to be retained in electronic, rather than paper, form. It also amends G.S. 90-106(h) by eliminating the requirement that a pharmacist write his or her own signature on the face of any prescription order for a controlled substance.
- *Impaired driving*: When a law enforcement officer requests a blood or urine sample in impaired driving situations, G.S. 20-139.1 requires certain health care personnel to draw the blood or collect the urine regardless of whether the suspect agrees. S.L. 2007-115 amends G.S. 20-139.1 to allow health care providers to refuse to collect urine or draw blood if it reasonably appears that the procedure cannot be performed without endangering the provider. This amendment is discussed in more detail in Chapter 21, "Motor Vehicles."

- *Respite care*: Respite care is the provision of temporary relief to family members and others who care for the elderly or for individuals with disabilities, chronic or terminal illness, or dementia. S.L. 2007-39 (H 424) directs DHHS to study the availability and delivery of respite care and make recommendations for state action on issues such as the need for more respite care providers, whether and how such providers should be licensed, and available funding for respite care.
- *Funeral establishments*: S.L. 2007-297 (H 1400) prohibits the taking of human tissue at funeral establishments, subject to limited exceptions for embalmers, medical examiners, and autopsy technicians.

Aimee N. Wall

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Higher Education

For the second session in a row, the General Assembly was generous in its appropriations to the University of North Carolina (UNC) and the state's Community College System. The 2006 session was a good one financially, and 2007 was even better. The extension of the relief from many lean years in a row was the chief legislative story regarding higher education.

Appropriations and Salaries

UNC Current Operations

Section 2.1 of the Current Operations and Capital Improvements Appropriations Act of 2007 [S.L. 2007-323 (H 1473)] (the budget act) appropriates $2.626 billion for 2007–08 and $2.656 billion for 2008–09 to the Board of Governors (BOG) of the University of North Carolina (UNC) for the operation of all UNC campuses and hospitals. These amounts represent increases of approximately 25 percent over the comparable appropriations for 2005–06 and 2006–07 set at the beginning of that biennium.

Community Colleges Current Operations

The budget act appropriates to the Community Colleges System Office $938,106,160 for 2007–08 and $899,643,003 for 2008–09. These amounts represent increases of approximately 18 percent over the comparable appropriations for 2005–06 and 2006–07 set at the beginning of that biennium.

Capital Improvements

The budget act's total statewide appropriation for capital improvements for all government—not just UNC and the community colleges—is $230,741,100. Of that total, $133,149,000 is for UNC. The single largest amounts are $25 million for dental school facilities at East Carolina University and UNC Chapel Hill, $19 million for energy production facilities at UNC Charlotte,

and $17 million for a library on the Centennial Campus at North Carolina State University (NCSU).

None of the $230 million appropriated for capital improvements statewide is for the community college system. Capital improvements for community colleges are primarily a county, not a state, responsibility, and it is not unusual for a budget to include no capital improvement funds for community colleges. The 2007 budget act does, however, make available $15 million for facility and equipment needs, to be awarded to community colleges through a competitive grant award program. No individual grant may exceed $1 million.

In addition to appropriations for UNC capital improvements, the budget act authorizes special indebtedness under the State Capital Facilities Finance Act in the following amounts for the projects indicated: $119.608 million for a science building at UNC Chapel Hill, $34 million for an educational building at Appalachian State University, $22.587 million for a science building at Fayetteville State University, $24.92 million for a library at the North Carolina School of the Arts, $38 million for an animal hospital at NCSU, $34 million for an engineering building at NCSU, $34.525 million for a teaching laboratory at UNC Wilmington, $41.605 million for a science building at Western Carolina University, $19 million for a nursing building at UNC Pembroke, $18.708 million for a student activities center at Winston-Salem State University, and $53 million for a science facility to be used jointly by UNC Greensboro and N.C. Agricultural and Technical State University.

In addition, S.L. 2007-394 (S 1241) authorizes a number of capital improvement projects at UNC constituent institutions that are to be funded by receipts, self-liquidating indebtedness, or sources other than General Assembly appropriations. The largest of these are residence hall construction and acquisition at Western Carolina University at just over $44 million, chilled water infrastructure at just under $40 million at UNC-Chapel Hill, a veterinary hospital at North Carolina State University at $34 million, and a parking facility at UNC-Chapel Hill at $30 million.

Salaries

All community college employees paid from state funds, other than faculty and professional staff, received salary increases of 4 percent. Faculty and professional staff received 5 percent increases under the budget act.

Similarly, for UNC employees who are subject to the State Personnel Act, the budget act provides for a salary increase of 4 percent. UNC employees who are not faculty and who are not subject to the State Personnel Act received an average increase of 4 percent, and faculty members received an average increase of 5 percent. Faculty in the School of Science and Mathematics received an average increase of 5 percent, with a minimum increase of $1,240.

The budget act also sets a minimum 2007–08 salary schedule for nine-month, full-time, teaching faculty at community colleges: $33,314 for those with vocational diplomas or less; $33,805 for those holding associate's degrees; $35,931 for those with bachelor's degrees; $37,817 for education specialists and those holding master's degrees; and $40,537 for faculty with doctoral degrees. The act permits community colleges to use portions of state-appropriated faculty salary funds (on a sliding scale) for purposes other than salaries that directly affect student services. The amount depends on how nearly the college's average faculty salary matches the national average. The closer to the national average, the more salary funds the college may transfer to other purposes.

University and Community College Governance

UNC Faculty Workload

Section 9.2 of the budget act directs the BOG to study the workload of UNC faculty members, comparing actual workloads to the figure used in the UNC enrollment model to calculate student credit hours per instructional position and to faculty workloads at regional and peer institutions.

University Contracting

S.L. 2007-322 (H 749) amends a number of statutes to relax regulations regarding certain kinds of contracts entered into by UNC. First, G.S. 133-1.1(a) requires that contracts in excess of $300,000 for repair of public buildings that do not involve structural changes must be planned by a registered architect. This act raises that threshold for UNC to $500,000. Second, the act makes the same change to the threshold under G.S. 143-64.34(b) regarding UNC contracts for procurement of architectural, engineering, and surveying services. Third, the act makes the same threshold change under G.S. 143-128(g) regarding bidding of UNC construction contracts. Fourth, the same change in G.S. 143-129(a) applies to the threshold for bidding UNC contracts for the purchase of apparatus, supplies, materials, or equipment. Fifth, an exception from the general bidding requirements found in G.S. 143-135 applies when work under the contract is to be performed by employees of the governmental unit itself and the total cost of the project does not exceed $125,000 and the total cost of labor does not exceed $50,000. The act raises those limits for UNC to $200,000 and $100,000, respectively. Sixth, the act adds new G.S. 116-31.12, empowering the BOG to develop policies under which the boards of trustees of the constituent institutions and the General Administration may acquire interests in real property by leases of up to ten years without acting through the state Department of Administration.

Progress Board Repealed

Section 9.11 of the budget act repeals the statutes that created the North Carolina Progress Board.

Principals' Executive Program Review

The budget act, in Section 9.10, provides that the operating budget of the Principals' Executive Program is appropriated on a nonrecurring basis until data is available showing a positive, measurable impact on conditions for teaching and learning in schools. It directs the program to give priority in admissions to administrators from high-need schools and to take geographic diversity into account in admission decisions. It directs the State Board of Education and BOG to create a plan to provide input on the program's priorities and feedback on its performance.

Access to Personnel Records

S.L. 2007-508 (S 1546) amends G.S. 115D-28, which specifies what information in a community college employee's personnel file is public, and G.S. 126-23, which does the same thing for UNC employees. The statutes provide that employee salaries are public information. The new language makes it clear that the term *salary* includes benefits, incentives, bonuses, and deferred and other forms of compensation paid by the college or university—not just straight pay. The amendment also specifies that the terms of any employment contract, "whether written or oral, past or current," are a matter of public record.

UNC Health Care System Debt Collection

G.S. 147-86.11(e) requires that all unpaid billings of $500 or more due to a state agency are to be turned over to the Attorney General for collection. S.L. 2007-306 (H 646) amends the statute to provide that the UNC Health Care System may, but is not required to, turn late patient accounts over to the Attorney General for collection. G.S. 147-86.23 provides that past-due billings owed to state agencies are to be accompanied by a late-payment fee. The act exempts UNC Health Care billings from this requirement. G.S. 116-37(f) permits the health system to spend public funds on behalf of a patient who is financially unable to afford the costs of ambulance or other transportation for discharge or placement in an after-care facility or certain other health-related needs. The statute formerly limited the expenditure to $7,500 per patient per admission. The act removes that ceiling. G.S. 143-553(a) provides that all employees of the state, of cities or counties, of school systems, or of community colleges who owe money to the state and whose salaries are paid in whole or in part by state funds must make full restitution to the state as a condition of continuing employment. The act adds a provision that no one may be dismissed from employment for failure to make restitution of money owed to the health care system for health services.

Instruction in American Sign Language

S.L. 2007-154 (H 915) enacts new G.S. 115D-5(r) and G.S. 116-11(4b) to direct the State Board of Community Colleges and the BOG, respectively, to encourage their constituent institutions to offer courses in American Sign Language as a modern foreign language.

State Employee Spouses on Governing Boards

Members of the General Assembly, officers and employees of the state, and officers and employees of the constituent institutions are prohibited from serving on UNC governing boards by the following statutes: G.S. 116-7(b) (UNC BOG); G.S. 116-31(h) (UNC constituent institution boards of trustees); and G.S. 116-233(c) (School of Science and Mathematics). In addition, G.S. 115D-2.1(d) makes ineligible for service on the State Board of Community Colleges members of the General Assembly, officers and employees of the state, and officers and employees of the institutions under the board's jurisdiction.

All of the statutes have extended the prohibition to spouses of those disqualified. S.L. 2007-278 (S 884) retains the prohibition for spouses of those serving in the General Assembly and of officers and employees of the institutions, but it removes the prohibition for spouses of state employees and officers.

Extension Service Employees

S.L. 2007-195 (H 847) amends G.S. 116-33.2, G.S. 126-5(c1), and G.S. 153A-439 to specify that employees of the North Carolina Cooperative Extension Service of NCSU who are employed in county operations are exempt from the State Personnel Act and to provide that their employment is to be governed by policies to be adopted by the NCSU trustees.

Arboretum Police

G.S. 116-40.5 authorizes UNC constituent institutions to establish campus law enforcement agencies and employ campus police officers. S.L. 2007-285 (S 630) extends that authority to the Board of Directors of the North Carolina Arboretum.

Records of Applicants

S.L. 2007-372 (S 1023) adds a new exception [G.S. 132-1.1(f)] to the state Public Records Law to provide that records relating to an individual applicant for admission to a UNC institution

or a community college are not public records, except for letters written on behalf of applicants by elected officials. (Records of enrolled students are confidential under federal law.)

Audit Records

G.S. 116-40.7 provides that audit reports by internal auditors within UNC are public records to the extent they do not contain information otherwise made confidential by law. S.L. 2007-372 amends the statute to provide that the working papers on which audits are based are similarly public records, once the audit report is completed. The custodian of the working papers may redact the name and personally identifying information of the person who initiated an allegation of wrongdoing that triggered the audit.

Calling Meetings of Community College Boards

G.S. 115D-18 provides that meetings of the boards of trustees of community colleges may be called by the chair of the board or by the college's president. S.L. 2007-197 (H 581) amends the statute to provide that meetings may also be called by a majority of the trustees.

Community College Energy Improvement Loans

S.L. 2007-476 (H 177) enacts new G.S. 115D-20(10a), adding to the specified powers of community college boards of trustees the authority to enter into loan agreements under the Energy Improvement Loan Program established in Part 3 of Article 36 of Chapter 143 of the General Statutes.

Community College Performance Standards

G.S. 115D-31.3 has mandated twelve performance measures to be used to evaluate community colleges' performance budgeting. S.L. 2007-230 (H 642) reduces the number of measures to eight and directs that they be used in "recognition of successful institutional performance" rather than performance budgeting. The four measures dropped are employment status of graduates, employer satisfaction with graduates, program enrollment, and proportion of those who complete their goals. As before, performance as measured by the remaining standards affects the ability of the college to carry forward funds from one fiscal year to the next without reversion. In addition, the act adds two new measures as a basis for determining "exceptional institutional performance" and distributing additional funds. They are (1) the passing rate on all reported licensure and certification examinations and (2) the percentage of college transfer students with a grade point average at least 2.0 after two semesters at a four-year college. The act also provides that the State Board of Community Colleges may withhold any funds a college qualifies for if the college is under investigation by a state or federal agency or does not meet the standards of the Southern Association of Colleges and Schools, the State Auditor's Office, or the State Board of Community Colleges.

Student Relationships and Financial Aid

Escheat Fund Financial Aid Appropriations

Section 9.3 of the budget act appropriates from the Escheat Fund approximately $103 million for 2007–08 and $124 million for 2008–09 to the UNC Board of Governors and just under $14 million each fiscal year to the State Board of Community Colleges, to be allocated by the State Education Assistance Authority (SEAA) for need-based student financial aid.

Education Access Rewards North Carolina Scholars Fund

Section 9.7 of the budget act creates the Education Access Rewards North Carolina Scholars Fund to provide grants of up to $4,000 per year for the first two years of undergraduate study at a UNC institution or North Carolina community college. Students who qualify for the grants are wards of the court or dependents under Title IV of the Higher Education Act of 1964 whose total family income does not exceed 200 percent of the federal poverty guideline.

To fund the grants, the act appropriates $27.605 million for 2007–08 and $60 million for 2008–09 from the General Fund to the SEAA, along with an additional $40 million for 2008–09 from the Escheat Fund to the SEAA. A provision directs the governor to include in the 2009–11 budget the amount necessary to fully fund grants under this program.

Medical and Dental Scholarship Programs

Sections 9.4 and 9.5 of the budget act enact new G.S. 116-40.9 and G.S. 116-40.10 governing the previously created Board of Governors Medical Scholarship Loan Program and parallel Dental Scholarship Loan Program. The new statutes provide for scholarship loans that cover all tuition and fees and related expenses plus a $5,000 annual stipend, to be used at any public or private North Carolina medical school and the one dental school. The loan is forgiven if the recipient practices medicine or dentistry in North Carolina for four years within seven years after graduation.

Nursing Scholarship Program

G.S. 90-171.100 establishes the Graduate Nursing Program for Faculty Production, which provides scholarship loans of $15,000 per year for students enrolled in master's degree or doctoral programs that qualify them as nursing instructors at community colleges or universities. Section 9.5 of the budget act makes the scholarship loans available to North Carolina community college nursing faculty who are currently pursuing master's degrees in nursing education. These faculty members are to be given preference in the awarding of the scholarship loans. The act also provides that scholarship loan recipients who teach in a North Carolina community college nursing program within seven years after graduation will receive one year of loan forgiveness for each year they teach.

Future Teachers Scholarship Program Expanded

Section 9.9 of the budget act amends G.S. 116-209.38(a), which establishes the Future Teachers of North Carolina Scholarship Loan Fund to expand the number of scholarship loans granted annually from 100 to 150.

State Aid to Part-time and Licensure Students at Private Colleges

For a number of years, the General Assembly has provided a grant for each North Carolina undergraduate enrolled at a qualifying North Carolina private college, to be credited directly against that student's obligation to the college. Only full-time students could qualify. The budget act, in section 9.13, amends G.S. 116-21.2 and G.S. 116-43.5 to extend the grants on a pro rata basis to part-time undergraduate students taking at least nine hours of academic credit per semester and to extend the grants to students enrolled in programs leading to licensure in teaching or nursing.

Scholarship Program for Athletes at Historically Black Colleges

Section 9.18 of the budget act enacts new G.S. 116-209.40, creating the John B. McLendon Scholarship Fund to award two leadership scholarships of $1,250 per year to one male and one

female member of a varsity athletic team at a historically black college or university in North Carolina. The colleges are to designate student recipients, who must demonstrate outstanding leadership qualities, be involved in the college community, and maintain high academic standards. The act allocates $500,000 to the SEAA for 2007–08 to fund the scholarships. The first scholarships will be awarded for the 2008–09 academic year.

Community College Tuition Surcharge

S.L. 2007-367 (S 1065) enacts new G.S. 115D-39.1, providing that a community college may, with the approval of the State Board of Community Colleges, implement a tuition surcharge of one-third to fund a new instructional program needed to attract industry to the area. The college may use the proceeds of an endowed scholarship to offset the increase in tuition as long as the scholarship's endowment is in excess of $5 million.

Teacher Assistant Scholarship Fund

G.S. 116-290.35(b) sets the criteria for eligibility for scholarships under the Teacher Assistant Scholarship Fund, one of which is that the teacher assistant must be enrolled in a North Carolina college. S.L. 2007-457 (H 851) specifies that the person so enrolled must be pursuing licensure as a teacher.

Robert P. Joyce

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Local Finance

The principle lobbying efforts of the North Carolina Association of County Commissioners in the 2007 session focused on a single piece of legislation—a comprehensive Medicaid relief package in which the state incrementally assumes the full county Medicaid share and provides counties additional revenue-raising options, in exchange for a portion of the counties' sales tax revenue. Municipalities did not fare as well in obtaining additional revenue sources to fund infrastructure projects but did succeed in protecting their share of the sales tax revenue.

In addition to the Medicaid reform legislation, the General Assembly made major changes in several other areas, including establishing a statewide solid waste management program, discussed both in this chapter and in Chapter 12, "Environment and Natural Resources," consolidating state and local 911 services under a new state 911 Board, and authorizing local governments to both establish and participate in irrevocable trust funds for Other Post-Employment Benefits and Special Separation Allowance liabilities.

This chapter discusses much of the 2007 finance-related legislation important to local governments, although not all. Interested readers also should review Chapter 8, "Economic and Community Development"; Chapter 12, "Environment and Natural Resources"; Chapter 17, "Local Government"; Chapter 18, "Local Taxes and Tax Collection"; Chapter 22, "Public Employment"; and Chapter 23, "Public Purchasing and Contracting."

Medicaid Relief and Local Option Taxes for Counties

Due to the rising costs associated with Medicaid expenses, counties have been lobbying the legislature for a number of years to reduce or eliminate the county share of nonfederal Medicaid expenses. According to the North Carolina Association of County Commissioners, as of 2007, North Carolina was the only state that required counties to pay a fixed percentage of all Medicaid services costs. The legislature had responded to the intense lobbying pressure with a one-year cap on the counties' Medicaid share in 2006. But, without further legislative action, counties were projected to spend more than $517 million for the nonfederal share of Medicaid in the 2007–08 fiscal year, crippling some counties' ability to fund other essential needs, such as public education.

The General Assembly adopted a permanent solution this session in the 2007 appropriations act, S.L. 2007-323 (H 1473), by phasing out the county share entirely over a three-year period. In

exchange for the state assuming this expense, the legislation also phases out the counties' authority to levy a half-cent local option sales and use tax—increasing the state sales and use tax by this amount—and imposes a one-year reduction in the allocation of funds to counties from the state's Public School Building Capital Fund. The comprehensive budget provision requires counties to hold municipalities harmless for the lost local sales and use tax revenue and requires the state to guarantee counties a certain return. Finally, it authorizes each county to levy either an additional one-fourth cent local option sales and use tax or a local land transfer tax of up to 0.4 percent, pending voter approval.

Phaseout of County Medicaid Share

The county Medicaid share as of 2007 was 15 percent of the nonfederal Medicaid costs and Medicare Part D clawback payments. S.L. 2007-323 phases out the county Medicaid share over the next three years—with the state assuming 25 percent beginning October 1, 2007, 50 percent beginning July 1, 2008, and 100 percent beginning July 1, 2009. Counties will continue to pay any local administrative expenses associated with the Medicaid program.

One-year Average Daily Membership Fund Adjustment

To defray the first-year costs to the state of assuming 25 percent of the county Medicaid share, the act amends G.S. 115C-546.2 to alter the average daily membership (ADM) distribution to counties from the Public School Building Capital Fund for fiscal year 2007–08 only. It reduces the amount of each county's distribution by the lesser of 60 percent of the expected ADM distribution or 60 percent of the amount of the county's Medicaid share assumed by the state. A county must make up for the reduction in ADM funds from the additional revenue it receives as a result of the state assuming a portion of its Medicaid payments. Specifically, in fiscal year 2007–08, a county must use for purposes set out in G.S. 115C-546.2(b) a portion of this revenue equal to the difference in what the county would have received in ADM funds under G.S. 115C-546.2(a) and what it does receive.

Phaseout of Article 44 Local Sales and Use Tax

To defray the costs to the state of assuming the county Medicaid share in future years, S.L. 2007-323 reduces the G.S. Chapter 105, Article 44 half-cent local sales tax to a one-fourth cent tax and increases the state sales tax by one-fourth cent, effective October 1, 2008, and further reduces the Article 44 local tax by the remaining one-fourth cent and increases the state sales tax by one-fourth cent, effective October 1, 2009. From October 1, 2008, through September 30, 2009, the Article 44 one-fourth cent local tax will be distributed among counties on a point-of-origin basis, that is, with the proceeds allocated to the counties where the goods were delivered.

Distribution Change of Article 42 Local Sales and Use Tax

When the second one-fourth cent of the G.S. Chapter 105, Article 44 local sales tax is repealed on October 1, 2009, the distribution formula for the Article 42 one-half cent local sales tax will switch from a per capita to a point-of-origin method. The distribution of the Article 39[1] one cent tax will remain on a point-of-origin basis and the distribution of the Article 40 one-half cent tax will remain on a per capita basis.

1. References in this chapter to the G.S. Chapter 105, Article 39 one-cent local sales tax include the Mecklenburg County one-cent sales tax under 1967 N.C. Sess. Laws ch. 1096.

Municipal Hold Harmless Funds

S.L. 2007-323, as amended by S.L. 2007-345 (H 714), enacts new G.S. 105-522, requiring counties to hold municipalities that are incorporated as of October 1, 2008, harmless for the phase-out of the half-cent G.S. Chapter 105, Article 44 local sales and use tax. The hold-harmless funds are paid to municipalities by the Secretary of Revenue each month from funds obtained by reducing the county's monthly allocation of the Article 39 one cent sales tax proceeds.

For the period after the first one-fourth cent of the Article 44 tax is repealed, October 1, 2008, through September 30, 2009, the hold-harmless payments are calculated as the equivalent of the revenue that would have been generated by the repealed one-fourth cent tax distributed per capita, less any actual distributions under the repealed tax. The calculations are as follows:

- 50 percent of the proceeds a municipality receives each month from the half-cent Article 40 tax (less revenue from the sale of food subject to the local tax only), *minus*
- the proceeds distributed to the municipality each month on a per capita basis from the repealed one-fourth cent Article 44 tax in October, November, and December 2008.

After the tax is completely phased out on October 1, 2009, the hold-harmless payments are calculated as the equivalent of the revenue that would have been generated by the repealed half-cent tax (distributed half per capita and half point-of-origin), less any actual distributions under the repealed tax, plus the impact on the municipality from the conversion of the Article 42 tax distribution from per capita to point-of-origin. The calculations are as follows:

- 50 percent of the proceeds a municipality receives each month from the half-cent Article 40 tax (less revenue from the sale of food subject to local tax only), *plus*
- 25 percent of the proceeds a city receives each month from the one cent Article 39 tax (less revenue from the sale of food subject to local tax only), [2] *plus*
- the difference between 50 percent of the proceeds a municipality receives each month from the half-cent Article 40 tax and 25 percent of the proceeds a municipality receives each month from the one cent Article 39 tax.

County Hold Harmless Funds

The state must guarantee that each county will gain at least $500,000 each fiscal year as a result of the state assuming the county Medicaid share.[3] Thus, for fiscal year 2007–08, if the amount of the county's Medicaid share paid by the state[4] minus the amount by which the county's Public School Building Capital Fund allocation is reduced does not equal or exceed $500,000, the state must reimburse the county for the difference.

Thereafter, G.S. 105-523 requires the Department of Revenue to calculate the projected revenue loss to the county from the local sales tax changes and compare that loss with the amount of revenue a county gains from the state assuming the county's Medicaid payments. For the period after the first one-quarter cent of the Article 44 tax is repealed (October 1, 2008, through September 30, 2009), the state must reimburse the county for the absolute value of the difference if the amount of a county's Medicaid costs assumed by the state minus $500,000 is less than the county's *repealed local sales tax amount*. A county's repealed local sales tax amount is calculated as the equivalent of the revenue that would have been generated by the repealed one-fourth cent tax distributed per capita, less any actual distributions under the repealed tax. The calculations are as follows:

2. This amount will be reduced by any actual distributions from the repealed tax during October, November, and December 2009.

3. The $500,000 guarantee, however, does not factor in the funds that a county must expend to hold municipalities harmless for the loss of local sales and use tax revenue beginning in October 2008.

4. The Secretary of Health and Human Services will certify to the Secretary of Revenue the amount of each county's Medicaid costs and Medicare Part D clawback payments assumed by the state.

- 50 percent of the proceeds a county receives from the G.S. Chapter 105, Article 40 local sales and use tax proceeds (less revenue from the sale of food subject to local tax only), *minus*
- the proceeds distributed to the county on a per capita basis from the repealed one-fourth cent tax in October, November, and December 2008.

After the Article 44 tax is completely phased out on October 1, 2009, the state must reimburse the county for the absolute value of the difference if the amount of a county's Medicaid costs assumed by the state minus $500,000 is less than the county's *repealed local sales tax amount*. A county's repealed local sales tax amount is calculated as the equivalent of the revenue that would have been generated by the repealed one-half cent tax (distributed half per capita and half point-of-origin), less any actual distributions under the repealed tax, plus the impact on the county from the conversion of the Article 42 tax distribution from per capita to point-of-origin. The calculations are as follows:

- 50 percent of the proceeds a county receives from the half-cent Article 40 sales (less revenue from the sale of food subject to local tax only), *plus*
- 25 percent of the proceeds a county receives from the one-cent Article 39 local sales and use tax (less revenue from the sale of food subject to local tax only),[5] *plus*
- the difference between 50 percent of the proceeds a county receives each month from the half-cent Article 40 tax and 25 percent of the proceeds a county receives each month from the one cent Article 39 tax.

The state supplemental payments are made semiannually. The Secretary of Revenue estimates the hold harmless amount and sends each county 90 percent of the estimated amount with the March local sales tax distribution. The Secretary of Revenue determines the actual amount at the end of the fiscal year and remits balance to each county by August 15.

Transitional Hold Harmless Funds

During the 2001 legislative session, the General Assembly repealed reimbursements that had been made to local governments by the state since the mid-1980s in compensation for the loss, through legislative action, of important local government revenue sources, including the removal from the property tax base of manufacturers', wholesalers', and retailers' inventories, the repeal of the intangibles tax, the expansion of the property tax homestead exclusion, and the repeal of the sales tax on food stamp purchases. In an effort to mitigate any adverse effect on local governments from the repeal of the reimbursements, the legislature authorized counties to levy the G.S. Chapter 105, Article 44 half-cent local sales and use tax and adopted a transitional hold-harmless payment provision in G.S. 105-521 to compensate any county that received less revenue from the new Article 44 tax than it would have received from the reimbursements during the 2002–03 fiscal year.

Effective January 1, 2008, S.L. 2007-323 makes conforming changes to the transitional hold-harmless funds calculation in G.S. 105-521 to account for the repeal of the Article 44 tax described above. Rather than calculating the hold-harmless amount by comparing each county's repealed reimbursement amount to the county's Article 44 sales tax share, the amended statute substitutes a proxy for the repealed Article 44 tax, called *replacement revenue,* for which local governments are being held harmless. It defines replacement revenue as

- 50 percent of the amount of the local one-half cent sales tax revenue distributed under G.S. Chapter 105, Article 40 (less revenue from the sale of food subject to local tax only), *plus*
- 25 percent of the amount of the local one cent sales tax revenue distributed under Article 39 (less revenue from the sale of food subject to local tax only).

5. This amount will be reduced by any actual distributions from the repealed tax during October, November, and December 2009.

Additional Local Option County Taxes

The state's assumption of the county Medicaid share provides needed relief to many of North Carolina's smaller and economically distressed counties. It alone, however, does not adequately address the needs of larger, growing counties. Thus, the Medicaid reform legislation also authorizes counties to adopt either up to a 0.4 percent land transfer tax (in 0.1 percent intervals) or an additional one-fourth cent local sales and use tax, the proceeds of which may be used for any public purpose. There is no requirement and, in fact, no authorization for a county to share the proceeds of either of these new revenue sources with municipalities.

A county must hold an advisory referendum on either additional revenue source and may hold a referendum on both at the same time. If the majority of those voting in the referendum vote for the levy of the local land transfer tax or additional local sales and use tax, the board of county commissioners may adopt a resolution levying the tax after providing ten days' public notice. (If both ballot measures are successful, a board of county commissioners may implement either but not both of the additional revenue options.) The levy of the land transfer tax may become effective no earlier than the first day of the second succeeding calendar month after the date the resolution is adopted. The levy of the additional sales and use tax may not become effective until the first day of the calendar quarter after the resolution is adopted and only after the county gives the Secretary of Revenue at least sixty days' advance notice of the new tax levy.

The adoption, levy, collection, administration, and repeal of the additional local sales and use tax must be in accordance with the G.S. Chapter 105, Article 39 local sales and use tax, except that the new tax will not apply to the sales price of food that is exempt from state tax.

The local land transfer tax applies to transfers of interests in real property located within the county. It is payable by the seller of the interest and applies to the consideration or value, whichever is greater, of the interest conveyed, including the value of any lien or encumbrance remaining on the property at the time of the conveyance. If the property is located in two or more counties, a transfer of an interest in the property is taxable only by the county in which the part with the greater value lies.

The legislation specifically exempts certain transferors, specifically governmental units and instrumentalities of governmental units. It also exempts certain conveyances of interests in real property to the same extent that they are exempt from the state land transfer excise tax—transfers that are required by operation of law; leases for a term of years; transfers by or pursuant to the provisions of a will, by intestacy, or by gift; transfers where no consideration in property or money is due or paid by the transferee to the transferor; transfers that are accomplished by merger, conversion, or consolidation; and transfers made by an instrument securing indebtedness.

Unlike the state land transfer excise tax, the local land transfer tax does not apply to contracts for the sale of standing timber, although it is unclear whether it applies to timber deeds. G.S. 105-228.30(a) authorizes the state land transfer excise tax and explicitly states that the tax "applies to timber deeds and contracts for the sale of standing timber *to the same extent as if these deeds and contracts conveyed an interest in real property*." (emphasis added) The legislation authorizing the local land transfer tax does not include this provision. The provision was added to the state land transfer excise tax statute in 2000 in response to a 1999 decision by the North Carolina Supreme Court holding that contracts for the sale of standing timber are transfers of personal property, not real property.[6] Although the amendment to G.S. 105-228.30(a) suggests that both contracts for the sale of standing timber and timber deeds are conveyances of personal property, it is an open question in North Carolina whether timber deeds constitute conveyances of real property or personal property.[7] If timber deeds do, in fact, convey real property, they are subject to the local land transfer tax despite the absence of an explicit provision addressing timber deeds in the authorizing legislation.

The administrative provisions for the state land transfer excise tax, codified in G.S. 105-228.32 through G.S. 105-228.37, also apply to the local land transfer tax. A county may repeal or reduce the rate of the local land transfer tax by resolution, but the repeal or reduction

6. Fordham v. Eason, 351 N.C. 151, 521 S.E.2d 701 (1999).

7. *See* DAVID M. LAWRENCE, LOCAL GOVERNMENT PROPERTY TRANSACTIONS IN NORTH CAROLINA 161–70 (2d ed. 2000).

may not become effective until the end of the fiscal year in which the repeal or reduction resolution is adopted.

Revenues

White Goods and Scrap Tire Disposal Tax Programs

The 2007 appropriations act, S.L. 2007-323, increases the allowable reimbursement to the Department of Revenue from the white goods and scrap tire disposal programs to cover administrative expenses, from $225,000 to $425,000 for each program. Although this change does not affect the distribution method of the tax proceeds to counties, it decreases the total amount available for distribution.

The General Assembly modified the allocation of the net proceeds of the scrap tire disposal tax in S.L. 2007-153 (S 1472), which increases the funds allocated to counties from 68 percent to 70 percent of the net proceeds.

State Sales and Use Tax

The appropriations act eliminates the scheduled sunset of one-fourth cent of the state sales and use tax; the rate remains at 4.25 percent. As discussed above, the state sales and use tax rate is scheduled to increase to 4.50 percent October 1, 2008, and to 4.75 percent October 1, 2009.

Clean Water Grants

Moneys are appropriated annually from the Clean Water Management Trust Fund to state agencies, local governments, and certain nonprofit corporations to finance high-unit-cost projects to clean up or prevent surface water pollution. A high-unit-cost project is defined as a project that results in an estimated average household user fee for water and sewer service in the area served by the project in excess of the high-unit-cost threshold, which is 1.5 percent of the median household income in an area that receives both water and sewer service or 0.75 percent of the median household income in an area that receives only water service or only sewer service.

S.L. 2007-185 (H 1370) amends G.S. 113A-254(d) to clarify that the high-unit-cost project threshold does not apply to planning grants and technical assistance grants made by the Clean Water Management Trust Fund for regional wastewater collection systems and regional wastewater treatment works. This change applies retroactively to applications for planning grants and technical assistance grants received by the Clean Water Management Trust Fund on or after January 1, 2007.

Solid Waste Management Fees

Late in the session, the General Assembly passed two bills that authorize the Department of Environment and Natural Resources (DENR) to establish a statewide solid waste management program and make extensive changes to the way landfills are regulated. The legislation is summarized in its entirety in Chapter 12, "Environment and Natural Resources." The following two provisions relate directly to local government finance.

S.L. 2007-550 (S 1492) imposes a $2-per-ton statewide excise tax on the disposal of solid waste. The tax is imposed on the following: (1) the disposal of municipal solid waste and construction and demolition debris in any landfill permitted under the state's solid waste management program, as set forth in Article 9 of Chapter 130A of the General Statutes and (2) the transfer of municipal solid waste and construction and demolition debris to a transfer station permitted under the state's solid waste management program for disposal outside the state. Municipal solid waste is defined as "any solid waste resulting from the operation of residential,

commercial, industrial, governmental, or institutional establishments that would normally be collected, processed, and disposed of through a public or private solid waste management service. It does not include hazardous waste, sludge, industrial waste managed in a solid waste management facility owned and operated by the generator of the industrial waste, for management of that waste, or solid waste from mining or agricultural operations."

The tax is payable by the owner or operator of each landfill and transfer station that is permitted under the state's solid waste management program, and the tax proceeds must be remitted according to the provisions governing the payment of sales and use taxes set forth in G.S. 105-164.16. The owner or operator of the landfill or transfer station may add the tax to any charges made to a third party for the disposal of the waste. When the waste is delivered to the landfill or transfer station, the owner or operator must weigh and record the waste tonnage on a scale approved by the Department of Agriculture and Consumer Services.

The act, as amended by S.L. 2007-543 (S 6), mandates that the proceeds of the tax be used first to compensate certain qualifying applicants who submitted an application for a permit for a solid waste management facility prior to August 1, 2006, and whose applications would be denied under the provisions of the new legislation. Once those reimbursements are satisfied, the tax proceeds will be distributed as follows:

- the Department of Revenue may retain up to $225,000 a year to cover its costs of collection;
- 50 percent of the net proceeds are allocated to the Inactive Hazardous Sites Cleanup Fund to be used by DENR to fund the assessment and remediation of pre-1983 landfills;
- 18.75 percent of the net proceeds are allocated to all cities in the state on a per capita basis, and 18.75 percent of the net proceeds are allocated to all counties in the state on a per capita basis, to be used solely for solid waste management programs and services; and
- 12.5 percent of the net proceeds are allocated to the Solid Waste Management Trust Fund to be used by DENR for grants to state agencies and units of local government to initiate or enhance local recycling programs and to provide for the management of difficult-to-manage solid waste, including abandoned mobile homes and household hazardous waste.

The legislation also amends the conditions under which local governments may impose fees for the availability of local solid waste disposal facilities. G.S. 153A-292(b) and G.S. 160A-314.1(a) authorize a county or city that operates one or more local solid waste disposal facilities as a public enterprise to impose a fee for the availability of the disposal facilities on all improved property that benefits from the disposal facilities. The statutory provisions previously exempted improved property served by a private contractor who disposes of solid waste collected from the property in a disposal facility provided by the private contractor. Effective August 1, 2007, S.L. 2007-550 modifies the exemption to apply only if the private contractor's disposal facility provides the same services as those provided by the local government's disposal facilities. And, to the extent that the private contractor's facility does not provide the same services provided by the local government's disposal facilities, the legislation expressly authorizes a local government to impose an availability fee on improved property served by the private contractor to cover the costs of the additional services provided by the local government's disposal facilities. The amendments to the public enterprise statutes were adopted specifically to allow local governments to obtain reimbursement for the costs of providing recycling services at disposal facilities, to the extent that these services are not provided at a private contractor's disposal facility. The amendments are not limited to recycling services, though. They apply to any additional services provided at the local government's disposal facilities.

The new legislation thus permits a local government to adopt a differentiated schedule of availability fees—at one rate for all improved property that is not served by a private contractor for the availability of solid waste facilities within the unit and at a different, presumably lower, rate on improved property that is served by a private contractor whose disposal facility does not provide all the services provided by the local disposal facilities, such as recycling services. A local

unit must ensure, however, that the availability fees imposed do not exceed the aggregate costs of providing the disposal facilities or the additional services, respectively. Furthermore, the act does not remove the prohibition on a city or county assessing any availability fee on unimproved property or on improved property served by a private contractor that does not use the local disposal facilities and that provides the same services as the local disposal facilities.

Statutory Fees

The state appropriations act, S.L. 2007-323, increases a number of statutory fees, including various court fees and water quality permit fees. For a description of the fee changes, see Chapter 6, "Courts and Civil Procedure," and Chapter 12, "Environment and Natural Resources."

911 Charges

Effective January 1, 2008, S.L. 2007-383 (H 1755) repeals Articles 1 and 2 of Chapter 62A of the General Statutes and replaces them with a new Article 3, establishing a consolidated system for administering both wireline and wireless 911 systems. Previously, the Wireless 911 Board administered a statewide wireless 911 system and local governments administered wireline 911 systems. The act creates a 911 Board and authorizes it to develop a comprehensive state plan for communicating 911 call information across networks and among public safety answering points (PSAPs)—defined as the public safety agencies that receive incoming 911 calls and dispatch appropriate public safety agencies to respond to the calls.

The act authorizes the 911 Board to levy a monthly service charge on each active voice communications service connection, defined as each telephone number assigned to a residential or commercial subscriber by a voice communications service provider, without regard to the technology deployed, which is capable of accessing the 911 system. It sets the monthly service charge at 70 cents, although the 911 Board is required to reduce the rate if it produces revenue in excess of the amount needed to ensure full cost recovery for voice communication service providers and primary PSAPs (the first point of reception of a 911 call). A voice communication service provider includes any entity that (1) transfers, conveys or routes real-time, two-way voice communications to a point or between or among points by or through any electronic, radio, satellite, cable, optical, microwave, wireline, wireless, or other medium or method, regardless of the protocol used; (2) has the ability to receive and terminate voice calls to and from the public switched telephone network; or (3) provides interconnected Voice over Internet Protocol (VoIP) services.

Any rate reduction must occur on July 1 of an even-numbered year, with at least ninety days' notice to service providers. The act prohibits a local government from levying an additional surcharge or fee relating to the provision of 911 services.

The monthly service charge is collected by each voice communications service provider and remitted to the 911 Board on a monthly basis, less an administrative allowance equal to the greater of 1 percent of the amount of the service charge collections or $50. Revenue from the monthly service charge will be credited to the 911 Fund, an interest-bearing special revenue fund within the State Treasury that is administered by the 911 Board. The 911 Board also may retain up to 1 percent of the revenue to cover administrative expenses. The remaining proceeds will be distributed according to the following formula:

- 53 percent of the monies remitted by commercial mobile radio service (CMRS) providers will be reimbursed to the CMRS providers that comply with certain statutory requirements, to cover the actual costs they incur in complying with the requirements of enhanced 911 service. A CMRS provider is an entity that is licensed by the Federal Communications Commission (FCC) to provide commercial mobile radio service or that resells commercial mobile radio service in North Carolina. CMRS is defined by federal law as an interconnected radio communication service carried on for profit between

mobile stations or receivers and land stations, and by mobile stations communicating among themselves.

- 47 percent of the monies remitted by CMRS providers and all monies remitted by all other voice communication service providers must be used to make monthly distributions to primary PSAPs and grants to PSAPs that comply with certain statutory requirements.

The money distributed to primary PSAPs is allocated according to the following formula:

- Each PSAP receives a base amount equal to the amount it received during fiscal year 2006–07 and deposited in the Emergency Telephone System Fund of its local governing entity.
- The 911 Board must designate a percentage of the remaining funds to be distributed to primary PSAPs on a per capita basis; the remaining funds will be allocated to the PSAP Grant Account to be distributed to eligible PSAPs in rural and other high-cost areas. If the Board does not designate an amount to be allocated to the PSAP Grant Account, all remaining funds will be distributed on a per capita basis. The Board may change its percentage designation once per calendar year.

In order to receive a distribution from the 911 Fund, each PSAP or its governing entity must comply with specified requirements. A county or municipality must provide the 911 Board with information about each PSAP located within its territory, as required by an FCC order. A participating PSAP must submit to the 911 Board an annual copy of its governing entity's proposed or approved budget detailing revenues and expenditures. A participating PSAP also must be included in its governing entity's annual audit and provide a copy of each audit to the 911 Board. Finally, a participating PSAP must comply with all requests by the 911 Board for financial information related to its operation.

The proceeds received by each PSAP are specifically earmarked to pay for (1) the lease, purchase, or maintenance of emergency telephone equipment, including necessary computer hardware, software, and database provisioning, addressing, and the nonrecurring costs of establishing a 911 system; (2) certain allowable expenses incurred for in-state training of 911 personnel regarding the maintenance and operation of the 911 system and, on a limited basis, certain expenses incurred for out-of-state training; (3) expenses incurred for training specific to the receipt of 911 calls but only for intake and related call taking quality assurance and improvement; and (4) charges associated with a service supplier's[8] 911 service and other service supplier recurring charges. The proceeds may not be used to pay for the lease or purchase of real estate, cosmetic remodeling of emergency dispatch centers, hiring or compensating telecommunicators, or purchasing mobile communications vehicles, ambulances, fire engines, or other emergency vehicles. The 911 Board may require a PSAP to refund any monies improperly spent, after notice and a hearing.

The finance officer of a PSAP must deposit the monies it receives from the 911 Fund in a special revenue fund designated as the Emergency Telephone System Fund. The finance officer may invest the money in the fund in the same manner as other money of the local government may be invested; any investment income earned must be credited to the fund.

Any funds remaining in the Emergency Telephone System Fund or required to be remitted by a service supplier to the local government for deposit in the fund before January 1, 2008, pursuant to the now-repealed Article 1 of Chapter 62A of the General Statutes must be transferred to the General Fund of the local governing entity and may be used for any lawful purpose. The act does not relieve a local governing entity from any obligation incurred prior to the effective date of the act for uses authorized by G.S. 62A-8.

8. A service supplier is an entity that provides exchange telephone service to a telephone subscriber.

Video Programming Services Taxes

During the 2006 legislation session, the General Assembly created a state cable franchising system and preempted local governments from entering into new franchise agreements with cable companies and assessing franchise fees. To replace the lost revenue, the state allocated a portion of the proceeds from three state taxes to local governments, based in part on the cable franchise revenue a local government certified to the Department of Revenue that it received during the first six months of fiscal year 2006–07. Several bills were introduced this session proposing modifications to the allocation of the tax proceeds, although none passed.

S.L. 2007-527 (S 540), however, authorizes a local government to correct any errors in its initial certification of cable television revenues. If a city or county determines that the amount of cable franchise tax it imposed during the first six months of fiscal year 2006–07 differs from the amount certified to the Secretary of Revenue by March 15, 2007, the city or county may submit a new certification revising the amount by April 1, 2008. The new certified amount will be used to adjust the local government's base allocation, which will serve as the basis for subsequent distributions.

Insurance Premium Tax and Volunteer Fire Department Payments

During the 2006 session, the General Assembly simplified the additional tax on gross premiums for fire and lightning insurance coverage by combining the existing state and local taxes on this coverage and clarifying the types and percentages of premiums subject to the tax. It also established percentages for distribution of the proceeds under the combined tax that were proportional to the distributions under the separate state and local taxes.

Effective January 1, 2008, S.L. 2007-250 (S 238) reduces the tax on gross premiums on insurance contracts for property coverage from 0.85 percent to 0.74 percent. The act also alters the distribution of the tax proceeds by increasing the allocation to the Volunteer Fire Department Fund from 20 percent to 30 percent. Of the remaining funds, 25 percent must be credited to the Department of Insurance for distribution to local fire districts and 45 percent must be credited to the General Fund.

S.L. 2007-250 also alters the distribution to local fire districts of the funds credited to the Department of Insurance. Under the new distribution method, the Insurance Commissioner will allocate to each county the same amount it received in the previous fiscal year as a base figure, which, depending on the total amount available for distribution, will be increased or decreased proportionately based on relative populations. The Insurance Commissioner then will distribute each county's allocation to the fire districts located within the county, based on the relative tax values of the properties in each district.

Fiscal Modernization Extension

During the 2006 session, the General Assembly established the Local Fiscal Modernization Study Commission, charged with studying and making recommendations on a variety of issues relating to state and local finances. S.L. 2007-169 (S 487) extends the reporting deadline for the commission from May 1, 2007, to May 1, 2008. It also authorizes the commission to make interim reports.

Illegally Levied Exactions

S.L. 2007-371 (S 1152) amends G.S. 153A-324 and G.S. 160A-363 to impose a penalty on counties and cities, respectively, for exacting taxes, fees, or monetary contributions for development that are not specifically authorized by law. The act requires a county or city that is found to have illegally exacted a tax, fee, or monetary contribution for development or a development permit that is not specifically authorized by law to return the tax, fee, or monetary

contribution plus interest of 6 percent per year. Further information on this legislation can be found in Chapter 5, "Community Planning, Land Development, and Related Topics."

Financial Administration

Public Agency Use of Electronic Signatures

S.L. 2007-119 (S 211) amends G.S. 66-58.4 to allow public agencies to both use and accept electronic signatures. Public agencies are defined as every public office, public officer, or official (state or local, elected or appointed), institution, board, commission, bureau, council, department, authority, or other unit of government of the State or of any county, unit, special district, or other political subdivision of government.

Other Post-Employment Benefits and Special Separation Allowance Trust Funds

S.L. 2007-384 (S 580) establishes the Local Government Other Post-Employment Benefits Fund (OPEB Fund) and the Local Governmental Law Enforcement Special Separation Allowance Fund (LESSA Fund) as trust funds under the management of the State Treasurer. Contributions to the OPEB and LESSA Funds are irrevocable, and assets of the funds, including contributions, interest, and other investment income, may be used only to provide benefits, respectively, to individuals who are former employees, or beneficiaries of former employees, of an entity that contributes to the OPEB Fund or to individuals who are former employees of a unit that contributes to the LESSA Fund.

A local government, a public authority, a local school administrative unit, or any other entity eligible to participate in the Local Government Employees' Retirement System may contribute to the OPEB Fund. Contributions to the LESSA fund are restricted to units of local government employing local law enforcement officers.

The act authorizes the State Treasurer to invest monies deposited in the OPEB or LESSA Fund in specified investment vehicles, including equity investments. The Treasurer may require a minimum deposit of up to $100,000 and may assess a fee of up to 15 basis points as a condition of making the equity investments. Assets of the funds are not subject to the claims of creditors of any unit or other entity that contributes to the funds.

S.L. 2007-384 also authorizes a local government, a public authority, a local school administrative unit, or any other entity eligible to participate in the Local Government Employees' Retirement System to establish and fund an irrevocable trust for the purpose of paying other post-employment benefits for which the entity is liable. Likewise, it authorizes any unit of local government that employs local law enforcement officers to establish and fund an irrevocable trust to pay law enforcement special separation allowance benefits for which the unit is liable. The irrevocable trust must be established by a resolution or an ordinance that states the purposes for which the trust is created and the method of determining and selecting the fund's trustees. The resolution or ordinance may be amended, but an amendment may not authorize the use of monies in the trust for a purpose not stated in the initial resolution or ordinance establishing the trust.

A local government unit or another eligible entity that establishes a trust may not deposit money in the trust if the total amount held in the trust would exceed the entity's actuarial liability, determined in accordance with the standards of the Governmental Accounting Standards Board, for the purposes for which the trust was established. And monies in an irrevocable trust may be appropriated only for the purposes for which the trust was established and are not subject to the claims of creditors of the entity that established the trust.

Finally, the act allows state and local law enforcement officers to transfer certain employer and employee contributions from the Supplemental Retirement Income Plan to the retirement system.

Retirement Payments for Probationary Employees

G.S. 128-26(q) currently allows members of the Local Governmental Employees' Retirement System to purchase credit for service spent in a probationary or employer-imposed waiting period and provides guidelines for purchase by the member or the member's employer. S.L. 2007-304 (H 1025) amends the statute to allow an employer that chooses to pay the cost of the probationary employment to pay in one of three ways: (1) in a lump sum; (2) by increasing its accrued liability contribution for the remainder of the accrued liability period; or (3) if the employer has satisfied its accrued liability contribution, by amortizing its portion of the full actuarial cost over a period not to exceed ten years.

Law Enforcement Special Separation Payment Allowance Payment Plan

S.L. 2007-69 (H 328) amends G.S. 143-166.41(a) to provide that the special separation allowance for law enforcement officers will be paid in equal installments on the payroll frequency used by the employer. The statute previously required that payment be made in twelve equal installments. Although the intent of the bill likely was to require payments to retired law enforcement officers at the same frequency as active employees of the unit, the actual language in the bill does not designate a specific payroll frequency. Thus, to the extent that a unit maintains multiple payrolls at different frequencies, it likely may choose which payroll frequency to use for payment of the special separation allowance.

Fidelity Bond Requirement for Public School Finance Officers

A school finance officer is appointed or designated by the superintendent of schools and approved by the local board of education. The duties of a school finance officer may be conferred on any officer or employee of the local school administrative unit or, upon request of the superintendent, with the approval by the board of education and the board of county commissioners, on the county finance officer. Each school finance officer must give a true accounting and faithful performance bond with sufficient sureties in an amount to be fixed by the board of education. Effective July 1, 2008, S.L. 2007-85 (S 772) amends G.S. 115C-442(a) to raise the minimum true accounting and faithful performance bond amount from $10,000 to $50,000. It also eliminates the maximum amount, which was previously set at $250,000.

Register of Deeds' Pensions

Each county must deposit a certain percentage of fees collected by registers of deeds under G.S. 161-10 with the State Treasurer to pay for a supplemental pension plan for eligible retired registers of deeds. S.L. 2007-245 (H 676) reduces the percentage of the fees remitted to the State Treasurer from 4.5 percent to 1.5 percent. The act also amends G.S. 161-50.4(b) to allow retiring registers of deeds to become eligible to receive a monthly pension from the supplemental fund in the month immediately following the effective date of their retirement, rather than having to wait until the January following their retirement and amends G.S. 161-50.5(a) to increase the maximum monthly pension payable to eligible registers of deeds from $1,200 to $1,500, not to exceed 75 percent of the register's latest salary including supplements. Finally, the act excludes from the calculation of the 75 percent salary figure any benefits from the Supplemental Retirement Plan (401(k) Plan) as a result of employer contributions.

Debt

Project Development Financing

S.L. 2007-395 (S 1196) makes three important modifications to the Project Development Financing Act. First, it amends G.S. 159-103(a) to add a few purposes for which project development financing debt instruments may be issued: (1) financing the capital costs of providing certain parks and recreation facilities, including land, athletic fields, parks, playgrounds, recreation centers, shelters, permanent and temporary stands, and lighting; (2) financing the capital costs of providing community colleges facilities, including buildings, plants, and other facilities, physical and vocational educational buildings, plants, and other facilities, including classrooms, laboratories, libraries, auditoriums, administrative offices, student unions, dormitories, gymnasiums, athletic fields, cafeterias, utility plants, and garages; and (3) financing the capital costs of providing school facilities, including schoolhouses, buildings, plants and other facilities, physical and vocational educational buildings, plants and other facilities, including in connection therewith classrooms, laboratories, libraries, auditoriums, administrative offices, gymnasiums, athletic fields, lunchrooms, utility plants, garages, and school buses and other necessary vehicles. It also clarifies that the proceeds of the project development financing debt instruments may be used for any service or facility to be provided in a municipal service district without having to actually create the district.

Second, the S.L. 2007-395 amends G.S. 159-103(a) to allow a city or a county to issue project development financing debt and use the proceeds for one or more of the specified purposes for which either unit of government may issue general obligation bonds. For example, as amended, G.S. 159-103(a) allows either a city or county to issue project development financing debt to fund the capital costs of providing streets and sidewalks even though, pursuant to G.S. 159-48(d)(5), only a city may issue general obligation debt to fund these projects.

Finally, the act eliminates the requirement that the base valuation be increased during each revaluation to reflect projected increases due solely to the revaluation of the property values of the district as they existed on the January 1 immediately preceding the effective date of the district. Thus, unless the unit amends its development financing plan to expand the district or remove property from the district, the base valuation will remain constant during the lifetime of the development financing district.

Installment Financing Authorizations

S.L. 2007-229 (H 1132) amends G.S. 130A-45.3(a) and G.S. 160A-20 to authorize public health authorities to enter into installment finance contracts to purchase or finance real or personal property, according to the procedures set forth in G.S. 160A-20. Likewise, S.L. 2007-226 (H 401) amends the definition of a unit of local government in G.S. 160A-20(h) to include a county water and sewer district created under Article 6 of Chapter 162A of the General Statutes, thereby authorizing these county water or sewer districts to use installment finance contracts to purchase, finance, or refinance the purchase of real or personal property or to finance or refinance the construction or repair of fixtures or improvements on real property.

Resolution of Public School Funding Disputes

G.S. 115C-431 authorizes a local school administrative unit to challenge its annual appropriation from the board of county commissioners and provides a detailed procedure for resolving these disputes—including joint negotiation meetings and, if those fail, mandatory mediation. If the funding dispute is not resolved through negotiation or mediation, the local board of education is authorized to file an action in superior court. The court is charged with making factual findings as to the amount of money necessary to maintain a system of free public schools

and the amount of money needed from the county to make up this total. The court must then issue a judgment ordering the board of county commissioners to appropriate a sum certain to the local school administrative unit and to levy such taxes on property as may be necessary to make up the sum. Either the local school administrative unit or the board of county commissioners may appeal the superior court's judgment.

Prior to the passage of S.L. 2007-92 (H 1519), if the appeal resulted in a delay beyond a reasonable time for levying taxes for the year, the judge was required to order the board of county commissioners to appropriate to the local school administrative unit for deposit in the local current expense fund a sum of money sufficient when added to all other moneys available to the fund to equal the amount of the fund for the previous year. The new act amends G.S. 115C-431(d) to delete this requirement. (It, however, does not alter the requirement that if the mediation phase continues beyond August 1, the board of county commissioners must appropriate to the local school administrative unit moneys sufficient to equal the county's contribution to the current expense fund for the previous year.) Instead, it enacts a new provision ensuring that any appeal of a school funding dispute is not affected if the fiscal or school year in contention ends before the issue is resolved, but does not mandate that the commissioners provide any funds to the school unit prior to the resolution of the appeal.

The new provision prohibits a county from denying or reducing an appropriation to a local school administrative unit in subsequent years to offset the payment of any final judgment by the county in favor of the local school administrative unit. (A previous version of the legislation included a requirement that a county pay any applicable interest on the final judgment to the local school administrative unit; this requirement was eliminated from the final version.)

Finally, as a procedural matter, the act requires that if an appeal is taken from the judgment in the superior court, the notice of appeal must be provided in writing within ten days of the entry of the judgment.

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Local Government

This chapter primarily discusses acts of interest to local governments that are not addressed in other chapters of *North Carolina Legislation 2007*. Local officials interested in particular topics also should consult Chapter 8, "Economic and Community Development"; Chapter 12, "Environment and Natural Resources"; Chapter 16, "Local Finance"; Chapter 18, "Local Taxes and Tax Collection"; Chapter 22, "Public Employment"; and Chapter 23, "Public Purchasing and Contracting."

Annexation and Incorporation

This session saw a large number of bills introduced to restrict or do away with the state's involuntary annexation statutes. Several bills would have required a referendum on any involuntary annexation, one would have required county approval of any involuntary annexation, one would have prohibited an involuntary annexation if the annexation area already was receiving urban services, and several would have modified the procedures or the standards for annexation. In addition, several bills sought to require referendums in specific counties before an involuntary annexation could take place. None of these bills reached the floor of the house in which they were introduced.

Two further bills called for a study of the involuntary annexation statutes, and eventually the House Rules committee held a public hearing on the possibility of such a study, attended by both defenders and opponents of involuntary annexation. At the end of the session, the House of Representatives amended the study bill it had received from the Senate to add an annexation study by a House select committee, but the two houses never were able to reconcile their differences and the study bill did not pass. So there is no formal authorization for a legislative study of involuntary annexation. The issue is not likely to go away, however, and another annexation study in the next few years seems a good bet.

During the session, bills were introduced to incorporate six communities, and three of the bills were enacted. Butner, in Granville County, and Eastover, in Cumberland County, were each incorporated directly by the General Assembly, with no need for a local referendum. Butner was incorporated by S.L. 2007-269 (H 986) and Eastover by S.L. 2007-267 (H 1191). S.L. 2007-329 (S 15) incorporates Hampstead, in Pender County, subject to referendum approval by the area's voters; that referendum is scheduled for this November.

Interestingly, each of the new towns is subject to restrictions upon its powers to annex. Certain annexations by Butner will require the approval of either the Creedmoor town council or the Durham city council, depending on the area proposed for annexation. The Eastover charter defines one area into which the new town is prohibited from annexing and another area in which it may not annex for the first fifteen years of its existence. The Hampstead charter requires that any involuntary annexation undertaken by the town be approved by the voters of the annexation area in a referendum before the annexation may take effect.

Police Power

Regulation of Smoking in Government Facilities

S.L. 2007-193 (H 24), as amended by S.L. 2007-484, s. 31.7 (S 613), makes major changes in the laws restricting the ability of the state and local governments to regulate smoking. The act is discussed in detail in Chapter 14, "Health."

City Regulation of Fireworks with County Approval

Public fireworks displays are generally regulated through permits granted by the board of county commissioners. S.L. 2007-38 (H 189) broadens this regulatory authority to include cities, as long as the county where the city is located approves. Specifically, the act amends G.S. 14-410(a) and G.S. 14-413 to authorize boards of county commissioners to adopt a resolution allowing the city council of any city within the county to issue permits for the use of pyrotechnics in connection with concerts or public exhibitions within the city's corporate limits. The resolution remains in effect until the board of commissioners adopts a subsequent resolution withdrawing the authorization.

If a city lies within more than one county, the boards of county commissioners of all of those must adopt authorizing resolutions. In such a case, if any county withdraws its authority for the city to issue permits, the city's authority ends, and all of its counties must resume their authority to issue the permits.

Effective May 11, 2007, S.L. 2007-38 also repeals all local acts authorizing cities to grant public fireworks permits pursuant to G.S. 14-410 or G.S. 14-413.

City and County Regulation of Demonstrations on State Roadways and Highways

Section 6 of S.L. 2007-360 (H 563) adds a new statute, G.S. 20-174.2, to the motor vehicle law, authorizing cities and counties to adopt ordinances regulating the time, place, and manner of gatherings, picket lines, or protests that occur on state roadways and highways. Licensees, employees, and contractors of the state Department of Transportation and of municipalities that are engaged in construction or maintenance or in making traffic or engineering surveys are exempted from the act (that is, no restrictions may be imposed on their activities).

On its face, new G.S. 20-174.2 appears to pass muster under the free speech and free assembly clauses of the First Amendment to the United States Constitution, as applied to the states through the Fourteenth Amendment. It allows regulation of only the time, place, and manner of protected speech, and such regulations are generally permitted by the courts. In addition, the only special "classes" or special exceptions that the statute creates relate to highway construction and safety. These are matters that are probably compelling state interests in this context and therefore valid subjects for special treatment.

A more important question for the future involves how counties and municipalities will choose to use their new authority. Statutes that are constitutional on their face may be

unconstitutional as applied in specific situations. City and county officials should consult their attorneys and use care if they are thinking about adopting ordinances under G.S. 20-174.2.

Electricity, Cable, and Fiber Optics

In 2005 the General Assembly enacted legislation calling upon cities with electric distribution systems (electric cities) and electric membership corporations (EMCs) that were competing for the same territory to undertake negotiations to resolve the competition. If the parties were unable to agree by May 31, 2007, the 2005 legislation directed the parties to submit any remaining disputes to mediation, and if mediation was not successful, to arbitration by a member of the Public Staff of the state Utilities Commission. S.L. 2007-419 (H 1395) modifies this arrangement. It repeals the special mediation provision enacted in 2005 and instead directs that any unresolved disputes come under the immediate jurisdiction of the Utilities Commission. Either party—a city or an EMC—may petition the Utilities Commission, which is to decide the issues based on public convenience and necessity and without consideration of any rate differentials between the parties.

The act also gives new authority to the Utilities Commission to order a transfer of responsibility for service to a particular consumer from a city or EMC to some other city or EMC, if the commission finds that the existing service is or will be "inadequate or undependable, or that the rates, conditions of service, or service regulations, applied to such consumer, are unreasonably discriminatory."

S.L. 2007-397 (S 3) enacts a new state policy that requires electric power suppliers—investor-owned utilities, EMCs, and electric cities—to provide a minimum percentage of electric power from renewable sources, effective January 1, 2008. For electric cities and EMCs, the minimum "Renewable Energy and Energy Efficiency Portfolio Standard" or REPS is phased in as follows:

Calendar Year	REPS Requirement
2012	3% of 2011 NC retail sales
2015	6% of 2014 NC retail sales
2018 and thereafter	10% of 2017 NC retail sales

An electric power supplier may meet these requirements by some combination of the following actions:

- generating power at a renewable energy facility,
- reducing energy consumption through demand-side management or energy efficient measures,
- purchasing power from a renewable energy facility or a hydroelectric facility,
- buying renewable energy certificates from a supplier with an excess of renewable energy, or
- buying power from a wholesale supplier whose portfolio meets the REPS requirement.

One of the most contested bills of the session was House Bill 1587, the Local Government Fair Competition Act. It would have imposed a number of requirements on any city intending to begin providing "communication services," defined to include cable television service or telephone service, installing fiber optic lines for public use, or acting as an Internet service provider. Perhaps most importantly, the bill would have required that any communication services provided by a city be entirely self-supported from rates, including any capital financing associated with the services. Indeed, not only would the bill have prohibited a city from subsidizing communication services from the general fund or from other enterprise funds, it would have required that any communication services pay a payment in lieu of taxes to the general fund in at least the amount of the property taxes that would have been imposed on a private provider of these services with the same amount of property.

The North Carolina League of Municipalities organized a strong lobbying effort to oppose the bill and was joined by a number of private companies involved in using the communication services targeted by the bill. This effort was ultimately successful. The House committee hearing the bill rewrote it to merely propose a study of the issues raised by the bill and then this House committee substitute was itself not enacted by the Senate.

Property Acquisition and Disposition

S.L. 2007-430 (H 1060) permits those local governments subject to Article 12 of G.S. Chapter 160A to donate surplus, obsolete, or unused personal property to other local governments or to nonprofit organizations. The donee governments or nonprofit organizations may be anywhere within the United States; in addition, a North Carolina local government can also donate to a sister city, defined as "a city in a nation other than the United States that has entered into a formal, written agreement or memorandum of understanding with the donor city for the purposes of establishing a long term partnership to promote communication, understanding, and goodwill between peoples and to develop mutually beneficial activities, programs, and ideas." The donor government must post public notice of the donation at least five days before the governing board adopts a resolution approving it. (The new statute does not require that this notice be published but merely posted; the best location is probably the principal bulletin board of the donor government.)

This statute should facilitate donating surplus property to local governments in this country that have been hit by natural disasters or to sister cities in foreign countries. There are constitutional questions about the ability of a local school administrative unit to donate property, and, therefore, school units should be cautious about use of the new statute.

S.L. 2007-396 (S 1167) amends G.S. 146-22, which regulates the acquisition of land on behalf of the state, to require the Department of Administration to give written notice of any proposed acquisition by the state (other than for transportation purposes) of land worth at least $25,000. The notice must be given to the county where the land is located and, if the land is in a city, to the city as well. The notice must be given at least thirty days before the acquisition, and the governing board or boards and individual elected officials may forward written comments on the acquisition to the Department of Administration, which must forward them in turn to the Governor and Council of State. (Any acquisition of land on behalf of the state must be approved by the Governor and Council of State.)

S.L. 2007-131 (H 1456) exempts regional solid waste management authorities from Article 8 of G.S. Chapter 143 (the purchasing statutes) and from all statutory procedural requirements for the disposition of real or personal property.

Economic Development

A reader interested in the economic development activities of local governments should turn to Chapter 8, "Economic and Community Development." One new act, however, should be mentioned here. S.L. 2007-515 (H 1595) makes two important changes to G.S. 158-7.1, the principal statute authorizing local governments to provide economic development incentives. First, under prior law a county or city could construct a shell building, defined as a building of "flexible design adaptable for use by a variety of industrial or commercial businesses." The new act deletes the quoted language and permits a local government to "acquire, construct, convey, or lease a building suitable for industrial or commercial use." This change permits a government to purchase or construct a building designed for a specific company and convey or lease the building to the company as an incentive. Second, the act adds a new provision to the statute requiring that any incentives agreement between a local government and a company include a "clawback" provision, under which the company agrees to return some portion of incentives received if it fails to perform its responsibilities under the agreement.

Transportation

Changes in County and Municipal Roles in Financing Roads.

S.L. 2007-428 (S 1513) makes two important changes in the ways counties and municipalities participate in the financing of roads and related improvements.

The more sweeping change alters a fundamental state highway financing and construction policy that dates from the 1930s. During the Great Depression, all county responsibilities for financing, constructing, and maintaining roads were taken over by the state, thereby removing counties from the road business entirely. S.L. 2007-428 reverses part of this decision. The act authorizes, but does not require, counties to participate in paying the costs of rights-of-way, construction, reconstruction, improvement, or maintenance of roads on the state highway system, under agreement with the state Department of Transportation.

A county may also acquire land by dedication and acceptance, purchase, or eminent domain and may even make improvements to portions of the state highway system, if it uses local funds that have been authorized for this purpose. Acquisition of property outside of the county limits is subject to G.S. 153A-15. That statute, applicable in 84 of North Carolina's 100 counties, requires that the board of county commissioners of the county where the land is located approve the acquisition.

The other change applies to municipalities' use of so-called "Powell Bill funds." These moneys comprise a portion of the state gasoline tax that is set aside pursuant to G.S. 136-41.1 for municipal use for road projects. New G.S. 136-41.4 gives municipalities that qualify for an allocation of funds under G.S. 136-41.1 the option of either accepting all the funds allocated and continuing to use them for municipal streets or reprogramming some or all of the allocation for any Transportation Improvement Project currently on the approved project list within the municipality's limits or within the area of any metropolitan planning organization or rural planning organization. The minimum amount that may be reprogrammed is an amount equal to either (1) the amount necessary to complete one full phase of the project selected by the municipality or (2) an amount that, when added to the amount already programmed for the project selected, would allow completion of at least one full phase of the project.

Length Increase Allowed for Public Transit Vehicles.

S.L. 2007-499 (H 514) amends G.S. 20-116 to authorize local governments to operate passenger buses up to 45 feet long on public streets or highways, as long as they are single vehicles. However, the Department of Transportation may prevent the operation of these buses if their operation on a street or highway presents a hazard to bus passengers or to the motoring public.

Public Safety

ATV Use by Public Safety Officers

S.L. 2007-433 (H 767) enacts new G.S. 20-171.23, which authorizes all law enforcement officers and fire, rescue, and emergency medical services personnel in North Carolina to operate motorized all-terrain vehicles (ATVs) on public highways where the speed limit is 35 mph or less. They may also operate ATVs on highways with higher speed limits that do not have fully controlled access, in order to travel from one speed zone to an adjacent speed zone where the speed limit is 35 mph or less. The vehicles must be owned or leased by the agency or department or directly under the control of the incident commander, and the operator must be acting in the course and scope of his or her duties.

All state laws governing the operation of ATVs also apply to the operation authorized by the act. The operator must observe posted speed limits and must not exceed the manufacturer's recommended speed for the vehicle, and he or she must carry an official identification card or badge. An ATV operated pursuant to the new law must be equipped with operable front and rear lights and a horn.

The act also adds new G.S. 20-171.24, which codifies the existing authority of municipal and county employees in certain jurisdictions to operate motorized ATVs that are owned or leased by the local agency, as long as they do so in the same places and obey the same rules as described above. Conforming changes repeal several local and other acts.

The act also amends G.S. 20-171.20 to require that ATV safety courses be sponsored or approved either by the Commissioner of Insurance (added by the act) or by the All-Terrain Vehicle Safety Institute (already included in the law). It authorizes the North Carolina Community College System to provide commissioner-approved training to persons less than eighteen years of age. (Since October 1, 2006, every ATV operator born in 2000 or later has been required to complete this type of course.)

Criminal History Background Checks for Emergency Medical Service Applicants

S.L. 2007-479 (H 1322) amends G.S. 114-19.12 to authorize local fire chiefs, county fire marshals, and local emergency service directors who are paid local government employees to request, and the North Carolina Department of Justice to supply, criminal histories for applicants for either paid or volunteer positions with an emergency medical service (fire department applicants are already included under G.S. 114-19.12). In the past, these requests had to go through the local Homeland Security director or, if there was none, through a local law enforcement agency that was in charge of the information that was supplied.

Emergency Service Vehicle Access to Gated Communities

Effective December 1, 2007, S.L. 2007-455 (H 976) adds a new section to Article 3 of Chapter 20 of the General Statutes to require that gated communities provide a means of immediate access to the roads within the gated areas for all emergency service vehicles, including law enforcement, fire, rescue, ambulance, and first responder vehicles. The act applies to all gated communities, whether or not the subdivision or community roads have been offered for dedication to the public.

Animal Control

Animal Cruelty

Under current law, animal cruelty is a crime.[1] Some acts of cruelty, such as maliciously torturing, poisoning, or killing an animal, are felonies. Other acts, such as intentionally overdriving, injuring, or even killing an animal are Class 1 misdemeanors. S.L. 2007-211 (H 995) amends the cruelty law to provide that a person who maliciously kills an animal by intentionally depriving it of necessary sustenance (i.e., starvation), is guilty of a Class A1 misdemeanor. It is already a Class 1 misdemeanor to intentionally starve an animal, but this change makes it a more severe crime to maliciously starve an animal to death. Under the state's structured sentencing guidelines, the potential punishment for a Class A1 misdemeanor is significantly higher than the punishment for a Class 1 misdemeanor.

1. G.S. 14-360.

S.L. 2007-211 makes another change to the criminal cruelty statute, G.S. 14-360. Under current law, there are several exceptions to the law. For example, a person is not guilty of cruelty if he or she kills an animal for the primary purpose of providing food. The act expands the list of exceptions to include the act of physically altering livestock or poultry for the purpose of conforming with breed or show standards.

While individuals are not required to report animal cruelty to law enforcement officials, many feel compelled to do so. Under a new law, S.L. 2007-232 (H 1359, enacting new G.S. 14-360.1), a veterinarian who has reasonable cause to believe that an animal has been the subject of animal cruelty will be protected from civil and criminal liability as well as any professional disciplinary action for (1) making a report of animal cruelty, (2) participating in a cruelty investigation, or (3) testifying in a cruelty-related judicial proceeding. Note that the new law does not require veterinarians to make these reports. In fact, it specifically states that veterinarians may not be disciplined by the North Carolina Veterinary Medical Board for failing to make a report.

Dog Fighting and Baiting

Two separate bills were enacted this session establishing new exceptions to the state's criminal law governing dog fighting and baiting, G.S. 14-362.2. The first new exception applies to herding dogs engaged in the working of domesticated livestock for agricultural, entertainment, or sporting purposes (S.L. 2007-181; S 21). The second new exception applies to the use of dogs in earthdog trials. An earthdog trial is a sporting event in which certain breeds of dogs, specifically terriers and dachsunds, attempt to locate the "quarry" (such as a caged rat) that is in an underground den. According to the American Kennel Club, the trials are designed to test a dog's "natural aptitude and trained hunting and working behaviors when exposed to an underground hunting situation."[2] As a result of S.L. 2007-180 (S 1424), activities conducted at these earthdog trials are not considered fighting or baiting as long as (1) they are sanctioned or sponsored by entities approved by the Commissioner of Agriculture and (2) the quarry (i.e., bait) is kept separate from the dogs by a sturdy barrier, such as a cage, and has access to food and water. Interestingly, while the earthdog trials are now exempt from the law, the act of training dogs to participate in these trials is not specifically exempted from the law.

Law Enforcement and Assistance Animals

Teasing, obstructing, and causing serious harm to law enforcement and assistance animals are crimes under G.S. 14-163.1. The law provides for penalties ranging from a Class I felony to a Class 2 misdemeanor. S.L. 2007-80 (S 34) amends the law to make it a Class H felony for a person to willfully kill an animal that the person knows or has reason to know is a law enforcement or assistance animal. The act also amends the state's sentencing laws (G.S. 15A-1340.16) to provide that the court may consider as an aggravating factor whether the crime involved harming a law enforcement or assistance animal.

Spay/Neuter Program Funding

The Division of Public Health in the North Carolina Department of Health and Human Services (DHHS) administers the Spay/Neuter program, which has two basic components. One component focuses on public education about the benefits of spaying and neutering pets and the other provides grants to local governments in support of programs that provide free or subsidized spay/neuter services to pets owned by low-income individuals. The second component—the spay/neuter grant program—is currently funded primarily through surcharges on voluntary purchases of "I Care" rabies tags and "Animal Lovers" license plates. S.L. 2007-487 (S 684) amends the funding structure for the program. Beginning in 2008, every rabies tag issued by

2. *See* American Kennel Club, *Getting Started in Earthdog Tests*, at http://www.akc.org/events/earthdog/getting_started.cfm (last visited August 12, 2007).

DHHS[3] will have a twenty-cent surcharge that will be dedicated to the Spay/Neuter program. Two categories of individuals are exempt from this surcharge: (1) a person who operates an establishment used primarily for boarding and training hunting dogs and (2) a person who owns and vaccinates ten or more dogs per year. S.L. 2007-487 also places a new condition on the receipt of funds from the Spay/Neuter program. Local governments must now require pet owners applying for free or subsidized spay/neuter services to either show proof that the animal has been vaccinated or have it vaccinated at the time of the spay/neuter service.

Petting Zoos

In the fall of 2004, more than 100 people—mostly children under age 6—contracted a communicable disease called E. coli after visiting the petting zoo at the North Carolina State Fair.[4] As a result, the General Assembly passed legislation directing the Commissioner of Agriculture to establish a permitting system for such petting zoos, or "animal exhibitions," at agricultural fairs (S.L. 2005-191, adopting new G.S. 106-520.3A). This year, S.L. 2007-171 (H 590), amends the laws governing liability of agritourism operators to extend them to operators of animal exhibitions at agricultural fairs. If the operator of the animal exhibition posts a sign warning the public about the "inherent risks" related to the animal exhibition, then a person who files a civil lawsuit alleging that he or she was harmed at the exhibition may not be able to recover money damages from the operator.[5] This new provision would not protect the operator in some circumstances, such as if the operator was negligent or had actual knowledge of a dangerous condition.[6]

Miscellaneous

Leaves of Absence for Officials During Active Duty

S.L. 2007-432 (H 671) amends G.S. Chapter 128 to provide for leaves of absence for elected and appointed state, county, and municipal officials who enter active duty in the United States armed forces or the North Carolina National Guard. For county and municipal officials, the leave of absence is obtained by filing a copy of the official's active duty orders with the clerk of the board of county commissioners or the city clerk, as appropriate.

The law allows for the appointment of a temporary replacement if the official will be on active duty for at least thirty days (no temporary replacement is appointed for shorter leaves). In the case of counties and municipalities, the temporary replacement is to be appointed by the board of county commissioners or the city council, respectively. The temporary replacement must be a citizen with all of the qualifications required by law for holding the office.

No vacancy is created by an official's obtaining a leave of absence under the law. During the leave, the official on active duty receives no salary.

The replacement official has all the authority, duties, perquisites, and emoluments of the official being temporarily replaced. The replacement is to begin serving on the date specified in writing by the official being temporarily replaced as the date that he or she will enter active military service, or as soon as practicable thereafter. The replacement's service ends (1) on the third day after the last day of active duty status of the official being temporarily replaced; (2) when the city clerk or the clerk to the board of commissioners receives written notice from the replaced

3. Note that veterinarians and others may purchase rabies tags from sources other than DHHS.
4. *See* Centers for Disease Control, *Outbreaks of Escherichia coli 0157:H7 Associated with Petting Zoos—North Carolina, Florida, and Arizona, 2004 and 2005, Morbidity and Mortality Weekly* (MMWR), 54(50); 1277-1280 (Dec. 23, 2005); Lisa Hoppenjans, *As Girl Copes, Legacy May Protect Others*, Raleigh News & Observer, July 26, 2005, at 1A.
5. G.S. 99E-32.
6. G.S. 99E-31.

official that he or she is ready and able to resume the duties of office; or (3) when the term of office of the person being temporarily replaced expires.

Changes in Cemetery Laws

A number of cities in North Carolina operate cemeteries, and counties often assume some responsibility for cemeteries that have been abandoned and neglected. But many of the cemetery laws that have developed over the years—particularly the provisions dealing with the care of abandoned and neglected cemeteries—have themselves effectively been "abandoned" or "neglected" due to age or disuse.

In recent years, however, the increasing level of development across the state has led to the unearthing of many long-forgotten burying places. The current lack of information about many of these abandoned or neglected cemeteries makes it difficult to contact heirs and properly relocate the discovered human remains.

S.L. 2007-118 (H 107) takes a step toward addressing these and related concerns. The act recodifies much of North Carolina's cemetery law, while also making technical, clarifying, and updating changes. The recodified provisions are gathered into a new Article 12 of G.S. Chapter 65. Also included are definitions of such key terms as *abandoned, neglected, cemetery,* and *grave* that might have been unclear in the past. Sections of the law dealing with municipal cemeteries are repealed, since nearly identical provisions are now found in G.S. 160A-344.

The act makes two changes to the law dealing with county commissioners' responsibilities with respect to certain cemeteries (formerly G.S. 65-1 to 65-3; now G.S. 65-111 to 65-113). For many years, G.S. 65-1 has required boards of county commissioners to prepare and keep on record in the register of deeds' office lists of (1) abandoned public cemeteries and (2) all public cemeteries in the county outside municipal limits that are not established and maintained for municipal use. These lists must be furnished to the division of publications in the office of the Secretary of State. G.S. 65-111, which replaces G.S. 65-1, retains these provisions and adds a new requirement that the lists also be furnished to the Department of Cultural Resources.

Second, the act appears to make completely optional the formerly mandatory responsibilities of boards of county commissioners with respect to public cemeteries, which were set out in G.S. 65-3 and are now found in G.S. 65-113. The prior language in G.S. 65-3 specified that the commissioners were "*required to take possession and control* of all abandoned public cemeteries in their respective counties" [emphasis added], and to see to the completion of various specified tasks involving the cemeteries, either directly or through a board of trustees. The new law, G.S. 65-113, states instead that "[t]he county commissioners of the various counties *are authorized to oversee* all abandoned public cemeteries in their respective counties" [emphasis added], in order to perform the same sorts of tasks as set out in G.S. 65-3. The new law also authorizes the use of a board of trustees.

Given the overall tenor of the portion of S.L. 2007-118 that deals with county commissioners' duties, including the reenactment and expansion in G.S. 65-111 of county commissioners' reporting responsibilities with respect to abandoned and certain other public cemeteries, one might be tempted to conclude that the change from "required" to "authorized" described in the immediately preceding paragraph was merely an oversight. Nevertheless, the change was made, and it appears to give boards of county commissioners the option of removing themselves from all of their responsibilities listed in G.S. 65-113 with respect to the control of abandoned public cemeteries, although they are still required to make the reports specified in G.S. 65-111. In truth, most boards of commissioners have not really been exercising the responsibilities now listed in G.S. 65-113 for many years, and the change may simply be recognition of this fact.

Some other substantive changes are found in the part of S.L. 2007-118 that recodifies the statutes allowing trust accounts to be established with the clerk of superior court for the upkeep of abandoned or neglected graves or cemeteries. This part of the act raises from $100 to $5,000 the minimum amount that must be deposited with the clerk to create such a trust account, and it eliminates the maximum amount for such a deposit. It continues to allow the clerk to use a

qualified bank or trust company as the trustee, and it adds a requirement that the clerk place a copy of the fund accounting in the estate file of the deceased.

S.L. 2007-118 became effective July 1, 2007, and applies to all trusts created on or after that date.

Qualified Immunity for Local Trustees of the Firemen's Relief Fund

S.L. 2007-54 (H 552) adds new G.S. 58-84-60, which makes persons serving on local boards of trustees of the Firemen's Relief Fund immune individually from civil liability for monetary damages—except to the extent covered by insurance—for any act or failure to act arising out of service on the board of trustees. This immunity does not apply in cases where the person

1. was not acting within the scope of his or her official duties;
2. was not acting in good faith;
3. committed gross negligence or willful or wanton misconduct that resulted in the damages or injury;
4. derived an improper direct or indirect personal financial benefit from the transaction; or
5. incurred the liability from the operation of a motor vehicle.

Clarification of the Gender Equity Reporting Statute

G.S. 143-157.1 requires that appointments to statutorily created public bodies be made from among the most qualified persons, in such a manner that the appointments promote membership on each body that accurately reflects the proportion each gender represents in the population of the state as a whole for statewide bodies, or in the population of the area represented by the body, in the case of local bodies. Information about these appointments must be reported annually to the Secretary of State.

Unfortunately, the statute's coverage, especially with respect to local governments, has been unclear. In particular, exactly what is a "statutorily created public body," the appointing authority of which is covered by the law?

Partly in response to the concerns of those who are involved in the local reporting process, in particular clerks of boards of county commissioners and municipal clerks, the Secretary of State's office prepared, and the General Assembly enacted, clarifying revisions to G.S. 143-157.1. S.L. 2007-167 (H 824) amends the law to list thirty-seven specific types of local public bodies that are covered and requires that the clerk of each appointing authority make an annual report on a form prescribed by the Secretary of State. The Secretary of State may accept reports by electronic means. The reports are due by September 1; the Secretary of State uses them to generate an annual composite report to be published by December 1. Copies of this report are submitted to the Governor, the Speaker of the House, and the President Pro Tempore of the Senate. The act also makes clarifying changes in the reporting requirements for state bodies.

Ethics

Several changes were made during the 2007 session to the 2006 State Government Ethics Act, S.L. 2006-201, and some of these modifications should be of interest to local government officials. The ethics act amendments are discussed in Chapter 13, "Ethics and Lobbying."

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Local Taxes and Tax Collection

Property tax reform—specifically, providing relief to residential homeowners from escalating property taxes—was the impetus behind a dozen bills introduced in 2007, including proposals ranging from amending the state constitution to cap the increase in assessed value of permanent residences in a reappraisal year to deferral of all taxes on the residences of qualifying elderly or disabled individuals. Other proposals included mandated four-year reappraisals of property, freezing the appraised values of residences owned by elderly North Carolinians, and raising the income eligibility limit for the homestead exclusion to $50,000. The General Assembly ratified two of the less drastic homestead relief bills, enacting modest increases in the income eligibility limit and exclusion amount under the existing homestead exclusion program along with a property tax circuit breaker benefit permitting qualifying elderly and disabled homeowners to defer a portion of the taxes assessed on their residences.

In other significant legislation, the 2007 appropriations act reduces the Article 44 one-half cent local option sales tax, changes the distribution method for that tax as well as for the Article 42 one-half cent local option sales tax, and, in 2009, repeals the Article 44 tax altogether. The act authorizes counties to levy a local land transfer tax of up to 0.4 percent or an additional local sales and use tax of 0.25 percent. Either tax is contingent upon voter approval in a referendum.

The General Assembly returned to the 2005 legislation that created a combined system for registration and taxation of motor vehicles, to become effective in 2010. Legislators removed a political hurdle that threatened implementation of the system by enacting a bill permitting automobile dealers to obtain limited registrations for vehicles sold without requiring the dealers to collect property taxes at the time of sale.

Property Tax Relief for the Elderly and Disabled

Providing tax relief for residential homeowners is not a new idea. Indeed, the North Carolina Constitution was amended more than seventy years ago (in 1936) to permit the General Assembly to exempt from taxation up to $1,000 in property held by and used as the residence of the owner. Since 1972 low-income elderly and disabled property owners have received property tax relief from the General Assembly's classification of homestead property as eligible for a partial exclusion from property taxation. Current G.S. 105-277.1 excludes from taxation the greater of $20,000 or 50 percent of the appraised value of a qualifying individual's residence. The income eligibility limit was set at $18,000 in 2002 and is adjusted each year based on the Social Security cost-of-living index. For the 2007–08 tax year, the income eligibility limit, measured by 2006 income, was $20,500.

S.L. 2007-497 (H 1499) amends the property tax homestead exclusion by increasing the amount excluded from taxation beginning in the 2008–09 tax year to the greater of 50 percent of the value of the residence or $25,000. Section 1.2 of S.L. 2007-497 authorizes the Revenue Laws Study Committee to study whether to index the minimum excluded appraised value limit ($25,000) to allow for an annual adjustment of the limit and, if so, which index to use.

The act also increases the income eligibility limit for qualifying homeowners to a base limit of $25,000, which likewise will be adjusted each year based on the Social Security cost-of-living index. The income eligibility limit changes are effective for the 2008–09 tax year; however, the statute's language creates some confusion about the income limit in the first year of the provision's application. Amended G.S. 105-277.1(a2) provides that "[u]ntil July 1, 2008," the income eligibility limit is $25,000, and then it states that for taxable years "beginning on or after July 1, 2008, the income eligibility limit is the amount for the preceding year, adjusted using the cost of living index." The statement that the $25,000 limit applies only ***until*** July 1, 2008, combined with the provision for an adjustment from the "amount for the preceding year" could be interpreted to mean that an adjustment will be made to the $25,000 base income limit in the very first year the new provisions apply: 2008. It seems unlikely, however, that this was the General Assembly's intent, given that it was empowered to set the statutory threshold at the desired income level for the first year of the statute's application, and did so in 2002 when it established $18,000 as the base income limit. Moreover, according to this interpretation, $25,000 would never in fact be the base income eligibility amount since it would immediately be adjusted. It seems more likely that the General Assembly intended for the limit to be $25,000 in 2007 income for a taxpayer to qualify for the homestead exclusion during the 2008–09 tax year.

S.L. 2007-497 also amends the definition of income to eliminate the reference to adjusted gross income as defined by the Internal Revenue Code. For purposes of the homestead exclusion for the 2008–09 tax year, *income* is defined as "[a]ll monies received from every source other than gifts or inheritances received from a spouse, lineal ancestor, or lineal descendant." For married applicants residing with their spouses, as before, the income of both spouses must be included. The amended definition of income captures all income and prevents a taxpayer from reducing his or her income by net business or other losses subtracted from income on a federal income tax return to arrive at an adjusted gross income figure.

In addition S.L. 2007-497 creates a circuit breaker benefit by allowing qualifying elderly and disabled homeowners beginning in 2009–10 to defer a portion of the property taxes assessed on their residences. Qualifying owners are North Carolina residents who (1) are at least 65 years old or are totally and permanently disabled, (2) have occupied their property as a permanent residence for at least five years, and (3) have an annual income of no more than 150 percent of the income eligibility limit set for the homestead exclusion. Based on a $25,000 homestead exclusion income eligibility limit, the income limit for the circuit breaker benefit is $37,500. A qualifying owner with gross income under the eligibility limit for the homestead exclusion may defer taxes on his or her permanent residence to the extent those taxes exceed 4 percent of his or her gross income. A qualifying owner who has an annual income of 100 to 150 percent of the income eligibility limit

may defer taxes on his or her permanent residence that exceed 5 percent of his or her gross income. When a permanent residence is owned by two or more people who are not married, all of the owners must qualify for the homestead circuit breaker and must elect to defer taxes under its provisions. Though S.L. 2007-497 does not directly address the issue of property owned by spouses as tenants by the entireties, its specific reference to the qualification requirements for other forms of multiple ownership indicates that either spouse may qualify for and be entitled to the full circuit breaker benefit, just as either spouse may qualify for and receive the entire homestead exclusion.

Some owners may qualify for both the homestead exclusion and the new property tax circuit breaker benefit. An individual owner may elect the benefit he or she desires; however, when property is owned by two or more persons other than husband and wife, each person must qualify for both types of relief and each must elect the property tax circuit breaker in order for that benefit to be allowed instead of the homestead exclusion.

If a property owner elects the homestead circuit breaker benefit, the difference between the taxes due under the circuit breaker and the taxes that otherwise would have been payable are a lien on the real property. Three previous years of deferred taxes are carried forward in the records of the taxing unit. Interest accrues on the deferred amounts as if they had been payable when the taxes originally became due. By September 1 of each year, the tax assessor must notify a property owner whose property is in the circuit breaker program of the accumulated sum of deferred taxes and interest.

Deferred taxes are payable within nine months after a disqualifying event, which occurs when the owner transfers the residence (other than certain transfers made as part of a divorce proceeding), dies, or ceases to use the property as his or her permanent residence. The tax for the fiscal year that opens in the calendar year in which deferred taxes become due is computed as if the property were not eligible for the benefit.

The homestead circuit breaker allows for interruptions in qualification that do not trigger an obligation to pay deferred taxes. If the owner does not qualify for the circuit breaker for reasons other than a disqualifying event, then deferred taxes are carried forward until a disqualifying event occurs. If the owner later requalifies for tax deferral, the taxing unit must disregard the years during which there was an interruption for purposes of determining the three fiscal years for which deferred taxes should be assessed.

As with homestead applications, the deadline for filing for the homestead circuit breaker is June 1 preceding the fiscal tax year for which relief is claimed. Conforming amendments to G.S. 105-282.1(a)(2) provide for submission of a single application for the circuit breaker benefit. Amended G.S. 105-309(f) requires assessors to inform taxpayers of the homestead circuit breaker provisions along with the homestead exclusion in an information sheet distributed with an abstract or on the abstract itself.

Reduction, Repeal, and Amended Distribution of Existing Local Option Sales Taxes

The General Assembly enacted legislation in 2007 designed to provide counties long-awaited Medicaid relief. For a detailed discussion of the provisions enacted to provide this relief, and of the local revenue sources conceded in the process, see Chapter 16, “Local Finance.”

Reduction and Subsequent Repeal of Article 44 Sales Tax

One significant aspect of the Medicaid relief package provided in S.L. 2007-323 (H 1473), the 2007 appropriations act, is a reduction in the Article 44 third one-half cent local option sales tax to one-quarter cent, effective October 1, 2008 and the repeal of the Article 44 tax in its entirety on October 1, 2009. Section 31.16.3 of S.L. 2007-323 also provides for distribution of the entire net proceeds of the Article 44 local option sales tax to counties based on the actual collection of the

tax in those counties, termed "a point of origin" basis. The new distribution method is effective October 1, 2008. Current G.S. 105-520 distributes half of the Article 44 tax based on point of origin and the other half on a per capita basis.

Section 31.16.3 also provides for corresponding increases in the state sales tax rate to accompany the reduction of the Article 44 tax in 2008 and its repeal in 2009. The state sales tax will increase by one-quarter cent on October 1, 2008, and another one-quarter cent on October 1, 2009.

Amended Distribution of Article 42 Sales Taxes

The 2007 appropriations act likewise provides for the distribution of net proceeds of the Article 42 one-half cent local option sales tax to counties based on the county in which the taxes were collected beginning October 1, 2009. Article 42 taxes currently are apportioned to counties on a per capita basis pursuant to G.S. 105-501(a).

Newly Authorized Local Option County Taxes

Section 31.17 of S.L. 2007-323 (H 1473), the 2007 appropriations act, authorizes counties to levy one of two local option taxes, a land transfer tax of up to 0.4 percent or an additional sales tax of 0.25 percent (or one-quarter cent). A majority of voters voting in a countywide advisory referendum must approve a proposed local option tax before it may be levied by a county board of commissioners. For additional discussion of the financial needs giving rise to the authorization for these taxes, see Chapter 16, "Local Finance."

Land Transfer Tax

New Subchapter X, Article 60, of G.S. Chapter 105 comprises the County Land Transfer Tax Act. New G.S. 105-601(b) permits a board of county commissioners to direct the county board of elections to conduct an advisory referendum on whether to levy a local land transfer tax in the county. The ballot question submitted to the voters may authorize the levy of a real property transfer tax at a rate not to exceed the amount set forth in the ballot, which may not exceed 0.4 percent. If the majority of those voting in the referendum vote in favor of the tax, the board of county commissioners may, by resolution and after 10 days' public notice, levy a transfer tax in increments of 0.1 percent up to the maximum rate approved in the ballot measure. Thus, if the voters approved a 0.4 percent rate, the board of county commissioners could adopt a rate of 0.1, 0.2, 0.3, or 0.4 percent. New G.S. 105-602(b) provides that a county land transfer tax becomes effective on the first day of a calendar month set in the resolution levying the tax, which may not be earlier than the first day of the second calendar month after the resolution is adopted. Thus, if voters approve a county land transfer tax in November 2007, which is levied by the board of commissioners later that same month, the tax may not become effective until January 1, 2008, at the earliest.

A local land transfer tax applies to transfers of interests in real property located within the county but not to transfers that are exempt from the statewide excise tax levied by Article 8E of G.S. Chapter 105. Conveyances by a governmental unit or an instrumentality of a governmental unit are exempt from the excise tax as are transfers (1) by operation of law; (2) by lease for a term of years; (3) made by or pursuant to the provisions of a will; (4) by intestacy; (5) by gift; (6) for which no consideration is due or paid by the transferee to the transferor; (7) by merger, conversion, or consolidation; or (8) by an instrument securing indebtedness. However, transfers subject to the excise tax are not necessarily subject to the local option land transfer tax. The excise tax specifically applies to timber deeds and contracts for the sale of standing timber "as if those deeds and contracts conveyed an interest in real property" (G.S. 105-228.30), notwithstanding the state supreme court's holding in *Fordham v. Eason*, 351 N.C. 151, 155, 521 S.E.2d 701, 704

(1999), that timber is personal property when subject to a sales contract. Given that new G.S. 105-602 does not expressly incorporate the timber deed and contracts language from the excise tax statutes, local land transfer taxes apparently apply only to transfers of interests in real property and not to contracts for the sale of timber. If timber deeds, like contracts for the sale of timber, also are considered to transfer only an interest in personal property, an issue that the North Carolina courts have not specifically addressed, then the county land transfer tax likewise does not apply to timber deeds.[1]

If property located in two or more counties is transferred, the transfer is subject to the land transfer tax of the county in which the greater part of the property, with respect to value, lies. The tax applies to the consideration or value, whichever is greater, of the interest conveyed, including the value of any lien or encumbrance attached to the property at the time of conveyance.

As with the excise tax, the county land transfer tax is payable by the transferor pursuant to new G.S. 105-603. Other administrative provisions of the excise tax codified in G.S. 105-228.32 through 105-228.37 also apply to local transfer taxes. Thus, a person who presents an instrument for registration must report to the register of deeds the amount of excise and county land transfer taxes due. Before recording the instrument, the register must collect the tax and mark the instrument to indicate that taxes in a specified amount have been paid. This amount must be shown separately from the excise tax amount. The county may seek to recover unpaid taxes and the taxpayer may request a refund of an overpayment by utilizing the procedures set forth in the excise tax statutes. Counties may use the proceeds of a county land transfer tax for any lawful purpose.

One-Quarter Cent County Sales and Use Tax

Section 31.17(b) of the 2007 appropriations act adds new Article 46 to Subchapter VIII of Chapter 105 of the General Statutes, titled the One-Quarter Cent (¼¢) County Sales and Use Tax. New G.S. 105-536 makes new Article 46 applicable only to counties that have levied the first one-cent sales and use tax under Article 39 of G.S. Chapter 105 or under Chapter 1096 of the 1967 Session Laws, the first one-half cent local sales and use tax under Article 40, and the second one-half cent local sales and use tax under Article 42. The board of county commissioners in a county that has levied the first two cents of local sales and use taxes may direct the county board of elections to conduct an advisory referendum on whether to levy an additional one-quarter cent sales and use tax in the county. If the majority of those voting approve the tax, the board of county commissioners may by resolution and after ten days' public notice levy the additional sales and use tax. If approved by the voters and levied by the board, the new one-quarter cent tax may become effective during the 2008 calendar year on the first day of any calendar quarter as long as the county provides the Secretary of Revenue at least sixty days' advance notice of the new tax levy.

The collection, administration, and repeal of the one-quarter cent tax are governed by Article 39. Unlike other local option sales taxes, the additional one-quarter cent tax does not apply to the sales price of food that is exempt from state sales tax pursuant to G.S. 105-164.13B. And, unlike previously authorized local option sales taxes, no portion of the proceeds from the one-quarter cent tax will be distributed to municipalities within a county. New G.S. 105-537(d) provides that a one-quarter cent sales tax may not be in effect in a county at the same time as a county land transfer tax levied under new Article 60 of G.S. Chapter 105. While a county may only levy one of the two optional taxes, it may conduct an advisory referendum on both, or only one, of its local tax options.

1. *See* DAVID M. LAWRENCE, LOCAL GOVERNMENT PROPERTY TRANSACTIONS IN NORTH CAROLINA, 161–67 (2d ed. 2000) (reasoning that the real-property character of standing timber conveyed by timber deed is not altered by *Fordham*).

Integrated Property Tax and Motor Vehicle Registration

S.L. 2007-471 (H 1688) amends G.S. 20-179.1 to allow automobile dealers to register and obtain license plates for newly sold vehicles without collecting property taxes at the time of sale. New G.S. 20-79.1A provides for the issuance of limited registration plates, a new type of license plate bearing a clear and visible marker denoting its temporary status, to dealers and others who submit an application for title and registration fees to the Division of Motor Vehicles (DMV). Limited registrations expire on the last day of the second month following the date on which the registration was applied for. New G.S. 105-330.5(a2) provides that limited registrations become valid for the remainder of the year upon payment of county and municipal taxes and fees and requires the Property Tax Division of the Department of Revenue to include this information in its notice to the vehicle's new owner. A dealer or any other person may opt to pay property taxes at the time the application for title is submitted and registration fees are paid and thereby obtain an annual rather than a limited registration.

S.L. 2007-471 also amends G.S. 105-330.1(b) by removing vehicles registered under the International Registration Plan (IRP) from the category of "classified motor vehicles." The IRP is a registration reciprocity agreement among forty-eight states, the District of Columbia, and provinces of Canada providing for payment of registration fees for fleet vehicles on the basis of total distance operated in all jurisdictions.[2] This change divorces the taxation of IRP vehicles from the process of registering these vehicles. Thus, taxpayers must list IRP vehicles with the county in which they are subject to taxation during the period for listing other taxable personal property (generally, the month of January).

The aforementioned provisions of S.L. 2007-471 are effective July 1, 2010, or when DMV and the Department of Revenue certify that the integrated computer system for registration renewal and property tax collection for motor vehicles is in operation, whichever occurs first.

Effective August 29, 2007, S.L. 2007-471 also amends G.S. 105-330.10 to vest the Office of State Budget and Management, rather than the Association of County Commissioners, with authority over funds in the Combined Motor Vehicle and Registration Account. Funds may not be transferred until the Department of Transportation and the Association of County Commissioners agree on a project plan for the integrated system. Other amendments credit the Combined Motor Vehicle and Registration Account with interest generated by the funds in that account. G.S. 105-330.10, as amended, provides for any funds remaining in the account after creation of the integrated system to be distributed to local governments on a pro rata basis. Each jurisdiction's pro rata share is based on the first month's interest collected by the jurisdiction and paid into the account. Finally, the act amends G.S. 105-330.10, effective January 1, 2010, to provide that the interest collected on unpaid registration fees pursuant to G.S. 105-330.4 will be transferred monthly to the North Carolina Highway Fund to be used for technology improvements within DMV.

Property Tax Exemptions/Special Tax Treatment

Farms for Aquatic Species

S.L. 2007-497 amends the definition in G.S. 105-277.3 of agricultural land entitled to taxation at present-use, rather than market, value to include agricultural land used as farms for aquatic species, as defined in G.S. 106-758. The amendments are effective for the 2008–09 tax year. An

2. International Registration Plan© (IRP) with Official Commentary, (July 1, 2006), at 3, 83–84, *available at* www.irponline.org/irp/DocumentDisplay.aspx?id={4A507479-F628-420A-AEA8-F185BF156D32}; *see also* 19A NCAC 3E .0401 (providing that apportionable vehicles used or intended for use in two or more jurisdictions that allocate or proportionally register vehicles must be registered in accordance with the provisions of the IRP).

aquatic species farm tract must meet the existing income requirements for all agricultural land (gross income averaging $1,000 for the three years prior to qualification) and must consist of five acres in actual production or must produce at least 20,000 pounds of aquatic species for commercial sale annually, regardless of acreage.

Leased School Facilities

S.L. 2007-477 (H 63) enacts new G.S. 105-275(43), effective for the 2007–08 tax year, classifying and excluding from taxation real and tangible personal property subject to a capital lease pursuant to G.S. 115C-531. (G.S. 115C-531 permits local boards of education to enter into capital leases of real or personal property for use as school buildings or facilities.)

Working Waterfront Property

S.L. 2007-485 (S 646) enacts new G.S. 105-277.14 classifying working waterfront property and land necessary for convenient use of the property as eligible for taxation at its present-use, rather than market, value. The new classification is effective for the 2009–10 tax year. Working waterfront property must have produced an average gross income for the past three years of at least $1,000 and may consist of (1) a pier that extends into coastal fishing waters and that can be accessed only by those who pay a fee or (2) real property that is adjacent to coastal fishing waters and that is primarily used for a commercial fishing operation or fish processing, including adjacent land being improved and used for one of these purposes.

As with other property eligible for present-use value taxation, the difference between the taxes due on working waterfront property taxed on the basis of its present use and the taxes that would be due if those taxes were based on market value is a lien on the property. The difference is carried forward as deferred taxes. Taxes for the fiscal year that opens in the calendar year in which the property is disqualified from the present-use program are assessed based on market value, and deferred taxes for the three previous fiscal years are due with interest calculated from the date those taxes originally would have been due but for their deferred status.

The owner of working waterfront property must file an application for taxation at present-use value during the regular listing period of the year for which the benefit is first claimed or within thirty days of a notice of a change in the property's valuation. Once the application has been approved, the property remains in the present-use program. There is no requirement that a new application be filed until the property is transferred or becomes ineligible for classification as working waterfront property.

Study

S.L. 2007-497 authorizes the Revenue Laws Study Committee to study ways to address the inability of landowners to pay escalating property taxes while maintaining "nondevelopmental uses" of the property. The study may review (1) implementing tax benefits for donating perpetual easements on property to ensure that the property is not developed, (2) extending present-use value benefits to property used for wildlife conservation, and (3) other ways to reduce property taxes to preserve farmland and other undeveloped property. The committee may report its findings along with recommendations or legislative proposals to the 2008 session of the General Assembly.

Property Tax Commission Members and Terms

The Property Tax Commission, each of its members, and any Department of Revenue employee so authorized by the commission may, in connection with the decision of any pending appeal, subpoena witnesses and documents for examination if there is reason to believe that information provided by these witnesses or contained in the documents is pertinent to the decision

of any appeal. There is no requirement that the witness or the person in possession of the documents be a party to the appeal. S.L. 2007-251 (S 1432) amends G.S. 105-290, the provision of the Machinery Act granting this subpoena power, to establish a procedure for challenging this subpoena. New G.S. 105-290(d)(3) permits the commission or one of its members to quash a subpoena upon request and after a hearing if the commission finds that the subpoena requires the production of evidence that is not relevant to an issue before the commission, the subpoena fails to describe with sufficient particularity the evidence to be produced, or the subpoena is subject to being quashed for any other reason sufficient in law. New G.S. 105-290(d1) requires a hearing on a motion to quash a subpoena at least ten days before the hearing for which the subpoena was issued and provides for judicial review of a denial of a motion to quash a subpoena in the superior court of Wake County or of the county where the person subject to the subpoena resides.

S.L. 2007-308 (H 1555) amends G.S. 105-288(a) to provide for four fiscal-year terms for all members of the property tax commission, effective for all appointments made after July 1, 2007. Formerly the term of the commission member appointed upon recommendation of the Speaker of the House of Representatives was two years, while other members served four-year terms, two of which expired on June 30 of each odd-numbered year.

Payment of Back Taxes before Deed Recordation

S.L. 2007-221 (H 464) amends G.S. 161-31(b) to authorize Burke, Caswell, Greene, Jones, and Wayne counties to require payment of delinquent property taxes before registers in those counties record deeds conveying property.

Transylvania County Tax Collector

S.L. 2007-16 (S 231) repeals Section 4 of Chapter 399 of the Public–Local Laws of 1941, which provided for the election of the Transylvania County tax collector. The act provides for the appointment of the Transylvania County tax collector by the county board of commissioners pursuant to G.S. 105-349.

Local Occupancy Taxes

Section 21 of S.L. 2007-527 (S 540) amends local acts enacted from 1983 through 1995 authorizing various cities and counties to levy room occupancy taxes to provide that occupancy tax returns and taxes are due on the twentieth day of each month rather than the fifteenth. This deadline comports with the deadline for filing and paying sales taxes. The new filing and payment deadlines are effective January 1, 2008.

Section 23 of S.L. 2007-527 corrects a statutory reference to G.S. 153A-155(g) in S.L. 2006-128 (authorizing Ocracoke Township to levy an occupancy tax).

Burke County

S.L. 2007-265 (H 78) amends Chapter 422 of the 1989 Session Laws, as amended by Chapter 143 of the 1995 Session Laws, to permit Burke County to levy an occupancy tax of 3 percent in addition to the 3 percent previously authorized and to make the uniform administrative provisions of G.S. 153A-155 applicable to Burke County. The 2007 act requires the creation of the Burke County Tourism Development Authority, prescribes the administrative procedures for appointing members to the authority, and allows the county thirty days (which expired August 27, 2007) to ensure that the membership of the authority complies with the act. The authority must expend two-thirds of the net proceeds from the first 3 percent of the tax to promote travel and tourism in Burke

County and the remaining one-third for tourism-related expenditures in the county. The authority must divide the remaining net proceeds into three separate accounts: 45 percent to the Morganton account, 30 percent to the Burke County account, and 25 percent to the Valdese account. The authority must use at least two-thirds of the funds in each account to promote travel and tourism in each of the designated areas and the remainder for tourism-related expenditures in the designated area. The 2007 act defines "net proceeds" to limit the percentage of gross proceeds that may be deducted for the costs of administering and collecting the tax and clarifies that the tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations only when those accommodations are furnished in furtherance of the organization's nonprofit purpose.

Carteret County

S.L. 2007-112 (S 465) rewrites the Carteret County occupancy tax. The primary changes postpone until July 1, 2010, the county's authorization to levy an occupancy tax of 1 percent in addition to the 5 percent previously authorized. The additional tax may be levied only if a development plan for the construction of a convention center has been approved by June 30, 2010, and there is a signed contract between the appropriate local governments and a private developer that includes financing commitments for construction of the center. (The additional 1 percent tax had previously been authorized to begin no earlier than July 1, 2008, and was to be repealed on September 1, 2009, if construction on the convention center had not begun by July 1, 2009.) The county's authority to levy the additional 1 percent tax is repealed if a total of $10 million in proceeds from the additional tax is collected or if construction on the convention center has not begun by July 1, 2011. If the county levies a 6 percent occupancy tax, the county must remit 50 percent of tax proceeds quarterly to the Carteret County Tourism Development Authority to be used to promote travel and tourism. The county must use 33 percent of the proceeds for beach nourishment on Bogue Banks. The remaining proceeds, up to a maximum of $10 million, must be used to finance debt service and operating costs for a new convention center in the county. Different distribution rules apply if the occupancy tax rate remains at 5 percent.

Caswell County

S.L. 2007-224 (S 442) authorizes Caswell County to levy an occupancy tax of up to 3 percent pursuant to the uniform administrative provisions of G.S. 153A-155. The act requires the board of commissioners, upon adopting a resolution levying an occupancy tax, to create the Caswell County Tourism Development Authority and sets forth requirements governing authority membership. The county must remit the net proceeds of the occupancy tax to the authority quarterly, which must use at least two-thirds of the proceeds to promote travel and tourism in the county and the remainder for tourism-related expenditures.

Chatham County

S.L. 2007-318 (S 282) amends Chapter 642 of the 1993 Session Laws to permit Chatham County to levy an occupancy tax of 3 percent in addition to the 3 percent previously authorized and to make the uniform administrative provisions of G.S. 153A-155 apply to Chatham County. The 2007 act requires creation of the Chatham County Tourism Development Authority and prescribes the administrative procedures for appointing members to the authority. The 2007 act redefines "net proceeds" to reduce the percentage of gross proceeds the county may deduct for the costs of administering and collecting the tax.

Granville County

S.L. 2007-331 (S 384) amends the Granville County occupancy tax, effective October 1, 2007, to permit the county to levy an occupancy tax of 1 percent in addition to the 3 percent

previously authorized. The 2007 act redefines "net proceeds" to reduce the percentage of gross proceeds the county may deduct for the costs of administering and collecting the tax and requires the Granville County Tourism Development Authority to expend at least two-thirds of the first 3 percent of funds for tourism-related expenditures and the remainder of that 3 percent to promote travel and tourism. The authority must use at least two thirds of the new 1 percent tax to promote travel and tourism and the remainder for tourism expenditures. The act requires a different allocation of net proceeds beginning October 1, 2019.

Haywood County

S.L. 2007-337 (H 1013) amends the Haywood County occupancy tax to permit the county to levy an occupancy tax of 1 percent in addition to the 3 percent previously authorized and to make the uniform administrative provisions of G.S. 153A-155 apply to Haywood County. The 2007 act redefines "net proceeds" to reduce the percentage of gross proceeds the county may deduct for the costs of administering and collecting the tax. The amendments alter the membership composition and terms of the Haywood County Tourism Development Authority. The 2007 act requires the authority to divide proceeds from the additional 1 percent tax into five separate accounts based on the zip codes of the areas from which the proceeds were collected. Based on recommendations from and in consultation with each collection area, the authority must use at least two-thirds of the funds to promote travel and tourism and the remainder for tourism-related expenditures in each of the five collection areas.

McDowell County

S.L. 2007-315 (S 18) amends Chapter 892 of the 1985 Session Laws to permit McDowell County to levy an occupancy tax of up to 2 percent in addition to the 3 percent previously authorized and to make the uniform administrative provisions of G.S. 153A-155 apply to McDowell County. The 2007 amendments require the McDowell Tourism Development Authority to use at least two-thirds of the net proceeds of the tax to promote travel and tourism in the county and the remainder for tourism-related expenditures. In addition, the amendments alter the composition of the authority and allow the county thirty days (which expired August 29, 2007) to ensure that the membership of the authority complies with the act. The act also requires that the authority expend the net proceeds of the tax, redefines "net proceeds" to limit the percentage of gross proceeds the county may deduct for the costs of administering and collecting the tax, and clarifies that the tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations only when those accommodations are furnished in furtherance of the organization's nonprofit purpose.

Northampton County

S.L. 2007-223 (H 792) authorizes Northampton County to levy a room occupancy tax of up to 6 percent and incorporates the uniform administrative provisions of G.S. 153A-155. The act requires the board of commissioners, upon adopting a resolution levying a room occupancy tax, to create the Northampton County Tourism Development Authority and sets forth requirements governing authority membership. The county must remit the net proceeds of the tax to the authority quarterly, which must use at least two-thirds of the proceeds to promote travel and tourism in the county and the remainder for tourism-related expenditures.

Perquimans County

S.L. 2007-19 (S 496) authorizes Perquimans County to levy a room occupancy tax of up to 6 percent pursuant to the uniform administrative provisions of G.S. 153A-155. The act requires the board of commissioners, upon adopting a resolution levying a room occupancy tax, to create the Perquimans County Tourism Development Authority and sets forth requirements governing

authority membership. The county must remit the net proceeds of the occupancy tax to the authority quarterly, which must use at least two-thirds of the proceeds to promote travel and tourism in the county and the remainder for tourism-related expenditures.

Swain County

S.L. 2007-23 (S 336) amends Chapter 923 of the 1985 Session Laws to permit Swain County to levy an occupancy tax of 1 percent in addition to the 3 percent previously authorized and to make the uniform administrative provisions of G.S. 153A-155 apply to Swain County. The 2007 amendments require the Swain Tourism Development Authority to use at least two-thirds of the net proceeds of the tax to promote travel and tourism in the county and the remainder for tourism-related expenditures. In addition, the amendments alter the composition of the Swain Tourism Development Authority and allow Swain County thirty days (which expired May 25, 2007) to ensure that authority membership complies with the act. The 2007 act requires that the authority expend the net proceeds of the tax, redefines "net proceeds" to limit the percentage of gross proceeds the county may deduct for the costs of administering and collecting the tax, and clarifies that the tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations only when those accommodations are furnished in furtherance of the organization's nonprofit purpose.

Yadkin County

S.L. 2007-340 (H 1027) creates Yadkin County District Y as a taxing district, defines its jurisdiction as that part of Yadkin County located outside of incorporated areas, and authorizes it to levy an occupancy tax of up to 6 percent, pursuant to the uniform administrative provisions of G.S. 153A-155. The act also requires the Yadkin County board of commissioners to create the Yadkin County District Y Tourism Development Authority and sets forth requirements governing authority membership. Yadkin County District Y must remit the net proceeds of the tax to the authority quarterly, which must use at least two-thirds of the proceeds to promote travel and tourism in the district and the remainder for tourism-related expenditures in the district.

City of Lumberton

S.L. 2007-332 (S 489) amends the City of Lumberton occupancy tax to alter the composition of the Lumberton Tourism Development Authority and allows the city thirty days (which expired September 1, 2007) to ensure that authority membership complies with the act. The 2007 act redefines "net proceeds" to reduce the percentage of gross proceeds the city may deduct for the costs of administering and collecting the tax and clarifies that the tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations only when those accommodations are furnished in furtherance of the organization's nonprofit purpose.

Town of Dallas

S.L. 2007-317 (S 154) authorizes the Town of Dallas to levy an occupancy tax of up to 3 percent pursuant to the uniform administrative provisions of G.S. 160A-215. The act requires the board of aldermen, upon adopting a resolution levying a room occupancy tax, to create the Dallas Tourism Development Authority and sets forth requirements governing authority membership. The town must quarterly remit the net proceeds of the occupancy tax to the authority, which must use at least two-thirds of the proceeds to promote travel and tourism in the town and the remainder for tourism-related expenditures.

Town of Jonesville

S.L. 2007-340 amends S.L. 2002-95 to permit Jonesville to levy an additional occupancy tax of up to 3 percent in addition to the 3 percent previously authorized.

Town of Yadkinville

S.L. 2007-340 authorizes the Town of Yadkinville to levy an occupancy tax of up to 6 percent and incorporates the uniform administrative provisions of G.S. 160A-215. The act requires the board of commissioners, upon adopting a resolution levying a room occupancy tax, to create the Yadkinville Tourism Development Authority and sets forth requirements governing authority membership. The town must remit the net proceeds of the tax to the authority quarterly, which must use at least two-thirds of the proceeds to promote travel and tourism in the town and the remainder for tourism related expenditures.

Town of Yanceyville

S.L. 2007-224, as amended by Section 42 of S.L. 2007-527, authorizes the Town of Yanceyville to levy an occupancy tax of up to 3 percent pursuant to the uniform administrative provisions of G.S. 160A-215. The act requires the Yanceyville Town Council, upon adopting a resolution levying an occupancy tax, to create the Yanceyville Tourism Development Authority and sets forth requirements governing authority membership. The town must remit the net proceeds of the tax to the authority quarterly, which must use at least two-thirds of the proceeds to promote travel and tourism in the town and the remainder for tourism-related expenditures.

Local Legislation

Municipal Vehicle Taxes

S.L. 2007-109 (H 1112) amends G.S. 20-97(a) as it applies to the Town of Matthews under S.L. 1985-1009, S.L. 1991-209, and S.L. 1993-345 to permit the town to charge an annual municipal vehicle tax of up to $30 per vehicle beginning in the 2007–08 tax year. The town may use the tax proceeds for road and sidewalk construction, maintenance, and repair or for public mass transit systems and mass transit–related activities.

S.L. 2007-73 (H 568) amends G.S. 20-97(a) to permit the towns of Garner, Holly Springs, Rolesville, and Knightdale to charge an annual municipal vehicle tax of up to $15 (was, $5) beginning in the 2007–08 tax year and to use proceeds from any levy above $5 exclusively for transportation-related purposes, including sidewalks.

S.L. 2007-108 (H 885) amends G.S. 20-97(a) to permit the towns of Apex and Morrisville to charge an annual municipal vehicle tax of up to $15 (was, $5) beginning in the 2007–08 tax year and to use proceeds from any levy above $5 exclusively for transportation-related purposes, including sidewalks.

Boundary between Gaston and Lincoln Counties

S.L. 2007-9 (S 193) permits Gaston and Lincoln counties to establish in accordance with G.S. 153A-18 the boundary line between the two counties as provided in a 1963 survey. In recognition that the counties' tax maps for more than forty years have departed from the boundary lines reflected in the survey, the act authorizes the counties to "respect to the extent practicable the line as it has been observed in practice, provided that the line does not make any territory in one county noncontiguous to the remainder of the county." The act permits the counties to continue to

apportion parcels between the two counties that have been divided in some proportion between the counties in the past.

Technical Corrections

S.L. 2007-527 makes technical amendments to G.S. 105-275(41) by clarifying that objects of art held by the North Carolina State Art Society Incorporated are exempt from taxation (previously the word "State" was omitted).

Shea Riggsbee Denning

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Mental Health

This chapter discusses acts of the General Assembly affecting mental health, developmental disabilities, and substance abuse (MH/DD/SA) services, with particular attention given to legislation affecting publicly funded services. Although these services are largely governed by policy administered on the state level by the Department of Health and Human Services' (DHHS) Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, they are primarily delivered at the community level through a service network managed by local governments. Due to the array of local government structures used for this task and the variety of statutory terms applicable to these entities, an explanation of the terminology used in this chapter is in order.

A county must provide, manage, and oversee publicly funded mental health, developmental disabilities, and substance abuse services through an area authority, county program, or consolidated human services agency. Each of these three agencies performs the same basic functions, though each has a different governance structure and, therefore, a different relationship to the county governments of the counties it serves. In 2006 the General Assembly enacted legislation (S.L. 2006-142) codifying the term *local management entity* and its acronym, LME, as a means for referring collectively to area authorities, county programs, and consolidated human services agencies based on their common functional responsibilities. The terms *area authority*, *county program*, and *consolidated human services agency* retain their statutory meaning and continue to denote the specific and distinct governance and administrative structures available to a county or group of counties for carrying out the local management entity functions codified at G.S. 122C-115.4.

This chapter uses the term *local management entity* or its acronym, LME, when discussing legislation that utilizes these references or when referring to area authorities, county programs, and consolidated human services agencies collectively. However, when the legislation being discussed does not apply to all local management entities or applies only to one of the three entities, this chapter uses the more specific reference.

Some significant features of the 2007 legislative session include a continued emphasis on crisis services and acute care at the community level and housing assistance for persons with mental health, developmental, and substance abuse disabilities. The 2007 General Assembly specifically targeted substance abuse services, appropriating money for drug courts, substance abuse treatment for criminal offenders, and community services that utilize the American Society

of Addiction Medicine model of care. On the perennial topic of mental health insurance parity, the General Assembly finally enacted legislation requiring insurers to offer mental health benefits commensurate with physical health benefits but excluded substance abuse treatment from the scope of the act. The General Assembly continued the involuntary commitment pilot and amended the laws affecting LME funding, reporting requirements, business planning, and service waivers.

Appropriations

General Fund Appropriations

The 2007 General Assembly appropriated $713,081,821 for 2007–08 and $721,639,723 for 2008–09 from the General Fund to the DHHS Division of MH/DD/SA Services. Annual appropriations for the past five years were $662.8 million (2006–07), $603.3 million (2005–06), $574.4 million (2004–05), $577.3 million (2003–04), and $573.3 million (2002–03).

The Current Operations and Capital Improvements Appropriations Act of 2007, S.L. 2007-323 (H 1473), reduces state appropriations to the Division of MH/DD/SA Services by $2.33 million in each year of the fiscal biennium based on the availability of unexpended funds in various funding accounts for MH/DD/SA services. According to the Conference Report on the Continuation, Capital, and Expansion Budget, this reduction is not expected to reduce funding received by local management entities.

For the 2007–09 biennium S.L. 2007-323 cuts $180 million in funding to Dorothea Dix Hospital and John Umstead Hospital in anticipation of their closings in fall 2007 and allocates approximately $176 million of this savings to fund the new Central Regional Hospital scheduled to open in late fall 2007. The remainder of the savings, approximately $4.4 million, along with an additional $500,000, is allocated for local management entity (LME) administrative costs in 2008–09. (LMEs receive state funding for administrative functions, often called "management functions," which include developing and monitoring a provider network, implementing and maintaining a system for citizens to access services, and authorizing and coordinating individual client care. State funding to LMEs for these administrative activities is separate from state funding allocated to LMEs for covering the cost of services provided to indigent, non–Medicaid-eligible MH/DD/SA clients.)

In 2006 the General Assembly made a nonrecurring appropriation of $5.25 million for the development and implementation of crisis services—both local crisis services and regional crisis facilities—for individuals with mental illness, developmental disabilities, and substance abuse addictions (S.L. 2006-66). The 2006 appropriations act also allocated $225,000 to DHHS to hire a consultant to provide technical assistance to LMEs as they develop and implement a "crisis plan" for local crisis services and regional crisis facilities. This year the General Assembly made a recurring appropriation of $13,737,856 in each year of the 2007–09 fiscal biennium for LMEs to continue to implement their crisis plans. (Section 10.49 of S.L. 2007-323.) DHHS may use up to $250,000 of these funds in each fiscal year to extend its contract with the crisis services consultant. Although the $13.7 million appropriation for crisis services expands funding for crisis services, it does not represent an expansion of total funding to the Division of MH/DD/SA Services because the money is made available by reducing, or moving money from, existing funding for mental health services.

In a matter related to funding for crisis services, S.L. 2007-323 appropriates $2.5 million for 2007–08 and $5 million for 2008–09 for a pilot program to test mechanisms for increasing community capacity for handling psychiatric crises and reducing patient admissions to the state psychiatric hospitals. This legislative provision is discussed in more detail in the section below entitled "Crisis and Acute Care Services."

In an attempt to increase the availability of substance abuse treatment, the budget act appropriates $6 million in each year of the 2007–09 biennium to "regionally-funded, locally-hosted" substance abuse services that utilize the American Society of Addiction Medicine

continuum of care model for community services. Most of this money, $5 million in each fiscal year, is made available by "realigning" existing funding. Section 10.49 of the budget act directs that a portion of the realigned funding—$500,000 in 2007–08 and $700,000 in 2008–09—be used for residential substance abuse programs with a vocational component and "encourages" LMEs to use a "portion" of the funds for prevention and education activities. In addition, LMEs may use up to 1 percent of the substance abuse treatment funds to provide nominal incentives for consumers who achieve specified treatment benchmarks.

S.L. 2007-323 appropriates $2 million in each year of the 2007–09 fiscal biennium for LMEs to provide substance abuse services for adult offenders and to increase the number of Treatment Alternatives For Safer Communities (TASC) case managers. The appropriations act also appropriates $2 million in each year of the 2007–09 fiscal biennium for services to treatment courts, including pre- and post-plea mental health courts, DWI courts, and adult and family drug courts for adult offenders.

In 2006 the General Assembly targeted the housing needs of individuals with disabilities by making a $10.9 million nonrecurring appropriation to the North Carolina Housing Trust Fund to finance the construction of 400 independent and supportive living apartments for individuals with disabilities with incomes at the Supplemental Security Income level. An additional $1.2 million in recurring funding was provided to subsidize the operating costs associated with the apartments. This year the General Assembly appropriated $7.5 million in nonrecurring funds to the North Carolina Housing Trust Fund for additional independent and supportive living apartments for persons with disabilities.

S.L. 2007-323 appropriates $2.5 million in each year of the fiscal biennium for long-term supported employment for individuals with mental illness, developmental disabilities, and substance abuse addictions. The money is made available by cutting $2.5 million in other funding for mental health and developmental disabilities services. Funding is to be distributed among the LMEs in proportion to the number of residents in an LME's catchment area living below the federal poverty level.

For mental health services to returning war veterans S.L. 2007-323 makes a $343,130 nonrecurring and $35,797 recurring appropriation for 2007–08, and it designates a $47,728 recurring appropriation for 2008–09. This money must be used to support one mental health manager position to lead the Division of MH/DD/SA Services' response to the mental health service needs of returning veterans and their families, to expand the North Carolina Health Information Portal, an educational and social marketing tool directed at veterans and their families, and for statewide training to providers regarding the mental health and substance abuse service needs of this population. Of the money in this appropriation, $40,782 in 2007–08 and $47,728 in 2008–09 is obtained by realigning existing funding for mental health services.

The appropriations act also

- Moves $512,835 for 2007–08 and $633,920 for 2008–09 from the Atypical Antipsychotic Drug program in the Division of MH/DD/SA Services to the Medication Access and Review Program of the Office of Rural Health and Community Care.
- Appropriates $300,000 for each year of the fiscal biennium to DHHS, Office of the Secretary, for allocation to the North Carolina Institute of Medicine to hire new staff and undertake studies at the request of the General Assembly and to convene a task force to study substance abuse services in North Carolina.
- Reduces funding to the Division of Medical Assistance for Medicaid provider inflationary increases by $35,441,213 for fiscal year 2007–08 and $37,707,413 for 2008–09.
- Moves $4.5 million in existing funding for developmental disabilities services from the Division of MH/DD/SA Services to the Division of Medical Assistance for 300 additional slots in the Community Alternatives Program for persons with mental retardation or other developmental disabilities.
- For 2007–08 only, directs $2 million in existing funding for developmental disabilities services to be used to develop three model programs of early intervention for autism.

- Provides $3.5 million for 2007–08 and $4.5 million for 2008–09 in recurring funds to the Division of MH/DD/SA Services for subsidizing the operational costs of independent and supportive living apartments for persons with disabilities.
- Appropriates $267,883 for 2007–08 and $357,117 for 2008–09 to increase the number of personnel positions in the Division of MH/DD/SA Services dedicated to the oversight, management, and delivery of community-based services.
- Allocates $121,988 in 2007–08 and $724,065 in 2008–09 to increase staffing at the state-operated North Carolina Special Care Center.
- Dedicates $60,000 in nonrecurring funding for 2007–08 to the North Carolina Council of Community Programs to establish a statewide consumer support and networking organization that promotes the role of consumers in contributing to the design, function, and oversight of the MH/DD/SA service system.
- Provides $100,000 for 2007–08 (nonrecurring) for Consumer and Family Advisory Committee training.
- Appropriates $100,000 in 2007–08 and $100,000 in 2008–09 to fund the development of Crisis Intervention Teams by local management entities and for the Division of MH/DD/SA Services to develop the capacity to provide Crisis Intervention Team training statewide.

Mental Health Trust Fund

In 2001 the General Assembly established the Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs as a nonreverting special trust fund in the Office of State Budget and Management. G.S. 143-15.3D provides that the fund must be used solely to meet the mental health, developmental disabilities, and substance abuse services needs of the state. Since 2001, money from the trust fund has been expended on both community-based treatment services and state-operated facilities, including construction and personnel positions at state-operated facilities. S.L. 2007-323 amends G.S. 143-15.3D to provide that, beginning July 1, 2007, the trust fund must be allocated solely to local management entities to increase community-based services. For fiscal year 2007–08, however, DHHS may spend trust fund monies for purposes other than community-based services as long as those purposes were included in the department's 2006–07 Mental Health Trust Fund Plan. The act further directs that money in the trust fund designated by DHHS in its 2006–07 Mental Health Trust Fund Plan for increasing community-based services must be disbursed in full to local management entities for community-based services no later than October 1, 2007. These funds, if not expended by LMEs for community-based services by June 30, 2009, will revert to the Mental Health Trust Fund on that date.

In spite of the emphasis on community-based services, the act permits DHHS to use money from the trust fund to support up to sixty-six positions at the state-operated Julian F. Keith Alcohol and Drug Abuse Treatment Center if the center opens before July 1, 2008. In addition, the act authorizes DHHS to use up to $1.5 million in each of the 2007–08 and 2008–09 fiscal years for community-based services without allocating that money to local management entities.

Federal Block Grant Allocations

Section 10.55 of S.L. 2007-323 allocates federal block grant funds for fiscal year 2007–08. The Mental Health Services (MHS) Block Grant provides federal financial assistance to states to subsidize community-based services for people with mental illnesses. This year the General Assembly allocated $5,654,932 (down from $7,184,481 in 2006–07) from the MHS Block Grant for community-based services for adults with severe and persistent mental illness, including crisis stabilization and other services designed to prevent institutionalization of individuals when possible. From the same block grant the legislature appropriated $3,921,991 (the same amount as in 2006–07) for community-based mental health services for children, including school-based

programs, family preservation programs, group homes, specialized foster care, therapeutic homes, and special initiatives for serving children and families of children having serious emotional disturbances. As it did last year, the General Assembly allocated $1.5 million of the MHS Block Grant funds for the Comprehensive Treatment Services Program for Children (CTSP), which provides residential treatment alternatives for children who are at risk of institutionalization or other out-of-home placement.

The Substance Abuse Prevention and Treatment (SAPT) Block Grant provides federal funding to states for substance abuse prevention and treatment services for children and adults. This year's SAPT Block Grant funding generally matched the funding levels of 2006–07. The General Assembly allocated $20,287,390 for alcohol and drug treatment services for adults. Other allocations include $4,940,500 for services for children and adolescents, $5,835,701 for child substance abuse prevention, and $8,069,524 for services for pregnant women and women with dependent children. The budget act also appropriates $4,816,378 from the SAPT Block Grant for substance abuse services for treatment of intravenous drug abusers and others at risk of HIV disease and $851,156 for prevention and treatment services for children affected by parental addiction.

From the Social Services Block Grant (SSBG), which funds several DHHS divisions, S.L. 2007-323 allocates $3,234,601 to the Division of MH/DD/SA Services for mental health and substance abuse services for adults, mental health services for children, and for developmental disabilities programs. An additional allocation of $5 million is made to the developmental disabilities services program. From the same block grant, the General Assembly allocated $205,668 to the DHHS Division of Health Service Regulation (formerly, the Division of Facility Services) for mental health licensure purposes and $422,003 to the Division of Social Services for the CTSP for Children**.** The SSBG allocations match the allocations made for 2006–07.

Local Management Entities

The 2007 acts discussed in this section amend the laws governing the functions, consolidation, board composition, business planning, services, provider relationships, reporting requirements, and funding of local management entities.

LME Functions

S.L. 2007-504 (H 627) amends G.S. 122C-115.4 to clarify that the primary LME functions enumerated in that section must not be conducted by an entity other than an LME unless an LME chooses to contract with another entity to perform those functions or unless the LME fails to adequately perform a function after receiving technical assistance from the state. This clarification was in response to a rule proposed by the Secretary of DHHS that would have permitted the secretary to designate other entities, in addition to LMEs including private entities, to perform LME functions.

LME functions include the review and approval of the person-centered plan developed for a consumer by the consumer's primary provider. This particular function includes the review and approval of the person-centered plan for each consumer who receives non-Medicaid state funded services. For all consumers in the LME's catchment area who receive Medicaid services, the review is concurrent with the review performed by the fiscal agent hired by the state to authorize Medicaid services. S.L. 2007-504 amends G.S. 122C-115.4, the statute that enumerates and describes LME functions, to provide that the LME's utilization management and review function includes the authority to participate in the development of any consumer's person-centered plan and the duty to monitor all person-centered plans. With regard to the LME's provider-monitoring function, the new law adds that the authority to endorse and monitor contracted providers of services includes the authority to remove a provider's endorsement if the provider fails to adequately document the provision of services or fails to provide required staff training. Without

the LME's endorsement, a provider cannot provide and obtain reimbursement for services to LME clients.

S.L. 2007-504 rewrites G.S. 122C-115.4(b)(5), the provision addressing the LME's care coordination and quality management function. The act expands the concept of care coordination beyond the mere monitoring of the effectiveness of person-centered plans by explaining that care coordination "involves individual client care decisions at critical treatment junctures to assure clients' care is coordinated, received when needed, likely to produce good outcomes, and is neither too little nor too much service to achieve the desired results." Care coordination must be provided by clinically trained professionals with the authority and skills necessary to determine appropriate diagnosis and treatment, approve treatment and service plans, link clients to higher levels of care when necessary, resolve disagreements between providers and clinicians, and consult with clinicians, providers, case managers, and reviewers. The new law also enumerates the activities that must be included in care coordination for high-risk, high-cost consumers.

LME Consolidation

To force greater consolidation of area authorities and county programs the General Assembly, in a special provision of the 2006 appropriations act, set a minimum size for LME catchment areas, the geographic areas served by LMEs. Specifically, section 10.32(c) of S.L. 2006-66 amended G.S. 122C-115 to provide that the catchment area of an area authority or county program must contain either a minimum population of 200,000 or a minimum of six counties. In addition, beginning July 1, 2007, DHHS was directed to reduce by 10 percent annually the state funding for LME functions to any LME that did not comply with the catchment area size requirement. Since the enactment of the legislation and the resulting flurry of LME mergers, some counties have chosen to break away from the LME that they were participating in and join a new one, rather than stay with the original LME as it merged wholesale with another LME. As a result, at least one LME was left with fewer counties than it originally had and it fell below the catchment area size requirement. S.L. 2007-504 amends G.S. 122C-115 to provide a twelve-month grace period from the size requirement for any LME that fails to meet the requirement due to change in county membership.

LME Board Composition

G.S. 122C-118.1 provides that the area board for a multicounty area authority consisting of eight or more counties and serving a population of more than 500,000 can have up to thirty board members, exceeding the twenty-five member maximum applicable to other area authorities. With the merger of the Smoky Mountain Center area authority and the New River area authority, the resulting twelve-county area authority met the eight-county threshold but did not meet the 500,000 population threshold. To permit the new Smoky Mountain Center area authority to have more than twenty-five board members, S.L. 2007-504 amends G.S. 122C-118.1 to drop the 500,000 population requirement.

The act also amends G.S. 122C-118.1 to provide that any individual who contracts with an LME for the delivery of client services may not serve on the LME board during the period that the service contract is in effect.

LME Business Plan

Every county, through its local management entity, must develop, review, and approve a business plan for the management and delivery of mental health, developmental disabilities, and substance abuse services. Pursuant to G.S. 122C-115.2, the business plan must be submitted to the Secretary of DHHS for approval. The statute requires the plan to address particular subjects and sets forth a procedure for submission and approval. To assist LMEs in developing their business plans, S.L. 2007-504 amends G.S. 122C-115.2 to require the secretary to develop a model business plan that illustrates compliance with the statute and any applicable state rules and

standards. A business plan that demonstrates substantial compliance with the model business plan developed by the secretary will be deemed as meeting state law and standards. The amended statute also provides that if the secretary, upon reviewing a business plan, determines that the plan needs substantial changes in order to be approved, the secretary must provide the LME with detailed information on each area of the plan that is in need of change, the particular state law or standard that has not been met, and instructions or assistance on what changes need to be made for the plan to be approved.

LME Services

G.S. 122C-141 requires area authorities and county programs to provide MH/DD/SA services to their clients by contracting with other agencies or institutions for the provision of those services. The area authority or county program itself may not provide services to clients unless the Secretary of DHHS approves the direct provision of services. S.L. 2007-504 amends G.S. 122C-141 to provide that any approval of direct service provision granted by the secretary must be for no less than one year, unless the area authority of county program requests otherwise.

LME Service Providers

G.S. 122C-141(a) authorizes the area authority or county program to contract with any "qualified public or private provider," defined as a provider that meets the provider qualifications as defined by rules adopted by the Secretary of DHHS. Most contracted providers of MH/DD/SA services are private incorporated organizations, but a few are public entities. The 2006 General Assembly amended G.S. 122C-141 to impose specific requirements on providers and LMEs if the public provider of MH/DD/SA services is a multicounty agency formed as a result of two or more counties entering into an interlocal agreement under Article 20 of G.S. Chapter 160A. Among other things, the 2006 law (S.L. 2006-142) amended G.S. 122C-141(d) to clarify that this kind of provider, like other public and private providers, must meet all provider qualifications as defined by rules adopted by the secretary. S.L. 2007-504 amends subsections (d) and (e) of G.S. 122C-141 to replace references to the secretary with references to the Commission for MH/DD/SA Services as the rulemaking entity responsible for promulgating rules defining provider qualifications. S.L. 2007-504 also amends G.S. 122C-114 to add to the powers and duties of the rulemaking commission the duty to adopt rules establishing the qualifications necessary to be a qualified provider. While it appears that the General Assembly intended to move the authority to adopt rules setting provider qualifications from the secretary to the commission, in an apparent oversight, S.L. 2007-504 left intact the language in G.S. 122C-141(a) that says provider qualifications are defined by the secretary.

LME Expenditure Reports

To address the lack of information available to the General Assembly regarding the use of county general funds appropriated to LMEs for MH/DD/SA services, Section 10.49.(ff) of S.L. 2007-323 requires LMEs to report annually to the Division of MH/DD/SA Services all expenditures from county funds by the LME for (1) services, (2) start-up expenses, and (3) capital and operational expenses. Multicounty LMEs must report the amount of money expended on services for residents of each county participating in the LME, and all LMEs must gather income data for all individuals receiving services.

Single Stream Funding

Historically, funding for client services has been allocated to LMEs according to funding categories that designate the clients and services for which a particular category of funds may be expended. Recently, the state has begun to experiment with "single stream funding," which dissolves the categorical restraints of multiple funding streams so that LMEs have the flexibility to

shift available funds between traditional service categories to meet local needs and priorities. Section 10.49.(y) of S.L. 2007-323 requires DHHS, by September 1, 2007, to designate two additional local management entities to receive all state appropriations through single stream funding. In addition, by October 1, 2007, DHHS must develop and implement clear standards for how an LME can qualify for single-stream funding and award single stream funding to any other LME that meets these standards during the 2007–08 and 2008–09 fiscal years. DHHS must continue to provide state allocations to the Piedmont, Smoky Mountain, Guilford, Sandhills, Five County, and Mecklenburg LMEs through single-stream funding.

Area Authority Director

Personnel administration for area authority employees must be conducted in accordance with the State Personnel Act and the rules and policies of the State Personnel Commission. These rules and policies govern things such as position classification, qualifications, recruitment, dismissal, and compensation. For example, employees who have satisfactorily completed a probationary period may not be demoted, suspended, or dismissed except for "just cause" or reduction in force. Under the just cause standard defined by the State Personnel Commission, area employees may not be discharged, suspended, or demoted for disciplinary reasons without adequate procedural due process and a demonstration that just cause for the disciplinary action—unacceptable job performance or personal conduct—exists.

The area director, the administrative head of an area authority, is appointed by the area board, the governing body for the area authority. S.L. 2007-323 amends G.S. 122C-121 to provide that the area director must "serve at the pleasure of the board." Thus although the area director is otherwise subject to the State Personnel Act, effective July 30, 2007, the just cause standard no longer applies and the area director's employment is "at the will" of either party, meaning that the area director or the area board may terminate the employment relationship at any time without explanation or legal penalty.

S.L. 2007-323 further amends G.S. 122C-121 to establish that, unless the State Personnel Commission deems the area authority's personnel system to be substantially equivalent to the standards established under the State Personnel Act, the area director may not be paid a salary less than the minimum nor more than the maximum of the applicable salary range adopted in accordance with the State Personnel Act. However, the area board, subject to the approval of the State Personnel Commission, may adjust the salary range to make the level of pay conform to local financial ability and fiscal policy, as long as the adjustment is not more than 10 percent above the normal allowable salary range.

Involuntary Commitment Pilot

North Carolina's involuntary commitment statutes set forth the procedure for evaluating an individual for court-ordered mental health or substance abuse treatment. Generally, before the district court may order involuntary commitment, the subject of the order must be examined at two different points in the process by either a physician or a psychologist. In 2003 the General Assembly authorized the Secretary of DHHS to permit up to five area authorities or county programs to use a professional other than a physician or psychologist, such as a licensed clinical social worker, master's level psychiatric nurse, or master's level certified clinical addictions specialist, to conduct the first examination (S.L. 2003-178). Intended as a pilot program, the waivers could be in effect for no more than three years or for the duration of the local management entity's business plan. To prevent the law from expiring on July 1, 2006, the 2006 General Assembly extended the waiver program until October 1, 2007 (Section 10.27 of S.L. 2006-6). With that deadline approaching, the 2007 General Assembly, in S.L. 2007-504H, extended and expanded the waiver program by moving the expiration date of the law to October 1, 2010, and by

authorizing the secretary to approve up to ten LMEs to operate under the waiver from October 1, 2007, until October 1, 2010.

The secretary must evaluate and report on the effectiveness of services provided under the waiver and the waiver's effect on health, safety, and welfare. The report, including data gathered from the participating LMEs, must be submitted to the Joint Legislative Oversight Committee on MH/DD/SA Services by October 1, 2009. The oversight committee must review the report and recommend to the 2009 General Assembly whether to extend, discontinue, or make permanent the pilot program provisions.

Co-payment for Services

S.L. 2007-410 (H 628) amends G.S. 122C-112.1 to add to the powers and duties of the Secretary of DHHS the duty to adopt rules for the implementation of a graduated co-payment schedule to be used by LMEs and contracted providers to require co-payments from families whose family income is 300 percent or greater of the federal poverty level. The secretary must identify the services to which the co-payment schedule applies. Effective July 1, 2008, the act amends G.S. 122C-146 to require LMEs and contracted provider agencies to implement the co-payment schedule developed by the secretary and apply the schedule to services provided on or after that date. The LME is responsible for determining the applicability of the co-payment to individuals that the LME authorizes to receive services. The act leaves intact the language in G.S. 122C-146 that says no individual may be refused services due to an inability to pay.

Confidentiality of Client Information

S.L. 2007-115 (H 353) amends the law governing the State Health Director's authority to investigate and control disease and health hazards. New G.S. 130A-15 requires health care providers and persons in charge of health care facilities or laboratories to provide the State Health Director, upon request and with proper identification, access to privileged medical information, including information protected by the Health Information Portability and Accountability Act (HIPAA) privacy rule. The State Health Director has the right to examine, review, and obtain a copy of records that the director considers necessary to prevent, control, or investigate a disease or health hazard that may present a clear danger to the public health. Medical information privileged under state law or protected under the HIPAA privacy rule and received by the State Health Director under new G.S. 130A-15 is confidential and must not be released except pursuant to other law or when release is made to another public health agency, a court, or a law enforcement officer for the purpose of preventing, controlling, or investigating a disease or public health hazard.

S.L. 2007-115 amends G.S. 90-21.20B, governing health records, and G.S. 8-53.1, the physician-patient privilege, to make those provisions consistent with the HIPAA privacy rule's provisions governing the disclosure of protected health information to law enforcement officers and for purposes of treatment, payment, and health care operations. The provisions, however, do not apply to providers of MH/DD/SA services when client information is also confidential under G.S. Chapter 122C and 42 C.F.R. Part 2. Under the new law, a health care provider may disclose protected health information to a law enforcement officer to the extent that the information may be disclosed under the HIPAA privacy rule, unless the disclosure is prohibited by other state or federal law. In addition, a health care provider may disclose protected health information for purposes of treatment, payment, and health care operations to the same extent that the information may be disclosed under the HIPAA privacy rule, unless the disclosure is prohibited by other state or federal law. The state law governing MH/DD/SA records and the federal regulations governing substance abuse records do not permit disclosure as broadly as the HIPAA privacy rule in these circumstances. Providers of MH/DD/SA services, therefore, must continue to follow the prohibitions against disclosure found in other state and federal laws.

Services

Crisis and Acute Care Services

As noted in the section on appropriations above, the 2007 General Assembly appropriated $13.7 million in each year of the 2007–09 fiscal biennium for LMEs to continue to implement the crisis service plans they were required to develop and implement under S.L. 2006-66. The 2006 legislation set forth the service components that must be included in a continuum of crisis services for all consumers. The 2007 appropriations act adds detoxification services as a required component.

Section 10.49 of S.L. 2007-323 provides that, until July 1, 2008, LMEs must report monthly to DHHS regarding (1) the use of state crisis funds, (2) whether there has been a reduction in the use of state psychiatric hospitals for acute admissions, and (3) any remaining gaps in local and regional crisis services. DHHS must report quarterly on each LME's proposed and actual use of funds to various legislative committees. Beginning with the 2007–08 fiscal year DHHS also must report quarterly to LMEs aggregate information regarding all visits to community hospital emergency departments due to a mental illness, developmental disability, or substance abuse disorder.

In a continuing search to find ways to reduce state psychiatric hospital admissions and increase the capacity of local governments to provide for the acute care and crisis services needs of individuals with mental illness at the community level, the General Assembly directed DHHS to select up to four LMEs to participate in an eighteen-month pilot program that tests whether giving LMEs greater financial and clinical responsibility for psychiatric hospital use permits them to reduce state hospital admissions. To increase community service capacity so that the LMEs participating in the pilot have alternatives to the state-operated hospitals, Section 10.49 of S.L. 2007-323 appropriates $2.5 million for 2007–08 and $5 million for 2008–09 for the pilot LMEs to use for start-up operations or payment for local services. A portion of this money, $250,000 in each fiscal year, may be retained by DHHS.

In preparing for the pilot that must be implemented by January 1, 2008, DHHS must calculate the cost of every LME's 2006–07 use of state psychiatric hospital services based on each state hospital's total budget and the percentage of patients at the hospital admitted from each LME's catchment area. DHHS must also calculate a daily cost rate for hospital usage based on the statewide usage for 2006–07. An LME that wishes to participate in the pilot program must submit a proposal by October 15, 2007, that includes a plan to reduce hospital usage by a specified amount with an explanation of how the LME expects to accomplish that goal. DHHS must award pilot participation by November 1, 2007, to those LMEs that project the largest decrease in use and that have the greatest likelihood of succeeding.

Each LME selected for the pilot program will have a virtual budget account for January 1, 2008, through June 30, 3008, based on one-half of the LME's cost of psychiatric hospital use during the 2006–07 fiscal year minus the LME's proposed reduction in hospital use. Every bed day used by patients from the LME's catchment area will be debited against the LME's virtual account using the daily rate calculated by DHHS. The pilot LMEs must use the money appropriated to them under the pilot to build community service capacity, pay for an on-site representative at the state psychiatric hospital serving their region, and pay for patient bed days that are in excess of the hospital use projected in their proposal. The LME representative at the hospital will participate in patient admission, supervision, and treatment; treatment plan development; and the development and implementation of discharge plans.

Based on the experience of the pilot program, DHHS must develop a proposal for subsequent pilots to reduce hospital use and build community services. The Division of MH/DD/SA Services must submit to the Joint Legislative Oversight Committee on MH/DD/SA Services interim reports on its progress by October 15, 2007, and by February 1, 2008, and a final report by February 1, 2009. The final report must include a description of the pilot LMEs' success in working with local hospitals and the resulting reductions in the use of emergency rooms, jails, and state facilities. The appropriations act clarifies that the budgets for the state psychiatric hospitals must not be reduced

during the 2007–08 fiscal year as a result of the pilot program, but that budgets will be adjusted in following years to reflect the previous year's use by the LMEs participating in the pilot program.

Substance Abuse Services

As noted above S.L. 2007-323 appropriates $2 million in each year of the 2007–09 fiscal biennium for LMEs to provide substance abuse services for adult offenders and to increase the number of Treatment Alternatives For Safer Communities (TASC) case managers. Section 10.49 of the act directs local management entities to consult with TASC to improve offender access to substance abuse treatment and match evidence-based interventions to individual needs at each stage of substance abuse treatment. Special emphasis must be placed on intermediate punishment offenders, community punishment offenders at risk for revocation, and Department of Corrections releasees who have completed substance abuse treatment while in custody.

S.L. 2007-323 also appropriates $2 million in each year of the 2007–09 fiscal biennium for treatment court programs. Section 10.49 of S.L. 2007-323 directs LMEs, when providing Drug Treatment Court services to consult with the local drug treatment court team and select a treatment provider that meets all provider qualifications requirements and the Drug Treatment Court needs. A single treatment provider may be chosen for non-Medicaid-eligible participants. During the 52-week Drug Treatment Court program, each participant must receive an array of treatment and after-care services that meet the participant's level of need, including step-down services that support continued recovery.

Housing Assistance and Residential Facilities

Section 10.49 of the appropriations act provides $7.5 million in non-recurring funds to DHHS to finance additional independent and supportive living apartments for persons with disabilities. The housing must be affordable to those with incomes at the Supplemental Security Income (SSI) level. DHHS must give first priority for these funds to apartments financed by the North Carolina Housing Finance Agency (NCHFA), second priority to other publicly subsidized apartments, and third priority to market-rate apartments. When awarding funds to finance apartments, NCHFA must give priority to those housing developments with an LME as a lead agency except where prohibited by federal law.

The act directs DHHS and NCHFA to develop a plan for the financing and development of additional independent and supportive living apartments for individuals with mental health, developmental, and substance abuse disabilities and to jointly submit, by March 1, 2008, an interim report to the Joint Legislative Oversight Committee on MH/DD/SA Services. The interim report must address how housing finance agencies and departments of health and human services in other states have worked together to address the housing needs of these populations and how other states have otherwise addressed disability-specific housing. A final report is due March 1, 2009.

The appropriations act also directs DHHS to

- develop a "Transitional Residential Treatment Program" service definition to provide 24-hour residential treatment and rehabilitation for adults who have a pattern of difficult behaviors related to mental illness and that exceed the capabilities of traditional community residential settings;
- develop a Uniform Screening Tool by January 1, 2008, to determine the mental health of any individual admitted to any long-term care facility.

S.L. 2007-323 reauthorizes the joint ad hoc subcommittee regarding the mentally ill in adult care homes, convened by the Joint Legislative Oversight Committee on MH/DD/SA Services and the Commission on Aging to study and identify rules and laws necessary to regulate facilities that provide housing for adults with mental illness in the same location with adults without mental illness.

Jail Services

Section 10.49 of S.L. 2007-323 directs LMEs to work with public health departments and county sheriffs to provide medical assessments and medication, if appropriate, for inmates housed in county jails who are suicidal, hallucinating, or delusional. In addition to providing these services, LMEs must study ways to provide additional services to inmates who are psychotic, severely depressed, or suicidal, or who have substance abuse disorders. DHHS must develop an evidence-based standardized screening tool to be used when offenders are booked, and LMEs and county sheriffs must designate an LME employee who is responsible for screening the daily booking log for individuals who are known to receive mental health services. The LME and county sheriff must also develop protocols for effective communication between the LME and jail staff, including a medication management protocol, and training to help detention officers recognize symptoms of mental illness.

Children's Services

Section 10.10 of S.L. 2007-323 directs the Department of Health and Human Services to continue the Comprehensive Treatment Services Program for Children (CTSP), in consultation with other agencies, to provide appropriate and medically necessary nonresidential and residential treatment alternatives for children who are at risk of institutionalization or other out-of-home placement. Section 10.9 continues the School-Based Child and Family Team Initiative to provide for agency collaboration in identifying and providing services for children who are at risk of school failure or out-of-home placement. Section 10.33 continues the Intensive Family Preservation Services Program.

Mental Health Insurance Parity

Effective July 1, 2008, S.L. 2007-268 (H 973) amends G.S. Chapter 58 to require health insurers to offer benefits for the care and treatment of mental illnesses that are no less favorable than benefits for physical illness generally. With some exceptions, a health plan must apply to mental illnesses the same deductibles, coinsurance factors, co-payments, maximum out-of-pocket limits, annual and lifetime dollar limits, and other dollar limits and fees that apply to covered services for physical illnesses. Mental illnesses are those illnesses diagnosed and defined in the Diagnostic and Statistical Manual of Mental Disorders, DSM-IV, or a subsequent edition published by the American Psychiatric Association. Excluded are mental disorders coded as substance related disorders (291.0 through 292.2 and 303.0 through 305.9) and sexual dysfunctions not due to organic disease (302.70 through 302.79).

Durational limits for the following specified mental illnesses must be subject to the same limits as benefits for physical illness generally: bipolar disorder, major depressive disorder, obsessive compulsive disorder, paranoid and other psychotic disorder, schizoaffective disorder, schizophrenia, post-traumatic stress disorder, anorexia nervosa, and bulimia. For other mental illnesses, a health benefit plan may apply durational limits that differ from the durational limits that apply to physical illnesses, but the plan must provide at least thirty combined inpatient and outpatient days per year and thirty office visits per year.

Rulemaking

S.L. 2007-504 amends G.S. 143B-148 to require the General Assembly to appoint two additional members to the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services. The two new members must be attorneys licensed to practice in North Carolina. Initially appointed for two years, these appointees will thereafter serve three-year terms.

S.L. 2007-504 enhances the rulemaking authority of the commission by transferring from the Secretary of DHHS to the commission the authority to adopt rules governing the implementation of a uniform portal process and by granting the commission the authority to adopt rules governing

- the development of a process for screening, triage, and referral at the LME service level, including a uniform portal process, to be implemented by the secretary;
- the monitoring and endorsement of service providers by LMEs;
- the provision of technical assistance by LMEs to providers of client services; and
- the requirements of a qualified public or private provider as that term is used in G.S. 122C-141.

State Facilities

The Secretary of DHHS is responsible for operating a number of state-owned facilities that provide mental health, developmental disabilities, and substance abuse services. S.L. 2007-177 (H 625) amends G.S. 122C-181 to rename some of those facilities, in part, to account for the prospective closing of the Dorothea Dix and John Umstead hospitals as they are replaced by the new Central Regional Hospital at Butner. The act also redesignates the state's mental retardation centers as developmental centers and renames the facilities known as "special care centers" by more specifically designating these facilities as either Neuro-Medical Treatment Centers or Residential Programs for Children.

Studies

Task Force on Substance Abuse Services

Section 10.53A of the appropriations act directs the North Carolina Institute of Medicine (Institute) to use a portion of the funds received under the act to convene a task force to study substance abuse services in North Carolina. Members of the task force must include, among others, providers of substance abuse services, academics and researchers with substance abuse expertise, representatives of DHHS and local management entities, members of the North Carolina Senate and House of Representatives, and representatives of the North Carolina Department of Justice, Office of Attorney General, Department of Public Instruction, and Community College System.

The act directs the task force to

1. Identify the continuum of services needed for the treatment of substance abuse, the services currently being provided, and the gaps in services.
2. Identify evidence-based models of care or promising practices and recommend how to incorporate these into the current service system.
3. Examine different financing options to pay for services at the local, regional, and state level.
4. Examine the adequacy of the current and future substance abuse workforce and develop, if needed, a workforce education plan to address current or future workforce shortages.
5. Develop strategies to identify people in need of substance abuse services, including people who are dually diagnosed with mental health and substance abuse problems.
6. Examine barriers that prevent people with substance abuse problems from accessing publicly funded services and explore strategies for improving access.
7. Examine current service outcome measures and identify other appropriate outcome measures to assess the effectiveness of services, if necessary.
8. Examine the economic impact of substance abuse in North Carolina and, if possible, the impact on the courts system, the health care system, social services, and worker productivity.

9. Make recommendations on the implementation of a cost-effective plan for prevention, early screening, diagnosis, and treatment of North Carolinians with substance abuse problems.

The task force must submit its interim report and recommendations to the 2008 session of the General Assembly and its final report to the 2009 General Assembly, at which time the task force will dissolve.

Legislative Study Commission on Children and Youth

Section 10.10(i) of S.L. 2007-323 rewrites Article 24 of G.S. Chapter 120 to make the following changes in the Legislative Study Commission on Children and Youth:

- Requires the commission, in its study of the needs of children and youth, to determine the adequacy and appropriateness of services to children and youth served by the MH/DD/SA services system.
- Changes the membership of the commission by adding one additional member of the House of Representatives and one additional member of the Senate; requiring that there be at least one member who also serves on each of several specified legislative committees; requiring that one member be the parent of a child at risk for behavioral, social, health, or safety problems or academic failure; and requiring that one member be a representative of a local board of education.

A new section, G.S. 120-221, creates a commission task force, the Task Force on the Coordination of Children's Services. The purpose of the task force is to study collaboration and coordination among agencies that serve children and families with multiple service needs and to make recommendations to the commission, the Governor, and the General Assembly. The act sets out numerous duties relating to the task force's study and recommendations and requires the task force to report at least annually to the commission and on April 1 each year to specified legislative committees.

Other Studies

S.L. 2007-156 (S 164) directs DHHS to study rules and regulations in North Carolina and other states relating to the appropriate care and housing of individuals with mental illness in the same "facility vicinity" as individuals without mental illness and to make recommendations relating to the housing of these individuals. The act also directs DHHS to study and make recommendations regarding the training of direct care workers in adult care homes who provide care to facility residents with mental illness. DHHS must present its findings and recommendations to the Study Commission on Aging and the Joint Legislative Oversight Committee on MH/DD/SA Services by March 1, 2008.

S.L. 2007-504 directs the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services (LOC) to study the statutory rule-making authority of the Secretary of DHHS and the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services. The LOC must determine whether there is duplication, conflict, or lack of clarity with respect to the secretary's rule-making authority and that of the commission. The LOC may also consider whether rule making should be more clearly divided between the secretary and the commission and, if so, how and for what reasons. The LOC must report its findings and recommendations to the 2008 Regular Session of the 2007 General Assembly.

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Miscellaneous

During the 2007 legislative session, the General Assembly made changes to several miscellaneous subjects, including administrative procedure, identify theft, wildlife, and boating. These changes are summarized below.

Administrative Procedure Act

S.L. 2007-491 (S 242) changes the administrative and judicial process for protesting tax decisions. The act moves appeals of decisions made by the Department of Revenue into a special class of contested cases under the State Administrative Procedure Act (APA). A new statute, G.S. 150B-31.1, sets out the procedure for contested tax cases. The Chief Administrative Law Judge is authorized to create simple procedures for pro se tax litigants. Venue is set in Wake County unless the parties agree to another location. The proceedings are confidential until the final decision is rendered. Judicial review of final decisions in contested tax cases works as provided for other cases under the APA, although the act requires the taxpayer to pay the amount of tax, penalties, and interest declared by the final decision to be due during the pendency of the appeal. The act also repeals G.S. 150B-28(b), which governs agency responsibility in all contested cases to make records available. Finally, the act provides for hearing constitutional claims by taxpayers, which are not within the jurisdiction of the Office of Administrative Hearings.

Identity Theft Legislation

Two bills enacted by the 2007 General Assembly seek to protect against identity theft. The first is S.L. 2007-534 (H 454), which amends the Identity Theft Protection Act, enacted in 2005 and codified as Article 2A of G.S. Chapter 75. In general the 2005 legislation imposed limitations on how private businesses might use Social Security numbers and set out mandatory notification procedures when a business suffered an unauthorized access into records it held about individuals. S.L. 2007-534 amends Article 2A to prohibit the broadcast or publication of "personal information" when the person whose information is being disclosed has previously objected to such a disclosure. The categories of information protected by this new act are mostly the same list of personal information found in G.S. 14-113.20, which prohibits theft of this information. The

most important sorts of protected information are Social Security and taxpayer identification numbers, driver's license numbers, bank account numbers, and bank card numbers. If the statute is violated, the person whose information is wrongly released is given an action for actual damages, up to $5,000, against the person or entity broadcasting or publishing the information, plus the possibility of treble damages. The act was effective December 1, 2007.

The second act is S.L. 2007-374 (S 1058), which enacts the Telephone Records Privacy Protection Act as Article 19D of G.S. Chapter 14. In general the act prohibits a person from obtaining or seeking to obtain telephone records about a particular telephone customer through fraudulent means. It appears to have been triggered by the wide publicity given to the use of such tactics by a company investigating certain officers and employees of Hewlett-Packard Corporation. Violation of new Article 19D is a Class H felony; in addition any person whose telephone records are improperly obtained, sold, or solicited is given the right to seek civil damages under G.S. 75-16, which permits treble damages as well as actual damages. This act was effective December 1, 2007.

Wildlife and Boating

Wildlife Emergency Powers

S.L. 2007-401 (S 1464) enacts new G.S. 113-306 to authorize the Wildlife Resources Commission to adopt rules governing the exercise by the commission's executive director of emergency powers necessary to respond to wildlife disease threatening wildlife or the public. The statute specifies the emergency powers that may be granted to the executive director, requires the rules to provide for public notice, and requires the executive director to consult with named commissions and officials before exercising the emergency powers. The emergency powers may be exercised for up to ninety days unless a temporary rule is adopted by the commission.

Hunting

Effective October 1, 2007, S.L. 2007-401 amends G.S. 113-291.2 to remove the restrictions on the use of dogs and on the number of antlerless deer taken during a muzzle-loading-firearm deer season. The act also amends the statute to allow the executive director of the Wildlife Resources Commission, upon application by a landowner, to issue a license and deer tags to the landholder sufficient to meet the landholder's management objectives or correct a deer population imbalance (current law requires a survey of the deer population and allows the license to be issued if as a result of the survey it is determined that there is an overpopulation of deer or an imbalance in the population).

S.L. 2007-401 requires deer hunters to wear hunter orange during deer firearms season, allows the taking of beavers with bow and arrow, and prohibits intentionally feeding alligators outside of captivity. The act also amends G.S. 113-291.1(f) to provide that the authority of the Wildlife Resources Commission to modify the migratory bird provisions of Article 1 of G.S. Chapter 113 to conform with federal law includes allowing the use of electronic calls. Finally, the act directs the Wildlife Resources Commission to study issues related to the retrieval of wildlife wounded by hunters and report its findings to the General Assembly by May 1, 2008.

S.L. 2007-96 (S 1246) enacts new G.S. 113-294(r) effective October 1, 2007, making it a Class 2 misdemeanor to place processed food products as bait anywhere the Wildlife Resources Commission has set an open season for taking black bears.

Boating Fees and Waterfront Access

A study commission on assuring traditional users continued access to the waterfront led to the enactment of a package of recommendations on this topic. S.L. 2007-485 (S 646) increases boating funding effective January 1, 2008, by (1) providing that interest and other investment

income earned on the Boating Account created in G.S. 75A-3(c) accrues to the account and (2) amending G.S. 75A-5 to increase the fees for boat numbering, for renewal, and for a change in ownership from $10 to $15 for a one-year period and from $25 to $40 for a three-year period.

S.L. 2007-485 also allows use value property taxation of "working waterfront" property (commercial fishing piers and commercial fishing operations and fish houses) beginning with the 2009–10 tax year; creates an Advisory Committee for Coordination of Waterfront Access within the Department of Environment and Natural Resources; directs the Department of Transportation to expand public access to coastal waters in its road planning and construction program; provides for waiving permit fees for emergency permits under the Coastal Area Management Act; and directs the Division of Emergency Management in the Department of Crime Control and Public Safety to study ways to facilitate construction and repair of water dependent structures (such as fish houses) located in flood hazard areas.

Mountain Heritage Trout Waters Program.

S.L. 2007-408 (S 1303) amends G.S. 113-272.3(e) to direct the Wildlife Resources Commission to implement a Mountain Heritage Trout Waters Program to promote trout fishing as a heritage tourism activity. Effective July 1, 2008, the act also amends G.S. 113-272 to create a mountain heritage trout waters three-day fishing license with a fee of $5.

Wildlife Conservation Account

S.L. 2007-448 (S 1365) provides that interest earned on the Wildlife Conservation Account created in G.S. 143-247.2 is credited to the account.

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Motor Vehicles

The 2007 Session of the General Assembly enacted numerous acts making significant changes in motor vehicle laws, ranging from endorsing a new technology that promises to continuously monitor a defendant's alcohol concentration, to criminalizing insurance rate fraud by out-of-state residents attempting to benefit from North Carolina's lower rates of car insurance. Responding to calls for greater accountability for persons charged with speeding offenses, the General Assembly narrowed options available to judges upon disposition of certain speeding convictions. Also recognizing the contrasting need for more flexible-sentencing options for persons convicted of driving while revoked, the legislature enacted a limited driving privilege available for certain offenders. Identification information appeared again on the legislative agenda, and significant changes were enacted to the statutes governing the types of information required to obtain registration and title documents from the Division of Motor Vehicles (DMV). The General Assembly also acted to integrate the processes and time-tables for inspection and registration of private passenger vehicles. All of the disparate legislation is, of course, aimed at serving two broad purposes: maintaining the integrity of the processes for registering, titling, insuring, and inspecting motor vehicles and protecting motorists and others from the harm that can result from a motor vehicle that is operated improperly.

Alcohol-Related Offenses and Punishment

Continuous Alcohol Monitoring

Courts often order defendants to abstain from drinking as a condition of probation and then are left with the difficult task of determining whether a defendant has complied with that condition. DMV hearing officers also are reluctant to restore driving privileges to a defendant who continues to drink alcohol after multiple convictions for impaired driving. S.L. 2007-165 (S 1290) addresses this monitoring and abstinence verification issue by sanctioning the use of equipment designed to continuously monitor the defendant's sweat for the presence of alcohol.[1]

1. The only company that currently offers such a product calls it a SCRAM® (Secure Continuous Remote Alcohol Monitoring) bracelet.

S.L. 2007-165 amends G.S. 20-19(d)(2) and (e), which permit DMV to conditionally restore the license of a repeat impaired driving offender. Before a license can be conditionally restored, the defendant is required to provide DMV satisfactory proof that the defendant is not currently an excessive user of alcohol, drugs, or prescription drugs, or unlawfully using any controlled substance—in addition to demonstrating that the defendant has not during the period of revocation been convicted of certain criminal offenses. Amendments to G.S. 20-19(e) permit DMV to conditionally restore a license after it has been revoked for at least twenty-four months under G.S. 20-17(a)(2) if the defendant proves that the defendant has not consumed any alcohol for the twelve months preceding the restoration while being monitored by a continuous alcohol monitoring device approved by the Department of Corrections (DOC) in addition to satisfying the other factors. The normal revocation period before a license may be conditionally restored under G.S. 20-19(e) is three years. Satisfaction of the one-year no-alcohol-consumption requirement shortens this period by twelve months.

DOC must establish regulations for continuous alcohol monitoring systems that are authorized for use by the courts as evidence that an offender on probation has abstained from the use of alcohol for a specified period of time. The term *continuous alcohol monitoring system* is defined as a device worn by a person that can detect, monitor, record, and report the amount of alcohol within the wearer's system continuously every day. These regulations must include procedures for supervising the offender, collecting and monitoring the results, and transmitting data to the court for its consideration. All courts, including those using continuous alcohol monitoring systems before December 1, 2007, must comply with DOC regulations established under the act.

S.L. 2007-165 also enacts new G.S. 20-179(e)(6a), adding as a mitigating factor for consideration by a judge in a sentencing for an impaired driving conviction the defendant's completion of a substance abuse assessment, compliance with its recommendations, and simultaneously maintaining sixty days of continuous abstinence from alcohol consumption, as proven by a continuous alcohol monitoring system. New G.S. 20-179(h1) through (h3) permit a judge to require as a condition of probation for defendants subject to Level One or Level Two punishments that a defendant abstain from consuming alcohol for at least thirty but not more than sixty days as verified by a continuous alcohol monitoring system. The total cost to the defendant for the continuous alcohol monitoring system may not exceed $1,000. If the court determines that the defendant should not be required to pay the costs of the continuous alcohol monitoring system, it may not impose the use of such a system unless the local government entity responsible for the incarceration of the defendant in the local confinement facility agrees to pay the costs of the system. Fees or costs paid for the system must be paid to the clerk of court for the county in which the judgment was entered or the deferred prosecution agreement was filed and must be transmitted to the entity providing the continuous alcohol monitoring system.

The act amends G.S. 15A-1374 to include as an appropriate condition of parole a requirement that the parolee remain alcohol free and prove his or her abstinence through evaluation by a continuous alcohol monitoring system.

All of the aforementioned provisions of S.L. 2007-165 (other than the requirement that DOC establish regulations, which was effective immediately) were effective December 1, 2007, and apply to offenses committed on or after that date, although the act did not prohibit a court from allowing the use of continuous alcohol monitoring systems before that date.

DOC must issue Requests for Information by January 1, 2008, for continuous alcohol monitoring equipment and monitoring services to consider the development of a pilot program for the use of alcohol monitoring systems for offenders supervised by the Division of Community Corrections as an intermediate punishment or as a condition of probation. DOC must report to the General Assembly by October 1, 2008, on the following: (1) its evaluation of continuous alcohol monitoring systems as evidence of an offender's abstinence from alcohol; (2) the results of the Requests for Information for continuous alcohol monitoring of offenders supervised by the Division of Community Corrections; (3) its recommendations for implementing continuous alcohol monitoring, including an evaluation of the costs and benefits of alcohol monitoring technology, the size and characteristics of the offender population, the number of offenders to be monitored, the costs of the monitoring program, and the caseloads for probation officers who

would supervise offenders using the monitoring technology; and (4) whether the state should conduct a pilot program for continuous alcohol monitoring in limited jurisdictions or statewide. DOC must also explore funding options, including the possibility of charging a fee to offenders, and report on any funds identified to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee.

Impaired Driving

The General Assembly made numerous changes to the Motor Vehicle Driver Protection Act of 2006, which was a comprehensive re-write of the impaired driving laws.

Impaired driving conviction remanded on appeal included as grossly aggravating factor. S.L. 2007-493 (S 999) amends G.S. 20-179(c)(1) to include as a grossly aggravating factor a prior conviction for an offense involving impaired driving if the conviction occurred in district court, the case was appealed to superior court, the appeal has been withdrawn or the case has been remanded back to district court, and a new sentencing hearing has not been held. Corresponding amendments to G.S. 20-38.7(c) remove the requirement that a district court delay sentencing in a remanded case until all pending charges of offenses involving impaired driving cases are resolved, which, in the case of more than one remanded impaired driving case, could result in an endless legal limbo because neither charge could be resolved without the other having been resolved. Other amendments clarify that the judge, not the jury, determines whether the defendant has convictions qualifying as an aggravating factor pursuant to G.S. 20-179(d)(5).

Forfeiture. S.L. 2007-493 amends G.S. 20-28.2(b) to specify that forfeiture of a vehicle driven by an impaired driver may be ordered at a *sentencing* hearing for the underlying offense involving impaired driving (former G.S. 20-28.2(b) permitted entry of an order of forfeiture at "a hearing" for the underlying offense) and to require that the evidence show that the *defendant is guilty* of an offense involving impaired driving, rather than merely that "the underlying offense involved impaired driving" before entry of an order of forfeiture. The 2006 amendments could have been read to authorize forfeitures before the underlying DWI charge was disposed of, and the 2007 amendments clarify the legislature's intent.

Ignition interlock. S.L. 2007-164 (S 830) amends G.S. 20-54 and 20-54.1(a) to permit DMV to abide by interlock installation requirements of G.S. 20-17.8 notwithstanding provisions requiring DMV to refuse registration or issuance of a certificate of title if registration of a vehicle is suspended or revoked for any reason.

Revocation of license. S.L. 2007-493 amends G.S. 20-19(d) and (e) to require a four-year license revocation upon a conviction of G.S. 20-141.4(a3) (felony serious injury by vehicle) and permanent revocation upon a conviction of G.S. 20-141.4(a4) (aggravated felony serious injury by vehicle). Conditional restorations under G.S. 20-19(e) may extend for five (was, three) years. The act also amends G.S. 20-19(i) to clarify that it applies only upon conviction of an offense involving impaired driving and a fatality, to extend the revocation period before eligibility for conditional restoration from three to five years, and to condition eligibility on the absence of convictions for motor vehicle and alcohol/drug related offenses for five (was, three) years.

Repeat Felony Death by Vehicle. S.L. 2007-493 amends G.S. 20-141.4(a6) to create the offense of repeat felony death by vehicle based upon the same elements included in the previous version of the statute, which provided for enhanced sentencing for repeat offenders but did not set out a separate offense. The amendments also specify that the pleading and proof of previous convictions must be in accordance with G.S. 15A-928.

Explanation of reduction or dismissal. S.L. 2007-493 amends G.S. 20-138.4(a) to require a prosecutor to explain the reduction or dismissal of charges in a case subject to the implied-consent law or involving driving while license revoked for impaired driving when the prosecutor substitutes a charge that is not subject to the implied-consent law (formerly, the prosecutor had to explain the substitution of a charge that was "not an offense involving impaired driving") or takes a discretionary action that effectively dismisses or reduces the original charge in a case subject to the implied-consent law (formerly, the requirement applied in "a case involving impaired driving.") This change expands the category of offenses requiring an explanation.

Sentencing. S.L. 2007-493 amends G.S. 20-179 to clarify that the G.S. 20-179 sentencing hearing requirement does not apply to violations of G.S. 20-138.3 (driving by a person under twenty-one after consuming alcohol or drugs). The act also eliminates from G.S. 20-179(p) the option of paroling a defendant into a residential treatment program in lieu of requiring that the defendant complete a recommended substance abuse treatment or training program before being released on parole.

Court costs and fees. Section 30.10 of S.L. 2007-323 (H 1473), the 2007 appropriations act, amends G.S. 20-16.5(j) to increase the fee for return of a license civilly revoked for an implied-consent offense from $50 to $100 effective August 1, 2007. Fifty percent of the costs collected must be credited to the General fund, 25 percent must be used to fund a statewide chemical alcohol testing program, and 25 percent must be remitted to the county as reimbursement for jail expenses incurred due to the enforcement of impaired driving laws. Section 30.11 of the act, as amended by Section 9.1 of S.L. 2007-345 (H 714) enacts new G.S. 20-20.2, which provides for a processing fee of $100 for issuance of a limited driving privilege, also effective August 1, 2007. The limited driving privilege is invalid if the processing fee is not paid to the clerk of superior court.

Obligation of health care provider to obtain sample for chemical analysis. S.L. 2007-115 (H 353) amends G.S. 20-139.1(c) and (d1) to permit a physician, nurse, emergency medical technician, or other qualified person to refuse a law enforcement officer's request to withdraw blood or collect urine for chemical analysis *only* if it reasonably appears that the procedure cannot be performed without endangering the safety of the person collecting the sample or the safety of the person from whom the sample is collected.

Gross impairment and high-risk drivers. S.L. 2007-493 made the following amendments effective for offenses committed on or after December 1, 2007.

Amendments to G.S. 20-179(d) and G.S. 20-179.3(g5) lower the alcohol concentration limit for gross impairment and for the mandatory ignition interlock requirement from 0.16 to 0.15 and provide that the results of a chemical analysis presented at trial or sentencing are conclusive as to the person's alcohol concentration. The act also lowers the threshold in G.S. 20-16.2(c1), which requires submission of an affidavit when a person has an alcohol concentration of 0.15 or more (was, 0.16). Amended G.S. 20-17.8(a) further provides that chemical analysis results showing an alcohol concentration of 0.15 (was, 0.16) or greater that are included in an affidavit must be used by DMV to determine a person's alcohol concentration for purposes of imposing ignition interlock as a requirement of license restoration. The effect of these amendments is to reduce the role played by judges in determining when interlocks are required as a condition of a person's relicensing after a revocation for an impaired driving conviction.

New G.S. 20-179.3(c1) adds additional limited driving privilege restrictions for "high-risk drivers," defined as persons convicted of an impaired driving offense with an alcohol concentration of 0.15 or more at the time of the offense. Again, these amendments provide that results of a chemical analysis presented at trial or sentencing are conclusive as to a person's alcohol concentration. Limited driving privileges issued to these drivers may not become effective until forty-five days after the final conviction under G.S. 20-138.1, must require the applicant to comply with ignition interlock requirements under 20-179.3(g5) (which requires a system set to prohibit driving with an alcohol concentration greater than 0.00), and must restrict the defendant to driving only to and from work, school, court-ordered treatment or substance abuse education, and any ignition interlock service facility. Section 31 of the act rewrites G.S. 7B-1903 to permit a court to order secure custody of a juvenile who is a danger to persons and is charged with violating G.S. 20-138.1 (Impaired driving) or G.S. 20-138.3 (Driving by person less than twenty-one years old after consuming alcohol or drugs) if there is a reasonable factual basis to believe the juvenile committed the offense alleged.

Effective date of medical exception to interlock. S.L. 2007-493 provides that new G.S. 20-17.8(l), which provides for a medical exception to the interlock requirement, is effective December 1, 2006. Formerly, the provision was effective for *offenses* committed on or after December 1, 2006.

Fingerprinting of impaired driving suspects. S.L. 2007-370 (S 1211) enacts new G.S. 15A-502(a2) requiring that if a person charged with an offense involving impaired driving or driving while license revoked for impaired driving cannot produce a valid identification, the person must be fingerprinted and photographed by the arresting law enforcement agency. The act is effective October 1, 2007.

Drivers of Commercial Vehicles

S.L. 2007-492 (H 769) amends G.S. 20-17.4(1) to require DMV to disqualify the holder of a commercial driver's license based upon refusal to participate in a drug or alcohol test as well as for testing positive for drugs or alcohol. Amendments to G.S. 20-37.19(c) require employers to submit to DMV documentation of refusal to participate in a drug or alcohol test.

License Revocation for Giving Alcohol to a Minor

S.L. 2007-537 (H 1277) enacts new G.S. 18B-302(a1) separating the offense of *giving* alcohol to a minor from the offense of *selling* alcohol to a minor. Amended G.S. 20-17.3 provides for a one-year revocation of a person's license upon conviction of giving alcohol to a minor. Other amendments to G.S. 18B-302(g) and G.S. 20-17.3 provide for revocation of the license of a person over twenty-one years of age who is convicted of aiding and abetting another in selling or giving alcohol to a minor or aiding and abetting a minor to purchase, possess, or consume alcohol. Amendments to G.S. 20-17.3 provide that a person whose license is revoked for giving alcohol to a minor or for aiding and abetting a violation of G.S. 18B-302 is eligible for a limited driving privilege under G.S. 20-179.3.

The act also amends G.S. 18B-302.1 to make the punishment provisions applicable to selling alcohol to a minor apply to the now separate offense of giving alcohol to a minor. All of the aforementioned amendments are effective for offenses committed on or after December 1, 2007.

Combating Insurance Rate Fraud by Out-of-State Residents

S.L. 2007-443 (H 729) enacts new G.S. 58-2-164, effective January 1, 2008, making it a Class 3 misdemeanor to present a written or oral statement in support of an application for auto insurance or vehicle registration knowing that the application contains false or misleading information that an applicant is eligible for North Carolina automobile insurance. The act is intended to deter out-of-state residents from falsifying a North Carolina residence in order to receive lower insurance rates than they could in their home states. See "Car insurance bill backed," *News & Observer*, May 18, 2007, by David Ranii (discussing initial version of House Bill 729, which made rate evasion a felony offense). New G.S. 58-2-164(c) requires insurers and agents to take reasonable steps to verify information provided by an applicant regarding his or her address and the place the vehicle is garaged. Insurers may rely on their agents to verify eligibility. New G.S. 58-37-1(4a), as enacted by S.L. 2007-443 and amended by S.L. 2007-481 (S 1147), redefines persons eligible for nonfleet private passenger vehicle insurance, incorporating the former definition of *eligible risk* but adding eligibility requirements for service members, their spouses, and dependants stationed in or deployed from North Carolina. New G.S. 58-2-164(d) provides that neither insurers nor their agents, nor the Commissioner of Insurance, nor employees of the commissioner are, absent actual malice, subject to civil liability as a result of any statement or information provided or action taken pursuant to the statute criminalizing rate evasion. Insurers are authorized to refuse to issue a policy to an applicant who falsifies his or her eligibility, cancel or refuse to renew an already issued policy, or deny coverage for any claim arising from bodily injury or property damage suffered by the applicant. G.S. 58-2-164(h) provides that in a civil action for recovery based upon a claim for which a defendant has been convicted under the statute, the conviction may be entered into evidence against the defendant and establishes his or her

liability as a matter of law for damages, fees, or costs proven. Amendments to G.S. 58-2-163 require that insurance companies, their employees and representatives, and other persons licensed under G.S. Chapter 58, report violations of the rate evasion fraud provisions. The Joint Legislative Transportation Oversight Committee is authorized to study the issues related to automobile insurance rate evasion and to report findings and recommended legislation to the 2008 session of the 2007 General Assembly. S.L. 2007-481 makes corresponding amendments to G.S. 20-52(a), requiring that an owner applying for a certificate of title, a registration plate, or a registration card verify that he or she is eligible for North Carolina automobile insurance. DMV must include on the application for registration and title of a nonfleet private passenger vehicle a statement informing applicants that providing false information regarding the owner's eligibility for North Carolina automobile insurance is subject to criminal prosecution and can result in denial of insurance coverage. The owner must verify that he or she will inform the insurer before the next policy renewal if he or she becomes ineligible for North Carolina automobile insurance.

The Need *to Limit* Speed

Legislative action designed to close loopholes in conviction and sentencing for drivers charged with speeding followed close on the heels of the "Speed Unlimited" series published in *The News & Observer* in May 2007. Among the News & Observer's findings was that, in 2006, only 19 percent of drivers ticketed for speeding at 100 mph or more were convicted as charged. For the year ending June 30, 2006, the newspaper reported that four of five speeding drivers had charges dismissed or reduced or were given a prayer for judgment continued. S.L. 2007-380 (S 925) addressed two of the more prominent issues raised in the newspaper's report: pleas to improper equipment (an infraction) and the entry of prayers for judgment continued. The act amends G.S. 20-141(o) to remove a violation of G.S. 20-123.2, the statute requiring that motor vehicles be equipped with a working speedometer, as a lesser included offense of charges of speeding in excess of 25 mph over the posted speed limit. Other amendments to G.S. 20-141(o) require that a conviction for a violation of G.S. 20-123.2 be recorded in a driver's official record as "Improper equipment – Speedometer." New G.S. 20-141(p) provides that a driver charged with speeding more than 25 mph over the posted speed limit is ineligible for a disposition of prayer for judgment continued. The provision does not specify whether the offense with which a defendant is "charged" is determined by the law enforcement officer or district attorney. These amendments are effective for offenses committed on or after December 1, 2007.

Newly Authorized Limited Driving Privilege

S.L. 2007-293 (S 758), as amended by S.L. 2007-323, enacts new G.S. 20-20.1, which permits persons convicted of certain driving-while-license-revoked offenses to obtain a limited driving privilege. A person may not apply for a limited privilege if the underlying offense (that is, the offense for which license had been revoked when the person was charged with driving while license revoked) involved impaired driving. Moreover, a person whose license is revoked under G.S. 20-28.1 for committing a motor vehicle moving offense involving impaired driving while driving with a revoked license is not eligible for the privilege.

To be eligible, a person must meet the following requirements:

- Driver's license was revoked under G.S. 20-28(a) or G.S. 20-28.1.
- Person complied with revocation for required period.
    - One-year revocation = Ninety-day compliance period
    - Two-year revocation = One-year compliance period
    - Permanent revocation = Two-year compliance period
- Revocation period for underlying offense has expired.
- Revocation under 20-28(a) or 20-28.1 is the only revocation in effect.

- Person is ineligible for limited driving privilege under any other law.
- Person has not held a limited driving privilege issued under G.S. 20-20.1 at any time during the three years before the date the person files the current petition.
- Person has no pending charges for any motor vehicle offense in any state and no unpaid motor vehicle fines or penalties in any state.
- Any driver's license issued to applicant by another state has not been revoked by that state.
- DMV is not prohibited from issuing the license under G.S. 20-9(e) (so disabled that person cannot exercise reasonable and ordinary control over a motor vehicle, unable to understand highway warnings or direction signs) or G.S. 20-9(f) (license or driving privilege cancelled, suspended, or revoked in any jurisdiction if acts upon which cancellation, suspension, or revocation was based would constitute lawful grounds for cancellation, suspension or revocation in North Carolina had those things been done here).

A person eligible for a limited driving privilege pursuant to G.S. 20-20.1 applies for the privilege by filing a petition in the district court in the county where he or she resides. An applicant must attach to a petition a copy of his or her motor vehicle record and a sworn statement that he or she is eligible for a limited driving privilege. The applicant must provide proof of insurance to the court and may not, under the limited privilege, consume alcohol while driving or drive at any time while alcohol or an unauthorized controlled substance is in his or her body.

A limited driving privilege issued under G.S. 20-20.1 restricts a person to essential driving related to travel to and from the person's place of work and in the course of employment; travel necessary for maintenance of the person's household; and travel to provide emergency medical care for the person or for an immediate family member who resides in the same household. Driving related to emergency medical care is authorized at any time and without restriction as to routes.

The court may authorize driving for employment-related purposes during standard working hours (6 a.m. to 8 p.m.) Monday to Friday without specifying times and routes. If the person is required to drive for essential work-related purposes only during standard working hours, the limited driving privilege must prohibit driving during nonstandard work hours unless the driving is for emergency medical care or for authorized household maintenance. The limited driving privilege must state the name of the person's employer. If a person is required to drive during nonstandard working hours for an essential work-related purposes and the person provides documentation of that fact to the court, the court may authorize the person to drive for that purpose during those hours subject to additional specified limitations related to routes and times.

The term of a limited driving privilege is one year or the length of time remaining in the revocation period, whichever is shorter. When the term expires, DMV must reinstate the person's license if the person has paid the restoration fee under G.S. 20-7(i1), provided proof of financial responsibility, and provided proof for reinstatement of license. A violation of a limited driving privilege issued under G.S. 20-20.1 constitutes the offense of driving while license revoked under G.S. 20-28. When a person is charged with operating a motor vehicle in violation of the limited driving privilege, the limited driving privilege is suspended pending the final disposition of the charge.

Photographing Drivers Cited for Moving Violations When Identity in Question

S.L. 2007-534 (H 454) amends G.S. 15A-502(b), effective for offenses committed on or after December 1, 2007, to permit a law enforcement officer, upon citing the operator of a motor vehicle for a moving violation that carries driver's license points, to photograph the person if he or she does not produce a valid driver's license and the law enforcement officer has a reasonable suspicion concerning the person's identity. New subsection (b1) requires that the photograph be

taken only of the vehicle operator, from the neck up, and that the photograph be taken at the place where the citation is issued or at jail if an arrest is made. The law enforcement officer or agency must retain the photograph until the final disposition of the case, and must then destroy it. The photograph may not be used for any purpose other than to confirm the identity of the alleged offender.

Expunging Records of Civil License Revocation

S.L. 2007-509 (S 301) amends G.S. 15A-145(c) to require that upon expunction of certain misdemeanor convictions, civil driver's license revocations resulting from an expunged conviction also be expunged. Civil revocations pursuant to G.S. 20-16.2 for driving while impaired and other alcohol-related offenses are excepted from these provisions and ***may not*** be expunged. The amended statute is effective October 1, 2007, but the Administrative Office of the Courts and the DMV are required to develop a system for reviewing expungment records for earlier-expunged convictions to determine if earlier civil revocations should be expunged under the standards set forth in amended G.S. 15A-145(c).

Registration and Titling Information

Required Identification for Registration and Titling

S.L. 2007-481 (S 1147) amends G.S. 20-52, effective September 15, 2007, to require that a vehicle owner submit his or her North Carolina driver's license or identification card number rather than his or her Social Security number on an application for a certificate of title, registration plate, or registration card for a vehicle. Active duty military personnel stationed in North Carolina and their spouses and dependants may provide a home state driver's license or identification card number along with a valid active duty military identification or military dependant identification card. Students attending school in North Carolina may provide a home state driver's license or identification card along with proof of enrollment. Persons who garage a car in North Carolina for six or more months of the year may provide a home state driver's license or identification card number along with a signed affidavit certifying that the owner intends to principally garage the vehicle at a specified address in North Carolina. A person applying pursuant to a court-authorized sale or a sale authorized by G.S. 44A-4 (sale to enforce lien) for the purpose of issuing a title to be registered in another state or county may provide his or her home state driver's license number or identification card number. If a vehicle has more than one owner, a co-owner may provide a home state driver's license number or identification card number if at least one co-owner provides a North Carolina driver's license number or identification card number. An owner submitting an application for a motor home, house car, or house trailer may submit the owner's home state driver's license number or special identification card. S.L. 2007-481 enacts new G.S. 20-51(a1), which permits an owner with a medical condition preventing him or her from obtaining a driver's license or identification card to be issued a registration plate and certificate of title if he or she provides an affidavit certifying that he or she intends to principally garage the vehicle in North Carolina at a specified address.

This act is the third ratified in the 2007 session enacting similar changes to G.S. 20-52. The first, S.L. 2007-164, required that an individual owner submit a North Carolina driver's license or identification card number and contained no provisions for submission of a license or identifying information from another state. As a result, certain applications for notation of a security interest could not be processed by DMV because none of the owners had a North Carolina driver's license or special identification card. S.L. 2007-209 (S 1350) repealed Section 4 of S.L. 2007-164 and provided that applications for notations of a security interest that had not been submitted or processed for this reason were deemed perfected as of the date of the execution of the security

agreement if the application was delivered to DMV with the required fee within twenty days of the effective date of the provision, July 11, 2007. S.L. 2007-209 also waives the requirement in G.S. 20-73 that a new owner apply to DMV for a new certificate of title within twenty-eight days for applications withheld or not processed because no owner had a North Carolina driver's license or identification card, provided that those requirements were met within twenty-eight days of S.L. 2007-209's enactment. In addition, Section 2 of S.L. 2007-209 enacted changes to G.S. 20-52 that were similar to those enacted by S.L. 2007-481, but S.L. 2007-481 repealed Section 2 of S.L. 2007-209, rendering its changes to 20-52 the final word—at least for the 2007 session.

Unified Carrier Registration Agreement

S.L. 2007-492 amends G.S. 20-382 to permit the Commissioner of Motor Vehicles to enter into the Unified Carrier Registration Agreement (UCRA), established under federal law, and into agreements with other jurisdictions participating in UCRA to exchange information for any audit or enforcement activity required by the UCRA. G.S. 20-382(b) is simplified: motor carriers that operate for-hire motor vehicles in interstate commerce in North Carolina and that are regulated by the United States Department of Transportation (USDOT) must verify to DMV that each for-hire motor vehicle the motor carrier operates is insured in accordance with the requirements set by the USDOT. A motor carrier that operates a for-hire motor vehicle in interstate commerce in North Carolina and is exempt from regulation by the USDOT must verify to DMV that each for-hire motor vehicle that the motor carrier operates in the state is insured as required by the North Carolina Utilities Commission. Amendments to G.S. 20-382(c) permit a motor carrier that is not registered to obtain an emergency trip permit allowing it to operate a for-hire motor vehicle in the state for a period not to exceed ten days. The act repeals G.S. 20-382.2, which provided penalties for failure to comply with registration or insurance verification requirements, and amends the fee schedule in G.S. 20-385 to remove the fee for verification of insurance for each for-hire motor vehicle operated in the state. The act further provides that if the Commissioner of Motor Vehicles enters into the UCRA, the agreement must specify the date on which any fees required under the agreement become effective, and the date selected must provide adequate time to implement fee provisions.

Sharing of Information with IDS

S.L. 2007-249 (S 1287) amends G.S. 20-7(b2) to permit DMV to disclose Social Security numbers from driver's license applications to the Office of Indigent Defense Services (IDS) for the purpose of verifying the identity of an IDS client and enforcing a court order to pay for legal services rendered.

Organ Donor Information

S.L. 2007-538 (H 1372) enacts the Revised Uniform Anatomical Gift Act, the provisions of which are discussed in greater detail in Chapter 14, "Health." Section 2 of the act amends G.S. 20-43.2 to provide that the purpose of the Donor Registry is to enable federally designated organ procurement organizations and eye banks to have access twenty-four hours a day, seven days a week (formerly, the statute merely required "timely access") to the registry to determine, at or near death of the donor or a prospective donor, whether the donor or prospective donor has made an anatomical gift through a symbol on the donor's or prospective donor's driver's license or special identification card or in another manner. Personally identifiable information on a donor registry about a donor or prospective donor may not be used or disclosed without the consent of the donor, prospective donor, or person who made the anatomical gift for any purpose other than to determine, at or near death of the donor or prospective donor, whether the person made an anatomical gift.

Verification of Title by Metal Recyclers and Salvage Yards

S.L. 2007-505 (S 1364) enacts new G.S. 20-62.1 permitting secondary metals recyclers and salvage yards that purchase motor vehicles for parts or scrap metal to purchase a motor vehicle without a certificate of title if the vehicle is ten model years old or older, and the buyer maintains specified records of all purchase transactions for motor vehicles for at least two years. One of the records that must be maintained is a written statement signed by the seller or the seller's agent stating that the seller has the right to sell and dispose of the motor vehicle. The act makes it a Class 1 misdemeanor to violate G.S. 20-62.1 or to falsify the seller's statement of ownership. A subsequent violation is a Class I felony. The act provides that any motor vehicle used to transport another vehicle illegally sold for parts or scrap may be seized by law enforcement and is subject to forfeiture by the court if the owner of the transport vehicle was privy to the commission of a crime. The act prohibits local governments from enacting any local law or ordinance regulating the sale of motor vehicles to secondary metals recyclers or salvage yards. These provisions are effective December 1, 2007.

Combined Processes for Inspection and Registration

Under current law, motor vehicles must be annually registered and inspected, but those processes operate separately on different time tables. A vehicle may be due for re-inspection in April, while its registration expires in June. Current inspection is reflected in a sticker placed on the windshield of a motor vehicle, but current registration is evidenced by a registration card and sticker placed on a license plate. Although a vehicle must have a current registration to pass inspection, registration may be renewed for a vehicle for which the safety or emissions inspection has expired. S.L. 2007-503 (H 679) integrates the registration and inspection processes, effective October 1, 2008, by requiring that a vehicle be inspected before its registration expires and by prohibiting DMV from renewing a vehicle's registration without a current safety or emissions inspection. The act implements a process for electronic submission of inspection authorizations from licensed safety and emissions inspectors to DMV and eliminates the inspection sticker.

S.L. 2007-503 amends G.S. 20-66 to prohibit DMV from renewing the registration of a vehicle that does not have a current safety or emissions inspection and to require that registration plates that are not renewed be surrendered to DMV within 120 days of expiration. Amended G.S. 20-183.2 defines *electronic inspection authorization* as an inspection authorization generated automatically through the electronic accounting system that creates a unique authorization number assigned to a vehicle's inspection receipt upon successful passage of an inspection. During the transition period to use of electronic inspection authorizations, inspection stickers are included as electronic inspection authorizations. Under the new law, safety inspection stations must have equipment and software to transfer electronically information on safety inspections to DMV. During the initial implementation of the electronic inspection process, the vendor selected by DMV must provide the equipment and software at no cost to a station that holds a license for safety or emissions inspections on October 1, 2008.

Amendments to G.S. 20-183.4C impose the following new requirements:

- Purchasers of all new or used vehicles (including those purchased at a public auction) must receive receipts certifying that the vehicles have been inspected and are in compliance.
- New vehicles purchased out of state must be inspected within ten days after they are registered in North Carolina.
- Used vehicles acquired in a private sale in North Carolina must be inspected within thirty days after the vehicle is registered with DMV or when the current registration expires if it has not received a passing inspection within the previous twelve months.
- An unregistered vehicle must be inspected within thirty days after the vehicle is registered with DMV or within thirty days after a transferred registration expires.

- A person who owns a vehicle located outside of North Carolina when its emissions inspection becomes due may obtain an emissions inspection in the jurisdiction where the vehicle is located in lieu of a North Carolina emissions inspection, as long as the inspection meets the requirements of 40 C.F.R. § 51.

Also effective October 1, 2008, the fee for a safety inspection increases from $8.25 to $12.75. Amendments also provide that a vehicle owner may obtain an emissions inspection waiver only if the cost of repairs to correct the emissions inspection failure is at least $200, regardless of the vehicle's age and impose a $250 penalty, regardless of the vehicle's age, for failure to obtain a required emissions inspection within four months after it is due, tampering with an emission control device, or incorrectly stating the county of registration to avoid having an emissions inspection. DMV must report on the progress of integrating the inspection and registration systems to the General Assembly by May 1, 2008.

In other changes, effective January 1, 2009, S.L. 2007-364 (S 509) increases the time allowed for re-inspection of a vehicle after a failed inspection from thirty to sixty days. A vehicle owner presenting a vehicle for re-inspection at the same inspection station within sixty days is not required to pay another inspection fee.

The act also amends G.S. 20-183.8A to waive civil penalties for failure to obtain a required emissions inspection within four months after it is due assessed against a person who was out of the state on active military duty from the time the inspection expired to the date the four-month grace period expired if no person operated the vehicle during this period and the person obtained a current inspection sticker within thirty days after returning to North Carolina. Other amendments to G.S. 20-183.8A, effective July 1, 2008, reduce the penalty from $250 to $50 for failure to have a vehicle inspected within four months after it is required to be inspected.

Dealer Plates and Registration of Sold Vehicles

S.L. 2007-481 (S 1147) enacts new G.S. 20-79(d)(6), permitting a motor vehicle dealer to maintain on file in its place of business copies of registration cards for its cars with dealer license plates as long as the vehicles are being driven within North Carolina, eliminating the requirement that the registration card be carried by the person operating the motor vehicle. New G.S. 20-183.4C(1a) permits a new motor vehicle dealer licensed to perform an inspection to examine the safety and emissions control devices on a new motor vehicle and perform services necessary to ensure that the vehicle conforms to the manufacturer specifications contained in its predelivery checklist. The completion of the predelivery inspection procedure constitutes the inspection required by G.S. 20-183.4C(1), and the date of inspection is the date of sale of the motor vehicle.

S.L. 2007-291 (H 135) amends G.S. 20-79 to permit DMV to issue to manufacturers and other persons licensed under Article 12 of G.S. Chapter 20 the appropriate classification of dealer license plates and to exempt manufacturers from restrictions on the number of dealer plates that may be issued to them. DMV may issue dealer plates with symbols that vary depending upon the classification of plate issued and must provide smaller license plates for motorcycle dealers and manufacturers.

Integrated System for Registration and Taxation of Motor Vehicles

The General Assembly enacted S.L. 2007-471 (H 1688) to remove a political hurdle that threatened implementation of the combined system for taxation and registration of motor vehicles. The act permits automobile dealers to obtain limited registrations for vehicles sold to customers without requiring them to collect property taxes at the time of sale.

Effective July 1, 2010, or when DMV and the Department of Revenue certify that the integrated computer system for registration renewal and property tax collection of motor vehicles is in operation, S.L. 2007-471 amends G.S. 20-79.1 to allow automobile dealers to register and obtain license plates for newly sold vehicles without collecting property taxes at the time of sale. New G.S. 20-79.1A provides for the issuance of limited registration plates, a new type of license plate bearing a visible marker denoting its temporary status, to dealers and others who submit an application for title and registration fees to DMV. Limited registrations expire on the last day of the second month following the date the registration was applied for. New G.S. 105-330.5(a2) provides that limited registrations become valid for the remainder of the year upon payment of county and municipal taxes and fees, and requires the Property Tax Division of the Department of Revenue to include this information in its notice to the owner of the vehicle. A dealer or any other person may opt to pay property taxes at the time the application for title is submitted and registration fees are paid and thereby obtain an annual rather than a limited registration.

S.L. 2007-471 also divorces the taxation of International Registration Plan (IRP) vehicles from the process of registering these vehicles. The IRP is a registration reciprocity agreement among forty-eight states, the District of Columbia, and provinces of Canada providing for payment of registration fees for fleet vehicles on the basis of total distance operated in all jurisdictions.[2] S.L. 2007-164 amends G.S. 20-91(c), which governs audits of vehicles registered under the IRP, to provide effective July 1, 2007, that the failure to pay fees or taxes within thirty days after the billing date is cause for denying registration of a vehicle registered or formerly registered through the IRP.

Tag Agents and Offices

S.L. 2007-243 (S 60) enacts new G.S. 20-63(h2), which requires DMV upon closing the only contract license plate agency in a county to designate as soon as practicable a temporary location for the issuance of all registration documents issue by DMV for that county. The street address and telephone number of the temporary location must be posted at the former agency location for at least thirty days. A former contract agent who fails to comply with these provisions is guilty of a Class 3 misdemeanor.

S.L. 2007-488 (S 1457) enacts new G.S. 20-63.01, effective January 1, 2008, to require tag agents to obtain a bond of at least $100,000 in favor of DMV. Tag agents who are unable to obtain a bond may seek a waiver from DMV and approval of a listed bond alternative, which may consist of assigning to DMV a savings account or certificate of deposit in an amount equal to the required bond.

The act permits DMV to operate its own tag office in Charlotte in addition to Raleigh. Amendments to G.S. 20-63 require DMV to accept electronic applications for registration documents and authorize DMV to collect fees from online motor vehicle registration vendors under contract with DMV. DMV must contract with at least two online motor vehicle registration vendors who may in turn contract with motor vehicle dealers. Tag agents also are authorized to contract with online motor vehicle registration vendors that are under contract with DMV to complete and file registration documents.

2. International Registration Plan© with Official Commentary, (July 1, 2006), at 3, 83-84, *available at* http://www.irponline.org/irp/DocumentDisplay.aspx?id={4A507479-F628-420A-AEA8-F185BF156D32}; see also 19A N.C.A.C. 3E .0401 (providing that apportionable vehicles used or intended for use in two or more jurisdictions that allocate or proportionally register vehicles must be registered in accordance with the provisions of the IRP).

Drivers' Licenses Again to Expire on Birthdays

S.L. 2007-56 (S 1026) amends G.S. 20-7(f) to restore the licensee's birthday as the expiration date for a driver's license. The amendments are retroactive to January 1, 2007. (S.L. 2006-257 amended G.S. 20-7(f) effective January 1, 2007, to provide for the expiration of drivers' licenses issued to persons eighteen years old and older eight or five years after the *date of issuance*, rather than on the licensee's birthday, which traditionally has served as the date of license expiration.) New G.S. 20-7(f)(2a) differentiates renewed licenses from original licenses and provides that renewed licenses issued to a person at least eighteen years old but less than fifty-four years old expire eight years after the expiration date of the license that is renewed and renewed licenses issued to a person at least fifty-four years old expire five years after the expiration date of the license that is renewed.

The act also amends G.S. 20-7(f)(3) and (s) to provide for the issuance of licenses of shorter duration to applicants with valid documentation issued under the authority of the federal government demonstrating the applicant's legal presence of limited duration in the United States (the former version of the statute provided for limited duration licenses only for applicants holding *visas* of limited duration). Licenses of limited duration must expire by the end of the authorization for the applicant's legal presence in the United States. Amended G.S. 20-15(a)(3) confers upon DMV the authority to cancel a license upon determination that a licensee is no longer authorized under federal law to be legally present in the country.

S.L. 2007-350 (H 1546) amends G.S. 20-7(f)(2) to require that a commercial driver's license with a school bus endorsement expires on the birth date of the licensee three years after the date of issuance.

Submission of Voter Lists to County Jury Commission

S.L. 2007-512 (H 943) enacts new G.S. 130A-121, which requires the State Registrar to submit to each county jury commission and the Commissioner of Motor Vehicles a list of all residents of the county and state, respectively, who have died in the two years prior to July 1 of each odd-numbered year. Amended G.S. 9-2 and G.S. 20-43.4 require the Commissioner of Motor Vehicles to remove from the list of registered voters supplied to the county jury commission pursuant to G.S. 20-43.4 the names of county residents who have recently died, as determined from the Registrar's list. The act also amends G.S. 20-43.4 to require the list provided to the county jury commission to be updated annually if an annual jury list is prepared. Other amendments require that the commissioner omit from the list the name of any formerly licensed driver whose license is expired and has not been renewed for at least eight years. The list must contain drivers' Social Security numbers as well as other specified identifying information. Corresponding amendments to G.S. 20-7(b2) permit DMV to disclose a Social Security number to each county jury commission for the purpose of verifying the identity of deceased persons whose names should be removed from jury lists. The provisions of S.L. 2007-512 are effective October 1, 2007.

Seat Belts and Child Restraints

S.L. 2007-289 (H 1330) exempts passengers transported by a law enforcement officer from the requirement that a backseat passenger wear a seat belt. S.L. 2007-6 (H 61) amends G.S. 20-37.1, the law requiring child restraint systems, to eliminate the exception for attending to a child's personal needs, thereby ensuring compliance with federal regulations. S.L. 2007-404 (S 1495) amends G.S. 20-135.2A(c) effective December 1, 2007, to exempt from the seat belt law drivers and passengers of residential garbage or recycling trucks while the trucks are operating during collection rounds.

School Bus Safety

S.L. 2007-382 (S 924) amends 20-217(g), which makes it a Class I felony to strike a person when willfully moving, passing, or attempting to pass a stopped school bus, to remove the requirement that the driver cause serious bodily injury to the person struck. This amendment is effective December 1, 2007. The act also amends G.S. 20-4.01(27)d4. to eliminate the requirement that the letters "School Bus" be eight inches in height, instead requiring that they be "plainly visible" and to require, effective August 1, 2007, that school buses be painted yellow.

Mobile Phone Use.

S.L. 2007-261 (H 183) enacts new G.S. 20-137.4, effective December 1, 2007, making it a Class 2 misdemeanor to use a mobile telephone or additional technology while operating a public or private school bus, operating a school activity bus, or transporting students for hire in any vehicle. Use of such a device in a stationary vehicle or in an emergency situation is excepted from the statute. Local governments are specifically prohibited from passing any ordinance regulating the use of mobile telephones or additional technology associated with a mobile telephone by operators of school buses. In 2006 legislation was enacted to prohibit drivers under eighteen from using these devices while driving.

Traffic Control and Other Technical Issues

Move-Over Requirement

S.L. 2007-360 (H 563) amends the definition of *public service vehicle* in G.S. 20-157(f) (the "move over" law) to remove the requirement that such a vehicle must have been called to the scene by a motorist or law enforcement officer. The act also alters the description of a red-light traffic signal in G.S. 20-158(b)(2) and substitutes the term *traffic signal* for *stoplight* and the term *traffic control device* for *signaling device* in G.S. 20-158(b)(5) and (c). New G.S. 20-158(b)(6) provides that when a traffic signal is not illuminated due to a power outage or malfunction, vehicles must approach the intersection and proceed through it as though it was controlled by a stop sign on all approaches. The subdivision does not apply if an authorized person or traffic control device is directing movement of traffic at the intersection.

Abandoned Vehicles

S.L. 2007-360 amends G.S. 20-161(e) to permit a law enforcement officer to remove from the right of way of a public highway, including a rest area, a vehicle parked or left standing twenty-four (was, forty-eight) hours or more. Pursuant to amended G.S. 21-161(f), an investigating law enforcement officer may remove a wrecked, abandoned, disabled, unattended, burned, or partially dismantled vehicle, cargo, or other personal property from the state highway system (formerly, these items could be removed from "a controlled access highway") if it constitutes a hazard.

Protests on State Roadways

S.L. 2007-360 enacts new G.S. 20-174.2 to permit a municipality or county to adopt an ordinance regulating the time, place and manner of gatherings, picket lines, or protests by pedestrians on state roadways and highways. Such an ordinance may not restrict the activities of licensees, employees, or contractors of DOT or a municipality who are working in construction or maintenance, or making traffic or engineering surveys.

Speed Zone Signs

S.L. 2007-164 repeals G.S. 136-33.2, which required signs marking the beginning and end of all speed zones, and enacts new G.S. 136-33.2A, which requires that a sign be erected 600 feet in advance of the beginning of any speed zone indicating a change in the speed limit.

Gated Communities

S.L. 2007-455 (H 976) amends G.S. 20-4.01(32), effective December 1, 2007, to clarify that roads used by vehicular traffic within or leading to a gated community are public vehicular areas. Many motor vehicle laws are enforceable on public vehicular areas as well as on streets and highways. S.L. 2007-455 enacts new G.S. 20-158.3, effective December 1, 2007, requiring that persons or entities responsible for controlled access to a road that is a public vehicular area (that is, a gated community) provide immediate access to those areas for emergency service vehicles, including law enforcement, fire, rescue, ambulance, and first responder vehicles.

Motorcycles

S.L. 2007-260 (S 1359) enacts G.S. 20-158(e), effective December 1, 2007, creating a defense for motorcycles entering certain intersections controlled by steady-beam traffic signals emitting a red light. The operator of a motorcycle, after stopping for a minimum of three minutes, may proceed through an intersection controlled by a traffic signal activated by a vehicle sensor if the sensor fails to detect the motorcycle and activate the signal.

Amended G.S. 20-140.4(a)(2), effective January 1, 2008, specifies that operators and passengers of mopeds and motorcycles must wear and secure the retention straps of safety helmets that comply with Federal Motor Vehicle Safety Standard 218.

Passenger Buses

S.L. 2007-499 (H 514) amends G.S. 20-116 to allow passenger buses more than forty-five feet long to operate on public streets and highways.

State Highway System

S.L. 2007-164 requires DOT to establish performance standards for the maintenance and operation of the state highway system and to report to the General Assembly by December 31 of each even-numbered year on the condition of the state highway system and maintenance funding needs.

Tandem Vehicles

S.L. 2007-77 (S 1456) amends G.S. 20-116(e) to except from the requirement that a tandem vehicle not exceed sixty feet in length semitrailers not more than forty-eight feet long that are combined with a truck tractor.

Tow Trucks

S.L. 2007-404 (S 1495) enacts new G.S. 20-101(d), effective December 1, 2007, to require that a motor vehicle used to tow or transport another vehicle have printed on the side of the vehicle in letters at least three inches tall the name and address of the registered owner of the towing vehicle and the name of the business or person being hired, if different.

Local Acts

Abandoned and Junked Vehicles

S.L. 2007-505 (S 1364) amends G.S. 160A-303.2(a) to add Monroe to the cities that may regulate the abandonment of junked vehicles on public and private property.

ATV Use by Law Enforcement and Emergency Personnel

S.L. 2007-433 (H 767) enacts new G.S. 20-171.23 to permit law enforcement officers and fire, rescue, and emergency medical services personnel acting in the course of their duties to operate all-terrain vehicles (ATV) on public highways where the speed limit is 35 mph or less. New G.S. 20-171.4 permits municipal and county employees in the following jurisdictions to operate motorized ATVs on public highways where the speed limit is 35 mph or less: the towns of Ansonville, Atlantic Beach, Burgaw, Carolina Beach, Cramerton, Dallas, Davidson, Duck, Emerald Isle, Franklin, Indian Beach, Kill Devil Hills, Kitty Hawk, Kure Beach, Murphy, Nags Head, North Topsail Beach, Oakboro, Ocean Isle Beach, Pine Knoll Shores, Stanley, Surf City, Sylva, Topsail Beach, and Wrightsville Beach; the cities of Albemarle, Belmont, Cherryville, Gastonia, Kings Mountain, Mount Holly, and Rockingham; and the counties of Cleveland, Currituck, Gaston, Surry, and Wilkes. The act repeals previous local acts authorizing the use of ATVs in various counties and cities and was effective October 1, 2007.

Golf Cart Use by Law Enforcement and Municipal Employees

S.L. 2007-215 (H 638) enacts new G.S. 20-114.4 applicable only to the City of King and the Town of Maiden permitting law enforcement officers and municipal employees to operate golf carts on public streets or highways within the city limits.

Golf Cart Use by Citizens

S.L. 2007-204 (H 279), S.L. 2007-259 (H 254), S.L. 2007-72 (H 538), and S.L. 2007-336 (H 849) allow the City of Conover and the towns of Badin, Carolina Beach, Emerald Isle, Fremont, Faison, Indian Beach, Kings Mountain, Kure Beach, Morrisville, North Topsail Beach, Shelby, and Wrightsville Beach to allow and regulate golf cart use on municipal streets. In recent years, many cities and towns have been authorized by local act to allow and regulate such golf cart use. Local ordinances may require registration of golf carts, require certain equipment (such as seat belts or rear view mirror and reflectors), limit loads and hours of operation, and specify who may operate the golf carts.

Special License Plates

No recent session of the General Assembly may be completed without authorization for additional special license plates. Amendments to G.S. 20-63(b) authorize the following special license plates as non-First in Flight plates: Back Country Horsemen of North Carolina; Hospice Care; Home Care and Hospice; NC Tennis Foundation; and AIDS Awareness. Other newly authorized registration plates recognize ALS Research, Brain Injury Awareness, Breast Cancer Earlier Detection, Bronze Star Combat Recipients, E-911 Telecommunication, Juvenile Diabetes Research Foundation, Maggie Valley Trout Festival, National Kidney Foundation, and Prostate Cancer Awareness.

Other provisions of S.L. 2007-483 (S 103) and S.L. 2007-400 (S 1036) amend fees for certain special license plates and add special registration plates for certain state government officials.

Shea Riggsbee Denning

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Public Employment

The 2007 General Assembly enacted several pieces of legislation that affect public employees. Among the session's most notable acts were the decision to discontinue the traditional indemnity plan offering under the State Health Plan effective July 1, 2008, and the decision to standardize coverage under the State Personnel Act by amending the definition of *career State employee* to include local government SPA employees with twenty-four months of service. The session also saw state employees and retirees receive salary and retirement income allowance increases.

Legislation Affecting All Public Employees

Personnel Records

S.L. 2007-508 (S 1546) amends the statutes relating to the privacy of public employee personnel records to clarify that (1) public information includes the terms of an employee's employment contract, whether the contract is written or oral, and (2) the words salary and compensation, as used in the personnel privacy statutes, include pay, benefits, incentives, bonuses, deferments, and all other forms of compensation paid by the employing government entity. S.L. 2007-508 makes these changes to each of the following statutes: G.S. 115C-320 (public school employee personnel records), G.S. 115D-28 (community college employee personnel records), G.S. 122C-158(b) (mental health authority/local management entity personnel records), G.S. 126-23 (state employee personnel records), G.S. 130A-45.9(b) (public health authority personnel records), G.S. 153A-98(b) (county employee personnel records), G.S. 160A-168(b) (municipal employee personnel records), and G.S. 162A-6.1(b) (water and sewer authority employee personnel records).

S.L. 2007-508 also makes changes to G.S. 126-22, relating to state employee records, and G.S. 131E-257.2, relating to public hospital employee records. It amends G.S. 126-22 to clarify the statute's broad definition of employee and employer and to include within the definition of personnel file any employment-related or personal information held by the Retirement Systems Division of the Department of State Treasurer or by the Office of State Personnel. The act amends G.S. 131E-257.2 to include employment contracts in the definition of personnel file, and it deletes from the list of information that is public with respect to public hospital employees both current salary and the date or amount of the most recent increase or decrease in salary. G.S. 131E-257.2

now also provides that the following are public information: base salary, bonus compensation, plan-based incentive compensation, and dollar value of all other compensation of the five most highly compensated officers and of the hospital's five key employees.

State and Local Government Retirement Systems

The General Assembly amended the statutes governing the Teachers' and State Employees' Retirement System (TSERS), the Judicial Retirement System (JRS), the Legislative Retirement System (LRS), and the Local Governmental Employees' Retirement System (LGERS) in S.L. 2007-179 (S 659) to provide that elected officials who are members of the retirement systems and who are convicted of a violation of state or federal law involving public corruption or a felony violation of an election law forfeit their retirement allowances.

S.L. 2007-388 (S 720) directs the Retirement Systems Division of the Department of State Treasurer to open enrollment in the contributory death benefit for retired members of the state retirement systems to current retirees from February 1, 2008, through May 31, 2008.

State and Local Government Law Enforcement Officer Special Separation Allowance

S.L. 2007-69 (H 328) amends G.S. 143-166.41(a) to provide that the annual law enforcement officer special separation allowance is to be paid in equal installments on the payroll frequency paid by the employer. The statute previously directed law enforcement employers to pay the allowance in equal installments on the last day of each month.

State Employees

Salary

Pursuant to S.L. 2007-323 (H 1473) (the appropriations act), the Governor's annual salary will increase to $135,854, while the annual salaries of the members of the Council of State will increase to $119,901. The salaries of appointed state department heads will increase to $117,142. Other executive, legislative, and judicial branch officials also received salary increases.

The General Assembly increased the salaries of all permanent, full-time SPA employees by 4 percent. The salaries of all non-elected employees of the General Assembly were also increased by 4 percent.

Community college faculty and professional staff supported by state funds received a 5 percent salary increase. All other community college employees supported by state funds received a salary increase of 4 percent.

For all University of North Carolina faculty and EPA employees supported by state funds, the General Assembly authorized aggregate average increases of 5 percent. For teaching employees of the North Carolina School of Science and Mathematics, the General Assembly authorized aggregate average increases of 5 percent.

State Health Plan

In perhaps one of the biggest changes to health insurance coverage for state employees in recent years, the General Assembly provided for the demise of the traditional major medical indemnity plan effective July 1, 2008. The appropriations act provides that on July 1, 2008, any current state employee or retiree who has not yet enrolled in one of the previously optional preferred provider network (PPO) benefit plans will be automatically enrolled in the Standard PPO option. Also effective July 1, 2008, the Teachers' and State Employees' Comprehensive Major Medical Plan is renamed the State Health Plan for Teachers and State Employees. Effective July 1,

2008, the State Health Plan will offer employee and spouse coverage in addition to the three types of coverage now offered, namely, employee only, employee and child(ren), and employee and family.

For fiscal year 2007–08, the appropriations act raises the deductible for members participating in the traditional indemnity plan from $350 to $450 per individual, subject to a new aggregate maximum of $1,350.00 per employee/children or employee/family coverage contract. Previously, the aggregate maximum was $1,050.00. The act also increases the co-payment under the traditional indemnity plan from $15 to $25 per member per visit. In addition, the General Assembly increased the co-payment for each preferred branded prescription from $25 to $30 under both the traditional indemnity plan and the optional PPO plans.

There were no substantive changes to benefits under either the traditional indemnity plan or the optional PPO plans this year.

S.L. 2007-521 (H 1593) directs the executive administrator of the State Health Plan to evaluate the impact of converting the plan's benefit year plan from the current fiscal year basis to a calendar year basis and to report to the Committee on Employee Hospital and Medical Benefits and the Fiscal Research Division.

State Employee Retirement Systems Increases and Changes

The appropriations act provides a 2.2 percent cost-of-living retirement allowance increase for retirees in TSERS, JRS, and LRS. It also adjusts the employer contribution rates for the various state retirement programs.

The appropriations act also amends the statutory sections governing the JRS to provide for the membership of all persons serving as public defenders as of July 1, 2007.

S.L. 2007-233 (H 1414) amends G.S. 134-4(g) to provide that teachers and state employees who serve in the uniformed services and return to state service within two years after the date of discharge are to receive creditable service under TSERS for the maximum period that they are entitled to reemployment under the federal Uniformed Services Employment and Reemployment Rights Act (USERRA).

State Disability Income Plan

S.L 2007-325 (H 1415) makes several changes to the North Carolina Disability Income Plan. With respect to the short-term disability plan, the act amends G.S. 135-105(a) by providing that TSERS participants applying for short-term disability benefits may count toward the one-year membership service prerequisite for short-term disability benefits any time spent in the United States uniformed services during the three years immediately preceding the date of disability. S.L. 2007-325 also makes two major changes to the terms of the long-term disability income plan. First, the act amends G.S. 135-106(a) to provide that state employees become eligible for benefits when they are "mentally or physically incapacitated for the further performance of duty." This change in effect undoes the amendment made to this section by S.L. 2004-78, which had required that employees be unable to perform the duties of their own jobs or to perform any occupation or employment commensurate with their education, training, or experience before they could qualify for long-term disability benefits.

The act also amends G.S. 135-106 and 135-107 to provide for payment of the long-term disability benefit only for the first thirty-six months of the long-term disability period. After the end of this period, the benefit payment ceases unless and until the beneficiary receives primary Social Security disability benefits, in which case the long-term disability plan will continue making payments, subject to a set-off for Social Security disability benefits, Department of Veterans Affairs benefits, and any applicable workers' compensation benefits.

Career Banding of SPA Employees

The 2007 appropriations act authorizes the Office of State Personnel and state agencies to begin or to continue developing and implementing career banding of nursing, engineering, library, fiscal, and pharmacy positions and authorizes the University of North Carolina to continue implementation of career banding of its SPA employees. In the 2006 appropriations act, the General Assembly had suspended any further implementation of career banding for SPA employees pending a review of the State Personnel Act by a legislative study commission.

UNC SPA Employees

S.L. 2007-413 (S 1353) directs the President of the University of North Carolina to appoint a task force to review the application of the State Personnel Act to university employees and report to the President and the Board of Governors by January 15, 2008. The act directs the Board of Governors to forward any recommendations it approves to the Joint Legislative Education Oversight Committee by March 24, 2008, for consideration in the 2008 regular session.

North Carolina Cooperative Extension Service Employees

In S.L. 2007-195 (H 847), the General Assembly amended G.S. 126-5(c1), 116-33.2, and 153A-439 to clarify that employees of the North Carolina Cooperative Extension Service are not subject to the State Personnel Act and to authorize the Board of Trustees of North Carolina State University to adopt personnel policies that govern extension service employees even when the employees are working in or with a county.

Criminal Background Checks of State Information Technology Employees

S.L. 2007-155 (S 878) enacts new G.S. 147-33.77(g) to authorize the State Chief Information Officer to require criminal history checks, including a fingerprint search of the State and National Repositories of Criminal Histories by the State Bureau of Investigation, of any applicant or current employee. The new subsection provides that the criminal history check is not a public record pursuant to G.S. Chapter 132. The act also amends G.S. 147-33.113(a)(4) (which provides for criminal history checks of state agency information technology security liaisons with the State Chief Information Officer) to state explicitly that the criminal background checks are not public records. Finally, the act enacts new G.S. 114-19.20 authorizing the Department of Justice and the State Bureau of Investigation to provide criminal histories of any applicant, employee, volunteer, or contractor of the Office of Information Technology Services upon receipt of a consent form signed by the subject of the criminal history search.

Criminal Background Checks for EMS Personnel

S.L. 2007-411 (H 535) amends G.S. 131E-159 (which sets forth the requirements for the credentialing of emergency medical services personnel) to provide for the Department of Health and Human Services to obtain and the Emergency Medical Services Disciplinary Committee to review criminal background check on all applicants for EMS credentials. The act also amends G.S. 114-19.21 to authorize the Department of Justice to provide to the Department of Health and Human Services a criminal history of any person applying for, holding, or renewing EMS credentials and amends G.S. 143-519(a) to authorize the Emergency Medical Services Disciplinary Committee to consider criminal backgrounds checks in making recommendations about an individual's eligibility for EMS credentialing.

Veterans Preference in State Hiring

S.L. 2007-286 (H 1412) amends G.S. 128-15(c) and G.S. 126-82(a) and (b) by adding language to clarify that the preference in hiring given to veterans applies both to initial employment with the state as well as to subsequent hirings, promotions, reassignments, and lateral transfers. In addition, S.L. 2007-287 amends G.S. 126-2(b)(3) to require that one of the two state employee members of the State Personnel Commission be a veteran nominated by the Veterans' Affairs Commission.

Gender Equity on Decision-Making Regulatory Bodies

S.L. 2007-167 (H 824) amends G.S. 143-157.1, which directs appointing authorities to public bodies to select from the most qualified candidates for appointment those persons whose selection would promote a membership that more accurately reflects the proportion of each gender in the state or in the geographic region represented by that public body. The act requires the Secretary of State to prescribe a reporting form and requires each state appointing authority to use that form to report to the Secretary of State. The act also amends the statute by explicitly listing the particular local government bodies whose gender composition must be reported.

Local Government Employees

Local Governmental Employees' Retirement System

The General Assembly did not provide for a cost-of-living retirement allowance increase for members of LGERS this year. In the absence of such a legislative provision, the LGERS Board of Trustees may authorize a cost-of-living increase.

Local Government Employees Subject to the Personnel Act

S.L. 2007-372 (S 1023) amends G.S. 126-1.1 to include in the definition of *career State employee* any local government employee employed for the immediately preceding twenty-four months in a position subject to the State Personnel Act. This change makes the treatment of state and local government SPA employees consistent with one another. State employees subject to the Personnel Act were not entitled to the act's protections until they had held their positions for twenty-four months, while local government employees subject to the Personnel Act received the act's protections upon completion of a probationary period of anywhere from three to nine months. Now all employees subject to the Personnel Act will have the same waiting period.

Local Government Retiree Health Benefits

S.L. 2007-384 (S 580) directs the Department of State Treasurer to establish the Local Government Other Post-Employment Benefits Fund to manage and invest contributions made to the fund by local government employers to provide post-employment benefits such as retiree health benefits.

Local Government Participation in the State Health Plan

In S.L. 2007-405 (H 508), the General Assembly authorized one additional county employer and six additional municipal employers to enroll their employees or retirees in the State Health Plan. These local government employers are Mitchell County and the towns of Biltmore Forest, Black Creek, Black Mountain, Blowing Rock, Ocean Isle Beach, Sunset Beach, and Tabor City.

Public School Employees

The General Assembly's 2007 legislation affecting public school employees is discussed in Chapter 10, "Elementary and Secondary Education."

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Public Purchasing and Contracting

Changes affecting the bidding procedures for public construction projects continue to dominate the legislative agenda in the public contracting area. The legislature increased the dollar threshold at which formal bidding of construction contracts is required, after having increased the informal bid threshold in 2005. New laws about Department of Insurance approval of project plans, retainage on payments due to contractors, and certification of historically underutilized businesses for public contracts will also affect the public construction process. Several bills that were introduced but not passed focused on illegal immigrants, including some that would have required verification of individuals' immigration status as a precondition of contracting with public agencies. The legislature enacted a new exception authorizing local governments to purchase from federal contract vendors. Finally, as is typical in every session, the legislature approved several local exemptions to the state bidding requirements.

Public Construction Contracts

Increase in the Formal Bid Limit for Construction or Repair Contracts

A bill designed to improve efficiency in state capital facilities projects included a provision increasing the dollar threshold at which formal bids are required for public construction or repair work. Effective July 1, 2007, S.L. 2007-446 (H 73) amends G.S. 143-129 to increase from $300,000 to $500,000 the formal bidding threshold for construction or repair contracts. This threshold was last increased from $100,000 to $300,000 in 2001. The range for informal bidding, as provided in G.S. 143-131, is from $30,000 to the formal limit. Thus, informal bidding procedures now apply to construction or repair work costing from $30,000 to $500,000. Another effect of the new law is that the advertisement and sealed bids requirements in G.S. 143-129 and the three-bid requirement in G.S. 143-132 will not apply to contracts costing below $500,000. The

formal and informal bid thresholds for the purchase of apparatus, supplies, materials, and equipment were not changed.

Dollar thresholds in several other statutes that affect public construction remain at $300,000. For example, performance and payment bonds are required under G.S. 143-129 and G.S. 44A-26 for projects that exceed $300,000. Bidding methods and procedures for building construction under G.S. 143-128 apply to projects costing over $300,000. Minority participation requirements for building construction under G.S. 143-128.2 apply to projects costing $300,000 or more. This statute includes requirements for minority outreach and documentation of good faith efforts by units of government and bidders. A separate provision in the informal bidding statute, G.S. 143-131(b), sets out less detailed requirements for minority participation on building construction projects costing between $30,000 and $500,000 (the new formal limit). Building construction projects costing between $300,000 and $500,000 are now subject to both statutes. In practice, the more stringent requirements in G.S. 143-128.2 should be used for building construction projects in this range.

Finally, it is important to note that local governments legally may and often do establish formal or informal bid limits that are *lower* than the statutory limits. Some local governments continue to conduct informal bids for contracts costing below $30,000 (the current starting point for informal bidding), in many cases retaining the $5,000 threshold that was previously the statutory minimum. Similarly, some local governments continue to conduct formal bids at $50,000 or $100,000, under local policies. Despite this most recent increase in the threshold, some local governments will probably continue to use lower thresholds for formal and informal bidding. Since requirements for bonds, advertisement, three bids, and other aspects of formal bidding are not required by state law for contracts below $500,000, local governments should always provide guidance for staff and for bidders about what standards and procedures will apply under local policies that require bidding at lower levels.

Other provisions of S.L. 2007-446 require the State Building Commission to study and modify as necessary the state construction process to improve efficiency, reduce delays, and provide accountability for state capital improvement projects.

New Restrictions on Retainage

G.S. 143-134.1 governs when payments must be made to prime contractors on public construction contracts and when prime contractors must make payment to subcontractors. Effective for contracts entered into on or after January 1, 2008, S.L. 2007-365 (S 1245) amends the statute's provisions concerning retainage (funds retained from payments due contractors for liquidated damages and to secure completion of work at the end of a project). The revised statute now prohibits retainage on public construction projects that cost less than $100,000 in total. For other projects the owner may retain no more than 5 percent per periodic payment owed to the prime contractor until the project is 50 percent complete. At 50 percent completion no further retainage is allowed as long as performance is satisfactory. Release of all retainage is required upon beneficial occupancy of the project or when a certificate of substantial completion is issued. Public agencies may, however, retain up to 2.5 times the value of remaining work in order to secure completion or correction of that work. The statute also provides for "line-item" release of retained funds for subcontractors who complete their work before 50 percent completion of the project.

Public agencies may comply with retainage provisions under federal contracts or grants that conflict with those in the statute, but bid documents for these contracts must specify when federal preemption applies. The statute also provides that the release of retainage on payments does not affect any warranties and that public agencies may allow contractors to bid on bonded contracts with and without retainage on payments.

An important provision in the new statute, G.S. 143-134.1(e), allows a public agency to withhold greater amounts of retainage for "unsatisfactory job progress, defective construction not remedied, disputed work, or third-party claims filed against the owner or reasonable evidence that

a third-party claim will be filed." This provision preserves the legitimate use of retainage to secure performance or preserve funds in case of nonperformance by contractors.

Construction Plan Review Process

Upon recommendation of the House Select Committee on Public School Construction, the legislature increased the size threshold at which state approval of plans for construction projects is required. S.L. 2007-303 (H 735) amends G.S. 58-31-40(b) to increase from 10,000 to 20,000 square feet the size threshold for buildings that are to be used by a county, city, or school district and that must be preapproved by the Commissioner of Insurance as to fire safety.

Historically Underutilized Businesses

For several years the state has been moving toward uniform certification of minority-owned firms as part of its program to encourage the use of these firms in state and local public construction projects. Though the definitions have not changed, the statutes establishing this program now refer to these firms as "historically underutilized businesses." In S.L. 2007-392 (S 320), the legislature reaffirmed and strengthened its commitment to establishing statewide certification, enacting G.S. 143-48.4 and amending G.S. 143-128.4. The Secretary of Administration is authorized to develop and administer a program for the certification of historically underutilized businesses doing business with state departments, agencies, and institutions and political subdivisions of the state by creating a database of those certified businesses and by adopting rules and procedures for their certification. Beginning July 1, 2009, state and local entities must use only historically underutilized businesses identified in the database for minority business purposes.

State law has not previously required local governments to certify historically underutilized businesses, though some units have established certification requirements and procedures in order to verify that firms are legally eligible to be counted toward participation goals and efforts required under state laws [see G.S. 143-128.2 and G.S. 143-131(b)]. Local government units will have an opportunity to participate in the development of the statewide certification standards and must conform their own programs to those standards or rely on the state's process when it is finalized. Apparently, beginning July 1, 2009, local governments will be required to consider only state-certified firms when applying the state requirements for outreach to and participation by historically underutilized businesses.

Financial Assistance for Small Businesses

S.L. 2007-441 (H 1181) creates the Small Business Contractor Act, Part 20 of Article 10 of G.S. Chapter 143B, to provide financial assistance to financially responsible small businesses that are unable to receive assistance from other sources. The act creates the eleven-member North Carolina Small Business Contractor Authority within the Department of Commerce to oversee the financial assistance, including making loans and guaranty payments from the newly created Small Business Contract Financing Fund. To qualify for assistance, the applicant (1) must be a North Carolina resident or be incorporated in the state, (2) must have its principal place of business in North Carolina, (3) must be a small business controlled by individuals with a reputation for financial responsibility, and (4) has to have been unable to obtain financing or bonding through an authorized company. The act also creates the Small Business Surety Bond Fund to pay authority expenses related to the provision of bonding assistance. Upon application, the authority may guarantee a surety for losses incurred under a bid bond, payment bond, or performance bond on an applicant's contract, of which the majority of the funding is provided by a government agency, up to the lesser of 90 percent of the surety's losses or $900,000. The authority may also execute and perform bid, performance, and payment bonds as a surety for the benefit of an applicant in connection with a contract that is majority government funded. In deciding whether to issue a guaranty or bond, the authority must determine that the contract for which a bond is sought to be

guaranteed or issued has a substantial economic impact. New G.S. 143B-472.112 makes it a Class 2 misdemeanor to knowingly make or cause to be made any false statement or report in an application or document submitted to the authority or to make or cause to be made any false statement or report to the authority for the purpose of influencing the action of the authority on an application.

Local Exemptions from Bidding Requirements

As is typical, the legislature granted local exemptions from bidding requirements for specific projects. These include S.L. 2007-1 (H 33), increasing the force account limit in G.S. 143-135 to $800,000 for several Catawba County landfill projects; S.L. 2007-44 (S 417), increasing the force account limit in G.S. 143-135 to $2,152,500 for several Town of Wilkesboro water and sewer projects; S.L. 2007-35 (H 506), exempting a joint Burke County/Western Piedmont Community College renovation project from certain bidding requirements; S.L. 2007-48 (H 443), authorizing Cherokee County to use the design-build method of construction for a justice center project; and S.L. 2007-135 (S 513), granting the City of Wilmington, New Hanover County, and a water and sewer authority an increase in the force account limit in G.S. 143-125 to $800,000 and an exemption from the bidding requirements for a sewer project.

Several general exemptions from bidding requirements were also granted: S.L. 2007-76 (H 1227) exempts New Hanover Regional Medical Center from all statutory bidding requirements, subject to specified limitations; and S.L. 2007-131 (H 1456) exempts regional solid waste management authorities from all statutory bidding requirements, subject to specified limitations. S.L. 2007-312 (S 403) authorizes the City of Charlotte to use various alternative design and construction methods for water and wastewater treatment plant projects and exempts the city from otherwise applicable design and construction contract bidding procedures for these types of projects. In addition, S.L. 2007-158 (S 579) authorizes the City of Charlotte to use electronic bidding and reverse auctions for construction or repair contracts in the formal range. (General law restricts the use of these bidding options to purchase contracts.) The city also received specific authority in S.L. 2007-205 (H 513) to use federal procurement procedures for federally funded transit projects.

University System Efficiency Measures

Pursuant to recommendations of the UNC President's Advisory Committee on Efficiency and Effectiveness (PACE), S.L. 2007-322 (H 749) makes a number of changes to statutes affecting construction and procurement by constituent institutions of the university system. The changes increase the scope of university discretion in contracting for construction repairs and renovation, including increased authority for the use of force account labor, and for leasing and acquisition of property.

Changes Affecting Purchasing and Other Public Contracts

Purchasing Exception for Federal (Including GSA) Contracts

S.L. 2007-94 (S 492) creates new G.S. 143-129(e)(9a) to provide an exception to the formal and informal bidding requirements for the purchase of apparatus, supplies, material, or equipment from contracts established by the United States or any federal agency. This exception allows local governments to purchase from federal contract vendors that are willing to extend to the local government the same prices, terms, and conditions as (or ones more favorable than those) established in the federal contract. Many federal contracts are awarded by the General Services Administration (GSA) and others are awarded by specific federal agencies, such as the Department of Transportation. Specific provisions of some federal contracts make them available

to local governments. The new exception is necessary for North Carolina local governments even when the contract itself is available to local governments because, without the exception, the local government would have to comply with state bidding requirements (informal or formal, depending upon the contract amount).

The wording of the exception allows a local government to contract with a vendor having a federal contract even if that contract does not contain terms allowing local government participation. The absence of a provision in a federal contract extending its terms to local governments does not prevent the vendor from separately contracting to sell the same items at the same or better prices, terms, and conditions. Like the "piggybacking" exception in G.S. 143-129(g) and the state contract exception in G.S. 143-129(e)(9), this exception does not create an obligation on the part of the vendor to extend the terms of the contract to local governments. Such an obligation would exist only if it is a part of the federal contract.

Like the exception for state contract purchases, this new exception overlaps with the piggybacking exception, which authorizes purchases from suppliers that have contracted with another public agency. Under the exception for federal contracts, however, the piggybacking exception's limitations on the time of the original contract award and its requirements for public notice and local governing board approval do not apply.

School Equipment Lease-Purchase Authority

Local school units have limited authority under G.S. 115C-528(a) to finance the purchase of equipment using lease-purchase or installment-purchase contracts. In S.L. 2007-519 (H 705), the legislature added food service equipment to the list of items schools may purchase under this statute.

Use of Electronic Signatures

State and federal laws provide general authority for the use of electronic signatures and contracts in both public and private transactions. State law also creates more specific authority and procedures for the use of electronic signatures in public contracting. S.L. 2007-119 (S 211) amends G.S. 66-58.4, which deals with electronic transactions by public agencies, to specify that public agencies may *use* and *accept* electronic signatures.

There are no general requirements for local governing board approval of electronic contracting procedures, nor are there specific procedures for local implementation of electronic contracting. Two statutes that require local governing board approval in specific circumstances are (1) G.S. 143-129(b), authorizing the use of electronic *instead* of newspaper advertisements for formal bids; and (2) G.S. 159-28.1, authorizing the use of a facsimile signature rather than an original signature, which is required for the preaudit certificate under G.S. 159-28(a) for all written contracts.

Surplus Property

Cities, counties, local school units, and several other types of local government units are governed by procedures in Article 12 of G.S. Chapter 160A for the disposition of real or personal property. By statute and under constitutional restrictions, disposition of public property must be in exchange for something of value to the unit, whether in the form of cash or provision of services benefiting the local unit's constituency. G.S. 160A-279 authorizes cities and counties to convey property to nonprofit organizations to which they have authority to appropriate funds. S.L. 2007-430 (H 1060) enacts new G.S. 160A-280 authorizing local governments to donate to another governmental unit in the United States, a sister city in another country, or a nonprofit organization any personal property that the governing board considers surplus, obsolete, or unused by the unit. In order for a city to be considered "a sister city" under the statute, there must be a

written agreement or memorandum of understanding between the donor city and the sister city "for the purposes of establishing a long term partnership to promote communication, understanding, and goodwill between peoples and to develop mutually beneficial activities, programs, and ideas."

The new statute requires the local governing board to adopt a resolution authorizing a donation and to "post a public notice" at least five days before the resolution's adoption. It is unclear how this statute relates to the existing authority in G.S. 160A-279, which allows conveyance of property only to those nonprofit organizations to which the city or county has authority to appropriate funds, requires compliance with the procedures in G.S. 160A-267 (including advertisement and a ten-day waiting period before completing a conveyance), and imposes restrictions to assure continued public use by the recipient as a condition of the conveyance. These restrictions are probably necessary to avoid violation of Article I, section 32, of the state constitution (the Privileges and Emoluments Clause), which requires consideration for the conveyance of public property.[1] While the new law clearly provides statutory authority for conveyances of property for use outside the local jurisdiction and the state, it is unclear whether these conveyances would be viewed as providing sufficient benefit to the constituency in the donor unit to satisfy the constitutional requirement for consideration.

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1. For a discussion of the interpretation of this constitutional provision in the context of local government property disposal, see DAVID M. LAWRENCE, LOCAL GOVERNMENT PROPERTY TRANSACTIONS IN NORTH CAROLINA 90–92 (2d ed. 2000).

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Registers of Deeds, Land Records, and Notaries

Compared to the previous two years, the 2007 legislative session was quiet with respect to legislation affecting registers of deeds and notaries.

Registers of Deeds and Land Records

Several laws were enacted in 2007 affecting registers of deeds and real estate records, including changes to local taxation of real estate transactions.

Local Option Land Transfer Tax

All North Carolina counties collect an excise tax of $1 on each $500 or portion thereof (0.2 percent) of the consideration or value of real estate conveyed in their counties [G.S. 105-228.30(a)]. The seller, or transferor, is required to report and pay the tax to the register of deeds when a deed is recorded [G.S. 105-228.30(a)]. The counties retain half the tax collected, and they may retain an additional 2 percent of the balance forwarded to the North Carolina Department of Revenue [G.S. 105-30(b)]. Several counties have been authorized by local acts to collect an additional tax, up to the same amount as the statewide tax, generally applicable to the same transactions, with the entire process retained by those counties. S.L. 2007-323 (H 1473) authorizes all counties to adopt such a tax, of up to 0.4 percent in increments of one-tenth percent, if approved in a local referendum. Counties that adopt the tax may not also adopt an additional one-quarter cent local sales and use tax authorized by the same legislation.

New Article 60 of Chapter 105 of the General Statutes provides that the local option county land transfer tax is to be based on "the consideration or value, whichever is greater, of the interest conveyed, including the value of any lien or encumbrance remaining on the property at the time of conveyance" [G.S. 105-602(b)]. The county retains the proceeds of the tax and may use them "for any lawful purpose" [G.S. 105-603(b)]. The tax has the same exceptions as apply to the statewide land transfer tax, the most commonly applicable of which are exceptions for gifts, transfers for no consideration, leases, conveyances by governments, and certain transfers that occur without deeds (such as transfers by survivorship or will). Other new statutes include G.S. 105-602(a) (incorporating exceptions from G.S. 105-228.28 and 105-228.29); G.S. 105-228.28 (tax does not apply to transfers by a governmental unit or instrumentality of a governmental unit); G.S. 105-228.29 (exceptions). Registers will collect the tax and show its amount on the recorded deeds [G.S. 105-603(a)]. The tax may take effect the first day of a calendar month set in the resolution levying the tax, but not earlier than the first day of the second succeeding calendar month after the resolution is adopted [G.S. 105-602(b)].

Tax Certification

G.S. 161-31(b) authorizes the board of commissioners of about half of the counties to prohibit a register of deeds from recording a deed unless the tax collector has certified that no delinquent taxes are a lien on the property being conveyed. S.L. 2007-221 (H 464) adds Burke, Caswell, Greene, Jones, and Wayne Counties to the counties authorized to require this certification.

Automation Enhancement and Preservation Fund

Pursuant to G.S. 161-11.3, counties retain 10 percent of certain fees charged by a register of deeds for use in an Automation Enhancement and Preservation Fund. S.L. 2007-353 (H 947) clarifies that the authorized use of these funds includes "computer or imaging technology and needs associated with the preservation and storage of public records in the office of the register of deeds."

List of County Cemeteries

S.L. 2007-118 (H 107) directs each board of county commissioners to prepare a list of all public cemeteries in the county that are outside municipalities and are not established and maintained by a municipality, including the names and address of those in possession and control of the cemeteries [G.S. 65-111(1)]. The list must be recorded and maintained with the register of deeds, as stated in G.S. 65-111(2), and a copy must be filed with the Department of Cultural Resources and the Publications Division in the Department of the Secretary of State, as instructed by G.S. 65-111(3).

Loan Originator Disclosure

S.L. 2007-176 (H 313) requires settlement agents handling real estate loan transactions to show the name of "the mortgage broker or other person who acted as a mortgage broker in the origination of the loan" on the first page of a deed of trust, if the agent receives information about such a broker from the lender or has actual knowledge of such a broker. Lenders are required to identify mortgage brokers in the loan closing instructions (G.S. 45A-4, 45A-5).

Register Pension Changes

County registers of deeds have important responsibilities, which are becoming increasingly challenging and complex in the modern transactional and technological environment. In 1987 the General Assembly established a supplemental pension for registers of deeds who are retired with at least twelve years of service as a register from the Local Governmental Employees' Retirement

System or an equivalent locally sponsored plan. A number of changes have been made to the supplemental pension since its creation, including extension of eligibility to those with at least ten years of service as a register of deeds, and other eligibility criteria based on age and length of service for those who retire from service with counties that do not participate in the Local Governmental Employees' Retirement System (G.S. 161-50.4). The supplemental pension is funded through deposits made by counties of a percentage of the monthly receipts by registers for recording fees and certain other charges for office functions. S.L. 2007-245 (H 676) makes three changes to adjust the pension. First, it changes the percentage of receipts deposited into the pension from 4.5 percent to 1.5 percent, which is possible because the amount being deposited was exceeding the amount of funding needed for eligible pensions [G.S. 161-50.2(a)]. Second, S.L. 2007-245 changes the description of those eligible to receive the monthly pension to those who have completed the required service and retirement status "beginning with the month of retirement" [G.S. 161-50.4(b)]. Third, S.L. 2007-245 changes the manner in which the maximum pension payment is calculated, so that now the payment cannot exceed 75 percent of a register of deed's equivalent last monthly rate, including all supplements, up to a maximum of $1,500 per month [G.S. 161-50.5(a)].

Notaries

S.L. 2007-484 (S 613) added a new curative provision to the many statutes validating notarial acts that otherwise could be open to challenge. New G.S. 10B-70 validates acknowledgments performed for a local government agency between October 31, 2006, and June 20, 2007, "by a person prior to qualification as a notary public but after commissioning or recommissioning as a notary public, by a person whose notary commission has expired, or by a person who failed to qualify within 45 days of commissioning as required by G.S. 10B-10."

Other Related Legislation

Registers issue marriage licenses to those who wish to get married in North Carolina. G.S. 51-1 defines who may perform marriage ceremonies for those who have obtained licenses. S.L. 2007-61 (S 1131) authorized North Carolina district court judges to perform marriages between June 4, 2007, and June 8, 2007.

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Senior Citizens

In 2007 the General Assembly enacted legislation providing additional property tax relief for elderly or disabled homeowners; establishing a new "silver alert" program to locate missing persons with dementia or other cognitive impairments; re-enacting an expired income tax credit for payment of premiums for long-term care insurance; revising state laws regarding advance medical directives; and making additional changes of interest to senior citizens. This legislation is summarized below or in other chapters.

Government Assistance and Services for Senior Citizens

Funding for Aging Programs and Services

The Current Operations and Capital Improvements Appropriations Act of 2007, S.L. 2007-323 (H 1473), appropriates:

- an additional $536,000 per year in recurring funding for aging programs and services funded through the Home and Community Care Block Grant;
- $300,000 per year in recurring funding for the seventeen area agencies on aging for aging services and planning;
- $250,000 in nonrecurring funding for the Seniors Health Insurance Information Program to provide grants to community organizations to assist senior citizens in enrolling in the NC Rx and Medicare Part D prescription drug programs; and
- $200,000 in nonrecurring funding for senior centers.

Property Tax Relief for Elderly or Disabled Homeowners

S.L. 2007-497 (H 1499) provides expanded property tax relief for elderly or disabled homeowners.

G.S. 105-277.1 provides a property tax exclusion for a permanent residence that is owned and occupied by a North Carolina resident whose income is less than the income eligibility limit ($20,500 in 2007) and who is aged at least sixty-five years or is totally and permanently disabled. The amount of the exclusion in 2007 is $20,000 or half the appraised value of the residence,

whichever is greater. Effective for taxes imposed for taxable years beginning on or after July 1, 2008, S.L. 2007-497 amends G.S. 105-277.1 to increase the income eligibility limit to $25,000 and to increase the exclusion amount to the greater of $25,000 or half the appraised value of the residence (income eligibility limit under G.S. 105-277.1 will continue to be increased annually based on the cost-of-living adjustment for Social Security benefits). The General Assembly's Fiscal Research Division estimates that these changes will result in local governments losing approximately $16.5 million in property tax revenues during fiscal year 2008–09. S.L. 2007-497 also authorizes the Revenue Laws Study Committee to study whether the exclusion amount should be indexed and, if so, which index should be used.

S.L. 2007-497 also enacts a new statute, G.S. 105-277.1B, creating a new property tax "circuit breaker" benefit for elderly or disabled homeowners for taxes imposed for taxable years beginning on or after July 1, 2009. This new benefit will be available with respect to a permanent residence that is owned and occupied for at least five years by a North Carolina resident whose income is less than 150 percent of the income eligibility limit under G.S. 105-277.1 and who is aged at least sixty-five years or is totally and permanently disabled.

A qualifying owner who elects this benefit in lieu of the homestead exclusion under G.S. 105-277.1 may defer the portion of the tax imposed on his or her residence that exceeds 5 percent of his or her income (or the portion that exceeds 4 percent of his or her income if the owner's income is less than the income eligibility limit under G.S. 105-277.1). Taxes that are deferred under G.S. 105-277.1B for the three fiscal years preceding the current tax year are carried forward as deferred taxes, accrue interest, constitute a lien on the property, and, except under certain circumstances, must be paid within nine months of the date the qualifying owner dies, transfers the residence, or ceases to use the property as a permanent residence. The provisions of new G.S. 105-277.1B are discussed in greater detail in Chapter 18, "Local Taxes and Tax Collection."

State-County Special Assistance

Increase in maximum payment. S.L. 2007-323, the 2007 appropriations act, increases the maximum amount of State-County Special Assistance payments for most eligible residents of adult care homes from $1,148 to $1,173 per month effective October 1, 2007. (North Carolina counties pay half of the cost of assistance payments to adult care home residents and therefore will be required to spend an additional $2.5 million per year to pay the cost of increasing assistance to adult care home residents under S.L. 2007-323.)

In-home payments. S.L. 2007-323 also enacts a new statute, G.S. 108A-47.1, codifying the State-County Special Assistance in-home payment program for individuals who (1) reside in in-home living arrangements, (2) would be eligible for State-County Special Assistance if they were residents of an adult care home, and, (3) but for the in-home payment program, would need and seek placement in an adult care home. An individual who is eligible for the in-home payment program will receive a State-County Special Assistance payment that is 75 percent of the amount he or she would receive if he or she resided in an adult care home or an appropriate amount of assistance as determined by the local case manager, whichever is less. The Department of Health and Human Services (DHHS) must make the in-home payment option available to all counties on a voluntary basis. The number of individuals receiving in-home payments may not exceed 15 percent of the total number of individuals receiving State-County Special Assistance.

Medicaid

S.L. 2007-323 directs DHHS to continue its efforts to expand the scope of the Community Care of NC care management model to elderly or disabled Medicaid recipients with a chronic condition and long-term care needs.

S.L. 2007-442 (H 1537), which revises the statutes governing the state's Medicaid estate recovery plan and the Medicaid transfer-of-assets penalty, is summarized in Chapter 27, "Social Services."

Respite Care Services

S.L. 2007-39 (H 424) directs the DHHS Division of Health Service Regulation, Division of Medical Assistance, and Division of Aging and Adult Services to study the availability and delivery of respite care services for family members and others who provide care for the elderly or persons with disabilities, chronic or terminal illnesses, or dementia and to present its findings and recommendations to the North Carolina Study Commission on Aging by March 1, 2008.

Programs and Services for Older Adults

S.L. 2007-355 (S 448) directs DHHS to study programs and services for older adults in Brunswick, Buncombe, Gaston, Henderson, Moore, and New Hanover counties, to make an interim report of its findings and recommendations to the North Carolina Study Commission on Aging by November 1, 2007, and to submit a final report by April 1, 2008, to the General Assembly, the Study Commission on Aging, and the board of county commissioners of each county studied.

Adult Care Homes and Long-Term Care

Adult Care Home Licensure

S.L. 2007-444 (H 772) amends G.S. 131D-2(b)(1) to prohibit the issuance of a new license for a change of ownership of an adult care home if outstanding fees, fines, or penalties imposed by the state against the home have not been paid.[1]

Adult Care Home Residents' Bill of Rights

S.L. 2007-444 amends G.S. 131D-26(a1) to increase from thirty to sixty days the time within which a county social services department must complete its investigation of a complaint alleging a violation of the rights of an adult care home resident pertaining to patient care or safety.

Adult Care Home Penalty Review Committee

Effective October 1, 2007, S.L. 2007-544 (S 56) revises the procedures for reviewing recommended administrative penalties against adult care homes [G.S. 131D-34(h)]. The act (1) requires the DHHS penalty review committee to meet at least quarterly; (2) requires DHHS to give public notice of committee meetings via the DHHS website; (3) requires an adult care home that is the subject of a penalty review meeting to post notice of the meeting in a conspicuous place available to residents, family members, and the public; (4) requires that notice of penalty review meetings be given to any individual who is authorized to make health care decisions for an affected resident (currently, the family or guardian of an affected resident) as well as to the affected resident, the county social services department that is responsible for oversight of the facility, and the facility; and (5) eliminates statutory provisions regarding the committee's responsibility to provide a forum for residents, the families and guardians of residents, facilities, and social services departments and to make recommendations or reports to DHHS regarding policy, training, and rules.

Adult Care Home Rated Certificates

S.L. 2007-544 enacts a new statute, G.S. 131D-10, requiring the Medical Care Commission to adopt rules for the issuance of rated certificates for adult care homes that are based, at a minimum,

1. Additional legislation regarding long-term care is discussed in Chapter 14, "Health."

on (1) inspections and substantiated complaint investigations by DHHS to determine compliance with licensing statutes and rules and (2) reviews of a facility's admission and discharge procedures, medication management, physical plant, resident care and services, residents' rights, sanitation grade, special care unit operations, and use of physical restraints and alternatives. Rated certificates will be issued beginning January 1, 2009. S.L. 2007-323 appropriates $500,000 in nonrecurring funding to assist adult care homes with implementation of the new rated certification program.

S.L. 2007-544 requires DHHS to make an interim report on its implementation of the rated certificate system to the North Carolina Study Commission on Aging by October 1, 2009, and to make a final report by October 1, 2010. S.L. 2007-544 also requires the DHHS Division of Health Service Regulation, Division of Aging and Adult Services, and Division of Medical Assistance to study the structure and cost of a system to reward adult care homes that receive high ratings and to report their findings and recommendation to the North Carolina Study Commission on Aging by March 1, 2008.

Training of Adult Care Home Employees

S.L. 2007-156 (S 164) requires the DHHS Division of Health Service Regulation, Division of Aging and Adult Services, and Division of Mental Health, Developmental Disabilities, and Substance Abuse Services to study the need to provide training to adult care home employees with respect to the care of mentally ill residents and to report their findings and recommendations regarding appropriate training and its fiscal impact on adult care homes by March 1, 2008, to the North Carolina Study Commission on Aging and the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services.

Adult Care Home Quality Improvement Program

S.L. 2007-323 directs the DHHS Division of Aging and Adult Services to develop a Quality Improvement Consultation Program for Adult Care Homes to promote better care of and improve the quality of life for residents of adult care homes and appropriates $264,000 per year in nonrecurring funding for the pilot program. County social services departments will be responsible for implementing the program. The program will be piloted in no more than four counties. At the conclusion of the pilot program, the Division of Aging and Adult Services must make recommendations to the DHHS Secretary, the North Carolina Study Commission on Aging, the Senate Appropriations Committee on Health and Human Services, and the House Appropriations Subcommittee on Health and Human Services regarding the effectiveness of the program and expansion of the pilot program or statewide implementation of the program.

Mental Health Screening of Long-Term Care Patients

S.L. 2007-323 requires DHHS, by January 1, 2008, to complete the development of a uniform screening tool to determine the mental health of any individual who is admitted to a long-term care facility.

Criminal Abuse of Adult Care Home Residents or Health-style Care Facility Patients

Effective December 1, 2007, S.L. 2007-188 (H 554) amends G.S. 14-32.2 to provide that the physical abuse of an adult care home resident or patient in a health care facility is a Class H felony (rather than a Class A1 misdemeanor) when the defendant's pattern of conduct is willful or culpably negligent and proximately results in bodily injury to the resident or patient.

Smoking in Long-Term Care Facilities

S.L. 2007-459 (H 1294), which prohibits smoking in adult care homes and other long-term care facilities, is discussed in Chapter 14, "Health."

Licensure of Home Care Agencies

S.L. 2007-125 (S 748) amends S.L. 2006-194 to extend until January 1, 2009, the prohibition against issuing licenses for new home care agencies that intend to offer in-home aide services (other than certified home health agencies or agencies that need a new license for an existing home care agency that is being acquired). The purpose of the extension is to allow DHHS more time to work with existing home care agencies to assure compliance with newly adopted home care rules.

State and Local Government Employee Retirement

Application for Retirement Benefits

S.L. 2007-431 (H 777) allows a state or local government employee who is covered under the Teachers' and State Employees' Retirement System (TSERS), the Local Governmental Employees' Retirement System (LGERS), the Consolidated Judicial Retirement System (CJRS), and the Legislative Retirement System (LRS) to apply for retirement benefits 120 days before the date of his or her retirement.

Cost-of-Living Allowance for Retired Government Employees

S.L. 2007-323 provides a 2.2 percent cost-of-living increase for retired state employees.

Contributory Death Benefit

S.L. 2007-388 (S 720) directs the State Treasurer to allow an open period, beginning February 1, 2008, and ending May 31, 2008, for enrollment for the contributory death benefit by retired government employees who receive benefits under TSERS, LGERS, CJRS, or LRS. Retirees who elect coverage during the open enrollment period will be charged a contribution rate that is 11.1 percent more than the rate established for persons who elected coverage at the time they retired.

Payment of Accumulated Contributions

S.L. 2007-431 amends G.S. 135-5(g1) and G.S. 128-27(g1) to provide that the payment of "accumulated contributions" upon the death of a retired employee covered under TSERS or LGERS includes the amount of voluntary employee contributions from a law enforcement officer's 401(k) plan that have been transferred to TSERS or LGERS.

Re-employment Earnings Cap

S.L. 2007-431 also amends G.S. 135-3(8)c. and G.S. 128-24(5)c. to provide that the retirement allowance of a retired employee covered under TSERS or LGERS will not be suspended due to re-employment earnings if his or her earnings from re-employment exceed the earnings "cap" in the month of December.

TSERS Purchase of Creditable Service

S.L. 2007-431 further allows employees covered by TSERS to purchase creditable service for approved leaves of absence under the workers' compensation act even if they do not return to state employment following that leave of absence and becoming long-term disability beneficiaries.

TSERS Death Benefit Plan

S.L. 2007-431 amends G.S. 135-5 to provide group life insurance benefits for employees who (1) are covered by the TSERS; (2) receive workers' compensation benefits during a period in which they otherwise would have been eligible for short-term disability benefits; and (3) die within 181 days of their last date of service but before their short-term disability benefits have ended.

TSERS Survivor's Alternate Benefit

S.L. 2007-431 also amends G.S. 135-5 to allow the principal beneficiary of an employee who is covered by TSERS to receive a survivor's alternate benefit if the employee receives workers' compensation benefits during a period in which he or she otherwise would have been eligible for short-term disability benefits and dies within 181 days of his or her last date of service but before his or her short-term disability benefits have ended.

Retirement Benefits for Retired Teachers Who Return to the Classroom

S.L. 2007-326 (H 956), which allows a retired public school teacher to continue receiving retirement benefits under certain circumstances if he or she is re-employed as a classroom teacher, is discussed in Chapter 10, "Elementary and Secondary Education."

Other Legislation of Interest to Senior Citizens

Tax Credit for Long-Term Care Insurance Premiums

Effective for taxable years beginning on or after January 1, 2007, and before January 1, 2013, S.L. 2007-323 allows a nonrefundable state income tax credit for the payment of premiums for qualified long-term care insurance policies for a taxpayer, the taxpayer's spouse, or a taxpayer's dependent. The amount of the credit is equal to 15 percent of the premium cost up to $350 per policy. The credit is not available to married taxpayers who file jointly and have adjusted gross incomes of more than $100,000 ($60,000 for single taxpayers who are not heads of households).

"Silver Alert" System

S.L. 2007-469 (H 38) requires the North Carolina Center for Missing Persons to establish a new "silver alert" system to ensure the rapid dissemination of information regarding a missing person who is believed to be suffering from dementia or other cognitive impairment and is at risk of abuse or other physical harm, neglect, or exploitation.

S.L. 2007-469 further authorizes any person who is responsible for the supervision of a missing person (as well as the parent, spouse, guardian, or legal custodian of a missing person) to submit a missing person report to a law enforcement agency or the Center for Missing Persons and prohibits law enforcement agencies from requiring any waiting period before accepting a missing person report.

S.L. 2007-469 also exempts credentialed emergency medical services personnel from the provisions of the Private Protective Services Act when they are engaged in search and rescue activities with respect to a missing person at the request of the state, a county or other political

subdivision of the state, a licensed adult care home, a licensed health care facility or agency, or a licensed facility that offers mental health, developmental disabilities, or substance abuse services.

Health Care Powers of Attorney and Advance Directives

S.L. 2007-502 (H 634), which amends North Carolina's statutes regarding health care powers of attorney, advance directives for a natural death ("living wills"), consent to medical treatment, advance health care directives, and natural death in the absence of an advance directive, is summarized in Chapter 14, "Health."

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Sentencing, Corrections, Prisons, and Jails

This chapter summarizes legislation enacted by the General Assembly in 2007 affecting the sentencing of persons convicted of crimes, the state Department of Correction (DOC), state prisons, county jails, and other correctional programs. Changes in criminal penalties for substantive criminal offenses are covered in Chapter 7, "Criminal Law and Procedure."

Sentencing

Increase in Minimum Age for Death Penalty

S.L. 2007-81 (H 784) amends G.S. 14-17 to increase the minimum age for imposition of the death penalty from seventeen to eighteen years in light of the United States Supreme Court's decision in *Roper v. Simmons*, 543 U.S. 551 (2005). In *Roper* the Court held that the Eighth and Fourteenth Amendments forbid imposition of the death penalty on those under the age of eighteen.

Forfeiture of Pension by Convicted Elected Official

Although not a true sentencing matter, S.L. 2007-179 (S 659) adds an additional consequence to convictions of certain public corruption crimes and election law violations by elected officials: forfeiture of all retirement benefits and allowances. Passed in the midst of the public corruption scandal involving Speaker of the House Jim Black, the legislation enumerates the federal and state offenses (including, for example, bribery of public officials and witnesses under 18 U.S.C. § 201, and buying and selling offices under G.S. 14-228) that trigger a forfeiture. A conviction triggers

forfeiture only if the offense was both (1) committed while the defendant was serving as an elected government official and (2) based on acts directly related to the official's government service. All monies forfeited under the law will be remitted to the state Civil Penalty and Forfeiture Fund. The legislation exempts a member's own contributions and interest from the amount forfeited.

New Aggravating Factor

S.L. 2007-80 (S 34), discussed further in Chapter 7, "Criminal Law and Procedure," is noted here to the extent that it enacts G.S. 15A-1340.16(d)(6a), a new aggravating factor effective for offenses committed on or after December 1, 2007, for offenses committed against or causing serious harm or death to a law enforcement or assistance animal while the animal is engaged in its official duties.

Corrections

Monitoring of Sex Offenders

S.L. 2007-213 (H 29) makes substantial changes to North Carolina's regime for tracking certain sex offenders through a satellite-based monitoring system. The act was passed in the context of a nationwide move toward harsher sanctions for and closer monitoring of sex offenders. As of 2006, roughly half of all states used some form of global positioning system (GPS) technology to monitor certain sex offenders.

North Carolina's most recent legislation on this front adds G.S. 14-208.40A, requiring district attorneys during the sentencing phase to present any evidence[1] of the following for offenders convicted of reportable convictions as defined by G.S. 14-208.6(4):

- The offender is a sexually violent predator pursuant to G.S. 14-208.20;
- The offender is a recidivist;
- The conviction was an aggravated offense; or
- The offense involved the physical, mental, or sexual abuse of a minor.

After considering the evidence, if the court determines that the defendant falls into any of the first three of these categories (sexually violent predator, recidivist, or aggravated offender), the court must order the defendant to submit to satellite-based monitoring for life. If the offense was one that involved the physical, mental, or sexual abuse of a minor, but that none of the other three categories applies, the court must order DOC to do a risk assessment of the offender within thirty to sixty days. Based on the results of the risk assessment, the court then determines whether and for how long the offender must submit to satellite-based monitoring. This process applies to sentences entered on or after December 1, 2007.

For defendants who have already been convicted of reportable convictions but for whom there has been no court determination as to whether satellite-based monitoring should apply, new G.S. 14-208B requires DOC to make an initial determination as to whether the offender falls into one of the four categories listed above. If so, DOC schedules a hearing at which the court effectively follows the procedure set out in G.S. 14-208A. The nature and format of this hearing is not set out in the statute, and it appears to be unique insofar as it is scheduled by DOC.

The legislation also adds new G.S. 14-208C, which requires that satellite-based monitoring, if required, begins immediately upon release from prison, or immediately upon sentencing for offenders who receive intermediate or community punishments.

In addition to the new provisions outlined above, S.L. 2007-213 amends G.S. 14-208.42 to make clear that throughout the monitoring period, DOC has authority to contact the offender at the offender's residence and to require the offender to appear at a specific location as required to complete the requirement of the satellite-based monitoring program, regardless of whether the

1. The statute specifies that district attorneys "have no discretion to withhold any evidence."

offender happens to be on probation, parole, or post-release supervision. The law also requires the offender to cooperate with DOC until the requirement to enroll is terminated and all monitoring equipment is returned. In this vein, the act amends G.S. 14-208.44, effective for offenses committed on or after December 1, 2007, to make it a Class E felony to remove, vandalize, or otherwise interfere with the proper functioning of a monitoring device, and a Class 1 misdemeanor to "fail to provide necessary information" or fail "to cooperate with the Department's guidelines and regulations for the program."

For offenders who are placed on probation on or after December 1, 2007, G.S. 15A-1343(b2) is amended to add a special condition requiring offenders to submit to searches of their person, vehicles, and premises that are reasonably related to their supervision. The amendment adds that searches of the probationer's computer or other electronic mechanism "shall be considered reasonably related to the probation supervision," and also provides that probationers may be required to pay the cost of positive drug screens. Amendments to G.S. 15A-1374(b)(11) and G.S. 15A-1368.4 make a similar changes to the laws applying to parolees and post-release supervisees, respectively.

S.L. 2007-213 amends G.S. 14-208.9 (effective July 11, 2007, under a technical correction in S.L. 2007-484 [S 613]) to require registered sex offenders who move from one county to another to report in person to the sheriff of the new county and to provide written notice of their new address within ten days of the change of address. The act also amends the residential restrictions on sex offenders under G.S. 14-208.16 to redefine "immediate family member" to include a grandparent, legal guardian, or spouse of the registrant, and limit the siblings who qualify to those eighteen years of age or older. Effective December 1, 2007, the act adds new G.S. 14-208.43(d1) requiring that upon notification by DOC that an offender has been released, pursuant to G.S. 14-208.12A, from the sex offender registration requirement, the Post-Release Supervision and Parole Commission must also lift the satellite-based monitoring requirement if the defendant so requests. Finally, the act amends G.S. 14-208.45, governing the requirement that a one-time fee of $90 be paid by all new enrollees in satellite-based monitoring, to reflect the enactment of G.S. 14-208.40A and G.S. 14-208.40B.

Alcohol Monitoring as a Condition of Parole

S.L. 2007-165 (S 1290), discussed further in Chapter 21, "Motor Vehicles," is discussed here to the extent that it amends G.S. 15A-1374(b) to add as a possible condition of parole the requirement that a parolee "[r]emain alcohol free, and prove such abstinence through evaluation by a continuous alcohol monitoring system of a type approved by [DOC]." The act further requires a parolee to pay the fees associated with the use of the continuous alcohol monitoring system to the clerk's office in the county of conviction, and it requires the clerk's office to remit the funds to the system service provider. The act is effective for crimes committed on or after December 1, 2007, but Section 9 of the act makes clear that courts already using monitoring systems before this date could continue to do so.

The act defines a *continuous alcohol monitoring system* as a device worn by a parolee that can "detect, monitor, record, and report the amount of alcohol within the wearer's system" at any time. The act requires DOC to establish regulations for the use of continuous monitoring systems, which must include procedures for offender supervision, monitoring, and transmission of data to the courts.

By January 1, 2008, DOC must issue requests for information to consider the development of pilot programs for using continuous monitoring equipment as an intermediate punishment under structured sentencing or as a condition of probation. By October 1, 2008, DOC must report to the General Assembly with an evaluation of the continuous alcohol monitoring system, the results of the requests for information process described above, DOC's recommendation for implementing continuous alcohol monitoring, and, finally, funding options, including the possibility of grants and fees to offset the costs of the program.

Authority of Private Correctional Officers

S.L. 2007-162 (S 930) amends G.S. 148-37.3, which concerns the use of private correctional officers employed in a private prison operated in North Carolina under contract with the federal prison system. Originally enacted in 2001, the statute gave correctional officers and security supervisors at private facilities authority to use necessary force and to make arrests consistent with the laws applicable to DOC. The 2007 amendments to G.S. 148-37.3 ease the regulatory burden on DOC, eliminating the requirement that DOC regulate private contractors' practices by, among other things, tracking the names and positions of officers and adopting rules to implement the statute. The amendments also remove the requirement that insurance companies providing coverage to private correctional facilities transmit annually to DOC a certificate of insurance evidencing compliance with G.S. 148-37.3(d), which requires these facilities to carry a set amount of liability insurance.

Correction Enterprises

S.L. 2007-280[2] (H 648) establishes the Division of Correction Enterprises (DCE) within DOC to employ incarcerated offenders in various industrial, agricultural, and service occupations to "provide them with meaningful work experiences and rehabilitative opportunities that will increase their employability upon release from prison" (G.S. 148-128). The division uses offender labor to produce, among other things, road signs, license plates, stationary, uniforms, furniture, and canned foods and to run a laundry service. The act revises and consolidates in new Article 14 of G.S. Chapter 148 the law governing work by incarcerated offenders (previously set forth in scattered sections of G.S. Chapter 148), but does not make major substantive changes to existing law. For example, the Correction Enterprises Fund established under G.S. 148-130(a) replaces the former Prison Enterprises Fund, which had been set forth in now-repealed G.S. 148-2(b).

The purposes of correction enterprises enumerated in the act include

- Providing incarcerated offenders with training opportunities to increase work skills and employability upon release;
- Providing quality goods and services; and
- Generating sufficient funds to be a self-supporting operation.

Additionally, under G.S. 148-130(b), 5 percent of net corrections enterprises proceeds will be credited to the Crime Victims Compensation Fund established under G.S. 15B-23. Inmate wages for work done under the auspices of DCE are set at the discretion of the Secretary of Correction, but are capped under G.S. 148-133(b) at $3.00 per day unless other state or federal law requires a higher rate.

The legislation sets forth the powers and responsibilities granted to DCE, including the authority to operate within or outside prison facilities; to employ any non-prisoners necessary to operate Correction Enterprises; to purchase machinery and equipment required to operate its enterprises; and to enter into contracts and set prices for the goods and services offered. G.S. 148-132 limits distribution of DCE goods and services to:

- Any public agency or institutions controlled by the state;
- Counties, cities, and towns in North Carolina;
- Any federal, state, or local public agency or institution in any other state;
- 501(c)(3) tax-exempt entities that also receive local, state, or federal grant funding; and
- North Carolina state employees (limited to $2,500 in purchases annually).

Eligibility of state employees to purchase DCE products expires on July 1, 2012. The act also amends G.S. 66-58(b)(16) to expand the list of agencies for whom DCE laundry services may be performed to include U.S. Veterans Affairs Medical Centers.

All state departments, institutions, and agencies are required under G.S. 148-134 to give preference to correction enterprises products when purchasing items for official use. Purchases

2. The statute numbers assigned in S.L. 2007-280, G.S. 148-123 through 148-129, were renumbered at the direction of the Revisor of Statutes to G.S. 148-128 through 148-134.

from DCE are exempt from the provisions of Article 3 of G.S. Chapter 143 regarding competitive bidding, although DCE is required under G.S. 148-134 to keep its prices "substantially in accord" with similar goods and services from the private sector.

An appropriation of $25,000 originally included in the legislation to fund a study of job training programs available to inmates was eliminated in House committee.

Inmate Work Assignments and Service Projects

Another piece of legislation pertaining to inmate labor, S.L. 2007-398 (S 1096), adds G.S. 148-26(e1), which permits DOC to establish work assignments for inmates or allow inmates to volunteer in service projects that benefit units of state or local government or 501(c)(3) nonprofit entities that serve the public interest. Products made pursuant to this provision are exempted from surplus property rules set forth in Article 3A of G.S. Chapter 143.

The act also amends G.S. 148-6 to delete a provision prohibiting female inmates from working on public roads, and amends G.S. 148-33 to delete a restriction on the employment of male prisoners in public buildings in which women are housed or employed.

Prisons and Jails

Legal Status of Prisoners

S.L. 2007-494 (S 229) enacts new G.S. 162-2, effective January 1, 2008, requiring jail administrators to inquire into the legal residency status of any person charged with a felony or an impaired driving offense who is confined for any period in a county jail, local confinement facility, or satellite jail/work release unit. The purpose of the inquiry is to determine, through questioning or examination of relevant documents, if the prisoner is a legal resident of the United States. The act was passed in an atmosphere of growing popular concern about illegal immigration, during a time when wide-reaching immigration reform ranks high on the national political agenda.[3] A number of immigration-related bills other than Senate Bill 229 were introduced but not ratified by the General Assembly in 2007, including the North Carolina Security and Immigration Compliance Act (H 55 and S 1189), the North Carolina Illegal Immigration Prevention Act (H 1485), and H 1950, which would have appropriated funds to encourage state law enforcement partnership with federal immigration officials under 8 U.S.C § 1357(g).[4]

Under S.L. 2007-494, if a jail administrator is unable to ascertain whether a prisoner is a legal resident or citizen of the United States, the administrator must, where possible, make a query through the Division of Criminal Information to the Law Enforcement Support Center of the federal Immigration and Customs Enforcement office of the Department of Homeland Security. This query serves as notice to federal authorities of the prisoner's status and confinement. The jail administrator is required under G.S. 162-62(d) to report the number of queries performed and the results of those queries to the Governor's Crime Commission annually, which will in turn make the reports available to the public.

The language in the legislation ultimately ratified by the General Assembly as S.L. 2007-494 first appeared in Senate Bill 405, which would have required jail administrators to request that federal authorities take all "illegal immigrants" into custody as soon as practicable. Iterations of the bill also appeared in House Bill 55, House Bill 1485, and Senate Bill 1189 (the broad immigration reform bills referenced above), none of which was ultimately ratified.

3. *See, e.g.*, Comprehensive Immigration Reform Bill of 2007, S. 1348, 110th Cong. (2007).
4. This program, which promotes cooperation between the federal Immigration and Customs Enforcement office and state and local law enforcement, is known as the "287(g) program," in reference to the section of the Immigration and Nationality Act in which it is codified.

As a practical matter, many jail administrators are already engaging in an inquiry similar to that mandated by S.L. 2007-494 under the auspices of the State Criminal Alien Assistance Program (SCAAP).[5] SCAAP is a U.S. Bureau of Justice Assistance program that provides federal payments to states to offset correctional officer salary costs for incarcerating (for at least four consecutive days) undocumented criminal aliens with at least one felony or two misdemeanor convictions for violations of state or local law.[6] In 2006, for example, forty-eight North Carolina counties received SCAAP funds totaling over $6 million.[7] To receive SCAAP funds, counties must submit records of all inmates in their custody born outside the United States who have no claim to U.S. citizenship. Therefore, the new inquiry and reporting requirements of S.L. 2007-494 may, in many counties, overlap with the inquiry and report already submitted to the Bureau of Justice Assistance under SCAAP.

Budget and Reporting Requirements

The corrections-related items in the 2007 appropriations act, S.L. 2007-323 (H 1473), include the following:

- DOC and the Post-Release Supervision and Parole Commission must report by March 1 of each year to House and Senate committees the number of inmates enrolled in post-release supervision and parole, the number completing the program, and the number who were enrolled but were terminated from the program.
- The Department of Transportation must transfer $11.3 million to DOC annually during fiscal years 2007–08 and 2008–09 for inmate road squads and litter crews. Additionally, the Office of State Budget and Management is tasked with performing a cost-benefit analysis of these inmate work crews, and whether current funding for them is adequate.
- The requirements for DOC's annual report on the Alcohol and Chemical Dependency Program set out in G.S. 143B-262.3 are amended to include a report on the number of current inmates with substance abuse problems that require treatment, the number of treatment slots, and the number of inmates who have completed treatment, as well as an analysis of all programs, including, among other things, evidence of reduction in alcohol and drug dependency, improvements in inmate discipline, and recidivism.
- DOC is directed to increase participation in the Inmate Construction Program to improve inmate job skills and reduce recidivism. DOC must also report on the program to House and Senate subcommittees by April 1, 2008, with a description of the program, the number of inmates involved, and the cost savings realized through the use of inmate workers.
- DOC is authorized to reimburse counties for the costs of inmates, parolees, and post-release supervisees awaiting transfer to the state prison system at the rate of $40 per day.
- DOC is authorized to use funds available during the 2007–09 fiscal biennium for the inmate medical program if expenditures are projected to exceed DOC's inmate medical continuation budget.
- When planning to close a prison facility, DOC is required to consult with the county or municipality where the facility is located, elected state and local officials, and state agencies about possible alternative uses for the facility, with priority given to criminal justice uses.

5. SCAAP is governed by § 241(i) of the Immigration and Nationality Act, 8 U.S.C. § 1231(i), and Title II, Subtitle C, Section 20301 of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (codified as amended in scattered sections of 8, 18 & 42 U.S.C.).
6. *See generally* Programs: State Criminal Alien Assistance Program (SCAAP), www.ojp.usdoj.gov/BJA/grant/scaap.html (last visited Aug. 28, 2007).
7. Bureau of Justice Assistance, FY 2006 SCAAP Payments, www.ojp.usdoj.gov/BJA/grant/06SCAAPPayments.pdf.

- DOC is authorized to continue to contract with Energy Committed to Offenders, Inc., a Charlotte-based nonprofit organization that emphasizes family ties as a means to reduce recidivism, for the purchase of prison beds for minimum security female inmates.
- The Post-Release Supervision and Parole Commission, with the assistance of the Sentencing Policy Advisory Commission and DOC, is directed to compare the amount of time served by each parole-eligible inmate before July 1, 2008, with the time served by comparable offenders under Structured Sentencing (Article 81B of G.S. Chapter 15A). If a parole-eligible inmate has served more time in custody than he or she would have served if sentenced the maximum sentence under Structured Sentencing,[8] the Post-Release Supervision and Parole Commission must reinitiate the parole review process for that inmate.
- Harriet's House, Summit House, and Women at Risk (nonprofit programs for nonviolent women offenders) are required to report by February 1 of each year on their integration with the Division of Community Corrections.
- DOC is required to report to the House of Representatives and the Senate by March 1 of each year on the status of sex offender monitoring programs using global positioning systems (GPS), including the number of offenders enrolled, the number of violations, the number of absconders, the number of offenders projected to be enrolled by fiscal year 2008–09, and the per-offender cost of the program.
- DOC is required to report by March 1 of each year to the House and Senate Appropriations committees on the status of the State-County Criminal Justice Partnership Program, including a requirement for the Research and Planning Division of DOC to review national best practices for community corrections and report on whether currently funded programs should continue or alternatives should be considered.

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8. Section 17.11(b) sets forth a formula for calculating the "maximum" sentence for the purposes of this comparison.

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Social Services

After years of public discussion and debate, the General Assembly enacted legislation to phase out the fiscal responsibility of North Carolina counties for the nonfederal share of the cost of providing Medicaid services for county residents. The General Assembly also revised state laws governing the Medicaid estate recovery program and the Medicaid transfer of assets penalty, appropriated funds to increase enrollment under the Health Choice program for uninsured children, appropriated additional funds for child day care subsidies, and enacted additional legislation affecting social services agencies and programs.

State and Local Social Services Agencies

Division of Health Service Regulation

S.L. 2007-182 (H 720) renames the Department of Health and Human Services' (DHHS) Division of Facility Services as the DHHS Division of Health Service Regulation.

County Social Services Departments

S.L. 2007-372 (S 1023) amends G.S. 126-1.1 to provide that the term "career State employee" includes an employee of a county social services department (and other local government employees who are covered by the State Personnel Act) who is in a permanent position appointment and has been continuously employed by the state, a county social services department, or other local entity whose employees are subject to the State Personnel Act for at least twenty-four months. The effect of this change is to supersede the decision of the North Carolina Court of Appeals in *Early v. Durham County Department of Social Services*, 172 N.C. App. 344, 616 S.E.2d 553 (2005), and preclude a county social services employee who has not attained "career" status from filing a contested case with the Office of Administrative Hearings under G.S. 126-34.1(a)(1) alleging that the county social services director (or, in the case of the county social services director, the county social services board) lacked "just cause" to dismiss, demote, or suspend the employee.

Child Welfare

Court Reviews for Children in Custody

G.S. 7B-908 requires the juvenile court to conduct post-termination of parental rights review hearings every six months after a child's parents' rights have been terminated, when the child is in the custody of a county department of social services or a licensed child-placing agency. Previously hearings were required only until the juvenile was placed for adoption and an adoption petition was filed. S.L. 2007-276 (H 698) amends G.S. 7B-908(b) and (e) to require the court to continue holding these hearings until the juvenile's adoption is final. The act makes a comparable change to G.S. 7B-909, for hearings conducted when children have been relinquished to an agency for adoption. The act amends other sections of the Juvenile Code to specify the right of certain parties and non-parties to present evidence at hearings. These changes are described in Chapter 4, "Children and Juvenile Law." The act became effective October 1, 2007.

Termination of Out-of-State Parents' Rights

S.L. 2007-152 (H 866) amends G.S. 7B-1101, effective October 1, 2007, to provide that the district court has jurisdiction to terminate the parental rights of a parent, regardless of the parent's state of residence, if (1) the court has nonemergency jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (G.S. Chapter 50A) and (2) the parent has been served with a summons pursuant to G.S. 7B-1106. The background and details of the act are described in Chapter 4, "Children and Juvenile Law."

Termination Ground to Facilitate Out-of-State Adoptions

S.L. 2007-151 (H 865) addresses cases in which a child is freed for adoption in North Carolina but the adoption proceeding takes place in another state. Sometimes a parent's consent to adoption or relinquishment of a child to a social services department or child-placing agency for adoption under North Carolina law is not sufficient to satisfy the prerequisites for adoption in another state. S.L. 2007-151 creates a new ground for termination of parental rights that applies when the parent's North Carolina consent or relinquishment has become irrevocable, termination of the parent's rights is necessary in order for the adoption to occur in another state, and the parent does not contest the termination of parental rights. The new ground, in G.S. 7B-1111(a)(10), became effective October 1, 2007, and applies to termination petitions and motions filed on or after that date.

Adoption Jurisdiction

S.L. 2007-151 rewrites G.S. 48-2-100 to expand North Carolina's jurisdiction in adoption proceedings to include (1) cases in which the child to be adopted has lived in the state either since birth or for the six consecutive months preceding the filing of the adoption petition, regardless of the adoptive parents' domicile and (2) cases in which a social services department or licensed child-placing agency in the state has legal custody of the child when the adoption petition is filed.

The act also provides that North Carolina may exercise jurisdiction in an adoption proceeding even if another state is properly exercising jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act when the adoption petition is filed, if the other state either dismisses its proceeding or releases its exclusive continuing jurisdiction within sixty days after the adoption petition is filed in North Carolina.

These changes became effective October 1, 2007, and apply to adoption petitions filed on or after that date.

Access to Adoption Information

S.L. 2007-262 (H 445) rewrites various sections of the adoption law, G.S. Chapter 48, to allow county social services departments and licensed child-placing agencies in the state to agree to act as *confidential intermediaries* for purposes of obtaining and sharing confidential adoption information and facilitating contact between individuals when there is written consent by all parties to the contact or information sharing. Agencies may charge a reasonable fee for the service. The act does not create an adoption registry or provide details about how the process will work, but it requires the state Division of Social Services to develop guidelines for confidential intermediary services.

Those who may seek and consent to information or contact or both through a confidential intermediary include an adoptee who has reached the age of twenty-one; an adult lineal descendant of a deceased adoptee; and a biological parent of an adoptee. An agency also may act as a confidential intermediary for the adoptive parents of a minor adoptee for purposes of obtaining and sharing non-identifying birth-family health information. The act is effective January 1, 2008.

Criminal History Checks

S.L. 2007-276 (H 698) rewrites the definition of "criminal history" for purposes of various criminal record checks required in relation to foster care and adoption, by amending G.S. 48-1-101(5a), 48-3-309, 131D-10.2(6a), 131D-10.3A(e), and related statutes.

Child and Family Team Initiative

Section 10.9 of S.L. 2007-323 (H 1473), the Current Operations and Capital Improvements Appropriations Act of 2007, continues the School-Based Child and Family Team Initiative, to provide for agency collaboration in identifying and providing services for children who are at risk of school failure or out-of-home placement.

Comprehensive Treatment Services

Section 10.10 of S.L. 2007-323 directs DHHS to continue the Comprehensive Treatment Services Program, in consultation with other agencies, to provide appropriate and medically necessary nonresidential and residential treatment alternatives for children who are at risk of institutionalization or other out-of-home placement.

Intensive Family Preservation Services

Section 10.33 of S.L. 2007-323 continues the Intensive Family Preservation Services Program.

Child Welfare Postsecondary Support Program

Section 10.34 of S.L. 2007-323 provides funding, from both the General Fund and the Escheat Fund, for a child welfare postsecondary support program, to provide scholarships and case management services for two categories of youth—those who age out of the foster care system and those with special needs who are adopted from foster care after the age of twelve. The funds may be used only for youth who attend public institutions of higher education in this state. Most of the funds appropriated by the section are to be allocated to the North Carolina State Education Assistance Authority, and the act requires DHHS to collaborate with the authority to develop policies and procedures for distributing the funds.

Safe Surrender Education

S.L. 2007-126 (H 485) amends G.S. 115C-47 to require local boards of education to adopt policies to ensure that students in grades nine through twelve receive information annually on the procedure through which a parent may lawfully abandon a newborn baby with a responsible person. The act is described in more detail in Chapter 4, "Children and Juvenile Law."

Family Resource Centers

Part 5B of Article 3 of G.S. Chapter 143B establishes the Family Resource Center Grant Program. S.L. 2007-130 (H 696) amends G.S. 143B-152.10 to restate the program's purpose as implementing research-based family support programs that have been evaluated for effectiveness (was, establishing family support centers) and that provide services to children from birth through age seventeen (was, through elementary school age) and their families. It also adds to the types of services provided those that "prevent child abuse and neglect by implementing program models that have been evaluated and found to improve outcomes for children and families."

Medicaid

State and County Medicaid Funding

Unlike most states, North Carolina historically has required counties to pay 15 percent of the nonfederal share of the cost (approximately 5.5 percent of the total cost or more than $400 million in state fiscal year 2002) of Medicaid services provided to county residents.[1]

The Current Operations and Capital Improvements Appropriations Act of 2007, S.L. 2007-323 (H 1473), phases out the fiscal responsibility of North Carolina counties for Medicaid services. (Counties will continue to be responsible for paying the nonfederal share of the local cost of administering the state Medicaid program.) The counties' fiscal responsibility for Medicaid services will be reduced to 11.25 percent of the nonfederal share of the cost of Medicaid services (and Medicare Part D "clawback" payments) effective October 1, 2007; will be reduced to 7.5 percent effective July 1, 2008; and will be eliminated effective July 1, 2009. Phasing out the counties' fiscal responsibility for Medicaid services will reduce county spending and increase state spending by approximately $86 million in state fiscal year 2007–08 and $271 million in 2008–09.

Medicaid Special Fund

S.L. 2007-117 (S 1119) amends G.S. 143C-9-1 to establish a nonreverting Medicaid Special Fund and require DHHS to transfer into the fund the balance of federal Medicaid funding for "disproportionate share hospitals" remaining after payments are made to hospitals from these funds. Funds deposited in the Medicaid Special Fund may be expended only through appropriation by the General Assembly.

Medicaid Estate Recovery Plan and Liens

In 2005 the General Assembly enacted legislation (S.L. 2005-276, sec. 10.21C) amending North Carolina's law regarding recovery of Medicaid payments from the estates of deceased Medicaid recipients and authorizing DHHS to impose liens against the property of certain Medicaid recipients to recover the cost of Medicaid services. Subsequent legislation (S.L. 2006-66, S.L. 2007-145, S.L. 2007-323), however, prevented these changes from taking effect.

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1. *See* John L. Saxon, "The Fiscal Impact of Medicaid on North Carolina Counties," *Popular Government* 67(4):14–22 (Summer 2002).

Effective August 23, 2007, S.L. 2007-442 (H 1537)

- repeals the 2005 amendments to G.S. 108A-70.5 that would have authorized DHHS to impose liens against the property of certain Medicaid recipients to recover the cost of Medicaid services;
- amends G.S. 108A-70.5 to provide that a Medicaid claim against the estate of a deceased Medicaid recipient may be asserted only with respect to (1) Medicaid services provided to a Medicaid recipient while he or she was an inpatient in a nursing facility, intermediate care facility for the mentally retarded, or other Medicaid institution and could not reasonably have been expected to be discharged to return home or (2) nursing facility services, home- and community-based services, hospital care, prescription drugs, and personal care services provided to a Medicaid recipient who was at least fifty-five years old;
- repeals G.S. 108A-70.6 and G.S. 108A-70.7, which established statutory criteria for the waiver or postponement of Medicaid liens and claims, and instead requires DHHS to adopt rules to waive estate recovery in whole or in part if recovery would not be administratively cost-effective or if recovery would be inequitable because it would work an undue hardship;
- repeals G.S. 108A-70.8 and G.S. 108A-70.9, which established statutory requirements with respect to notice regarding Medicaid liens and estate recovery claims;
- provides that, unless required by federal law, the DHHS rules with respect to notice regarding Medicaid estate recovery are limited to notice during the Medicaid application process and notice following the death of a Medicaid recipient;
- repeals G.S. 108A-70.5(e), which referred to the treatment of "special needs trusts" under the Medicaid program; and
- requires DHHS to report by April 15, 2008, to the chairs of the Senate Appropriations Committee for Health and Human Services and the House Appropriations Subcommittee for Health and Human Services with respect to the provision of personal care services to Medicaid recipients and Medicaid estate recovery claims for personal care services.

Medicaid Transfer of Assets Penalty

The federal Medicaid statute (Title XIX of the Social Security Act, as amended by P.L. 109-171) requires state Medicaid programs to disqualify individuals from receiving certain types of Medicaid services if they, or their spouses or others acting on their behalf, transfer certain types of property, resources, or assets for less than fair market value. In 2006 the General Assembly enacted G.S. 108A-58.1 amending North Carolina's Medicaid "transfer of assets" penalty and directed DHHS to adopt rules regarding waiver of the transfer of assets penalty in cases involving "undue hardship." On January 19, 2007, DHHS adopted final rules with respect to waiver of the transfer of assets penalty in cases involving undue hardship (10A NCAC 21B.0314) and these rules were approved by the Rules Review Commission on March 15, 2007.

Effective August 23, 2007, S.L. 2007-442 disapproves the DHHS rules regarding waiver of the Medicaid transfer of assets penalty in cases involving undue hardship and instead enacts a new statute, G.S. 108A-58.2, setting forth the administrative procedure for requesting waiver of the Medicaid transfer of assets penalty in cases involving undue hardship and the standards for waiving the transfer of assets penalty because of undue hardship.

Under new G.S. 108A-58.2, a request for waiver of the transfer of assets penalty made by or on behalf of a person who is applying for Medicaid will be considered and determined in conjunction with the individual's Medicaid application. When a person is receiving Medicaid and is subject to the transfer of assets penalty, the county social services department must notify the Medicaid recipient that he or she may request waiver of the penalty due to undue hardship. To do so, a Medicaid recipient must request the waiver within twelve calendar days from the date of the notice. If an institutionalized Medicaid recipient requests waiver of the penalty, the Medicaid program must continue to provide the same level of services to the recipient until the last day of

the month following the expiration of ten workdays following notice of the decision regarding the recipient's waiver request or the date of the local hearing decision under G.S. 108A-79 involving the recipient's waiver request, whichever is later. The Medicaid program, however, will not make "bed hold" payments under 42 U.S.C. § 1396p(c)(2)(D) while a waiver request is pending.

A county social services director or the director's designee may not waive imposition of the transfer of assets penalty unless a Medicaid applicant or recipient demonstrates that imposition of the penalty would endanger his or her health or life by depriving him or her of medical care, food, clothing, shelter, or other necessities. In order to demonstrate that imposition of the penalty would endanger the health or life of a Medicaid applicant or recipient, the applicant or recipient must submit a written certification by a medical doctor with knowledge of the individual's medical condition stating that, in the doctor's professional opinion, the individual will be in danger of death or that the individual's health will suffer irreparable harm if the penalty is imposed. In order to obtain a waiver, a Medicaid applicant or recipient also must demonstrate that (1) he or she has no alternative income or resources [as defined in G.S. 108A-58.2(e)] available to provide the medical care, food, clothing, shelter, or other necessities that would be denied as a result of the penalty and (2) he or she, or someone acting on his or her behalf, is making a good faith effort to pursue all reasonable means to recover the transferred asset or the fair market value of the transferred asset.

Medicaid "Ticket to Work" Program

In 2005 the General Assembly enacted G.S. 108A-54.1 establishing a Medicaid "Ticket to Work" demonstration program that would allow disabled people who work and are not otherwise eligible for Medicaid to enroll in the state's Medicaid program. S.L. 2007-144 (S 254) delays the effective date of this legislation from July 1, 2007, to July 1, 2008.

Temporary Assistance for Needy Families

S.L. 2007-323 approves North Carolina's Temporary Assistance for Needy Families (TANF) State Plan for 2007–09, and designates Beaufort, Caldwell, Catawba, Iredell, Lenoir, Lincoln, Macon, and Wilson counties as "electing" counties under G.S. 108A-27.3 through 108A-27.5.

S.L. 2007-323 also amends G.S. 108A-27.9 and G.S. 108A-27.10 to revise the process for adopting the TANF state plan. Under these amendments, DHHS must consult with local government and private sector organizations regarding its proposed TANF state plan and give those organizations at least forty-five days to comment on the proposed plan before it is submitted to the General Assembly. Following this comment period, the proposed plan must (1) be submitted to the Senate Appropriations Committee on Health and Human Services and the House Appropriations Subcommittee on Health and Human Services; (2) be submitted to, reviewed by, and approved by the Governor; and (3) be submitted to the General Assembly for approval by May 15 of each odd-numbered year.

Food Stamps

Because assistance under the Food Stamp Program is now provided through the issuance of electronic benefit transfer cards rather than food stamp coupons, S.L. 2007-97 (S 836) changes the name of the Food Stamp Program to the Food and Nutrition Services Program.

Child Support Enforcement Services

S.L. 2007-460 (H 825) amends G.S. 110-130.1(a) to require state and local child support enforcement programs to impose and collect an annual fee of $25 for any child support enforcement case involving a family that has not received public assistance under the Aid to Families with Dependent Children or Temporary Assistance for Needy Families (Work First) programs if the state has collected for and disbursed to the family at least $500 in support during the federal fiscal year.

State–County Special Assistance

Legislation affecting the State-County Special Assistance program is discussed in Chapter 25, "Senior Citizens."

Health Choice

S.L. 2007-323 appropriates $7.5 million in recurring funding for each year of the 2007–09 fiscal biennium to allow a 6 percent annual increase in enrollment in the Health Choice program for uninsured children in low-income families.

Children's Health Care

S.L. 2007-323 directs the DHHS Division of Medical Assistance to produce a report that identifies the most cost-efficient and cost-effective method of developing and implementing a program of comprehensive health care benefits for children in families with incomes between 200 and 300 percent of the federal poverty level and determines whether this program should be implemented by expanding eligibility under the state Medicaid or Health Choice programs. DHHS must submit a final report of its findings and recommendations by February 1, 2008, to the Senate Appropriations Committee on Health and Human Services, the House Appropriations Subcommittee on Health and Human Services, the Joint Legislative Commission on Governmental Operations, and the Fiscal Research Division.

S.L. 2007-323 also states the General Assembly's intent to expand access to health insurance for children in families with incomes above 200 percent of the federal poverty level and appropriates $7 million for state fiscal year 2008–09 to do so.

Child Day Care

S.L. 2007-323 appropriates an additional $8.4 million in recurring funding for each year of the 2007–09 fiscal biennium for child day care subsidies that will implement rate adjustments and provide services to 643 children on the waiting list for subsidized child day care.

Public Benefits and Services for Victims of Human Trafficking

Effective December 1, 2007, S.L. 2007-547 (S 1079) amends G.S. 14-43.11 to provide that a person who is a victim of human trafficking under that statute and is not a legal resident of North Carolina is eligible for public benefits and services provided by any state agency if the victim otherwise would be eligible for the benefit or service but for his or her status as a nonresident.

Eligibility for public benefits and services under this statute terminates when the victim's eligibility to remain in the United States is terminated under federal law.

Maternity Homes, Child Placing Agencies, and Residential Child Care Facilities

S.L. 2007-30 (H 697) directs the state Social Services Commission to adopt rules establishing educational requirements for executive directors and staff employed in maternity homes, child placing agencies, and residential child care facilities.

Licensed Clinical Social Workers

S.L. 2007-379 (S 1090) amends G.S. 90B-7(f) and other statutes regarding the issuance of provisional licenses to provide clinical social work services. Under these amendments, a provisional licensee must pass the qualifying clinical examination within two years in order to be eligible for renewal of a provisional license and generally must satisfy all requirements for full licensure within six years. S.L. 2007-379 also repeals the exemptions from licensure requirements under G.S. 90B-10(b) other than the exemption for students completing a clinical requirement for graduation while pursuing a course of study in social work in an institution accredited by or in candidacy status with the Council on Social Work Education.

Migrant Housing

S.L. 2007-548 (S 1466) rewrites numerous parts of the Migrant Housing Act of North Carolina (Article 19 of G.S. Chapter 95) to make changes relating to the health and safety of migrant workers, establish procedures for addressing uninhabitable migrant housing, and direct the North Carolina Housing Finance Agency to study the development of a low-interest loan program for agricultural employers.

Janet Mason

John L. Saxon

28

State Government

The General Assembly enacted two general reform measures in 2007, eliminating the Commission on State Property and prohibiting state investments in certain companies with activities related to Sudan. Efforts were also made to improve state government accountability. Finally, in response to pressure from advocates and the media, the General Assembly enacted legislation to make the University of North Carolina Health Care System's debt collection practices more "patient friendly."

Commission on State Property

In 2004 the General Assembly established the sixteen-member Commission on State Property to identify surplus state-owned property that would then be sold. During its three-year existence, the commission failed to sell any surplus property. The commission also came under scrutiny in 2007 for possible conflicts of interest. S.L. 2007-12 (H 1012) abolishes the Commission on State Property by repealing Article 78 of G.S. Chapter 143. In addition, S.L. 2007-12 provides that no finding that a property is or should be surplus that was made by the commission before its abolition is binding on the Department of Administration.

Sudan Divestment Act

In light of the genocide in Sudan and the federal government's actions to denounce the activities taking place in Sudan, the General Assembly enacted S.L. 2007-486 (H 291) prohibiting investments in companies with active business operations related to Sudan. S.L. 2007-486 requires the Public Fund to identify all scrutinized companies in which the fund has direct or indirect holdings or could have such holdings in the future. The *Public Fund* is defined as any funds held by the State Treasurer to the credit of (1) the Teachers' and State Employees' Retirement System, (2) the Consolidated Judicial Retirement System, (3) the Firemen's and Rescue Workers' Pension Fund, (4) the Local Governmental Employees' Retirement System, (5) the Legislative Retirement System, (6) the Legislative Retirement Fund, or (7) the North Carolina National Guard Pension Fund. The Public Fund is required to file an annual report to the General Assembly that includes

the scrutinized companies list. A *scrutinized company* is a company that meets one of the following criteria:

- The company has business operations that involve contracts with or provision of supplies or services to (1) the government of Sudan, (2) companies in which the government of Sudan has any direct or indirect equity share, (3) government of Sudan-commissioned consortiums or projects, or (4) companies involved in government of Sudan-commissioned consortiums or projects where a specified amount of income comes from Sudan-related industrial activities.
- The company is complicit in the Darfur genocide.
- The company supplies military equipment within Sudan, unless the company can show that the equipment cannot be used to facilitate offensive military actions in Sudan or the company implements safeguards to prevent use of the equipment by forces participating in armed conflict.

The Public Fund must sell, redeem, divest, or withdraw all publicly traded securities of a company that continues to have scrutinized active business operations within fifteen months after the company's most recent appearance on the scrutinized companies list. The Public Fund is allowed to stop divesting from or to reinvest in certain scrutinized companies if evidence shows that the value of all assets managed by the Public Fund becomes equal to or less than 99.50 percent of the hypothetical value of all assets under management by the Public Fund, assuming that no divestment for any company had occurred. The Public Fund is required to report to the General Assembly in advance of a reinvestment, on the reasons and justification for its decisions to stop divestment, reinvest, or remain invested in companies with scrutinized active business operations.

The act expires if the United States revokes all sanctions imposed against the government of Sudan or if the United States Congress or President declares any of the following: (1) that the Darfur genocide has been halted for at least twelve months, (2) that the government of Sudan has honored its commitments to cease attacks on civilians, demobilize and demilitarize the Janjaweed and associated militias, grant free and unfettered access for deliveries of humanitarian assistance, and allow for the safe and voluntary return of refugees and internally displaced persons, or (3) that mandatory divestment of the type provided for in the act interferes with the conduct of United States foreign policy.

State Government Accountability

S.L. 2007-520 (H 1551) enacts new Chapter 143D of the General Statutes, effective January 1, 2008, requiring state agencies to establish and maintain a system of internal control in accordance with standards and policies to be established by the State Controller. The purpose of the new chapter is to improve internal control within state government and to clarify responsibilities for internal control. The new law applies to every entity for which the state has oversight responsibility, including universities, hospitals, community colleges, and clerks of court. The act defines *internal control* as a process "designed to provide reasonable assurance regarding the achievement of objectives related to the effectiveness and efficiency of operations, reliability of financial reporting, and compliance with applicable laws and regulations." Each state agency is required to maintain documentation and submit periodic certified financial reports to the State Controller. A state employee's willful or continued failure to comply with the new law is sufficient cause for disciplinary action, including dismissal.

S.L. 2007-424 (H 1401) enacts new Article 79 of G.S. Chapter 143 to require certain state agencies to establish an internal auditing program if they have an annual operating budget of more than $10 million, have more than 100 full-time equivalent employees, or receive and process more than $10 million in a fiscal year. The term *state agency* includes each department created pursuant to G.S. Chapter 143A or 143B, the judicial branch of state government, the University of North Carolina, and the Department of Public Instruction.

The internal auditing program must, among other things, provide an effective system of internal controls that safeguards public funds and assets and minimizes incidences of fraud, waste, and abuse. The new law also sets out requirements and standards for internal auditing programs and the minimum qualifications of internal auditors. The act establishes the Council of Internal Auditing, which is supported by the Office of State Budget and Management and consists of five ex-officio members as well as the State Auditor, who is a nonvoting member. The council's duties include developing guidelines and best audit practices, administering a peer review system for audits, and conducting hearings regarding effectiveness of or interference with internal auditing.

Bonds for Special Purpose Projects

S.L. 2007-128 (S 966) amends G.S. 159C-3(15a) to add the following three types of projects to the special projects for which the North Carolina Capital Facilities Finance Agency may issue bonds:

1. Facilities for the provision of material salvage and recycling services, the proceeds of which must be used to provide low, moderate, or affordable housing.
2. Research facilities owned or operated by a nonprofit corporation incorporated by two or more accredited universities that have main campuses located in the state or by the universities' Chancellor, President, or similar official of those universities.
3. Facilities for housing international headquarters of a nonprofit scholarly society that is a member of the Scholarly Societies Project.

UNC Health Care System Debt Collection

S.L. 2007-306 (H 646) is intended to make the collection of money owed by patients to the UNC Health Care System more patient friendly. The act amends G.S. 147-86.11(e) by excluding money owed by UNC Health Care System patients from those accounts receivable required to be turned over the Attorney General for collection within ninety days after payment is due. Instead, UNC Health Care System *may* turn accounts over to the Attorney General for collection. Under G.S. 147-86.23, state agencies are required to charge interest on past-due accounts. S.L. 2007-306 amends the statute to exempt from this requirement money that is owed to the UNC Health Care System for health care services. The act also amends G.S. 116-37(f) by removing the $7,500 per patient per admission cap on the amount that the UNC Health Care system may expend for the benefit of a patient. The expenditure of operating funds to place a patient in an after-care facility is also allowed whether or not the placement is pending approval of third-party benefits. Finally, the act amends G.S. 143-553(a) to prohibit a state agency, city or county board of education, or community college board of trustees from terminating an employee because the employee owes money to the UNC Health Care System for health care services.

Christine B. Wunsche

29

State Taxation

In 2007 the General Assembly finally resolved the temporary half-cent state sales tax enacted in 2001, by making permanent one-fourth cent of the tax. In addition, the General Assembly converted a half-cent local sales tax to a state sales tax as part of the Medicaid swap, in which it phased-out county responsibility for part of the nonfederal share of Medicaid costs. Other legislation this session capped the variable component of the motor fuels tax rate for two years, allowed a small refundable earned income tax credit, and reformed the process for resolving tax disputes with the Department of Revenue. Tax incentives for economic development are discussed in Chapter 8, "Economic and Community Development," and property tax issues are covered in Chapter 18, "Local Taxes and Tax Collection."

Motor Fuels and Energy

Cap Motor Fuel Tax Rate

In 2006 the General Assembly reacted to substantial increases in the price of oil and of gas at the pump by capping the variable component of the motor fuel excise tax rate at 12.4 cents from July 1, 2006, through June 20, 2007. Section 31.15 of the 2007 appropriations act, S.L. 2007-323 (H 1473), extends this temporary cap for two more years. Unlike in 2006, this time the General Assembly did not provide a reserve in the General Fund to reimburse the Highway Fund and the Highway Trust Fund for any revenue lost due to the motor fuel tax rate cap.

Renewable Energy Investment Tax Credit

North Carolina provides a generous 35 percent tax credit in G.S. 105-129.16A for individuals and businesses that invest in renewable energy property. Renewable energy property includes biofuel production equipment, hydroelectric generators, windmills, and solar energy equipment for water heating, active space heating and cooling, passive heating, daylighting, generating electricity, and other purposes. As part of a package of changes relating to renewable energy, S.L. 2007-397 (S 3) enacts new G.S. 105-129.16G to allow a tax-exempt nonprofit corporation to pass through to a donor the tax credit for which the nonprofit would have been eligible (if it were

taxable) for investing the donation in renewable energy property. The new credit becomes effective beginning with the 2008 tax year.

Fuel Used by Farmers and Manufacturers

S.L. 2007-397 phases down over several years the state taxes on the sale of energy to farmers and manufacturers, and eliminates the taxes as of July 1, 2010. Section 10 of S.L. 2007-397 amends G.S. 105-164.4 and G.S. 105-164.13 to set the sales tax rate on electricity sold to farmers for farming purposes and electricity sold to manufacturers for manufacturing use as follows:

Effective Date	Rate
10/1/07	1.8%
7/1/08	1.4%
7/1/09	0.8%
7/1/10	-0-

In lieu of sales tax, the state imposes an excise tax on piped natural gas. The rate is based on monthly volume received by the end user and ranges from $.047 to $.003 per therm. Section 11 of S.L. 2007-397 amends G.S. 105-187.41 to phase out this tax on natural gas received by a farmer for use in farming and natural gas received by a manufacturer for use in manufacturing, as follows:

Effective Date	Range
10/1/07	$.032–$.002
7/1/08	$.025–$.002
7/1/09	$.014–$.001
7/1/10	-0-

Other fuels sold to farmers for farming purposes are already exempt from sales taxes. In lieu of sales tax, the state imposes a 1 percent privilege tax on fuels, other than electricity and piped natural gas, sold to manufacturers to operate manufacturing industries and plants. Section 12 of S.L. 2007-397 amends G.S. 105-187.51A to phase out this tax as follows:

Effective Date	Rate
10/1/07	0.7%
7/1/08	0.5%
7/1/09	0.3%
7/1/10	-0-

Fuel Alcohol and Biodiesel

S.L. 2007-527 (S 540) provides that fuel alcohol providers and biodiesel providers are not required to file a bond when applying for a license unless they (1) have expected annual liability of $2,000 or more or (2) are either a position holder or a person that receives motor fuel pursuant to a two-party exchange bond. S.L. 2007-524 (S 1272) exempts from the motor fuel tax any biodiesel that is produced by an individual for personal use in the individual's private passenger vehicle.

Highway Use Tax Sunset

S.L. 2007-527 repeals Section 8.4 of 1989 N.C. Sess. Laws Ch. 692, which would have repealed the Highway Use Tax, the Highway Trust Fund, and the Joint Legislative Transportation Oversight Committee upon completion of contracts for projects under the Highway Trust Fund.

Sales Tax

State Sales Tax Rate

In 2006 the General Assembly began the process of phasing out the temporary additional 0.5 percent state sales tax, reducing the tax rate from 4.5 to 4.25 percent effective December 1, 2006, and then to 4 percent effective July 1, 2007. The 2007 General Assembly changed course, however. Section 31.2 of S.L. 2007-323 repeals the reduction to 4 percent that would have become effective July 1, 2007. As part of the Medicaid swap, in which it phased-out county responsibility for a portion of the nonfederal share of Medicaid costs, the act also converted the one-half cent local sales tax in Article 44 of G.S. Chapter 105 to a state sales tax, making the state rate 4.5 percent effective October 1, 2008, and 4.75 percent effective October 1, 2009. For a detailed description of the local tax changes associated with the Medicaid swap, see Chapter 16, "Local Finance" and Chapter 18, "Local Taxes and Tax Collection."

Bundled Transactions

S.L. 2007-244 (H 257) modifies the sales tax statutes governing bundled transactions by defining a *bundled transaction* as the sale of two or more distinct products for one non-itemized price and providing that sales tax applies to a bundled transaction unless one of three exceptions applies. The first exception applies if (1) the bundle contains no services, (2) the bundle includes exempt food, exempt drugs, and/or exempt medical products, and (3) the price of the taxable products in the bundle is no more than 50 percent of the price of the bundle. The second exception applies if the bundle contains a service and the retailer can determine an allocated price for each product in the bundle; in this case, sales tax applies to an allocated price of each taxable product in the bundle. The third exception applies if neither of the first two exceptions applies and the price of the taxable products in the bundle does not exceed 10 percent of the price of the bundle. The act also makes conforming changes to G.S. 105-164.12B (property sold below cost with conditional service contract). These changes bring state law into compliance with the Streamlined Sales Tax Agreement. The agreement is part of the Streamlined Sales Tax Project, an effort by states, with input from local governments and the private sector, to simplify and modernize sales and use tax collection and administration.

Sales Tax Holiday/School Instructional Materials

Section 31.14 of S.L. 2007-323 amends the sales tax holiday statute effective October 1, 2007, to increase the maximum price for school instructional materials to qualify for exemption from $100 to $300 per item.

Use Tax on Boats and Aircraft

North Carolina sales tax is collected by retailers from purchasers on sales made in this state. The use tax complements the sales tax by taxing transactions in which property is purchased in another state or by Internet or mail order for use in this state. Unlike the sales tax, the use tax must be remitted by the purchaser, not the retailer. Businesses must pay monthly or quarterly, but G.S. 105-164.16(d) allows consumers to pay the use tax annually on their nonbusiness mail-order and other out-of-state purchases. The use tax may be reported on the consumer's individual income tax return. Section 12 of S.L. 2007-527 excludes use tax on aircraft and boats from the annual payment provision. As a result, consumers must now pay aircraft and boat use taxes quarterly under the standard sales and use tax payment schedule.

Targeted Sales Tax Exemptions

In S.L. 2007-368 (S 1240), the General Assembly granted an exemption from state and local sales tax for bread, rolls, and buns that are sold at a bakery thrift store. In S.L. 2007-500 (H 487), the General Assembly exempted baler twine used by farmers.

Income Tax

Earned Income Tax Credit

For years, advocates for low-income citizens have lobbied unsuccessfully for an earned income tax credit (EITC); 2007 was the year that their efforts finally bore fruit, although the result is more like a grape than a melon. Section 31.4 of S.L. 2007-323 enacts new G.S. 105-151.31, which grants an individual a state EITC equal to only 3.5 percent of the individual's federal EITC. The new EITC is effective beginning in the 2008 tax year and sunsets at the end of 2012. Despite its small size, the credit is expected to cost the General Fund more than $48 million in 2008–09. Like the federal credit, the state credit is refundable, resulting in a grant for individuals whose income is too low to be taxable. Unlike the federal credit, there is no provision for advance payment of the credit through the individual's periodic paychecks. Section 24.3 of the act, as amended by Section 14.3 of S.L. 2007-345, requires the Department of Revenue to promote the federal and state EITCs in the tax instruction booklet and encourages tax software developers to provide for automatic calculation of the EITC.

Real Estate Investment Trusts

Section 31.18 of S.L. 2007-323 is the latest in an ongoing effort to close tax loopholes exploited by creative tax professionals representing business interests. The act limits a corporation's ability to use a captive real estate investment trust (REIT) to avoid North Carolina taxes, effective beginning with the 2007 tax year. A REIT is an organization that uses the pooled capital of investors to purchase and manage real estate. The REIT pays no tax on the income it distributes to its shareholders as dividends because it deducts the dividends. The shareholders should pay tax on the dividends received. A REIT owned or controlled by a single entity is a captive REIT. The General Assembly found that corporations were creating captive REITs and passing the dividends through an out-of-state corporation or using other strategies to result in no tax being paid to North Carolina on income generated from North Carolina real estate. Section 31.18 of S.L. 2007-323 disallows this strategy by prohibiting a captive REIT from taking a deduction for dividends paid to entities subject to North Carolina corporate income tax. As a result, a captive REIT will pay North Carolina tax on income derived from North Carolina property. Double taxation is avoided by allowing a corporate dividends received deduction for dividends received from a captive REIT.

The act requires the Department of Revenue to report to the Revenue Laws Study Committee by May 1, 2009, on the amount of corporate income tax revenue generated in the 2007 tax year by the captive REIT provision. The study committee must calculate a revenue neutral corporate income tax rate based on the revenue generated and include the rate in a report to the 2010 Session of the General Assembly. This provision implies that the General Assembly will consider using the revenue gained by the captive REIT provision to lower corporate income taxes for all corporations.

Parental Savings Trust Fund Deduction

The 2006 General Assembly enacted G.S. 105-134.6(d)(4), permitting certain individuals to deduct from taxable income up to $2,000 ($4,000 for married couples filing jointly) for contributions to the Parental Savings Trust Fund of the State Education Assistance Authority. To

qualify, the taxpayer's adjusted gross income must be below specified thresholds. The deduction was due to sunset after the 2010 tax year. Effective beginning with the 2007 tax year, Section 31.19 of S.L. 2007-323 modifies the Parental Savings Trust Fund by (1) repealing the sunset, (2) increasing the maximum deduction to $2,500 ($5,000 for joint filers), and (3) temporarily removing the income thresholds for the period 2007 through 2011.

The Parental Savings Trust Fund is a qualified tuition program under Section 529 of the Internal Revenue Code. Distributions from qualified tuition programs are excludable from taxable income to the extent the distributions are used to pay for qualified higher education expenses. Because contributions are deductible and distributions are excludable, North Carolina provides a double tax benefit, as compared to federal law. The Parental Savings Trust Fund deduction must be added back to taxable income if the amount is withdrawn from the fund but not used to pay for qualified higher education expenses of the designated beneficiary, unless the withdrawal was made because of the death or permanent disability of the beneficiary.

Firefighter/Rescue Squad Deduction

Effective beginning with the 2007 tax year, Section 31.24 of S.L. 2007-323 allows eligible unpaid volunteer firefighters and rescue squad workers to take an income tax deduction of $250.

Tax Credits

Long-term Care Tax Credit

Effective beginning with the 2007 tax year, Section 31.5 of S.L. 2007-323 reenacts G.S. 105-151.18, the individual income tax credit for premiums paid on long-term care insurance. The credit, which had expired at the end of 2003, is 15 percent of the premium costs, up to $350 per insurance contract. The act modifies the credit by limiting it to taxpayers with adjusted gross income below specified amounts and expanding the class of dependents for whom the taxpayer may claim a credit for insurance coverage. The act sunsets the credit effective January 1, 2013. The credit is designed to reduce state Medicaid costs for long-term care by encouraging more individuals to obtain long-term care insurance. In the absence of data indicating that the credit affects taxpayer behavior, there is a question as to whether the credit merely subsidizes expenditures that taxpayers would have made anyway, yielding no benefit to the state.

Adoption Tax Credit

Section 31.6 of S.L. 2007-323 enacts new G.S. 105-151.32 to allow an individual income tax credit equal to 50 percent of the amount of the federal adoption tax credit, effective beginning with the 2007 tax year and sunset beginning with the 2013 tax year. Section 23 of the Internal Revenue Code provides a tax credit for adoption fees, court costs, attorney fees, traveling expenses, and other expenses directly related to legally adopting an eligible child. The credit amount is subject to dollar limits and income limits.

Work Opportunity Tax Credit

Effective beginning with the 2007 tax year, Section 31.21 of S.L. 2007-323 enacts new G.S. 105-129.16G, allowing taxpayers who are eligible for the federal work opportunity tax credit to take a state credit equal to 6 percent of the amount of the federal credit. There is no sunset on the credit. The federal work opportunity credit provides employers an incentive to hire individuals from targeted groups that have a particularly high unemployment rate or other special employment needs. The credit can be as much as 40 percent of the "qualified first year wages." Targeted groups include the following, and the employee must also meet additional conditions to qualify:

- Recipients of assistance under temporary assistance for needy families.
- Veterans.
- Ex-felons.
- High-risk youth.
- Individuals referred for vocational rehabilitation.
- Summer youth employees.
- Food stamp recipients.
- Supplemental Security Income (SSI) recipients.

Conservation Tax Credit

Effective beginning with the 2007 tax year, S.L. 2007-309 (H 463) amends the 25 percent income tax credit for donations of conservation real property in G.S. 105-130.34 (corporate income tax) and G.S. 105-151.12 (individual income tax) to specify that the corporate tax credit applies to Subchapter C corporations and the individual tax credit applies to individuals and pass-through entities (Subchapter S corporations, partnerships, and limited liability companies). The act increases the maximum annual credit for pass-through entities from $250,000 to $500,000. The maximum annual credit remains at $500,000 for corporations and $250,000 for individuals, although the act specifies that a married couple filing a joint return may claim $500,000. The corporate and individual maximums apply whether the taxpayer made the donations directly or received the credit from a pass-through entity. If the maximum prevents the owner of a pass-through entity from taking the entire credit, the credit may not be reallocated among the other owners.

S.L. 2007-309 replaces the catch-all purpose for which the credit was allowed, *other similar land conservation purposes,* with specific, itemized conservation purposes, including farmland conservation and historic landscape conservation. The act requires the taxpayer to either provide an approved appraisal report of the value of the property or use the county appraisal to determine the value.

Historic Rehabilitation Tax Credit

Since 1994 North Carolina tax law has allowed income tax credits for the rehabilitation of historic buildings. Currently, a taxpayer may claim either 20 percent of rehabilitation expenditures that qualify for a companion federal credit or 30 percent of eligible rehabilitation expenditures that do not qualify for the federal credit. The state credits may be used by a pass-through entity so that the tax benefits are allocated directly to and used by the entity's owners, who report the income and credits as owners on their own income tax returns. For most state tax credits, a pass-through entity is required to allocate the credit among its owners in the same proportion that other items, such as the federal rehabilitation credit, are allocated under the Internal Revenue Code. The 20 percent rehabilitation tax credit provides for the separate sale of the credit, however, by allowing a pass-through entity to allocate the tax credit among its owners at its discretion as long as each owner's adjusted basis is at least 40 percent of the amount of credit allocated to that owner. This provision was set to expire January 1, 2008. S.L. 2007-461 (H 1259) removes the sunset, making the allocation provision permanent.

Reform Tax Appeals

S.L. 2007-491 (S 242) substantially revises the process for resolving disputes between taxpayers and the Department of Revenue.[1] The sweeping changes of the act will affect relatively few taxpayers, however, because most taxpayers never contest a tax matter, and fewer than 100

1. The act does not affect property tax procedures or class action cases.

each year proceed to a hearing or to court. Under prior law, the tax appeal procedure differed based on whether the dispute started as a refund claim or a proposed assessment, and it also differed based on whether a refund claim asserted that the tax was unconstitutional or merely incorrect. The statutes were confusing and did not describe all of the informal procedures available for resolving tax disputes. Effective January 1, 2008, S.L. 2007-491 provides a clear and comprehensive tax appeal system that is unified for tax assessments and refund claims.

Under the new procedures, a tax dispute is first negotiated informally within the Department of Revenue. The act extends from thirty to forty-five days the time the taxpayer has to request this informal pre-hearing review process. If the process does not resolve the issue, the taxpayer is not required to pay the tax in order to seek further review. The taxpayer may pursue the case using the Administrative Procedure Act's contested case hearing procedure before a neutral administrative law judge. Under prior law, the Department of Revenue was both a party and the decision maker at the administrative level; the taxpayer was required to pay the tax before seeking review in an impartial forum.

Contested case procedures for tax disputes are confidential until final. The judge's decision in a contested case is returned to the Department of Revenue for final review. The taxpayer may appeal an adverse decision to superior court, but only after paying the tax. Complex cases may be handled by the business court. The act requires taxpayers to follow these levels of review; unlike under prior law, the taxpayer cannot bypass the administrative process and take the dispute directly to court.

Miscellaneous

Internal Revenue Code Reference Update

North Carolina's tax law tracks many provisions of the federal Internal Revenue Code by reference to the code.[2] The General Assembly determines each year whether to update its reference to the Internal Revenue Code.[3] Updating the Internal Revenue Code reference makes recent amendments to the code applicable to the state to the extent that state law tracks federal law. The General Assembly's decision on whether to conform to federal changes is based on the fiscal, practical, and policy implications of the federal changes and is normally enacted in the following year, rather than in the same year the federal changes are made. Section 31.1 of S.L. 2007-323 updates the reference date to the code from January 1, 2006, to January 1, 2007. Updating the reference date to January 1, 2007, incorporates the federal changes to the code enacted during 2006. As required by the North Carolina Constitution, the act delays until January 1, 2007, the incorporation of any federal changes that would increase North Carolina taxable income retroactively for an earlier tax year.

Five major pieces of federal legislation amending the Internal Revenue Code became law in 2006: the Deficit Reduction Act of 2005 (P.L. 109-71); the Tax Increase Prevention and Reconciliation Act of 2005 (P.L. 109-222); the Heroes Earned Retirement Opportunities Act (P.L. 109-227); the Pension Protection Act of 2006 (P.L. 109-280); and the Tax Relief and Health Care Act of 2006 (P.L. 109-432). The tax changes made by the Deficit Reduction Act of 2005 have

2. North Carolina first began referencing the Internal Revenue Code in 1967, the year it changed its taxation of corporate income to a percentage of federal taxable income.

3. The North Carolina Constitution imposes an obstacle to a statute that automatically adopts any changes in federal tax law. Article V, Section 2(1) of the constitution provides in pertinent part that the "power of taxation . . . shall never be surrendered, suspended, or contracted away." Relying on this provision, the North Carolina court decisions on delegation of legislative power to administrative agencies, and an analysis of the few federal cases on this issue, the Attorney General's Office concluded in a memorandum issued in 1977 to the director of the Tax Research Division of the Department of Revenue that a "statute which adopts by reference future amendments to the Internal Revenue Code would . . . be invalidated as an unconstitutional delegation of legislative power."

little or no impact on North Carolina taxes. The remaining four federal acts, however, made numerous changes that will affect North Carolina taxes for individuals, businesses, and other entities. These changes are described in detail in *2007 Finance Law Changes,* written by the legislature's tax staff and available on the Legislative Publications page of the General Assembly's website at www.ncleg.net. Among the most notable are

- Extending until 2008 the sunset on above-the-line deductions for higher education expenses.
- Extending until 2008 the sunset on above-the-line deductions for qualified expenses of elementary and secondary school teachers.
- Extending until 2009 the sunset on deductions for energy efficient commercial buildings.
- Extending until 2010 the sunset on enhanced small business expensing thresholds.
- Expanding to all minors under eighteen the "kiddie tax" on unearned income.
- Expanding the charitable deductions for contributions of food inventories and book inventories.
- Prohibiting a taxpayer from claiming a deduction for the fair market value of charitable donations of clothing and household items unless the items are in "good" or better used condition.
- Increasing the deduction for donations of conservation easements, and further increasing the deduction if the donation is made by a farmer or rancher for agricultural use.
- Allowing an individual over 70½ years old to distribute up to $100,000 a year from an IRA to charitable institutions without recognizing the income.
- Excluding up to $3,000 of otherwise taxable distributions from a government pension plan of a retired public safety officer when the money is used to pay for health insurance premiums.
- Allowing members of the Armed Forces serving in a combat zone to make contributions to retirement plans, effective retroactively to 2004.
- Removing the income limit for converting a traditional IRA to a Roth IRA, beginning in 2010.
- Increasing the deduction limits for employer contributions to defined benefit plans.

Cigarette and Tobacco Products Taxes

S.L. 2007-435 (H 1460) amends G.S. 105-113.35(d) to provide that if permission to be relieved of paying the tax on tobacco products is granted to a tobacco products manufacturer (that is not also a retailer), the permission also applies to an integrated wholesale dealer that is an affiliate of the manufacturer. If a cigarette manufacturer granted permission to be relieved of paying the cigarette excise tax is also a wholesaler of tobacco products other than cigarettes, then the manufacturer's permission also applies to the tax imposed on tobacco products other than cigarettes.

Gross Premiums Tax

Effective January 1, 2008, S.L. 2007-250 (S 238) reduces the tax on gross premiums on insurance contracts for property coverage from 0.85 to 0.74 percent. This act is discussed in detail in Chapter 16, "Local Finance."

Solid Waste Disposal Tax

S.L. 2007-550 (S 1492) imposes a $2-per-ton statewide excise tax on the disposal of solid waste. This act is discussed in detail in Chapter 16, "Local Finance."

Tax Incentives

S.L. 2007-422 (H 1598), which extends the sunset on the qualified business tax credits, is discussed in Chapter 8, "Economic and Community Development." Chapter 8 also covers the economic incentive tax breaks enacted in the 2007 appropriations act for the following industries: software publishing, research and development, renewable fuel production, aircraft parts manufacturing, medical and testing laboratory analytical services, datacenter hosting and data processing services, and railroad intermodal facilities.

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