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Legislative Survey

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# Legislative Survey

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A. Emergency Appropriation

In an attempt to prepare the state for the possible costs of the "Year 2000 Problem", the legislature created an emergency appropriation. Recognizing the need to make as many state systems as possible Y2K compliant and the projected costs due to systems that will not operate properly at the turn of the century, the Act designates over twenty million dollars to the Department of Commerce from the General Fund to cover the costs of the year 2000 conversion. In addition, funds have been diverted to the Department of Commerce from various other agencies to cover the costs of year 2000 conversions.

B. Feasibility of State Construction Projects

As part of this feasibility act, all requests for building appropriations larger than one hundred thousand dollars must have statement of needs certified as feasible. A statement of needs is feasible if it is sufficiently defined in scope so as to reasonably ensure that the project may be completed with the amount of funds requested. This act applies to departments and agencies requesting state aid.

C. Building Code Council

Membership on the Building Code Council appointed by the Governor has been increased from fifteen to seventeen. A second architect and a general contractor specializing in coastal residential construction are the additional appointees. Further changes include a provision requiring the council to request the Office of State Budget and Management to prepare a fiscal note for a proposed Code change that increases the cost of residential housing by eighty dollars or more per housing unit.

D. Privilege License and Excise Taxes

License taxes are now annual taxes due by July 1 of each year. The taxes are imposed for the privilege of engaging in specified activities that require licensing.

Several of the changes brought by the act pertain to the licensed activities of amusements, circuses and other traveling shows. Owners of these amusements are no longer required to pay a fifty dollar annual license tax, but the three per cent tax on gross receipts derived from admission charges was retained. In addition, a one percent tax is imposed on the gross receipts of owners and operators of motion picture shows. However, an exemption is created for the gross receipts of motion pictures promoted and managed by a center for the performing and visual arts.

Other changes were made to the licensing fees for attorneys and other professionals. Morticians have been added to the list of professions requiring a fifty dollar license fee. Moreover, persons who are seventy-five years or older, persons who practice healing through prayer or spiritual means without fee and persons who are legally blind are now exempted from this fee in every profession.

Several of the tax rates on alcoholic beverages have been changed through the act. The excise tax on beer has been raised from forty-eight cents per gallon to over fifty-three cents per gallon, without regard to the size of the container holding the beer. Also of significance is an across the board raise on permit fees for alcoholic beverages. With few exceptions, the application fees for alcoholic beverage permits have doubled.

E. Use of Purchase Financing by Metropolitan Sewerage Districts

Under Act 117 of 1998, Metropolitan Sewerage Districts and certain Sanitary Districts have been added to the definition of the
term “unit of local government.” In addition, the population requirement for local school administrative units has been removed, allowing all such units to qualify as units of local government. These changes will allow the use of purchase financing by these units to the same extent purchase financing is used by other units of local government.

F. Conflicts of Interest in Fire Inspections by Firefighters

Firefighters who perform some fire inspections as a secondary responsibility of their employment as a firefighter are exempt from the general rule prohibiting inspections by persons with a financial interest in the site inspected. However, no firefighter may inspect work done or materials supplied by the firefighter.

G. State Employee Workplace Harassment Grievances

Under this amendment to the State Personnel Act, harassment grievances are placed on a track similar to claims of discrimination. State employees having grievances arising out of their employment who allege unlawful harassment due to the employee's age, sex, race, color, national origin, religion, creed or handicapping condition must submit a written complaint to the employee's department or agency. The agency has sixty days within which to take remedial action. Only after the expiration of the sixty days may an employee appeal directly to the State Personnel Commission. These rules apply whether the harassment is based on a hostile work environment, quid pro quo, or retaliation for opposition to harassment.

Nathan J. Taylor

H. Municipal Annexation Laws

In September of 1998, the General Assembly made several amendments and additions to the laws concerning annexation and municipal incorporation. A section was added to Article 20 of

22. Id.
Chapter 120, N.C. GEN. STAT. section 120-169.1. This new section adds criteria for the Joint Legislative Commission to consider when reviewing proposed incorporation.\(^{28}\) This added criteria requires that a positive recommendation can not be given unless a plan is submitted for providing a reasonable level of municipal services to the area. Such plan for incorporation must include at least two services from the following list: police protection; fire protection; garbage and refuse collection and disposal; water distribution; sewer collection and disposal; street maintenance, construction, or right of way acquisition; street lighting; or adoption of citywide planning and zoning.\(^{29}\)

Section 4 of this Act amended N.C. GEN. STAT. section 160A-35 dealing with the required prerequisites to annexation for cities of less than 5,000.\(^{30}\) The General Assembly modified the requirement of the extension of water mains and sewer lines to the proposed annexation area. The act adds language applying to situations where installation of sewer is not economically feasible, and allowing the municipality the ability to provide septic system maintenance until sewer can be provided.\(^{31}\) The act also adds an additional prerequisite to annexation which requires a statement showing how the proposed annexation the city's finances.\(^{32}\) This statement must be filed thirty days before the public informational meeting.\(^{33}\) Identical amendments were made to N.C. GEN. STAT. section 160A-48, which applies to annexation by cities of greater than 5,000, in Section 11 of this Session Law.\(^{34}\)

Section 6 of this act amends N.C. GEN. STAT. section 160A-36, which deals with the character of the area to be annexed by a city of less than 5,000.\(^{35}\) The amendments clarify the required urban purposes for which the annexed area must be developed.\(^{36}\) The amendments also changes the method for determining boundaries.\(^{37}\) The previous statute allowed the use of natural topographic features such as ridge lines or streams as boundaries.\(^{38}\)

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The statute as amended states that the municipality shall use recorded property lines and streets as boundaries. 39

Section 14 of this Session Law makes clarifications to the urban purposes for which an area to be annexed must be developed by amending N.C. GEN. STAT. section 160A-48 which applies to the annexation by cities of greater than 5,000. 40

The North Carolina General Assembly added a requirement that a municipality hold a public informational meeting in addition to the public hearing requirements of N.C. GEN. STAT. section 160A-37 (applying to cities of < 5,000) 41 and N.C. GEN. STAT. section 160A-49 (applying to cities > 5,000). 42 This public informational meeting must be held not less than forty-five and not more than fifty-five days after the resolution of intent to consider annexation. 43 When notice is given of the informational meeting and the public hearing, the amendments require an explanation of an owner's rights along with the other required information. 44 At the public information hearing, a representative of the municipality must explain the report and all persons owning property or residing in the area and all residents of the municipality must be given an opportunity to ask questions regarding the annexation. 45

The General Assembly also added a provision which states that if a city fails to deliver police or fire protection or solid waste or street maintenance within sixty days after the effective date of annexation, the owner of the property may petition for the abatement of taxes paid to the city as of the end of the sixty day period. 46

The General Assembly, in Sections seven and fifteen of this act, amended N.C. GEN. STAT. section 160A-37 and section 160A-49 adding exceptions to the effective date of the annexation. 47 The exception created by the amendments of these statutes deals with property which is agricultural, horticultural or forest land on the effective date of the annexation and which is subject to tax at a present-use value appraisal. 48 For such property, the annexation

46. § 7, 1998 N.C. SESS. LAWS 150.
shall become effective only for the purpose of city boundaries and for exercise of the city's authority pursuant to Article 19 of this Chapter. For all other purposes, the annexation is effective for this property on the last day of the month in which the tract of land becomes ineligible for classification of present-use value appraisal. Until such time, the land is not subject to taxation by the city nor is it entitled to services provided by the city.

Section 10 and section 18 of this act, amending N.C. Gen. Stat. section 160A-38 and N.C. Gen. Stat. section 160A-50, give a property owner within the annexed territory sixty days rather than the previous thirty days to appeal to the superior court if they believe that they will suffer material injury by reason of the failure of the municipal governing board to comply with the required procedures. The time for filing such petition on the municipality is also amended from five days to ten days. The amendments to these statutes also allow the court as one of the possible remedies, to find the ordinance null and void if it can not be corrected on remand. Another section was added to allow parties that agree to a settlement to present the settlement to the court and upon the court's approval the settlement will be binding on all parties.

G. Underground Petroleum Storage Tanks

Section one of this law allows a landowner who meets certain requirements to elect to have the Commercial Fund or the Non-commercial Fund pay the cost of obtaining the additional information needed by the Commission to assess the risk to human health and the environment posed by a discharge or release of petroleum underground storage tank. The section sets out the certain circumstances where this election may be made.

Section two adds a subsection to N.C. Gen. Stat. section 143-215.94B which deals with the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund. The added section

makes the connection of a third party to public water systems, where such would reduce the risk to public health and environment, a part of the definition of the cleanup of environmental damage thus allowing the Department to pay for such connection out of the Commercial Fund.  

Section three amends the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund created by N.C. GEN. STAT. section 143-215.94D. This amendment makes the same extension of the definition of the cleanup of environmental damage to thus allow, under certain circumstances, the cost of connection of a third party to public water systems allowable to be paid from the Noncommercial Fund.

Section five amends the rights and obligations of owners as set out in N.C. GEN. STAT. section 143-215.94E of the Leaking Petroleum Underground Storage Tank Cleanup requirements. This amendment allows the Commission to require an owner to obtain approval from the Department before proceeding with any task which may result in cost which are eligible for reimbursement under the previously amended sections.

Section eight further amends the rights and obligations of owners under the Leaking Petroleum Underwater Storage Tank Cleanup provisions. The additional section amends the reporting requirements for spills associated with a petroleum underground storage tanks, requiring that a spill of greater than twenty-five gallons be immediately cleaned up, and reported to the Department within twenty-four hours. It requires that a spill of less than twenty-five gallons be immediately cleaned up, but that where it cannot be cleaned up in twenty-four hours, it should be reported to the Department.

The General Assembly limited N.C. GEN. STAT. section 143-215.94T which allows for the adoption and implementation of regulatory programs for underground storage tanks. The limitation states that any rules adopted that only apply to commercial tanks shall not apply to any farm or residential tanks of 1,100 gallons or less used to store motor fuel for noncommercial purposes. Also, these rules shall apply to tanks of 1,100 gallons or less used
for storing heating oil for consumptive use when stored on the premises or stored for four or fewer households.64

H. Withdrawal and Transfer of Surface Waters

Under Article 21, Water and Air Resources, the General Assembly amended N.C. GEN. STAT. section 143-211 by declaring that the public policy of the State is to maintain, protect, and enhance water quality within the State and that the impact from transfers from source river basin shall not violate the antidegradation policy.65

N.C. GEN. STAT. section 143-215.22H, which sets out the standards for registration of water withdrawals and transfers, was amended to require that transfers and withdrawals of one hundred thousand or more gallons be registered instead of the one million gallon threshold which previously existed.66 An additional section was also added to the statute to make it inapplicable to any transfer of water less than one million gallons per day used for acts incidental to production of agricultural products.67

N.C. GEN. STAT. section 143-215.22I which sets out the regulations of surface water transfers, was amended in several ways. One addition was the inclusion in the consideration of an application for a water transfer certificate, the cumulative effect on the source major river basin of any water transfer.68 Also, as amended the statute stipulates that in evaluating the present and future detrimental effects on the source river basin, the local water plans that effect the source major river basin shall be used to project future municipal water needs.69 The General Assembly also added a section to this statute requiring an environmental assessment to be prepared with any petition for a certificate for water transfer under this section.70 It requires the applicant to pay the cost of any additional studies required.71 An additional section was added by the to require that were any transfer, for which a certificate under this section was issued, equals eighty percent of the maximum amount authorized by the certificate, the

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64. Id.
applicant is required to submit a detailed plan of how he intends to address future foreseeable water needs.\(^\text{72}\) When the transfer equals ninety percent of the authorized amount, the applicant must begin implementation of the plan submitted.\(^\text{73}\)

\[\text{Wendy M. Caldwell}\]

### I. Fisheries Reform Act Amendments

The General Assembly amended the Fisheries Reform Act of 1997 and other related fisheries laws.\(^\text{74}\) The act recognized the traditional common law right of the public to free use and enjoyment of ocean beaches.\(^\text{75}\)

#### 1. Marine Fisheries Commission

Part I of the act relates to the Marine Fisheries Commission. The act gives the commission authority to regulate participation in fisheries “subject to a federal fishery management plan when that plan imposes a quota on the State for the harvest or landing of fish in the fishery.”\(^\text{76}\) In regulating such fisheries, the commission is authorized to issue ‘licenses to participate’ to persons who for two out of the last three years held valid licenses and met minimum catch requirements.\(^\text{77}\) Additionally, the commission is now authorized to adopt rules to comply with the federal Magnuson-Stevens Act or a fishery management plan adopted by the Atlantic States Marine Fisheries Commission.\(^\text{78}\)

The Act also makes it clear that Commission members and appointees may not benefit financially from grants issued by the Fisheries Resource Grant Program.\(^\text{79}\) The quorum of the Commission was increased from five to six members, and must include one member who was appointed in their capacity as a fisherman or fish dealer/processor and one member who was appointed as a recreational sports fisherman or sports fishing industry participant.\(^\text{80}\) If a quorum is not met, the commission chair may call

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\(^{75}\) Id.


another meeting, at which a quorum will be made with any five members. 81

2. Fisheries Management Plans

DEHNR is required to consult with regional advisory committees in preparing Fisheries Management Plans. 82 Before submitting a Fishery Management Plan to the Joint Legislative Commission on Seafood and Aquaculture or the Environmental Review Commission, the Department (DEHNR) is required to review any comments or recommendations submitted by a regional advisory committee. 83 The Marine Fisheries Commission is also required to consult with the regional advisory committees, and review any comments or suggestions they submit, prior to adopting a temporary management measure. 84 If the Marine Fisheries Commission determines that an optimal yield cannot otherwise be achieved, it may recommend that the General Assembly limit participation in a fishery. 85 Several statutory factors are provided to assist in the determination. 86

3. Shellfish Regulation

Knowingly taking shellfish from a privately leased, franchised, or deeded shellfish bottom area without written authorization from the owner is now a Class A1 misdemeanor (increased from Class 2). 87 The penalty was likewise increased for injuring, destroying, stealing, or stealing from nets, seines, buoys, pots, etc. 88

4. Commercial Fishing Licences

A person is not eligible to retain or renew a commercial fishing license if their current license is suspended, revoked, or they have violated four or more laws, rules or regulations governing the management of marine and estuarine resources within the last three years. 89 The Division of Marine Fisheries may cancel a

84. Id.
85. Id.
86. Id.
license issued on the basis of false information supplied by the applicant.\textsuperscript{90}

A person holding a SCFL (Standard Commercial Fishing License) is not authorized to take shellfish unless the SCFL is specially endorsed for shellfish or they hold a shellfish license.\textsuperscript{91} Parties assigning a SCFL must send a notarized copy to the Morehead City office of the Division of Marine Fisheries within five days of the transfer, or the assignment will expire.\textsuperscript{92} The SCFL may only be assigned one time.\textsuperscript{93} The act placed additional restrictions on the parties eligible to receive an assignment.\textsuperscript{94} A transferee, who is sixty-five or older, of a RSCFL (Retired Standard Commercial Fishing License) has the option of keeping the transferred license as a RSCFL or converting it into a SCFL.\textsuperscript{95}

Fish dealers are no longer required to demand that their suppliers present only a SCFL, RSCFL, or shellfish license, but may now demand the commercial vessel registration instead, or may record the transaction consistent with N.C. Gen. Stat. section 113-168.2\textsuperscript{96} Fish dealer licenses may now be obtained at any office of the Division of Marine Fisheries, not just at the Morehead City Office.\textsuperscript{97} Organizers of recreational fishing tournaments are not allowed to sell the fish taken in connection with the tournament to anyone other than a licensed fish dealer, unless the tournament organizer is a licensed fish dealer themselves.\textsuperscript{98}

The act makes clear that crew members working for an out of state menhaden fisherman are not required to have a menhaden license when they are under the direction of a person who has a valid license.\textsuperscript{99} The act also reinforces the position that a person may harvest shellfish without a license as long as they do not take more than personal use limits.\textsuperscript{100} The personal use limits are applicable to shellfish caught on public or private grounds.\textsuperscript{101}

\begin{footnotes}
\footnotetext{93.} Id.
\footnotetext{94.} Id.
\end{footnotes}
The Act lays out the specifics for selecting North Carolina’s representatives on the South Atlantic Fishery Management Council. The first member must be the Director of the Division of Marine Fisheries or his designee. Any other members are selected by the U.S. Secretary of Commerce from a list compiled by the N.C. Marine Fisheries Commission.

The act also establishes a SCFL Eligibility Board, which is comprised of the Secretary of DEHNR, the Director of Marine Fisheries, and the Chair of the Commission of Marine Fisheries. These named persons are allowed to appoint designees in their place. The Board is exempt from the formalities of the Administrative Procedure Act, though all decisions are appealable under the judicial provisions of the act.

5. Common Law Right to Ocean Beaches

It is made clear that nothing in the Fisheries Reform Act interferes with the common law right of the public to the “customary free use and enjoyment of the ocean beaches.” The term ‘ocean beaches’ is defined to include any “area adjacent to the ocean and ocean inlets that is subject to public trust rights.”

J. Notary Public Act

The General Assembly amended the Notary Public Act by exempting some maps from certification requirements, authorizing the Secretary of State to authorize certain documents, and giving relief to Corporations and LLCs (Limited Liability Companies) which are subject to dissolution for failing to file their annual corporate reports.

The prevention of fraud and forgery is included as a purpose of Notary Public Act. The payment of a nonrefundable twenty-five dollar fee is now statutorily required prior to obtaining a notary commission. A notary instructor is required to pay a fifty

104. Id.
107. Id.
111. § 1, 1998 N.C. Sess. Laws 228.
dollar nonrefundable fee prior to certification, which may be renewed for fifty dollars.\textsuperscript{113} Registers of Deeds, Clerks of Court, and the Director of the Notary Section are allowed to teach notary classes without meeting the requirements of the Notary Act.\textsuperscript{114} Unless their rights have been restored, convicted felons are not allowed to obtain notary commissions.\textsuperscript{115}

The Act clarifies notarization requirements - the notary's name must appear either be in the form of a readable signature or be "typed, printed, or embossed near the signature."\textsuperscript{116} The standard maximum fees a notary may charge are increased to three dollars\textsuperscript{117}

Registers of Deeds and Clerks of Court are allowed to notarize under the seals of their offices or courts.\textsuperscript{118} Their assistants and deputies are allowed to notarize, under the seal of their respective offices or courts, oaths and affirmations and verifications of proofs.\textsuperscript{119} The Registers, Clerks, and their assistants and deputies are only allowed to notarize documents in the performance of their official duties, unless they have completed the regular certification requirements.\textsuperscript{120}

The Secretary of State, or his designee, "may sign and issue a certificate of authentication for a document that has been executed or issued in this State so that it can be recognized in a foreign jurisdiction."\textsuperscript{121} Before authenticating the document, the Secretary must compare the seal and signature of the document with a copy on file in the Department of the Secretary of State (if a copy is not file, the Secretary is authorized to obtain one).\textsuperscript{122} All seals and signatures must be originals, all dates must be in chronological order, the document must be in English (or accompanied by a certified or notarized English translation), and include a statement that any copies used are true and accurate.\textsuperscript{123} The Secretary is authorized to check whether the signer of an official doc-

\begin{flushleft}
\textsuperscript{114} § 4, 1998 N.C. Sess. Laws 228.
\textsuperscript{119} § 8, 1998 N.C. Sess. Laws 228.
\textsuperscript{120} Id.
\textsuperscript{122} §16, 1998 N.C. Sess. Laws 228.
\textsuperscript{123} Id.
\end{flushleft}
ument was authorized to act under seal.\textsuperscript{124} If the Secretary believes the authentication is going to be used for an unlawful or immoral purpose, he may not issue it.\textsuperscript{125} The Secretary is authorized to request additional information in determining whether the authorization is contrary to public policy.\textsuperscript{126}

A corporation delinquent in filing any annual report for 1991-1997, may cure the deficiency by filing and paying the fee for the current annual report and paying the fees for the delinquent fees.\textsuperscript{127} Corporations that have been administratively dissolved must also file an application for reinstatement, though the filing fee is waived.\textsuperscript{128} Delinquent limited liability companies are able to receive the same curative treatment, except they are not required to pay the filing fee for the years in which they are delinquent.\textsuperscript{129}

\textit{Troy G. Crawford}

\textbf{K. Board of Transportation}

Any person who was serving on the Board of Transportation or as Secretary of Transportation on December 1, 1998 must disclose any contributions made personally by the individual or by his/her immediate family to the campaign of the Governor by whom he/she was appointed.\textsuperscript{130} Anyone appointed after that date to these positions must disclose the same information as of the date of appointment.\textsuperscript{131} This disclosure statement must be filed with the Governor or his designee and is not public record until the appointment is made public.\textsuperscript{132}

Those appointed to any of the afore mentioned positions, after January 1, 2001, must disclose any contributions acquired personally, or acquired by a political party executive committee acting on behalf of the appointee, within the past two years when they were a candidate for this or any other statewide office.\textsuperscript{133}

\begin{itemize}
\item \textsuperscript{124} \textit{Id.}
\item \textsuperscript{125} \textit{Id.}
\item \textsuperscript{126} \textit{Id.}
\item \textsuperscript{127} \textit{Id.}
\item \textsuperscript{128} \textsection{16, 1998 N.C. Sess. Laws} 228.
\item \textsuperscript{129} \textit{Id.}
\item \textsuperscript{130} \textsection{1, 1998 N.C. Sess. Laws} 169.
\item \textsuperscript{131} \textit{Id.}
\item \textsuperscript{132} \textit{Id.}
\item \textsuperscript{133} \textit{Id.}
\end{itemize}
The Board is required to adopt, by December 1, 1998, a code of ethics for themselves as well as the Secretary that includes a prohibition against taking official action when a conflict of interest or the appearance of such conflict exists. The subsection then goes on to lay out certain specific examples of when such a conflict exists, or appears to, and requires the Board to include these examples in the code which it must adopt. Next in this subsection, the Board members and the Secretary are required to file statements of economic interest and statements of associations.

The Board must now consist of nineteen members instead of the previous twenty. At least three of the members must be from a political party different from that of the appointing governor. Terms of the members of the new Board will be staggered; some starting with four year and some with two year terms, but with all of them having subsequent four year terms.

The next section of this act amends Article 1 of Chapter 136 by adding a new subsection, N.C. GEN. STAT. section 136-11.1. This new section requires that, prior to any action taken by the Board, it must request from any affected municipality of county, a written resolution expressing their views as to the proposed action. This resolution must be received within forty-five days or this chance for input will be deemed to have been waived. The Board will take the concerns expressed in the resolution into consideration, but is not bound by them.

L. State Personnel Commission

In this act, the General Assembly changed the number of members on the State Personnel Commission from seven to nine. More importantly, however, this act provides that the two new members will not be appointed by the Governor, as with the original seven, but by the General Assembly itself. The two

134. Id.
135. Id.
138. Id.
139. Id.
141. Id.
142. Id.
143. Id.
145. Id.
new members are to be attorneys who are licensed to practice in North Carolina; one of which is recommended by the Speaker of the House and the other by the President Pro Tempore of the Senate.\textsuperscript{146} The other seven members are appointed by the Governor, but his selection criteria has been reorganized. Two members must be from private business or industry with knowledge of human resource management.\textsuperscript{147} Two members must be employees of the state; one with supervisory duties and the other without, but neither may be human resource management professionals.\textsuperscript{148} Two of the seven members appointed by the Governor must be local government employees recommended by the N.C. Association of County Commissioners; one with supervisory duties and one without.\textsuperscript{149} Finally, one member must be appointed from the public at large.\textsuperscript{150}

In Section 2 of this act, the General Assembly amended N.C. GEN. STAT. section 126-4.1 by laying out the duties of the reorganized State Personnel Commission.\textsuperscript{151} These duties are to make final agency decisions in contested cases brought under Art. 3 Chapter 150B of the General Statutes, for the chair to appoint panels of four members (attempting for them to be representative of the committee as a whole) who will make recommendations as to contested cases and refer them to the full Commission.\textsuperscript{152}

\textbf{M. Information Technology Procurements}\textsuperscript{153}

The terms "Information Technology", "Solution-Based Solicitation", and "Government-Vendor Partnership" are defined in this section.\textsuperscript{154} The term "Best Value Procurement" is also defined as a contractor selection process centered around quality and involving several factors which must be considered.\textsuperscript{155} These factors include: the vendor's past performance, total cost of ownership, the evaluated probability of performing, and the evaluated technical merit of the vendor's proposal.\textsuperscript{156}

\begin{thebibliography}{9}
\bibitem{146}Id.
\bibitem{147}Id.
\bibitem{148}Id.
\bibitem{149}Id.
\bibitem{150}§ 1, 1998 N.C. SESS. LAWS 181.
\bibitem{151}§ 2, 1998 N.C. SESS. LAWS 181.
\bibitem{152}Id.
\bibitem{154}§ 1, 1998 N.C. SESS. LAWS 189.
\bibitem{155}Id.
\bibitem{156}Id.
\end{thebibliography}
The General Assembly continued in section one to lay out, quite plainly, the intent of this act, being to "enable contractors to offer and the agency to select the most appropriate solution to meet the business objectives defined in the solicitation and to keep all parties focused on the desired outcome of a procurement."\(^{157}\)

Finally, the act sums up that from now on the acquisition of Information Technology by the State will be conducted using this "Best Value Procurement" contractor selection method unless the project is deemed highly complex or the best solution to the business problem is unknown, in which case the Solution-Based Solicitation or Government-Vendor Partnership methods are authorized.\(^{158}\)

N. Credit for Probationary Employment with a Local Government \(^{159}\)

A new subsection was added to N.C. Gen. Stat. section 135-4. As of July 1, 1998, employees who are members of the Teachers' and State Employees Retirement System, who worked with a local government employer, as defined by N.C. Gen. Stat. section 128-21(11),\(^{160}\) for a probationary or waiting period, may purchase creditable service time (through an annuity-type system) that will be counted toward their Membership Retirement System Plan, provided that such former employer has now revoked the policy of having a probationary or waiting period prior to normal employment status.\(^{161}\)

O. Conveyance of Personal Property by Counties

This act amends N.C. Gen. Stat. section 160A-279(a), which grants a county the authority to convey personal property which it owns to any not for profit public or private entity which carries out a public purpose.\(^{162}\) As amended, this ability has been extended to the conveyance of automobiles.\(^{163}\) This new power of conveyance does not carry with it the condition that the automobile be used for a public purpose (as with the other conveyances of personal property), but it is conditioned upon agreement, by the

\(^{157}\) Id.

\(^{158}\) Id.


\(^{161}\) § 1, 1998 N.C. Sess. Laws 190.


receiving entity, that the automobile be subsequently given by the
dentity to a participant of the "Work First" program.164 The entity
is allowed to retain a security interest in the automobile.165

P. North Carolina Government Competition Act

This session law creates the Competition Commission which
will be composed of nine members; three appointed by the Gover-
nor, three by the Speaker of the House, and three by the President
Pro Temp. of the Senate.166 For each set of three, one is to be a
state employee and the other two are to be members of the private
sector.167 The members shall serve two year terms and all initial
appointments shall become effective July 1, 1998.168

This Commission is designed to be "a catalyst for the use of
competition to improve the delivery of State government services,
to make State government more effective and more efficient, and
to reduce the costs of government to taxpayers."169 To achieve
this goal, the Commission will set up criteria with which to mea-
sure the productivity and efficiency of State agencies and govern-
ment officials.170 The criteria will include a variety of factors but
will focus heavily on a performance cost/benefit analysis171 The
Commission will also set up reporting processes with which all
State agencies, offices and officials must comply.172

The teeth of this new legislation comes from forced competi-
tion between different State agencies as well as the private sector.
If a private entity submits a proposal for competition in regards to
a government project, the Governor, the General Assembly, or the
Commission may direct a State agency to perform a public-private
competition analysis covering the project or service.173 Also, the
Commission may solicit these competition proposals from private
entities or other State agencies.174 The Commission will then
review the competing proposals and the public-private competi-

164. Id.
165. Id.
166. Id.
167. Id.
168. Id.
169. Id.
170. Id.
171. § 15.2C, 1998 N.C. SESS. LAWS 212.
172. Id.
173. Id.
174. Id.
tion analysis, make a cost-comparison analysis, and recommend to the appointing office which entity should receive the project.\textsuperscript{175}

Q. \textit{Rural Tourism Development}

Section 15.3 of this act puts forth that \$300,000 of the funds appropriated to the Department of Commerce shall be allocated to the "Rural Tourism Development Grant Program."\textsuperscript{176} This program is to be implemented by the Department to provide grants to non profit organizations and local governments for the purpose of encouraging the development of new tourism projects and activities in rural areas of North Carolina.\textsuperscript{177} The section goes on to lay out a list of specific requirements for receiving these grants.\textsuperscript{178} No recipient can receive more than \$50,000 for the 1998-99 fiscal year.\textsuperscript{179}

R. \textit{Branded Title}

Section 27.8 of N.C. Session Law 212 deals with branded title clarification for salvage and other vehicles requiring branded titles.\textsuperscript{180} For the most part, the General Assembly simply reorganized N.C. GEN. STAT. section 20-71.3 from a continuous paragraph format into an easier to follow outline format.\textsuperscript{181} Some changes were made however. Under the amended statute, any damaged vehicle six years old or less that has undergone the preliminary inspection as required by this statute, may be retitled with an unbranded title if the rebuilder includes, with the title application, an affidavit setting forth: the parts used or replaced, the major components that were replaced, the hour of labor and the rate charged and finally the total cost of repair.\textsuperscript{182} Even with this information, an unbranded title will only be issued in the total cost of repair is not more than seventy-five percent of the vehicle's fair market value.\textsuperscript{183} Interestingly enough, in the very next section of the amended statute, the General Assembly allows any vehicle more than six years old that has been damaged by

\textsuperscript{175} Id.
\textsuperscript{176} § 15.3, 1998 N.C. Sess. Laws 212.
\textsuperscript{177} Id.
\textsuperscript{178} Id.
\textsuperscript{179} Id.
\textsuperscript{180} § 27.8, 1998 N.C. Sess. Laws 212.
\textsuperscript{181} Id.
\textsuperscript{182} Id.
\textsuperscript{183} Id.
collision to receive the same unbranded title without going through the preliminary inspection, as long as this same type of affidavit is sent along with the title application.\textsuperscript{184} The section goes on to add that these affidavits will be maintained by the DMV and made available for review by those researching a vehicle's salvage and repair history.\textsuperscript{185}

\textbf{S. Salary Adjustment for DMV Officers}

Section 27.9 of this act is good news for enforcement officers of the DMV. Of the money appropriated to the Department of Transportation, up to $3,390,708 may be used to adjust the salaries of these enforcement officers.\textsuperscript{186} The adjustments are to be based on several factors including: employee salary, position grade, position class title, and number of creditable years of sworn service.\textsuperscript{187} Unfortunately for those officers whose salary is already at the top of his pay grade, the General Assembly says that they cannot get an adjustment.\textsuperscript{188}

\textbf{T. Local Government Commission Approval of Financing Arrangements}

In this act, the General Assembly amended Art. 8 of Chapter 159 of the General Statutes to cover not only financing agreements, but "other financing arrangements" as well.\textsuperscript{189} This act defines "other financing arrangements" to be agreements to incur indebtedness or any agreement similar to that, entered into by the local governmental unit or by any third party, on behalf of, the unit.\textsuperscript{190} Under this act, in order for a local governmental unit to enter into such an arrangement, approval must be given by the Local Government Commission.\textsuperscript{191} The only exceptions to this approval requirement are (1) if a law specifically requires Commission approval of the arrangement or (2) if the entry into the arrangement is not subject to review or specifically exempted under various other statutes.\textsuperscript{192}

\begin{itemize}
\item \textsuperscript{184} Id.
\item \textsuperscript{185} Id.
\item \textsuperscript{186} § 27.9, 1998 N.C. SESS. LAWS 212.
\item \textsuperscript{187} Id.
\item \textsuperscript{188} Id.
\item \textsuperscript{189} § 1, 1998 N.C. SESS. LAWS 222.
\item \textsuperscript{190} § 2, 1998 N.C. SESS. LAWS 222.
\item \textsuperscript{191} Id.
\item \textsuperscript{192} Id.
\end{itemize}
The statute also delineates certain factors which are to be considered when an arrangement of this nature is put forth for approval; examples include: (1) whether the undertaking is necessary or expedient, (2) the outstanding debt of the entity or unit wishing to enter into the financing agreement, (3) the entity or unit’s debt management procedures and policies.\(^{193}\) Other factors can be found in the act itself.\(^{194}\) To facilitate this process, the Secretary may require that the unit submit any documentation surrounding the arrangement to the Commission.\(^{195}\) For approval, the Commission must find that the indebtedness to be incurred is not excessive for its purpose, the entity has demonstrated financial responsibility and that the particular sale of obligations in question will not have any adverse effect upon any other scheduled or anticipated State sale of obligations.\(^{196}\) This act is not retroactive and becomes effective March 1, 1999.\(^{197}\)

R. Small Family Farm Preservation Commission

This act creates the Commission for Small Family Farm Preservation, an investigative body with the primary purpose of examining the obstacles against the continuation of small family farms and finding ways to reduce these obstacles.\(^{198}\) The Commission consists of nineteen members, several from the Senate and the House, several from state universities and scholarly agencies with programs familiar with the purpose of the Commission, and finally two members will be farmers appointed by the Governor.\(^{199}\) The Commission may file an interim report in the 1999 Regular Session and its members will serve until the final report is presented to the General Assembly during the 2000 Regular Session.\(^{200}\)

_Walter W. Robinson, III._

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193. _Id._
194. _Id._
195. _Id._
CIVIL PROCEDURE

A. Civil Penalty and Forfeiture Fund

The North Carolina General Assembly passed an act requiring state agencies to deposit clear proceeds of certain civil penalties and forfeitures into the Civil Penalty and Forfeiture Fund, unless the given statute provides otherwise. The Civil Penalty and Forfeiture Fund was created by N.C. GEN. STAT. section 115C-457.1 as part of the Elementary and Secondary Education section. The fund is administered by the Office of State Budget and Management. Proceeds from the fund are payable to the County School Fund and are used exclusively for maintaining free public schools. This act does not create any new civil penalties or forfeitures; it merely amends numerous statutes that impose civil penalties or forfeitures to require the state government body collecting the penalty or forfeiture remit the clear proceeds to the Civil Penalty and Forfeiture Fund. Violations of various administrative, agricultural, corporate, environmental, health and human services, insurance, justice, labor, licensing, revenue, and utilities statutes were made subject to the provisions of the Civil Penalty and Forfeiture Fund.

Joe Downer
Don R. Wells

3. Id.
4. Id.
B. Small Claims Procedure Act

The small claims procedure was amended to clarify that the district court has authority to hear certain motions for relief.\textsuperscript{17} Although the chief district court judge may allow magistrates to hear Rule 60(b)(1) motions, the district court still retains authority to hear motions pursuant to Rule 60(b)(1) through (6) and grant relief from a judgement or order entered by a magistrate.\textsuperscript{18} This authority to vacate a judgement by a magistrate is no longer restricted to situations of mistake or excusable neglect.\textsuperscript{19} The act also authorized district court judges, who were formerly assistant district attorneys of the Thirteenth Judicial District, to perform marriage ceremonies.\textsuperscript{20}

\emph{Margaret P. Eagles}

\textsuperscript{17} Act of August 27, 1998, 1998 N.C. SESS. LAWS 120.
\textsuperscript{18} § 1, 1998 N.C. SESS. LAWS 120.
\textsuperscript{19} Id.
\textsuperscript{20} § 2, 1998 N.C. SESS. LAWS 120.
COMMERCIAL LAW

A. Electronic Commerce Act

In Act 127 of 1998, the General Assembly enacted the Electronic Commerce Act to facilitate and regulate electronic commerce with public agencies. In a transaction with a public agency, an electronic signature has the effect of a manual signature if it meets specified requirements. The public agency involved must have requested or required the electronic signature. The electronic signature must have all of the following characteristics: (1) the electronic signature is unique to the person using it; (2) the electronic signature is capable of certification; (3) the electronic signature is under the control of only the person using it; (4) the electronic signature is linked to the data in such a way that it would be invalidated if the data are changed; and (5) the electronic signature conforms to rules adopted by the Secretary of State. An electronic signature is not sufficient where a signature requires attestation by a notary public. Violations of certification of an electronic signature may result in civil penalties and/or criminal penalties.

B. Local Government Regulation of Sexually Oriented Businesses

The General Assembly clarified local government authority to regulate the location and operation of sexually oriented businesses in an attempt to curtail adverse secondary effects. A city or county may regulate sexually oriented businesses through zoning regulations, licensing requirements or other appropriate local ordinances. While a local government considers such regulation,
the city or county may enact moratoria on new sexually oriented businesses or expansions of existing businesses.14

Jeanette Brooks

C. Contracts for Shared Appreciation Act

Article 21 of Chapter 53 of the General Statutes was amended by adding a new section concerning contracts for shared appreciation or shared value.15 This amendment allows for lenders and borrowers to agree what the lenders may receive.16 The act also amended the prohibited acts of reverse mortgage lenders by disallowing contracting for, or receiving, appreciation or shared value, except as provided in the new section described above.17 Closing a reverse mortgage without receiving certification that the borrower has received counseling on the advisability of a reverse mortgage loan, the various types of reverse mortgage loans, the potential tax consequences and the availability of other financial options and resources for the borrower is also prohibited.18 The lender should be guaranteed or insured by federal government.19 The lender needs to provide that the borrower receives extra economic benefits for paying the shared appreciation including potentially larger monthly payments or a larger line of credit.20 The borrower must receive, at least fourteen days before closing, a disclosure explaining the additional costs and benefits of shared appreciation with a comparison of a comparable loan without the shared appreciation.21

D. North Carolina Financial Privacy Act

In Act 119 of 1998, the North Carolina General Assembly amended the North Carolina Financial Privacy Act to permit disclosure of the existence of, and pertinent information about, a bank account of any customer to a government authority, who makes a written request for the information.22 The financial insti-
tution is not forbidden to notify a government authority that it may have information pertaining to a possible violation of a law or regulation.\textsuperscript{23} The act also amended the requirements of the maximum loan rate on variable rate loans in the Contract Rates and Fees statute.\textsuperscript{24} It allows the maximum rate of interest permitted on variable rate loans to be the greater of the rates announced by the Commissioner of Banks either in the preceding calendar month or the calendar month preceding that in which the rate is varied or adjusted.\textsuperscript{25} The act states these same maximum variable interest rates stated in the Contract Rates and Fees statute will apply to equity lines of credit.\textsuperscript{26} The act also repealed the laws governing variable rate loans on manufactured homes\textsuperscript{27} and installment rates and fees.\textsuperscript{28}

\textit{Margaret P. Eagles}

\begin{itemize}
  \item 25. § 1, 1998 N.C. Sess. Laws 119.
\end{itemize}
CRIMINAL LAW

A. Enhanced penalty for repeat offenders of crimes involving children

The General Assembly enhanced penalties for repeat offenders of child related crimes. A new section was added to the Criminal Procedure Act that provides for life imprisonment without parole for a second or subsequent conviction of a Class B1 felony if there are no mitigating circumstances and the victim is thirteen years of age or younger.¹

B. Injury to a Pregnant Woman

Structured sentencing guidelines under the Criminal Procedure Act enhanced the punishment imposed for injuring a pregnant woman in the commission of a felony, or act of domestic violence, causing miscarriage or stillbirth.² The added section provides that a person is guilty of a felony that is one class higher than the felony committed if that person, during the commission of a felony, causes injury to a pregnant woman that results in miscarriage or stillbirth and that person knows the woman to be pregnant.³ Likewise, the section also provides that a person who, during the commission of a misdemeanor that is an act of domestic violence, knowingly injures a pregnant woman that results in miscarriage or stillbirth, is guilty of a misdemeanor that is one class higher than the misdemeanor committed.⁴ However, the section has no application to acts committed by the pregnant woman herself, which result in a miscarriage or stillbirth.⁵

C. Enhanced Penalty for Drug Violations on School Property or Penal Institutions

The General Assembly sought to protect schools and penal institutions by enhancing penalties for drug violations committed on such property.⁶ The rewritten portion provides that any person who commits a Class one misdemeanor and has been previ-
ously convicted for one or more offenses under the laws of North Carolina or any laws within United States territory shall be punished as a Class one felon.\textsuperscript{7} Likewise, any person who commits a Class two misdemeanor and has prior convictions is guilty of a Class one misdemeanor.\textsuperscript{8} Furthermore, added sections provide that any person over twenty-one years of age who sells or transfers drugs on elementary or secondary school property or within 300 feet of the school property is punished as a Class E felon.\textsuperscript{9} Similar violations on the premises of penal institutions qualifies as a Class H felony.\textsuperscript{10}

\textbf{D. Criminal Penalty for Trespassing on Property Dedicated as a Safe House}

In an effort to prevent domestic violence, the North Carolina legislature extended protection to victims of domestic violence by increasing the penalty for criminal trespass upon property operated as a Safe House.\textsuperscript{11} Any person who trespasses on Safe House property is guilty of a misdemeanor if the complainant and the person charged are "living apart."\textsuperscript{12} Evidence of "living apart" includes a judicial order of separation,\textsuperscript{13} a restraining order,\textsuperscript{14} a verbal agreement that the complainant and person charged will live separately,\textsuperscript{15} and separate places of residence.\textsuperscript{16} Furthermore, the section provides that the trespasser is guilty of a Class G felony if armed with a deadly weapon.\textsuperscript{17}

\textbf{E. Capital Punishment}

Death by lethal gas was effectively abolished in North Carolina.\textsuperscript{18} Any person convicted of a criminal offense who is sentenced to death shall be executed by the administration of lethal drugs.\textsuperscript{19}

\begin{itemize}
\item \textsuperscript{7} Id.
\item \textsuperscript{8} § 17.16, 1998 N.C. Sess. Laws 212.
\item \textsuperscript{9} Id.
\item \textsuperscript{10} Id.
\item \textsuperscript{12} § 17.19, 1998 N.C. Sess. Laws 212.
\item \textsuperscript{13} Id.
\item \textsuperscript{14} Id.
\item \textsuperscript{15} Id.
\item \textsuperscript{16} Id.
\item \textsuperscript{17} Id.
\item \textsuperscript{19} § 17.22, 1998 N.C. Sess. Laws 212.
\end{itemize}
F. Crime Victims Rights Act

The 1998 North Carolina legislature created the Crime Victims Rights Act to provide victims of crimes with further protection and information regarding trial and subsequent events that may affect the victim.\footnote{20} A “victim” is defined by the Act as a person against whom there is probable cause to believe a crime was committed, however, if the victim is deceased, the next of kin is entitled to the rights granted under this Act.\footnote{21}

The Act requires the appropriate law enforcement agency to provide victims with certain information regarding the availability of medical services, compensation funds, and how to contact the District Attorney handling the case within seventy-two hours of the crime.\footnote{22} The victim is also entitled to notification within seventy-two hours of the defendant’s arrest.\footnote{23}

After the defendant’s arrest, the District Attorney must provide the victim with written material explaining his or her rights about the disposition of the case.\footnote{24} Post trial rights include notification from the District Attorney of the final disposition of the case and any rights to appeal.\footnote{25} If the defendant is convicted, the victim has the right to offer admissible evidence of the impact of the crime, which must be considered by the court or jury in sentencing the defendant.\footnote{26} Evidence may include the extent of emotional, physiological or physical injury, explanation of loss, and or request for restitution.\footnote{27}

The Act extends the victim’s rights beyond the trial by allowing the victim to elect to receive further information from the agency with custody of the defendant.\footnote{28} If desired, the victim is entitled to notification of the projected date of release,\footnote{29} inmate assignment and work-release programs available to defendant,\footnote{30} the defendant’s escape and capture,\footnote{31} actual scheduled date of

\footnote{21} § 19.4, 1998 N.C. SESS. LAWS 212.
\footnote{22} Id.
\footnote{23} Id.
\footnote{24} Id.
\footnote{25} Id.
\footnote{26} Id.
\footnote{27} § 19.4, 1998 N.C. SESS. LAWS 212.
\footnote{28} Id.
\footnote{29} Id.
\footnote{30} Id.
\footnote{31} Id.
release at least sixty days prior, and defendant's death. The victim may also request information of probation and parole hearings. In the event of commuting the sentence or pardoning the defendant's sentence, the Governor's Clemency Office must notify the victim detailing the change.

In addition to any penalty authorized by law, the court may require the defendant to make restitution to the victim or the victim's estate for any injuries or damages arising directly or proximately out of the offense committed by the defendant. In determining the amount of restitution, the Act suggests the court to consider factors such as the costs of medical services and loss of income and/or property. The court may also order the defendant to make restitution to a person other than the victim, or to any organization, corporation or association who provided assistance to the victim following the commission of the offense. The Act makes clear that any amount of restitution does not abridge the victim's right to bring a civil action against the defendant for damages arising out of the crime committed.

Gloria F. Taft

G. Notice in Bond Forfeiture Cases

Service in bond forfeiture cases is no longer required to be by certified mail. Rather service by first-class mail is now acceptable.

H. Right to Pretrial Release in Capital and Noncapital Cases

The General Assembly decided that in some situations no conditions of release could assure the appearance of some defendants. All of these situations concern instances where the accused is reasonably believed to be involved in drug trafficking. Subject to rebuttal, it shall be presumed that no release condition can assure the safety of the community nor the appearance of the defendant.

32. Id.
34. Id.
35. Id.
36. Id.
37. Id.
38. Id.
CRIMINAL LAW

accused when there is reasonable cause to believe the offense involves trafficking in a controlled substance or when a drug trafficking offense was committed while the defendant was on pre-trial release from another offense. This presumption shall also apply when the person was previously convicted of a Class A through E felony or another drug trafficking offense and where there has not been more than five years since the conviction date or the date of release from jail, whichever is later. This does not mean that the individual may never be released from jail prior to trial. Rather, it requires a judge to find reasonable assurance that the individual will appear for court and that release does not present an unreasonable risk of harm to the public.

The act also adds methods of ensuring adequate records are kept concerning criminal cases. The clerk of superior court must ensure that dispositions contain all essential information. This includes the identity of the presiding judge, attorneys for the state, and the defendant.

I. DWI Forfeiture Provisions

In 1998, the General Assembly passed several changes to laws regarding DWI offenses. Laws relating to the forfeiture of vehicles involved in impaired driving offenses were amended. Laws were passed to provide for “zero-tolerance” for commercial drivers and drivers of school or child care vehicles. Fines for DWI offenses were also increased.

In this act, the General Assembly recalculated the method for determining an individual’s blood alcohol concentration. Results are now reported to the hundredths and any result falling in between hundredths shall be rounded down to the lower number. The legislature also increased activities that would constitute the offense of DWI. First or second degree murder convictions based on impaired driving and convictions of habitually impaired driving will now be considered offenses involving impaired driving.

42. § 1, 1998 N.C. SESS. LAWS 208.
43. Id.
44. Id.
45. Id.
46. Id.
The General Assembly clarified instances where the vehicle used in the activity of impaired driving could be seized. The term "innocent party" was renamed "innocent owner" and defined more clearly. Innocent owners include individuals who did not know, nor have reason to know, that the defendant’s license was revoked. If the owner did know about the revocation, he may still be deemed innocent, if the defendant drove the vehicle without express or implied revocation. An owner who reports his vehicle stolen or agrees to prosecute for unauthorized use of the motor vehicle is also considered innocent. Individuals in the business of renting or leasing vehicles are innocent where they have no knowledge of the revocation on the driver’s license or the driver is not a listed driver on the contract. Prosecutors are responsible to notify each motor vehicle owner and lienholder that the vehicle may be subject to forfeiture. If the vehicle was involved in an accident, insurance companies shall also be notified. This does not excuse the company from paying any proceeds, but simply requires that all accident proceeds be paid to the clerk of court. Any unclaimed proceeds are turned over the county board of education. Hearings for forfeiture of vehicles not released to innocent owners shall be held not less than sixty days after the defendant failed to appear for trial.\footnote{Act of October 8, 1998, § 2, 1998 N.C. Sess. Laws 182.}

The act provides procedures for impounding vehicles and providing notification of any such impoundment. Notice to any non-operating owners and lienholders must be sent within forty-eight hours of receipt of the seizure notice by first class mail. If the vehicle was damaged, notice shall also be sent to any insurance company involved. The county board of education may negotiate settlements with the insurance company and any proceeds received shall be deposited with the clerk of court. The clerk of court shall disburse proceeds upon further court order. A magistrate must determine whether probable cause existed for the seizure and whether proper procedure for seizure occurred. Orders of seizure are valid anywhere within the state of North Carolina. However, search warrants are required to enter upon the private property of anyone other than the defendant in order to seize the vehicle. Seized vehicles are to be towed and stored pursuant to statewide or regional contracts or contracts with county boards of education. Motor vehicles may be released to nondefendant owners upon payment of all towing and storage
charges provided a bond equal to the fair market value of the vehicle is secured. This bond shall be forfeited in instances where the nondefendant fails to return the vehicle on the day of the forfeiture hearing. Owners who believe they qualify as "innocent owners" may file a pretrial petition seeking such a determination. Defendants who obtain a pretrial determination that their license was not revoked due to an impaired driving offense may also seek return of the vehicle. Where there has been a default on any obligation secured by the vehicle, lienholders may seek release of the vehicle upon payment of all towing and storage costs. The lienholder must agree to sell the vehicle and pay to the clerk of court all proceeds less any amount owed to them.51

Once ninety days have passed from the date of seizure, the county board of education may sell any vehicle having a fair market value of less than $1,500. Once towing and storage costs exceed eighty-five percent of the vehicle's fair market value, it may be sold. If the owner consents any vehicle may be sold, regardless of its value. Before any sale takes place, ten days notice must be provided to all owners and lienholders. Personal items not affixed to the vehicle may be returned if proof of ownership is provided. Once the defendant is convicted of an impaired driving offense, he becomes responsible to pay restitution to the county board of education, the owner of the vehicles, and the lienholder for any towing and storage costs.52 If the defendant is found not guilty or if the case is dismissed, the vehicle and any insurance proceeds shall be released to the vehicle owner.53

This act also sets forth provisions governing responsibilities of the Division of Motor Vehicles. Whenever a vehicle is seized, a report shall be issued to the Division containing the name, address, and license number of the defendant driver as well as the vehicle owner. The make, model, year, vehicle identification number, state of registration and plate number shall also be furnished when it is known.54 Once notification of conviction for impaired driving is received, the Division shall revoke the registration of all vehicles registered in the convicted person's name. No further registrations shall be issued until restoration of the license occurs. When the owner of the vehicle is different from the defendant, the owner's registration shall be revoked and not

restored until the convicted operator's license has been restored. This provision does not apply to innocent owners.\textsuperscript{55}

In order to further its zero tolerance program for commercial drivers, the General Assembly added to and modified its zero tolerance provisions. The section was amended to apply to drivers of commercial motor vehicles with alcohol levels between 0.00 and 0.04, and school bus, school activity buses and child care vehicles with alcohol levels above 0.00\textsuperscript{56}. This is an implied-consent provision punishable by as a class three misdemeanor and a penalty of $100.00.\textsuperscript{57} Implied-consent provisions were amended to provide that drivers' licenses be revoked if any person, under the age of twenty-one, fully refuses to submit to chemical analysis and has any alcohol concentration.\textsuperscript{58} The provision was also amended to include child care vehicles which are defined as those vehicles being under the direction and control of a child care facility and driven by an owner, employee or agent for the primary purpose of transporting children to and from the child care facility or a child care event.\textsuperscript{59} Now, an individual's license may be revoked for second or subsequent convictions of driving a commercial motor vehicle after consuming or for conviction or driving a school bus, activity bus or child care vehicle after consuming.\textsuperscript{60} A person convicted of their first offense shall be disqualified from driving for ten days. Disqualification for life occurs after a person is convicted of a third or subsequent violation or refuses to submit to a chemical test of the third time when charged within an implied-consent offense.\textsuperscript{61} Fines for DWI offenses were doubled.\textsuperscript{62}

Valeree R. Gordon

\textsuperscript{60} Act of October 8, 1998, § 18, 1998 N.C. SESS. LAWS 182.
A. Teacher Competency Assurance

Each assistance team assigned to a low-performing school shall review the team’s evaluations of certified staff members to determine if lack of knowledge contributed to the performance of any certified staff member. ¹ If a certified staff member if classified as a Category three and is found to have a general lack of knowledge, then the State Board will administer a general knowledge test at the end of the 1997-98 school year. ² During the 1998-99 school year and thereafter, either the principal of the low-performing school or an assistance team assigned to that school may recommend that a certified staff member take a general knowledge test if the staff member’s performance has been impaired by lack of general knowledge. ³ The State Board will then administer a test. ⁴ If the staff member fails to pass the test, a remediation plan must be completed. ⁵ If the staff members fail to pass the general knowledge test a second time, dismissal proceedings will follow. ⁶ The above described process does not restrict or postpone the dismissal, demotion, nonrenewal or decision to grant career status as provided in other sections. ⁷ If a staff member is dismissed after the remediation, retest process, they can request a hearing before a panel of the State Board and then to the State Board itself. ⁸

Local school administrators will review and evaluate all certified employees assigned to a school designated as low-performing which has not received an assistance team. ⁹ Regardless of low performance designation, all teachers who have not attained career status shall be observed at least three times by the principal, or designee, observed at least once by a teacher, and have at least one evaluation by the principal annually. ¹⁰ Upon receipt of an unsatisfactory evaluation, the evaluator must recommend to

³. Id.
⁴. Id.
⁵. Id.
⁶. Id.
⁷. Id.
the superintendent an action plan to be completed by the employee, that the employee be dismissed, or that the employee be demoted. The local board of education must assign an assessment team to each low-performing school which has not received an assistance team.

B. **Removal of School Administrators Exam Fee**

There is an application fee, not to exceed fifty dollars, which is a prerequisite to taking the North Carolina Public School Administrator Exam. The additional exam fee, which was previously required has been eliminated.

C. **Identification of Low-Performing Schools**

Upon designation of a school as low-performing, the superintendent must submit a plan for addressing the school's needs to the local school board which ultimately votes on the plan and submits it to the State Board. The superintendent must also make recommendations regarding the principal of any low-performing school to the local board which submits its final decision to the State Board. The State Board may dismiss the principal of a low-performing school after a series of unsatisfactory evaluations, failures to improve after the assignment of assistance teams, and after a series of hearings.

D. **Sale, Exchange, or Lease of Property for Specific Educational Purposes**

If real or personal property is donated to a community college to support a specific educational purpose, the board of trustees may use the proceeds from the sale or lease of property according to the terms of the donation.

11. *Id.*
12. *Id.*
E. **Lease Purchase and Installment Purchase Contracts for Equipment**

A community college may use lease purchase or installment purchase contracts to purchase equipment.\(^{19}\) These contracts may be subject to approval by the State Board of Community Colleges as well as the local tax-levying authority.\(^{20}\)

F. **Private Educational Facilities Finance Act**

Institutions for elementary and secondary education have been brought under the Act in order to improve student learning, increase learning opportunities, encourage new and innovative methods of teaching, increase educational opportunities, and to lower the overall cost of education.\(^{21}\) This legislation empowers the North Carolina Educational Facilities Finance Agency to effectuate the purposes of the Act by, among other things, making loans, arranging for financing, suing or being sued, employing fiscal consultants, and borrowing money.\(^{22}\)

G. **Implementation of Recommendations of the Legislative Commission on Public Schools**

The primary goal of the ABC's program is to improve student performance by implementing a system of accountability, recognition, assistance, and intervention to hold each participating school and its personnel accountable for improving performance.\(^{23}\) The State Board sets annual performance goals for each of the participating schools.\(^{24}\) Financial awards are available for schools which exceed the performance goals.\(^{25}\) If a school fails to meet its performance goals, the school is designated as low-performing and must then complete an improvement plan.\(^{26}\) The State Board may assign an assistance team to any low-performing school in order to improve performance.\(^{27}\) The superintendent of low-performing schools as well as the personnel of the low-performing schools may be subject to dismissal or other disciplinary meas-

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\(^{25}\) Id.
\(^{26}\) Id.
\(^{27}\) Id.
ures. Certified personnel and superintendents of low-performing schools may also be subject to a series of evaluations and plans for improvement.

Each school shall adopt a school calendar that includes a minimum of 180 days and 1,000 hours of instruction covering at least nine months.

Each school participating in the ABC's plan must develop and implement an improvement plan that takes into account its performance goals. Each school must also develop and implement a technology plan.

Applicants for a residential school personnel position are subject to a criminal history check. Certified personnel of low-performing schools assigned an assistance team are subject to dismissal by the Secretary of the Department of Health and Human Services upon two consecutive evaluations indicating inadequate performance. Certified personnel of low-performing schools are also subject to dismissal upon an assistance team recommendation of dismissal or demolition based on one or more grounds.

Lynwood P. Evans

H. Single-Prime and Multi-Prime Bidding on Local School Construction Projects.

Local school administrative units may now use either single-prime, multi-prime, or a combination of the two types of bids in granting contracts to builders on school projects which cost over $500,000. Administrators may consider any factor they deem appropriate in deciding which type of bidding scheme to employ. The job, however, must be granted to the lowest bidder considering the quality, performance, and time specified for completion.

28. Id.
29. Id.
31. Id.
32. Id.
33. Id.
38. Id.
Once a bidding process is chosen, it is regulated. The school administrative unit may not open bids under the single-prime system unless it receives at least three competitive bids from reputable and qualified contractors or at least one bid from a general contractor under the multi-bid system. The multi-prime bids must be submitted three hours prior to the deadline for the single-prime bids. A subcontractor may not make a higher bid to a general contractor under the multi-prime system than he makes directly to the school as a single-prime bid. A general contractors bid should contain a breakdown of the sub-contractor and their bids.

These new regulations apply to bids made on or after September 11, 1998. If the requisite number of bids have not been received after two attempts to solicit bids via advertising, the administrative unit may give the contract to the lowest responsible bidder that did submit a bid.

I. Teacher Certification Fees

New fees are now in place for teacher certification and administrative changes to certificates. For copies, demographic, or administrative changes the charge is thirty dollars. The initial application for in-state graduate, renewals, extensions, and upgrades are now fifty-five dollars. Finally, the initial application for out-of-state certification and all other applications are eighty-five dollars. All fees are to be paid when submitted.

J. Purchasing Flexibility in All Public Schools

The General Assembly, in order to increase purchasing flexibility for public schools, has repealed those sections of N.C. Gen. Stat. section 115c-522.1 which refer to the development and functioning of a pilot program to make the law now applicable to all public schools. New conditions on this purchasing power include

39. Id.
40. Id.
41. Id.
42. Id.
43. § 1, 1998 N.C. Sess. Laws 137.
46. Id.
47. Id.
48. Id.
that items must be "the same or substantially similar in quality, service, and performance" as those provided under state contracts.\(^5\) They must also notify the Department of Administration of these purchases and keep records of the cost savings due to this new legislation.\(^5\) This program does not apply to student transportation expenses.\(^5\)

K. Responsibilities of School Superintendents, the ABC's Program, and Competency Testing.

The main purpose of Session Law 220 is to clarify or make only minor changes. For example, the President Pro Tempore of the Senate appoints one of the co-chairs on the School Technology Commission. The superintendent or his/her designee replaces principals as to the responsibility over assignment, control, and enforcement of school buses, drivers, monitors, etc.\(^5\)

The superintendent may also suspend students for bringing weapons to school, but must keep demographic records on those suspended more than ten days.\(^5\) Upon a principal's recommendation a superintendent may also place a student in an alternative education program.\(^5\)

Under the ABC's program a school must make awards to personnel no later than the second regular teacher payroll after receiving the funds.\(^5\) However, local boards must also implement action plans for any certified employee in a low performing school who receives an unsatisfactory rating.\(^5\) Competency testing will be shifted from the tenth to the ninth grade. Those students who fail to pass the eighth grade test will be given remedial help with an eye toward a successful ninth grade test score.\(^5\)

Minor cosmetic changes also appear regarding transferring student records, state board requirements, and exemptions from state board certification.\(^5\)

\(^{50}\) § 1, 1998 N.C. Sess. Laws 194.
\(^{51}\) Id.
\(^{52}\) Id.
\(^{54}\) § 1, 1998 N.C. Sess. Laws 220.
\(^{55}\) Id.
\(^{56}\) Id.
\(^{57}\) Id.
\(^{58}\) Id.
\(^{59}\) Id.
L. Hiring of Uncertified Teachers During a Shortage.

The Generally Assembly now allows local boards of education which experience a shortage of state-certified teachers to hire for up to one year those who have not met the state's requirements.\textsuperscript{60} The employee does, however, have to fulfill certain requirements to teach under a provisional certification. These requirements include having a bachelors degree, relevant full time teaching experience of at least one year, or out-of-state certification.\textsuperscript{61} The board may be required to review the teacher's competence, review his/her past students' performance, give annual evaluations, and multiple observations.\textsuperscript{62} If the teacher has no classroom experience, the board must provide a mentor teacher.\textsuperscript{63} The local board must report to the State board twice a year the number of teachers it has hired under provisional certification via (1) out-of-state certification, (2) one year of full-time experience as a professor, or (3) three years of other relevant teaching experience.\textsuperscript{64}

\textit{Carey A. McAlister}
ENVIRONMENTAL LAW

A. Environmental, Public Health and Natural Resource Program

The deadline for the Environmental Review Commission to study and issue its findings was extended to the 1999 General Assembly session. The Act also directs the Commission to review the organization, functions, and powers of the various boards and commissions having jurisdiction over environmental, public health and natural resources and determine if it would be appropriate to consolidate all into a single commission.

The Department of Health and Human Resources is directed to report to the General Assembly by February 1, 1999 on additional changes, including proposed legislation, necessary to effectuate the Act, including implementation of the recommendations of the Environmental Review Commission's report. The department is to report on any proposed changes in department boards and commissions not implemented to the Joint Legislative Commission on Governmental operations by February 1, 1999.

B. Sedimentation Pollution Act

The General Assembly adopted the recommendations of the Sedimentation Control Commission and the Environmental Review Commission. The Act requires that graded slopes left exposed will within fifteen working days or thirty calendar days of completion of any phase of grading, whichever period is shorter, be planted or otherwise provided with ground cover, devices or structures sufficient to restrain erosion. The General Assembly also increased the period that a stop-work order may be issued from a period not to exceed three days to a period not to exceed five days.

2. § 1, 1998 N.C. SESS. LAWS 76.
3. Id.
4. Id.
7. § 1, 1998 N.C. SESS. LAWS 99.
C. Resolution of Claims to Land under Navigable Waters

The time that an action may be brought under this section was extended by five years to December 31, 2006. The deadline for the Secretary to establish a plan to resolve these claims was also extended to December 31, 2003.

D. Swine Integrator Registration

Those who must register under this Act include “growers”, defined as anyone who holds a permit for animal waste management or who operates a swine farm that is subject to an operations review or an inspection. “Swine operation integrators” or “integrators” are also subject to the registration requirements. They are defined as any person, other than a grower, who provides 250 or more animals to a swine farm and who either has an ownership interest in the animals or otherwise establishes management and production standards for the permit holder for the maintenance, care, and raising of the animals. A right or option is deemed an ownership interest for purposes of the Act.

Written registration is required and must include; the name of the owner of the swine farm, the owner’s mailing address, the physical location of the farm, the swine farm facility number, a description of the animal waste management system of the farm and the name and address of the grower, if different from the owner and the name and mailing address of the integrator. If the integrator removes all the animals or terminates his relationship with the operation, he must notify the department within thirty days. If the grower ends his relationship with the integrator or enters into a relationship with a different grower he must also provide notice of the change within thirty days. The department must notify the integrator of a swine farm of all notices of deficiencies and violations of laws and rules governing the animal waste management system at any farm for which that integrator is registered with the department. These notices are to be a

11. Id.
12. Id.
14. Id.
15. Id.
matter of the public record and are subject to disclosure pursuant to Chapter 132 of the General Statutes.\textsuperscript{16}

The Act also extends the moratorium on the issuing of permits for the construction or expansion of swine farms and on lagoons and animal waste management systems for swine farms to September 1, 1999.\textsuperscript{17} Two exceptions were added to the prior established exception list. The first applies if the animal waste management system does not employ an anaerobic lagoon (which is defined in the Act) as the primary method of treatment, does not employ land application of waste except by injection into the soil or by surface application if the injection or surface application meets a list of requirements and is designed to be the subject of a research project.\textsuperscript{18} One may be issued a permit under this exception if the Environmental Management Commission determines that additional research is necessary to evaluate whether the waste treatment system will; eliminate discharge to surface and ground waters through direct discharge, seepage or runoff, substantially eliminate atmospheric emissions of ammonia, substantially eliminate the emission of odor that is detectable beyond the boundaries of the farm, substantially eliminate the release of disease-transmitting vectors and airborne pathogens and substantially eliminate nutrient and heavy metal contamination of soil and groundwater.\textsuperscript{19} The second exception has the same requirements as outlined above and can be issued if the Commission determines that the animal waste system has been in use on a swine farm with climatic conditions and soil characteristics that are similar to those that will be encountered at the proposed site of the farm for at least a year, that the system has been under evaluation for at least a year and that sufficient data exist to establish that the system will meet the legislative goals listed above.\textsuperscript{20}

E. Compliance Date for Nitrogen Discharge Limit for Certain NSW Waters

For surface waters classified as nutrient sensitive waters (NSW) on or after July 1, 1997, the Commission must establish a date by which facilities that were placed into operation prior to

\begin{itemize}
  \item \textsuperscript{16} Id.
  \item \textsuperscript{17} Id.
  \item \textsuperscript{18} Id.
  \item \textsuperscript{19} § 1, 1998 N.C. Sess. Laws 188.
  \item \textsuperscript{20} Id.
\end{itemize}
the date on which the water were classified NSW to comply with subsections (c1) and (c2) of this section.\textsuperscript{21} The compliance date cannot be set more than five years after the date of classification.\textsuperscript{22} Compliance date may be extended,\textsuperscript{23} with a request to extend being made within 120 days of the date the Commission reclassifies a surface body water as NSW.\textsuperscript{24}

Also extended are the dates for compliance with the nitrogen and phosphorus discharge limits. A request for an extension must be answered by the Commission within 120 days of receipt, but will not be granted if the Commission deems the extension would result in a violation of the antidegradation policy set out in 40 Code of Federal Regulations section 131.12 (1 July 1997 Edition).\textsuperscript{25} The Commission must find that the permit holder needs additional time to develop a calibrated nutrient response model that meets the requirements of the section in order to grant an extension.\textsuperscript{26} The Commission must determine the extended compliance date by adding to the date on which it extends compliance: two years for the collection of data; a maximum of one year to prepare the calibrated nutrient response model, the amount of time the Commission may need to develop a nutrient management strategy and to adopt rules or modify discharge permits to establish maximum mass loads or concentration limits based on the model; and a maximum of three years to plan, design, finance and construct a facility that will comply with the set limits.\textsuperscript{27}

The Commission may extend time if needed to complete the construction of a facility by a maximum of two years.\textsuperscript{28} A permit holder granted an extension must: develop a calibrated nutrient response model (based on current data) in conjunction with other affected parties within time granted by the Commission; evaluate and optimize the operation of all facilities that discharge into the NSW; evaluate methods to reduce the total mass load of waste that its facilities discharge; evaluate methods to reduce the discharge of treated effluent from all such facilities including land application of treated effluent, the use of restored or created wet-

\begin{itemize}
\item \textsuperscript{22} § 6.3 1998 N.C. SESS. LAWS 212.
\item \textsuperscript{23} Id.
\item \textsuperscript{24} Id.
\item \textsuperscript{25} Id.
\item \textsuperscript{26} Id.
\item \textsuperscript{27} Id.
\item \textsuperscript{28} § 6.3 1998 N.C. SESS. LAWS 212.
\end{itemize}
lands not within a 100 year floodplain to polish treated effluent, and other methods to reuse treated effluent and determine whether this methods are cost effective.\textsuperscript{29} The permit holder must also report to the Commission on its progress in all of the above based on a schedule set by the Commission that must at least require semiannual reports.\textsuperscript{30} The Commission is granted the power to revoke the extension if the permit holder is found to have failed to comply with the above requirements or violated any other conditions or limitations of its permit that result in a significant violation of water quality standards.\textsuperscript{31} Finally, the Act requires that an application for a new permit or a modification of an existing permit be accompanied by information concerning: the extent to which the facility is publicly funded, the impact on water quality and whether there are cost-effective alternatives that will achieve greater protection of water quality.\textsuperscript{32} The Environmental Management Commission shall submit written reports required by the subsection on or before January 15, April 15, July 15, and October 15 of each year for the preceding calendar quarter.\textsuperscript{33}

\textbf{F. Child Lead Exposure}

The Amendment eliminates the provision for reporting by laboratories of elevated blood lead levels.\textsuperscript{34} Also changed is the language concerning compliance with the maintenance standard. Compliance with the maintenance standard satisfies the remediation requirements for confirmed lead poisoning cases identified on or after October 1, 1990 as along as all hazards identified on interior and exterior surfaces are addressed by remediation.\textsuperscript{35} Compliance by owner occupied residential housing units is to be verified by: annual monitoring inspection; by documentation no child under six lives there or has been a regular visitor in the last year; by documentation that no child less than six who lives there or is a regular visitor has an elevated blood lead level.\textsuperscript{36} In all other cases, compliance will be verified by an annual monitoring inspec-

\textsuperscript{29}. Id.
\textsuperscript{30}. Id.
\textsuperscript{31}. Id.
\textsuperscript{32}. Id.
\textsuperscript{34}. § 1, 1998 N.C. Sess. Laws 209.
\textsuperscript{35}. Id.
\textsuperscript{36}. Id.
tion conducted by the department.\textsuperscript{37} Finally, a fee of ten dollars for each certificate of compliance was added to the Act.\textsuperscript{38}

\textit{Sarah L. Heekin}

\textsuperscript{37} \textit{Id.}

\textsuperscript{38} \textit{Id.}
ESTATES

A. Renunciation of Property and Renunciation of Fiduciary Powers Act Amended and Clarified.

N.C. Gen. Stat. section 31B-1(b) was rewritten so as to strike that portion which will not allow one to succeed to a greater share than the renouncer would have received and makes subsection (b) now applicable to all renunciations of present and future interests of every kind unless the instrument provides otherwise.1

Changes to N.C. Gen. Stat. section 31B-2(a) now require filing as a prerequisite for the renouncement to be a “qualified disclaimer for federal and state inheritance, estate, and gift tax purposes.”2 Filing requirements were changed to depend not on the death of the decedent or donee of the power, but instead on the date the transfer was completed for tax purposes.3 For all purposes, renunciations relate back to the date the transfer was complete for tax purposes. If the renunciation is not in compliance with the filing requirements, the property will devolve as if the renouncer had died on the date the renunciation was filed.4 Possession or enjoyment in future interests are under these same requirements and take effect immediately as to the person in being at the time the renouncer is deemed to have died.5

Finally, the right to renounce is not barred by acceptance of property, but the acceptance may preclude it from being a qualified renunciation for tax purposes.6

B. Procedure for Opening and Inventory of a Decedent's Safe-Deposit Box

In order to clarify the process by which a safe-deposit box of a decedent is to be opened and inventoried, the General Assembly has added a new section to N.C. Gen. Stat. section 28A-15. The new section defines the following terms: Institution, Letter of Authority, and Qualified Person.7

3. Id.
4. Id.
5. Id.
6. Id.
The statute requires that unless a qualified person (i.e. one possessing a letter of authority or named as a lessee or cotenant to the safe-deposit box) requests access, the Clerk of Superior Court or a representative of the Clerk must be present. The clerk or the qualified person shall make an inventory of the box’s contents and give it to the person possessing the key. If the box contains any document which purports to be a will, codicil, or testamentary in nature, the Clerk or qualified person must file it in the office of the Clerk of Superior Court. The contents cannot be released to anyone other than a qualified person. No tax waiver is required for this release.

Carey A. McAlister

9. Id.
10. Id.
11. Id.
12. Id.
A. Adoption and Safe Families Act

Revisions to the Adoption and Safe Families Act include new guidelines for the Department of Social Services and are designed to provide greater safety to juveniles in abusive environments. The revisions affect the investigation of suspected abuse by the director and also provide specific guidelines in custody placement and parental visits.

Another change involves the termination of parental rights and the possibility of permanent placement for juveniles unable to return home. These revisions are to insure that the best interests of the child are considered in situations where a juvenile is at risk of physical and sexual abuse.

1. Investigation by Director and Secure Custody

The revision expanded the director’s investigation to include not only any report of suspected abuse, but directs an investigation into a report of a juvenile’s death as a result of “suspected maltreatment or report of suspected abuse”.1 Another change is the addition of restrictions placed on secure and nonsecure custody. Before the recent revisions the court was ordered to place the child with a relative if the relative was willing and able to provide care in a "safe home". Now the court will place the child with the relative if the court finds that the placement would not be contrary to the best interests of the child and is in conformance with the Indian Child Welfare Act and the Howard M. Metzenbaum Multiethnic Placement Act of 1994.2

Other modifications include the addition of findings of reasonable efforts on the part of the Department of Social Services before a child is placed within their charge except in the case of an emergency situation involving possible harm to the child.3

2. Supervised Visitation

The statute further provides security for the juvenile by not allowing unsupervised visits with the child or the return of the child to the parents without a hearing in which the court must

find that the juvenile will receive “proper care and supervision in a safe home.” A dispositional order shall provide for “appropriate visitation which is determined by the best interests of the child, and the court may order the director to arrange visitation which is to be approved by the court.”

3. Permanency Planning Hearing

The purpose of this section is to enable a court to consider permanent placement of the child. The court will determine whether it is possible for the child to be returned home within six months and if not, the court will consider whether adoption would be in the best interests of the child. The statute requires that the court make periodic reviews of whether the child should be permanently placed or remain within the custody of social services.

4. Termination of Parental Rights

This section authorizes a petition for terminating parental rights when a juvenile is placed within the jurisdiction of the district court because of abuse, neglect or dependency proceedings. The grounds for terminating parental rights have been expanded to include participating in the murder or manslaughter of another child of the parent or child residing in the home, and the committing of a felony assault to the child or another child.

5. Mandatory Criminal Checks on Prospective Adoptive Parents

Sections have been added to include mandatory criminal background checks on all prospective adoptive parents. The parents shall provide fingerprints and other identifying information needed to perform the background check.

Linda S. Fowler

B. Transfer of Real Property and Salary Withholding in Satisfaction of Child Support, Alimony or Postseparation Payments

Courts may order persons in arrears on child support, alimony, or postseparation payments to transfer real property in satisfaction thereof if the value does not exceed the amount owed. The court may also require income withholding for the failure to make payments of child support, alimony or postseparation support, but must give notice to the payor. Copies of such notice are filed with the clerk of court and mailed first class to the supporting spouse. The supporting spouse will be subject to withholding on the earlier of (1) the date he/she fails to make the payment or (2) the date withholding is requested.

The notice must contain the type of payment in arrears, the amount due, and the name of the person to whom the payment is owed.

C. Grants for Displaced Homemakers

The General Assembly created a fund which will give quarterly grants to programs for displaced homemakers. These grants shall be given according to criteria set out by the North Carolina Council for Women. No more than ten percent will be used for administrative costs by the Council. The fund will be established in part by the fee taken in filing costs for divorce.

D. Mediation in District Court Actions Involving Family Issues.

Changes to this statute were primarily cosmetic. The pilot program’s language has changed the term mediation settlement to settlement procedures. This allows for a more open and inclusive range of dispute resolution alternatives. All district court judges, not just the chief judge, may order mediated or other settlement procedures. The chief district court judge may be

12. Id.
13. Id.
14. Id.
17. Id.
19. Id.
required to report statistical data to the Administrative Offices of the Court.\textsuperscript{20} The Dispute Resolution Commission changed from nine to fourteen members which now includes five judges (two from superior court and two from district court), two mediators certified for superior court mediation, and two mediators certified for equitable distribution mediation.\textsuperscript{21} Vacancies will be filled in the same manner as incumbents were appointed.\textsuperscript{22}

\textit{Carey A. McAlister}
HEALTH LAW

A. Dissolution of Sanitary Districts

The Public Health Law of North Carolina was amended to allow an alternative procedure for dissolution of a sanitary district that has no indebtedness and the territory of which has been entirely annexed. The new section allows a sanitary district, which has been annexed by a city or town and has been located within the limits of such city or town for five years, to be dissolved under certain conditions. Upon unanimous vote of the board of the district, the board may petition the board of commissioners of the county in which the district is located to dissolve the district if the following conditions are met: (1) the sanitary district is located entirely within one county, (2) it has no outstanding debts, (3) it was not located entirely within a city or town when created, (4) it has not provided any water or sewer service for at least five years, (5) it did not levy any ad valorem tax in the current year and, (6) the annexing town or city has assumed all assets and liabilities of the district. Upon receipt of a petition, the board of commissioners shall notify the Department of Health and Human Services and the governing body of the city or town within which the district lies. If the governing body of the city or town, the county board of commissioners, and the Commission of Health Services agree, the Commission of Health Services shall adopt a resolution to dissolve the district. All taxes owed, property held, judgments, liens, rights and causes in favor of the sanitary district shall vest in the city or town at dissolution. This section is to provide an alternative to the procedure set out in N.C. GEN. STAT. section 130A-73. If both sections apply to a sanitary district either may be used.

2. § 1, 1998 N.C. SESS. LAWS 123.
3. Id.
4. Id.
5. Id.
6. Id.
7. Id.
8. § 1, 1998 N.C. SESS. LAWS 123.
B. Septic Tank Regulations

In 1998 the General Assembly adopted rules governing wastewater treatment and disposal.9 The new section provides that all septic tanks designed to treat 3,000 gallons per day or less of sewage shall be required to use an effluent filter to reduce waste entering the drain field and to use an access device for each compartment of the tank to facilitate maintenance.10 Specifications for the filter and access device shall not be required, but are permitted, to exceed the requirements of N.C. Gen. Stat. section 130A-335.1.11 An effluent filter is required to comply with the following conditions: (1) be capable of withstanding corrosives to which septic tanks are normally subject, (2) prevent material larger than one-sixteenth of an inch from entering the drain field, (3) allow for routine maintenance, (4) not require maintenance more frequently than once in any three year period under normally anticipated use.12 The access device shall provide access to each compartment of a septic tank for inspection and maintenance either by means of an opening in the top of the tank or by a riser assembly and shall include an appropriate cover.13 An access device is required to comply with the following conditions: (1) be large enough to facilitate inspection and service, (2) equal or exceed the minimum loading specifications applicable to the septic tank, (3) prevent water entry, (4) be visibly marked for easy location.14

C. Sanitation in Institutions

The rules governing regulation of sanitation in institutions have been amended to require setback requirements applicable to water supply wells servicing institutions.15 An institution located in a single-family dwelling served by a well located closer to the building than allowed by the Commission of Health Services may be approved or licensed if it meets water testing requirements established by the Commission and there are no other potential health risks.16 The water shall be tested for pesticides, nitrates,
and bacteria at the time of the license application and re-tested at times determined by the Commission, not less than once a year. \textsuperscript{17} A qualified health official shall collect the samples and examine the location of the well to determine other potential health hazards. \textsuperscript{18} The amended portion further provides that the Department of Health and Human Services may suspend or revoke a license for a violation of this section or other rules adopted by the Commission. \textsuperscript{19}

D. Health Care Power of Attorney

The General Assembly recognized that as a matter of public policy it is the fundamental right of an individual to control the decisions relating to the individual's medical care. \textsuperscript{20} The legislature has expanded health care powers of attorney to include mental health care and treatment. \textsuperscript{21} The new provision defines mental health treatment as the process of providing for the physical, emotional, psychological, and social needs of a person for the individual's mental illness. \textsuperscript{22} This includes, but is not limited to electroconvulsive treatment, treatment of mental illness with psychotropic medication, and admission to and retention in a facility for care or treatment of mental illness. \textsuperscript{23}

The statutory form for a health care power of attorney was amended to include mental health treatment decisions within the realm of included health care decisions. \textsuperscript{24} The principal is allowed to give express specific limitations or restrictions on the authority of the health care agent. \textsuperscript{25} When a health care agent exercises his authority in regard to mental health treatment decisions, he is bound to act the way he believes the principal would act if the principal were making the decision. \textsuperscript{26}

Under the general statement of authority granted to a health care agent, two new provisions have been added regarding mental health treatment. \textsuperscript{27} These new sections allow the agent to author-

\textsuperscript{17} Id.
\textsuperscript{18} Id.
\textsuperscript{19} Id.
\textsuperscript{20} N.C. GEN. STAT. § 122C-71(a) (Supp. 1997).
\textsuperscript{22} § 1, 1998 Sess. Laws 198.
\textsuperscript{23} Id.
\textsuperscript{24} Id.
\textsuperscript{25} Id.
\textsuperscript{26} Id.
\textsuperscript{27} Id.
ize admission and retention in a facility for the treatment of mental illness and the administration of medications and electroconvulsive or "shock" treatment.28

Under the special provisions and limitations the principal may set out in advance, two new sections have been added. The first allows the principal to set forth special limitations on the agent regarding mental health decisions.29 These limits include instructions by the principal regarding mental health decisions.30 These limits include instructions regarding treatment, administration of medications, and admission or retention in a mental health facility.31 The second instructs the principal to indicate whether he has executed an advance instruction for mental health treatment.32 This is necessary because the health care agent's decisions must be consistent with any statement given in an advance instruction for mental health treatment.33

There have also been substantial changes made regarding the advance instruction for mental health treatment. The definition of "advance instruction" still requires the principal to sign in the presence of two qualified witnesses.34 However, additional requirements have been added. The witnesses must believe the principal to be of sound mind at the time of signing and the signing must be acknowledged before a notary public. The new definition eliminates appointment of an attorney in fact.35 The advance instruction authorizes mental health treatment according to the principal's wishes.36 It may also provide instructions regarding, but not limited to, consent or refusal of mental health treatment when the principal is incapable.37

The definition of "qualified witness" has also been changed. The new definition eliminates three groups of people as qualified witnesses.38 These three groups are (1) employees of the attending physician or mental health treatment provider, (2) employees of a health care facility in which the principal is a resident, and (3)

29. Id.
30. Id.
31. Id.
32. Id.
33. Id.
36. Id.
37. Id.
38. Id.
anyone related to the principal or the principal's spouse within the third degree.\textsuperscript{39}

The scope of the advance instruction has been expanded to allow for the granting or withholding of mental health treatment, including but not limited to the use of psychotropic medications, shock treatment, and admission/retention in a mental health facility.\textsuperscript{40}

There have also been changes made in the effectiveness and the revocation of an advance instruction. The advance instruction now becomes effective upon proper execution, instead of when it is delivered to a primary physician or mental health treatment provider.\textsuperscript{41} A physician or mental health treatment provider may consider the advance instruction valid unless they have actual knowledge or revocation or invalidity.\textsuperscript{42} The physician or mental health treatment provider is entitled to presume that it was executed voluntarily and that the principal was of sound mind.\textsuperscript{43}

Once the principal has been determined incapable the physician or health care treatment provider shall follow the advance instruction.\textsuperscript{44} However, they shall obtain informed consent and follow the principal's instructions, regardless of the advance instruction, until the principal is determined incapable.\textsuperscript{45} The attending physician or an eligible psychologist will determine the principal's capability.\textsuperscript{46} Execution of an advance instruction shall not be considered an indication of the principal's capacity at the time treatment decisions is required.\textsuperscript{47} An advance instruction is now effective until revocation, instead of the previous two-year duration.\textsuperscript{48} It may be revoked at any time the principal is not incapable by any means he is able to communicate intent to revoke and by notifying the treating physician or mental health treatment provider.\textsuperscript{49}

The circumstances under which an attending physician or mental health treatment provider may deviate from the advance

\textsuperscript{39} Id.
\textsuperscript{40} Id.
\textsuperscript{41} § 2, 1998 N.C. Sess. Laws 198.
\textsuperscript{42} Id.
\textsuperscript{43} Id.
\textsuperscript{44} Id.
\textsuperscript{45} Id.
\textsuperscript{46} Id.
\textsuperscript{47} § 2, 1998 N.C. Sess. Laws 198.
\textsuperscript{48} Id.
\textsuperscript{49} Id.
instruction have also changed. As the statute is rewritten, the advance instruction must be complied with when the principal becomes incapacitated unless one of the following conditions are met: (1) compliance is not consistent with community practice standards of treatment to benefit the principal, (2) compliance is not consistent with the availability to treatments requested, (3) compliance is not consistent with applicable law, (4) the principal is committed to a twenty-four hour facility and treatment is authorized by N.C. GEN. STAT. section 122C-57 or, (5) compliance is not consistent with appropriate treatment in case of an emergency endangering life or health. 50 If any part of the advance instruction cannot be followed due to one of the above conditions, all other parts shall still be followed. 51 If the physician or mental health treatment provider is unwilling to comply with the advance instruction because of one of the above conditions, he shall promptly notify the principal and, if applicable, the health care agent. 52 He shall document the reason why the advance instruction was not followed and the notification of the principal in the principal's medical record. 53

In absence of actual knowledge of revocation, a treating physician or mental health treatment provider as a result of treating the principal in accordance with the advance instruction will incur no liability, unless the lack of knowledge was the result of negligence. 54 Even if the advance instruction is subsequently found invalid, no liability will be incurred if the advance instruction was relied on in good faith. 55 The Act also dismisses claims based on lack of informed consent if the advance instruction is followed. 56 However, it does not otherwise affect negligent acts or omissions in medical treatment under an advance instruction or that arise out of deviation from reasonable medical standards. 57

There are three important additions to the statutory form for advance instruction. Two of these have already been discussed. These two are the new requirements for a qualified witness and the certification by a notary public. 58 The third addition provides

50. Id.
51. Id.
52. Id.
54. Id.
55. Id.
56. Id.
57. Id.
58. Id.
the principal with notice that the information in the advance instruction may be shared with other health care or mental health providers when necessary for treatment. The new section also allows the principal to give specific instructions about the sharing of such information.

E. Sexual Exploitation by a Psychotherapist

Chapter 90 of the General Statutes has been amended to add the new Article 1F. The purpose of the new article is to provide a civil action remedy for persons who are sexually exploited by their psychotherapist. The article defines client as a patient, whether charged for services or not. This includes former patients. The definition of psychotherapist gives an extensive list of mental health care providers. This list includes licensed psychiatrists, psychologists, licensed professional counselors, substance abuse professionals, social workers engaged in a clinical social work practice, fee-based pastoral counselors, licensed marriage or family therapists, and mental health service providers who perform or purports to perform psychotherapy. Sexual exploitation includes two broad categories. The first category is sexual contact as defined by the statute. The statute's definition of sexual contact is extensive, but could be summarized to prohibit any intimate touching or kissing of either the client or psychotherapist, for the purpose of sexual stimulation or gratification. The second category prohibits any act done or statement made by the psychotherapist for purposes of sexual stimulation or gratification of the client or psychotherapist. This category prohibits such behavior as exposing oneself, showing sexually graphic pictures, statements regarding the client's sexual history, and therapeutic deception.

60. Id.
63. Id.
64. Id.
65. Id.
66. Id.
67. Id.
69. Id.
70. Id.
A client may bring this action if the sexual exploitation occurred under any of the following circumstances: (1) any time between and including the first and last date of counseling, (2) within three years after termination of psychotherapy or, (3) by means of therapeutic deception. The client may receive actual or nominal damages, reasonable attorney's fees, and punitive damages in accordance with Chapter 1D of the General Statutes.

The client's sexual history is generally not subject to discovery. There are two situations in which the client's sexual history is subject to discovery. The first is when the client is claiming an impairment of sexual function. In the second situation the court must conduct a hearing prior to discovery. The court will allow discovery of the client's sexual history if it finds the information relevant and the probative value outweighs the prejudicial effect of the information. However, the court may only allow discovery of specific information or examples of conduct it determines relevant and must detail the information subject to discovery. Reputation or opinion may not prove sexual history, otherwise admissible.

The fact that the sexual exploitation occurred outside therapy or off premises regularly used for therapy is a prohibited defense. The client's consent is also a prohibited defense. This action must be brought within three years after the action accrues. The action accrues upon the last act of the psychotherapist giving rise to the action or when the client discovers or reasonably should discover that the sexual exploitation had occurred. In either case the action may not be commenced more

71. Id.
72. Id.
73. Id.
75. Id.
76. Id.
77. Id.
78. Id.
79. Id.
81. Id.
82. Id.
83. Id.
than ten years after the last act of the psychotherapist that gave rise to the action. 84

The new article further provides that any provision of a settlement agreement, which prevents a party from pursuing a complaint before the psychotherapist's licensing entity, is void. 85

Jason T. Deane

F. Health Insurance Program for Children Act

This law establishes comprehensive health care insurance for low-income children. 86 The Department of Health and Human Services may enroll eligible children based on availability of funds. Guidelines for eligibility require that: a child be under nineteen; be ineligible for Medicaid, Medicare, or other government sponsored health insurance; be uninsured; be a North Carolina resident and eligible under federal law; and have paid the program enrollment fee required. 87 The Act also requires that, based on the child's age, family income be a certain percentage of the federal poverty level. 88

The family member responsible for the child must report any changes in enrollee's status within sixty days of the change in status. 89 In the case of a child who's parent has a court ordered obligation to provide insurance and has failed to do so, the child may still be enrolled in the program upon proof that the custodial parent will notify and cooperate with the child support enforcement agency in enforcing the order. 90 The custodial parent also has the responsibility of notifying the department within ten days of his child receiving another form of insurance as this renders the child ineligible for continued coverage. 91 The program is to last for a year, but children may reapply. 92

Under the program enrollees are to receive coverage equivalent to that provided under the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan. 93

84. Id.
85. Id.
88. Id.
89. Id.
90. Id.
91. Id.
92. Id.
Additional coverage is provided for dental, optical and hearing examinations etc.\textsuperscript{94} The annual enrollment and cost-sharing fees vary according to the family's income.\textsuperscript{95} However the total annual aggregate cost-sharing including fees is not to exceed five percent of the family's income for the year involved.\textsuperscript{96} The Act further provides that the costs of private plans for eligible children may be reimbursed if the private plans are shown to meet certain guidelines.\textsuperscript{97} An enrollee who becomes ineligible, but still falls within a certain income bracket (once again determined using a percentage of the federal poverty level) may purchase at full premium cost continued coverage under the plan for up to one year.\textsuperscript{98}

The Act further includes sections dealing with special needs children, claims processing, and administration and implementation of the program.\textsuperscript{99} In addition, the Act creates a Joint Legislative Health Care Oversight Committee and a Commission on Children with Special Care Needs.\textsuperscript{100}

\textbf{G. Mental Health Commitment Law}

This Act was changed to explicitly include a parent in a family unit within the Act's definition of an individual, who under the Act, may seek voluntary admission at any facility by presenting himself for evaluation to the facility.\textsuperscript{101} The Act was also expanded so that "family units" may voluntarily seek admission to a twenty-four hour substance abuse facility that can specifically address the family unit's needs.\textsuperscript{102} Services are to be provided to parent as well as child.\textsuperscript{103} The facility is to evaluate whether it can help the family unit or not and may refuse admission if it determines the family unit does not need or cannot benefit from care.\textsuperscript{104} If denied entry by a facility, the family unit must be given a refer-
Family unit is defined as a parent and that parent's dependents children under the age of three.  

Sarah L. Heekin

H. Provider Sponsored Organization Licensing

The North Carolina Legislature recently enacted legislation amending Chapter 131E of the General Statutes by adding a new article permitting and encouraging the creation of Provider Sponsored Organizations (PSOs). A Provider Sponsored Organization is a group of individual health care providers and entities who associate for the purpose of contracting with the federal Medicare program to provide health care services to Medicare beneficiaries and to engage in other related activities. The addition to Chapter 131E specifically defines a PSO as a (1) group of individuals or entities domiciled in this state who are engaged in the delivery of healthcare as members of a licensed profession, (2) in which physicians comprise no less than fifty percent of the operating board and (3) which provide a substantial proportion of the Medicare contract directly through the sponsoring provider. The addition notes that the General Assembly declares such Provider Sponsored Organizations as beneficial to North Carolina Medicare recipients, and therefore the Act strives to foster the development of such organizations. The General Assembly, by implementation of this new provision, further seeks to encourage innovative methods by which sponsoring providers can share substantial financial risks in the ultimate success of the PSO.

The Act sets forth a specific regulatory mechanism for PSOs separate and apart from the current regulatory mechanisms for health maintenance organizations and insurance companies. The Act deems that the Division of Medical Assistance of the Department of Health and Human Services will license and oversee Provider Sponsored Organizations. Under this new provision, specific, detailed procedures are established for the

105. Id.
108. Id.
109. Id.
110. Id.
111. Id.
112. Id.
application of PSO status,\textsuperscript{113} the approval of applications,\textsuperscript{114} requirements for financial plans,\textsuperscript{115} ongoing financial standards,\textsuperscript{116} reporting requirements,\textsuperscript{117} as well as additional consumer protection and quality standards.\textsuperscript{118} The new provisions additionally establish procedures for suspension or revocation of the PSO licensee,\textsuperscript{119} appropriate penalties and enforcement,\textsuperscript{120} confidentiality requirements,\textsuperscript{121} and mandated procedures for utilization review and grievance filings.\textsuperscript{122}

\textit{Michael C. Allen}

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{113} § 1, 1998 N.C. \textsc{sess. laws} 227.
\item \textit{Id}.
\item \textit{Id}.
\item \textit{Id}.
\item \textit{Id}.
\item \textit{Id}.
\item \textit{Id}.
\item \textit{Id}.
\item § 1, 1998 N.C. \textsc{sess. laws} 227.
\item \textit{Id}.
\item \textit{Id}.
\item \textit{Id}.
\end{enumerate}
\end{footnotesize}
INSURANCE LAW

A. Priority of Distribution

In Act 211 of 1998, the General Assembly clarified and expanded certain Insurance and other laws. This Act changed the priority of distribution from an insurer's estate to include claims of HMO enrollees and HMO enrollees beneficiaries. These claims fall in the same category as claims for benefits under insurance policies and losses including third party claims and claims for unearned premiums.

B. Condominium Insurance/Individual Units

The General Assembly has changed the requirements for Condominium Associations. The Associations are now required to maintain insurance for units containing horizontal boundaries as described in the declaration but still do not have to include improvements and betterment's installed by unit owners.

C. Medicare Supplement Insurance

Insurers are now forbidden to use attained age as a methodology or structure for the insurer's Medicare supplement insurance rates. There is an exception to this new rule. Insurers may use such a methodology if it fully discloses the methodology to the applicant at the time of application or at the time of delivery if the applicant purchases by mail order. Notice shall include: (1) a statement that attained age rating means that rates increase as the insured ages, (2) an illustration based on attained age that states the dollar amount of premium increase over a period of not less than ten years, (3) a statement that premiums for other Medicare supplement policies that are not on age bases do not increase as the insured ages, (4) a statement that other Medicare supplement policies that are on issue age bases should be compared to policies on attained age basis. The General Assembly has also

5. Id.
6. Id.
required all insurers to indicate in any solicitation material that premiums are based on attained age.\textsuperscript{7}

\textbf{D. Notices From Individual Licensees}

The General Assembly has created a new provision creating duties on Licensees under Chapter 58 to provide notice to the Commissioner in certain situations.\textsuperscript{8} "License" under this statute includes any license, certificate, registration or permit provided under Chapter 58.\textsuperscript{9} An applicant for a license is required to inform the Commissioner of the applicant's residential address.\textsuperscript{10} A licensee must give notice to the Commissioner within ten business days after moving to his or her new residence.\textsuperscript{11} This includes changes of residential address even when there has been no change in location.\textsuperscript{12} A licensee is also required to give notice to the Commissioner if the licensee is convicted in any court of competent jurisdiction.\textsuperscript{13} Conviction includes a plea of guilty, an adjudication of guilt and a plea of nolo contendre.\textsuperscript{14}

\textbf{E. Insurance Agents, Brokers, and Adjusters}

Applicants attempting to become an adjuster now have specific requirements concerning their employer's certificate.\textsuperscript{15} The employer must now include four things in the certificate that it will file with the Commissioner.\textsuperscript{16} These include first that the applicant is an individual of good character.\textsuperscript{17} Second, the signer of the certificate employs the applicant.\textsuperscript{18} Third, the applicant will operate as a student or learner under the instruction and general supervision of a licensed adjuster.\textsuperscript{19} Finally the employer will be responsible for the adjustment acts of the applicant during the learning period.\textsuperscript{20}

\begin{itemize}
  \item \textsuperscript{7} \textit{Id.}
  \item \textsuperscript{8} Act of October 27, 1998, § 16, 1998 N.C. SESS. LAWS 211.
  \item \textsuperscript{9} § 16, 1998 N.C. SESS. LAWS 211.
  \item \textsuperscript{10} \textit{Id.}
  \item \textsuperscript{11} \textit{Id.}
  \item \textsuperscript{12} \textit{Id.}
  \item \textsuperscript{13} \textit{Id.}
  \item \textsuperscript{14} \textit{Id.}
  \item \textsuperscript{15} Act of October 27, 1998, § 18, 1998 N.C. SESS. LAWS 211.
  \item \textsuperscript{16} § 18, 1998 N.C. SESS. LAWS 211.
  \item \textsuperscript{17} \textit{Id.}
  \item \textsuperscript{18} \textit{Id.}
  \item \textsuperscript{19} \textit{Id.}
  \item \textsuperscript{20} \textit{Id.}
\end{itemize}
F. Tort Claim Liability/School Buses

The General Assembly increased the amount of medical expenses that the Attorney General may pay for each pupil who sustained a bodily injury or death while boarding, riding on or alighting from a school bus operated by a local school administrative unit.\(^\text{21}\) The Attorney General may now pay reasonable medical expenses not in excess of $3,000.\(^\text{22}\) This is up from the previous figure of $600.\(^\text{23}\)

G. Examination of Records

The State Treasurer is now entitled to reimbursement for actual expenses incurred during an examination into the records or assets of insurers in certain circumstances.\(^\text{24}\) The insurer must pay reimbursement costs when he maintains part of his records or assets outside North Carolina and the Department conducts examination of such records or assets.\(^\text{25}\) The insurer must also pay costs when it requests an examination of its records or assets.\(^\text{26}\) Finally, such costs are recoverable when the Commissioner examines an insurer that is impaired, insolvent or unlikely to meet obligations with respect to claims or to pay obligations in the ordinary course of business.\(^\text{27}\) The recoverable amount is limited to $100,000 unless the insurer and Commissioner agree on a higher amount.\(^\text{28}\)

H. Procedures for Conversions by Hospital, Medical, and Dental Service Corporations

The General Assembly intended by this Act to create a procedure for a medical, hospital, or dental service corporation to convert to a stock accident and health insurance company or stock life insurance company.\(^\text{29}\) In order to convert, a corporation must file a plan of conversion with the Commissioner and submit a copy to the Attorney General at least 120 days before the proposed con-

\(^\text{22}\) § 9.17, 1998 N.C. SESS. LAWS 212.
\(^\text{23}\) Id.
\(^\text{26}\) Id.
\(^\text{27}\) Id.
\(^\text{28}\) Id.
The plan for conversion must contain the purposes for conversion; the proposed articles of incorporation of the new corporation; the proposed bylaws of the new corporation; a description of any changes in the new corporation's mode of operations after conversion; a statement describing the manner in which the company will protect all contractual rights of other parties; a statement continuing liability and obligations of the old corporation; documentation showing that the corporation has approved the plan; the business plan of the new corporation; any conditions to be fulfilled by a proposed date; any proposed articles of incorporation and bylaws of the foundation; any proposed agreement between the foundation and the new corporation. The Commissioner has twenty days to publish the plan in a newspaper of general circulation in the proposed corporation's area and will give notice of public hearings. These hearings must be completed within sixty days of the filing of the conversion plan.

A Commissioner may approve a plan if the following are met:
1. the plan meets the requirements of N.C. GEN. STAT. section 58-65-131, 132, and 133,
2. the new corporation will meet the applicable standards and conditions under Chapter 58,
3. the plan protects the existing rights of the corporation's subscribers and certificate holders to medical or hospital services and payment of claims for service reimbursement,
4. no director, officer or employee of the corporation will receive fees, compensation, distribution of the assets, surplus, capital or capital stock because of the conversion other than normal compensation,
5. the corporation does not have disciplinary action pending and has complied with all material requirements of the Chapter,
6. the conversion plan is equitable, fair and nonprejudicial to the contractual rights of the policy and certificate holders of the new corporation,
7. the plan is in the public interest,
8. the plan of conversion contains a proposed voting and registration agreement.

31. Id.
32. Id.
33. Id.
34. Id.
35. Id.
37. Id.
38. Id.
39. Id.
40. Id.
between the Foundation and the proposed new corporation\textsuperscript{41} and (9) the Attorney General has given approval.\textsuperscript{42}

Once approved, the new corporation will then file its articles of incorporation with the North Carolina Secretary of State.\textsuperscript{43} The new corporation is merely a continuation of the old and the conversion is only a change in identity and organization.\textsuperscript{44} Any person aggrieved by an adverse decision of the Commissioner may petition the Superior Court of Wake County within thirty days for review.\textsuperscript{45}

\textit{Benjamin D. Overby}

\begin{footnotesize}
\begin{enumerate}
\item Id.
\item \textsection 2, 1998 N.C. \textit{Sess. Laws} 3.
\item Id.
\item Id.
\item Id.
\end{enumerate}
\end{footnotesize}
JUVENILE LAW

A. Section 1

The purpose of this session act is to establish the office of Juvenile Justice, to reorganize and transfer the Division of Youth Services, the Department of Health and Human Services and the Division of Juvenile Services of the Administrative Office of the Courts, and to amend and recodify the juvenile code as recommended by the Commission on Juvenile Crime and Justice.


The General Assembly created the Office of Juvenile Justice and transferred the authority of the Juvenile Services Division and the Division of Youth Services to the newly created entity. The Office will develop strategies designed to alleviate a disproportionate number of minority youth in the juvenile facilities if the problem occurs. The Office has the authority to contract with any governmental agency, person, association, or corporation to enable the accomplishment of its goals and duties.

2. Juvenile Facilities

The Office of Juvenile Justice will be responsible for administering programs to provide juveniles that are in state facilities with appropriate treatment such as educational, clinical and psychological, psychiatric, social, medical, vocational, and recreational programs. Any juvenile that has been committed to the Office may be compensated for any work performed while in custody. The monies earned by the juvenile may be provided to him or her in the form of an allowance while in custody for personal expenses; the balance of the funds earned must be given to the juvenile or his guardian after release.

The Office will be responsible for the juvenile detention services and will develop a statewide plan for regional detention serv-

2. Id.
3. Id.
4. Id.
5. Id.
6. Id.
8. Id.
ices. In order to facilitate the development of the regional plan the Office may: (1) in counties that have a county detention facility, coordinate with them to provide regional services, (2) in counties having space in the county jail facility, utilize the available space for a county detention home provided that there is no contact between the juveniles and the county inmates, or (3) plan and administer regional detention homes that comply with state and federal standards. Any county that provides these juvenile detention services will be eligible to receive a per diem cost per juvenile from the Office.

In order to provide effective implementation of the statewide regional juvenile detention the Office may do any of the following: (1) release or transfer a juvenile from one home to another, (2) plan with counties to provide regional services, upgrade physical facilities and pay subsidies to those counties providing regional juvenile detention that meets state standards, (3) reimburse law enforcement or government officers for the transportation of juveniles to or from any juvenile detention home, and (4) seek federal funding or gifts from public or private sources.

3. Juvenile Court Services

The General Assembly set out the duties and powers of the chief court counselors and the juvenile court counselors in this section. The Office must develop a Comprehensive Juvenile Delinquency and Substance Abuse Prevention Plan providing for implementation of services and programs at the community level designed to lessen delinquent behavior and substance abuse.

4. Juvenile Crime Prevention Councils

The purpose of this section is to provide community-based alternatives to training schools. The programs implemented will be planned and organized at the community level through the Juvenile Crime Prevention Council. The creation of such is a prereq-

9. Id.
10. Id.
11. Id.
12. Id.
14. Id.
15. Id.
16. Id.
17. Id.
uisite of a county receiving funding for juvenile court services and delinquency prevention programs.\textsuperscript{18} The Council will have twenty-five members statute\textsuperscript{19} and will review annually the needs of any juveniles at risk within the county or those juveniles that have been adjudicated undisciplined or delinquent and submit a written plan of action to the Office of Juvenile Justice.\textsuperscript{20}

5. \textit{State Advisory Council on Juvenile Justice and Delinquency Prevention}

Within the Office of Juvenile Justice, the State Advisory Council on Juvenile Justice and Delinquency Prevention\textsuperscript{21} will review and advise the Office of an interagency plan to coordinate efforts to reduce juvenile delinquency. The Council will have nineteen appointed members.\textsuperscript{22} The Council has various powers and duties such as to review the juvenile justice system's operation and to prioritize funding, to review the proposed budget, and to review the progress of delinquency prevention.\textsuperscript{23}

B. \textit{Sections 2 and 3}

The General Assembly added a requirement that a juvenile be in custody for at least six months before the Office will develop a plan for home visits.\textsuperscript{24} Under Section three, the Governor will develop a plan of reorganization for the Division of Youth Services of the Department of Health and Human Services and the Juvenile Services Division of the Administrative Offices of the Courts.\textsuperscript{25} The Governor will report the plan of reorganization to the General Assembly on or before April 1, 2000 and the plan will become effective at that time if it is approved by the General Assembly.\textsuperscript{26}

C. \textit{Section 4}

Under Section 4, an applicant for employment or an employee with the Department of Health and Human Services or with the

\begin{thebibliography}{99}
\bibitem{19} \textit{Id.}
\bibitem{20} \textit{Id.}
\bibitem{21} \textit{Id.}
\bibitem{22} \textit{Id.}
\bibitem{23} \textit{Id.}
\end{thebibliography}
Office of Juvenile Justice may not be employed or may be fired if their criminal history shows one or more convictions set out in the statute.\(^{27}\) A conviction does not mean that the employee or applicant will not be able to fill the position, but rather the statute sets out factors to consider such as the seriousness of the crime, the age at the time of conviction, etc.\(^{28}\) However, employment may be denied or discontinued if the person in question refuses to consent to a criminal history check.\(^{29}\)

**D. Section 5**

Under section 5, Subchapter XI, Articles 41 through 59 of Chapter 7A of the General Statutes, the North Carolina Juvenile Code, Articles 24B and 39 of Chapter 7A of the General Statutes, Articles 2A, 4, 4A and 10 of Chapter 110 of the General Statutes, Article 62 of Chapter 143 of the General Statutes, and N.C. GEN. STAT. section 7A-289.13 were repealed.\(^{30}\)

**F. Section 6\(^{31}\)**

1. **Jurisdiction**

The district court division of the General Court of Justice has original jurisdiction over the following types of cases: (1) a case involving any juvenile who is alleged to be abused, neglected, or dependent, (2) proceedings under the Interstate Compact on Children, (3) proceedings involving judicial consent for emergency medical treatment of a juvenile where the parent refuses to consent, (4) emancipation proceedings, (5) proceedings to determine juveniles' placement in foster care, (6) proceedings to terminate parental rights, (7) proceedings where a person has obstructed or interfered with an investigation, and (8) proceedings that involve judicial consent for abortions.\(^{32}\) The court retains this jurisdiction over the juvenile until they turn age eighteen or are emancipated.\(^{33}\)

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29. Id.
2. Screening of Abuse and Neglect Complaints

Any person or institution that suspects a juvenile is being abused may report their suspicion to the director of the department of social services in that county by either telephone or in writing.34 The report will include the name and address of the juvenile and his parent or guardian, the age of the juvenile, whether any other juveniles are present in the home, the juveniles whereabouts, the nature and extent of the injury.35 If the report is by telephone, the reporting person must give their name, address and telephone number.36 However, if they refuse to give this information, an investigation may still be conducted.37 If the report is of sexual abuse, then the director shall notify the State Bureau of Investigation within twenty-four hours or the next working day.38

After a report has been made, the director of the department of social services shall make a prompt and thorough investigation, which includes a visit to the juvenile's home and a determination if there are other juveniles in the home in need of protection.39 Any information received during the investigation, including the name of the juvenile, shall remain confidential.40

If the investigation concludes that abuse, neglect, or dependency exists, the director shall ascertain whether the removal of the juvenile is necessary. If removal is unnecessary, protective services shall be provided for the juvenile.41 The protective services will be provided under the jurisdiction of the court even if the juvenile's guardian refuses the services.42 If removal from the home is necessary, the director will sign a complaint to invoke the jurisdiction of the court.43 Any state agency may assist the director in the investigation. During the investigation, the director may demand any reports or information that may be relevant to the investigation, regardless of whether the information is confidential unless it is protected by the attorney-client privilege or will jeopardize the prosecution of a defendant.44

34. Id.
35. Id.
36. Id.
37. Id.
38. Id.
40. Id.
41. Id.
42. Id.
43. Id.
44. Id.
Unless the reporting person did not identify themselves, or waived right of notification, within five working days after the report, the director must give written notice to the reporting person whether the report was accepted for investigation or whether it was referred to a State agency.\textsuperscript{45} Within five working days after the completion of protective services, the director must again give written notice to the reporting person whether there was a finding of abuse, neglect, or dependency.\textsuperscript{46} If the reporting person is unsatisfied with the director's decision not to file a petition with the court, the director must inform them of the proper procedures to request review by the prosecutor.\textsuperscript{47} The prosecutor must review the director's decision within twenty days after the notification of the reporting person by the director.\textsuperscript{48} After conferences with the reporting person, the protective services worker, the juvenile and any other persons having pertinent information, the prosecutor may affirm the decision of the director, request an investigation by local law enforcement, or direct the director to file a petition.\textsuperscript{49} If the director finds that the juvenile has been abused, they must make an report to the district attorney and local law enforcement. Within forty-eight hours the law enforcement agency must coordinate a criminal investigation along with the protective services investigation being conducted by the director.\textsuperscript{50} Any physician or administrator of a hospital or clinic that a juvenile that is suspected of being abused is taken for treatment shall have the right to retain the juvenile for twelve hours when authorized by the chief district court judge when the physician certifies in writing that the juvenile should remain in the facility for medical treatment or it is unsafe to return them to their guardian.\textsuperscript{51} If the medical treatment rendered is determined to be medically necessary by the court, then the cost of such care will be charged to the parents.\textsuperscript{52} Any person who makes a report or cooperates with an investigation under this section is immune from civil and criminal liability provided the person acts in good faith.\textsuperscript{53} However, in the case

\textsuperscript{46} Id.  
\textsuperscript{47} Id.  
\textsuperscript{48} Id.  
\textsuperscript{49} Id.  
\textsuperscript{50} Id.  
\textsuperscript{52} Id.  
\textsuperscript{53} Id.
of failing to report, no privileges will be deemed an excuse except in the case of attorney-client privilege.54 The Department of Health and Human Services will maintain a central registry of abuse, neglect and dependency cases and child fatalities that are the alleged result of mistreatment to identify repeat abusers of the same juvenile or those in his immediate family.55 This information is confidential and the data contained therein may not be used in any court proceeding unless based on judgment in a court of law.56

3. Venue and Petitions

The proceeding in which a juvenile is alleged to be abused, neglected, or dependent must be conducted where the juvenile is residing or is present.57 The same petition may involve juveniles from the same family.58 The director will determine if a petition is to be filed, unless it is done by the prosecutor or the magistrate in emergency situations.59 After a petition is filed, the clerk shall issue a summons to the parent or guardian requiring them to attend a hearing.60 The summons must be served at least five days before the hearing, but if the parent or guardian cannot be found through a diligent effort, then the summons may be served through mail or publication.61

4. Temporary Custody, Nonsecure Custody and Custody Hearings

A juvenile may be taken into temporary custody without a court order by either a law enforcement officer or a department of social services worker if there are reasonable grounds to believe that the juvenile would be harmed or would be unable to be taken into custody by court order.62 A juvenile cannot be held for more than twelve hours if on a weekday or twenty-four hours if on a weekend unless a petition is filed by the director of the department of social services or a court order has been entered by the district court.63

54. Id.
55. Id.
56. Id.
58. Id.
59. Id.
60. Id.
61. Id.
62. Id.
After determining that the juvenile requires nonsecure custody, the court will first consider placing the juvenile in the home of a relative. 64 If this is not feasible then the juvenile shall be placed in a foster home, a facility operated by the department of social services, or a home or facility that is approved by the court and designated in the order. 65 No juvenile can remain under the non-secure custody order for more than seven calendar days without a hearing to determine the need for continued custody. 66 In the order for continued custody, the court must include findings as to whether reasonable efforts have been made to prevent the need for such custody and return the juvenile to a safe home unless there was an immediate threat of harm to the child. 67 If the court finds that the custody is warranted, another review must be held within seven business days and after that on thirty day intervals. 68

5. Basic Rights

If there is no parent at a hearing or if the court finds that it is in the best interests of a child, the court may appoint a guardian for the child who will have custody of the child and will represent them in legal actions before the court. 69 The guardian may consent to certain actions by the juvenile and may arrange placement. 70 This guardian will continue until the court terminates, the juvenile is emancipated or reaches the age of majority. 71

If a petition states that a juvenile is alleged to be abused or neglected, the court must appoint a guardian ad litem who will represent the juvenile in all actions before the court. 72 This appointment lasts for two years and can be reappointed at that time for good cause shown. 73 The guardian ad litem has the duties to investigate to determine the facts, determine the needs of the juvenile and the resources in the family to meet those needs, to offer evidence and examine witnesses, settle dispute issues, explore options with the court, and to protect the best

64. Id.
65. Id.
66. Id.
67. Id.
68. Id.
70. Id.
71. Id.
72. Id.
73. Id.
interests of the juvenile.\textsuperscript{74} The parent also has the right to counsel and if indigent counsel shall be appointed provided that it is not a county attorney, prosecutor, or public defender.\textsuperscript{75}

6. \textit{Discovery, Hearing Procedures and Dispositions}

In cases of abuse or neglect, the court can restrict or deny discovery\textsuperscript{76} or permit the party seeking relief to submit affidavits for in camera inspection.\textsuperscript{77} A clear and convincing evidentiary standard is to be used in abuse and neglect hearings.\textsuperscript{78} The statute provides that any initial disposition by the court should involve working with the juvenile and the family in the home.\textsuperscript{79} The disposition hearings can be closed to the public, but only on motion of the juvenile.\textsuperscript{80} Several alternatives are available to the court in abuse and neglect cases.\textsuperscript{81} First, the court may order supervision in the home by the Department of Social Services.\textsuperscript{82} Second, the court can place the juvenile in the care of a suitable person or a placement agency.\textsuperscript{83} Finally, the juvenile can be placed in the care of the Department of Social Services.\textsuperscript{84} The court can order a medical examination\textsuperscript{85} and can order treatment if necessary.\textsuperscript{86} This can include a mental examination.\textsuperscript{87} Parents can be ordered by the court to undergo counseling.\textsuperscript{88} Placement reviews must be held every six months, beginning six months after the termination hearing.\textsuperscript{89} The court should also review placement plans\textsuperscript{90} and voluntary foster care placements.\textsuperscript{91}

\begin{itemize}
  \item \textsuperscript{74} Id.
  \item \textsuperscript{75} § 6, 1998 N.C. Sess. Laws 202.
  \item \textsuperscript{76} Id.
  \item \textsuperscript{77} Id.
  \item \textsuperscript{78} Id.
  \item \textsuperscript{79} Id.
  \item \textsuperscript{80} § 6, 1998 N.C. Sess. Laws 202.
  \item \textsuperscript{81} Id.
  \item \textsuperscript{82} Id.
  \item \textsuperscript{83} Id.
  \item \textsuperscript{84} Id.
  \item \textsuperscript{85} Id.
  \item \textsuperscript{86} § 6, 1998 N.C. Sess. Laws 202.
  \item \textsuperscript{87} Id.
  \item \textsuperscript{88} Id.
  \item \textsuperscript{89} Id.
  \item \textsuperscript{90} Id.
  \item \textsuperscript{91} Id.
\end{itemize}
7. Termination of Parental Rights

Article 11 sets out the requirements for when a guardian ad litem is appointed in termination proceedings, who may petition to terminate parental rights, what is required in such a petition, and the procedures for appealing a decision. If the name or identity of the parent is unknown, the court shall hold a hearing to determine such facts, and if unable shall publish notice of the termination proceeding.

8. Prevention of Abuse and Neglect

The statute goes on to outline the Program on Prevention of Abuse and Neglect. As the name implies, this Article makes prevention of child abuse and neglect a priority in North Carolina, and orders the State Board of Education to develop a prevention plan. The State Board of Education is also given the responsibility of contracting with public or private groups to operate its programs, and is further empowered to develop the guidelines for awarding contracts.

9. Child Fatality Prevention System

The statute also establishes a Child Fatality Task Force. The Task Force is to set up a study of child deaths and then review the study and draw conclusions from it. A State Team is also established for the purpose of reviewing the deaths of children known to have been abused and neglected prior to their deaths, or whose deaths were proximately caused by abuse or neglect. Each county is to have Community Child Protection Teams and Child Fatality Teams to keep abreast of child fatalities in that

93. Id.  
94. Id.  
95. Id.  
96. Id.  
97. Id.  
99. Id.  
100. Id.  
101. Id.  
102. Id.  
103. Id.  
105. Id.
county.\textsuperscript{106} Finally, Local Teams are to be set up to study child fatalities in their immediate areas.\textsuperscript{107}

\textbf{10. Undisciplined and Delinquent Juveniles}

The purpose of Subchapter II is to prevent delinquency and crime by juveniles.\textsuperscript{108} Intake services are to be set up to determine how to proceed with a complaint of delinquency.\textsuperscript{109} An intake counselor must decide whether a complaint should be filed as a petition against the juvenile, the juvenile's case diverted, or the case resolved without further action.\textsuperscript{110} A list of diversion options is included in the statute,\textsuperscript{111} but certain offenses, mostly serious felonies, are made nondivertible.\textsuperscript{112}

\textbf{11. Custody}

A juvenile may be taken into temporary custody prior to a court ordering he or she into secure or nonsecure custody, provided grounds exist which would justify the arrest of an adult,\textsuperscript{113} or there are reasonable grounds to believe that the youth is an "undisciplined juvenile".\textsuperscript{114} The statute includes the requirements for granting nonsecure custody,\textsuperscript{115} as well as for secure custody.\textsuperscript{116} Secure custody may only be granted in limited situations, typically involving risk of harm to others or a risk of flight.\textsuperscript{117} Further, the statute explains where the juvenile may be held in custody.\textsuperscript{118} When a juvenile is ordered held in secure custody he or she is entitled to a hearing within five calendar days.\textsuperscript{119} If the court orders the juvenile be held in nonsecure custody a hearing must be held within seven calendar days.\textsuperscript{120}

\begin{thebibliography}{99}
\bibitem{106} Id.
\bibitem{107} Id.
\bibitem{108} Id.
\bibitem{109} Id.
\bibitem{111} Id.
\bibitem{112} Id.
\bibitem{113} Id.
\bibitem{114} Id.
\bibitem{115} Id.
\bibitem{117} Id.
\bibitem{118} Id.
\bibitem{119} Id.
\bibitem{120} Id.
\end{thebibliography}
12. Basic Rights

Juveniles have a right to counsel in all proceedings, and they are conclusively presumed to be indigent. No “in-custody admission or confession” by a juvenile under the age of fourteen is admissible unless it is made in the presence of the juvenile’s parent, guardian, custodian or attorney. Also, nontestimonial identification procedures such as lineups, fingerprinting or blood samples may not be conducted on any juvenile unless a court order is obtained, unless the juvenile is being tried as an adult. Grounds for issuance of such a court order are included in the statute.

13. Probable Cause Hearings and Transfer Hearings

The district court may transfer jurisdiction over a juvenile to superior court on motion if the juvenile was thirteen years old or older when the offense was committed and the offense would have been a felony if committed by an adult. The district court shall transfer jurisdiction over a juvenile to superior court if the offense alleged is a Class A felony and the court finds probable cause. A probable cause hearing must be held within fifteen days of the juvenile’s first appearance.

14. Discovery

Upon motion of the juvenile, the court shall allow him or her to see his or her own statements, either oral or written, to receive a list of the prosecution’s witnesses, to inspect and copy records and tangible exhibits, and to inspect and copy reports of tests and examinations. The juvenile must provide the petitioner with a list of his or her witnesses, allow the petitioner to inspect

121. Id.
123. Id.
124. Id.
125. Id.
126. Id.
127. Id.
129. Id.
130. Id.
131. Id.
132. Id.
133. Id.
and copy any records or tangible exhibits in his or her possession, and permit the petitioner to inspect and copy records of any examinations or tests which he or she has.

15. Hearing Procedures

Delinquency hearings can only be closed for good cause. A court may only accept admissions by a juvenile after addressing the juvenile and ensuring that he or she is aware of his or her rights. Any adjudication that a juvenile is delinquent or any commitment of a juvenile is not considered conviction of a crime and will not affect the juvenile's citizenship rights.

16. Dispositions

The General Assembly set out guidelines for the courts to follow in achieving the purposes of dispositions in juvenile actions. The disposition should, promote public safety, emphasize accountability of the juvenile and their parents or guardian and provide appropriate treatment, training and rehabilitation to make the juvenile a productive member of the community. The hearing may be informal and the court may consider a wide variety of evidence, including testimony from the juvenile or their parents or guardian. The court may require the juvenile to be examined by a physician, psychiatrist or psychologist to determine the needs of the juvenile and the court shall require the juvenile to be tested for the use of alcohol or controlled substances, within thirty days of adjudication, when the offense charged involves alcohol or a controlled substance. The court may also order any appropriate treatment needed for the juvenile upon completion of certain examinations, including committing the juvenile to a mental hospital against the wishes of the parent or guardian.

Once a juvenile has been adjudicated as undisciplined the court may place the juvenile under the care and supervision of a parent or guardian, order the juvenile to be supervised at a home

135. Id.
136. Id.
137. Id.
138. Id.
139. Id.
141. Id.
142. Id.
143. Id.
by a social worker, place the juvenile in the custody of the department of social services or it may excuse the juvenile from compulsory school attendance when there is a more suitable alternative in the best interests of the juvenile. The court may impose conditions on the protective supervision, including curfews, employment by the juvenile, probation and that the juvenile not go certain places or violate any laws. If the juvenile fails to comply with these conditions, the court may hold them in contempt and confine them to a detention facility.

When the juvenile has been adjudicated as delinquent, the court has broad discretion in their disposition and the alternatives include, but are not limited to, house arrest, training programs, substance abuse programs, restitution, fines and community service. The juvenile's delinquency history level is determined in the same manner as determining an adult's prior criminal history for sentencing, using a point system for prior adjudications involving felonies and misdemeanors and then classifying the delinquent juvenile as having a low, medium or high delinquency history. The General Assembly has also given offense classifications of violent, serious and minor and based on the delinquency history, the juvenile will be assigned a delinquency history level of one through three and these levels guide the court in the appropriate disposition. A level one delinquency history is community disposition, a level two is intermediate disposition and level three is commitment of the juvenile.

If the court has placed the juvenile on probation, it may attach conditions to the probation, including that the juvenile not violate any laws, refrain from possession or use of controlled substance, curfews, no possession of firearms and restitution. Probation is not to exceed one year, unless extended for one year by the court. If the juvenile violates the probation, the court may modify the probation order and add further conditions of the probation.

144. Id.
145. Id.
147. Id.
148. Id.
149. Id.
150. Id.
151. Id.
153. Id.
The court may not commit a juvenile who is under ten years of age and in no case shall the commitment exceed the juvenile's twenty-first birthday, while for more minor offenses, the commitment may not exceed the juvenile's eighteenth birthday.\footnote{154} The commitment shall be for an indefinite term of at least six months.\footnote{155} Commitment of the juvenile does not terminate the court's continuing jurisdiction, but only transfers physical custody.\footnote{156} Legal custody remains with the parent, guardian or agency in whom it is vested.\footnote{157}

Following the juvenile's release from commitment, there must be a post-release supervision plan and it shall be for a period of at least ninety days and not more than one year.\footnote{158} If the Office determines that the juvenile needs to be committed beyond the maximum commitment period, they must notify the parent or guardian thirty days in advance and give a detailed explanation of their determination.\footnote{159} The parent or guardian may request a review of the Office's determination by the court.\footnote{160} Upon motion by the court counselor or on the court's own motion, after notice to the juvenile, there may be a hearing to determine if the juvenile has violated the post-release supervision conditions.\footnote{161}

17. Modification and Enforcement of Dispositional Orders; Appeals

Upon motion and after notice, the court may conduct a review hearing and modify or vacate the order in light of changes in circumstances or the needs of the juvenile.\footnote{162} If the office to which the juvenile was committed is determined to be unsuitable for the needs of the juvenile, as determined by the Office, they may make a motion to the court for an alternative disposition.\footnote{163}

Upon motion, review of the final order of the court in a juvenile matter is before the Court of Appeals and notice of appeal must be given in open court or within ten days after entry of the

\footnote{154} Id.
\footnote{155} Id.
\footnote{156} Id.
\footnote{157} Id.
\footnote{159} Id.
\footnote{160} Id.
\footnote{161} Id.
\footnote{162} Id.
\footnote{163} Id.
The superior court shall review the record for abuse of discretion in the transfer, but shall not review the findings as to probable cause for the underlying offense. The superior court order is interlocutory and the issue of transfer can be appealed to the Court of Appeals only after the juvenile has been convicted in superior court.

An appeal may be taken by the juvenile, the parent, guardian, custodian or the State. However, the State’s right to appeal is limited to findings that the statute is unconstitutional, an order upholding the defense of double jeopardy, a holding that there is no cause of action under the statute or the granting of a motion to suppress.

18. Authority Over Parents of Juveniles Adjudicated Delinquent or Undisciplined

The parent, guardian or custodian of the juvenile shall attend the hearings unless excused by the court and any failure to appear at these hearings shall be grounds for contempt. Furthermore, the court may order the parent or guardian to attend parental responsibility classes.

If the court orders medical, surgical, psychiatric, psychological or other evaluations, the court may require the parent or guardian to attend these evaluations and may require them to pay the cost of treatment or care. The court may also order that the parent undergo psychiatric, psychological or other evaluation or treatment directed towards remedying behaviors or conditions that led to or contributed to the juvenile’s adjudication or the court’s decision to remove custody of the juvenile from the parent. The court may order the parent or guardian to provide transportation for the juvenile to keep appointments to comply with orders of the court. The court may also order the parent or

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165. Id.
166. Id.
167. Id.
168. Id.
169. Id.
170. Id.
172. Id.
173. Id.
guardian to pay for the support of the juvenile, a probation fee and court-appointed attorney's fees.\textsuperscript{174}

19. \textit{Interstate Compact on Juveniles}

The General Assembly has given the Governor the authority to execute a compact with other states relating to the cooperative supervision of delinquent juveniles on probation or parole and for the return of juveniles that have escaped or absconded or for nondelinquent juveniles who have run away from home.\textsuperscript{175}

If a nondelinquent juvenile runs away from home without the consent of the parent or guardian, the parent may petition the appropriate court for the issuance of a requisition for the juvenile's return.\textsuperscript{176} The court to which the application is made may hold a hearing to determine whether the petitioner is entitled to legal custody of the juvenile, whether the juvenile has run away without consent or whether the juvenile is emancipated.\textsuperscript{177} If the court determines that the juvenile should be returned to North Carolina, it must follow all applicable procedures, but may retain custody of the juvenile if he has pending criminal charges in his current state, until discharged from prosecution or other forms of disposition.\textsuperscript{178}

Any delinquent juvenile who has absconded or escaped or any juvenile who has run away may consent to his immediate return to North Carolina if consented to by the juvenile and his counsel or guardian ad litem, by executing and subscribing a writing in the presence of the judge of the appropriate court after the court has informed them of their rights under the Interstate Compact.\textsuperscript{179} North Carolina may permit any delinquent juvenile on probation or parole to reside in another state that is a party to the Interstate Compact if the parent, guardian or person entitled to custody is residing within the receiving state or if the guardian is not so residing, if the receiving state consents to accepting the delinquent juvenile.\textsuperscript{180} The receiving state then assumes the duties of visitation and supervision over the delinquent juvenile

\textsuperscript{174. Id.} \\
\textsuperscript{175. Id.} \\
\textsuperscript{176. Id.} \\
\textsuperscript{177. \S 6, 1998 Sess. Laws 202.} \\
\textsuperscript{178. Id.} \\
\textsuperscript{179. Id.} \\
\textsuperscript{180. Id.}
and the sending state shall be responsible for paying the costs of transporting the delinquent juvenile to the receiving state. 181

To the extent possible, states that are a party to the Interstate Compact shall not place delinquent juveniles in prison, jail or detain them with criminals, vicious or dissolute persons. 182

20. Records and Social Reports of Cases of Abuse, Neglect, and Dependency

The clerk shall maintain complete records of all juvenile cases alleging abuse, neglect or dependency and they shall be withheld from public inspection and may be examined only by order of the court. 183 The Director of the Department of Social Services shall maintain a record of cases of juveniles under protective custody and they may be examined only by order of the court or by the juvenile or guardian ad litem. 184 Where there has been a child victim, the court may order the information to be shared with such public agencies as it deems necessary to reduce the trauma to the victim. 185 The court’s record of a proceeding involving consent for an abortion on an unemancipated minor is not a matter of public record and may be examined only by order of the court.

If the juvenile’s records and reports relate to a child fatality or near fatality, the public agency shall disclose to the public, upon request, the information relating to the child fatality or near fatality if a person is criminally charged with having caused the incident or the district attorney has certified that a person would be charged with the fatality or near fatality. 186 However, such records shall not disclose to the requesting party the content of any psychiatric, psychological or therapeutic evaluations pertaining to the child or the child’s family unless directly related to the cause of the child fatality or near fatality. 187

21. Juvenile Records and Social Reports of Delinquency and Undisciplined Cases

A juvenile’s record who has been adjudicated delinquent or undisciplined shall be maintained by the clerk and may be examine

181. Id.
182. Id.
184. Id.
185. Id.
186. Id.
187. Id.
only by order of the court, except for the juvenile, his parent or
guardian, the prosecutor or court counselors.188 The prosecutor
may share information in the juvenile's record with law enfor-
ment, but may not allow them to photocopy any part of the rec-
ord.189 All other records relating to juveniles shall be kept
separate from the records and files of adults and shall be withheld
from public inspection, however, the juvenile, his attorney or par-
ent and the court counselor shall have the right to inspection of
these records without a court order.190

22. Disclosure of Juvenile Information

The Office shall adopt rules and regulations concerning the shar-
ing of information of juvenile information between public agencies
and that information shall remain confidential.191 Disclosure of
information concerning the identity of any juvenile under investi-
gation is prohibited, except that pictures of runaways may be pub-
lished with the permission of the parents.192

The juvenile court counselor shall deliver verbal and written
notification to the principal of the school of the juvenile when a
petition is filed alleging delinquency of the juvenile that would be
a felony if committed by an adult or if the petition is dismissed or
if the court transfers jurisdiction to the superior court, including
all court dispositional orders and modifications or vacations of
such orders.193

23. Parental Authority Over Juveniles

All juveniles under the age of eighteen are subject to the supervi-
sion and control of their parents.194 However, this is not applica-
table to juveniles who are married, have been emancipated or
working in the U.S. armed forces.195 The provisions of this act
may be enforced by the parent, guardian or custodian by filing a
civil action in district court and the judge has the authority to

188. Id.
190. Id.
191. Id.
192. Id.
193. Id.
194. Id.
make findings of fact and conclusions of law and may hold the juvenile in contempt for failure to comply with its order.196

24. Emancipation

Any juvenile who is sixteen and has resided in North Carolina for six months may petition the court to be emancipated.197 The parents of the juvenile must be notified198 and the court must hold a hearing, at which the petitioner must prove by a preponderance of the evidence that emancipation is in his best interests.199 In determining what is in the best interests of the petitioner, the court shall consider a variety of factors, including, petitioner's ability to function as an adult, the quality of parental supervision and the extent of family discord which may threaten reconciliation of the petitioner with his family.200 If the court determines it is in the best interests of the petitioner, it shall enter a decree of emancipation.201 The effect of such a decree is that the petitioner can contract, sue and be sued as if he were an adult, the decree is irrevocable and the parent or guardian is relieved of all legal duties owed to the petitioner.202

25. Judicial Consent for Emergency Surgical or Medical Treatment

If a juvenile is in need of emergency treatment and the parent or guardian has refused to authorize it, the court may authorize the physician to proceed if it determines that the treatment is necessary to prevent immediate harm to the juvenile.203 If possible, a hearing shall be held, at which time the parent or guardian would be given an opportunity to explain their refusal of treatment.204 Following a hearing, for which proper notice has been given, the court may order the parent or guardian to pay for the emergency medical or surgical treatment.205

196. Id.
197. Id.
198. Id.
199. Id.
200. Id.
202. Id.
203. Id.
204. Id.
205. Id.
25. **Placing or Adopting of Juvenile Delinquents or Dependents**

No person, agency or corporation may bring a juvenile into the state for purposes of another person adopting the juvenile, without the express written approval of the Department of Health and Human Services. This department may require a bond of up to $1000.00 for bringing in a juvenile for adoption. One must also get the department’s written approval for taking a juvenile outside of this state if he is being taken out of the state for purposes of placing the juvenile in a foster home.

26. **Interstate Compact on the Placement of Children**

The General Assembly enacted into law the Interstate Compact on the Placement of Children with all other jurisdictions who have adopted the Compact. Under this Compact, all party states will cooperate with each other in the interstate placement of children with the different state agencies with supervision over juveniles working together to achieve purposes and policies of this Compact, namely to assure that the juvenile is placed in the most suitable environment to provide the necessary and desirable degree and type of care needed.

27. **Registration of Certain Juveniles**

If a juvenile who is at least eleven years old at the time of the offense is adjudicated delinquent for committing a sex crime, the judge may find that juvenile is a danger to the community and require that he be registered as a sex crime offender.

28. **Employment Discrimination**

The General Assembly sought to clarify when an employee has an action for wrongful dismissal and rewrote the statute concerning employment discrimination. Under the current statute, any employee who is dismissed for filing a claim or complaint or initiates any inquiry or investigation with respect to any actions previ-

206. Id.


208. Id.

209. Id.

210. Id.

211. Id.
ously authorized by statute, shall have a cause of action against his employer.\textsuperscript{212}

29. \textit{Educational Use of Juvenile Court Information}

In amending the statute relating to the educational use of juvenile court information, the General Assembly struck the provision requiring the juvenile's school principal to maintain the juvenile's court documents until dismissal, adjudication or transfer of jurisdiction.\textsuperscript{213} Under the current statute, the principal must shred, burn or otherwise destroy all information gained by the examination of the juvenile's records when the principal finds that the school no longer needs the information to protect the safety of or improve the educational opportunities for the juvenile or others.\textsuperscript{214}

30. \textit{Sentencing Commission Directives}

The General Assembly has directed the Sentencing Commission to use the newly enacted juvenile code and its purposes in evaluating the dispositional laws and policies as relate to juveniles and they are to make recommendations to the General Assembly for any proposed modifications of such dispositional alternatives.\textsuperscript{215} The Commission shall also develop an Office of Juvenile Justice facilities population simulation model and shall have first priority to apply the model to fact situations or changes in dispositional laws concerning juveniles.\textsuperscript{216} Using all available data, the Commission shall determine the long-range needs of the juvenile justice system and identify problems, together with suggestion for fixing those problem areas.\textsuperscript{217} The Commission was also increased to thirty members by adding a representative of the Office of Juvenile Justice.\textsuperscript{218}

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\textit{Nikki Gfellers  
Tilghman Pope  
F. Marshall Wall}
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\begin{itemize}
  \item \textsuperscript{212} Id.
  \item \textsuperscript{213} § 6, 1998 Sess. Laws 202.
  \item \textsuperscript{214} Id.
  \item \textsuperscript{216} § 10, 1998 Sess. Laws 202.
  \item \textsuperscript{217} Id.
  \item \textsuperscript{218} Id.
\end{itemize}
A. **Summary Ejectment Proceedings**

The General Assembly amended N.C. GEN. STAT. section 42-34 in order to require that tenants pay the clerk of court the amount of rent in arrears if they seek to stay an execution of judgment for summary ejectment.\(^1\) Under the old statute, a tenant merely had to sign an undertaking that he would pay the amount of the contract rent as it became due after judgment was entered.\(^2\) This amendment requires the tenant to actually pay the rent in arrears to the clerk of court. However, the statute makes an exception if there is an actual dispute as to the amount of rent in arrears. If there is a dispute as to actual amount of rent due, the tenant shall not be required to pay any money to the clerk of court, even if the magistrate makes a finding as to the specific amount of rent due and specifies such amount in his judgment.\(^3\)

Additionally, the amendment provides that if a tenant is an indigent who prosecutes his or her appeal as an indigent, he or she shall not be required to pay undisputed rent in arrears to the clerk of court in order to stay execution of a summary ejectment pending appeal.\(^4\) He or she will continue to be bound only by the old rule that requires only that he or she sign an undertaking to pay contract rent as it becomes periodically due.

The General Assembly also added a new statute setting forth the requirements for payment of rent pending execution of judgment.\(^5\) The new statute provides that if a judgment in district court is against the tenant and the tenant does not appeal the judgment, then the tenant must pay rent to the landlord for the time the tenant remains in possession of the premises after the judgment is given. However, if the tenant does appeal the judgment, he or she can stay execution of the judgment if he or she posts a bond as provided in amended N.C. GEN. STAT. section 42-34(b) as noted above. Thus, the tenant would have to pay the undisputed rent in arrears to the clerk of court.\(^6\)

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2. N.C. GEN. STAT. § 42-34(b) (1994).
3. § 1, 1998 N.C. SESS. LAWS 125.
4. Id.
These amendments became effective October 1, 1998 and apply only to actions for summary ejectment filed on or after that date.\textsuperscript{7}

\section*{B. Requirements of Landlord}

In Act 212 of 1998, the General Assembly modified and amended the appropriations for all areas of state government.\textsuperscript{8} Other statutes were amended within the appropriations plan, including current requirements of landlords under housing codes.\textsuperscript{9} Landlords are now required to install smoke detectors in their property in accordance with National Fire Protection Association.\textsuperscript{10} They shall also replace or remove smoke detectors within fifteen days of written notification from the tenant.\textsuperscript{11} The landlord shall also ensure that a smoke detector is operable and in good repair at the beginning of each tenancy.\textsuperscript{12}

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\section*{C. Planned Community Act}

In Act 199 of 1998, the General Assembly passed legislation in order to bring planned communities within North Carolina under the same guidelines and regulations.\textsuperscript{13} This chapter applies only to planned communities within the state which contain more than twenty lots which are for residential purposes only. This Chapter does not invalidate or modify any zoning ordinance or real estate use law, except that such a law may not impose a prohibition or a requirement on a planned community that it would not impose on a substantially similar development under different form of ownership.\textsuperscript{14} It addresses the issue of eminent domain by allowing for compensation to the lot owner for his lot and its interest in the common element.\textsuperscript{15} Article 2 of the Act allows for the creation, termination, and merger of a planned community, as well as the construction of its bylaws.\textsuperscript{16} The chapter declares that

\begin{itemize}
\item \textsuperscript{9} § 1, 1998 N.C. Sess. Laws 212.
\item \textsuperscript{10} \textit{Id}.
\item \textsuperscript{11} \textit{Id}.
\item \textsuperscript{12} \textit{Id}.
\item \textsuperscript{14} § 1, 1998 N.C. Sess. Laws 199.
\item \textsuperscript{15} \textit{Id}.
\item \textsuperscript{16} \textit{Id}.
\end{itemize}
the rule against perpetuities may not be applied to defeat any provision of the declaration, nor may title to a lot be rendered unmarketable by the declaration’s failure to comply with this Chapter.\textsuperscript{17} A planned community can be terminated only by an agreement of lot owners who control eighty percent or larger of the votes that the association is allocated. If the real estate within the planned community is not intended to be sold at termination, then title to the common elements vest in the lot owners as tenants in common.\textsuperscript{18} Two or more planned communities, including their activities and operations, are able to merge by agreement of the lot owners into a single planned community, which would be the legal successor of the preexisting communities.\textsuperscript{19} Article 3 of the Act details the management of the planned community, including the organization and the powers of a owners’ association and executive board.\textsuperscript{20} It also details the bylaws, including voting requirements, and the required upkeep of the planned community.\textsuperscript{21} \\

\textit{Margaret P. Eagles}
PUBLIC UTILITIES

A. Trains and Railroads

Session Law 128 of 1998 adds a new article to Chapter 14-460 and 14-461 of the general statutes. Under Article 61, any person with the intention of being transported free who rides or attempts to ride on top of a train, under or between cars, or in any freight car shall be guilty of a Class three misdemeanor.  

Under Chapter 14-461, it is a Class one misdemeanor for any person to make, manufacture, sell, or give away a duplicate key to a lock used on a railroad company’s switches or switch tracks. This section does not apply to officers of such railroad company’s who have a duty to issue keys to employees.

Session Law 128 also added two new sections in Chapter 136 of the general statutes. Under Chapter 136-197, a ticket agent of a passenger train can refuse to sell a ticket to someone they believe to be intoxicated, and the conductor can prevent an intoxicated person from boarding the train. It is a Class 1 misdemeanor for an intoxicated person to board a train after being forbidden to do so.

Under section 136-198, a conductor may lawfully put a passenger and the passenger’s baggage out of the train by using necessary force if a passenger violates the rules of the train, refuses to pay the fare, or is intoxicated.

B. Water Supply Systems

Session Law 132 of 1998 established the State Infrastructure Council located within the Department of Environmental and Natural Resources. The purpose of the Council is to develop a plan that addresses North Carolina’s water supply, distribution, and wastewater treatment needs. The membership shall consist of nineteen members, five ex officio and fourteen appointed.

3. Id.
6. Id.
9. Id.
appointed members shall have expertise in the fields of environmental science. The members shall serve two-year terms. Initial appointments will vary in length of term. For example, the Governor will initially appoint two members for two years and two members for three years. The President Pro Tempore of the Senate and the Speaker of the House of Representatives will each initially appoint two members for two years and three members for three years. The Chair of the commission shall be appointed biennially by the Governor from the members of the Council.

The new article lays out the filling of vacancies, compensation and removal of members, meetings, and the appropriate quorum. The duties of the Council include developing a plan that addresses North Carolina's water supply and distribution and wastewater treatment needs. In developing a plan, the Council must take into account the availability of natural resources and analyze the roles that State and local government must play to carry out the plan. The Council shall annually file a written report to the Joint Legislative Commission on Governmental Operations.

In Chapter 159G-6 of the general statutes, the maximum principle amount of revolving loans to a government unit has been increased to $8,000,000 and the maximum principle amount of grants to a government unit has increased to $3,000,000.

Session Law 132 also added a new section to Chapter 62-159 of the general statutes regarding additional funding for natural gas expansion. In order to promote the construction of facilities for extension of natural gas, the commission may provide funding through appropriations from the General Assembly or from proceeds of general obligation bonds.

The funding may be given to an existing natural gas local distribution company or to a person or gas district awarded a new

10. Id.
11. Id.
12. Id.
13. Id.
15. Id.
16. Id.
17. Id.
18. Id.
franchise for the construction of natural gas facilities. The scope of the proposed project and the economic feasibility of the project must be considered by the commission in making funding decisions.

If a gas district decides to sell or dispose of a facility financed with funds received under this section, the gas district must first notify the commission. The commission will determine the repayment method or accounting for such funds.

The Commission has the authority to grant exclusive franchises under subsection (c). This subsection is not applicable to gas districts formed under Article 28 of Chapter 160A.

The Commission shall adopt rules to implement this section and shall report to the Joint Legislative Utility Review Commission with respect to the use of funding under this section.

Daniel M. Gaylord

C. Wireless Telephone Service

1. Purpose

With the enactment of session law number 158 of 1998, the General Assembly created a new chapter, Chapter 62B, of the General Statutes. The purpose of section one of this act is to provide a foundation for a wireless enhanced 911 system for the use of cellular, personal communications service, and other wireless telephone customers. This legislation was enacted in accordance and in response to an order of the Federal Communications Commission (FCC Order).

2. Operation

A wireless enhanced 911 system is basically an emergency telephone system that will provide mobile, cellular and radio telephone users with a wireless 911 service, which will direct 911 calls

22. *Id.*
23. *Id.*
24. *Id.*
25. *Id.*
26. *Id.*
28. *Id.*
30. *Id.*
to an appropriate public safety answering point (PSAP) that receives incoming 911 calls and dispatches appropriate public safety agencies to respond to such calls.\textsuperscript{32} This Wireless Enhanced 911 system will direct those 911 calls to the appropriate PSAPs by selective routing based on the geographic location from which they originated.\textsuperscript{33} To accomplish this goal, the Wireless enhanced 911 system will contain two very important sets of services. The first feature, automatic location identification or AALI,\textsuperscript{34} allows a Wireless Enhanced 911 system to display information defining the approximate geographic location of a wireless telephone that is used to place a 911 call.\textsuperscript{35} The second set of features are referred to as automatic number identification (ANI) and Pseudoautomatic number identification (Pseudo-ANI).\textsuperscript{36} These service capabilities enable the automatic display of mobile handset telephone numbers and cell site or cell face numbers that are used to call 911.\textsuperscript{37}

To become eligible to take part in the planned benefits of this act, PSAPs must have (1) opted to provide wireless enhanced 911 service and (2) submitted written notice to their FCC licensed commercial mobile radio service providers and to the Wireless 911 Board.\textsuperscript{38}

3. Wireless 911 Board

Section two of chapter 62B provides for the creation of a thirteen member wireless 911 board.\textsuperscript{39} Two of the members are appointed by the Governor, one upon the recommendation of the N.C. League of Municipalities and one upon the recommendation of the N.C. Association of County Commissioners.\textsuperscript{40} Five members are appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives.\textsuperscript{41} Five other members are appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate.\textsuperscript{42}

\begin{thebibliography}{9}
\bibitem{32} § 1, 1998 N.C. Sess. Laws 158.
\bibitem{33} Id.
\bibitem{34} Id.
\bibitem{35} Id.
\bibitem{36} Id.
\bibitem{37} Id.
\bibitem{38} § 1, 1998 N.C. Sess. Laws 158.
\bibitem{39} § 2, 1998 N.C. Sess. Laws 158.
\bibitem{40} Id.
\bibitem{41} Id.
\bibitem{42} Id.
\end{thebibliography}
The final member will be the Secretary of Commerce or the Secretary's designee. Each member shall serve a term of four years and may be appointed to no more than two successive terms. Additionally, the General Assembly has provided that there is to be established with the Treasurer, the Wireless Fund, into which the Board shall deposit all revenues derived from a service charge levied on each mobile handset telephone number assigned to a commercial mobile radio service (CMRS) customer. This fund will be a separate fund restricted to use only under Chapter 62B.

4. Service Charge

The Board will levy a monthly wireless Enhanced 911 service charge on each CMRS connection. This charge shall be applied and imposed uniformly throughout the State. The rate of such service charge shall initially be set at eighty cents (80 cents) per month per each CMRS connection beginning October 1, 1998. The Board beginning July 1, 2000 and every two years may adjust the service charge thereafter. The Board is to set the service charge at such a rate as to ensure full recovery, over a reasonable period of time, for CMRS providers and for PSAPs, of the costs associated with developing and maintaining a wireless Enhanced 911 system. The service charge shall not exceed eighty cents (80 cents) per month.

5. Management and Use of funds

Each CMRS provider, as part of its monthly billing, shall collect the wireless Enhanced 911 service charge and may list the service charge as a separate entry on each bill. In the event of a partial payment, the provider shall apply the payment first against the amount the subscriber owes the provider. A CMRS

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43. Id.
44. Id.
46. Id.
47. Id.
48. Id.
49. Id.
50. Id.
52. Id.
53. Id.
54. Id.
provider has no obligation to take any legal action to enforce the collection of service charges for which any subscriber is billed.\footnote{Id.}

Sixty percent of the funds in the Wireless Fund shall be used to reimburse CMRS providers for their actual costs in complying with the wireless 911 requirements.\footnote{Id.} The remaining forty percent of the funds in the Wireless Fund shall be used to make monthly distributions to eligible PSAPs (the Forty Percent Fund).\footnote{§ 2, 1998 N.C. Sess. Laws 158.} Half of the Forty Percent Fund shall be divided equally among the total number of PSAPs in North Carolina.\footnote{Id.} However, monthly distributions will be made only to those PSAPs that have complied with the provisions of Chapter 62B and distribution will begin in the next month after compliance.\footnote{Id.} All monies remaining in this half of the Forty Percent Fund on January 31 of each year will then be evenly distributed to each of the eligible PSAPs.\footnote{Id.}

The remaining half of the Forty Percent Fund shall be divided pro rata among the eligible PSAPs based on the population served by the PSAP.\footnote{Id.} Monthly distributions will also be made one month after the PSAP's compliance with Chapter 62B.\footnote{Id.}

\section{6. Provision of Services}

In accordance with the FCC Order\footnote{See supra, note 4.}, no CMRS provider shall be required to provide wireless Enhanced 911 service until such time as (1) the provider receives a request for such service from the administrator of a PSAP that is capable of receiving and utilizing the data elements associated with the service; (2) funds are available \cite{430} from the Wireless Fund; and (3) the local exchange carrier is able to support the wireless Enhanced 911 system.\footnote{§ 2, 1998 N.C. Sess. Laws 158.} Chapter 62B establishes that all proprietary information received by the Board and the State Auditor, in compliance with this Chapter, shall be retained in confidence.\footnote{Id.} Additionally, the Chapter states that the wireless 911 system shall be used solely for emergency communication by the public, and that any knowing misuse

\begin{itemize}
\item \footnote{Id.}
\item \footnote{Id.}
\item \footnote{§ 2, 1998 N.C. Sess. Laws 158.}
\item \footnote{Id.}
\item \footnote{Id.}
\item \footnote{Id.}
\item \footnote{Id.}
\item \footnote{Id.}
\item \footnote{See supra, note 4.}
\item \footnote{§ 2, 1998 N.C. Sess. Laws 158.}
\item \footnote{Id.}
\end{itemize}
of the system to avoid any CMRS charge shall be a Class 3 misdemeanor if the services obtained had a value of one hundred dollars or less and a Class one misdemeanor if the value exceeded one hundred dollars. 66

7. Lease Provisions for Communication Towers

Section three of this act amends section 146-29.2 of the General Statutes. 67 The amended statute now allows the State to lease State land for the purpose of construction and placement of communication towers. 68 It also allows for the leasing of space on State buildings for the placement of antennas for wireless communication. 69 These leases shall contain provisions which allow other telecommunication carriers to co-locate on the communication towers, on commercially reasonable terms between the lessee and the co-locating carrier, until the tower reaches its capacity. 70 Unless the State determines that co-location is not feasible at that location, all communication towers shall be designed and constructed to accommodate other carriers on the towers. 71 The act makes it clear the State Park land will not be available for such leases and that the State shall choose land that minimizes the towers' visual impact. 72

D. Utility Franchises (Shared Tenant Telephone Providers)

In Act 180 of 1998, the General Assembly implemented a recommendation of the joint Legislative Utility Committee by amending section 62-110(d) of the General Statutes. 73 This amendment allows providers of telephone service to shared tenants (i.e. people who occupy the same contiguous premises) to obtain telephone line access from any certified local provider or any provider authorized by the [North Carolina Utility] Commission. 74 Prior to the amendment of this statute, the certificated

66. Id.
70. Id.
71. Id.
72. Id.
74. Id.
local exchange telephone company could be the only provider of access lines to the telephone network. 75

Additionally, the General Assembly now allows the North Carolina Utility Commission to permit or approve flat rates, message rates or some combination of those rates for shared or resold services whenever the service is offered to patrons of hotels or motels, occupants of timeshare or condominium complexes serving primarily transient occupants. 76 Prior to this amendment, the Commission could approve or permit rates on bases other than measured or message for shared services only to patron of hospitals, nursing homes, rest homes, retirement centers, student housing or temporary losses of residential property. 77

E. High Voltage Line Safety Act and the Law or Project Expediters on Public Contracts.

1. Public Contracts

In Act 193 of 1998, the General Assembly amended section 143-128(e) of the General Statutes to allow public bodies (i.e. The State, Counties, and Municipalities) to provide in contract documents for resolution of project disputes through alternative dispute resolution processes, such as mediation and arbitration, whenever separate contracts are awarded and separate contractors are engaged for a public project that require project expediters. 78

2. Voltage Safety Act

In section two of act 193 of 1998, the legislature amended section 95-229.6(4) of the General Statutes to alter the definition of person responsible for the work to be done. 79 Prior to the amendment, that term meant the person performing or controlling the job that necessitates the precautionary safety measures required by the Voltage Safety Act. 80 The Legislature amended this definition to provide that if the person performing or controlling the work is under contract or agreement with a government entity,

76. § 3, 1998 N.C. SESS. LAWS 180.
80. N.C. GEN. STAT. § 95-229.6(4) (Supp. 1997).
the government entity will be the person responsible for the work to be done.\textsuperscript{81}

\textit{William Grainger Wright}

TAX LAW

A. Art Festivals Exemption

This act was designed to exempt certain nonprofit arts organizations from paying taxes on festivals they hold. The act states that the taxes imposed by N.C. GEN. STAT. section 105-37.1 (licensing and gross receipts taxes) do not apply to Art festivals and community festivals that are no longer than seven days, and that are held outdoors on public property and involve a variety of exhibitions, entertainments, and activities. This is true as long as the person holding the festival who is exempt from income tax has no more than two arts festivals and one community festival during the calendar year.

B. Exemptions for Piped Natural Gas

This Act was created to retain the tax-exempt status for piped natural gas sold by municipalities, and to tax other sales of piped natural gas more uniformly. In doing so, the legislature removed all language pertaining to natural gas and created a new article, Article 5E. Besides a section providing definitions, Article 5E set out provisions for the rates, liability, and payment of the tax.

The rates are based on the monthly therm volumes of piped natural gas received by the end-user of the gas. If the end-user is receiving gas through two or more separate measuring devices, each one is calculated individually unless they are located on the same premises and are billed through the same account where the total volume would be used to calculate the tax. This section does not apply to municipalities. The tax is payable on the last day of the month in which it is accrued. The time for accrual is dependent upon who delivers and receives the gas. If the gas is received by a person with direct access to an interstate gas pipeline, and it is for their consumption, the tax accrues when it is received and is payable by that person.

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2. § 1, 1998 N.C. SESS. LAWS 96.
4. § 1, 1998 N.C. SESS. LAWS 22.
5. Id.
6. Id.
7. Id.
8. Id.
tribution company delivers the gas, the tax accrues when delivered. In both cases, the deliverer pays the tax.9

The North Carolina Utilities Commission must give the Secretary a list of the entities that received piped natural gas.10 The owner of an interstate pipeline might also be required to report its customers. All of these records should be kept for three years, and these persons should be aware that the Secretary may audit them.11 These reports must contain the amount of gas delivered and to whom, as well as the amount of gas received by persons who gained it directly from and interstate pipeline.12 From this information, the Secretary will distribute the tax to the cities in the amount of one half of the tax attributable to that city.13

Another change in this law is that a corporation is allowed a credit on its tax return.14 This credit is either the one claimed under Division V of Article 4, or one half of the amount of tax they had to pay under Article 5E.15 Additionally, the city cannot levy a privilege license tax on any person who supplies natural gas and who is subject to the tax.

C. White Goods

This act has reduced the privilege and excise taxes of white goods to three dollars, regardless of whether or not it contains chlorofluorocarbons.16 It is no longer permissible for counties to use the funds generated by this tax on things other than the management of discarded white goods.17 Suggestions on how to use these monies include capital improvements such as equipment for moving the white goods and storing them, defraying labor costs and other costs associated with the white goods, and using the monies to help in the clean-up of illegal white goods disposal sites.18 The important thing is that monies must be spent on something that has a direct relation to the management of discarded white goods.19

9. Id.
11. Id.
12. Id.
13. Id.
The counties will not receive more money for management during the quarterly distribution unless their undesignated balance is less than their threshold amount. \textsuperscript{20} "Threshold amount" means twenty-five percent of the amount of white goods disposal tax the counties received (or would have been able to receive had it been eligible) the preceding fiscal year. \textsuperscript{21}

Another new provision is that the counties must prepare a report listing the amount of white goods scrap metal collected, the amount of revenue credited to its white goods account, the expenditures from that account, its designated and undesignated balances from this account, and the comparison between the undesignated balance and the amount of white goods disposal tax it received (or would have received) the previous fiscal year. \textsuperscript{22}

\textbf{D. Interest Accrual}

This act allows a taxing unit's governing body to delay the accrual of interest on unpaid taxes for the fiscal year of 1997-98 unless the taxes remain unpaid after June 6, 1998 if the body passes a resolution to this effect. \textsuperscript{23} For taxes that remain unpaid after this deadline interest will accrue according to the schedule in N.C. GEN. STAT. section 105-360. \textsuperscript{24} If the body does adopt this resolution, any interest that was paid before June 6, 1998 shall be refunded to the taxpayer. \textsuperscript{25}

\textbf{E. Transfer or Delivery of a Decedent's Property}

Session law 69 of 1998 was designed to abolish tax waivers on the delivery or transfer of a decedent's property. The legislature added a new section that requires notice to be provided to the Secretary if a company pays the proceeds of either a life insurance policy, an initial payment of an annuity, or the initial distribution of an IRA upon the death of the owner who had named himself as the recipient. \textsuperscript{26} This will not apply though if the payment is made to a surviving spouse or to a Class A beneficiary under N.C. GEN. STAT. section 105-4(a) and the amount does not exceed $100,000.

\textsuperscript{22} Id.
\textsuperscript{24} § 1, 1998 N.C. Sess. Laws 67.
The statute further states that taxes are a lien on the real property in an estate and on any proceeds arising from a sale of that property.\(^\text{27}\) The lien begins at the decedent's death and continues until it is paid, ten years have elapsed, or it is released.\(^\text{28}\) A lien can be released only when the Secretary issues a tax waiver for the lien, issues a tax certificate, or when a personal representative files a tax certification with the clerk of superior court.\(^\text{29}\)

Every entity that rents safe-deposit boxes no longer has to retain a portion of the contents of the box to cover any taxes on it.\(^\text{30}\) Instead, upon the death of the person to whom it is issued, the entity must have the clerk of the superior court or his representative open the box and inventory its contents. After this is done, the entity must release the contents upon the request of the deceased's personal representative, collector, lessor, or co-tenant of the box.\(^\text{31}\) If this person reasonably believes that the safe-deposit box is empty, he can certify this to the clerk of superior court who must authorize in writing that the person may open the box outside the clerk's presence but in the presence of a representative of the entity in control of the box.\(^\text{32}\) The person must then certify to the clerk whether the box was indeed empty.\(^\text{33}\) If the box is not empty, the representative of the institution shall close the box and it can only be reopened under the above procedures.\(^\text{34}\)

This Session Law does not repeal or modify any provisions relating to inheritance tax,\(^\text{35}\) or estate taxes,\(^\text{36}\) and seeks to regulate and protect the relationships between banks and joint owners of deposit accounts,\(^\text{37}\) between credit unions and joint owners of accounts,\(^\text{38}\) and between savings banks and joint owners of accounts.\(^\text{39}\)

\(^{29}\) Id.
\(^{32}\) Id.
\(^{33}\) Id.
\(^{34}\) Id.
F. Collection of Local Taxes

In an effort to improve the collection of local taxes, the General Assembly provided particular government officials the avenue to share certain tax information.

As to the first subdivision added to N.C. GEN. STAT. section 105-259(b), tax information is provided to a regional public transportation authority or a regional public transportation authority on an annual basis when that authority needs the information to administer its tax on leased vehicles.\(^40\) The tax information that can be released includes the name, address, and identification number of retailers who collect the tax on leased vehicles pursuant to N.C. GEN. STAT. section 105-187.5 or who are audited by the Department of Revenue regarding the tax on leased vehicles.\(^41\) However, the audit information can only be released to the authority when the Department of Revenue determines that the audit results may be of interest to the authority.\(^42\)

As to the second subdivision added, tax information is provided to a county or city on an annual basis when it needs the information to administer its tax on prepared foods and beverages.\(^43\) The tax information provided the county or city includes the name, address, and identification number of retailers who collect the sales and use taxes and may be selling prepared food and beverages in a business or who are audited by the Department of Revenue regarding the sales and use taxes.\(^44\) However, the audit information can only be released to the county or city when the Department of Revenue finds that the audit results may assist the county or city in its administration of local prepared food and beverages tax.\(^45\)

Further, a new subsection was added to N.C. GEN. STAT. section 153A-148(1)(a) to reflect the ability to exchange information with a regional public transportation authority or the Department of Revenue when necessary to fulfill a duty imposed on that authority or on a county.\(^46\)

An amendment has been made to N.C. GEN. STAT. section 105-330.(6)(c). This amendment allows an owner of a motor vehi-
cle to receive a release or refund for vehicle property taxes when
the owner moves out-of-state.\textsuperscript{47} Upon application from the owner,
a release or refund can be obtained for any full calendar month
remaining in the vehicle's tax year after the date of surrender.\textsuperscript{48}

\textbf{G. Kerosene and Other Motor Fuel Taxes}

In an attempt to clarify the taxation of kerosene and to
change the motor fuel tax laws, the General Assembly began by
modifying and adding some definitions. Diesel Fuel has been
redefined to include kerosene.\textsuperscript{49} Some modification has been
made to the definition of Two-Party Exchange, now called Two-
Party Transaction.\textsuperscript{50} The term User has been added and means
"[a] person who owns or operates a licensed highway vehicle and
does not maintain storage facilities for motor fuel."\textsuperscript{51}

The General Assembly requires certain action to be taken by
the Secretary if "a license holder files a bond or an irrevocable let-
ter of credit as a replacement for a previously filed bond or letter
of credit and the license holder has paid all taxes and penalties
due under this Article. . ."\textsuperscript{52} The action that the Secretary must
take includes returning the previously filed bond or letter of credit
or notifying the person liable on the previously filed bond and the
license holder that the person is released from liability on the
bond.\textsuperscript{53}

In the section addressing the party(s) liable for payment of
the motor fuel tax, the General Assembly gave the Secretary some
additional responsibility.\textsuperscript{54} If the Secretary finds that a bulk-end
user or retailer has used or sold untaxed dyed diesel fuel to oper-
ate a highway vehicle when the fuel is dispensed from a storage
facility or through a meter marked nonhighway use, then all of
the fuel delivered into that storage facility is subjected to excise
tax under the presumption that the fuel has been used to operate
a highway vehicle.\textsuperscript{55}

\begin{flushleft}
\textsuperscript{48} § 3, 1998 \textit{Sess. Laws} 139.
\textsuperscript{50} § 3, 1998 \textit{Sess. Laws} 146.
\textsuperscript{51} § 3, 1998 \textit{Sess. Laws} 146.
\textsuperscript{53} § 4, 1998 \textit{Sess. Laws} 146.
\textsuperscript{55} § 5, 1998 \textit{Sess. Laws} 146.
\end{flushleft}
The General Assembly added to the motor fuel excise tax exemptions. Diesel that is kerosene and is sold to an airport is now exempt from the tax.

The General Assembly has imposed a penalty for the non-filing of a return in a specific instance. A penalty of $250.00 is imposed on a licensed distributor or a licensed importer for not filing a return as required by this section when a licensed distributor or importer deducts an exempt sale from a tax payment to a supplier and does not report the sale by filing a return.

A monthly refund of the excise tax paid by certain distributors of kerosene is now available. In order to be eligible for this refund, a distributor must sells kerosene to the end user of the kerosene or a retailer of kerosene. There are also other limitations on the distributor as to the final use of the kerosene after the distributor dispenses the kerosene into a storage facility.

The due dates for this and other applications for refund have been modified to take into consideration the refund period (i.e. annual, quarterly, or monthly). Applications for an annual refund must state "whether or not the applicant has filed a North Carolina income tax return in the preceding taxable year." Applications for refunds provided for in this Part must state that the applicant has paid for the fuel for which a refund is claimed or that payment for the fuel has been secured to the seller's satisfaction.

Finally, the General Assembly added to the requirements for an applicant trying to obtain a license. Not only does the applicant need to file a form with all the required information, now the applicant must also meet the requirements for obtaining a license set out in N.C. GEN. STAT. section 105-449.69(b).

64. § 10, 1998 Sess. Laws 146.
H. Non-Resident Withholding and Tax

To limit non-resident withholding requirements, the General Assembly redefined the term contractor to include only athletes and entertainers. The threshold for non-resident withholding was raised from $600.00 to $1500.00. By raising this threshold requirement, every payer who pays a contractor more than $1500.00 during a calendar year must deduct and withhold from compensation paid to that contractor the state income tax payable by that contractor on that compensation.

The General Assembly has also provided mechanisms to enhance the collection of taxes from non-residents engaged in construction-related businesses. First, the Board shall not issue a license unless a certificate of authority is obtained from the Secretary of State. Second, the Board shall provide the Secretary of Revenue, upon the Secretary's request, the name, address, and tax identification number of every non-resident licensed by the Board. Finally, the Board shall not renew the certificate of license of a non-resident if the Secretary of Revenue determines that the non-resident owes a delinquent income tax debt.


Some changes were made by the General Assembly in an effort to conform state law to the Internal Revenue Code. First, the Internal Revenue Code used in defining and determining certain state tax provisions now refers to the Code enacted as of September 1, 1998. Next, the corporate income tax carryforward for net economic losses has been extended from five to fifteen years. Stated another way, the net economic losses sustained by a corporation in any or all of the fifteen preceding income years

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70. § 2, 1998 Sess. Laws 162.
are allowed as deduction to the corporation subject to some limitations. Third, some modification was necessary to conform state law with Federal Gift Tax treatment of contributions to Qualified Tuition Programs. 77

J. Criminal Penalty for Tax Violations

The General Assembly has changed the class of felony in order to enhance the criminal provisions for tax violations. A person who attempts to evade or defeat tax is now guilty of a Class H felony,78 formerly a Class I felony.79 Further, a person who aids or assists in violation of tax laws is also guilty of a Class H felony80 rather than a Class I felony.81 These changes are effective December 1, 1998, and apply to offenses occurring on or after that date.82

K. Income Tax Credit for Charitable Contributions by NonItemizers

The General Assembly has increased the income tax credit for charitable contributions made by nonitemizers.83 The credit has increased from two and three-fourths percent84 to seven percent of the taxpayer’s excess charitable contributions.85 This Act is effective for the taxable years beginning on or after January 1, 1999.86

L. Use of Local Sales Tax Proceeds for Public School Capital Outlays

The General Assembly extended the number of fiscal years a county must use a portion of the local sales tax proceeds for public school capital outlay purposes. The number of fiscal years were extended from the next ten and sixteen fiscal years to the next twenty-three and twenty-five fiscal years, respectively.87 The cap-

ital outlay purposes are defined in N.C. GEN. STAT. section 115C-426(f).\textsuperscript{88} The Act becomes effective July 1, 1998.\textsuperscript{89}

\textbf{M. Local Pay Phone Services Exempt from Sales Tax}

A sales tax has been applied to the gross receipts derived by a local telecommunication service.\textsuperscript{90} However, with the General Assembly's modification, the gross receipts no longer include receipts from local pay phone service.\textsuperscript{91}

\textbf{N. Excise Tax on Controlled Substances}

A new rate has been added for the excise tax levied on controlled substances possessed by dealers.\textsuperscript{92} The rate of fifty dollars is now levied for each gram, or fraction thereof, of cocaine.\textsuperscript{93} The 'Interest and Penalty' section has been renamed 'Administration'.\textsuperscript{94} The language of the former Interest and Penalty section has been stricken and replaced with a reference to Article 9 of this Chapter which applies to this Article.\textsuperscript{95}

Janice L. Davies

\textbf{O. Tax Incentives for New and Expanding Businesses}

\textit{1. Designation of Development Zones}

The General Assembly amended this portion of the tax laws to include not only new and existing businesses but "development zones" as well.\textsuperscript{96} A tract is deemed a development zone under this Article if it is located in a city with a population of more than five thousand, has a population of one-thousand or more, and more than twenty percent of its population is below the poverty level.\textsuperscript{97} A development zone designation is effective for forty-eight months and the zone is considered an enterprise tier one area for the pur-
poses of determining tax credits under this Article. Development zones are now given priority for the receipt of community development block grants.

2. Central Administrative Office Credit Expansion

Article 3A also expands the Central Administrative Office tax credit to include jobs that were filled in that office in the twenty-four month period that the business was using temporary space during completion of the business office property. The credit was formerly only allowable for businesses that hired forty additional full time employees during the taxable year when the new property was first used as a central administrative office. The new amendment allows that credit to be taken whether or not the office building is complete.

3. Large Investment Enhancement Credits

The General Assembly further expanded the tax incentives for businesses by allowing taxpayers otherwise qualified under Article 3A to become eligible for a “large investment enhancement” for business tax credits. Under this section, the taxpayer is eligible for the large investment credit if the taxpayer purchases or leases at least $150,000,000 worth of property, machinery/equipment, or central administrative office property to be used in the applicable business within a two year period.

4. Newly Acquired Businesses

There has been a recent clarification in the law with respect to tax incentives for businesses that are sold. The tax credits under this Article are only applicable for the new taxpayer with respect to his newly acquired business if the business was headed for imminent closure before it was acquired or if the newly acquired business was a result of an employee buyout.

98. N.C. GEN. STAT. § 105-129.3A(b), (c) (Supp. 1999).
99. §3, 1998 N.C. SESS. LAWS 55, (codified at N.C. GEN. STAT. § 143B-437.04(b) (Supp. 1999)).
100. §1, 1998 N.C. SESS. LAWS 55 (codified at N.C. GEN. STAT. § 105-129.4(a1) (Supp. 1999)).
102. §1, 1998 N.C. SESS. LAWS 55 (codified at N.C. GEN. STAT. § 105-129.4(a1) (Supp. 1999)).
103. N.C. GEN. STAT. § 105-129.4(b1) (Supp. 1999).
104. Id.
105. § 105-129.4(e)(1)-(3).
5. Miscellaneous Tax Amendments for Businesses

All of the above credits are allowed against the franchise tax and income tax levied in Articles 3 and 4 respectively.106 Additionally, the Central Administrative Office credit described above is now allowed to be taken against the gross premium tax levied in Article 8B of this Chapter.107 The General Assembly now requires that a taxpayer requesting eligibility for tax credits under this Article pay a fee of seventy-five dollars for a certificate of eligibility.108 The General Assembly has also expanded the tax incentives available for businesses that engage in research and development.109

P. Tax Incentives for Interstate Air Couriers

Interstate air couriers are now allowed certain tax incentives. An interstate air courier is defined as “a person engaged in the air courier service business. . . in interstate commerce.”110 Air couriers that meet the above definition are entitled to a sales tax reduction from the standard four percent to only one percent for the materials handling equipment that it uses at its hub.111 These couriers also receive a sales tax exemption for aircraft lubricants and parts that are used at its hub.112 Finally, the interstate air courier is allowed a property tax exemption under this Act for the aircraft that it uses at its hub.113 These provisions do not become effective until January 1, 2001.114

Q. Tax Incentives for Recycling Facilities

Perhaps the most comprehensive of the tax changes by the General Assembly in this area, Article 3C of Chapter 14 authorizes certain tax credits to what the Act terms “large” and “major”

106. N.C. GEN. STAT. § 105-129.5(a) (Supp. 1999).
107. Id.
108. N.C. GEN. STAT. § 105-129.6(a1) (Supp. 1999).
109. N.C. GEN. STAT. § 105-129.10(b) (Supp. 1999).
111. § 8, 1998 N.C. SESS. LAWS 55 (codified at N.C. GEN. STAT. § 105-164.4(a)(1d)(k) (Supp. 1999)).
112. § 9, 1998 N.C. SESS. LAWS 55 (codified at N.C. GEN. STAT. § 105-164.13(45) (Supp. 1999)).
113. §10, 1998 N.C. SESS. LAWS 55 (codified at N.C. GEN. STAT. § 105-275(24a) (Supp. 1999)).
114. § 22, 1998 SESS. LAWS 55 (codified as amended at N.C. GEN. STAT. § 105-164.3(6a),§ 105-164.4(a)(1d)(k), § 105-164.13(45), §105-275(24a) (Supp. 1999)).
These facilities do not qualify for the credit under the Act unless three-fourths of the plant's products are made from at least fifty percent post-consumer waste material. A "major" recycling facility is one which is located in an enterprise tier one area (as defined by N.C. Gen. Stat. section 105-129.3); will invest at least $300,000,000 in the facility by the end of its fourth year; will create at least 250 new, full-time jobs in the facility; and whose jobs meet the wage standard (as defined in N.C. Gen. Stat. section 105-129.4(b)). The requirements for a "large" recycling facility under the Act are similar except that the plant need only plan to invest $150,000,000 in two years and plan to create 155 new, full-time jobs.

If the facility qualifies under the Act, the owner of the facility receives a tax credit allowed against the franchise tax and income tax levied in this Chapter for purchasing or leasing machinery and equipment for use at the recycling facility. If the plant is a major recycling facility, the credit is fifty percent of the purchase or lease price. If the plant is a large recycling facility, the tax credit is twenty percent of the purchase price paid during that taxable year. This tax credit, however, is forfeited and must be repaid with interest if the machinery or equipment is not placed in service within thirty months after the credit was taken. An additional transportation tax credit is allowed against the corporate income tax for those facilities not accessible by ocean barge or ship. The owner must generally reinvest the allowable transportation credit under this section during the first ten taxable years after construction of the new recycling facility in rail or roads associated with the facility, water system infrastructures designed to reduce these transportation costs, and land or other industrial sites located in the county.

Major recycling facilities also receive a reduction in sales tax from the generally applicable four percent to one percent for per-
sonal property such as cranes and other material handling equipment that is to be used in the facility. These facilities are actually exempted from the sales tax for electricity used at the plant site and other fuels used in motor vehicles at the site. Furthermore, major recycling facilities now receive a tax refund of sales tax paid in connection with the construction of the facility if requested within six months after the end of the facility's fiscal year. Finally, the property used for the facility site is exempted from property tax.

Kelly Falls Miller

R. Credit for Construction of Dwelling Units for the Handicapped

In order to remove unconstitutional restrictions, the General Assembly amended the allowable income tax credit for construction of multi-family rental units in compliance with handicapped regulations to provide for both residents and non-residents of North Carolina to receive the $550.00 credit per complying dwelling unit. Section 105-151.11(c), as amended, also specifically repealed the prior provision disallowing a credit for employment related expenses paid by a non-resident of North Carolina. A nonresident or partial resident who claims the credit allowed must reduce the amount of the credit by multiplying it by the fraction calculated under GEN. STAT. section 105-134.5(b) or (c), as appropriate.

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125. § 14, 1998 N.C. SESS. LAWS 55 (codified at N.C. GEN. STAT. § 105-164.4(a)(1d)(j) (Supp. 1999)).
127. §16, 1998 N.C. SESS. LAWS 55 (codified at N.C. GEN. STAT. § 105-164.14(g) (Supp. 1999)).
128. §18, 1998 N.C. SESS. LAWS 55 (codified at N.C. GEN. STAT. § 105-275(8)(d) (Supp. 1999)).
130. § 2, 1998 N.C. SESS. LAWS 100.
131. Id.
TRANSPORTATION & MOTOR VEHICLE LAW

A. Transportation

1. Transportation for the 1999 Special Olympics

In an effort to deal with the transportation problems that the 1999 Special Olympics World Summer Games may present, the North Carolina General Assembly passed a statute providing that the Department of Administration may allow the 1999 Special Olympics Organizing Committee to use state-owned trucks and vans. The vehicles may be used for approved purposes only and the Department of Administration cannot charge any fees for the use of the vehicles.

Additionally the State shall not incur any liability for damages resulting from the use of such vehicles and as a precaution, the 1999 Special Olympics World Summer Games is required to carry $5,000,000 of liability insurance in order to use state vehicles.

The statute also provides that Johnston, Wake, Orange, and Durham Counties may allow, under terms set by the public school systems, the 1999 Special Olympics Organizing Committee to use their public school and activity buses for the transportation of persons officially associated with the 1999 Special Olympics.

2. City of Charlotte-Requirements to contract with private parties for construction of Charlotte-Douglas International Airport Special User Projects

The North Carolina General Assembly passed a statute providing that special user projects need not comply with Article 8 of Chapter 143 of the General Statutes. Special user projects are defined as “Charlotte-Douglas International Airport projects that are undertaken for the use and benefit of one or more private entities who will lease the facilities from the City of Charlotte upon terms and conditions that will make the private entities solely responsible for the repayment of all notes, bonds, debts, or other

3. Id.

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costs incurred in the financing, acquisition, development, or construction of the project.\textsuperscript{5}

The statute also provides that the City of Charlotte may agree that all contracts relating to special user projects shall be solicited, negotiated, awarded, and executed by the private parties subject only to approval by the City of Charlotte as the City may require.\textsuperscript{6} This statute expires January 1, 2003.\textsuperscript{7}

3. \textit{Exceptions to Truck Weight Limits on Light-Traffic Roads}

The General Assembly amended N.C. Gen. Stat. section 20-118(c) in order to provide two more exceptions to the light-traffic road limitations imposed on trucks.\textsuperscript{8} These two exceptions allow overweight trucks to use the roads only if they are carrying (1) apples being transported from the orchard to the first processing or packing point or (2) trees grown as Christmas trees being transported from the field, farm, stand, or grove to the first processing point.\textsuperscript{9}

4. \textit{Transportation Corridor Official Map Act}

The North Carolina General Assembly amended N.C. Gen. Stat. section 136-44.50 by first changing the name of the Act from the Roadway Corridor Official Map Act to the Transportation Corridor Official Map Act.\textsuperscript{10} Second, the amendments provide that a transportation official map may be adopted or amended by a regional public transportation authority created pursuant to Article 26 or 27 of Chapter 160A of the General Statutes.\textsuperscript{11} This is in addition to those ways already provided by statute. Third, the amendments impose additional requirements on the process by which an official map may be adopted or amended. Now notice of the mandatory public hearing required to be provided in each county affected by the map must be additionally provided by first class mail sent to each property owner affected by the corridor.\textsuperscript{12} Addresses are to be determined by the county tax records. Also, an official map cannot be adopted or amended until the names of

\textsuperscript{6} \textsection{} 1, 1998 N.C. Sess. Laws 173.
\textsuperscript{9} \textsection{} 1, 1998 N.C. Sess. Laws 177.
\textsuperscript{11} \textsection{} 1, 1998 N.C. Sess. Laws 184.
\textsuperscript{12} \textit{Id}.
all property owners affected by the corridor have been submitted to the Register of Deeds.\textsuperscript{13}

The North Carolina General Assembly also amended N.C. GEN. STAT. section 136-44.52 in order to delineate the steps a regional public transportation authority must follow in reviewing petitions for variance.\textsuperscript{14} The amendment requires a regional public transportation authority to provide a hearing de novo by the Department of Transportation for any petition for variance that the authority denies. Likewise, the General Assembly amended N.C. GEN. STAT. section 136-44.53 to make the same requirements applicable to any requests for advance acquisition due to hardship that is denied by a regional transportation authority.\textsuperscript{15} Thus, if a property owner files a petition for acquisition of property due to an imposed hardship that is denied by the regional authority, the authority must provide for a hearing de novo by the Department of Transportation. Any decision of the Department shall be final and binding. Additionally, any property determined eligible for hardship acquisition must be acquired within three years of such finding.\textsuperscript{16}

The General Assembly also added a new statute which provides that the Department of Transportation shall utilize the criteria contained in 49 C.F.R. section 24.103 as the standard for appraising right-of-way in a transportation corridor designated under this Article.\textsuperscript{17}

5. Public Contracts

Regional public transportation authorities (RTPA's) or regional transportation authorities (RTA's) may now approve the entering into of any contract for the purchase, lease, or other acquisition of any apparatus, supplies, materials, or equipment without competitive bidding and without meeting the requirements of N.C. Gen. Stat. § 143-129(b) (Supp. 1997) so long as a certain method is followed.\textsuperscript{18} The amended statute\textsuperscript{19} provides for

\textsuperscript{13} Id.
\textsuperscript{14} Id.
\textsuperscript{15} Id.
\textsuperscript{16} Id.
\textsuperscript{17} § 1, 1998 N.C. Sess. Laws 184.
an alternative method of procurement by competitive proposal which RPTA's and RTA's may follow.\textsuperscript{20}

The competitive proposal method of procurement is normally conducted with more than one source submitting an offer or proposal. The method is generally used when conditions are not appropriate for the use of sealed bids. If this procurement method is used, the amendment states that all of the following requirements apply:

1. Requests for proposals shall be publicized.
2. Proposals shall be solicited from an adequate number of qualified sources.
3. RPTA's or RTA's shall have a method in place for conducting technical evaluations of proposals received and selecting awardees, with the goal of promoting fairness and competition without requiring strict adherence to specifications or price in determining the most advantageous proposal.
4. The award may be based upon initial proposals without further discussion or negotiation or, in the discretion of the evaluators, discussions or negotiations may be conducted either with all offerors or with those offerors determined to be within the competitive range and one or more revised proposals or a best and final offer may be requested of all remaining offerors.
5. The award shall be made to the responsible firm whose proposal is most advantageous to the RPTA's or the RTA's program with price and other factors considered.\textsuperscript{21}

Additionally, the amendment requires the board or governing body of the RPTA or the RTA to make, by formal motion, findings of fact that the procurement by competitive proposal method is the most appropriate acquisition method. Also the RPTA or RTA must certify that the requirements of this amendment have been followed before approving the contract.\textsuperscript{22}

B. Motor Vehicle Law

1. Issuance of North Carolina Drivers Licenses to Youths with Out-Of-State Licenses

The General Assembly addressed for the first time the issue of persons, aged sixteen to eighteen who have an out-of-state

\textsuperscript{20} § 1, 1998 N.C. Sess. Laws 185.
\textsuperscript{21} Id.
\textsuperscript{22} Id.
restricted license and who become residents of North Carolina.\textsuperscript{23} The statute provides that such persons may trade in their out-of-state licenses and obtain one of the following:

(1) a limited provisional license if the person has completed a drivers education program that meets the requirements of the Superintendent of Public Instruction, held the restricted license for at least 12 months, and whose parent or guardian certifies that the person has not been convicted during the preceding 6 months of a motor vehicle moving violation or a seat belt infraction or

(2) a limited learners permit if the person has completed an approved drivers education program but either has not held his/her restricted license at least 12 months or was convicted of a traffic violation in the last 6 months.\textsuperscript{24}

The General Assembly also added a new amendment dealing with persons aged fifteen who have an out-of-state unrestricted or restricted license and who become residents of North Carolina.\textsuperscript{25} Such a person can obtain only a limited learners permit subject to the requirement that the person prove he has completed a drivers education program that meets the requirements of the Superintendent of Public Instruction.\textsuperscript{26}

The amendment further requires that an application by an out-of-state youth for a North Carolina license be signed by both the applicant and another person.\textsuperscript{27} That other person must be (1) the applicant’s parent or guardian, (2) a person approved by the applicant’s parent or guardian, or (3) a person approved by the Division of Motor Vehicles.\textsuperscript{28}

The General Assembly also laid down new rules preventing certain persons from driving commercial motor vehicles.\textsuperscript{29} Three more items were added to the list of violations that result in a disqualification from driving a commercial motor vehicle. First, any person convicted for violating an out-of-service order shall be disqualified as follows:

(1) A person is disqualified from driving a commercial vehicle for a period of ninety days if it is his first violation.

\textsuperscript{24} § 2.2, 1998 N.C. Sess. Laws 149.
\textsuperscript{26} § 2.3, 1998 N.C. Sess. Laws 149.
\textsuperscript{28} § 2.4, 1998 N.C. Sess. Laws 149.
(2) A person is disqualified for a period of one year if convicted of his second violation during any ten-year period, arising from separate incidents.

(3) A person is disqualified for a period of three years if convicted of a third or subsequent violation during any ten-year period, arising from separate incidents.\(^{30}\)

An out-of-service order is a declaration that a driver, a commercial motor vehicle, or a motor carrier operator is out of service.\(^{31}\)

Second, any person convicted for violating an out-of-service order while transporting hazardous materials or while operating a commercial vehicle designed or used to transport more than fifteen passengers, including driver, shall be disqualified as follows:

(1) A person is disqualified for 180 days for his first violation.

(2) A person is disqualified for a period of three years if convicted of a second or subsequent violation during any ten-year period, arising from separate incidents.\(^{32}\)

Third, a person loses his or her privilege to operate a commercial vehicle if convicted in another state for an offense that, if committed in this State, would be grounds for disqualification.\(^{33}\)

### 2. Special Registration License Plates

The Division of Motor Vehicles is authorized to issue a Native American registration plate.\(^{34}\) The plate must bear a phrase or an insignia representing Native Americans. However, the Division must receive 300 or more applications for the plate before it may be developed.\(^{35}\)

Additionally, the DMV is authorized to issue Eagle Scout special registration plates to eagle scouts or their parents or guardians\(^{36}\) and to issue Girl Scout gold award special registration plates to recipients of the Girl Scout Gold Award or their parents or guardians.\(^{37}\) The Eagle Scout plates shall bear the insignia of the Boy Scouts of America and shall have the words “Eagle Scout.”

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30. § 3, 1998 N.C. SESS. LAWS 149.
32. § 3, 1998 N.C. SESS. LAWS 149.
33. Id.
35. § 1, 1998 N.C. SESS. LAWS 155.
on them. Likewise, the Girl Scout plates shall bear the insignia of the Girl Scouts of the U.S.A. and shall have the words “Girl Scout Gold Award” on them. As with the Native American plate, the DMV must receive 300 applications for these plates before they can be issued.

The DMV is also authorized to issue a special registration plate to recipients of the silver star, the bronze star, and the distinguished flying cross. Each respective plate must bear the words “Bronze Star”, “Silver Star”, and “Distinguished Flying Cross” and the corresponding emblem.

In addition, the North Carolina General Assembly eliminated the fee for purple heart registration plates and passed an act requiring the DMV to completely redesign the Purple Heart Special license plate by January 1, 1999.

Elizabeth K. Arias

WELFARE

A. Welfare Reforms to the Work First Program

The 1998 Session Laws include a number of changes to North Carolina's welfare system, specifically the Work First program. Section 108A-27(a) of the North Carolina General Statutes was amended in 1998 to redefine the purpose of the Work First program as facilitating a movement towards self-sufficiency through "gainful" employment, as opposed to just reducing the welfare role by finding any employment.1 This provision of the statute emphasized the Work First's focus on self-sufficiency and the ultimate goal of gradual elimination of generational poverty.2

In order to achieve this goal, the amended statute provides for the ongoing evaluation of the success of the Work First program towards the goal of self-sufficiency and gradual elimination of poverty for North Carolina families.3 The State Plan must include provisions to ensure that recipients within the program, who are sanctioned, are provided a clear explanation of any sanction they are given, and that all recipients, including those under sanction or termination for rules infractions, are fully informed of their right to legal counsel and any other representatives they choose at their own cost.4

Funds appropriated for the Work First program were reduced from $3,900,000 to $3,817,000 for the 1998-99 fiscal year, and under the amended statute, money given to the counties to fund program integrity activities is to be given in a lump sum to the counties with any unexpended funds reverting to the General Fund.5 The amount set aside for the continued support of the Office of Inspector General in the Department of Justice was reduced from $700,000 to $617,000 for the fiscal year 1998-99.6

The Inspector General must now provide each of the county directors of social services with a copy of the policies and standards for investigation into matters of fraud, abuse, waste, and mismanagement in the means-tested public assistance programs.7

2. Id.
3. Id.
4. Id.
5. Id.
6. Id.
When the Inspector General determines that a county social services agency has not complied with the policies and standards, the Inspector General must notify the director of that agency and recommend an appropriate action in response to their noncompliance.  

Session Law 1998-212 also redefined the duties of certain departments and agencies as well as the individual counties under the Work First Program. The Department of Health and Human Services is responsible for ensuring that specifications of the general provisions of the State Plan regarding procedures for sanctions are uniformly developed and implemented statewide. The county boards of commissioners in Electing Counties may, but no longer are required to, provide community service for a recipient who cannot find employment. As for the maintenance of the program, the Department may not reduce or reallocate State or county funds previously obligated or appropriated for Work First County Block Grants or child welfare services. If the Director of the Budget declares the State, an individual county, or an individual region, to be in a state of economic emergency for available Work First funds through events beyond their control, then the Director must direct the Secretary to attempt to access any available federal funds. If there are no federal funds, the Director may use funds in the following order; (1) The Work First Reserve Fund, (2) funds available to the Department, (3) funds available from other departments, institutions, or other spending agencies of the State. All of these may be used to provide Work First Family Assistance funds for the State, the individual counties, or the individual region.

Under the amendments to the First Stop Employment Assistance, a county department of social services may now enter into a cooperative agreement with the community college system or any other entity to operate the Job Preparedness component of the program. The cooperative agreement must include a provision for the county to pay, to the entity, the cost of providing those

8. Id.
9. Id.
10. Id.
11. Id.
12. Id.
14. Id.
15. Id.
16. Id.
services, because this is a component of the County Plan payable from fund allocations in the county block grant.\textsuperscript{17} If contracted to do so, the Employment Security Commission, in addition to being the primary job placement entity of the Work First Program, will provide further assistance to registrants in job search, job placement, or referral to community service.\textsuperscript{18}

The county department of social services, along with the Employment Security Commission, may refer an individual to the Job Preparedness component of the First Stop Employment Program or to a literacy council.\textsuperscript{19} The county, and not the Employment Security Commission, may contract with service providers to provide services and shall monitor the provision of the services by the service providers.\textsuperscript{20} Registrants may participate in more than one Job Preparedness component of the program at one time.\textsuperscript{21}

In a further effort to evaluate the needs of North Carolina, the General Assembly amended subsection (r) of § 108A-29 to state that each county’s Job Service Employer Committee or Workforce Development Board shall continue the study of the working poor, titled “NC WORKS”, in their respective counties.\textsuperscript{22} The study is to be submitted by May 1 of each year and must (1) determine the extent to which current labor market participation enables individuals and families to earn the amount of disposable income necessary to meet their basic needs, (2) determine how many North Carolinians work and earn wages below 150\% of the Federal Poverty Guideline and study trends in the size and demographic profiles of this underemployed group within the respective county, (3) examine job market factors that contribute to changes in the composition and numbers of the working poor including employment shifts from manufacturing to service, full to part-time, and permanent to temporary, (4) consider and determine the respective responsibilities of the public and private sectors in ensuring that working families and individuals have disposable income adequate to meet their basic needs, (5) evaluate the effectiveness of the unemployment insurance system in meeting the needs of low-wage workers when they become unemployed, (6) examine the wages, benefits, and protections available to part-

\textsuperscript{17} Id.
\textsuperscript{18} Id.
\textsuperscript{19} § 12.27A, 1998 N.C. SESS. LAWS 212.
\textsuperscript{20} Id.
\textsuperscript{21} Id.
\textsuperscript{22} Id.
time and temporary workers, leased employees, independent contracters, and other contingent workers as compared to regular full-time workers, (8) solicit, receive, and accept grants or other funds from any person or entity and enter into agreements funds regarding the undertaking of studies or plans necessary to carry out the purposes of the committee, and (9) request necessary data from either public or private entities that relate to the needs of the committee or board.23

The Employment Security Commission must use the information furnished to it only in a non-identifying form for statistical and analytical purposes related to its NC WORKS study.24 The following information may be used from the North Carolina income tax forms; (a) name, social security number, spouse's name, and county of residence, (b) filing status and federal personal exemptions, (c) federal taxable income, additions to federal taxable income, and the total of federal taxable income plus additional income, (d) income while a North Carolina resident, total income from North Carolina sources while a nonresident, and total income from all sources.25

The General Assembly added a new subdivision to section 96-14 of the General Statutes which states that any claimant that leaves work or is discharged from work who has been adjudged an aggrieved party as set forth by Chapter 50B of the General Statutes as the result of domestic violence committed upon the claimant or upon a minor child with or in the custody of the claimant by a person who has or has had a familial relationship with the claimant or minor child, has good cause for leaving.26

B. Welfare and Early Childhood Education and Development Initiatives Reform

Within Session Law 1998-212 the General Assembly made definitional revisions to the Early Childhood Initiative laws27 as well as significantly reforming the plan for the North Carolina Partnership for Children, Inc.28 As to Early Childhood Initiatives

23. Id.
24. Id.
26. Id.
28. Id.
the word "high" was added to describe the quality of early childhood education and development the state sought to provide. 29

While reaffirming the flexibility and discretion communities are given in developing their early childhood initiative plans, a provision was added which leaves the plans subject to the approval of the North Carolina Partnership and accountable to the North Carolina Partnership and to the General Assembly. 30

Early Childhood is defined as birth through five years of age. 31 A Local Partnership is now defined as a county or regional private, nonprofit 501(c)(3) organization established to coordinate a local demonstration project to provide ongoing analyses of the local needs that must be met to ensure that the developmental needs of children are met to prepare them to begin school healthy and ready to succeed, and to provide programs and services to meet these needs. 32

The North Carolina Partnership for Children, Inc. Board of Directors was reorganized under Session Law 1998-212. 33 In order for the Partnership to receive state funds it must consist of twenty-five members including; (a) the Secretary of Health and Human Services or his designee, (b) previously repealed, (c) the Superintendent of Public Instruction or his designee, (d) the President of the Department of Community Colleges or his designee, (e) three members of the public appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate, including one child care provider, one other who is a parent, and one other who is a board chair of a local partnership serving on the North Carolina Partnership local partnership advisory committee, (f) three members of the public appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives, including one who is a parent, one other who is a representative of the faith community, and one other who is a board chair of a local partnership serving on a North Carolina Partnership local partnership advisory committee, (g) twelve members appointed by the Governor, three of which may not be of the same political party as the Governor; seven of the twelve must be as follows; one child care provider, one pediatrician, one health care provider, one parent, one member of the business community,

29. Id.
30. Id.
31. Id.
32. Id.
one member representing a philanthropic agency, and one early childhood educator, (h1) the Chair of the North Carolina Partnership Board shall be appointed by the Governor, (i) repealed, (j) one member of the public appointed by the General Assembly upon recommendation of the Majority Leader of the Senate, (k) one member of the public appointed by the General Assembly upon recommendation of the Majority Leader of the House of Representatives, (l) one member of the public appointed by the General Assembly upon the recommendation of the Minority Leader of the Senate, (m) one member of the public appointed by the General Assembly upon the recommendation of the Minority Leader of the House of Representatives. 34

The significant changes to the Board's composition in this amended section include the allowance of a designee in lieu of the department heads in subsections (a), (c), and (d), 35 the repealing of the use of congressional districts as geographic areas from which citizens could be chosen in (e) and (f), 36 the reduction of gubernatorial appointees from seventeen to twelve in (g), 37 the repealing of both the President Pro Tempore of the Senate and the Speaker of the House or their designees as Board members in (h) and (i), 38 the appointment of the Chair by the Governor, 39 and the inclusion on the board of one member of the public appointed by the majority and minority leaders in the House and Senate as opposed to those people themselves sitting on the Board. 40

The amended statute provides further that all members be appointed to a three year term and members may succeed themselves. 41 All board members at the state and local level must avoid conflicts of interest and the appearance of impropriety. 42 All ex officio members or their designees are voting members and no members of the General Assembly may serve as a member. 43 The North Carolina Partnership may establish a nominating committee that must be consulted and their recommendations must be considered by the Governor and all others making appoint-

34. Id.
35. Id.
36. Id.
37. Id.
38. Id.
40. Id.
41. Id.
42. Id.
43. Id.
The Partnership may establish an attendance policy and the appropriate appointing authority may replace any members who miss more than three consecutive meetings without excuse or any members who vacate their appointment. The replacement will serve until a successor can be appointed or until the replaced member's term expires, whichever is earlier. The Partnership must establish a membership policy for the local board that includes a county residency requirement.

The North Carolina Partnership must oversee the development and implementation of the local demonstration projects as they are selected and must approve the ongoing plans, programs, and services of the local partnerships as well as holding the local partnerships accountable for the financial and programmatic integrity of the programs and services. The Partnership may suspend funds to a local partnership that is not fulfilling its duties until the defects can be proven corrected. At its discretion, the Partnership may assume the management of the local partnership until it is appropriate to return to the programs and services to the local partnership.

The General Assembly struck the provision establishing a two year term with no consecutive terms for members of the local partnership advisory committee established by the North Carolina Partnership. Contracts between local partnerships and the North Carolina Partnership must contain a statement that the contract is subject to monitoring by both the local partnership and the North Carolina Partnership, that contractors and their subs be fidelity bonded unless the contractors or subs receive less than $100,000 or the contract is for child care subsidy services, that contractors and their subs are subject to audit oversight by the States Auditor, and that contractors and subs must be audited as per N.C. Gen. Stat. section 143-6.1. Organizations subject to

44. Id.
46. Id.
47. Id.
48. Id.
49. Id.
50. Id.
52. Id.
N.C. GEN. STAT. section 159-34 are exempt from this requirement.

In section 143B-168.13, which details the duties of the Department and the Secretary in implementing the program, the General Assembly repealed subsection (a)(1) concerning the Department's duty to cooperate with the North Carolina Partnership in developing a statewide process to select the local demonstration projects. Previously the programs had been selected based first on one from each of the twelve congressional districts, with the remainder of the selections representing various geographic areas of the state. Subsection (b), concerning Secretary approval of all allocations of State funds to local demonstration projects and all local plans, was also repealed. As to the conditions imposed on local partnerships, the 1998 Session Laws changed the first condition imposed on the local partnerships to read that each "local partnership" must develop a plan of services to children and families in the service-delivery area. Originally this section had been directed at the actual demonstration projects coordinated by the local partnerships. The language in section 143B-168.14(a)(1), as to who may make up the members of the local boards was repealed. The Board of the North Carolina Partnership may now authorize exceptions to the requirements for what types of organizations are eligible to serve as local partnerships.

The North Carolina Partnership for Children, Inc., and all local partnerships must use competitive bidding practices in contracting for goods and services on contract amounts as follows; (1) for amounts of $5,000 or less, three verbal quotes, (2) for amounts between $5,000 and $15,000, three written quotes, (3) for amounts between $15,000 and $40,000, a request for proposal process, (4) for amounts of $40,000 or more, request for proposal process and advertising in a major newspaper. The details of

59. Id.
62. Id.
63. Id.
this subsection are new; the statute had previously required only "competitive bidding" for amounts over $1500 and below $1500 if possible; there were no other specifications.64

As of October 1, 1998, in addition to the funds allocated for Early Childhood Education and Development Initiatives, $42,500,000 of the funds appropriated to the Department of Health and Human Services, Division of Child Development for the 1998-99 fiscal year, will be used to administer and deliver direct services in all 100 counties.65 Of this amount, the North Carolina Partnership may use up to $2,000,000 for State level administration of the program.66

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64. N.C. GEN. STAT. § 143-168.16(f) (1994).
66. Id.
MISCELLANEOUS

A. Agriculture

1. Horse Industry Promotion Act

In Act 154 of 1998, the North Carolina General Assembly determined that the horse industry is an important contributor to the state's economy, therefore it sought to develop a means for horse owners to voluntarily assess themselves to gather funds for self-promotion. 1 The North Carolina Horse Council can now conduct a survey or referendum among members of the industry to determine whether they want to levy an assessment consistent with this Act. 2 If the membership decides to have an assessment, the Council will decide the amount of the assessment, with the maximum limited to two dollars per ton of commercial horse feed, and the period of time to be assessed is limited to a maximum of three years. 3 This information will be listed on the ballots. 4 The Council would also be responsible for the time, place, and procedures surrounding the referendum, along with any other matters pertaining to the referendum. 5 All owners of horses will be eligible to vote in the referendum. 6 Notice of the vote will be posted in at least ten daily and ten weekly or biweekly newspapers, trade journals, and in every place the Council identifies as selling commercial horse feed. 7 A majority of the votes are required to collect the assessment. 8 If the referendum passes, the Department of Agriculture and Consumer Services will notify all manufacturers and distributors of commercial horse feed, as well as provide reporting forms and prosecute any distributor or manufacturer who fails to pay the assessment. 9 The Department will forward any funds collected to the North Carolina Horse Council, where they will use

2. Id.
3. Id.
4. Id.
5. Id.
6. Id.
8. Id.
9. Id.
them to promote the interests of the horse industry and to pay reasonable administrative expenses.\textsuperscript{10}

\textit{Margaret P. Eagles}

\textbf{B. Professions and Occupations}

\textit{1. Regulation of Cosmetic Art}

Chapter 88 of the General Statutes was repealed and replaced with Chapter 88B entitled "Cosmetic Art."\textsuperscript{11} The new act establishes a board of cosmetic art examiners composed of six members appointed by the General Assembly and the Governor.\textsuperscript{12} The purpose of the board is to oversee the cosmetic art industry. The thrust of the regulation comes in the form of a licensing requirement for all business and individuals practicing cosmetic art.\textsuperscript{13} Cosmetic art includes massaging, manicuring, esthetics and hair-styling.\textsuperscript{14} Practicing without a license in violation of the act is a class three misdemeanor.\textsuperscript{15} Nurses, undertakers, persons authorized to practice medicine and persons employed in a cosmetic art shop to shampoo hair are exempted from the act.\textsuperscript{16}

\textit{2. Unlawful Body Piercing of Minors}

The General Assembly added subsection (b) to N.C. GEN. STAT. section 14-1400 making it unlawful for any person to pierce any part of the body, other than the ears, of another person under age eighteen without parental consent.\textsuperscript{17} Violation of the provision is a class two misdemeanor.\textsuperscript{18}

\textit{3. Massage and Bodywork Therapy Practice}

Recognizing the need for greater regulation of massage and bodywork therapy, the General Assembly enacted the Massage and Bodywork Therapy Act.\textsuperscript{19} The act mandates that no person may practice massage or bodywork therapy without a license in

\begin{footnotes}
\item 10. \textit{Id.}
\item 13. \textit{Id.}
\item 14. \textit{Id.}
\item 15. \textit{Id.}
\item 16. \textit{Id.}
\item 18. \textit{Id.}
\end{footnotes}
North Carolina. Requirements for licensure include being eighteen years of age, of good moral character, possessing a high school diploma or equivalent, and successful completion of an examination. The act establishes a board composed of seven members appointed by the Governor and the General Assembly. The board is vested with the authority to grant and remove licenses and take disciplinary action against licensees. Persons giving a massage and bodywork therapy to members of that persons immediate family and the practice of techniques that are intended to affect the human energy field are exempted from the requirements of the act.

Brian E. Moore

4. **Engineering and Land Survey Act**

In Act 118 of 1998, the General Assembly amended the definition of the practice of land surveying and the qualifications of professional land surveyors created under the North Carolina Engineering and Land Survey Act. The Act specifically permits the practice of land surveying based on conventional land measurements, aerial photography and global positioning via satellite. A list of acts constituting the practice of land surveying follows the definition. The Act specifically provides that a person may qualify as a professional land surveyor based on experience as a photogrammetrist.

Jeanette Brooks

C. **Tobacco Litigation**

1. **Settlement Reserve Fund for Money Received From Tobacco Settlements and Related Legislation**

In Act 191 of 1998, the General Assembly sought to protect North Carolina citizens from losses due to tobacco legislation or

20. Id.
21. Id.
22. Id.
23. Id.
litigation and to provide that funds received due to tobacco settle-
ments and related Congressional legislation be spent by specific
appropriation. This act states that any money credited to the
state of North Carolina or a state agency within North Carolina,
by way of federal legislation or litigation which implements a set-
tlement or acts as a final order or judgment between the United
States tobacco companies and the states, unless so prohibited by
federal law or otherwise encumbered or distributed, shall be
credited to the state Settlement Reserve Fund. This fund is a
restricted reserve in the General fund and is to be expended only
by specific appropriation by the General Assembly.

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