North Carolina Legislation

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A summary
of legislation
in the 2000
General Assembly
of interest to
North Carolina
public officials.

Edited by David W. Owens
Established in 1931, the Institute of Government provides training, advisory, and research services to public officials and others interested in the operation of state and local government in North Carolina. A part of The University of North Carolina at Chapel Hill, the Institute also administers the university’s Master of Public Administration Program.

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

The 2000 edition of *North Carolina Legislation* is the thirty-seventh periodic summary of legislation published by the Institute of Government. From 1955 through 1973 these summaries were published in a special issue of *Popular Government*. Since 1974 the summary has been published annually as a separate publication.

*North Carolina Legislation 2000* is a comprehensive summary of legislation enacted by the North Carolina General Assembly. It is intended to cover all legislation of interest and importance to state and local government officials. The book is organized by subject matter and divided into twenty-seven chapters. In some instances, to provide differing emphases or points of view, the same legislation is discussed in more than one chapter. Institute of Government faculty members with expertise in the particular fields covered wrote each chapter in this book. The two exceptions are Chapter 12, “Information Technology,” which was written in part by staff members of the League of Municipalities and Association of County Commissioners, and Chapter 25, “State Taxation,” which was written by members of the General Assembly’s professional staff.

The final text of all bills discussed in this book may be viewed on the Internet at the General Assembly’s Web site: [http://www.ncleg.net](http://www.ncleg.net). This site also includes a detailed legislative history of all action taken on each bill and, for some bills, a summary of the fiscal impact of the bill.

While comprehensive, this book does not summarize every legislative enactment of the 2000 General Assembly. For example, some important topics that do not have a substantial impact on state or local governments, such as business regulation or insurance, are not discussed at all. Local legislation of importance to a single jurisdiction often is given only brief coverage. Readers who may need information on public bills not covered in this book may wish to consult *Summaries of Substantive Ratified Legislation, 2000 General Assembly*, which contains brief summaries of all public laws enacted during the 2000 session. That compilation is published by the General Assembly’s Research Division and is posted on the Internet at the General Assembly’s Web site. A list of General Statutes affected by 2000 legislation, prepared by the General Assembly’s Bill Drafting staff, also is online at the same site.

The Institute of Government also publishes two separate reports, *Final Disposition of Bills* and the *Index of Legislation*, that provide additional information with respect to public and private bills considered in 2000. These publications can be purchased through the Institute’s Publications and Marketing Division (phone 919-966-4119, e-mail khunt@iogmail.iog.unc.edu).

Each day that the General Assembly is in session, the Institute’s Legislative Reporting Service publishes the *Daily Bulletin*. It includes summaries written by Institute of Government faculty members of every bill and resolution introduced in the state House or Senate, summaries of all amendments and committee substitutes adopted by the House or Senate, and a daily report of all actions taken on the floor of both chambers relative to legislation. The *Daily Bulletin* is available by paid subscription, with delivery via U.S. mail, telefax, or the World Wide Web. For information on subscriptions, contact the Institute’s Publications and Marketing Division (phone 919-966-4119, e-mail khunt@iogmail.iog.unc.edu).
Throughout this book, references to legislation enacted during the 2000 legislative session are cited by the Session Law number of the act (for example, S.L. 2000-2), followed by a parenthetical reference to the number of the Senate or House bill (for example, S 1076) that was enacted. As a general rule, the effective date of new legislation is not noted if it is prior to the production of this book. References to the General Statutes of North Carolina are abbreviated as G.S. (for example, G.S. 160A-385).

David W. Owens
After nearly a decade of lengthy regular and extra sessions in the even-numbered years of the biennium, the General Assembly reverted to its earlier form and practices in 2000. Coming off a 1998 session that set records for length, and lengthy extra sessions in 1994, 1996, and 1998, the length, workload, and procedures followed in 2000 were more like those of the late 1980s and early 1990s.

Prior to the regular “short session” the Governor called the General Assembly into special session twice. Each extra session dealt with a single issue, and both were expeditiously concluded. The legislature met on December 15–16, 1999, to address Hurricane Floyd recovery issues. The legislature met on April 5, 2000, to revise the law regarding punitive damage awards. The regular 2000 session of the General Assembly convened on May 8 and adjourned on July 13, 2000. Despite initial projections of a potential significant budget shortfall, the legislature for the second consecutive year finished its work on the budget prior to the beginning of the fiscal year.

First Extra Session—Hurricane Floyd Recovery

North Carolina suffered the greatest natural disaster in the state’s history when Hurricane Floyd dumped torrential rains on the eastern part of the state on September 16, 1999. Hurricane Dennis and other storms had drenched the state only a few weeks earlier, so when Hurricane Floyd struck, the resulting floods were devastating. Fifty-one persons drowned in the floods, and entire cities were underwater for days. Some 24,000 homes were rendered uninhabitable, and more than 12,000 businesses were damaged. The federal government made over $2.2 billion in disaster relief available in the immediate storm aftermath. Governor James B. Hunt, Jr., declared a state of emergency and, pursuant to G.S. 166A-6(c)(5), reallocated substantial state funds to provide disaster relief and assistance. The Governor then called the General Assembly into session to authorize the use of the Budget Stabilization Reserve and the remaining credit balance in the General Fund and to take other action to expedite recovery efforts.

The General Assembly responded with the adoption of the Hurricane Floyd Recovery Act of 1999, S.L. 1999-463 (H 2, Ex. Sess.). The legislature appropriated an additional $40 million for fiscal 1999–2000 from the General Fund to the Hurricane Floyd Reserve Fund (the Reserve Fund) for crisis housing assistance; authorized the Governor, with the concurrence of the Council of
State, to reallocate additional funds, previously appropriated for the operation and maintenance of state agencies, for repairs, renovations, and other capital projects, and similarly authorized the reallocation of other nonrecurring appropriations; appropriated $281,465,824 for the 1999–2000 fiscal year from the Savings Reserve Account (“rainy day fund”) to the Reserve Fund (with $4.5 million from the Savings Reserve to be held in reserve for solid waste cleanup); and transferred $6,678,000 from the funds for renovations of the legislative chamber and offices to the Reserve Fund. These allocations, along with previous fund reallocations by the Governor, made some $836 million in state funds available for hurricane relief and recovery. All of the state funding came from reallocation of existing state revenues, with no new taxes or revenues being created.

This act also authorizes state agencies to adopt temporary rules to implement the act without following the procedures set out in the Administrative Procedure Act and authorizes the Governor to establish new programs and modify existing programs to provide assistance from the Hurricane Floyd Reserve Fund. The act authorizes the Governor to use funds for purposes listed in the establishment of the Reserve Fund, to provide grants to local governments, and to transfer funds to federal agencies and local governments pursuant to cooperative agreements. The act amends G.S. 105-134.6(b) and -130.5(b) to allow a deduction from state income tax and from federal taxable income in determining state net income the amount paid to a taxpayer from the Reserve Fund for hurricane relief but not including payments for goods or services provided by the taxpayer. The act revises G.S. 96-13(c) to provide that when unemployment is due directly to a major natural disaster, applicants for unemployment compensation are exempt from the usual one-week waiting period before becoming eligible for benefits. The act provides that no state funds appropriated from the Reserve Fund may be expended for the construction of a new residence within the 100-year floodplain unless the construction is in an area regulated by a local floodplain management ordinance (and the construction complies with that ordinance). Homeowners receiving assistance must have flood insurance, if available. Finally, local school boards in disaster counties were granted additional flexibility regarding the length of the school year. [The year can be 180 calendar days or (rather than “and”) 1,000 hours of instruction.]

The act created the twenty-one-member Legislative Commission to Address Hurricane Floyd Disaster Relief. The commission is directed to study the adequacy of the state’s short-term and long-term responses to natural disasters and necessary modifications in response to future disasters and short- and long-term recovery efforts. The commission was to be appointed by January 15, 2000, and hold its first meeting by February 1, 2000, with reports to be made to the General Assembly in 2000 and 2001. The commission is meeting through the fall of 2000 and intends to report in 2001.

Second Extra Session—Punitive Damage Limitations

A class action suit filed in 1994 in Florida led to the second extra legislative session called between the 1999 and 2000 regular sessions. The suit was brought against the nation’s five largest tobacco companies on behalf of Florida smokers made ill by tobacco products. The jury in the case found the companies liable in 1999 and awarded $12.7 million dollars in compensatory damages to the three principal plaintiffs. Concern about the possibility of sizable punitive damages led to the adoption of legislation in several tobacco-producing/-manufacturing states (Virginia, Georgia, and Kentucky) that attempted to limit the impact of large punitive damage awards on their state’s citizens and businesses. Governor Hunt called the General Assembly into session on April 5, 2000, to consider similar legislation in North Carolina.

In a one-day session the General Assembly adopted legislation to address this issue. The legislation amends G.S. 1-289 to limit the bond that a judgment debtor must post to stay execution of a money judgment while a case is on appeal to an appellate court and provides that when a judgment includes an award of noncompensatory damages of $25 million or more, the appeal bond is to be set at $25 million for that portion of the judgment that is for noncompensatory damages. For the compensatory damages portion of a judgment, the bond for the amount of the
The General Assembly

judgment still applies. The law requires the court to rescind such a limited bond and replace it with a bond of the full amount of the judgment if the judgment creditor proves, by a preponderance of the evidence, that the judgment debtor is dissipating, secreting, or diverting assets outside the jurisdiction of the state courts or of U.S. courts for the purpose of evading the judgment. The law also adds G.S. 1C-1750 and -1760 to provide that if a judgment creditor seeks to enforce in North Carolina a judgment entered in another state or a U.S. court (a foreign judgment) and that judgment directs the payment of damages other than compensatory damages and an appeal is being taken or the time for taking an appeal has not expired, the North Carolina court must stay enforcement of the judgment until all available appeals are concluded upon the filing of the limited stay of execution bond provided in G.S. 1-289. These amendments apply to judgments filed or entered in North Carolina on or after April 5, 2000.

On July 14, 2000, the jury in the Florida case awarded punitive damages of $144.87 billion. The judgment and award were immediately appealed.

Overview of the 2000 Regular Session

Article II, Section 11, of the North Carolina Constitution provides for a biennial session of the General Assembly that convenes in every odd-numbered year. Until 1973 the General Assembly held a single, regular session, convening in each odd-numbered year, meeting several months, and then adjourning sine die. Prior to 1974, legislative sessions in even-numbered years of the biennium were special “extra” sessions (the N.C. Constitution allows the Governor or a three-fifths majority of both houses to call such a session), and they were rare and of short duration. In this century such sessions occurred in 1908 (11 days), 1920 (15 days), 1924 (15 days), 1936 (6 days), 1938 (6 days), 1956 (5 days), and 1966 (5 days).

Beginning with the 1973–74 biennium, the General Assembly adopted the practice of holding annual sessions. The General Assembly convenes in January of odd-numbered years. In these “long sessions,” which generally run through mid-summer, a biennial budget is adopted and any legislative business may be considered. In even-numbered years, the General Assembly convenes for a “short session,” which generally runs from May through mid-summer. In the short session the General Assembly generally considers adjustments for the second year of the biennial budget, bills that have passed one but not both houses of the legislature, and a limited number of additional non-controversial matters. Legally the short session is a continuation of the long session.

The first regular short session was held in 1974. That session was in most respects very similar to the regular long sessions—it convened in January and ran for three months and had no limits on the introduction of new bills. Dissatisfaction with the notion of having two “long” sessions in a single biennium led to dramatic changes for the 1976 session. Limits were placed on bill introductions and the focus of the “short” session became adjustments to the second year of the biennial budget. Those changes were effective, as the 1976 session lasted just two weeks. While the practice of meeting for two to four weeks held through the mid-1980s, the short sessions gradually came to run longer and deal with more complex legislative agendas. By the early 1990s ten-week short sessions were the norm. Matters were further complicated in the mid-1990s by a succession of “extra sessions.” As was stated above, extra sessions may be called by the Governor or by a three-fifths majority of both houses. Prior to the mid-1990s, most extra sessions were called to deal with an emergency issue and lasted a day or two. However, in 1994 there was a seven-week extra session to deal with crime and punishment issues; in 1996, a three-week extra session to complete work on the state budget (which was in essence a continuation of the regular short session); and in 1998, a five-week extra session to deal with health insurance for children in low-income families.

The 2000 session marked a return to the legislative schedule and practice of a decade earlier. After ever-lengthening sessions in the 1990s, in this session the General Assembly conducted its business in ten weeks and focused primarily on budget adjustments and financial matters. Chart
1-1 depicts the length of sessions in even years. This chart shows the number of legislative workdays for all sessions in even years, including regular and extra sessions.

The 1999 adjournment resolution provided that bills on the following matters could be considered in the 2000 session:

1. bills directly affecting the budget for fiscal year 2000–01;
2. bills introduced in 1999 that passed third reading in the house of introduction and were not unfavorably disposed of in the other house;
3. bills implementing recommendations of study commissions, commissions directed to report to the General Assembly, the House Ethics Committee, or the Joint Legislative Ethics Committee;
4. noncontroversial local bills;
5. bills making appointments;
6. bills authorized for introduction by a two-thirds vote of both houses;
7. bills affecting state or local pension or retirement programs; and
8. resolutions regarding state government reorganization, memorial resolutions, adjournment resolutions, resolutions disapproving administrative rules, and resolutions regarding constitutional amendments.

The following bill introduction deadlines were set by House and Senate rules for the 2000 session: May 17 for study bills, May 24 for local bills and state-local pension/retirement bills, and May 25 for all other public bills.

In the 2000 regular session, 760 bills were introduced. Of these, 191 were enacted as session laws and 7 as joint resolutions. When the actions from the two extra sessions are added to these, the totals are 766 bills introduced (389 in the Senate and 377 in the House of Representatives), 193 session laws enacted, and 9 joint resolutions adopted. These numbers are generally consistent with past even-year sessions, though they do reflect a modest decline both in the number of introductions and the number of enactments (a trend that was present also in 1999 relative to previous odd-year sessions). These trends are depicted in Chart 1-2 and Chart 1-3. A detailed numerical summary is set forth in the tables at the end of this chapter.
Chart 1-2. Bills Introduced

Chart 1-3. Session Laws Enacted
Major Legislation Enacted in 2000

Among the topics of major legislation enacted in the 2000 regular session are the following, each of which is discussed in some detail in other chapters, as indicated:

- adjustments to the 2000–01 state budget, making more than $475 million in adjustments to the $14 billion General Fund and allocating some $149 million in Highway and Highway Trust Fund revenues and $779 million in federal block grants (Chapter 2);
- expansion of the Smart Start early childhood education program statewide (Chapter 3);
- regulation of the use of restraints in a variety of residential care situations (Chapters 3 and 18);
- creation of several new tools to encourage rural economic development (Chapter 4);
- expanded financial support for the judicial system, including new judges, magistrates, and technology support (Chapter 5);
- reorganization of the state’s program for providing legal services for indigents (Chapter 6);
- authorization of satellite absentee voting in expanded circumstances (Chapter 7);
- increased attention to the achievement gap for minority students and completion of the teacher pay raises called for in the Excellent Schools Act (Chapters 8 and 23);
- creation of trust funds for moneys received from the tobacco settlement to address agricultural and health issues (Chapters 9 and 10);
- revisions to the funding mechanism for the Clean Water Trust Fund (Chapter 9);
- authorization of bonds, subject to voter approval, for a major capital construction and renovation program for the university and community college system (Chapter 11);
- revisions in Uniform Commercial Code filings (Chapter 14);
- revisions in local floodplain zoning authorizations (Chapter 15);
- a mandate to develop a detailed plan for mental health system reform (Chapter 18);
- revisions to the driving while impaired laws, including restrictions on opened containers of alcohol within vehicles (Chapter 19).

The General Assembly also directed that a number of legislative studies be conducted, with reports and legislative recommendations to be made in 2001. Among these are the following:

- second primary elections (Chapter 7);
- prescription drug assistance for the elderly (Chapters 10 and 21);
- the homestead property tax exemption for the elderly and other property tax credits (Chapters 16 and 21) and taxation of continuing care retirement communities (Chapter 17).

The Legislative Institution

Membership Changes

There were five membership changes in the House of Representatives subsequent to adjournment of the 1999 session. When the General Assembly convened in extra session in December 1999, Jennifer Weiss was sworn in to fill the unexpired term of the late Representative Jane H. Mosley (D-Wake). When the General Assembly convened in extra session in April 2000, two new members were sworn in: John D. Hall, to replace Representative Thomas C. Hardaway (D-Halifax), who resigned effective January 15, 2000; and Jimmie E. Ford, to replace Representative Jerry Braswell (D-Wayne), who resigned effective February 11, 2000. When the regular session convened, two additional new members took office: Roger West, to replace Representative James C. Carpenter (R-Macon), who resigned effective May 3, 2000; and Len Sossamon, to replace Representative Richard L. Moore (D-Cabarrus), who resigned effective May 7, 2000.
Legislative Salaries and Benefits

The salaries of legislators were not changed in the 2000 session, though S.L. 2000-67 raised the salaries of most legislative employees by 4.2 percent. The principal clerks’ salaries were set at $87,681, and the sergeant-at-arms and reading clerks salaries were set at $286 per week plus subsistence. The act also amends the Legislative Retirement System to provide a 3.6 percent post-retirement increase in the allowance of beneficiaries who retired on or before January 1, 2000 (and prorated increases for those who retired between January 1 and June 30, 2000).

Convening in 2001

The next General Assembly will convene at noon on January 24, 2001. Members of that session will be elected at the November 7, 2000, general election.
Statistics for the 2000 Session

Table 1-1. Length of Legislative Sessions in Even Years

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### Table 1-2. Bills Introduced and Adopted in Short Sessions

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<td>916</td>
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David W. Owens
The State Budget

The usual focal point of legislative short sessions is mid-biennium adjustments to the state budget. The 2000 session was no exception. The session began with major attention being given to the question of how to pay for needed expansions and renovations on the state’s university and community college campuses. The session ended with the adoption of a budget bill that filled significant new spending needs—teacher and state employee pay raises, Smart Start expansion, state employee health insurance cost reserves—without raising taxes. This task was complicated considerably by the depletion of state budget reserves to pay for Hurricane Floyd recovery costs.

This chapter summarizes the budget process, the budget adjustments that were made, and other bills that significantly affect state spending. The details of many of the budgetary provisions are discussed in the chapters that follow.

The Budget Process

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

The amount of time taken to make budget adjustments in the short sessions had been steadily increasing in recent years. The General Assembly first began to hold regular sessions in the second year of the biennium in 1974. From 1974 through 1982, work on budget adjustments was completed prior to the start of the second fiscal year (completion dates were April 13 in 1974, May 14 in 1976, June 16 in 1978, June 25 in 1980, and June 23 in 1982). In the mid-1980s a number of factors contributed to a lengthened budget-making process—the demise of the Advisory Budget Commission, the rise of numerous local and nonprofit appropriations, an increasing number and complexity of special provisions in the budget bills, and the increasing role of partisan politics in the General Assembly. The timetable for completion of the budget adjustments slipped into July in the 1984 through 1994 period (completion dates were July 7 in 1984, July 15 in 1986, July 12 in 1988, July 28 in 1990, July 8 in 1992, and July 16 in 1994). In the late 1990s the trend toward later
budget approvals dramatically accelerated. In 1996 the completion date slipped to August 3, and a House-Senate impasse in 1998 delayed completion of work on the budget until October 28.

In this biennial session those trends were reversed. The 1999 session marked the first time in two decades that all of the budget bills for a biennial budget were adopted prior to the start of the fiscal year. That change continued in the 2000 session, with work on the state budget again being completed on June 30.

The state budget process begins with the formulation of budget recommendations by the Governor, who by virtue of the state constitution is director of the budget. The Governor’s recommendations include estimates of the amount of revenues available for expenditure, estimates of the amount of appropriations needed to continue existing programs at their current level, recommended changes in appropriations for expansion or contraction of programs, and recommendations for capital improvements. Governor James B. Hunt, Jr., submitted his recommended budget adjustments to the General Assembly in May 2000. A copy of the Governor’s budget recommendations for 2000–01 is available on the Internet at http://osbm4.osbm.state.nc.us/osbm/pdf_files/changes0001.pdf. Among the Governor’s major funding recommendations were:

- $224 million to provide a 6.5 percent pay raise for teachers, completing the fourth year of increases proposed in the Excellent Schools Act to bring North Carolina teacher salaries up to the national average;
- $66.7 million to extend the Smart Start program statewide; and
- funding for a 3 percent pay raise for most state employees.

In the 2000 session the General Assembly continued the budget-making process used in 1999, which again resulted in adoption of a state budget prior to the beginning of the fiscal year. The House and Senate again worked to develop consensus on major budget issues during the budget development process. The House and Senate Appropriations Subcommittees met jointly throughout the spring, splitting only when the final budget bills of the respective chambers were to be approved. The entire state budget was again consolidated into a single bill (H 1840). The practice of excluding substantive provisions that are unrelated to the budget as “special provisions” within the budget bill was generally continued.

Following consolidation of subcommittee recommendations into an omnibus budget bill, the full House Appropriations Committee considered H 1840 on June 13. Some twenty-four amendments were proposed and deliberated at length, with nineteen being adopted. The bill was considered on the House floor the following day. In seven hours of debate, some eighteen amendments were considered and six adopted. Several amendments were offered and ruled out of order. The vote on the final version of the bill was 105 to 10 on second reading and 103 to 9 on third reading. The Senate Appropriations Committee considered a committee substitute for this bill on June 21, when some eighteen amendments were offered and ten adopted. The budget bill was then considered on the Senate floor on June 22, when ten amendments were offered and seven adopted. The bill was then adopted on second and third reading by a 48 to 0 vote. While the Senate bill was quite similar to the House version, there were substantial differences on several specific, key points. For example, the House had proposed a 5 percent pay raise for state employees while the Senate proposed 3 percent. The House proposed a one-time reduction in payments to the retirement system to reflect increased valuation of assets owned by the system while the Senate did not. The Senate proposed setting aside substantial reserves to cover anticipated increases in costs for the state employee health insurance plan while the House did not. The House proposed adding three new court of appeals judges while the Senate did not. Conferees were appointed on June 22 to negotiate these and other differences in the two versions of the budget. A conference report reconciling House and Senate differences was made on June 30. The bill (S.L. 2000-67) was adopted by both chambers on that date. The bill was presented to and signed by Governor Hunt on June 30.
The 2000–01 Budget

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

The General Fund

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

Revenue Availability. The strong economy projected with the adoption of the budget in 1999 materialized and was projected to continue into the 2000–01 fiscal year. The Governor’s budget submission projected a tax revenue increase of 6.3 percent for the year, leading to a 5.8 percent increase in total availability within the General Fund. However, fund transfers and expenditures from the Savings Reserve made to adequately respond to the costs incurred in connection with Hurricane Floyd (see Chapter 1, “The General Assembly,” for a summary of these transfers in the special session held in late 1999) meant that the usual year-end credit balance was not available for 2000–01. Thus even though the state’s economy was strong, the state had no surplus funds available for reallocation in 2001.

Also, judicially mandated refunds of previously collected taxes continued to have a significant impact on state budget making. The state completed repayment of improperly collected taxes on government employee retirement benefits (referred to collectively as the Bailey/Emory/Patton settlement) in 1999. However, the final $240 million installment in the repayment of improperly collected intangibles taxes had to be paid in 2000.

The General Assembly resolved early in the session to make adjustments to the budget to provide for new spending needs without a tax increase. Given the limitations in fund noted above, legislators searched for other avenues to increase fund availability without a tax increase. The Governor had proposed, for example, borrowing funds to repay the intangibles tax. However, the General Assembly secured the $240 million needed for this purpose by transferring, on June 30, 2000, to a reserve for the tax refund, $240 million in funds that would have been earmarked for paying teacher salaries in the eleventh and twelfth months of their contracts (July and August). (The remaining $11 million from the $251 million previously allocated to pay these two months of teacher salaries was placed in the General Fund for 2000–01.) Thus in future years the funds for these two months of salary will have to be provided in the budget year they are paid, as opposed to being set aside in the previous year’s budget (which is the year the obligation to pay accrues and is the year the work is actually done). Another major source of fund availability resulted from a change in calculating the needed reserves for the retirement system. Given the increased value of investments held by the system and a conservative valuation of the assets for accounting purposes, the General Assembly was able to adjust its calculation of the value of the assets, retain the fiscal integrity and soundness of the system, and make a substantial sum available for allocation in the 2000–01 fiscal year. The resulting sums available in the General Fund are set out in Table 2-1.
Table 2-1. 2000–01 General Fund Budget Availability

<table>
<thead>
<tr>
<th></th>
<th>2000–2001 ($ Millions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Beginning Unreserved Credit Balance</td>
<td>0</td>
</tr>
<tr>
<td>Tax Revenues</td>
<td>13,216.3</td>
</tr>
<tr>
<td>Nontax Revenues</td>
<td></td>
</tr>
<tr>
<td>Investment Income</td>
<td>214.0</td>
</tr>
<tr>
<td>Judicial Fees</td>
<td>106.7</td>
</tr>
<tr>
<td>Disproportionate Share Receipts</td>
<td>105.0</td>
</tr>
<tr>
<td>Insurance</td>
<td>42.1</td>
</tr>
<tr>
<td>Highway Trust Fund Transfer</td>
<td>170.0</td>
</tr>
<tr>
<td>Highway Fund Transfer</td>
<td>13.8</td>
</tr>
<tr>
<td>Other Nontax Revenues</td>
<td>103.9</td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td><strong>13,971.8</strong></td>
</tr>
<tr>
<td>H 1854 Fee bill</td>
<td>6.1</td>
</tr>
<tr>
<td>Y2K Reserve Transfer</td>
<td>9.0</td>
</tr>
<tr>
<td>Hurricane Fran Reserve Transfer</td>
<td>48.0</td>
</tr>
<tr>
<td>Eleventh/Twelfth Month Carryforward Revision</td>
<td>11.0</td>
</tr>
<tr>
<td>H 1559 IRC Conformity Adjustment</td>
<td>(2.0)</td>
</tr>
<tr>
<td>Disproportionate Share Reserve Transfer</td>
<td>1.0</td>
</tr>
<tr>
<td>Crime Victims Compensation Fund Reversion</td>
<td>1.0</td>
</tr>
<tr>
<td>State/Federal Retirees Administrative Cost Reimbursement</td>
<td>0.1</td>
</tr>
<tr>
<td>Federal Retirees Refund Reversion</td>
<td>0.3</td>
</tr>
<tr>
<td>S 1305 UCC Revision</td>
<td>3.9</td>
</tr>
<tr>
<td><strong>Total General Fund Availability</strong></td>
<td><strong>14,050.2</strong></td>
</tr>
</tbody>
</table>

**Appropriations from the General Fund.** The functional allocation of operating funds remains similar to past years. The 2000–01 operating budget provides $8.071 billion for education (58.6 percent), $2.919 billion for health and social services (21.2 percent), $1.487 billion for justice and public safety (10.8 percent), $654 million for reserves and debt service (4.7 percent), $347 million for general government (2.5 percent), and $308 million for natural and economic resources (2.2 percent). These figures are illustrated in Chart 2-1.
S.L. 2000-67 makes the specific revisions in the 2000–01 budget set out in Table 2-2. Reductions are shown in parentheses. Among the notable expenditures are salary increases for state employees (6.5 percent for teachers and 4.2 percent with a $500 one-time bonus for most other employees), an allocation of $120 million to replenish the Savings Reserve, and $100 million for the Repair and Renovation fund for state buildings. Detailed budget adjustments for the General Fund are set out in Table 2-2.

Table 2-2. General Fund Appropriation Adjustments for 2000–01

<table>
<thead>
<tr>
<th>($ Amount)</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Assembly</td>
</tr>
<tr>
<td>Judicial Department</td>
</tr>
<tr>
<td>Office of the Governor</td>
</tr>
<tr>
<td>Office of State Budget and Management</td>
</tr>
<tr>
<td>Office of State Budget and Management Special Appropriations</td>
</tr>
<tr>
<td>Department of Secretary of State</td>
</tr>
<tr>
<td>Department of State Auditor</td>
</tr>
<tr>
<td>Department of State Treasurer</td>
</tr>
<tr>
<td>Department of Public Instruction</td>
</tr>
<tr>
<td>Department of Justice</td>
</tr>
<tr>
<td>Department of Administration</td>
</tr>
<tr>
<td>Office of the Governor—Housing Finance</td>
</tr>
<tr>
<td>Department of Agriculture and Consumer Services</td>
</tr>
<tr>
<td>Department of Labor</td>
</tr>
<tr>
<td>Agency</td>
</tr>
<tr>
<td>-----------------------------------------------------------------------</td>
</tr>
<tr>
<td>Department of Insurance</td>
</tr>
<tr>
<td>Department of Environment and Natural Resources</td>
</tr>
<tr>
<td>Office of Administrative Hearings</td>
</tr>
<tr>
<td>Rules Review Commission</td>
</tr>
<tr>
<td>Department of Health and Human Services (DHHS)</td>
</tr>
<tr>
<td>Office of the Secretary</td>
</tr>
<tr>
<td>Division of Aging</td>
</tr>
<tr>
<td>Division of Child Development</td>
</tr>
<tr>
<td>Division of Services for the Deaf and Hard of Hearing</td>
</tr>
<tr>
<td>Division of Social Services</td>
</tr>
<tr>
<td>Division of Health Services</td>
</tr>
<tr>
<td>Division of Medical Assistance</td>
</tr>
<tr>
<td>Division of Services for the Blind</td>
</tr>
<tr>
<td>Division of Mental Health, Developmental Disabilities, and Substance</td>
</tr>
<tr>
<td>Abuse Services</td>
</tr>
<tr>
<td>Division of Facility Services</td>
</tr>
<tr>
<td>Division of Vocational Rehabilitation Services</td>
</tr>
<tr>
<td><strong>Total DHHS</strong></td>
</tr>
<tr>
<td>Department of Correction</td>
</tr>
<tr>
<td>Department of Commerce</td>
</tr>
<tr>
<td>Commerce</td>
</tr>
<tr>
<td>Biotechnology Center</td>
</tr>
<tr>
<td>Rural Economic Development Center</td>
</tr>
<tr>
<td>State Aid to Non-State Entities</td>
</tr>
<tr>
<td>Department of Revenue</td>
</tr>
<tr>
<td>Department of Cultural Resources</td>
</tr>
<tr>
<td>Department of Crime Control and Public Safety</td>
</tr>
<tr>
<td>Office of State Controller</td>
</tr>
<tr>
<td>University of North Carolina Board of Governors</td>
</tr>
<tr>
<td>General Administration</td>
</tr>
<tr>
<td>University Institutional Programs</td>
</tr>
<tr>
<td>Related Educational Programs</td>
</tr>
<tr>
<td>UNC–Chapel Hill—Health Affairs</td>
</tr>
<tr>
<td>NCSU—Academic Affairs</td>
</tr>
<tr>
<td>UNC–Wilmington</td>
</tr>
<tr>
<td>WCU</td>
</tr>
<tr>
<td>WSSU</td>
</tr>
<tr>
<td>NCCU</td>
</tr>
<tr>
<td><strong>Total UNC Board of Governors</strong></td>
</tr>
<tr>
<td>Community Colleges System Office</td>
</tr>
<tr>
<td>Debt Service</td>
</tr>
<tr>
<td>Office of Juvenile Justice</td>
</tr>
<tr>
<td>Reserve for Compensation Increase</td>
</tr>
<tr>
<td>Reserve for Compensation Bonus</td>
</tr>
<tr>
<td>Premium Reserve (Retirees)</td>
</tr>
<tr>
<td>Retirement Contribution Adjustment</td>
</tr>
<tr>
<td>Premium Reserve (Employees)</td>
</tr>
<tr>
<td>State Employee Reserve</td>
</tr>
</tbody>
</table>
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Death Benefit Contribution Adjustment (10,864,400)
Statewide Reserve for Salary Increase (11,000,000)
Reserve for Repairs and Renovation 100,000,000
Clean Water Management Trust Fund 30,000,000
Savings Reserve 120,000,000

Grand Total Current Operations—General Fund 476,796,293

The Highway Fund and Highway Trust Fund

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

The funding provided from these funds for the 2000–01 fiscal year is set out in Table 2-3.

Table 2-3. Highway and Highway Trust Fund Appropriations

<table>
<thead>
<tr>
<th>HIGHWAY FUND</th>
<th>($ Amount)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department of Transportation</td>
<td></td>
</tr>
<tr>
<td>Administration</td>
<td>1,214,914</td>
</tr>
<tr>
<td>Secondary Construction</td>
<td>192,000</td>
</tr>
<tr>
<td>State Maintenance</td>
<td>20,577,486</td>
</tr>
<tr>
<td>Capital Improvements</td>
<td>9,000,000</td>
</tr>
<tr>
<td>State Aid to Municipalities</td>
<td>192,000</td>
</tr>
<tr>
<td>State Aid for Public Transportation and Railroads</td>
<td>7,700,000</td>
</tr>
<tr>
<td>Division of Motor Vehicles</td>
<td>765,284</td>
</tr>
<tr>
<td>Reserves and Transfers</td>
<td>25,958,316</td>
</tr>
<tr>
<td>Grand Total Current Operations—Highway Fund</td>
<td>65,600,000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>HIGHWAY TRUST FUND</th>
<th>($ Amount)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Intrastate System</td>
<td>48,538,626</td>
</tr>
<tr>
<td>Secondary Roads Construction</td>
<td>6,102,120</td>
</tr>
<tr>
<td>Urban Loops</td>
<td>19,626,998</td>
</tr>
<tr>
<td>State Aid—Municipalities</td>
<td>5,092,834</td>
</tr>
<tr>
<td>Program Administration</td>
<td>4,119,422</td>
</tr>
<tr>
<td>Grand Total—Highway Trust Fund</td>
<td>83,480,000</td>
</tr>
</tbody>
</table>
Federal Block Grants

S.L. 2000-67 allocates nearly $779 million in federal block grants to a number of state programs, primarily in the area of human services. Table 2-4 summarizes the amounts of the various block grants available to the state.

<table>
<thead>
<tr>
<th>Table 2-4. 2000–01 Block Grant Allocations</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>DHHS Block Grant Provisions</strong></td>
</tr>
<tr>
<td>Community Services Block Grant</td>
</tr>
<tr>
<td>Social Services Block Grant</td>
</tr>
<tr>
<td>Low-income Energy Block Grant</td>
</tr>
<tr>
<td>Mental Health Services Block Grant</td>
</tr>
<tr>
<td>Substance Abuse Prevention and Treatment Block Grant</td>
</tr>
<tr>
<td>Child Care and Development Fund Block Grant</td>
</tr>
<tr>
<td>Temporary Assistance to Needy Families (TANF) Block Grant</td>
</tr>
<tr>
<td>Maternal and Child Health Block Grant</td>
</tr>
<tr>
<td>Preventive Health Services Block Grant</td>
</tr>
<tr>
<td><strong>NER Block Grants</strong></td>
</tr>
<tr>
<td>Community Development Block Grant</td>
</tr>
</tbody>
</table>

Other Legislation

Tobacco Settlement Funds

In 1998, North Carolina and forty-five other states signed the Master Settlement Agreement with major American tobacco companies to settle existing and potential claims of the states for damages arising from the use of the companies’ tobacco products. The amount that North Carolina will actually receive from this settlement remains uncertain, but projections are that the state will receive some $4.6 billion over the next twenty-five years.

Legislation in 1999, S.L. 1999-2, created a nonprofit corporation to receive and distribute 50 percent of the settlement funds allocated to North Carolina. S.L. 1999-2 directed that these funds be used for the public charitable purposes of providing economic-impact assistance to economically affected or tobacco-dependent regions of the state. S.L. 1999-2 also stated the intent of the General Assembly to allocate the remaining 50 percent of the settlement funds equally to two trust funds—one for the benefit of tobacco producers, allotment holders, and persons engaged in tobacco-related businesses and a second for the benefit of health. This year the General Assembly enacted S.L. 2000-147 (H 1431) to establish the Health and Wellness Trust Fund and the Tobacco Trust Fund and created commissions charged with managing these funds. Each fund will receive 25 percent of the tobacco settlement payments. These funds are described in more detail in Chapter 9, “Environment and Natural Resources,” and Chapter 10, “Health.”

University Bonds

One of the major fiscal issues facing the General Assembly in 2000 was how to pay for needed capital improvements on the state’s sixteen university and fifty-nine community college campuses. Differences between the House and Senate on the amount of funding to be allocated for this purpose and whether a referendum was needed to authorize bonds prevented resolution of the question in 1999.

S.L. 2000-3 (S 912) resolved these questions. It authorizes the issuance of $3.1 billion of general obligation bonds for capital improvements in the university and community college systems over the next ten years (with $2.5 billion going to the university system and $600 million
The State Budget

to the community college system). Issuance of the bonds is contingent upon voter approval at the November 2000 elections. Details on the bond bill are set out in Chapter 11, “Higher Education.”

**Clean Water Trust Fund**

The Clean Water Management Trust Fund (the Fund) has become a major vehicle for natural area acquisition in the state. Prior to this year the Fund received a portion of the unspent funds remaining in the state treasury at the end of each fiscal year. This year the General Assembly provided a direct appropriation to the Fund and repealed the provisions for automatic appropriations from unspent funds. Section 7.7 of S.L. 2000-67 (H 1840) appropriates $30 million to the Fund in 2000 and increases the appropriation to the Fund to $40 million in 2001, $70 million in 2002, and $100 million in 2003 and thereafter (of course, future General Assemblies can modify those numbers).

**Clean Water Bonds**

S.L. 2000-156 (S 1381) reallocates $200 million of the 1998 Clean Water Bond revenues to provide more water and wastewater grants to local government units in high-unit-cost and unsewered communities. The bill also reduces the maximum grant award under G.S. 159G-6(a) to $3 million over a period of three fiscal years and calls for a study of the geographic inequities alleged to have arisen in the early distribution of Clean Water Bond revenues. This act is discussed in more detail in Chapter 9, “Environment and Natural Resources.”

*David W. Owens*
The General Assembly concerns itself in a variety of ways with the welfare of children and families. This chapter describes legislative actions taken in 2000 of direct importance in the areas of child care, residential child-care facilities, domestic violence, and child support. It also describes expansion of the state’s pilot family court system.

Other legislative actions that will have an impact on families and children are described in Chapter 8, “Elementary and Secondary Education”; Chapter 10, “Health”; Chapter 13, “Juvenile Law”; Chapter 18, “Mental Health and Related Laws”; and Chapter 23, “Social Services.”

**Child Development and Child Care**

**Child-Care Subsidy Rates**

Section 11.27.(b) of S.L. 2000-67 (H 1840), the Current Operations and Capital Improvement Appropriations Act of 2000, adds a new section, G.S. 110-109, requiring the Department of Health and Human Services (DHHS) to conduct a statewide market rate study of child-care facilities at least once every two years. DHHS is directed to use the results of the study, which must include a survey of all licensed facilities, to establish a market rate for child-care centers and homes at each rated quality level for each county and for each age group. DHHS also must calculate a statewide market rate at each rated quality level for each age group, set at the seventy-fifth percentile of fees charged to unsubsidized, privately paying parents at each rated quality level for each age group.

Within six months of completing a statewide market rate study, DHHS must publish the results and implement market rates based on the results. When a county has at least seventy-five children in an age group at a particular rated quality level, the subsidy rate is the county market rate for that age group at that quality level. When a county has fewer than seventy-five children in an age group at a particular rated quality level, the subsidy rate is the statewide market rate for that age group at that quality level. However, the subsidy rate will be the county market rate when it can be demonstrated that

1. the statewide market rate is lower than the county market rate and
2. setting the subsidy rate at the statewide market rate would inhibit a county’s ability to purchase child care for low-income children.
The first market rate study must be completed by April 1, 2001. In addition, DHHS must complete a one-time interim market rate study by April 1, 2002. The interim study must incorporate the results of the first study and include a survey of rates charged at child care facilities that have changed their rate quality level since the first study. DHHS must implement the results of the interim study within six months of its completion.

**Noncitizen Families’ Eligibility for Child-Care Subsidies**

Section 11.27.(e) of S.L. 2000-67 (H 1840) provides that noncitizen families residing legally in North Carolina are eligible for child-care subsidies if all other eligibility conditions are met. Noncitizen families who reside in the state illegally are eligible for child-care subsidies only if all other conditions of eligibility are met and the child is

1. receiving child protective services or foster care services,
2. developmentally delayed or at risk of being developmentally delayed, or
3. a citizen of the United States.

**Early Childhood Education and Development Initiatives (Smart Start)**

G.S. 143B-168.12(a) directs the North Carolina Partnership for Children to establish policy on membership of the boards for local partnerships. Section 11.28.(a) of S.L. 2000-67 (H 1840) amends the subsection to provide that no member of the General Assembly shall serve as a member of the board of a local partnership. It also amends the subsection

- in regard to the state Partnership’s oversight of local demonstration projects, to provide that the Partnership may contract at the state level to obtain services or resources when the Partnership determines that would be more efficient;
- to require the Partnership to develop a regional (instead of centralized) accounting and contract management system;
- to require all local partnerships to participate in the regional accounting and contract management system; and
- to give the state Partnership greater discretion in making allocations to local programs, by providing that the Partnership may adjust its allocations by up to ten percent on the basis of local partnerships’ performance assessments. (Previously, specific allocation adjustments based on performance assessments were required.)

Section 11.28.(b) of S.L. 2000-67 amends G.S. 143B-168.13(6) to require DHHS, in annually updating its funding formula, to collaborate with the state Partnership. Section 11.28.(c) completely rewrites G.S. 143B-168.15(b) to require that of funds allocated to local partnerships for direct services, 70 percent of the funds spent in each year be used in child-care related activities and early childhood education programs that

1. improve access to child care and early childhood education services,
2. develop new child-care and early childhood education services, and
3. improve the quality of child care and early childhood education services in all settings.

Previously the subdivision required that 75 percent of the funds allocated for direct services be used for any one or more of specifically listed activities and services.

G.S. 143B-168.15(g) requires that at least 30 percent of local partnerships’ direct services allocations be used to expand child-care subsidies. Section 11.28.(d) of S.L. 2000-67 rewrites the subsection, effective September 1, 2000, to specify that the requirement applies to funds spent each year. It also adds a provision authorizing the state Partnership to increase this percentage requirement up to a maximum of 50 percent when, based on a significant local waiting list for subsidized child care, the state Partnership determines that a higher percentage is justified.

Section 11.28.(g) rewrites section 11.48(i) of S.L. 1999-237 to

1. change the match requirement ratio, from at least 10 percent cash contributions and not more than 10 percent in-kind donated resources, to at least 15 percent cash contributions and not more than 5 percent in-kind donated resources;
2. delete the exclusion from the match requirement of any program funding expended for child-care subsidies during the previous twelve months; and
3. provide that volunteer services may be treated as an in-kind contribution and specify how volunteer services are to be valued.

Section 11.28.(b) of the act allocates $122,878,076 of funds appropriated to DHHS for fiscal year 2000–2001 to be used as follows:
- $121,413,725 to administer and deliver services in all one hundred counties;
- $500,000, in nonrecurring funds, to assist local partnerships in their efforts to develop local collaboration; and
- $964,351 for state-level administration of the program.

Use of Restraints in Residential Child-Care Facilities

The General Assembly enacted S.L. 2000-129 (H 1520), effective January 1, 2001, to address concerns about the use of restraint and/or seclusion in a variety of settings, including residential child-care facilities. Article 1A of G.S. Chapter 131D, which governs out-of-home care for children, defines a “residential child-care facility” as “a staffed premise with paid or volunteer staff where children receive continuing full-time foster care.” The term specifically includes child-caring institutions, group homes, and children’s camps that provide foster care.

Rulemaking by Social Services Commission

S.L. 2000-129 amends G.S. 131D-10.5 to give the state Social Services Commission the power and duty to adopt rules on
1. documenting the use of physical restraints in residential child-care facilities and
2. personnel and training requirements related to the use of physical restraints and timeout for staff employed in residential child-care facilities.

Data Collection

S.L. 2000-129 adds a new G.S. 131D-10.5A, which requires residential child-care facilities that use physical restraints on children to collect data. For each such incident the data must reflect
- the type of procedure used,
- the length of time it was used,
- any alternatives that were considered or employed, and
- the effectiveness of the procedure or the alternative that was used.

The facility must analyze the data at least quarterly to monitor effectiveness, determine trends, and take any necessary corrective action. A facility must make the data available to the Department of Health and Human Services (DHHS) upon request. Nothing in the new section abrogates any existing requirement relating to confidentiality, privilege, or the disclosure of information.

Report of Death

S.L. 2000-129 adds a new G.S. 131D-10.6B, which requires any facility licensed under Article 1A of G.S. Chapter 131D to notify DHHS
- immediately upon the death of any resident that occurs within seven days of physical restraint of the resident and
- within three days of the death of any resident resulting from violence, accident, suicide, or homicide.

DHHS may assess a civil penalty, ranging from $500 to $1,000, against a facility that fails to notify the department of a death and the known circumstances surrounding it. The assessment of
penalties is governed by the Administrative Procedure Act, G.S. Chapter 150B, and either DHHS or the Attorney General may bring a civil action to recover a penalty.

If a resident’s death occurs within seven days of the use of physical restraint, DHHS must initiate an investigation immediately. Whenever DHHS receives notification of a death, the department must notify the Governor’s Advocacy Council for Persons with Disabilities that a person with a disability has died and must give the council access to information about each reported death. The DHHS Secretary is required to establish a standard reporting format and a form for facilities to use in complying with these reporting requirements.

An amendment to G.S. 131D-10.6 requires DHHS to report the level of facility compliance with laws governing the use of restraints and time-out in residential child-care facilities to the Legislative Study Commission on Mental Health, Developmental Disabilities, and Substance Abuse Services. The report, to be submitted annually on October 1, must include the number of facilities that reported deaths, the number of deaths reported by each facility, the number of deaths investigated by DHHS because of the proximity of the death to the use of restraints or time-out, and the number of deaths found to be related to the use of physical restraints or time-out.

**Domestic Violence**

**Services to Work First Recipients**

S.L. 2000-67 (H 1840) appropriates $3 million in Temporary Assistance for Needy Families (TANF) Block Grant funds to the DHHS Division of Social Services for fiscal year 2000–2001 to provide domestic violence services to Work First recipients. Section 5.(t) of the act requires the division, in consultation with the Council for Women and local social services departments, to develop and implement a way to use the funds to facilitate the delivery of domestic violence counseling, support, and other direct services to clients. The funds may not be used to establish new domestic violence shelters, for state administration, or to facilitate lobbying efforts. DHHS and the Council for Women are required to report on the use of the funds by February 1, 2001.

**Cyberstalking and Referrals to Abuser Treatment Programs**

S.L. 2000-125 (H 813) amends G.S. Chapter 14 to make “cyberstalking” a criminal offense. G.S. 14-196.3 makes it unlawful for a person to use an electronic method of communication to threaten, harass, or annoy a person or that person’s child, sibling, spouse, or dependent. (See Chapter 6, “Criminal Law and Procedure,” for a more thorough description of the new crime.) The act also amends G.S. 15A-1343(d) to allow a judge to order, as a special condition of probation, that a criminal defendant found responsible for acts of domestic violence attend an abuser treatment program approved by the Department of Administration.

In addition, the act amends G.S. Chapter 50B regarding civil domestic violence protective orders. G.S. 50B-3(a)(12) allows a judge to require a party found responsible for acts of domestic violence to attend an abuser treatment program approved by the Department of Administration. The amendment deletes the requirement that the treatment program be within a reasonable distance from the party’s residence.

The act becomes effective December 1, 2000, and applies to domestic violence offenses committed on or after that date.

**Child Support**

S.L. 2000-138 (S 787), the Studies Act of 2000, directs the Department of Health and Human Services (DHHS) and the Administrative Office of the Courts (AOC) to study ways to “more effectively coordinate the efforts of the two agencies in regard to the collection and enforcement of child support.” The act requires DHHS and the AOC to work in conjunction with local
departments of social services, clerks of court, child support enforcement (IV-D) attorneys, district court judges, representatives of county government, representatives of business and industry, and representatives of child support clients. The study must include

- studying the feasibility of each agency’s granting the other access to its computer systems and of making the two computer systems compatible;
- developing protocols to facilitate directing individuals to the proper agency for assistance; and
- studying barriers to the establishment of a unified system of child support collection and enforcement and offering solutions to identified barriers.

DHHS and the AOC are required to make an interim report to the Joint Legislative Public Assistance Commission by December 1, 2000. A final report is due March 1, 2001.

**Family Court**

S.L. 2000-67 (H 1840) provides funds to expand the family court pilot project to two additional district court districts. (See “Joint Conference Committee Report on the Continuation, Expansion and Capital Budgets,” incorporated by reference into the budget by Section 28.1 of S.L. 2000-67.) In family court districts, specially trained judges and court staff work to actively manage family cases and to coordinate families with the community resources available to address underlying problems such as substance abuse or inadequate housing. Goals of family court include minimizing the delay and expense traditionally associated with litigation and increasing the use of less adversarial means of resolving family disputes.

The addition of two new districts will bring the total family court pilot districts to eight. The family court pilot project began in 1998 when the General Assembly, as part of the comprehensive Juvenile Justice Reform Act of 1998, directed the Administrative Office of the Courts to establish family court pilot projects in three judicial districts. The three original pilots began operating on March 1, 1999, in district court districts 14 (Durham County), 26 (Mecklenburg County), and 20 (Stanly, Union, Richmond, and Anson counties). During the 1999 session, the General Assembly directed that the program expand to three additional districts beginning January 1, 2000. The three additional districts chosen by the AOC were districts 12 (Cumberland County), 5 (New Hanover and Pender counties), and 6A (Halifax County).

*Caryl D. Howell*

*Janet Mason*
This was a banner year in the General Assembly for rural communities in North Carolina. The General Assembly enacted almost all of the recommendations made by the Rural Prosperity Task Force, a high-profile group formed by the Governor in 1999 to examine and recommend ways to help the state’s rural economies and families faced with plant closings and layoffs, depressed agricultural prospects, and a changing tobacco industry. In February 2000, the Task Force presented the Governor and leadership of the General Assembly with a report recommending increased access to information technology, greater availability of investment capital, expanded educational opportunities, resources for agriculture, improved public infrastructure, and increased leadership and community development. The General Assembly responded by enacting legislation to

1. provide high-speed Internet access to rural parts of the state,
2. finance rural economic development projects and provide investments for rural business development,
3. improve the education, training, and retraining of rural students and workers,
4. ensure that farmers, agribusiness leaders, researchers, and other interested parties work together to shape the future of farming in the state, develop profitable new markets, and reinvigorate existing markets for North Carolina’s agricultural and biotechnology products, and
5. provide the water and sewer services, affordable housing, roads, and railroads needed to develop rural communities.

The Rural Prosperity Task Force defined economic development broadly. Some of the General Assembly’s responsive provisions, such as those in education and transportation, are not included in this chapter because they are fully covered in other chapters in this book. Others, such as taxation, are mentioned here but are also discussed in other chapters.
Beyond rural economic development, minor modifications were made to several of the state’s signature economic development and affordable housing creation statutes. In addition, local governments were granted greater authority to deal with the problems posed by both residential and nonresidential abandoned structures.

**Rural Community Economic Development**

**Rural Redevelopment Authority**

S.L. 2000-148 (H 1819) creates the Rural Redevelopment Authority, which is authorized to create two funds: (1) the Rural Investment Fund, a revolving loan fund that will finance loans and grants for economic development projects, such as shell buildings, and (2) the Long-Term Rural Development Fund, the income from which may be used for such economic development projects as improving water and sewer services; developing industrial parks; improving roads or railroads; providing fiber optic cable or coaxial cable, towers, and other infrastructure to accommodate high-speed Internet access; providing air or water pollution control facilities; and paying the administrative expenses of the authority. Both funds are available only for projects in rural counties, which are defined as counties with densities of fewer than 200 people per square mile based on the 1990 Census. The authority is located within the Department of Commerce but exercises all of its powers, including the power to employ, direct, and supervise its employees, independently of the Secretary of Commerce. The authority is governed by an eleven-member board of directors: three appointed by the Governor; three appointed by the General Assembly; three members of the General Assembly; the Secretary of Commerce; and the chief executive officer of the authority.

**Treasurer Investments in Small Business Investment**

S.L. 2000-160 (H 1583) authorizes the State Treasurer to invest in the North Carolina Economic Opportunities Fund. This fund will be partially financed with a $30 million combined contribution from six of the state’s largest banks. The fund has applied for certification as a Small Business Investment Corporation by the federal Small Business Administration. If its application is approved, the fund is expected to leverage more than $100 million in private, federal, and state investment funds for rural companies, making it the nation’s largest rural investment fund. The goal is to seek out and invest in those small but growing companies to which other investors might deny funding.

**Rural Internet Access Authority**

In response to a finding of unequal access among North Carolinians to computer technology and Internet connectivity by income, educational level, and/or geography, S.L. 2000-149 (S 1343) creates the North Carolina Rural Internet Access Authority. Located within the Department of Commerce, the purpose of the authority is to manage, oversee, and monitor efforts to provide rural counties with high-speed broadband Internet access. The authority is also to serve as the central rural Internet access policy planning body of the state and will communicate and coordinate with state, regional, and local agencies and with private entities in order to implement a coordinated rural Internet access policy. The North Carolina Rural Economic Development Center, Inc., will provide administrative and professional staff support for the authority.

The authority’s duties include developing and recommending to the Governor, the General Assembly, and the North Carolina Rural Redevelopment Authority a plan to provide rural counties with high-speed broadband Internet access; proposing funding that may be needed to make necessary investments to achieve the authority’s goals; and setting specific targets and milestones.
to achieve the goals and objectives set forth in the legislation. The legislation’s goals and objectives include providing:

1. local dial-up Internet access from every telephone exchange within one year;
2. high-speed Internet access to every citizen of North Carolina within three years;
3. two model Telework Centers in either enterprise tier one or enterprise tier two areas by January 1, 2002;
4. significant increases in ownership of computers, related Web devices, and Internet subscriptions throughout North Carolina;
5. accurate, current, and complete information through the Internet to citizens about the availability of present telecommunications and Internet services;
6. government Internet applications to make citizen interactions with government agencies and services easier and more convenient and to facilitate the delivery of more comprehensive programs; and
7. open technology approaches to encourage all potential providers to participate in the implementation of high-speed Internet access.

MCNC, a nonprofit research center that the state has funded in the past, has pledged $30 million from the proceeds of its sale of a spin-off company to help pay for part of the cost of developing the necessary infrastructure to make this high-speed, affordable access possible. High-speed broadband Internet access is defined as access with transmission speeds of at least 128 kilobits per second for residential costumers and at least 256 kilobits per second for business customers. A rural county is defined as a county with a density of fewer than 200 people per square mile based on the 1990 Census. The legislation creating the authority sunsets December 31, 2003.

**Agricultural Advancement Consortium**

In S.L. 2000-67 (H 1840), the General Assembly created the Agricultural Advancement Consortium, a coalition of experts and others with agricultural interests to research trends and identify and promote opportunities to improve the state’s economic development through farming and agricultural interests.

**Agriculture and Biotechnology Funding**

S.L. 2000-67 (H 1840) also includes $1 million in funding for biotechnology research and $300,000 in additional funding for marketing efforts.

**Other Community and Economic Development Legislation**

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

The William S. Lee Quality Jobs and Business Expansion Act (Bill Lee Act) was enacted in 1996 to provide private companies with economic incentives to create jobs. The Economic Opportunity Act of 1998 and the Widely Shared Prosperity Act of 1999 bolstered the Bill Lee Act, which is now considered the state’s main economic development legislation. This year the General Assembly made adjustments to the Bill Lee Act in S.L. 2000-56 (H 1560). The changes included:

- instituting a wage test (as provided in G.S. 105-129.4) for the Industrial Recruitment Competitive Fund and Industrial Development Fund (amending S.L. 1999-237);
- restating the standard for getting a credit for creating jobs to include a requirement that an employer have five or more full-time employees [amending G.S. 105-129.8(a)];
- making airline maintenance and repair facilities associated with interstate air carriers eligible for a tax credit [amending G.S. 105-129.2(2)]:


• providing for an employee buyout incentive if a business is acquired by employees as set forth in the statute [amending G.S. 105-129.4(e)];
• restricting the Department of Commerce from making loans or awarding grants to any recipient who has previously defaulted on a loan from the department until the debt is satisfied (amending G.S. 143B-431.2);
• permitting a taxpayer to continue to take the eligible tax credit if the cost of machinery taken out of service is offset in the same taxable year by a new investment in eligible machinery and equipment (amending G.S. 105-129.9);
• providing that if a taxpayer stops engaging in an eligible business, the tax credit expires and the taxpayer may not take any remaining portions of the credit [adding new G.S. 105-129.4(a2)];
• extending for ten years the carry-forward period for eligible companies investing $50 million in real property, machinery, and equipment, or in central office or aircraft facility property [amending G.S. 105-129.5(c)]; and
• providing that the application fee does not apply to any credit that the taxpayer intends to claim with respect to a location that is in a state development zone [amending G.S. 105-129.6(a1), 105-129.13(e)].

This bill and other modifications to the Bill Lee Act are discussed in detail in Chapter 25, “State Taxation.”

**Reallocate Water Bond Funds**

S.L. 2000-156 (S 1381) reallocates the proceeds of the 1998 Clean Water Bond revenues to provide more water and wastewater grants to local government units in high-unit cost and unsewered communities. This legislation transferred $200 million in water and sewer money from loans to grants. It sets the maximum principal amount of a grant at $3 million during any fiscal year for a high-unit cost wastewater project if the applicant is a sewer district that includes three or more local government units and similarly sets the maximum principal award of a grant to an applicant for a high-unit cost water supply system at $3 million if the applicant is a water district that includes three or more local government units or if it is a county in which less than 50 percent of the population is served by a public water system that is owned or operated by a local government unit or a nonprofit water corporation.

The new law requires the State Infrastructure Council to study the geographic distribution of loans and grants from the bond proceeds to determine the extent to which any geographic disparities and inequities exist. If the council finds that such disparities and inequalities exist, it is required to develop a plan to redress injuries caused by them. The plan should include proposed legislative action, if required. The council must report the results of its evaluation, any administrative action taken, and any legislative proposals to the General Assembly by December 1, 2000. An earlier version had required the Department of Environment and Natural Resources and the Rural Economic Development Center to assure that all loans and grants from the proceeds of the clean water bonds were distributed geographically so that at least 30 percent was awarded to applicants from each of the three defined regions of the state (eastern, central, and western).
Brownfield Tax Incentive

For taxable years beginning on or after July 1, 2001, the General Assembly created a tax incentive in S.L. 2000-158 (S 1252) for the redevelopment of brownfields. For more information, see Chapter 9, “Environment and Natural Resources.”

Abandoned Nonresidential Structures

S.L. 2000-164 (S 1152) amends G.S. 160A-426 to allow a municipality to declare a nonresidential building or structure within a community development target area to be unsafe if the building or structure appears to be vacant or abandoned and in such a dilapidated condition that it would cause or contribute to blight, disease, vagrancy, or fire or would pose a safety hazard, be a danger to children, or tend to attract persons intent on criminal activities or other activities that would constitute a public nuisance. The amendment defines “community development target area” as an area that has characteristics of a development zone under G.S. 105-129.3A, a nonresidential development area under G.S. 160A-503(10), or an area with similar characteristics designated by the city council as being in special need of revitalization for the benefit and welfare of its citizens. The amendment also authorizes a city, in lieu of initiating any action or proceedings, to have a building or structure removed or demolished to prevent or abate a violation or to prevent occupancy of the building or structure. Any costs incurred in connection with such removal or demolition shall form a lien against the property. It is important to note that this provision is not to be construed as impairing or limiting the power of a city to define and declare nuisances and to cause their removal or abatement by summary proceedings or by other means.

In the various versions of the bill that the General Assembly considered, the scope varied from limiting applicability to particular named cities to applying it to those municipalities with populations over 400,000 or to those municipalities with populations over 200,000. However, the final version made the law applicable to all cities.

Affordable Housing

Abandoned Housing

As North Carolina’s municipalities struggle to combat the health and safety issues associated with dilapidated housing, the General Assembly is continuously faced with requests to make the minimum housing standards statute a stronger weapon in the fight. This session the General Assembly responded by lowering the threshold for municipalities to invoke the provisions of G.S. 160A-443(5a), which allow a municipality to require that buildings that have been vacated and closed for a year either be repaired or demolished. As originally enacted, G.S. 160A-443(5a) applied only to municipalities in counties with populations over 163,000. However, over the years several local bills had applied the provisions to the smaller cities of Bethel, Eden, Farmville, Greenville, Lumberton, Roanoke Rapids, and Waynesville and to the municipalities in Lee County. This year’s changes make the provisions available to all municipalities located in counties with populations of more than 71,000. The provisions of the amendments do not affect G.S. 160A-443(5a)b, which applies to municipalities with populations in excess of 190,000.

Low-Income Housing Tax Credit

S.L. 2000-56 (H 1560) extended the maximum state low-income housing tax credit for four years to the twenty-six counties designated as moderately or severely impacted by Hurricane Floyd.

Anita R. Brown-Graham
The most important legislation affecting the court system was the state budget for fiscal 2000–01. The budget proposals submitted by the Administrative Office of the Courts, though addressing many needs, focused largely on technology needs and caseload problems, especially in the district courts, and both of these items were addressed by the General Assembly, as were many other smaller needs, including the creation of three new court of appeals judgeships. In a year in which funds for expanding programs were very tight, the court system’s budget was increased by more than $14 million, raising the total appropriated to the courts to nearly $362 million. That figure does not include the funds necessary to fund the salary increase for court officials.

The General Assembly’s budgeting decisions were made easier by the enactment of a court fee increase for all types of cases. The fees were rounded up to the next nearest 5-dollar increment, which in most cases resulted in a $4 increase that is expected to generate over $6 million.

In addition to money issues, important bills were enacted to revise the procedures used to collect forfeited criminal appearance bonds and to rewrite the law that determines what property should pass to a surviving spouse if the decedent does not include the spouse in his or her will. Finally, the issue of how to provide legal services to indigents charged with crimes or otherwise entitled to legal assistance was addressed by adopting, with some modifications, the recommendations of a study commission to create the Office of Indigent Defense Services, to be governed by the Commission on Indigent Defense Services. The bond forfeiture and indigent defense bills are discussed in Chapter 6, “Criminal Law and Procedure,” and the spouse’s elective share bill is discussed in this chapter.
The Budget

New Judgeships and Other Personnel Additions

Although the Administrative Office of the Courts (AOC) sought funding only for new district judgeships and not for new superior court or court of appeals judgeships, it received funding for all three types of judgeships. In its version of the budget, the House of Representatives included three new court of appeals judgeships, along with the attendant support staff—two law clerks and an executive assistant per judge. The Senate, after initially refusing to accept the proposed expenditure, ultimately agreed. The 2000 Appropriations Act, S.L. 2000-67 (H 1840), provides that the court of appeals positions will become effective on December 15, 2000, if they are pre-cleared by the U.S. Department of Justice for compliance with Section 5 of the Voting Rights Act. The initial occupants of the judgeships will be appointed to terms expiring on January 1, 2005. The successors of those judges will be elected in 2004 for an eight-year term expiring in 2012. The length of that initial term is unusual: typically the initial appointment lasts until the next general election that is held more than sixty days after the judgeship is created.

The budget also creates two new superior court judgeships, one in district 4B, consisting of Onslow County, the other in district 26B, consisting of part of Mecklenburg County. To fund these judgeships, two special superior court judgeships were eliminated. Both new judgeships will be created on December 15, 2000, and the initial occupants of the seats are to be appointed by the Governor. The judge appointed in district 4B will serve until January 1, 2006, so that the new judgeship will be put on the same electoral cycle as the existing judgeship in that district. The judge appointed in district 26B will serve until January 1, 2003, and the person elected to that seat in 2002 will have an eight-year term.

The largest caseload in the court system is in the district court, and that is also where the largest increases in caseload have occurred. Consequently, that court has been adding judges at a faster pace than in the other levels of the courts. This budget cycle (1999–2001) added eighteen new district judgeships, with nine added in each year of the biennium. The judges added this year were in districts 1, 4, 9B, 10, 11, 17A, 22, 26, and 28. They are created as of December 15, 2000, and the initial occupants will be appointed by the Governor to serve until the first Monday in December in 2004. Their successors will be elected in 2004 to four-year terms.

In addition to those positions, magistrate positions were added in thirteen counties, and the Administrative Office of the Courts received thirty-five new positions, with most of those established in the AOC’s court technology program. For the first time in many years, no new deputy clerk or support positions in prosecutors’ offices were created, and no judicial or prosecutorial districts were subdivided or established.

Interpreters, Court Reporting, and Pilot Programs

Other matters of concern were addressed in the budget. The impact of the increasing number of non-English-speaking persons in the state is evident in the increased appropriation for interpreters (an additional $250,000) and in the establishment of funding for such interpreters in civil domestic violence cases ($75,000). A shortage of court reporters has in some instances led to cancellation of previously scheduled sessions of court. That problem is addressed in two places in the budget—in the creation of two court reporter positions and in a $211,000 appropriation to pay for the installation of seventy-five courtroom recording systems across the state to handle district court and non-jury superior court proceedings.

The court system has several projects that are pilot projects or that gradually are being phased in across the state. Among these projects are drug treatment courts, custody mediation programs, court-ordered arbitration programs, worthless check collection programs, and family courts. Several of these projects were funded for additional expansion. Funds were appropriated for:

1. family courts in two more judicial districts,
2. increased support for existing drug treatment court programs ($100,000), and
3. expansion of worthless check collection programs in the district attorney’s office to districts 4 and 7.
The budget for the Administrative Office of the Courts and the Governor’s budget both recommended that the custody mediation program be expanded to the entire state, but funds for that purpose were not included in the budget.

Technology
The largest portion of the budget went to fund improvements in the court’s technology program. Of the $14 million appropriated to the courts, $7.5 million is earmarked for technology improvements. In 1999 a consultant’s report (done by the Gartner Group) commissioned by an earlier legislature was presented to the courts and the legislature. The report recommended a major overhaul of the court’s technology infrastructure and a substantial increase in the appropriation levels for court technology. The resulting appropriation is both large, when compared to past expansions of the technology program, and small, when compared to the levels recommended by the Gartner report. Most of the specific projects funded are to continue or complete previously started projects—an automated system for magistrates to create documents charging criminal offenses by computer instead of manually; a disaster recovery program to provide backup to the court’s main computer operation in the event of a fire, flood, or other disaster; and continuation and improvement of a civil case processing system begun several years ago. This increase was in large part offset by the increase in revenue that will flow from the court fee increase approved in S.L. 2000-109 (H 1854).

Substantive Changes Included in the Budget Bill
S.L. 2000-67 (H 1840) contains several provisions that do not appropriate funds but that do have an impact on the operation of the courts. One deals with the recurring issue of the ability of local governments to supplement the operation of the court system in a given county. Last session the budget bill (S.L. 1999-237) contained statutory amendments allowing cities and counties to use local funds to contract with the Administrative Office of the Courts to establish temporary support positions in the district attorney’s office, where the district attorney certified in writing that the “overwhelming public interest” warranted the use of local funds to supplement the state’s funding in that district. This year’s budget expanded that authority to include support staff for the superior court, clerk of court, and public defender’s offices. That debate, over the state’s role in providing adequate funding, has been a persistent issue, and this legislation authorizes local governments to use their funds to pay for virtually any kind of position except judgeships and support staff for the district courts.

In another change, the budget amends the executive budget act [G.S. 143-11(b)] to require the Governor, in preparing a proposed budget for each year, to include an estimate for the Judicial Department’s equipment replacement costs for each year in the period covered in the proposed budget. This amendment addresses a need that AOC officials have been noting for some time, namely, that since the early 1990s, the court’s budget has not included continuing funding for the replacement of basic office equipment, such as copiers, computer terminals, and telephones. Although the amendment does not require that funds for such replacements be included in the Governor’s budget, requiring a formal and precise statement of these agency needs will call attention to them.

Finally, the budget amends G.S. 7A-773.1 and 15A-1333 to clarify the uses to which information contained in the sentencing recommendations of sentencing services programs may be put. These programs provide sentencing recommendations to judges in cases in which a defendant is eligible to receive an intermediate punishment (probation with certain mandatory conditions). Some defendants and their attorneys were concerned that the law was not sufficiently clear in prohibiting the use of information obtained in the defendant’s trial and sentencing. The amendment now makes it clear that any information obtained by a sentencing services program may not be used for “any purpose” in the defendant’s trial. It further provides that the information
is not a public record and may be made available only as provided in the plan of operation that each program is required to develop in conjunction with the senior resident superior court judge.

**Court Cost Increases**

S.L. 2000-109 (H 1854) increases the filing fees for all kinds of court actions. For the typical case the fees were increased to $90 for district court criminal matters, to $115 for superior court criminal matters, to $50 for small claims, and to $65 for civil district and $80 for superior court civil matters. In addition, this legislation amends G.S. 7A-313 to provide that persons sentenced to jail as a condition of a probationary sentence may be ordered to pay daily jail fees in an amount equal to the daily fee paid by the Department of Correction to local governments when state prisoners are held in local jails. That amount for 2000–2001 is $18 per day.

**Closing of Courts**

The flooding caused by Hurricane Floyd in September 1999 was more severe than any in recent memory. Several communities in which courthouses were located were under water and virtually uninhabitable for many months. During that time, there was no authority for any court official to suspend the running of statutes of limitations or other time periods specified by statute for the taking of actions related to litigation. In response to the need and the apparent lack of authority, the AOC recommended legislation to the Courts Commission addressing the issue, and that commission in turn amended the recommendation and submitted it to the legislature. S.L. 2000-166 (H 1502), passed in essentially the same form as submitted by the commission, authorizes the Chief Justice of the Supreme Court, by written order, to extend the time for filing papers, such as pleadings, required to meet statutes of limitations. The order must specify the amount of time granted for the extension. In addition, the legislation gives specific authority to the long-standing practice of allowing local court officials to close their offices when necessary because of a disaster or other emergency; the closing must be in accordance with guidelines to be promulgated by the AOC. These closings do not affect the running of statutes of limitations or other time limits; only the Chief Justice may extend those limits.

**Rules of Civil Procedure**

S.L. 2000-127 (S 393) intends to curb motions by ambush. It amends Rule 7(b) to require that any motion filed by a party state “with particularity” the grounds for the motion. It also amends Rule 5, for superior court actions only, to require that if a party files a brief or memorandum in support of or in opposition to a motion seeking final determination of the rights of the parties as to one or more of the claims of the parties (e.g., motion to dismiss, motion for summary judgment), the party must also serve a copy of the brief on all other parties at least two days before the hearing of the motion. For purposes of this law, service includes facsimile transmission or other means that results in the party actually receiving the brief within the required time. A judge may continue the hearing or proceed without considering the brief if the party filing the brief has failed to properly serve it on the opposing parties. S.L. 2000-127 also amends Rule 6(d), regarding parties filing affidavits to oppose a motion, and Rule 56(d), regarding affidavits opposing a motion for summary judgment, to require that those affidavits be served on the opposing parties at least two days before the hearing on the motion.
Matters of Particular Interest to Judges

Uniform Electronic Transactions Act

S.L. 2000-152 (S 1266) adopts a uniform act governing the use of electronic records and signatures in transactions except wills and testamentary trusts. It provides that a record or signature cannot be denied legal effect or excluded in a trial solely because it is in electronic form. An electronic record satisfies the requirement that the record be in writing, and an electronic signature that complies with the provisions of the act satisfies the requirement for a signed writing. The act is discussed more fully in Chapter 14, “Land Records and Registers of Deeds,” and Chapter 16, “Local Government and Local Finance.”

Superior Court Judges Perform Marriages

Under North Carolina law, marriages may be performed by ministers and by North Carolina magistrates. In response to a request from a superior court judge who wished to perform a marriage ceremony for a relative, H 973 was introduced to allow superior court judges to perform marriages for a limited period of time. After introduction, the bill was amended to also allow superior court judges from other states to perform marriages in North Carolina for a limited period of time, because someone in North Carolina wanted a relative who was a judge in another state to conduct the marriage ceremony in this state. S.L. 2000-58 allows superior court judges from North Carolina or from other states to perform marriage ceremonies in this state from June 30, 2000 (when the bill became law), until September 15, 2000 (when the law expires).

Matters of Particular Interest to Clerks of Superior Court

Stay of Execution Bond in Cases with Large Punitive Damages Awards

On April 5, 2000, the General Assembly met in a special session to deal with an issue arising out of ongoing tobacco litigation in Florida. Tobacco companies were concerned that a massive punitive damages judgment might be entered against them and that they would be forced to declare bankruptcy before being able to appeal any judgment, because under Florida law they could not stay the execution of a judgment on appeal without posting the full amount of the judgment as a bond. As a result, the tobacco companies sought protective legislation in several tobacco states where they held major assets. North Carolina enacted S.L. 2000-1 (Ex. Sess.) (S 2), which amends G.S. 1-289 to provide that to stay enforcement of a North Carolina judgment in a civil action in which non-compensatory damages of $25 million or more are awarded while the case is on appeal, the judgment debtor must post a bond in an amount equal to the compensatory damages plus $25 million for the non-compensatory damage portion. However, if the judgment creditor proves that the judgment debtor is dissipating, secreting or diverting assets for the purpose of evading the judgment, the judgment debtor will be required to post a bond equal to the total amount of the judgment, which is the normal stay of execution bond required in other cases. S.L. 2000-1 (Ex. Sess.) also amends G.S. 1C-1760 to provide a similar provision for judgment creditors who wish to docket and enforce in North Carolina judgments entered in other states. If an out-of-state judgment is brought to North Carolina while an appeal is pending in the original state, the North Carolina court must stay enforcement of the foreign judgment in North Carolina upon the posting of the bond required by G.S. 1-289.
New Dissent Law

Under North Carolina law a person cannot disinherit his or her spouse. A surviving spouse is entitled to a certain share of his or her spouse’s estate, and if a decedent dies leaving his or her spouse less than that share, the surviving spouse can “dissent” and receive the statutory share of the decedent’s estate rather than the share left to the spouse. However, in determining whether a spouse can dissent, the dissent law considered property passing through the estate and certain non-probate property that passed to the surviving spouse outside of the estate but never counted other property passing outside of the estate. Therefore, numerous inequities occurred in determining whether a spouse was entitled to dissent. For example, Smith is married and has two children, Jim and Linda. His assets are a house with a value of $150,000 owned with his wife Beth as tenancy-by-entirety (each pays half the cost); a $150,000 joint bank account with Jim having right of survivorship; a $150,000 joint bank account with Linda having right of survivorship; stocks and bonds held in his name worth $50,000; and personal and household belongings with a value of $5,000. Smith’s will leaves $10,000 to his wife and the remainder to Jim and Linda. Under the current dissent law, Beth is entitled to dissent if the amount passing to Beth under the will plus the amount passing to her outside the will is less than one-third of Smith’s net estate. However, the net estate includes only property passing under the will, which in this fact situation is $55,000 (the stocks and bonds and personal and household belongings). The two joint survivorship accounts with his children pass outside the estate and are not counted as part of the net estate; nor does the tenancy-by-entirety property pass through the estate. Beth takes $10,000 under the will and $75,000 outside the will (one-half the value of the home since she paid for one-half); thus her share is $85,000, which is more than one-third of $55,000. She cannot dissent.

S.L. 2000-178 (H 979) corrects such inequities by repealing the current dissent law and replacing it with a new statute that grants a surviving spouse a minimum share of the decedent’s estate and that counts all of the decedent’s property whether or not it passes through the estate. Rather than call the surviving spouse’s right one of dissent, the new statute refers to the surviving spouse’s right to an elective share. The surviving spouse is now entitled to a share equal to from one-sixth to one-half of the decedent’s estate, depending upon the number of the decedent’s surviving lineal descendants and whether the surviving spouse is a first or successive spouse. Under the new law, every asset of the decedent that would be counted for federal estate tax purposes is included in the total net assets regardless of whether those assets pass through or outside of the estate. The surviving spouse may claim an elective share equal to the applicable share (one-sixth to one-half) of the decedent’s total net assets less the value of the property passing to the surviving spouse. Using the same example given above, under the new law Smith’s total net assets would be $430,000. The property passing to Beth would be $85,000, which is less than one-third of $430,000. Beth would thus be entitled to claim an elective share and have additional property awarded her to bring her share up to one-third of Smith’s total net assets.

The surviving spouse must claim the elective share within six months after issuance of letters of probate or administration, and the clerk must hold a hearing no earlier than two nor later than six months after the claim is filed. S.L. 2000-178 requires the estate’s personal representative to submit to the clerk a proposed federal estate tax return regardless of whether the form is required to be filed with the Internal Revenue Service. That tax form should assist the clerk in determining the total net assets of the estate. The surviving spouse and personal representative may agree on the fair market value of the assets of the estate, but if they are unable to agree the clerk may appoint a disinterested person to determine the value. At the hearing, the clerk must determine whether the surviving spouse is entitled to claim an elective share, and if the spouse is found to be so entitled, the clerk must determine the amount of that share and must order the personal representative to transfer that share to the surviving spouse. The clerk’s order must recite specific findings of fact and conclusions of law relied upon in arriving at the decedent’s total net assets, property passing to the surviving spouse, and the elective share. The new law continues the right of a surviving spouse to take a life interest in a decedent’s estate in lieu of an elective share. S.L. 2000-178 takes effect January 1, 2001, and applies to estates of decedents dying on or after that date.
Matters of Particular Interest to Magistrates

Processing Fee for Worthless Checks

G.S. 25-3-506 allows a merchant to charge a processing fee of up to $25 to a customer who gives the merchant a check that is returned for insufficient funds but only if the merchant has posted a conspicuous sign, in a location where customers can see it, informing them that the merchant charges the fee for any check returned for insufficient funds. If the customer pays by mail, the merchant must have given written notice of the fee before payment is made. This processing fee may be collected in a civil action and is also part of the restitution to be collected if the customer pleads guilty to or is convicted of the crime of writing a worthless check. S.L. 2000-118 (H 1021) deletes the requirement of posting a sign or notifying a customer paying by check. Thus for checks presented on or after October 1, 2000, the merchant may charge the customer a fee of up to $25 without posting any sign or giving any advance notice to the customer.

Service by Publication in Small Claims Motor Vehicle Lien Cases

G.S. 44A-2 grants a person who repairs, services, tows, or stores motor vehicles a lien against the motor vehicle for the reasonable charges for services provided. Frequently the lien arises because a motor vehicle is abandoned beside a road and the garage owner tows the vehicle at the request of a law enforcement officer. Often the owner of the vehicle cannot be determined or a current address for the owner cannot be discovered, so the owner cannot be served by the normal methods for service allowed in small claims cases. In 1977 when the General Assembly authorized magistrates to hear motor vehicle lien cases, the authorizing statute, G.S. 7A-211.1, allowed defendants in those cases to be served under Rule 4(j) as well as under the normal methods of service of process for small claims as provided in G.S. 7A-217. At that time Rule 4(j) provided for service by publication if the defendant, after a due and diligent search, could not be served by some other authorized method of service. However, in 1981 the General Assembly amended Rule 4 by moving the provisions regarding publication from Rule 4(j) to a new subdivision 4(j1) but did not amend G.S. 7A-211.1. S.L. 2000-185 (H 1501) amends G.S. 7A-211.1 to provide that a defendant in a small claims motor vehicle lien case may be served as provided by G.S. 1A-1, Rule 4(j1), as well as by Rule 4(j), thus returning the statute to its original provision allowing service by publication.

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Criminal Law and Procedure

The 2000 General Assembly made few substantive changes in the state’s criminal law and procedure. Of the criminal legislation enacted, the most significant involved the legality of video poker machines and the procedure for forfeiture of bail bonds. The General Assembly did, however, reorganize a crucial part of the administration of the criminal justice system—indigent defense. These and other acts bearing on criminal justice are discussed in this chapter. For a discussion of related topics, see Chapter 19, “Motor Vehicles”; Chapter 5, “Courts and Civil Procedure”; and Chapter 22, “Sentencing, Corrections, Prisons, and Jails.”

Indigent Defense

S.L. 2000-144 (S 1323), the Indigent Defense Services Act of 2000, deals with the provision of legal services to indigent persons who are charged with crimes or who are otherwise entitled to legal assistance at state expense. It places the responsibility for managing indigent defense under a new statewide Office of Indigent Defense Services (Office). Most of the provisions governing the powers and duties of the Office appear in new Article 39B of Chapter 7A (G.S. 7A-498 through -498.8). The act also makes numerous conforming changes to Chapters 7A and 15A as well as to other statutes on indigent representation.

The portions of the act establishing the Office became effective August 2, 2000, but the Office does not assume responsibility for providing indigent defense services until July 1, 2001. No rules, standards, or other regulations adopted by the Office concerning the delivery of such services take effect until the latter date. In the interim, the Office must develop procedures for the orderly transfer of authority over the program to the Office.

**Background.** With some modifications, the act adopts the recommendations of the Indigent Defense Study Commission (Study Commission), created in 1998 to consider ways to improve the management of funds being expended for representation of indigent defendants without compromising the quality of representation. The enabling legislation directed the Study
Commission to consider a host of issues, including the procedures for determining indigency, the effectiveness and quality of different methods of providing legal representation (public defenders, appointed counsel, contract attorneys), the procedures for evaluating compensation requests by private counsel and expert witnesses, and the appropriateness of modifying the current management structure [Section 16.5, S.L. 1998-212 (S 1366), as amended by Section 17.11, S.L. 1999-237 (H 168)].

The Study Commission met several times during 1999 and 2000 and received information about the status of indigent defense programs, in North Carolina and nationally, from the Administrative Office of the Courts (AOC), the Legislative Fiscal Research Division, the Institute of Government, the directors of indigent defense programs in Minnesota and Kentucky, and an outside consultant funded through a grant to the American Bar Association from the U.S. Bureau of Justice Assistance.

The Study Commission concluded that the indigent defense program in North Carolina suffers from a lack of centralized planning, oversight, and management. The Study Commission found that authority over the program is scattered among the AOC, the North Carolina State Bar, thirty-six local bar committees (coinciding with the thirty-six judicial districts), more than 300 judges acting in thousands of separate cases, and eleven independent public defenders. The Study Commission found that the program, which costs the state more than $60 million per year, needed more management and recommended that the General Assembly establish the new statewide Office of Indigent Defense Services. The Study Commission did not make individual recommendations on the various issues identified by the General Assembly, concluding that the Office, assisted by professional staff, would be in the best position to address those issues.¹

**Purpose of legislation.** New G.S. 7A-498.1 sets forth several goals for the Office. It states that the legislation’s purpose is to:

- enhance the oversight of legal services provided at state expense;
- improve the quality of representation and ensure the independence of counsel;
- establish uniform policies and procedures for the delivery of services;
- generate reliable statistical information; and
- deliver services in an efficient, cost-effective manner without sacrificing the quality of representation.

**Structure and authority of Office.** G.S. 7A-498.2 describes the structure of the Office and its relationship to the AOC. The Office is administered by the Director of Indigent Defense Services (Director) and is governed by the Commission on Indigent Defense Services (Commission). The Office is established within the Judicial Department, and its budget is part of the Judicial Department’s budget. The AOC provides administrative support to the Office, but the Office exercises its powers independently of the AOC and has final authority over budget and policy decisions.

The Office is responsible for providing legal representation in virtually all cases in which an indigent person is entitled to representation at state expense. The Office’s jurisdiction, specified in new G.S. 7A-498.3, covers:

- cases in which an indigent person has a constitutional right to counsel;
- cases in which an indigent person is statutorily entitled to legal representation under G.S. 7A-451 and -451.1, the main statutes describing the right to counsel; and
- any other cases in which the Office is designated by statute as responsible for providing legal representation.

In all of these cases, the Office is responsible for overseeing the delivery of legal services and allocating and dispersing funds appropriated by the General Assembly for such services. The Office’s authority with respect to specific procedures, such as appointment of counsel, is discussed further below.

¹ This discussion is drawn from the Report and Recommendations of the Indigent Defense Study Commission, submitted to the North Carolina General Assembly May 1, 2000.
Membership of Commission. The Commission on Indigent Defense Services, the governing body of the Office, consists of thirteen members appointed for staggered terms of four years by the Chief Justice, Governor, Speaker of the House, President Pro Tempore of the Senate, Public Defenders Association, and various bar groups (G.S. 7A-498.4). The Commission also has the responsibility of appointing three of its members.

Individuals appointed to the Commission must have significant experience in the defense of criminal or other cases under the Office’s jurisdiction or must have demonstrated a strong commitment to quality representation in indigent defense matters. No active prosecutors, law enforcement officials, or judicial officials may serve on the Commission, except that the Chief Justice’s appointee must be an active or former member of the judiciary and one of the Commission’s appointees may be an active member of the judiciary. Active employees of the Office, including active public defenders, may not serve on the Commission; however, private attorneys who do appointed or contract work for the Office may be on the Commission. All members of the Commission may vote on matters coming before it, but the Commission must adopt rules with respect to voting on matters in which a member has or appears to have a financial or other personal interest.

Director and professional staff. The Director of Indigent Defense Services is appointed by the Commission for a term of four years and may be removed before the end of his or her term by a two-thirds vote of all Commission members. He or she must be an attorney (G.S. 7A-498.6). The 2000 Appropriations Act [S.L. 2000-67 (H 1840)] gives the Director an initial staff of four—a chief financial officer, information systems manager, research analyst, and administrative assistant. Funding for the Director and the administrative assistant positions begins November 1, 2000; funding for the other positions begins January 1, 2001.

Development of standards. One of the principal functions of the Office, acting through its Commission and Director, is to develop standards to ensure the quality of representation provided to indigent defendants. G.S. 7A-498.5(c) requires the Office to develop standards on, among other things:

- minimum qualifications for appointed counsel;
- caseloads for public defenders and appointed counsel;
- performance of public defenders and appointed counsel; and
- qualifications and performance of counsel in capital cases.

Methods of delivering services. Another key function of the Office is to determine the methods for providing legal representation in each district. The Office may choose to rely on appointed counsel on a case-by-case basis; enter into contracts with attorneys to handle a number of cases over a specified period of time; employ full-time or part-time public defenders to represent indigent defendants in a particular district or region; or use any combination of methods [G.S. 7A-498.5(d)].

In determining the method for delivering services, the Office is required to consult with the district bar and the judges of the district or districts under consideration and ensure that they have the opportunity to be significantly involved in the process. The Office also must solicit written comments and forward them to the members of the General Assembly who represent the affected districts and to other interested parties [G.S. 7A-498.5(e)]. Before the Office may establish or abolish a public defender office, a legislative act is required [G.S. 7A-498.7(a)].

Appointment and compensation of counsel. Under revised G.S. 7A-452, which governs the assignment of counsel in individual cases, the courts and the Office each have responsibilities. The court makes the initial determination of whether a person is indigent and is entitled to counsel at state expense. The Office is required to develop standards for determining indigency [G.S. 7A-498.5(c)(8)].

If the court finds in a non-capital case that a person is entitled to counsel, the court assigns counsel pursuant to rules adopted by the Office. If the court finds that a person is entitled to counsel in a capital case, the Office makes the assignment. When practicable, at least one member of each capital defense team must be a member of the bar in that division (G.S. 7A-452).
The Office is responsible for developing procedures for compensating appointed counsel, including rates of compensation, schedules of allowable expenses, and procedures for applying for and receiving compensation [G.S. 7A-498.5(f), 7A-458]. The Office is also responsible for developing procedures for compensating experts [G.S. 7A-458.5(f), 7A-454].

**Public defender offices.** The act repeals the provisions on public defenders in G.S. 7A-465 through 7A-471 but repeats many of those provisions in new G.S. 7A-498.7. For example, public defenders continue to be appointed by the senior resident superior court judge from a list of two to three attorneys nominated by the local bar. Public defender offices are subject to standards adopted by the Office, although day-to-day operation and administration is the responsibility of the public defender in charge of the office.

New G.S. 7A-498.8 deals with the office of appellate defender, which likewise is subject to the Office’s oversight. That section repeats a number of provisions from the statutes governing the appellate defender’s office (G.S. 7A-486 through 7A-486.7), which are repealed. A principal difference is that the head of the appellate defender’s office is appointed by the Commission rather than by the Chief Justice.

**Recoupment of counsel fees.** Revised G.S. 7A-455 continues to require the court to enter judgment for the value of legal services rendered to an indigent person, whether by private counsel or public defender, if the indigent person is convicted. The Office is required to develop procedures for determining the value of services and entering judgment.

**Counsel in noncriminal cases.** The act amends numerous statutes dealing with the right to counsel in noncriminal cases, such as juvenile delinquency cases, parental termination hearings, and involuntary commitment proceedings. The changes make the delivery of services in these cases subject to the Office’s oversight; they do not alter the extent of a person’s right to counsel.

### Criminal Procedure

#### Bail Bonds

Two chapters of the General Statutes deal with bail bonds—Chapter 15A on criminal procedure and Chapter 58 on insurance. S.L. 2000-133 (H 1607) rewrites statutes in both chapters to modify the procedures for forfeiture of bail bonds and certain other procedures. The act applies to bonds executed and forfeiture proceedings initiated on or after January 1, 2001.

**Definitions.** The act begins with a rewrite of G.S. 15A-531, the definitions section of the bail article in Chapter 15A. A defendant who is obligated to appear in court on penalty of forfeiting bail is referred to as the “defendant” rather than the “principal.” A person who writes bonds on behalf of an insurance company is referred to as a “bail agent” instead of a “surety bondsman.” The definitions of “accommodation bondsman,” “insurance company,” “professional bondsman,” and “surety bondsman,” set forth in G.S. 58-71-1, are restated in G.S. 15A-531. An accommodation bondsman is a person who, for no consideration, acts as a surety for a defendant by promising to pay the amount of the bond in the event that the defendant fails to appear in court. An insurance company and a professional bondsman are two different types of commercial sureties—the first pledges the assets of the insurance company as security, the second pledges his or her own assets. A surety bondsman is any one of these three types of sureties.

The current provisions on cash bonds are carried over to new G.S. 15A-531(1c), which defines “bail bond” as an unsecured appearance bond, an appearance bond secured by a cash deposit in the full amount of the bond, an appearance bond secured by a mortgage, or an appearance bond secured by a surety. As under current law, a bond secured by a bail agent on behalf of an insurance company is considered the same as cash, while a bond secured by a professional bondsman is not. Cash bonds set in child support contempt proceedings may not be satisfied in any manner other than by the deposit of cash.
Identifying information on bond. New G.S. 15A-544.2 requires that the following information be entered on each bail bond: the name and mailing address of the defendant; name and address of any accommodation bondsman; name and license number of any professional bondsman and any runner executing a bond on a professional bondsman’s behalf; and name of any insurance company and name, license number, and power of appointment number of any bail agent executing a bond on an insurance company’s behalf. If a bail bond does not contain the required information, a defendant’s release may be revoked.

Surrender of defendant by surety. The act rewrites the procedures in G.S. 15A-540 for the surrender of a defendant by a surety. It also rewrites G.S. 58-71-25, which contained somewhat different surrender procedures, to require that any surrender be in accordance with G.S. 15A-540.

Revised G.S. 15A-540(a) provides that if a defendant has not yet breached the conditions of a bail bond—that is, if he or she has not failed to appear in court as scheduled—a surety may surrender the defendant as provided in G.S. 58-71-20. That section specifies the locations where a surety may surrender the defendant and requires that the surety return the premium paid by the defendant except in certain circumstances. Upon application by the surety after surrender, the clerk must exonerate the surety from the bond—that is, relieve the surety of liability for any later failure to appear by the defendant.

Revised G.S. 15A-540(b) provides that after the defendant has breached the bond, a surety may arrest the defendant and surrender him or her to the sheriff of the county in which the defendant is bonded to appear or to the sheriff where the defendant was bonded. A surety also may surrender a defendant who is already in the sheriff’s custody by appearing in person and informing the sheriff that the surety wishes to surrender the defendant.

Revised G.S. 15A-540(c) provides that when a defendant is surrendered by a surety after breach, the sheriff without unnecessary delay must take the defendant before a judicial official for the setting of new pretrial release conditions. The subsection also seeks to limit the discretion of judicial officials in setting bonds in cases in which a surety surrenders the defendant after a failure to appear. It requires the judicial official to impose any conditions set by the court in its order for arrest of the defendant and further states that, if the issuing court has not set conditions, the judicial official must double the amount of the previous bond. The judicial official also must indicate on the release order that the defendant was surrendered for failing to appear.

Entry and notice of forfeiture. Part 2 of Article 26 of Chapter 15A (15A-544.1 through 15A-544.8) sets forth the new procedures for forfeiture of bail bonds. G.S. 15A-544.3 authorizes the court, upon the defendant’s failure to appear, to enter a forfeiture for the full amount of the bond. G.S. 15A-544.4 requires the court to notify the defendant and each surety of entry of forfeiture by first-class mail; the court also must mail a copy to any bail agent who executed the bond on behalf of an insurance company, though failure to do so does not affect the validity of notice given to the insurance company. Notice is effective when mailed, but if notice is not mailed within thirty days of entry of forfeiture, the forfeiture may not be converted to a final judgment and may not be enforced or reported to the Insurance Commissioner.

Grounds for setting aside forfeiture. Subject to certain time limits, described below, a forfeiture must be set aside for any of the following reasons, which are set forth in G.S. 15A-544.5:

- the defendant’s failure to appear has been set aside by the court and the order for arrest has been recalled;
- all charges for which the defendant was bonded to appear have been finally resolved other than by the state’s taking of a voluntary dismissal with leave;
- the defendant has been surrendered by a surety as provided in G.S. 15A-540 (discussed above);
- the defendant has been served with the order for arrest for failing to appear;
- the defendant died before final judgment on the forfeiture; and
- the defendant was incarcerated in the Department of Correction or was in a unit of the Federal Bureau of Prisons within North Carolina at the time of the failure to appear.
Methods of setting aside forfeiture. The act provides for two methods of setting aside a forfeiture. First, G.S. 15A-544.5(c) provides that if the court enters an order striking a defendant’s failure to appear and recalling an order for arrest, it may simultaneously enter an order setting aside any bond forfeiture. Unless the court orders otherwise, further appearances by the defendant continue to be secured by the same bail bond.

Second, G.S. 15A-544.5(d) establishes a motion procedure for setting aside a forfeiture if it has not been set aside under Subsection (c), above. The defendant or surety has 150 days from the date on which notice of forfeiture was given to make a written motion to set aside the forfeiture. The motion must be filed with the superior court clerk of the county in which the forfeiture was entered and must be served on the district attorney for that county and the county board of education. If the district attorney or county board of education do not file written objections within ten days of service of the motion, the clerk must set aside the forfeiture. If written objections are filed, a hearing on the motion must be held in the trial division in which the defendant was bonded to appear. If the court allows the motion, the forfeiture is set aside. If the court does not set aside the forfeiture, it becomes a final judgment on the later of the date of the hearing or the date a forfeiture becomes final under G.S. 15A-544.6 (essentially, 150 days after notice of forfeiture was given). Thus if the court denies the motion on day 120, the forfeiture becomes final and subject to execution on day 150. If the motion is still pending on day 150, the judgment does not become final until the court rules on the motion.

Only one motion to set aside a particular forfeiture may be considered by the court [G.S. 15A-544.5(e)]. No more than two forfeitures may be set aside in any case if the surety or bail agent knew before executing the bond that the defendant had previously failed to appear two or more times [G.S. 15A-544(f)]. An order on a motion to set aside a forfeiture is a final judgment for purposes of appeal. Appeal is as in civil actions and, if properly filed, the court may stay the effectiveness of the forfeiture on conditions the court finds appropriate [G.S. 15A-544.5(h)].

Entry and execution of forfeiture judgment. On the 150th day following notice of forfeiture, a forfeiture automatically becomes a final judgment without further action of the court unless the court has set aside the forfeiture or a motion to set aside is still pending (G.S. 15A-544.6). Once a forfeiture becomes a final judgment, the superior court clerk must docket the judgment as a civil judgment against the defendant and each surety and, like any civil judgment, it constitutes a lien against the real property of the defendant and surety. [Under revised G.S. 24-5(a1), the judgment begins bearing interest on the date of docketing rather than on the date of entry.] After docketing, the clerk must issue an execution on the judgment against the defendant and each accommodation and professional bondsman. If an insurance company or professional bondsman is named in the judgment, the clerk also must send a copy of the judgment to the Insurance Commissioner. Once a final judgment is docketed, a surety may not act as a surety on any other bail bond in that county until the judgment is satisfied in full.

Extraordinary relief. Under G.S. 15A-544.8, the court may grant a defendant or surety relief from a final judgment of forfeiture for one of the following two reasons:

- the person seeking relief was not given notice as required by G.S. 15A-544.4, discussed above; or
- other extraordinary circumstances exist that the court finds, in its discretion, warrant relief.

This section also includes the procedure for filing a motion for extraordinary relief.

Other bail bond changes. A second act, S.L. 2000-180 (H 1608), makes various changes to the bail bond laws. The principal changes, which became effective on October 1, 2000, are as follows.

The act amends various sections of G.S. Chapter 58 to require persons licensed as bail bondsmen or runners to work under the supervision of an experienced bondsman for their first year. The act includes some exceptions to this requirement.

Amended G.S. 58-71-95(5) provides that a bail bondsman who, after final termination of liability on a bond, knowingly fails to return any collateral security that exceeds $1,500 in value is
Amended G.S. 58-71-100 provides that collateral security must be held in trust and that trust funds may not be commingled with other funds. If the collateral security is in the form of cash or a check, the bail bondsman must deposit it within two banking days in a separate, non-interest bearing trust account in a bank in North Carolina.

**Other Procedural Changes**

**Traffic law enforcement statistics.** Apparently concerned about possible racial profiling in the stopping of vehicles—that is, the stopping of vehicles based on the race or ethnicity of the drivers or passengers—the 1999 General Assembly amended G.S. 14-110 to require the Division of Criminal Statistics (Division) to collect information on traffic stops made by state law enforcement officers, such as the North Carolina State Highway Patrol [S.L. 1999-26 (S 76)]. Section 17.2 of S.L. 2000-67 (H 1840) further amends G.S. 14-110 to require the division, effective August 1, 2000, to keep the following additional information: the identity of the officer making the stop, the date the stop was made, the location of the stop, and the agency making the stop. The amended statute also provides that officers may be assigned anonymous identification numbers for record-keeping purposes and that their identity is not a public record and may not be disclosed unless a court finds that disclosure is necessary to resolve a claim or defense.

**Concealed handgun permits.** S.L. 2000-191 (H 1508) makes several minor changes to the statutes governing concealed handgun permits (G.S. 14-415.10 through 14-415.23). The act eliminates the fingerprinting requirement for renewal permits if the applicant’s fingerprints are submitted to the State Bureau of Investigation (SBI) on the Automated Fingerprint Information System (AFIS) after June 30, 2001 (G.S. 14-415.16); it reduces the renewal fee from $80 to $75 [G.S. 14-415.19(a)]; it requires entities presented with an original or photocopied release for records concerning an applicant’s mental health or capacity to disclose such records to the sheriff [G.S. 14-415.14(c)]; and it provides that a concealed handgun permit is valid for five instead of four years [G.S. 14-415.11(b)]. All changes became effective July 1, 2000, but the longer permit period applies only to permits issued or renewed on or after that date.

**Reporting procedure for controlled substance taxes.** Effective for arrests and seizures occurring on or after December 1, 2000, S.L. 2000-119 (H 1551) revises the reporting procedures to be followed by local and state law enforcement agencies in cases involving unauthorized substances. The act repeals G.S. 114-18.1, which required law enforcement agencies to submit unauthorized-substance reports to the SBI, and G.S. 114-19(b), which required the SBI to notify the Department of Revenue of the reports it received. The act replaces those provisions with G.S. 105-113.108(b), which requires local and state law enforcement agencies to report directly to the Department of Revenue.

The act also revises the circumstances under which law enforcement agencies must submit a report. G.S. 105-113.108(b) continues to require law enforcement agencies to submit a report within forty-eight hours of seizing certain unauthorized substances, or arresting an individual in possession of certain unauthorized substances, if a revenue stamp is not affixed to the substances. Removed from the list of substances for which a report is required are counterfeit controlled substances; this change conforms to a 1995 change repealing the tax on counterfeit controlled substances [S.L. 1995-340 (H 123)]. Added to the list of substances for which a report is required are any quantities of illicit mixed beverages, illicit spirituous liquor, and mash; this change conforms to a 1997 change imposing a tax on these substances [S.L. 1997-292 (H 754)].

**Enforcement of other tax laws.** G.S. 105-236.1 has allowed the Secretary of the Department of Revenue to appoint employees of the Unauthorized Substances Tax Division as revenue law enforcement officers and to authorize them to enforce the tax on controlled substances (discussed above). The statute also has allowed the Secretary to appoint employees of the Criminal Investigations Division (CID) as revenue law enforcement officers and to grant them the authority to enforce certain felony tax violations. For employees of either division to act in a law enforcement capacity, they must be certified as criminal justice officers under G.S. Chapter 17C.
Effective July 14, 2000, S.L. 2000-119 (H 1551) makes two changes to G.S. 105-236.1. First, it authorizes CID employees appointed by the Secretary to enforce certain misdemeanor tax violations. Second, it authorizes the Secretary to administer the oath of office to revenue law enforcement officers.

Criminal Offenses

Video Poker

S.L. 2000-151 (S 1542) seeks to regulate the use of video poker and similar video gaming machines. The law forbids the operation of certain machines, if not within the state before a certain date, limits the number of machines that may be used at any one location, prohibits their use by individuals under age eighteen, and imposes other restrictions. The law states that it does not preempt more restrictive local ordinances on video gaming machines [G.S. 14-306.1(j)].

Definition of video gaming machine. The definition of “video gaming machine” is critical to applying the new restrictions. The apparent intent of the act is to regulate certain types of video gaming machines—video poker, video bingo, and other video games that involve the random matching of symbols.

Two sections must be examined—G.S. 14-306, which defines “slot machine,” and new G.S. 14-306.1(c), which defines “video gaming machine.” Slot machines have been and continue to be unlawful unless they fall within an exception, while video gaming machines are subject to the new video gaming restrictions if not banned altogether as slot machines. Together these sections create three categories of machines—those that are always lawful, those that are always unlawful, and those that may or may not be lawful depending on the application of the new video gaming restrictions.

Lawful machines. In the “always lawful” category are those machines defined in G.S. 14-306(b)(1): coin-operated machines, video games, pinball machines, and other computer, electronic, or mechanical devices that (a) are played for amusement, (b) involve the use of skill or dexterity to solve problems or make varying scores, and (c) do not award free replays or coupons that may be redeemed for prizes or cash. These machines are (and in the past have been) excepted from the definition of slot machine in G.S. 14-306 and thus from the slot machine ban. They also are excepted from the definition of video gaming machine in new G.S. 14-306.1(c) and thus from the new video gaming restrictions. An example of such a game might be an air hockey game at a video arcade, which awards no replays and no coupons redeemable for prizes.

At least some of the machines defined in G.S. 14-306(b)(2) also may be placed in the “always lawful” category, but the statutes are not entirely clear on this point. G.S. 14-306(b)(2) covers the same machines as those covered by Subsection (b)(1)—namely, ones that are played for amusement and that involve the use of skill or dexterity—except that under (b)(2) the machines may award free replays or coupons exchangeable for prizes and merchandise (but not cash) worth up to $10. (The machines also must limit to eight the number of accumulated credits or replays that may be played at one time.) An example of such a machine might be a miniature basketball game that awards tickets, redeemable for small prizes, based on the number of shots made. These machines have been excepted from the definition of slot machine in G.S. 14-306 and so have been lawful in the past. Strictly read, however, the new definition of video gaming machine (discussed below) could be interpreted as making any machines covered by G.S. 14-306(b)(2) subject to the new video gaming restrictions, a result the General Assembly almost certainly did not intend.

Unlawful machines. In the “always unlawful” category are slot machines that do not come within either of the exceptions in G.S. 14-306(b)(1) and (2). According to previously issued opinions by the Attorney General’s office, video poker and similar games that do not exceed the replay and award restrictions are within the exception in G.S. 14-306(b)(2), and therefore are not illegal slot machines, because they involve the use of some skill and dexterity.
Two new subsections in G.S. 14-306 reinforce the prohibition on devices that exceed the replay or award restrictions. New Subsection (c) provides that video machines within the exception in Subsection (b)(2) must display the message that it is a criminal offense to pay more than that allowed by law. New Subsection (d) states that the exception in Subsection (b)(2) does not apply to machines that pay off in cash or that issue coupons exchangeable for cash or for merchandise worth more than $10.

Operation of a prohibited slot machine, or possession of such a machine for the purpose of operation, remains a violation of G.S. 14-301, a Class 2 misdemeanor under G.S. 14-303. In contrast, violation of the new restrictions on operating video gaming machines, including those restrictions that regulate but do not ban operation of the machines, is at least a Class 1 misdemeanor and may be as high as a Class G felony under revised G.S. 14-309, discussed further below. G.S. 14-309 also governs the punishment for slot machine violations under G.S. 14-304 and 14-305, which were Class 2 misdemeanors but now are subject to the higher punishments.

New G.S. 14-306(d) appears to increase the penalty for one other slot machine violation. Effective for offenses committed on or after October 1, 2000, that subsection makes it “a criminal offense, punishable under G.S. 14-309, for the person making the unlawful payout [of cash or merchandise worth over $10] to violate this section” (emphasis added). The violation to which G.S. 14-306(d) refers is apparently the act of making an unlawful payout; G.S. 14-306, which is primarily a definitions section, does not prohibit any other activity.

**Regulated machines.** G.S. 14-306.1(c) contains four definitions of video gaming machine. It begins with the statement that a video gaming machine is a “slot machine” as defined in G.S. 14-306(a). This definition (definition number one) does not really aid in understanding which machines are subject to the new video gaming restrictions. New G.S. 14-306.1(c) states that the listing of games in that subsection does not make operation of those games lawful if they are otherwise prohibited by law [G.S. 14-306.1(l) states a similar rule]. Slot machines are prohibited unless they fall within one of the two exceptions in G.S. 14-306(b).

G.S. 14-306.1(c) contains three additional definitions of video gaming machine, which apparently must be read together; otherwise, the new restrictions would appear to sweep too broadly. The subsection states that video gaming machines include any electrical, mechanical, or computer games, such as video poker, video bingo, video craps, and other video games that are based on the random matching of different symbols and that do not depend on the skill or dexterity of the player (definition number two). The subsection next states that a video gaming machine is a video machine that requires the deposit of any coin or token or the use of any credit card or other method that requires payment to activate play of the games listed in the subsection (definition number three). By its own terms, this definition modifies definition number two.

Last, the subsection states that video gaming machines include those within the exclusion in G.S. 14-306(b)(2) but not those within the exclusion in G.S. 14-306(b)(1) (machines that do not award replays or redeemable coupons). If read alone, this definition (definition number four) covers all of the video games in G.S. 14-306(b)(2), including previously lawful arcade games such as miniature basketball, and makes those games subject to the new video gaming restrictions, such as the prohibition on use of such games by any person under age 18. It seems highly unlikely that the General Assembly intended this result. A more logical approach might be to read definition number four in conjunction with definitions two and three. One could then conclude that only those kinds of games listed in G.S. 14-306.1(c) that also fall within the exception in G.S. 14-306(b)(2) are subject to the video gaming restrictions. In other words, video poker and similar games would be subject to the video gaming restrictions, but other types of video arcade games would not.

**Restrictions on video gaming machines.** Except for two categories of offenses, the new regulations on video gaming machines apply to offenses committed on or after October 1, 2000.

G.S. 14-306.1(a), which bars “new” video gaming machines, is one of the provisions with an early effective date. It states that it is unlawful to operate, allow to be operated, place into operation, or possess for the purpose of operation any video gaming machine unless it was
• lawfully in operation and available for play in North Carolina on or before June 30, 2000, and
• listed in North Carolina by January 31, 2000, for ad valorem taxation for the 2000–01 tax year.

This provision is effective August 2, 2000. Thus on or after that date, it is unlawful to operate any video gaming machines that do not meet the above criteria.

G.S. 14-306.1(h), which bans the warehousing of video gaming machines, is the other offense with an early effective date. It applies to offenses committed on or after September 1, 2000. The provision applies to the warehousing of all video gaming machines, newly or already in the state, except when the warehousing is in conjunction with the assembly, manufacture, and transportation of those machines as defined in Subsection (g) of G.S. 14-306.1. That subsection provides that the various restrictions on video gaming machines do not apply to assemblers, manufacturers, and transporters of video gaming machines who assemble, manufacture, and transport them for sale in another state as long as the machines cannot be used to play the prohibited games while in North Carolina. Subsection (g) also exempts those who assemble, manufacture, and sell such machines for use by a federally recognized Indian tribe if such machines may be lawfully used under the Indian Gaming Regulatory Act.

The remaining prohibitions and restrictions apply to offenses committed on or after October 1, 2000. Subsection (b) of G.S. 14-306.1 provides that of those video gaming machines that are lawful, it is unlawful to operate, allow to be operated, place into operation, or possess for the purpose of operation more than three machines at one location. Subsection (d) specifies the minimum distance between locations and requires that the machines be inside a permanent building.

Subsection (c1) prohibits any person under age eighteen from playing a video gaming machine. In contrast to the punishment for other violations, discussed below, this violation is an infraction, a non-criminal violation of law punishable under G.S. 14-3.1 by a maximum penalty of $100. It is also unlawful for the operator of a video gaming machine to knowingly allow a person under age eighteen to play a video gaming machine. This violation is subject to greater punishments, described below.

Subsection (c2) makes it unlawful to operate or allow the operation of any video gaming machine from 2:00 A.M. Sunday through 7:00 A.M. Monday; Subsection (c3) requires that the machines be in plain view; and Subsection (c4) prohibits advertising of video gaming machines by on- or off-premises signs.

**Registration and reporting requirements.** Subsection (e) of G.S. 14-306.1 provides that no later than October 1, 2000, the owner of any video gaming machine must register the machine with the sheriff of the county in which the machine is located (on a form provided by the sheriff). If the machine is moved to a different location, the owner must reregister the machine before it is placed in operation. The subsection also provides that a material false statement in the registration form subjects the machine to seizure under G.S. 14-298, discussed below.

Beginning with the first quarter of 2001, Subsection (e1) requires the owner of a video gaming machine to file a quarterly report with the Department of Revenue disclosing the gross receipts per machine, number of machines per location, and total value of prizes awarded per machine. The first report is due April 15, 2001, and thereafter by the fifteenth day of the month after the quarter ends. A failure to report or the filing of a materially false report subjects the machine to seizure under G.S. 14-298. Upon request, the sheriff of the county where the machines are located may obtain a copy of the report from the Department of Revenue.

**Punishments.** G.S. 14-309 has made it a Class 2 misdemeanor to violate G.S. 14-304 through 14-309, which cover certain slot machine violations. The statute is revised to increase the punishment for violations of those statutes and to set the punishment for violations of the new video gaming restrictions in G.S. 14-306.1. Revised G.S. 14-309 makes a first offense a Class 1 misdemeanor, a second offense a Class I felony, and a third or subsequent offense a Class H felony. If a violation of G.S. 14-306.1 involves the operation of five or more video gaming machines, the person is guilty of a Class G felony. These punishments apply to offenses
committed on or after October 1, 2000, except for violations of G.S. 14-306.1(a), which bans operation of new video gaming machines. The increased punishments apply to violations of that subsection committed on or after August 2, 2000. G.S. 14-306.1(h), the ban on the warehousing of video gaming machines, is effective September 1, 2000, but the enhanced punishments apply only to violations of that section committed on or after October 1, 2000; for offenses committed between September 1 and October 1, the punishment remains a Class 2 misdemeanor under current G.S. 14-309.

The revised statutes also impose other sanctions. G.S. 14-306.1(k) disqualifies a person from possessing a video gaming machine for varying lengths of time if convicted under G.S. 14-309. A person may not possess a video gaming machine for one year if he or she has been convicted once under G.S. 14-309, for two years if convicted twice, and indefinitely if convicted three or more times. The effective date of this provision is stated as October 1, 2000; presumably the penalties apply only to offenses committed on or after that date.

Also effective for offenses committed on or after October 1, 2000, new G.S. 14-306.2 provides that a violation of the video gaming restrictions by a person with an alcoholic beverage control (ABC) permit is a violation of the ABC laws. Such a violation may subject a permittee to administrative penalties, including suspension or revocation of an ABC permit.

Last, G.S. 14-298 is revised to authorize law enforcement officers to seize and destroy any video gaming machine whose use is prohibited by G.S. 14-306.1. Previously, the seizure provisions applied only to illegal slot machines and other illegal gambling devices. The statute does not specify the procedure that law enforcement officers should follow before seizing and destroying a machine, however. Presumably they should obtain a search warrant or other court order authorizing the action (G.S. 15-11.1 prescribes the procedure for seizure of evidence in criminal cases generally). Although the revisions were made effective August 2, 2000, law enforcement officers may not exercise the revised seizure authority until the new prohibitions become effective—August 2, 2000, for the ban on new machines; September 1, 2000, for the ban on warehousing; and October 1, 2000, for most other violations.

**Other provisions.** The North Carolina Sheriffs’ Association, in consultation with the Division of Alcohol Law Enforcement and the Conference of District Attorneys, must report on enforcement of the new law no later than January 1, 2001, to the Joint Legislative Commission on Governmental Operations.

### Other Criminal Offenses

**Cyberstalking.** In 1999 the General Assembly expanded G.S. 14-196(a)(2), which had prohibited making threatening telephone calls, to prohibit threats via telephone or e-mail. The statute also was revised to prohibit threats to inflict bodily harm on a person’s child, sibling, spouse, or dependent [S.L. 1999-262 (S 956)]. This session, in S.L. 2000-125 (H 813), the General Assembly deleted the reference to e-mail in G.S. 14-196(a)(2) and enacted a new statute, G.S. 14-196.3, prohibiting a far wider range of electronic mail and electronic communications, referred to in the statute’s title as “cyberstalking.”

Effective for offenses committed on or after December 1, 2000, G.S. 14-196.3 makes it a Class 2 misdemeanor to do any of the following:

- Use in electronic mail or other electronic communications any words or language (a) threatening to inflict bodily harm to a person or that person’s child, sibling, spouse, or dependent, (b) threatening to inflict physical injury against a person’s property, or (c) for the purpose of extorting money or other things of value from a person.
- Transmit electronic mail or other electronic communications to another repeatedly for the purpose of abusing, annoying, threatening, terrifying, harassing, or embarrassing.
- Knowingly make in electronic mail or other electronic communications to another person any false statement concerning death, injury, illness, disfigurement, indecent conduct, or criminal conduct of that person or any member of that person’s family or household with the intent to abuse, annoy, threaten, terrify, harass, or embarrass.
• Knowingly permit an electronic communication device under the person’s control to be used for any of the above purposes.

In addition to listing the prohibited acts, the new statute includes a definition of electronic mail and electronic communication; provides that an offense may be deemed to have been committed where the electronic mail or electronic communication was originally sent, originally received in this state, or first viewed in this state; and excludes any peaceful, nonviolent, or non-threatening activity intended to express political views, provide lawful information, or otherwise involve constitutionally protected speech.

**Other computer crimes.** Article 60 of Chapter 14 (G.S. 14-453 through 14-458) prohibits a variety of acts involving damage to or unauthorized accessing of computers. Effective for offenses committed on or after December 1, 2000, S.L. 2000-125 (H 813) revises these statutes to clarify that they apply to computer programs as well as to computers, computer systems, and computer networks. The act also incorporates in G.S. 14-453 (the definition section for Article 60) the definition of electronic mail from new G.S. 14-196.3, discussed above.

**Trespassing on railroad.** Effective for offenses committed on or after December 1, 2000, S.L. 2000-146 (S 1183) adds a new statute, G.S. 14-280.1, making it a Class 3 misdemeanor to trespass on a railroad right-of-way. A person is guilty of this offense if he or she

- enters and remains
- on a railroad right-of-way
- without the consent of the railroad company or person operating the railroad or without authority under state or federal law.

The statute does not apply to persons crossing a railroad right-of-way at a public or private crossing or at an abandoned railroad right-of-way. See Chapter 26, “Utilities and Energy,” for a fuller discussion of this topic.

**Personal watercraft.** G.S. 75A-13.3(e) has provided that certain maneuvers by a person operating a personal watercraft (a jet ski) constitute reckless operation of a vessel in violation of G.S. 75A-10(a), a Class 2 misdemeanor under G.S. 75A-18(b), which sets forth the punishment for violations of certain subsections of G.S. 75A-10. One such maneuver specified in G.S. 75A-13.3(e) has been operating a personal watercraft at greater than a no-wake speed within 100 feet of an anchored vessel, dock, marked swimming area, or other specified areas.

Effective for offenses committed on or after June 30, 2000, S.L. 2000-52 (H 541) deletes this prohibition from G.S. 75A-13.3(e) and restates it with some modification in new Subsection (a1) of G.S. 75A-13.3. This revision has two effects. First, although the new subsection continues the general prohibition on operating a personal watercraft at greater than a no-wake speed within 100 feet of the specified areas, it allows a personal watercraft to be operated at a greater speed at a distance as close as 50 feet of those areas while in a narrow channel (defined in new Subsection (f1) as 300 feet or less in width). Second, the penalty for violating the speed and distance restrictions is apparently reduced to a Class 3 misdemeanor, punishable by a fine of up to $250 only, because G.S. 75A-18(a) establishes this lower punishment for violations of G.S. Chapter 75A for which no punishment is otherwise specified.² For a further discussion of these acts, see Chapter 27, “Wildlife and Boating Regulation.”

**Controlled substance schedules.** Effective for offenses committed on or after December 1, 2000, Section 92.2(a) through 92.2(c) of S.L. 2000-140 (S 1335) amend the controlled substance schedules by dropping gamma hydroxybutyric acid from the list of Schedule IV controlled substances in G.S. 90-92(a)(1) and adding that substance to the list of Schedule I controlled substances in G.S. 90-89(4). Offenses involving Schedule I controlled substances generally carry a greater punishment than offenses involving other controlled substance schedules. The act

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² Two local acts also affect personal watercraft and other vessels. Effective June 19, 2000, S.L. 2000-14 (H 1688) allows Currituck County to adopt ordinances regulating the operation of personal watercraft in the Atlantic Ocean and other waterways in and adjacent to the county; effective June 30, 2000, S.L. 2000-41 (H 1659) makes it a Class 3 misdemeanor to operate a vessel at greater than no-wake speed in certain waterways in Carteret County.
designates the above substance as a Schedule III controlled substance if it is contained in a drug product that has been approved under the federal Food, Drug, and Cosmetic Act. The act also amends G.S. 90-95(d2) to add gamma-butyrolactone to the list of regulated precursor chemicals.

**Violent habitual felons.** Under G.S. 14-7.7 through 14-7.12, a person convicted for the third time of a violent felony must be sentenced to life without parole. “Violent felony” is defined in G.S. 14-7.7(b) as

1. any Class A through E felony;
2. any repealed or superseded offense substantially equivalent to the offenses in (1); or
3. any offense committed in another jurisdiction that is substantially equivalent to the offenses in (1).

Effective for offenses committed on or after September 1, 2000, Section 13 of S.L. 2000-155 (H 1499) revises Subsection (3) to provide that out-of-state convictions must be substantially “similar,” rather than substantially “equivalent,” to the offenses in Subsection (1). The wording of Subsection (2) is unchanged.

**Telephone solicitations.** S.L. 2000-161 (H 1493) regulates telephone solicitations to residential telephone subscribers. Violations of the new restrictions, set forth in new G.S. 75-30.1, are not made criminal offenses; rather, the Attorney General may enforce the statute by seeking civil monetary penalties and injunctive relief. For a further discussion of this act, see Chapter 12, “Information Technology,” and Chapter 26, “Utilities and Energy.”

**Processing fee for worthless checks.** G.S. 25-3-506 has allowed a person who receives a worthless check for goods or services to charge a processing fee of up to $25 if the person has given the check writer notice of the potential fee by posting a sign or giving written notice in accordance with the requirements of that statute. The court may then impose this fee as part of the restitution required of a defendant convicted of writing a worthless check under G.S. 14-107. Effective for checks presented on or after October 1, 2000, S.L. 2000-118 (H 1021) eliminates the notice requirement as a precondition to imposition of the processing fee.

*John Rubin*
Elections

In 1999, the General Assembly was very active in passing legislation related to elections. That year, the legislature directed changes in voter registration, campaign finance regulation, absentee voting, local elections administration, and state-level administration. The 2000 session was much quieter; only a few pieces of elections legislation were enacted. [Reminder: In compliance with Section 5 of the Voting Rights Act of 1965, statewide election law passed by the General Assembly cannot be implemented until it has been approved by the United States Justice Department.]

Satellite Absentee Voting

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

The 2000 General Assembly worked a significant change in that law. S.L. 2000-136 (S 767) provides that if a county board of elections has considered a Plan for Implementation (or more than one such plan) and has been unable to reach unanimity in favor of a plan, a member or members of that board may petition the State Board of Elections to adopt a plan in place of the county board. If petitioned, the state board may also receive and consider alternative petitions from another member or members of the board. The state board may adopt a plan for the county, taking into consideration such factors as geographic, demographic, and partisan interests.

The act appropriates $250,000 for funding and administering a one-time grant-in-aid program to counties to operate multiple one-stop absentee voting sites.

Political Activities by Election Board Members

S.L. 2000-114 (S 1290) adds a new Article 4A to Chapter 163 of the General Statutes, entitled “Political Activities by Board of Elections Members.” The new article provides that members of the State Board of Elections and of county and municipal boards of elections may not
1. make written or oral statements intended for general distribution to the public at large supporting or opposing the nomination or election of one or more clearly identified candidates for public office,
2. make written or oral statements intended for general distribution supporting or opposing the passage of one or more clearly identified referendum proposals, or
3. solicit contributions for a candidate, political committee, or referendum committee.
A violation is grounds for removal. Individual expressions of opinion, support, or opposition not intended for general public distribution are not violations. It is not a violation for a board member to participate in a political party convention as a delegate or to make a contribution to a candidate, political committee, or referendum committee.

Contributions to Candidates for Certain Offices

Before 1997, a campaign finance statute prohibited members of the Council of State or members of the General Assembly (or their political committees) from accepting contributions from registered lobbyists during a session of the General Assembly. A 1997 act of the General Assembly replaced that statute with a new statute—G.S. 163-278.13B—that prohibited such contributions not only to members of the Council of State or the General Assembly but also to candidates for those posts (and their committees). A 1999 decision of the North Carolina Court of Appeals held that the statute was unconstitutional in prohibiting contributions to the committees of members or candidates as opposed to the members or candidates themselves. In response the General Assembly, in S.L. 2000-136, amended the statute so that the prohibition now applies only to contributions to members of the General Assembly or Council of State and candidates for those positions, but not to contributions to committees for those individuals. The statute also amends a portion of the campaign finance statute to make clear that it is a violation for a member or candidate to attempt to get a third party to solicit a contribution to the member or candidate that would be unlawful for the member or candidate to solicit directly.

Precinct Boundaries

North Carolina attempts to coordinate election precinct boundaries with census block lines employed by the U.S. Census Bureau, for the purpose of easing the burden of drawing election district boundaries without splitting precincts. To this end, G.S. 163-132.1 requires state approval of precinct boundaries drawn by county boards of elections and has frozen precinct boundaries until January 2, 2002. The freeze has certain exceptions, however, which permit limited changes in precinct boundaries. S.L. 2000-140 (S 1335) (called the “technical corrections” act) adds a couple of instances in which boundaries can be changed during the freeze, dealing primarily with correcting mistakes and accounting for changes made by the Census Bureau itself.

Study

S.L. 2000-138 (S 787), the Studies Act of 2000, authorizes the Election Laws Study Commission to study second primary elections, the cost to tax payers to conduct second primaries, voter turnout, impact on elections, and other related matters and report its findings, together with any recommended legislation, to the 2001 General Assembly.

Robert P. Joyce
Elementary and Secondary Education

The General Assembly enacted no bold new initiatives to improve public education in 2000. Instead it continued to support previously established efforts to improve both employee and student accountability, to recruit and retain teachers, and to target resources toward special populations, including students with limited proficiency in English, small school systems, and low-wealth school systems. At the same time, the General Assembly decided to become directly involved in reducing paperwork for teachers and in taking steps to reduce the minority achievement gap. This involvement illustrates the ongoing search for the proper balance between state and local control of the daily operations of the schools.

Improving Student Achievement

Minority Achievement Gap

The achievement gap between minority students and white students has existed for many years. In recent years this gap has received substantial discussion, and special efforts have been put forward to reduce, and then eliminate, it. According to the State Board of Education:

The discrepancy between the academic performance of minority students and White students has been a long-standing education concern in North Carolina and in the nation. As the composition of North Carolina’s public school population has become more diverse over the past decade, concern regarding minority student achievement has increased proportionately.
With a projected 40% racial minority group representation in the state’s public schools by 2010, the promotion of academic achievement among minority students is likely to receive increased attention from the state’s educators.¹

The State Board of Education and the Department of Public Instruction have undertaken a number of initiatives aimed at closing the achievement gap.² Section 8.28 of S.L. 2000-67 (H 1840), the 2000 Appropriations Act, directs the State Board of Education to take additional steps related to “minority” students, “at-risk” students, and students from “low-income” families, although S.L. 2000-67 does not define these terms.³ The board must:

- examine the connection between the achievement gap and the identification of minority and at-risk students as students with specified disabilities;
- examine the underrepresentation of minority students in advanced classes or academically gifted programs;
- design a Minority Achievement Report Card;
- develop guidelines for local task forces;
- develop a plan for a hotline to collect complaints;
- report the rates of suspension and expulsion by race and gender; and
- develop a plan and budget for specified actions.

These requirements will be discussed in turn.

Disabilities. In many school units, minority children are identified as having certain disabilities at a rate that is higher than that for white students. This has led some educators and others to suspect that some minority children are being identified inappropriately. Now the State Board must study the connection between the identification of minority and at-risk students as students with behavioral or emotional disabilities and the gap in student achievement. The board must examine the criteria used to identify these students and determine whether valid and objective criteria are the primary basis for the identification. The board must also determine whether the curricula for these students are sufficiently rigorous and whether the teaching methodologies are sound and appropriate. In addition, the board must examine the qualifications of teachers assigned to these students and utilization of other services, such as mental health services.

Advanced classes. Minority children participate in programs for students achieving at the highest levels of performance at a rate lower than that of white children (that is, the percentage of minority students participating in such programs is smaller than the percentage of the student body that is made up of minority students). The State Board must study the underrepresentation of minority and at-risk students in honors classes, advanced placement classes, and academically gifted programs and evaluate whether this underrepresentation contributes to the gap in student achievement. In its study, the board must examine the criteria used to identify students for these programs, determine whether valid and objective criteria are the primary basis for including students, and examine whether low academic expectations or certain instructional practices contribute to the underrepresentation.

Report card. The State Board must design an annual Minority Achievement Report Card, based on data submitted by local school administrative units and individual schools. The report card must be implemented beginning with the 2001–02 school year.

¹. State Board of Education, State of the State: Educational Performance in North Carolina 1999 (Raleigh, N.C.: Department of Public Instruction, 2000), 34. This publication is available through www.dpi.state.nc.us/accountability/html.
². For more information, see www.dpi.state.nc.us/closingthegap/html. This site also provides a breakdown by race of students performing at or above grade level on End-of-Grade tests.
³. The Department of Public Instruction defines minority groups as Hispanics, Native Americans, Asians, and Blacks. In 1999, blacks comprised 30.2 percent of North Carolina’s public school population; Hispanics, 3.1 percent; Native Americans, 1.5 percent; and Asians, 1.7 percent. State of the State, supra note 1 at 34.
Guidelines. The State Board must develop guidelines to enable the formation of local task forces to advise and work with school boards and administration on closing the gap. Each local school administrative unit must have a task force “if appropriate.” S.L. 2000-67 does not say what entity or individual determines whether a task force is appropriate or by what criteria. Each task force must be racially diverse and include parents, school personnel, and representatives from human service agencies, nonprofit organizations, and the business sector.

Complaints hotline. The State Board must develop a plan to establish a hotline to collect complaints alleging disparate treatment of minority students and students from low-income families. In developing the guidelines the board must “give strong consideration” to:
- a mechanism for the board to secure an investigation of systemic problems revealed through complaints;
- a procedure for the board to report individual complaints, with permission of the complaining party, to the local school unit so it also may investigate;
- criteria for fair and impartial local investigation; and
- other information to enable full implementation of the hotline at the beginning of the 2001-02 school year.

Suspensions and expulsions. Each local school unit must submit data on school discipline to the State Board. Specifically, the local board must report, by race and gender, the number of students suspended for no more than ten days, suspended for more than ten days, expelled, and placed in an alternative program because of conduct that could have led to suspension or expulsion. The State Board must report data from the 1998-99 and 1999-2000 school years, to the extent the data are reasonably available.

Plan of action. There are many other steps that might reduce the achievement gap. The State Board must develop a plan and budget for a list of items related to diversity and to students with limited English proficiency (LEP). The list includes staff development, sufficient funding for programs, translators, and implementation guidelines for student accountability standards and promotion policies for LEP students.

After it reviews information from the State Board and other sources, the Research Council of the Education Cabinet must report to the Joint Legislative Education Oversight Committee on the practices and methodologies most effective in closing the achievement gap for children of various demographic groups who are performing below grade level. The cabinet and council must recommend the most cost-effective ways of improving student achievement among the targeted groups.

A related provision, Section 11.4A of S.L. 2000-67, directs the Department of Health and Human Services to establish and administer a pilot program to assist families that have children who are performing below school grade level. The program is to help these families strengthen family cohesiveness, functioning, and economic progress and improve the academic performance of their children. For more information about the program, see Chapter 13, “Juvenile Law.”

Paperwork Reduction

“Too much paperwork” is a common refrain among educators. They believe that excessive forms and reports take time and energy that could be better spent on activities directly related to instruction. Section 8.18 of S.L. 2000-67, as amended by Section 77 of S.L. 2000-140 (S 1335), is aimed at reducing unnecessary and redundant paperwork. G.S. 115C-307(g) authorizes the board of education to require teachers to make reports and authorizes the superintendent to require teachers to make reports to the principal. Section 8.18 amends G.S. 115C-307(g) to impose limits on what teachers can be required to do. The local board, the superintendent, and the principal cannot require teachers to provide information already available through the student information system.

4. G.S. 115C-276(r) requires superintendents to maintain data on each student suspended for more than ten days or expelled. Therefore, data on students suspended for fewer than ten days may not be available from all school units for these years.
management system (which must be available to teachers). Nor may they require teachers to provide the same written information more than once during a school year, unless the information has changed since the original report. However, a board may require the information if it can demonstrate both a compelling need for the information and that there is not a more expeditious manner of getting it. The statute does not explain how or to whom the board is to make this demonstration. In addition, a board may not require a teacher to complete forms for children with disabilities unless the forms are necessary for compliance with the federal Individuals with Disabilities Education Act (IDEA).

Section 8.18 of S.L. 2000-67 amends G.S. 115C-47(18) to add to a local school board’s duties the duty of eliminating to the maximum extent possible duplicate or obsolete reporting requirements. In addition, each local board must appoint a person or establish a paperwork control committee to monitor all reports and other paperwork that the central office requires of teachers.

The State Board of Education also must join the paperwork reduction effort. It must (1) review its requirements for reports from local school units and eliminate to the extent possible any duplicate or obsolete reporting requirements and (2) develop a plan to implement a paperless student information management system before the 2005–06 school year.

Special education requires extensive documentation for each student. In order to reduce paperwork related to special education, the State Board must:

- work with United States Department of Education to standardize IDEA’s compliance requirements;
- simplify paperwork that the Department of Public Instruction requires to verify compliance with IDEA;
- develop a plan to cut spending for special education compliance issues by 50 percent for the 2001–02 fiscal year without jeopardizing procedural safeguards under IDEA; and
- develop a plan to fund special education compliance issues only with federal funds provided specifically for that purpose for the 2002–03 fiscal year, eliminating state funding for compliance issues.

**Class Size**

The issue of class size comes up in almost every discussion of how to improve student achievement. Under G.S. 115C-301(c) the average class size for each grade span in a school unit may not exceed the funded allotment ratio of students to teachers. At the end of the second month of school and for the rest of the school year, the size of any individual class may not exceed the allotment ratio by more than three students. Section 8.8 of S.L. 2000-67 provides that, notwithstanding these provisions of G.S. 115C-301(c), the maximum class size for both the grade span kindergarten, first grade, and second grade and an individual class within that grade span is twenty-six.

S.L. 2000-159 (S 1210) adds new provisions to G.S. 115C-472.10 and G.S. 20-81.12 to permit the sale of personalized license plates with the message “Support Public Schools” and establishment of a fund under the control of the State Board of Education, consisting of proceeds from these sales to be used for reducing class size in the public schools.

**Studies**

In addition to the studies discussed above, the General Assembly authorized studies of several important issues in public education. The Studies Act of 2000, S.L. 2000-138 (S 787), authorizes the Legislative Research Commission to study the placement of children in group homes and the provision of special education to these children. The act authorizes the Joint Legislative Education Oversight Committee to study exclusive contract practices among public schools; distribution of textbooks; issues related to public school counselors and social workers; the need for elementary-school instruction in foreign languages; and the feasibility of increasing the minimum number of instructional days from 180 to 200, the minimum number of instructional hours to 1,120, and the
contractual period for teachers to twelve months. The State Board of Education may study the school calendar and identify and evaluate strategies to assist teachers in providing students with interdisciplinary lessons that integrate science and social studies as well as reading, writing, and mathematics.

Section 8.4 of S.L. 2000-67 directs the Commission on Children with Special Needs to study the issue of when the head count of children with special needs should be performed and whether a single head count during a school year is adequate. One important use of the head count is that it determines the amount of state funds local school units receive for special education.

Charter Schools

Enrollment

Charter schools are public schools that operate under a charter approved by the State Board of Education, and the State Board must approve all material revisions to a school’s charter application. Under G.S. 115C-238.29D the State Board must allow a charter school to increase its enrollment by 10 percent of the school’s previous year’s enrollment or as is otherwise provided in the charter. This level of enrollment growth does not constitute a material revision and therefore does not require State Board approval. When a charter school wants to exceed this enrollment growth, however, it does need State Board approval. Section 8.23 of S.L. 2000-67 amends G.S. 115C-238.29D to set limits on when the State Board may give such approval. The board may do this only if it finds that:

1. the actual enrollment of the charter school is within 10 percent of its maximum authorized enrollment;
2. the charter school has commitments for 90 percent of the requested maximum growth;
3. the board of education of the school unit in which the charter school is located has an opportunity to be heard by the State Board on any adverse impact the proposed growth would have on the unit’s ability to provide a sound basic education to its students;
4. the charter school is not currently identified as low-performing under the ABCs of Public Education Program;
5. the charter school meets generally accepted standards of fiscal management; and
6. it is otherwise appropriate to approve the enrollment growth.

Exemption from Motor Fuel Tax

S.L. 2000-72 (H 1302) amends G.S. 105-449.88 to provide that the excise tax on motor fuel does not apply to motor fuel sold to a charter school for school purposes. G.S. 115C-238.29J requires the State Board of Education to direct the Department of Public Instruction to notify the Department of Revenue when the State Board terminates or fails to renew a school’s charter or grants a new charter.

Funding

Appropriations

Section 1.1 of S.L. 2000-67 (H 1840) appropriates just over $5.27 billion to the Department of Public Instruction. Specific allocations are made to implement the ABCs Program, continue the Governor’s efforts to raise teachers’ salaries to the national average, supplement low-wealth and small school units, improve student performance, and implement a new student information system.
Qualified Zone Academy Bond Act

The federal Taxpayer Relief Act of 1997 provides funds for repair and rehabilitation of public school buildings from the proceeds of qualified zone academy bonds. These bonds are sold to private entities, which then receive tax credits rather than interest. In order to make North Carolina eligible to participate in this program, S.L. 2000-69 (H 1539) adds new Article 34B to Chapter 115C, which designates the State Board of Education as the state agency responsible for administering the Qualified Zone Academy Program. Bonds may be issued under the Local Government Bond Act, and the Local Government Commission may sell bonds at private sale under an amendment to G.S. 159-123(b). Bonds may be issued also under G.S. 160A-20, to the extent authorized by G.S. 153A-158.1.

School Employees

Salaries

S.L. 2000-67 (H 1840) sets provisions for the salaries of teachers, school-based administrators, central office administrators, teacher assistants, and other noncertified personnel.

For teachers, the act sets a salary schedule for 2000–01 that ranges from $25,000 for a ten-month year for new teachers holding an “A” certificate to $55,350 for teachers with twenty-nine or more years experience, an “M” certificate, and national certification. For school-based administrators (meaning principals and assistant principals), the ten-month pay range is from $31,950 for a beginning assistant principal in a small school to $74,170 for a principal in the largest category of schools with more than forty years of experience. Of course, many school-based administrators are employed not for ten but for eleven or twelve months, adding the proportionate amount to their salaries. For central office administrators (meaning assistant and associate superintendents, directors and coordinators, supervisors, and finance officers), the ten-month range is from $29,320 to $70,020, and many are employed for more than ten months. For teacher assistants and other noncertified personnel, the General Assembly mandated a 4.2 percent pay increase, with certain exceptions permitted. All public school employees who were employed on April 1, 2000 and were still employed on October 1, 2000 received a $500 one-time bonus.

ABCs Incentive Awards

S.L. 2000-67 directs the State Board of Education to use available funds to provide incentive funding for schools that met or exceeded projected levels of improvement in student performance under the ABCs of Public Education Program. The incentive awards in schools that achieve higher than expected improvements may be up to $1,500 for each teacher or other certified employee and $500 for each teacher assistant. In schools that meet expected improvements, the corresponding amounts are $750 and $375. For principals and assistant principals, the incentive award is 1 percent of salary in a school that meets or exceeds expectations and 1 percent for a school that meets its goals for maintaining a safe and orderly school.

National Certification Help

The National Board for Professional Teaching Standards (NBPTS) is an independent, nonprofit organization operating a voluntary system for assessing and certifying teachers who meet its standards. To receive NBPTS certification, a teacher must complete a number of requirements in his or her own teaching duties, participate in a NBPTS assessment center, and pass an examination. North Carolina has for several years provided for a salary increase for teachers who achieve NBPTS certification.

S.L. 2000-67 adds new G.S. 115C-296.2, directing the state to pay the NBPTS participation fee and provide up to three days of approved paid leave to all teachers participating in the NBPTS program who have completed three years of teaching in a North Carolina public school and who
meet certain other requirements. If the teacher does not complete the process (for reasons other than death or disability) or does not teach for a year in a North Carolina public school after completing the program, he or she must repay the participation fee.

**Employment of Retired Teachers**

In 1998, faced with an increasing teacher shortage, the General Assembly amended statutory provisions relating to the Teachers’ and State Employees’ Retirement System [specifically, G.S. 135-3(8)c] to permit a retired teacher to return to teaching and collect both salary for teaching and full retirement benefits. This provision applied only where the teacher had been retired for at least twelve months and had not been employed by a school system in any capacity except as substitute teacher for twelve months and (1) the teacher returned on a substitute or interim basis and not on a permanent basis or (2) was employed in his or her area of certification in a school designated as low-performing under the ABCs Program or in an area of the state determined by the State Board of Education to be suffering a critical shortage of teachers. S.L. 2000-67 amends these provisions to make it easier for school systems to employ retired teachers by removing the requirement that the teacher return to a low-performing school or certain area of the state in order to be employed on a permanent basis. The statute clarifies that the teacher must not have been employed in the twelve months immediately preceding reemployment.

**Miscellaneous**

**Modernize Bail Bond Forfeitures**

Under Article IX, Section 7, of the North Carolina Constitution, the clear proceeds of all forfeitures belong to the counties and must be used exclusively for maintaining free public schools. S.L. 2000-133 (H 1607) is designed to modernize bail bond forfeiture proceedings. One provision, new G.S. 15A-544.4(d), gives the school board attorney the option of objecting to a motion to set aside forfeiture in specified circumstances. S.L. 2000-133 is discussed in detail in Chapter 6, “Criminal Law and Procedure.”

**Information Technology**

S.L. 2000-174 (H 1564) transfers the Office of Information Technology Services to the Office of the Governor and makes other changes in the laws regarding information technology–related state government functions. S.L. 2000-174 is discussed in more detail in Chapter 12, “Information Technology.” S.L. 2000-130 (H 1578) amends G.S. 143B-472.51, which sets out the powers and duties of the Office of Information Technology Services. It provides that local governmental entities, including local school administrative units, may use the information technology programs, services, or contracts offered by the office, including information technology procurement. Local governmental units are not required to comply with otherwise applicable competitive bidding requirements when using contracts established by the office.

*Laurie Mesibov*

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The 2000 session was a relatively quiet one for environmental legislation. Most of the bills that passed made incremental changes to existing programs. The major push for change from the regulated sectors, the Environmental Excellence Act, received much attention but stalled after passing the Senate. Environmental groups concentrated largely on the interface between environmental issues and planning tools. Important bills in this category were the Million Acres Initiative, a commitment by the state to preserve one million additional acres of land for conservation purposes by 2009, and the metropolitan transportation planning bill. Major changes were made in the funding of the Clean Water Management Trust Fund, with the potential for greatly increased future funding. The Farmland Preservation Trust Fund also received a significant infusion of cash. In general, the energy and attention of the legislature to environmental matters were focused mainly on issues pertaining to “smart growth,” although the only bill with direct limits on growth, a floodplain management bill, was greatly weakened prior to passage. Heavy new responsibilities were imposed on the coastal resources program by a series of late session enactments.

**Agency Structure**

**DENR Organization**

The organization and reorganization of the environment and natural resources departments of state government has been a nearly continuous subject of legislative and executive branch interest since 1989. S.L. 2000-138 (S 787), the 2000 Studies Act, authorizes the Appropriations Subcommittees on Natural and Economic Resources in both the Senate and House to study the current organization of the Department of Environment and Natural Resources (DENR).
Agriculture and Forestry

Crops

**Tobacco Trust Fund.** The 1999 General Assembly enacted S.L. 1999-333 to ratify Phase II of the tobacco settlement agreed to by four major tobacco companies providing for a multi-billion dollar payment into the National Tobacco Growers Settlement Fund. The 1999 act created a nonprofit corporation to serve as a certification entity to administer the distribution of Phase II funds in North Carolina out of a settlement reserve fund.

This year the General Assembly modified last year’s legislation by creating two trust accounts in the North Carolina settlement reserve fund. One trust account will be transferred to a Health and Wellness Trust Fund, to be administered by a commission located in the Office of the State Treasurer. The other trust account will be transferred to a Tobacco Trust Fund, to be administered by a commission located in the Department of Agriculture and Consumer Services. Each commission will have eighteen members, six each appointed by the Governor, the President Pro Tempore of the Senate, and the Speaker of the House.

Under S.L. 2000-147 (H 1431) the tobacco commission will make annual awards to tobacco producers, allotment holders, and persons engaged in tobacco-related business in order to compensate them for economic losses resulting from the tobacco settlement. The tobacco commission may also expend trust funds on qualified agricultural programs to assist tobacco-related segments of the agricultural economy. The health and wellness commission will make grants to state and local agencies and nonprofit corporations to address health needs and problems in North Carolina and to develop a plan for remediating the health effects of tobacco use and reducing youth tobacco use. Each commission will be subject to several similar requirements and limitations:

- The open meetings and public records laws will apply to commission proceedings, and the state auditor will audit the commissions.
- North Carolina legislators may not serve on either commission.
- The conflict of interest statute, G.S. 14-234, will apply to grants by the commissions, except that members of the tobacco commission are eligible for grants from that commission if they do not participate in commission actions and if the Commissioner of Agriculture and Consumer Services determines that awards to members meet the commission’s general criteria.
- Employees of both commissions are exempt from the State Personnel Act.
- There are statutory limits on administrative and operating expenses (the lesser of 2.5 percent or $1 million annually).
- The health and wellness commission must reserve 50 percent of the annual payments into its fund and may only expend the investment returns of these reserved funds.

**Food, Drug and Cosmetic Act**

The North Carolina Food, Drug and Cosmetic Act is designed to protect consumers from false and misleading information found on food containers and labels. Among other things, it makes the manufacture, sale, or delivery of any food that is misbranded a Class 2 misdemeanor. Until this legislative session, however, the act had not specifically prohibited the alteration of a “sell-by” date found on meat, poultry, and seafood packaging.

S.L. 2000-67 (H 1840), the 2000 Appropriations Act, fills that gap by expanding the definition of “misbranding” to include the removal or alteration of a sell-by label that was provided by a manufacturer, packer, distributor, or retailer. The act does not prohibit transferring a sell-by date to repackaged or relabeled food or re-labeling food to reflect an extension of its shelf life through freezing, cooking, or other processing.
Farmland Preservation

S.L. 2000-171 (H 1132) amends the farmland preservation trust fund law to require nonprofit organizations and, in some cases, counties to put up matching funds in order to qualify for distribution of farmland preservation trust fund moneys to purchase agricultural conservation easements. Nonprofit organizations must match 30 percent of the trust fund moneys they receive. Counties must match 15 percent of trust fund moneys if they have prepared countywide farmland protection plans that meet the standards set forth in the act and if they are enterprise tier four or five counties. Counties that have not prepared countywide farmland protection plans and that are enterprise tier one, two, or three counties must match 30 percent of trust fund moneys. (“Enterprise tiers” are rankings of counties assigned yearly by the Secretary of Commerce for purposes of tax incentives, pursuant to G.S. 105-129.3. They reflect a combination of unemployment rates, per capita income, and population growth factors.)

Forestry

S.L. 2000-16 (H 1545) makes the $1 per $500 value excise tax on conveyances of interests in real property applicable to timber deeds and contracts for the sale of standing timber. It applies to all such timber deeds and contracts executed on or after July 1, 2000.

Miscellaneous

S.L. 2000-159 (S 1210) adds several new categories to the list of special registration plates that may be issued by the Department of Motor Vehicles. One of the new categories is a “Goodness Grows” plate that, for an additional fee of $25, may be issued to promote agricultural products should at least 300 people apply for the plates.

Air Quality

Inspection and Maintenance Program

One of the major pieces of environmental legislation passed in 1999 was the Ambient Air Quality Act, which, among other things, extended inspection and maintenance requirements for automobiles to forty-eight of the state’s counties by 2006. However, the 1999 act provided that this expanded and enhanced inspections and maintenance program would be repealed unless inspection fees were increased by January 1, 2001. The General Assembly failed in this session to agree on a fee increase, once again reserving that issue for future study. But in S.L. 2000-134 (H 1638), the General Assembly did remove the inspections repeal provision and also provided for use of on-board diagnostic equipment on 1996 model and later cars as a substitute means of inspection. Effective in 2006, the bill eliminates emissions inspections altogether for vehicles manufactured before 1996. S.L. 2000-134 further provides that, effective July 1, 2003, vehicles manufactured between 1975 and 1996 must be inspected for exhaust emissions only in the counties of Cabarrus, Durham, Forsyth, Gaston, Guilford, Mecklenburg, Orange, Union, and Wake. The 2000 legislation also adds an exemption from inspection for vehicles licensed at the farmer rate under G.S. 20-88(b). Other provisions in the 2000 legislation require inspection stations and mechanics to be prepared to analyze data provided by on-board diagnostic equipment. Finally, the bill removes federal congestion mitigation and air quality improvement program funds from the transportation equity funding formula normally used by the North Carolina Department of Transportation to distribute federal transportation dollars.
Open Burning

S.L. 2000-107 (H 1768) gives Orange County (outside of two specified precincts) the power to regulate and prohibit open burning as a condition of local building and subdivision permits. The Town of Chapel Hill had received this authority in 1999 within its municipal limits and extraterritorial area.

Coastal Resources

Late this session—primarily in its appropriations and studies and technical corrections bills—the General Assembly enacted detailed legislation affecting the Coastal Area Management Act, imposing heavy responsibilities on the Coastal Resources Commission (CRC) and its staff. A series of tight deadlines is involved, especially considering the impending change of administration in the executive branch. The range of topics affected extends to urban waterfront redevelopment, estuarine shoreline protection, relocation of the program’s headquarter offices from Raleigh to the coast, and a beach management and restoration strategy.

Coastal Area Management

Urban waterfront redevelopment. The Coastal Area Management Act (CAMA) requires permits for development in areas of environmental concern (AECs), including public trust waters. Before 1997 the CRC limited waterfront development in or on public trust waters to “water dependent” structures. A proposed waterfront development in Wilmington ran afoul of this policy. In S.L. 1997-337 the General Assembly took the unusual step of directing the CRC to issue a permit for non-water-dependent development in public trust AECs under a tight set of conditions that closely tracked the Wilmington situation. This legislation was scheduled to expire on July 1, 2000.

S.L. 2000-140 (S 1335) extends the expiration date of the 1997 legislation to April 1, 2001, and makes it applicable to permits granted and applications submitted before that date. These permits and applications were made transferable. S.L. 2000-140 also directs the CRC (notwithstanding the Administrative Procedure Act and its implementing rules) to adopt a temporary rule providing for use standards for waterfront development in urban areas, which would become effective April 1, 2001, and remain effective until replaced by a permanent rule.

In a related action, the General Assembly, in S.L. 2000-140 (S 1335), the 2000 Technical Corrections Act, amended the 1997 statute to provide more broadly that a structure constructed over coastal wetlands, estuarine waters, or public trust areas prior to July 1, 2000, may be used to serve the public with food and drink prepared at a food services establishment that began operation on or before July 1, 2000. Thus continues the legislative detailed oversight of urban waterfront redevelopment in the coastal area.

Estuarine Shoreline Protection. Legislative detailed oversight of another kind is reflected in this year’s legislative studies bill, S.L. 2000-138 (S 787). Among other things, this bill gives the Environmental Review Commission—a group of legislators that meets between legislative sessions—responsibility to examine the subject of estuarine shoreline protection. These responsibilities grow out of recommendations made by an August 1999 report of the Estuarine Shoreline Protection Stakeholders Team established by the CRC.

Specifically, S.L. 2000-138 authorizes the Environmental Review Commission to:

- review the findings and recommendations of the stakeholders team and determine which ones can be implemented administratively, which ones require CRC rulemaking, and which ones require legislation;
- evaluate local land use planning in the coastal and inland counties that are included in the river basins that drain to the coast (a subject now under intensive study by the Division of Coastal Management);
- specifically evaluate whether the CAMA-required local land use planning process should be extended to include inland counties located in river basins draining to the coast;
- request assistance from the Department of Environment and Natural Resources (DENR), the CRC, and the stakeholders team; and
- refer any of these issues to the Smart Growth, Growth Management, and Development Issues Commission and recommend state legislation in 2001.

**Exceptions to thirty-foot estuarine shoreline setback.** Developer concern with the CRC’s estuarine shoreline buffer zone is reflected in S.L. 2000-142 (S 1272). This act authorizes the CRC (notwithstanding the Administrative Procedure Act and its implementing rules) to adopt a temporary rule to establish criteria for exceptions to the CRC rule requiring a thirty-foot setback along public trust and estuarine waters. The exceptions allow construction of residences on previously platted undeveloped lots of 5,000 square feet or less, located in “intensively developed areas,” that would otherwise be prohibited by CRC rules.

The course of passage of this act is an education in the current North Carolina legislative process. S 1272 began its life as a bill, introduced on May 17, 2000, authorizing the addition of the Lea Island State Natural Area to the State Parks System. The bill passed the Senate on June 12 and was referred to the House Environment and Natural Resources Committee. On July 7 the committee completely removed the bill’s substantive provisions and converted it into a vehicle for consideration of two unrelated topics. (In legislative parlance, S 1272 became “a shell bill,” that is, a bill whose original content was abandoned and which became a shell of its former self, to be used for other purposes. A tactical advantage of this maneuver is avoiding deadlines for the introduction and crossover of bills.) One of the two unrelated topics was an amendment to the commercial fishing law concerning crab licenses, and the other was the authorization for exceptions to the CRC estuarine shoreline buffer zone. A week later, a House committee substitute containing this amalgam was approved by both houses, and two weeks thereafter Governor Hunt signed it into law. For those who seek to follow legislation, the estuarine shoreline component of this bill is particularly frustrating. It was not codified in CAMA as an amendment to G.S. Chapter 113A but was tacked onto S 1272 as an uncodified provision, which is much harder to track.

**Relocating the offices of the Division of Coastal Management.** On one other front that touches on the always-delicate issue of local-state relations under CAMA, the General Assembly, in Section 13.3 of S.L. 2000-67 (H 1840), the 2000 Appropriations Act, directs DENR to study the possibility of relocating the main offices of the DENR Division of Coastal Management to one or more of the twenty coastal area counties covered by CAMA (the Division already has four field offices and three coastal reserve offices located in the coastal area; the Division’s headquarter office is in Raleigh). In making this study DENR is to take into account the costs of relocation, efficiency, availability of office space, and other factors. DENR is to report its recommendations to the Senate and House Appropriations Subcommittees on Natural and Economic Resources and to the Fiscal Research Division.

**A beach management and restoration strategy.** Finally, the impact of the 1999 hurricanes on coastal counties is reflected in Section 13.7 of S.L. 2000-67 (H 1840). This complex legislation directs DENR to develop a biennial, multiyear beach management and restoration strategy and plan, to be submitted to successive legislatures by March 1 of each odd-numbered year, beginning by May 1, 2001. The first plan is to report on alternative state and local funding; sources for beach nourishment; review of policies on assisting owners to move erosion-threatened structures; acquisition and management of beach access and open space areas; and identification of high-hazard, erosion-prone, or unbuiltable parcels. Coverage of the plans is spelled out in great detail, and detailed legislative findings point strongly toward an emphasis on beach nourishment projects.
Local Acts

S.L. 2000-14 (H 1688) authorizes Currituck County to regulate by ordinance the operation of personal watercraft in the Atlantic Ocean and other waterways in and adjacent to the county. Any municipality in the county may adopt a resolution permitting the county’s ordinance to be applied within the municipality.

S.L. 2000-43 (H 1732) allows the Town of Ocean Isle Beach to protect and regulate erosion-control works as a public enterprise. This authority was already available to the Town of Kure Beach.

Environmental Finance

Budget

S.L. 2000-67 (H 1840), the 2000 Appropriations Act, provides several highlighted projects for the State:

- $13.4 million to DENR’s Division of Water Resources to match federal water project funds, including the Wilmington Harbor Project;
- $1.7 million to the Department of Agriculture for the Farmland Preservation Trust Fund (which works in conjunction with DENR’s Division of Soil and Water Conservation on farmland preservation efforts);
- $5.9 million to the Department of Transportation to increase urban and regional transit, and $1.8 million to the Department of Transportation to increase rural transit;
- $100 million for repair and renovation of state buildings;
- one-time funds for environmental health training and environmental education.

A provision to consolidate the administration of drinking water and wastewater loan and grant programs in DENR was dropped. Governor Hunt’s request for $1 million to hire stormwater inspectors in DENR’s Division of Water Quality and sedimentation control inspectors in DENR’s Division of Land Resources was not funded.

Dedicated Funds

Section 7.7 of S.L. 2000-67 shifts the funding of the Clean Water Management Trust Fund from end-of-year unspent funds to general fund appropriations effective July 1, 2001, with annual funding at $40 million in 2001, increasing to $70 million in 2002, and to $100 million in 2003. The act provides $30 million to the fund in the 2000–2001 fiscal year. Other bills would have changed the way grants from the Clean Water Trust Fund are allocated. H 1815 and S 1501 would have required that funds in the Clean Water Management Trust Fund be allocated to seventeen river basin accounts in amounts equal to the population in each river basin on June 30 of that fiscal year (at a rate of $1 per person). The bills provided further that an eligible river basin association, as defined in new G.S. 113-145.3A(d), might apply to Clean Water Fund trustees for authority to award grants for its river basin. However, these bills did not move out of committee.

S.L. 2000-171 (H 1132) amends G.S. 106-744 to set priorities for allocation of funds for agricultural conservation easements from the Farmland Preservation Trust Fund. Funds may be allocated to nonprofit organizations that provide a 30 percent match and to counties that provide a match based on their economic condition. Counties in enterprise tiers one, two, or three are not required to provide matching funds if the county has prepared a countywide farmland protection plan; without a plan, they must provide a 30 percent match. Enterprise tier four and five counties must provide a 15 percent match if they have adopted a farmland protection plan, 30 percent if they have not.

S.L. 2000-156 (S 1381) reallocates $200 million of the 1998 Clean Water Bond revenues to provide more water and wastewater grants to local government units in high unit cost and unsewered communities. Funds to be reallocated come from bond proceeds previously allocated to
wastewater and water loans. The bill also calls for a study of the geographic inequities alleged to have arisen in the early distribution of Clean Water Bond revenues (critics charged that excessive amounts went to communities in eastern North Carolina, rather than to higher need communities in the Piedmont and the west). The bill also reduces the maximum grant award under G.S. 159G-6(a) to $3 million over a period of three fiscal years (formerly, it was during any fiscal year) with two narrowly drawn statutory exceptions that are allowed to continue the former, higher funding levels.

Enterprises and Utilities

In an extraordinary series of decisions, the North Carolina Supreme Court struck down the City of Durham’s program for improving stormwater quality. [See Smith Chapel Baptist Church v. City of Durham, 348 N.C. 632, 502 S.E.2d 364, superseded on reh’g by 350 N.C. 822, 514 S.E.2d 272 (1998).] Durham had created a “stormwater utility” under which all property owners, including nonprofit entities not subject to property taxes, were charged fees for stormwater quality. Revenues from the fees were used for structural as well as nonstructural stormwater improvements (nonstructural improvements including such things as public education about the stormwater system). Plaintiffs in the Smith Chapel case ultimately prevailed in their claim that the public enterprise statute did not permit the use of stormwater utility revenues for nonstructural purposes.

The legislature overruled this judicial interpretation in S.L. 2000-70 (H 1602). The bill clarified that stormwater utility fees may be used to fund all costs of stormwater management programs. G.S. 153A-274 (counties) and 160A-311 (cities) originally defined “public enterprise” to include, among other things, “structural and natural stormwater and drainage systems of all types.” This bill amends both statutes to include “stormwater management programs designed to protect water quality by controlling the level of pollutants in, and the quantity and flow of, stormwater and structural and natural stormwater and drainage systems of all types.” Of importance to the cities with stormwater programs funded in this manner, the act applies retroactively to July 15, 1989. The act is also discussed in Chapter 15, “Land Use Regulation, Planning, Code Enforcement and Transportation” and Chapter 16, “Local Government and Local Finance.”

Fees

S.L. 2000-109 (H 1854), the 2000 fee bill, repeals the sunset on white goods taxes, discussed below under the heading “Solid Waste.”

Installment Financing

S.L. 2000-143 (S 1477) authorizes construction of two new, “sustainably designed” wildlife education centers, to be used by the Wildlife Resources Commission pursuant to installment financing contracts. One center is to be built, along with a state office building, on the Centennial Campus of N.C. State University in Raleigh; the other center is to be located in Currituck County.

Tax Incentives

In 1997 North Carolina passed the Brownfields Property Reuse Act to encourage the development of abandoned, underused, and idle properties where development may be hindered by fear of environmental liabilities. S.L. 2000-158 (S 1252) creates a property tax incentive for brownfields cleanups. The bill adds G.S. 105-277.13 to designate certain improvements on brownfields properties as a special class of property under the North Carolina Constitution, Article V, Section 2(2). The bill entitles the owner of real property subject to a brownfields agreement with DENR to an exclusion from taxable income of a percentage of the appraised value of qualified improvements to property made after the brownfields agreement or July 1, 2000,
whichever is later. Percentages of appraised value excluded are: 90 for first taxable year after improvements, 75 for the second year, 50 for the third year, 30 for the fourth year, and 10 for the fifth year. The bill is effective for taxes imposed for taxable years beginning on or after July 1, 2001.

S.L. 2000-128 (H 1473) broadens the state’s corporate tax credit for investments in photovoltaic equipment production to include the manufacture of other types of renewable energy equipment: biomass equipment, hydroelectric generation, renewable biomass resources, solar electric or thermal equipment, and wind energy. The bill also amends G.S. 105-116.1 to increase utility franchise tax distributions to cities that in 1995–96 received less than 60 percent of the amount they received from such taxes in 1990–91 before a several-year freeze in the amount of such distributions. Current law protection extends to cities that received in 1995–96 less than 95 percent of the amount received in 1990–91. The bill extends the sunset for renewable energy tax credits to 2006.

S.L. 2000-160 (H 1583) creates a tax credit (20 percent of the cost of the equipment) for investments in dry cleaning equipment that does not use hazardous solvents or other substances deemed by DENR to pose a threat to human health or the environment. The credit follows the discovery and patenting by a University of North Carolina researcher of dry cleaning processes using carbon dioxide rather than the traditional chlorinated or petroleum-based solvents.

**Environmental Health**

The 2000 General Assembly adopted one set of changes in the food and lodging law and converted part of the loan allocation for drinking water loans to grants. Environmental health professionals may also be interested in legislation amending contested case hearing procedures and the Tort Claims Act, as well as another study of DENR organization and a DENR pilot project to establish one-stop permitting, including time frames for permit actions.

**Food and Lodging Law**

A longstanding exception to the food and lodging law has exempted from regulation “establishments that prepare or serve food or provide lodging to regular boarders or permanent house guests only.” Health officials have regarded this as making an appropriate distinction between regulating to protect public health and not regulating essentially private conduct. This exception is so generally worded, however, that it provides little guidance for addressing some less obvious situations with public health overtones.

S.L. 2000-82 (H 1506) provides a more specific standard for one such area, food and lodging facilities that serve elderly residents of nursing homes and that are not regulated as institutions. It makes the food and lodging law applicable to establishments not regulated as institutions that prepare or serve food for pay to thirteen or more regular boarders or permanent houseguests who are disabled or aged fifty-five or older. Such establishments operating on July 1, 2000, may continue to use equipment and construction then in use if there is no imminent hazard. Replacement equipment must meet the food rules.

**Drinking Water Program**

S.L. 2000-156 (S 1381) converts part of the previous loan allocation for water supply systems (and wastewater systems) to be used as grants (see the discussion in “Environmental Finance” above).
Soil Scientists

S.L. 2000-115 (S 1316) allows licensed soil scientists to form limited liability companies (as well as corporations) to engage in the practice of soil science if a licensed soil scientist is in responsible charge.

Growth/Planning

Billboard Moratorium

S.L. 2000-101 (S 1275) extends the moratorium on billboards along Interstate 40 between Chapel Hill and Wilmington to July 1, 2001. This legislation is discussed in Chapter 15, “Land Use Regulation, Planning, Code Enforcement, and Transportation.”

Floodplain Management

In the wake of the 1999 hurricanes that devastated much of eastern North Carolina, legislation was proposed this year seeking to update and strengthen the state’s existing floodway regulation law. As originally conceived, the proposal embodied these objectives by:

1. extending the coverage of the earlier law from the 100-year floodway to the more extensive 100-year floodplain;
2. prohibiting certain land uses in the floodplain (solid or hazardous waste facilities, salvage yards and chemical storage facilities);
3. requiring development to be located at least two feet above the 100-year flood level; and
4. limiting disaster relief to communities that failed to adopt conforming ordinances.

A much-amended bill was enacted that achieved the first two objectives but not the third and fourth objectives. S.L. 2000-150 (S 1341) also revises several key provisions of the earlier floodway law by:

• eliminating the authority of the Environmental Management Commission to trigger the adoption of local ordinances;
• exempting a number of utility facilities not exempted in the floodway law; and
• permitting variances that were not authorized by the floodway law.


Regional Transportation Planning

S.L. 2000-80 (H 1288) provides for the coordination of metropolitan transit planning. Environmental public interest groups focused on “smart growth” consider it one of the most important pieces of environmental legislation in the session. For further discussion of the bill, see Chapter 15, “Land Use Regulation, Planning, Code Enforcement, and Transportation.”

Open Space Preservation

In 1999 Rep. Joe Hackney introduced a bill to provide for growth management in North Carolina. Rather than pass the legislation, the 1999 budget bill, S.L. 1999-237, created the Commission to Address Smart Growth, Growth Management, and Development Issues. In January 2000, Governor Hunt addressed the first meeting of the “Smart Growth” commission. Among other things, he challenged the commission to come up with a way to preserve for conservation purposes one million additional acres of land in North Carolina over a ten-year period. S.L. 2000-23 (S 1328) codified this goal in the North Carolina statutes. The bill adds new Article 17 (“Conservation, Farmland, and Open Space Protection and Coordination”) to G.S. Chapter 113A, stating the intent of the General Assembly to encourage, support, and accelerate the permanent
protection of farmland, forestland, parkland, gameland, wetlands, open space, and conservation lands in North Carolina. The bill specifically directs the state to encourage, facilitate, plan, coordinate, and support appropriate federal, state, local, and private protection efforts so that an additional million acres of farmland, open space, and conservation lands in the state are permanently protected by December 31, 2009. In 2000, approximately 2.6 million acres (8.6 percent of the state’s land area) is legally preserved for conservation purposes. The proposed one million additional acres represent a 36 percent increase and would bring the state’s total legally protected conservation lands to 11.6 percent of its land area.

**Marine Fisheries**

**Licensing**

*Commercial fishing licensees may take crabs.* The commercial fishing laws have allowed only holders of interim crab licenses to take crabs. S.L. 2000-142 (S 1272) allows these interim licensees to apply for and obtain standard commercial fishing licenses (SCFLs), and it allows persons who hold SCFLs or retired SCFLs to take crabs from coastal fishing waters as part of a commercial fishing operation.

*Gill nets.* S.L. 2000-139 (H 1562) allows one person who holds a recreational commercial gear license (RCGL) to use up to 100 yards of gill net to take fish for recreational purposes and two persons who hold RCGLs to use up to 200 yards of gill net for this purpose. Regardless of the number of persons aboard a vessel, however, no more than 200 yards of gill net may be used to take fish for recreational purposes.

**Mineral Resources**

**Permitting**

In early 2000, the state issued a mining permit on Belview Mountain in Avery County. Nearby residents protested, pointing out that the mine was within sight of the Appalachian Trail (a protected area) and Grandfather Mountain (an international biosphere reserve). The state acknowledged that, had it known more precisely the location of the mine and the likely impacts on nearby protected areas, it might not have issued the permit. Apparently the mine owner had attempted to use loosely drawn notice provisions in the State Mining Act to avoid notifying adjacent property owners. The permit was thus issued with little opportunity for public comment that might have brought the impacts to the attention of the regulators. (The propriety of the permit application and its issuance are now being litigated.)

The regulators and the legislature responded by tightening the notice provisions for mining permits. S.L. 2000-116 (S 1329) more clearly defines the persons who must be notified of mining permit applications. It introduces the concept of “permitted area” (including both the area affected by mining and its buffer). This attempts to prevent the technique used by the owner of the Avery County mine under the former statute—drawing an “affected area” within his own property boundaries so as to arguably eliminate the existence of “adjoining property owners” who must be notified. The bill also expands the list of persons who are to receive notice of mining permits.
Permitting in General

Consolidation

Most of the core regulatory programs of DENR involve “permits”—points at which persons who want to undertake some activity must get permission from one or more governmental agencies. It is not possible to give a definitive count of the number of permit programs in DENR (or any other state environmental agency) without adopting elaborate counting rules, but a reasonable estimate is that there are approximately fifty different programs. Many common construction and development activities require multiple permits from different programs within DENR, and many more require permits from multiple levels of government. There is, accordingly, always the possibility for improvements in the efficiency with which permits decisions are made.

Section 13.7 of S.L. 2000-67 (H 1840), the 2000 Appropriations Act, directs DENR to establish a one-stop environmental permit application assistance and tracking system pilot project for one year in at least two regional offices (probably Mooresville and Wilmington). This effort is the outgrowth of five years of work within DENR on improved coordination and standardization of permitting and technical assistance to applicants. The legislature stated its intent to expand this pilot program to more than two regional offices during the 2000–2001 fiscal year if the resources are available and to expand it into a statewide program as soon as possible after the 2000–2001 fiscal year.

As part of the pilot project, DENR is to provide a time frame within which an applicant may expect a final decision regarding the issuance or denial of a permit. Unless otherwise provided by law, when an applicant has provided to DENR a complete application and DENR fails to issue or deny the permit within sixty days of the projected date, the permit shall be automatically granted to the applicant. This automatic issuance does not apply when an applicant submits a substantial amendment to its application after DENR has provided the applicant the projected time frame or when an applicant agrees to receive a final decision from DENR more than sixty days from the projected date.

Delegation

S 1245 would have allowed the Secretary of DENR, the Coastal Resources Commission, the Commission for Health Services, and the Environmental Management Commission to delegate authority to a local government to implement a program of environmental permitting and enforcement. Delegation would have been authorized only if the local government had an ordinance providing for maintenance and inspection, established standards that equaled or exceeded statewide standards, and provided for enforcement of standards. The bill failed to move out of committee.

Regulatory Flexibility

A great deal of negotiation and debate went on about H 1580 (later becoming S 1132), a bill sought by industry to allow the Secretary of DENR to give regulatory flexibility to certain regulated entities. The bill authorized “Environmental Excellence Agreements” to incorporate alternative regulatory regimes established between DENR and the entities. Such agreements could have contained provisions superceding otherwise applicable local, regional, or state environmental statutes, rules, or regulations. Exceptions to this broad authority were statutes or ordinances regulating the selection of a location for a new facility, including swine farms, concentrated animal feeding operations, animal waste management systems, and radioactive or hazardous waste sites. Provisions for public notice and comment and the standards required for entering such an agreement were debated and never finalized. The version of the bill filed in 2000 allowed the Secretary to enter such agreements upon finding either that (1) emission reductions or reductions in the discharge of wastes or reductions in environmental risk would achieve better overall environmental results than those required by otherwise applicable environmental regulations or (2)
compliance with applicable environmental regulations would be equal or improved if such agreements were in effect. This second element could have been met by demonstrating an innovative approach or cost-effective results. Trade associations or other authorized representatives of owners or operators of facilities would have been allowed to enter agreements for programmatic coverage of multiple facilities. The bill passed the Senate but was postponed indefinitely in the House.

**Soil and Water Conservation**

Two decades ago North Carolina embarked on a program of encouraging farmers, by working within their own organizations, the soil and water conservation districts that span the state, to control agricultural non-point source pollution from runoff of fertilizer and pesticides. The program started with a half dozen counties whose rivers were classified as nutrient sensitive because they were choked by eutropic conditions. It gradually spread over the entire state.

Basically this program makes agricultural cost-share funds available to farmers who sign and execute cost-share agreements to carry out recommended practices to bring about the control of non-point source pollution. The priorities are set and the funds are allocated in each participating county by its board of soil and water conservation supervisors.

Section 13.6 of S.L. 2000-67 (H 1840), the 2000 Appropriations Act, provides $240,000 in additional funds for the agricultural cost-share program. These moneys will be used to help pay the cost of the technical assistance (already supported in many counties) that is needed to staff the cost-share programs.

**Solid Waste**

**Abandoned Vessels**

S.L. 2000-74 (H 1625) directs DENR to carry out a pilot program for the removal of “abandoned” vessels in the Neuse River Basin during the period July 1, 2000, through January 1, 2003. DENR is to make an interim report to the Environmental Review Commission by January 1, 2002, and a final report by January 1, 2003. A vessel is abandoned when it has been left unattended, wrecked, or junked for more than ninety consecutive days.

Removal is to be initiated by notification of the record owner under the notice procedure set forth in Rule 4 of the N.C. Rules of Civil Procedure, the owner being given forty-five days to remove the vessel. The owner is liable for the cost of removal. The original bill would have utilized a criminal procedure to enforce removal, but S.L. 2000-74 as enacted eliminated this approach in favor of a civil process.

**Tax on White Goods**

S.L. 2000-109 (H 1854), Section 9, repeals the July 1, 2001, sunset of the 3 percent excise tax on the sale of new white goods levied pursuant to G.S. 105-187.21. The act also directs DENR to study the amount and apportionment of the scrap tire disposal tax and the white goods disposal tax and make recommendations on these matters to the Environmental Review Commission by October 1, 2000.
State Parks

Additions to Parks System

The legislature added three areas to the State Parks System in 2000. S.L. 2000-17 (H 1577) adds the Bullhead Mountain State Natural Area in Alleghany County to the system (with the state office of the National Audubon Society partnering in the long-term management of the site). S.L. 2000-102 (H 1617) adds Lea Island in Pender County to the system (also in partnership with the Audubon Society). S.L. 2000-157 (S 1311) authorizes addition of the Mountains to Sea Trail to the system. The act includes a provision dictating that only land managed by the Division of Parks and Recreation for the trail are to be included and that land may not be condemned for the trail unless the county board of commissioners of the county involved (and the city council if the land is within a municipality) are notified of the proposed condemnation and do not object within five business days of notification. Chapter 16, “Local Government and Local Finance,” discusses this condemnation process in more detail.

Superfund & Inactive Sites Cleanup

Dry Cleaners

As noted in 1999, significant changes were proposed and debated in the state’s nascent Dry Cleaning Solvent Act cleanup program. In essence, the private insurance market, which was the foundation for the original act, dried up. The dry cleaning industry had persuaded the legislature that private insurance would provide a major source of financial assurance for the solvency of the new fund. The fund operates essentially like a public insurance pool (not unlike the insurance provided by the petroleum underground storage tank program). With private insurance now unobtainable but statutorily required as the primary way for dry cleaners to show financial assurance that they could cover the costs of future cleanups, the legislature amended the act in 2000 to raise revenue from other sources.

S.L. 2000-19 (H 1326) establishes a temporary environmental surtax to fund cleanup of dry cleaning solvent contamination; designates state sales tax revenue from dry cleaning and laundry services for the dry cleaning solvent cleanup fund; amends the Dry Cleaning Solvent Cleanup Act of 1997 to repeal the requirement of financial responsibility for dry cleaning facilities and wholesale dry cleaning solvent distribution facilities; and allows the Environmental Management Commission to enter into contracts with private contractors for assessment and remediation activities at dry cleaning facilities and wholesale dry cleaning solvent distribution facilities.

The bill requires dry cleaning, laundry, and related businesses to pay a temporary environmental surtax of one cent for every two cents of sales tax payable. Taxes collected must be deposited in the Dry Cleaning solvent Cleanup Fund (“the Fund”). The tax is repealed effective July 1, 2003, when a new section (G.S. 105-164.44E) becomes effective. The new section will be effective until July 1, 2010, and will require DENR to transfer an amount equal to the amount of use and sales taxes collected from dry-cleaning, laundry, and related businesses to the Fund. Effective July 1, 2003, the bill increases taxes currently payable under G.S. 105-187.31 to $7.50 per gallon (currently, $5.85) of dry cleaning solvent that is chlorine-based and $1.00 per gallon (currently, 80 cents) of dry cleaning solvent that is hydrocarbon-based. In lieu of the prior financial responsibility requirements, the bill requires potentially responsible persons who petition the Environmental Management Commission to enter into dry cleaning solvent assessment agreements or dry cleaning solvent remediation agreements to pay a flat fee plus a percentage of the costs of assessment or remediation up to a maximum of $1 million. Changes to the financial responsibility statutes are retroactive to April 1, 1998.
Petroleum Discharges and Residual Contamination

S.L. 1999-198 (S 1159) extended the use of “institutional controls,” in the form of land-use restrictions, to all DENR remedial cleanup programs. It required that “cleanups” relying on institutional controls, or otherwise based on a risk assessment that allowed residual contamination in excess of standards to remain on the property, be publicly recorded in the chain of title of the property and “run with the land.” S.L. 2000-51 (S 1279) exempts cleanups of petroleum from leaking underground storage tanks from these requirements.

S.L. 2000-54 (H 1618) amends the release-reporting requirement of the State’s Oil Pollution and Hazardous Substance Control Act. It provides an exception to the normal requirement of immediate notification of spills for petroleum releases that are (1) less than twenty-five gallons, (2) do not cause a sheen on nearby surface water, and (3) occur at a distance greater than 100 feet from any surface water body. These “de minimis” discharges require the person in control prior to the spill to take measures to collect and remove the discharge but not to report it, unless the discharge cannot be cleaned up within twenty-four hours or causes a sheen on nearby surface water.

Technical Amendments

S.L. 2000-172 (H 1218), the Environment Technical Corrections bill, enacted the following changes in 2000:

1. provided for the use of sub-meters in consecutive water systems;
2. extended the sunset on historic urban waterfront redevelopment to April 1, 2001;
3. provided for variances under the dredge and fill permit program;
4. clarified the authority of the Governor to make appointments to the Environmental Management Commission;
5. required the Department of Environment and Natural Resources to consult with stakeholders prior to developing riparian buffer rules;
6. prohibited the Marine Fisheries Commission from establishing fees for certain permits and abolished certain existing permit fees; and
7. made other clarifying and technical changes.

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For those involved in health care or public health in North Carolina, the 2000 session was as notable for those efforts that did not survive legislative scrutiny as for those that did. At the end of the 1999 session, the General Assembly appeared poised to enact major new regulations for health maintenance organizations (HMOs) and other health insurers doing business in the state. Several bills had passed the state House of Representatives and were awaiting action by the Senate. In the end, however, only one of the bills passed—an act requiring insurers to make prompt payments on claims. A bill that would have permitted HMO clients to appeal denials of claims to external review panels failed, as did an effort to impose liability on HMOs that negligently deny care.

Financing for health efforts in the state was given a considerable boost by the creation of the Health and Wellness Trust Fund. The fund will receive and expend 25 percent of the moneys the state receives from its settlement agreement with four major manufacturers of tobacco products. Grants awarded by the fund must be used for health efforts and are intended to supplement, not supplant, other state expenditures for health. Another source of funds for community health efforts was made available in the 2000-01 fiscal year through a one-time appropriation of $1 million to the state’s Healthy Carolinians program. Other health programs sustained substantial budget cuts in 2000. The state Medicaid program lost $32 million in recurring funds and $70 million from its reserve fund. The AIDS Drug Assistance Program, which helps low-income individuals purchase HIV/AIDS prescription drugs, sustained a one-time budget cut of $3 million. Efforts to increase Medicaid reimbursement rates for dental care and to expand eligibility for the children’s health insurance program failed.

Several new laws affect the licensure and practice of health care providers in North Carolina. The Respiratory Care Practice Act requires respiratory care practitioners to be licensed by October 1, 2002. Another law permits retired physicians to receive limited licenses to practice on a voluntary basis in clinics providing medical care to indigents.

Other significant pieces of legislation included a law providing limited liability to individuals who use automated external defibrillators in an emergency, a provision in the state budget requiring that newborns be screened for hearing loss, and a new law requiring that residents of adult care homes and nursing homes be vaccinated against influenza and pneumonia.

As always, the General Assembly also directed the preparation of a number of reports and authorized several studies of health issues.
Health and Wellness and Tobacco Trust Funds

In 1998, North Carolina, along with forty-five other states, entered into an agreement with four major American tobacco companies to settle existing and potential claims by the states against the tobacco manufacturers. The parties signed the Master Settlement Agreement (MSA) under which the tobacco companies agreed to make payments to the states totaling $206 billion through the year 2025. It is projected that ultimately North Carolina will receive about $4.6 billion from this settlement.

In 1999, the General Assembly approved legislation to implement the terms of the MSA in North Carolina. S.L. 1999-2 created a nonprofit corporation to receive and distribute 50 percent of the settlement funds for the purpose of providing assistance to regions of the state that are tobacco-dependent or otherwise were affected economically by the settlement. S.L. 1999-2 also stated the intent of the General Assembly to allocate the remaining 50 percent of the settlement funds equally to two trust funds: one for the benefit of tobacco producers, tobacco allotment holders, and persons engaged in tobacco-related businesses; and one for the benefit of health. The General Assembly did not establish those trust funds during the 1999 session, however.

This year, the General Assembly enacted S.L. 2000-147 (H 1431), which established the Health and Wellness Trust Fund and the Tobacco Trust Fund and created commissions charged with managing the two trusts. Each fund will receive 25 percent of the tobacco settlement payments.

The purpose of the Health and Wellness Trust Fund is to finance programs and initiatives to improve the health and wellness of North Carolinians. The fund will be administered by the eighteen-member Health and Wellness Trust Fund Commission, which will allocate the moneys in the fund in the form of grants to public agencies or private nonprofit organizations that have as a significant purpose promoting public health, limiting youth access to tobacco products, or reducing the health consequences of tobacco use. Moneys from the fund may be used for any of the following purposes:

1. to address the health needs of vulnerable and underserved populations in North Carolina;
2. to provide for research, education, prevention, and treatment of health problems in North Carolina and to increase the capacity of communities to respond to public health needs; or
3. to develop a comprehensive, community-based plan to improve health and wellness with a priority on preventing, reducing, and remedying the health effects of tobacco use and with an emphasis on reducing tobacco use by adolescents.

The primary purpose of the Tobacco Trust Fund is to compensate the tobacco-related segment of North Carolina’s economy for the economic hardship it is expected to experience as a result of the Master Settlement Agreement. The trust will be administered by the eighteen-member Tobacco Trust Fund Commission. The commission is charged with developing and funding “compensatory programs,” designed to compensate those involved in tobacco-related businesses who have suffered actual economic losses, and “qualified agriculture programs,” designed to foster and support the vitality and solvency of the tobacco-related segment of the state’s economy. More details on this fund are in Chapter 9, “Environment and Natural Resources.”

Health Care Facilities

Health Care Personnel Registry

The North Carolina Department of Health and Human Services (DHHS) maintains a registry of health care personnel working in North Carolina facilities who have been found by DHHS to have committed one of the following acts: neglect or abuse of a patient, misappropriation of a patient’s or the facility’s property, diversion of drugs belonging to a patient or the facility, or fraud against a patient or the facility. Under prior law, facilities were required to notify DHHS of all
substantiated incidents of those types. S.L. 2000-55 (S 1179) amends the law to require facilities to notify DHHS of all allegations against personnel, whether or not substantiated, that appear to be related to any of those acts. Facilities are further required to investigate all allegations and to make every effort to protect patients from harm during the investigation. Results of investigations must be reported to DHHS within five working days of the initial notification. The law also authorizes DHHS to suspend, cancel, or amend a license when a facility substantially fails to comply with the requirements of the registry law.

Adult and Long-Term Care Facilities

Several new laws affect facilities that provide continuing or long-term care to adults.

A special provision in the 2000 Appropriations Act (S.L. 2000-67) requires DHHS and the North Carolina Institute of Medicine jointly to convene a special work group to develop criteria for monitoring the quality of care in nursing homes, adult care homes, assisted living facilities, and home health care programs. DHHS and the Institute are directed to work together to implement the criteria and to pursue the options for using the new criteria in lieu of current federally mandated standards.

S.L. 2000-154 (S 1192) requires certain disclosures by nursing homes or combination homes that provide special care units for patients with Alzheimer’s disease or other forms of dementia. The required disclosures pertain to the special care that is provided that distinguishes the unit as being especially designed for those patients. Nursing homes or combination homes that do not promote themselves as special care units for those patients are not required to make the disclosures.

Additional laws affecting adult and long-term care facilities are discussed in the section on communicable disease control, below, and in Chapter 21, “Senior Citizens.”

Property Tax Exemptions

S.L. 2000-20 (H 1573) clarifies the property tax treatment of health care facilities that are subject to the Health Care Facilities Finance Act (G.S. Chapter 131A). The new law provides that, if the North Carolina Medical Care Commission issues bonds or notes to provide or improve a health care facility, the facility is exempt from property taxes. If refunding bonds or notes are issued, the facility will remain exempt from the taxes until the refunding bonds or notes are retired, provided the final maturity of the refunding bonds or notes does not extend beyond the final maturity of the original bonds or notes. The property tax exemption must not exceed the lesser of the original principal amount of the bonds or notes or the assessed value for ad valorem tax purposes of the facility.

S.L. 2000-20 also extended the sunset on property tax exemptions for continuing care retirement centers from July 1, 2000, to July 1, 2001.

Certificate of Need

An individual or entity that wishes to offer, develop, acquire, or incur an obligation for a capital expenditure for a new institutional health service must first obtain a certificate of need from DHHS. S.L. 2000-135 (H 1184) amended the definition of “new institutional health service” to include the relocation or expansion of part or all of an ambulatory surgical facility, or the relocation and addition of part or all of a hospital operating room to a new or different building. This provision will sunset on July 1, 2001.

Deaths in Facilities

S.L. 2000-129 (H 1520) requires the Chief Medical Examiner to provide a copy of the medical examiner’s report to the Secretary of Health and Human Services within thirty days of the chief’s receipt of the report when the decedent was a client or resident of a residential child-care
facility, an adult care home, or a facility for the mentally ill, developmentally disabled, or substance abusers. The law also addresses the use of restraints in those types of facilities. The provisions regarding restraint use are described in Chapter 18, “Mental Health and Related Laws.”

Health Care Providers

Physicians
S.L. 2000-05 (H 1153) authorizes the North Carolina Medical Board to issue a limited volunteer license to a retired physician who has allowed his or her license to practice to become inactive. A limited volunteer license allows the physician to practice only at clinics specializing in the treatment of indigent patients. Retired physicians who obtain the license must comply with the board’s continuing medical education requirements. The law also amends G.S. 90-21.14(a1) to limit liability for retired physicians practicing under the limited volunteer licenses. The physicians may be held liable only for injuries and deaths caused by gross negligence, wanton conduct, or intentional wrongdoing.

Another new law (S.L. 2000-184, S 432) provides immunity from civil liability for any person or entity that, acting in good faith and without fraud or malice, does any of the following:

1. reports or investigates acts or omissions of a licensee or applicant relating to that person’s fitness to practice;
2. initiates or conducts proceedings against a licensee or applicant;
3. testifies before the North Carolina Medical Board in any proceeding involving the fitness of an applicant or licensee to practice; or
4. makes a recommendation to the Board in the nature of peer review.

Respiratory Care Practitioners

The General Assembly enacted the Respiratory Care Practice Act, G.S. Chapter 90 Article 38, to provide for the licensure and regulation of respiratory care practitioners. S.L. 2000-162 (H 1340) creates the North Carolina Respiratory Care Board and authorizes it to determine the qualifications and fitness of applicants for licensure and to issue, renew, suspend, revoke, or deny licenses. After October 1, 2002, it will be unlawful for any unlicensed person to engage in the practice of respiratory care, use the title respiratory care practitioner or the abbreviations associated with that title, or to imply or indicate that the person is a licensed respiratory care practitioner. It will also be unlawful for employers to hire or solicit for employment unlicensed persons to practice respiratory care. Professionals who are performing work incidental to or within the practice of their profession and employees supervised by such professionals are exempt from the act’s requirements, provided they do not represent themselves as respiratory care practitioners.

Optometrists

S.L. 2000-184 (S 432) provides immunity from civil liability for any person or entity that, acting in good faith and without fraud or malice, does any of the following:

1. reports or investigates acts or omissions of a licensee or applicant relating to that person’s fitness to practice;
2. initiates or conducts proceedings against a licensee or applicant;
3. testifies before the North Carolina Board of Examiners in Optometry in any proceeding involving the fitness of an applicant or licensee to practice; or
4. makes a recommendation to the Board in the nature of peer review.

The law also gives the board additional disciplinary authority.
Insurance/Managed Care

Medicaid

The state Medicaid program sustained substantial cuts in funding during the 2000 session. The 2000 Appropriations Act (S.L. 2000-67) decreased recurring funding for Medicaid by $32 million and also cut $70 million from the Medicaid reserve fund.

S.L. 2000-67 also makes changes to Medicaid reimbursement policies and directs the Department of Health and Human Services (DHHS) to undertake a number of tasks. The act authorizes Medicaid reimbursement for services provided by nurse practitioners and provides that public ambulance providers will be reimbursed at cost. It directs DHHS to amend the Medicaid plan to adopt simplified methodologies for the treatment of assets in determining Medicaid eligibility for aged, blind, and disabled persons. The simplified methodologies are limited to excluding the value of burial plots and the cash value of life insurance when the total face value of cash value-bearing life insurance policies does not exceed $10,000. The act also authorizes DHHS to provide Medicaid coverage for family planning services to men and women of childbearing age with family incomes equal to or less than 185 percent of the federal poverty level, if DHHS can obtain a federal waiver permitting it to do so.

S.L. 2000-67 also requires the Fiscal Research Division to engage an independent consultant to study and review the amount, sufficiency, duration, and scope of each service provided under the Medicaid program. The consultant must make an interim progress report by January 1, 2001, and a final report by March 1, 2001.

Section 11.34 of S.L. 2000-67 forbids DHHS from amending the Medicaid state plan to provide Medicaid reimbursement for intensive home visiting services. It further directs DHHS to arrange for an independent evaluation of Intensive Home Visitation Program first-year pilot programs that began operation in February 1998.

Finally, S.L. 2000-67 requires DHHS to submit the following reports:
- a progress report on DHHS’s planning and development work on the Program of All-Inclusive Care for the Elderly,
- quarterly status reports on expenditures for acute care and long-term care services (monthly reports had been required),
- a report of a study of the feasibility of authorizing Medicaid reimbursement for children eligible for Early Periodic Screening, Diagnosis, and Treatment (EPSDT) services by providers who are eligible for reimbursement for these services under the Teachers’ and State Employees’ Comprehensive Major Medical Plan and under North Carolina Health Choice.

Health Choice (Children’s Health Insurance Program)

The North Carolina Health Choice Program requires applicants to be uninsured for a sixty-day period immediately preceding the date of application for program benefits. A special provision in the 2000 Appropriations Act (S.L. 2000-67) waives the sixty-day period for some children with special needs, as those are defined by law. The period is waived if health insurance benefits available to the child’s family have been terminated due to a long-term disability or a substantial reduction in or limitation of lifetime medical benefits or a benefit category.

Teachers’ and State Employees’ Medical Plan

The 2000 General Assembly made changes to the Teachers’ and State Employees’ Major Medical Plan that increased retirees’ access to plan benefits, increased female plan members’ access to Pap smears, and altered the laws regarding the purchase of prescription drugs under the plan.

S.L. 2000-141 (H 1855) authorizes the plan’s executive administrator and board of trustees to determine allowable charges for outpatient prescription drugs. In the past, the allowable charges
were determined according to a statutory formula. The new law provides that allowable charges shall not be greater than a pharmacy’s usual and customary charge to the general public and requires a $25 co-payment for prescription drugs not included on the plan’s formulary. The law also authorizes the plan to use a pharmacy benefit manager to help manage outpatient prescription drug coverage and prohibits the plan from paying for certain types of drugs unless those drugs are medically necessary. The drugs for which coverage is prohibited include drugs for erectile dysfunction, and growth hormone, antiwrinkle, weight loss, and hair growth drugs.

The legislature removed the portions of G.S. 135-40.2(a) that required retirees first hired or legislators first taking office on or after October 1, 1995, to have twenty or more years of retirement service credit to be eligible for medical coverage on a noncontributory basis. This effectively extends noncontributory coverage to all state and legislative retirees.

S.L. 2000-184 (S 432) provides that the state medical plan will cover one Pap smear per year for any covered female. Under the previous law, annual Pap smears were covered only for plan members over the age of 50. Younger women were covered for less frequent tests, based on their age.

S.L. 2000-184 also amended the statutes that denied medical plan coverage for employees who were found to have defrauded the plan. The new law permits, but does not require, the plan’s executive administrator and board of trustees to reinstate such an employee’s membership in the plan after a period of five years, provided the employee has provided full and complete restitution to the plan for all fraudulent claims.

**HMOs and Other Health Plans**

The General Assembly in both the 1999 and 2000 sessions considered a number of bills that would regulate health maintenance organizations (HMOs) and other private insurers. In the end, however, only one bill became law. S.L. 2000-162 (H 1340), the law that created the Respiratory Care Practice Act, discussed above, also includes a provision requiring health insurers to respond promptly to claims for payment. A new section (G.S. 58-3-225) gives health insurers thirty calendar days to pay the claim or give notice that the claim is not being paid for one of the following reasons:

- The claim is denied.
- The proof of loss is inadequate or incomplete.
- The claim was not submitted on the proper forms.
- Coordination of benefits information is needed in order to pay the claim.
- The claim is pending based on nonpayment of fees or premiums.

If the insurer gives notice that the claim is not being paid, the notice must include the specific good faith reasons for the insurer’s conclusion that the claim cannot be paid and any relevant additional information. For example, if the notice states that the claim was not submitted on the proper forms, it must identify the forms that should be used when the claim is resubmitted. An insurer who fails to make timely payments of claims must pay interest at an annual rate of 18 percent beginning on the date following the day on which the claim should have been paid.

**Other**

Section 21.2 of S.L. 2000-67 repealed the Health Care Purchasing Alliance Act, a law enacted in 1993 to facilitate the purchase of group health insurance by small businesses.

**First Aid Use of Defibrillators**

A new law provides immunity from civil liability for any person who, on a voluntary (unpaid) basis, uses an automated external defibrillator in an emergency. S.L. 2000-113 (S 1269) provides that the use of an automated defibrillator constitutes “first aid or emergency health care treatment”
under G.S. 90-21.14(a), the statute that limits the liability of any person who provides such care on a voluntary basis. A volunteer who uses the defibrillator will not be liable for injuries or death unless the injuries or death were caused by gross negligence, wanton conduct, or intentional wrongdoing.

The law also provides immunity from civil liability arising from the use of a defibrillator to the following persons: those who provide CPR and automated external defibrillator training to a person who uses the defibrillator; the person responsible for the site where the defibrillator is located, if the person has provided for a training program; and North Carolina-licensed physicians who without compensation write prescriptions for automated external defibrillators.

Preventive and Community Health

Several special provisions in the 2000 Appropriations Act (S.L. 2000-67) addressed preventive and community health issues.

Section 11 creates a new statute, G.S. 130A-5.1, which requires the Secretary of Health and Human Services to adopt standards and goals for community health against which the state’s actions to improve the health status of citizens will be measured. The new law requires the Secretary to report annually to the General Assembly and the Governor on how the state compares to national health measurements and established state goals, steps taken by state and non-state entities to meet established goals, and additional steps proposed or planned to be taken to achieve the goals.

Section 11.31 of S.L. 2000-67 amends G.S. 130A-125, the law governing the newborn screening program. The new law provides that newborns will be screened for permanent hearing loss.

S.L. 2000-67 also extends the life of the state Osteoporosis Task Force by one year. The task force, which was set to expire on October 1, 2000, will instead exist until October 1, 2001, at which time it must submit its final report to the legislature.

Section 11.38 of S.L. 2000-67 requires the Department of Health and Human Services (DHHS) to work with the Fiscal Research Division to assess preventive health activities in North Carolina and develop a plan for more effectively and efficiently administering those activities. DHHS and the division must prepare a report that:

1. provides a full inventory of all prevention activities, including task forces and committees that receive administrative funding;
2. identifies linkages among program activities;
3. identifies all administrative costs and funding sources and positions associated with various prevention activities; and
4. includes a plan for an alternative organizational structure for administering preventive health activities.

Section 11.42 provides that $150,000 of the funds appropriated to the Division of Public Health will be used for public awareness activities on the prevention of birth defects and infant mortality reduction. The activities must emphasize the importance of folic acid supplementation for women of childbearing age. Folic acid has been shown to significantly reduce neural tube defects such as spina bifida.

Adolescent Pregnancy and Parenting

A number of provisions in the 2000 Appropriations Act (S.L. 2000-67) address adolescent pregnancy or adolescent parenting. The act directs the Division of Public Health to use $1 million of the funds appropriated to it from the Temporary Assistance for Needy Families (TANF) block grant to support the Responsible Fatherhood Initiative, a parenting program that targets young men. The act further directs the division to work in collaboration with local program
administrators, the Adolescent Pregnancy Prevention Coalition of North Carolina, and other organizations to develop guidelines for the administration of funds for teen pregnancy prevention and parenting programs. The act also requires the Department of Health and Human Services (DHHS) to contract with an independent private consulting firm to evaluate teen pregnancy prevention programs supported by state funds.

In S.L. 2000-138 (S 787), the 2000 Studies Act, the legislature directs DHHS to work with the Adolescent Pregnancy Prevention Coalition and other entities to develop a plan for consolidating adolescent pregnancy prevention programs and adolescent parenting programs in the state. The plan for consolidation must be reported to the General Assembly by March 1, 2001.

Communicable Disease Control

AIDS Drug Assistance Program

The AIDS Drug Assistance Program (ADAP) provides financial assistance for the purchase of prescription drugs to uninsured low-income individuals who have HIV or AIDS. In 1999 the General Assembly provided $7 million in continuing funding to this program. In 2000 the program sustained a one-time cut of $3 million. In addition, a special provision in the 2000 Appropriations Act (S.L. 2000-67) amends a provision of the 1999 budget act that required the Department of Health and Human Services (DHHS) to develop a comprehensive information system on HIV/AIDS clients. Section 11.35 of S.L. 2000-67 directs DHHS to pattern the system after the information management system that is used by the Elderly Drug Assistance Program. The section further specifies that the system must provide instantaneous internal access to information and must include information on program usage patterns of ADAP participants, including types of medications prescribed and their cost and participants’ demographic characteristics.

Last year’s budget act authorized HIV-positive individuals with incomes at or below 125 percent of the federal poverty level to participate in ADAP during the 1999–2000 fiscal year. This year’s act continues that authorization for fiscal year 2000–2001 and further provides that participation in ADAP may be extended to individuals with incomes of up to 150 percent of the federal poverty level, but only after the Office of State Budget and Management certifies in writing that DHHS has developed the required information management system. Finally, the act requires DHHS to make certain reports about the program to the legislature.

Immunizations

S.L. 2000-112 (S 1234) requires immunizations for residents and employees of adult care homes and nursing homes. Effective September 1, 2000, residents of adult care homes and nursing homes must be immunized against pneumonia. Effective September 1, 2001, residents and employees of adult care homes and nursing homes must be immunized against influenza. Individuals may be exempted from the immunization requirements if the vaccines are medically contraindicated for them or against their religious beliefs. Individuals may also be exempted if they refuse to receive the vaccines after being fully informed of the health risks of not being immunized. Adult care homes and nursing homes must notify residents and employees of the requirements, ask them to agree to be immunized, and document their immunization status. The Commission for Health Services is authorized to adopt rules to implement these requirements.

Prescription Drug Assistance for the Elderly

The Elderly Prescription Drug Assistance Program pays for outpatient prescription drugs for people over the age of 65 who have cardiovascular disease or diabetes, are not eligible for full Medicaid benefits, and have annual incomes of not more than 150 percent of the federal poverty
level. The amount of funding for this program was increased from $.5 million to $1 million for fiscal year 2000–2001.

A special provision in the 2000 Appropriations Act (S.L. 2000-67) establishes the Legislative Study Commission on Prescription Drug Assistance for Elderly and Disabled Persons. The twelve-member study commission is charged with determining the feasibility of expanding the program to reach all elderly and disabled state residents who need assistance in purchasing prescription drugs.

### Reports and Studies

The General Assembly required the Department of Health and Human Services (DHHS) and other entities that receive state funds for health programs to prepare a number of reports during the 2000–2001 fiscal year. In addition to the reports described in the preceding sections, S.L. 2000-67 orders the following reports:

- The Heart Disease and Stroke Prevention Task Force must prepare a report addressing its budget and activities for the 1999–2000 fiscal year and the impact and effectiveness of the task force’s activities in the state.
- DHHS must prepare a report describing the impact of combining and allocating funds appropriated for the 1999–2000 fiscal year in the Acute Communicable Disease Control Fund, the Tuberculosis Control Fund, and the Sexually Transmitted Disease Control Fund into one Acute Communicable Disease Control Aid to Counties Grant.
- DHHS must report on the following programs by October 1, 2000: the Kenneth C. Royall, Jr., Children’s Vision Screening Improvement Program; the North Carolina Healthy Start Foundation; and the Adolescent Pregnancy Prevention Coalition of North Carolina.

In S.L. 2000-138, the General Assembly authorizes the Legislative Study Commission to study the following issues:

- insurance, managed care, and other health care issues, including insurance availability in beach and coastal areas; employer-sponsored, self-insured group health benefit plans; and parity in health insurance coverage for mental illness and chemical dependency benefits.
- health and public safety issues, including drug abuse during pregnancy and social anxiety disorder.

Also in S.L. 2000-138, the legislature authorizes the Joint Legislative Health Care Oversight Committee to study:

- elder care protection,
- state pain policy and medical practice,
- criminal background checks in the adult care industry.

*Jill D. Moore*
The biggest story in higher education legislation in the 2000 session of the General Assembly was the enactment of the Michael K. Hooker Higher Education Facilities Financing Act, authorizing, upon the approval of the voters of the state in November 2000, the issuance of $2.5 billion of general obligation bonds for capital improvements at the University of North Carolina (UNC) and $600 million of general obligation bonds for improvements in the North Carolina Community College System. The impetus behind the act was the recognition that in the next ten years the university is expecting tens of thousands of additional students and the community college system will be facing corresponding increases in demand.

The bill—S 912—would have, in its original 1999 form, authorized the sale of limited obligation bonds (meaning that the university and the community college system would pledge various kinds of assets as security for the bonds) and not general obligation bonds (which pledge the full faith and credit and taxing authority of the state for the repayment of the bonds). The difference was important because the state constitution requires a vote of the people in the issuance of general obligation bonds but not in the issuance of limited obligation bonds. In the original form of the bill, there would have been no referendum. The bonds faced stiff opposition because of the size of the proposal and the no-referendum feature.

The bill passed the Senate in 1999 at the $3 billion level with no referendum. It eventually passed the House in a version calling for $1 billion in university bonds and $200 million in community college bonds, contingent on a favorable vote in a referendum. The 1999 session ended with the two houses unable to agree on a final bill.

The bill became law—S.L. 2000-3—as the third enactment of the young 2000 session when a compromise was reached. The funding level would remain just above $3 billion (as in the version passed in the Senate), but the bonds would be general obligation bonds (as in the version passed in the House), thus requiring a referendum.

The $2.5 billion in university bonds will, if the referendum passes, be issued in amounts ranging from $202 million in 2000–01 to $524 million in 2005–06. The proceeds will be paid into a fund from which improvements in the following amounts will be funded:

- Appalachian State University ($82 million);
- East Carolina University ($190 million);
- Elizabeth City State University ($46 million);
- Fayetteville State University ($46 million);
- NC A&T State University ($156 million);
- NC Central University ($119 million);
- NC State University ($449 million);
- NC School of the Arts ($43 million);
- UNC at Asheville ($50 million);
- UNC at Chapel Hill ($499 million);
- UNC at Charlotte ($178 million);
- UNC at Greensboro ($160 million);
- UNC at Pembroke ($57 million);
- UNC at Wilmington ($108 million);
- Western Carolina University ($98 million); and
- Winston-Salem State University ($42 million).

In addition, $66 million is allocated for the digital conversion of UNC Public Television and related improvements; $10 million, for improvements at the North Carolina Arboretum at Asheville; and $5 million, for the School of Science and Mathematics. Also, another $72 million is allocated for projects at the various campuses that were delayed when money formerly available for those projects was transferred to Hurricane Floyd disaster relief. Finally, $25 million goes into a reserve for renovations, repairs, and cost overruns.

The $600 million in community college bonds will, again if the referendum passes, be issued in amounts ranging from $48 million in 2000–01 to $126 million in 2005–06. The proceeds will be paid into a fund from which improvements in the following amounts will be funded:

- Alamance Community College ($7.2 million);
- Asheville-Buncombe Technical Community College ($14.1 million);
- Beaufort County Community College ($7.2 million);
- Bladen Community College ($4.3 million);
- Blue Ridge Community College ($3.4 million);
- Brunswick Community College ($1.4 million);
- Caldwell Community College and Technical Institute ($7.1 million);
- Cape Fear Community College ($36.7 million);
- Carteret Community College ($6.8 million);
- Central Carolina Community College ($13.8 million);
- Central Piedmont Community College ($63.8 million);
- Cleveland Community College ($5.1 million);
- Coastal Community College ($19.5 million);
- College of the Albemarle ($6.7 million);
- Craven Community College ($7.5 million);
- Davidson County Community College ($6.1 million);
- Durham Technical Community College ($15.4 million);
- Edgecombe Community College ($8.0 million);
- Fayetteville Technical Community College ($38.5 million);
- Forsyth Technical Community College ($18.4 million);
- Gaston College ($9.6 million);
- Guilford Technical Community College ($40.0 million);
- Halifax Community College ($9.1 million);
- Haywood Community College ($2.6 million);
- Isothermal Community College ($3.3 million);
- James Sprunt Community College ($2.7 million);
- Johnston Community College ($10.2 million);
- Lenoir Community College ($12.8 million);
- Martin Community College ($1.6 million);
- Mayland Community College ($3.3 million);
- McDowell Community College ($2.9 million);
Higher Education

- Mitchell Community College ($5.6 million);
- Montgomery Community College ($0.6 million);
- Nash Community College ($5.2 million);
- Pamlico Community College ($2.5 million);
- Piedmont Community College ($4.8 million);
- Pitt Community College ($18.0 million);
- Randolph Community College ($3.0 million);
- Richmond Community College ($5.1 million);
- Roanoke-Chowan Community College ($0.9 million);
- Robeson Community College ($13.8 million);
- Rockingham Community College ($4.8 million);
- Rowan-Cabarrus Community College ($11.2 million);
- Sampson Community College ($4.1 million);
- Sandhills Community College ($13.6 million);
- South Piedmont Community College ($0.7 million);
- Southeastern Community College ($6.9 million);
- Southwestern Community College ($10.5 million);
- Stanly Community College ($5.1 million);
- Surry Community College ($9.5 million);
- Tri-County Community College ($1.0 million);
- Vance-Granville Community College ($17.1 million);
- Wake Technical Community College ($33.0 million);
- Wayne Community College ($13.0 million);
- Western Piedmont Community College ($5.3 million);
- Wilkes Community College ($8.4 million);
- Wilson Technical Community College ($6.3 million); and
- Center for Applied Textile Technology ($0.8 million).

Of these amounts, $499 million is for new construction and $101 million is for repair and renovation. The division is different for each college. For example, the allocation to Martin Community College is to be used entirely for repair and renovation, while $34.3 million of the allocation to Cape Fear Community College is for new construction and $2.4 million is for repairs and renovation. No matching funds are required for the renovation and repair allocations, but matching is required for new construction allocations and on the following basis: for counties rated lowest on the ability-to-pay scale formulated by the State Board of Community Colleges, no match is required at all; for those above a certain rating on that scale, matching is required on a sliding scale based on relative ability to pay.

The act (1) establishes the Higher Education Bond Oversight Committee to call for reports and analyze the progress of construction; (2) modifies certain state construction rules with respect to projects funded with bond proceeds; and (3) applies regular minority-participation rules and rules for use of historically underutilized businesses.

The act sets the referendum date at the general election day in November 2000.

Appropriations and Salaries

The University of North Carolina Current Operations

In even-year sessions, the General Assembly makes modifications to the appropriations made in the previous odd-year session for the second year of the biennium. The 1999 Appropriations Act appropriated a total of $1,656,863,227 from the General Fund to UNC for fiscal year 2000–01. The 2000 Appropriations Act (S.L. 2000-67, H 1840) adjusts UNC’s 2000–01 appropriations by increasing some items and making minor reductions in others. The largest
funding increase, $39,762,236, for university instructional programs, constitutes the bulk of the net $41,309,503 in increased funding for 2000–01.

**Community Colleges Current Operations**


**Capital Improvements**

The 2000 Appropriations Act contains no new capital improvement appropriations for the university or the community college system. The potentially huge amounts of new capital money are contained in the bond act discussed above.

S.L. 2000-168 (H 1853) does authorize thirteen capital improvement projects at UNC, all to be financed with funds other than state appropriations (chiefly, self-liquidating indebtedness). The largest of these projects are the Centennial Campus Infrastructure at NC State University ($19 million) and a parking deck at UNC at Greensboro ($11 million).

**Salaries**

Section 26.11 of S.L. 2000-67 provides sufficient funds for salary increases for UNC employees who are not subject to the State Personnel Act (primarily, faculty members) to receive an average salary increase of 4.2 percent, to be distributed to employees according to rules adopted by the Board of Governors. For teaching employees of the School of Science and Mathematics, the increase is 6.5 percent. UNC employees who are subject to the State Personnel Act received a combination of cost-of-living salary increase (2.2 percent across-the-board) and “career growth recognition awards” (averaging two percent).

Section 26.10 provides sufficient funds for salary increases for community college employees (full- and part-time) to receive an average salary increase of 4.2 percent, to be distributed to employees in accordance with rules adopted by the State Board of Community Colleges.

Most employees will also receive a one-time $500 bonus.

**UNC and Community College Governance**

**Community College Performance Budgeting**

In the 1999 session the General Assembly added a new G.S. 115C-31.3 directing the State Board of Community Colleges to create new accountability measures. Required standards were to include:

1. progress of basic skills students;
2. passing rate for licensure and certification examinations
3. goal completion of program completers;
4. employment status of graduates; and
5. performance of students who transfer into the university system.

Colleges could choose one other measure from a specified list. A college meeting the new performance standards was to be allowed to carryforward funds remaining in its budget up to 2 percent of the state funds allocated to the college for that year, to be used for the purchase of equipment and initial program start-up costs other than faculty salaries.

In the 2000 session, in Section 9.7 of the budget act (S.L. 2000-67, H 1840), the General Assembly retained those five performance standards as required standards for achieving the carryforward, and specified a list of six additional standards, from which one standard must be chosen and met by a college. A college may carryforward one-third of 1 percent of the state funds
allocated to the college for that year for each of those six standards that it meets. The newly defined additional standards are:

6. passing rates in developmental courses;
7. success rates of developmental students in subsequent college-level courses;
8. the level of satisfaction of students who complete programs and those who do not complete programs;
9. curriculum student retention and graduation;
10. employer satisfaction with graduates; and
11. client satisfaction with customized training.

The funds carried forward may be used for equipment purchase, initial program start-up costs, including faculty salaries in the first year of the program, and one-time faculty and staff bonuses.

In addition, the statute adds a twelfth standard, program enrollment. Each college is to publish its performance on the twelve measures annually in its electronic catalog or on the Internet and in its printed catalog each time the catalog is printed.

Millennial Campuses

In 1985 the General Assembly, through G.S. 116-36.5, created a special continuing and nonreverting trust fund, composed of proceeds from the lease or rental of property in the Centennial Campus of North Carolina State University, to be used for the development of the Centennial Campus. In 1999 the General Assembly amended that statute to add directly corresponding provisions for the Horace Williams Campus of the University of North Carolina at Chapel Hill.

In S.L. 2000-177 (S 586) the General Assembly in effect expanded the opportunity for the establishment of such funds for special campuses at each of the constituent institutions of the University of North Carolina (UNC). By new G.S. 116-198.34(8b) the Board of Governors, upon the recommendation of the President, may designate real property held by, or acquired by, a constituent institution as a “Millennial Campus.” From that point all moneys received through development of such a campus, including net rents, would be placed in a special nonreverting trust fund to be used exclusively for further development of that campus and its operation.

UNC School Programs Moved

In Section 10 of the budget act (S.L. 2000-67, H 1840), the General Assembly moved the Principals Executive Program and the Science Education Network from UNC at Chapel Hill to UNC General Administration, to be coordinated within the UNC Center for School Leadership Development.

Tuition and Student Aid

New need-based aid program. In Section 10.1 of the budget act (S.L. 2000-67, H 1840), the General Assembly allocated to the UNC Board of Governors $5 million in recurring funds to be used to establish and begin the implementation of a new need-based student financial aid program for in-state students attending UNC institutions for undergraduate and master’s degrees. The program is to be administered by the North Carolina State Education Assistance Authority.

Community college tuition status for aliens. In Section 9.8 of the budget act the General Assembly amended G.S. 115D-39 to add a provision specifying that a nonresident of the United States who has resided in North Carolina for a twelve-month qualifying period and has filed an immigration petition with the U.S. Immigration and Naturalization Service is to be considered a state resident for community college tuition purposes.

Aid for students attending private colleges. Section 10 of the budget act raises from $1,050 to $1,100 the amount per full-time equivalent student paid by the state to North Carolina private colleges that enroll North Carolina undergraduate students. These funds are used by the private colleges to provide financial assistance to needy North Carolina students. The act also raises from
$1,750 to $1,800 the amount that is granted to each full-time North Carolina undergraduate student attending a private college in this state.

*Parental Savings Trust Fund.* S.L. 2000-177 (S 586) amends G.S. 116-209.25 to provide that money in the Parental Savings Trust Fund (a savings trust fund for parents planning for college expenses, administered by the State Education Assistance Authority) may be invested in a strategy that may include a combination of fixed-income assets and preferred or common stocks or other appropriate investment instruments to achieve long-term returns through a combination of capital appreciation and current income. Contributions to the fund may be invested in individual, common, or collective trust funds of an investment manager, provided the investment manager has assets under management of at least $100 million and is subject to the jurisdiction and regulation of the U.S. Securities and Exchange Commission.

**Studies and Reviews**

*Proprietary schools.* In Section 9.8 of the budget act the General Assembly directs the Legislative Research Commission to study current state programs governing the licensure and regulation of proprietary schools.

*Higher education compensation.* In Section 10.5, the budget act directs the Joint Legislative Education Oversight Committee to study the need for an “Excellent Universities and Community Colleges Act” that would address the need and ability of the university and the community college system to attract and retain excellent faculty, including compensation issues.

*Global education programs.* In Section 10.6, the budget act directs the Joint Legislative Education Oversight Committee to study the various international studies and global education programs offered within the university system.

*UNC School Leadership Program.* In Section 10.11, the budget act directs the Board of Governors to review the programs under the UNC Center for School Leadership Development, focusing on accountability and performance measures.

*Principal Fellows Program.* In Section 10.11, the budget act directs the Board of Governors, in collaboration with the State Board of Education, to convene a representative committee to study the policies and legislation creating the Principal Fellow Program and to make recommendations that would increase the flexibility necessary for the program to attract a broader age, racial, and ethnic makeup into the applicant pool.

*Robert P. Joyce*
The General Assembly made sweeping changes in state Information Technology (IT) governance in 1999 by enacting S.L. 1999-434. That act created Article 10, Part 16, of Chapter 143B of the General Statutes. The intent of the act is “to strengthen the management of information technology in State government by enhancing the accountability for expenditures, providing for more cost-effective investments, improving operational efficiencies, and clarifying responsibilities for maximizing benefits from related assets” (G.S. 143B-472.40).

S.L. 1999-434 largely centralized information technology planning, procurement, and management under the Division of Information Technology Services (ITS), formerly known as the State Information Processing Services. Specifically, the act directed ITS to procure all information technology for all state agencies [excluding the University of North Carolina (UNC) system], coordinate a portfolio-based approach to agency IT assets, and institute enterprise management of state IT resources. The act sought to have all state IT assets inventoried, tie IT investments with agency business plans, and weigh the anticipated benefits of future IT investment against their total life cycle costs. This far-reaching legislation also called on ITS to provide recommendations on agency IT budget requests to the state’s Office of Management and Budget (OMB). To better track state expenditures for all IT-related categories, the act directed ITS, OMB, and the Office of State Controller to jointly develop a budgeting and accounting system for IT resources.

Realizing the importance of state agency cooperation, particularly among agency business representatives, S.L. 1999-434 required ITS to establish and use an Information Technology Management Advisory Council (ITMAC) to advise the office on business and technology matters. The ITMAC chair is to serve as a member on the state’s IT oversight body, the Information Resource Management Commission (IRMC). S.L. 1999-434 authorized the creation of an independent staff, to be funded out of ITS’ fee-for-service receipts, to facilitate the IRMC’s independent oversight of ITS.

Another important legislative change in 1999 codified the IRMC’s project certification process. S.L. 1999-347 specified that IRMC certification of compliance with IRMC policies, standards, and procedures is required for any agency IT project that is expected to cost more than $500,000. State agencies cannot allocate or expend funds on such IT projects without prior IRMC certification. Finally, the IRMC can suspend certification if it finds the project no longer complies
with its policies, standards, or procedures. Such a suspension could result in the additional suspension of appropriations or in the non-release of project funds (G.S. 143B-472.41).

In 2000 the General Assembly provided additional structure to the governance, organization, and operation of government technology. In addition, the legislature provided an important framework for the emergence of “digital government” and “eCommerce” applications. Included are the mechanisms to connect government to the Internet, to coordinate the automation of procurement, and to connect rural North Carolina to the Internet at an expense comparable to urban areas of the state. By legalizing electronic signatures, the legislature has opened up new avenues of Internet-based commerce. Finally, provisions were made to sanction cyberstalking, unleashing computer viruses, and making repeated unwanted telephone solicitation calls.

**Governance and Procurement of Information Technology Resources**

S.L. 2000-174 (H 1578) further defines and clarifies some of the requirements in S.L. 1999-434 in keeping with the Joint Select Committee on Information Technology’s findings and recommendations. It also recodifies these statutory provisions on information technology governance as Article 3D of Chapter 147 of the General Statutes.

The newly renamed Office of Information Technology Services (OITS) is transferred intact from the N.C. Department of Commerce to the Office of the Governor, along with the IRMC. The membership on the IRMC (now codified at G.S. 147-33.78) is expanded to include the President of the Community College system, who joins the state’s other educational representatives, the State Superintendent of Public Instruction (serving since the IRMC’s inception as one of the Governor’s Council of State appointments) and the President of the University of North Carolina, on the commission. The act also provides for local government representation on the IRMC. Both the Association of County Commissioners and the League of Municipalities are to have staff serving as nonvoting members. The act rescinds membership for the chair of the largely defunct Data Processing and Information Systems Committee.

S.L. 2000-174 provides that the Governor, after consultation with the General Assembly’s IT committees, is to appoint a state chief information officer (CIO) to manage and administer OITS. The CIO, who serves at the Governor’s pleasure, also acts as secretary to the IRMC.

S.L. 2000-174 also makes it clear that the General Assembly, the Judicial Department, and the University of North Carolina and its constituent institutions are exempt from OITS requirements (G.S. 147-33.80). These agencies may elect to participate in the programs, services, or contracts offered by the office.

S.L. 2000-174’s clarification regarding local governments’ use of OITS contracts for information technology procurement is of particular importance to local governments. Local governments, including local educational authorities and community colleges, “are not required to comply with otherwise applicable competitive bidding requirements when using contracts established by the Office.” (G.S. 147-33.82 (b) and G.S. 147-33.92 (b).)

While all contract information shall be made a matter of public record after the award of the contact, trade secrets, test data, and security information may remain confidential.

**Fees for Access to Agency Services through Electronic and Digital Transactions**

Section 8 of S.L. 2000-109 (H 1854), the 2000 Fees Bill, creates G.S. 66-58.12 to encourage public agencies (defined to include local governments and exclude the Judicial Department) to maximize citizen and business access to their services through the use of electronic and digital transactions. The act allows public agencies to determine which services may be made available to
the public through electronic means and requires the agencies to identify any inhibitors to electronic transactions, “including legal, policy, financial, or privacy concerns and specific inhibitors unique to the agency or type of transaction.” In addition, it directs that an agency shall not provide a transaction through the Internet that is “impractical, unreasonable, or not permitted by laws pertaining to privacy or security.” [G.S. 66-58.12(a).]

The act also authorizes agencies to charge a fee to cover the cost of permitting a transaction through the World Wide Web or other means of electronic access. This fee may be applied on a per transaction basis and may be calculated either as a flat fee or a percentage fee, as determined under an agreement. Such fee may be collected by the agency or by its third party agent. [G.S. 66-58.12(b).]

For a public agency that is not “counties, unit, special district, or other political subdivisions of government,” the fee imposed under subsection (b) must be approved by the Information Resource Management Commission (IRMC), in consultation with the Joint Legislative Commission on Governmental Operations. The revenue derived from the fee must be credited to a non-reverting agency reserve account. The funds in the account may be expended only for e-commerce initiatives and projects approved by the IRMC, in consultation with the Joint Select Committee on Information Technology. [G.S. 66-58.12(c).]

Since this legislation explicitly allows public agencies to charge transaction fees for service delivery over the Internet, it eliminates the uncertainty some local governments had expressed about their authority to do so. Cities and counties can now explore public policy and business considerations and determine whether to charge extra for Web-based services or to provide them at no additional cost to their customers.

**Uniform Electronic Transactions**

S.L. 2000-152 authorizes the use of “electronic signatures” in most types of transactions and contracts on a voluntary basis. An electronic signature is defined as an electronic sound, symbol, or process attached to, or logically associated with, a record and executed or adopted by a person with the intent to sign the record. The act also recognizes the legal validity of electronic transactions into which the parties have voluntarily entered, and it requires that electronic records be given legal effect. It also specifies that electronic records satisfy records retention requirements, subject to additional requirements as specified by those government agencies, such as the N.C. Department of Cultural Resources, having jurisdiction over the records.

**Electronic Procurement**

Section 7.8 of S.L. 2000-67, the 2000 Appropriations Act, creates G.S. 143B-472.70, which directs the Department of Administration and the Office of the State Controller, in conjunction with the Office of Information Technology Services (OITS), the Department of State Auditor, the Department of State Treasurer, the University of North Carolina General Administration, the Community Colleges System Office, and the Department of Public Instruction to develop electronic or digital procurement standards. Further, the Department of Administration, in conjunction with the Office of the State Controller and the OITS may, upon request, provide to all state agencies, universities, local school administrative units, and the community colleges training in the use of the electronic procurement system. The OITS is required to act as an Application Service Provider for an electronic procurement system and is to establish, manage, and operate this electronic procurement system through state ownership or through a commercial lease.
Web Portal

In order to allow persons to access state government services on a twenty-four-hour basis, S.L. 2000-67 (H 1840) also adds Article 11B to Section 7.9, Chapter 66, of the General Statutes, instructing the Office of Information Technology Services to develop, implement, and operate one or more centralized Internet Web portals. The Information Resource Management Commission (IRMC) must approve the plan. Each state department, agency, and institution under the review of the IRMC is required to functionally link its Internet or electronic services to the new centralized Web portal system.

Security of Electronic Records

S.L. 2000-71 (S 1260) addresses concerns by local governments and state agencies that the current public records statutes do not sufficiently protect the integrity of electronic records within the state’s computer systems. The act amends G.S. 132-6.1(c) to provide that a public agency is not required to disclose “security features of its electronic data processing systems, information technology systems, telecommunications networks, or electronic security systems, including hardware or software security, passwords, or security standards, procedures, processes, configurations, software, and codes.” This amendment makes it clear that information that could be used to gain unauthorized access to governmental information systems is protected from public disclosure.

North Carolina Rural Internet Access Authority

S.L. 2000-149 (S 1343) creates the North Carolina Rural Internet Access Authority to close the “digital divide” faced by the citizens of rural North Carolina. The purpose of the Authority is to manage, oversee, and monitor efforts to provide rural counties with affordable high-speed broadband Internet access and to serve as the central rural Internet access policy planning and coordinating body among state, regional, and local agencies and private entities. Administrative and professional staff support for the Authority is provided by the North Carolina Rural Economic Development Center, Inc.

The Authority will develop and recommend a plan and propose funding required to provide rural counties with high-speed broadband Internet access to achieve the following goals and objectives:

- provide dial-up Internet access from every telephone exchange within one year;
- make high-speed Internet access available to every citizen of North Carolina within three years, at prices in rural counties that are comparable to prices in urban North Carolina;
- establish two model Telework Centers in tier one or two enterprise zones by January 1, 2002;
- increase ownership of computers, related Web devices, and Internet subscriptions throughout North Carolina;
- use the Internet to provide reliable information to citizens about the availability and development of telecommunications and Internet services;
- promote the development of Internet applications to improve citizen interactions with government agencies and services and to facilitate the delivery of more comprehensive programs, including training, education, and health care;
- encourage open technology approaches from all potential providers to participate in the implementation of high-speed Internet access with no technology bias; and
- coordinate activities, conduct and sponsor research, and recommend and advocate actions to achieve its goals and objectives.

The Authority does not have the power of eminent domain or the power to levy any tax.
The legislation also provides for regional partnerships, as defined in G.S. 143B-437.21, with the assistance of the North Carolina Rural Economic Development Center, to study the information technology infrastructure and information technology needs of each county within its particular region. Each study is to include an inventory of existing information technology infrastructure, an inventory of information technology needs, an analysis of how the information technology needs affect industrial and business recruitment, and recommendations that address the information technology needs of each region.

The sunset for the Authority is December 31, 2003.

**Cyberstalking and Computer Viruses**

S.L. 2000-125 (H 813) amends G.S. 14-196.3 to make it unlawful for a person to use e-mail or other electronic communication methods to convey a threat of bodily harm to a person or their family, or physical injury to their property. In addition, it is unlawful to repeatedly use e-mail for the purpose of abusing, annoying, threatening, terrifying, or embarrassing any person, or to knowingly communicate a false statement concerning death, injury, illness, disfigurement, or criminal conduct with the intent to abuse, annoy, threaten, terrify, harass, or embarrass. Further, it is unlawful to knowingly permit an electronic communication device under one’s control to be used for these purposes. A violation of these provisions is a Class 2 misdemeanor.

The act also amends G.S. 14-455 and -456 to add the unauthorized access, damage, or denial of services of “computer programs” to the list of categories of computer-related crimes.

**Telephone Solicitation Calls**

S.L. 2000-161 (H 1493) creates G.S. 75-30.1 to provide a mechanism for citizens to control unwanted telephone solicitations. It also imposes requirements on those who make solicitations to residential phone subscribers. The requirements include the telephone solicitor providing clear identifying information and a return phone number, terminating the call upon request, and, if requested, removing the subscriber from the contact list for subsequent calls. Calls are limited to the hours of 8:00 A.M. to 9:00 P.M., and solicitors are required to keep a log of their calls for twenty-four months. Civil penalties of up to $500 per violation are allowed.

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The General Assembly made several changes in the Juvenile Code. One group of amendments clarifies procedures for terminating parental rights in pending abuse, neglect, or dependency proceedings. Another clarifies the status of a relative or other person who is appointed as guardian of the person for a child in an abuse, neglect, or dependency proceeding.

In relation to juvenile justice (delinquent and undisciplined juveniles), the General Assembly addressed a number of organizational and programmatic matters. Returning to an issue that was not resolved when the Juvenile Justice Reform Act was enacted in 1998, the General Assembly created the cabinet-level Department of Juvenile Justice and Delinquency Prevention.

**Appointment of Counsel in Juvenile Proceedings**

Under the Juvenile Code, indigent parents in abuse, neglect, dependency, or termination of parental rights proceedings are entitled to appointed counsel unless they waive the right to counsel. Every juvenile who is alleged to be delinquent is entitled to appointed counsel and must have appointed counsel unless the parent or someone else retains counsel for the juvenile. Counsel also must be appointed for an undisciplined juvenile who is alleged to be in contempt.

S.L. 2000-144 (S 1323) enacts the Indigent Defense Services Act, Article 39B of G.S. Chapter 7A, which applies to the appointment of counsel in these situations as well as in criminal cases and other proceedings in which a person is entitled to appointed counsel. The act, which is described more fully in Chapter 6, “Criminal Law and Procedure,” establishes the Office of Indigent Defense Services and the Commission on Indigent Defense Services in the Administrative Office of the Courts. For each judicial district the commission is required to determine methods for delivering legal services to eligible persons. The commission also must develop standards

- prescribing minimum experience, training, and other qualifications for appointed counsel;
- for the performance of public defenders and appointed counsel;
- for providing and compensating experts and others who provide services; and
- for determining indigency and assessing and collecting the costs of legal representation and related services.
The duties of the Director of Indigent Defense Services include conducting training programs for attorneys and others involved in the legal representation of persons entitled to appointed counsel. The act makes conforming amendments to various sections of the Juvenile Code, G.S. Chapter 7B, to make clear that the appointment and payment of counsel must be in accordance with rules adopted by the Office of Indigent Defense Services.

Abuse, Neglect, Dependency

Study of Expungement Issues

A proposed amendment to a bill dealing primarily with termination of parental rights would have made changes in the Juvenile Code with respect to the handling of information relating to abuse and neglect reports and court records. When initial committee discussion of the proposed amendment threatened to become prolonged, the bill was amended to provide instead for a study. Section 14 of S.L. 2000-183 (H 1609) directs the Legislative Research Commission (LRC) to study issues related to the expungement of information from the state’s Central Registry and from judicial records of juvenile cases involving alleged abuse, neglect, or dependency. It specifies that the study should consider whether expungement should be available

1. from the Central Registry when a county department of social services does not substantiate a report of abuse, neglect, or dependency; and
2. from the juvenile court record when alleged abuse, neglect, or dependency is not proven by clear and convincing evidence.

The LRC must make recommendations to the 2001 session of the General Assembly.

Guardian of the Person Appointed in Juvenile Proceeding

G.S. 7B-600 authorizes the court in an abuse, neglect, or dependency proceeding to appoint a guardian of the person for a child and describes a guardian’s responsibilities. (Unlike a guardian ad litem, whose duties are limited to representing the child’s interests in a particular juvenile proceeding, a guardian of the person has responsibilities much like those of a parent.) S.L. 2000-124 (S 1340) expands the section to clarify the status of the guardian when guardianship is the permanent plan for the child. Under new G.S. 7B-600(b), if the court has found that appointment of a guardian is in the child’s best interest and that guardianship is the permanent plan for the child, the court may terminate the guardianship or order that the child be reintegrated into a parent’s home only if the court finds that:

1. the relationship between the guardian and the juvenile is no longer in the juvenile’s best interest;
2. the guardian is unfit;
3. the guardian has neglected a guardian’s duties; or
4. the guardian is unwilling or unable to continue assuming a guardian’s duties.

The new subsection provides that if a party files a petition or motion for review, before conducting a review hearing the court may take any action necessary in order to make a determination in the case, including:

- order the county department of social services to investigate the guardian’s performance, make a written report, and give testimony about the investigation;
- use community resources in behavioral sciences and other professions in the investigation and study of the guardian; and
- ensure that a guardian ad litem has been appointed for the juvenile and has been notified of the pending motion or petition.

The act also makes conforming changes to G.S. 7B-906(b) and 7B-1000(a).
Standing of Guardian ad Litem to Seek Termination of Parental Rights

S.L. 2000-183 (H 1609) amends G.S. 7B-1103 to delete the requirement that a juvenile’s guardian ad litem have served in that capacity for at least one year in order to have standing to file a petition or motion for termination of parental rights.

Effect of Parent’s Failure to File Answer or Response

S.L. 2000-183 (H 1609) amends G.S. 7B-1107 to provide that when a parent fails to file a written answer or response to a petition or motion for termination of parental rights, the court, after a hearing on the petition or motion, may (instead of “shall”) issue an order terminating that parent’s rights. This change conforms the statute to a number of appellate court decisions stating that the court is never required to terminate parental rights.

Procedure for Seeking Termination by Motion in Pending Proceeding

Legislation enacted in 1998 provided that a petition for termination of parental rights could be filed as a motion in the cause in a pending abuse, neglect, or dependency proceeding. (Section 9.1 of S.L. 1998-229 added this provision in G.S. 7A-289.23A, which was recodified in the new Juvenile Code as G.S. 7B-1102.) The legislation was intended to streamline procedures for terminating parental rights by precluding the need to institute a new action for that purpose when the court already was exercising jurisdiction over the child and parent in a juvenile proceeding. The provision, however, left unanswered several key questions about notice, service of process, and other procedural details. S.L. 2000-183 (H 1609) addresses those questions.

The act adds to G.S. 7B-406(b) a requirement that the initial summons in every abuse, neglect, or dependency proceeding notify the person served that the court, after proper notice and hearing and a finding of statutory grounds, may terminate the parental rights of a respondent parent. It rewrites various sections of the termination of parental rights law, Article 11 of G.S. Chapter 7B, to distinguish clearly between termination proceedings that are initiated as new actions by the filing of a petition (by a “petitioner”) and those that are brought by the filing of a motion (by a “movant”) in a pending abuse, neglect, or dependency action.

S.L. 2000-183 amends G.S. 7B-1103 to provide that any person or agency with standing under that section to file a petition for termination of parental rights also may intervene in a pending abuse, neglect, or dependency proceeding for the purpose of filing a motion to terminate parental rights. The act completely rewrites G.S. 7B-1102 to provide that the motion and a required notice must be served in accordance with G.S. 1A-1, Rule 4 (the same method required for service of a petition and summons) if:

1. the person or agency to be served was not served originally with a summons;
2. the person or agency to be served was served originally by publication that did not include notice that the court, after proper notice and hearing and a finding of statutory grounds, may terminate the parental rights of a respondent parent;
3. a period of two years has elapsed since the date of the original action; or
4. the court orders that service be made in accordance with G.S. 1A-1, Rule 4.

Otherwise, service must be made in accordance with G.S. 1A-1, Rule 5(b), the method by which motions ordinarily are served.

As rewritten, G.S. 7B-1102 also provides that if a petition to terminate parental rights is filed in the same district in which the child is the subject of a pending abuse, neglect, or dependency proceeding, the court on its own motion or a party’s motion may consolidate the actions pursuant to G.S. 1A-1, Rule 42.

A new section, G.S. 7B-1106.1, sets out detailed requirements for the notice that a movant must prepare and that must be served with a motion for termination of parental rights. The

1. This is the statute number as it appears in S.L. 2000-183. The Codifier of Statutes is authorized to number the section differently.
Study of Grounds for Termination

Section 2.1 of S.L. 2000-138 (S 787) authorizes the Legislative Research Commission (LRC) to study issues relating to the termination of parental rights of rapists. The bill that originally proposed this study (H 1678) directed that the study include:

• Whether the parental rights of the rapist can be terminated as a matter of law upon conviction of the crime of rape of the mother.
• Whether rape should be grounds for termination of parental rights prior to the birth of a child.
• Whether the parental rights of the rapist can be denied, as a matter of law, when the conception of the child was as a result of the rape.
• Whether willingness to consent to adoption or voluntary release of parental rights can be excluded as a condition of a plea bargain agreement on a rape charge.

The LRC, if it decides to do the study, may report its findings and any recommended legislation to the 2001 General Assembly.

Bills That Did Not Pass

In 1999 the General Assembly enacted S.L. 1999-318 (H 1159), which added to the Juvenile Code several provisions relating to “violence-prone caregivers” in abuse, neglect, and dependency proceedings. H 1637, which did not pass, would have rewritten those provisions to modify and clarify requirements and procedures for criminal history checks and mental health evaluations of alleged violence-prone caregivers. The bill also would have authorized the court to impose conditions on the release of a juvenile from nonsecure custody pending a hearing on an abuse, neglect, or dependency petition.

Juvenile Justice —Delinquent and Undisciplined Juveniles

Creation of Department of Juvenile Justice and Delinquency Prevention

When the General Assembly enacted the Juvenile Justice Reform Act in 1998, it combined state-level functions that previously were carried out by the Juvenile Services Division in the Administrative Office of the Courts and the Division of Youth Services in the Department of Health and Human Services. There was disagreement, however, about whether those combined functions should be placed in a new state department or housed in either the Department of Crime Control and Public Safety or another executive agency or department. The General Assembly placed them temporarily in a new Office of Juvenile Justice in the Governor’s Office and indicated that it would return to the question of whether that office should be given departmental status. This year the legislature answered that question in the affirmative by enacting S.L. 2000-137 (H 1804), which creates the cabinet-level Department of Juvenile Justice and Delinquency Prevention.

The creation and attributes of the new department are set out in new Article 12 of G.S. Chapter 143B (G.S. 143B-511 through 143B-537). The new article largely mirrors the provisions of the notice largely mirror the contents of the summons that is required when a petition for termination of parental rights is filed. Unlike a summons, though, the notice

• directs the person or agency served to file a “written response” (instead of an “answer”) within thirty days.
• informs the parent that any attorney appointed previously to represent the parent in the abuse, neglect, or dependency proceeding will continue to represent the parent unless the court orders otherwise.
• must be served on the juvenile’s guardian ad litem if one has been appointed pursuant to G.S. 7B-601 and has not been relieved of responsibility.
of Article 3C of G.S. Chapter 147, which created the Office of Juvenile Justice and which S.L. 2000-137 repeals. Powers and duties formerly assigned to the Office of Juvenile Justice and the Governor are given to the new department and its secretary. Provisions that are relocated into the new article with few changes include those relating to juvenile facilities, juvenile court services, the comprehensive juvenile delinquency and substance abuse prevention plan, juvenile crime prevention councils, and the State Advisory Council on Juvenile Justice and Delinquency Prevention. New G.S. 143B-536 does expand the membership of the State Advisory Council on Juvenile Justice and Delinquency Prevention from nineteen to twenty, by adding the President of The University of North Carolina as an ex officio member. The same day that Governor James B. Hunt signed the bill, July 20, 2000, he named George L. Sweat, former chief of police in Winston-Salem, as the department’s first secretary. Sweat had been serving as director of the Office of Juvenile Justice.

S.L. 2000-137 makes numerous conforming changes to various parts of the General Statutes.

### Transfer of the Center for Prevention of School Violence

Section 19 of S.L. 2000-67 (H 1840), the 2000 Appropriations Act, transfers the Center for Prevention of School Violence from The University of North Carolina to the Office of Juvenile Justice (now, Department of Juvenile Justice and Delinquency Prevention). The section specifies that the center is to continue to consult with the university and the Department of Public Instruction to enhance research opportunities and such specialized study areas as teacher preparation, school resource officer development, suicide prevention, and best practices.

### Transfer of Guard Response Program

The Guard Response Alternative Sentencing Program serves as a probation option for certain first-time juvenile offenders who have been adjudicated delinquent and are subject to Level 2 dispositions under the Juvenile Code. Section 19.7 of S.L. 2000-67 transfers all of the functions, powers, duties, and obligations relating to the program from the Department of Crime Control and Public Safety to the Office of Juvenile Justice (now, Department of Juvenile Justice and Delinquency Prevention).

### Juvenile Information System Network

Section 19.1 of S.L. 2000-67 directs the Department of Justice to transfer to the Office of Juvenile Justice (now, Department of Juvenile Justice and Delinquency Prevention) the three positions and the $225,000 appropriated in the act for support of the Juvenile Information System Network.

### Management Information System Costs

Section 19.11 of S.L. 2000-67 authorizes the Office of Juvenile Justice (now, Department of Juvenile Justice and Delinquency Prevention) to use up to $300,000 of funds available for 2000–2001 to support recurring communications costs in its management information systems.

### Reporting Requirements for Staffing Study

In 1999 the General Assembly directed the Office of Juvenile Justice to study issues related to the staffing of juvenile training schools and detention centers and to develop a staffing plan for each training school and detention center. Section 19.2 of S.L. 2000-67 rewrites Section 21.4 of S.L. 1999-237 to extend to September 1, 2000 (from April 1, 2000), the date by which the Office (now, Department of Juvenile Justice and Delinquency Prevention) must report the results and recommendations of that study. It also adds a requirement that the report be made to the Joint Legislative Commission on Governmental Operations.
Multifunctional Juvenile Facility Changes

In 1999 the General Assembly authorized the Office of Juvenile Justice to establish a pilot program in Eastern North Carolina to provide juveniles in the juvenile justice system with custodial, rehabilitation, treatment, and program services, including substance abuse and sex offender services. That law (S.L. 1999-237) required the Office to contract with a private for-profit or nonprofit firm for the construction and operation of a multifunctional juvenile facility for up to one hundred beds. Section 19.5.(b) of S.L. 2000-67 rewrites Section 21.13.(j) of S.L. 1999-237 to require the Office (now, Department of Juvenile Justice and Delinquency Prevention) to make a written report no later than March 1, 2001, on the status of the pilot program, to evaluate the program annually, and to report findings of the evaluations by May 1, 2002, and May 1, 2003.

Section 21.12.(i) of S.L. 1999-237 authorized the Office of Juvenile Justice, in the discretion of the director, to provide services to and house juveniles involved in the North Carolina juvenile justice system in a facility constructed and operated by a private entity. Section 19.5.(a) of S.L. 2000-67 adds a provision specifying that the Office (now, Department of Juvenile Justice and Delinquency Prevention) shall house in the facility only juveniles who are in the North Carolina juvenile justice system.

Mecklenburg Multipurpose Group Homes

The General Assembly appropriated funds in 1998 (and reallocated those funds to the Office of Juvenile Justice in 1999) for construction of an eight-bed secure group home for female offenders in Mecklenburg County and the upgrading of the Gatling Detention Center. Section 19.6 of S.L. 2000-67 provides that those funds may be used to construct two eight-bed multipurpose group homes to house juvenile offenders. A maximum of two beds in each home may be designated for secure detention. The homes may be used to house male juvenile offenders until the population of female juvenile offenders in the area served increases to the point that both homes are needed for female offenders. The section authorizes the Office of Juvenile Justice (now, Department of Juvenile Justice and Delinquency Prevention) to contract with Mecklenburg County to implement the section and to assure that the multipurpose group homes are consistent with similar facilities in the state.

Forsyth Detention Center

In 1999 the General Assembly appropriated $1.75 million to the Office of Juvenile Justice for a grant-in-aid for construction of the Forsyth Detention Center. Section 19.9 of S.L. 2000-67 allows those funds to be carried forward to fiscal year 2000–2001 to allow for completion of a needs assessment by Forsyth County and for review and evaluation by the Office of Juvenile Justice (now, Department of Juvenile Justice and Delinquency Prevention) of the county’s plan for the center.

Boys and Girls Clubs

In 1999 the General Assembly directed the Office of Juvenile Justice to develop a pilot program to grant funds to local organizations of the Boys and Girls Clubs in the ten counties with the highest rate of training school commitments in fiscal year 1997–98 and provided $500,000 for that purpose. Section 19.3 of S.L. 2000-67 allows expenditures only for fully accredited organizations of the Boys and Girls Clubs and requires the Office (now, Department of Juvenile Justice and Delinquency Prevention), before expending funds to establish any new local organization, to reconsider counties that were eligible but not funded in fiscal year 1999–2000. The Office (now, Department) must report to the chairs of the House and Senate Appropriations Committees on the proposed new local organization, including its location and the amount the Office (now, Department) proposes to expend on it. The section rewrites Section 21.10.(c) of S.L. 1999-237 to change from April 1, 2000, to April 1, 2001, the date by which the Office (now,
Section 5.(n) of S.L. 2000-67 directs the Department of Health and Human Services (DHHS) to administer a grant program to award funds to approved Boys and Girls Clubs across the state. The act appropriates $1 million of federal Temporary Assistance for Needy Families (TANF) Block Grant Funds to DHHS for that purpose. The grants are for implementing programs that improve the motivation, performance, and self-esteem of youth and other initiatives to reduce school dropout and teen pregnancy rates. DHHS is required to encourage and facilitate collaboration, including the submission of joint applications if appropriate, between the Boys and Girls Clubs and Support Our Students, Communities in Schools, and similar programs. DHHS is required to make a progress report by April 1, 2001.

**Support Our Students (S.O.S.) Program**

*Statewide Expansion.* S.L. 2000-67 transfers $2,750,674 in federal TANF Block Grant funds to the Office of Juvenile Justice (now, Department of Juvenile Justice and Delinquency Prevention) for fiscal year 2000–2001 to support existing S.O.S. programs and to expand the program statewide. These funds may not be used for administration of the program.

*Administrative Cost Limits.* Section 19.11 of S.L. 2000-67 increases from $450,000 to $550,000 the amount the Office of Juvenile Justice (now, Department of Juvenile Justice and Delinquency Prevention) is authorized to use in fiscal year 2000–2001 to administer the S.O.S. Program, to provide technical assistance to applicants and local S.O.S. programs, and to evaluate the local programs.

**Treatment Services**

The provisions discussed in the two sections below are described more fully in Chapter 18, “Mental Health and Related Laws.”

**Child Residential Treatment Services Program**

Section 11.19 of S.L. 2000-67 requires the Department of Health and Human Services (DHHS) to establish a Child Residential Treatment Services Program and to implement it in consultation with the Office of Juvenile Justice (now, Department of Juvenile Justice and Delinquency Prevention) and other affected state agencies. The purpose of the program is to provide appropriate and medically necessary residential treatment alternatives for children who are at risk of institutionalization or other out-of-home placement. The program must include, among other things,

1. behavioral health screenings for all children at risk of institutionalization or other out-of-home placement;
2. appropriate and medically necessary residential treatment placements, including placements for youth needing substance abuse treatment services, children with serious emotional disturbances, and sexually aggressive youth;
3. multidisciplinary case management services; and
4. mechanisms to ensure that children are not placed in the custody of a department of social services for the purpose of obtaining mental health residential treatment services.

Specified memoranda of agreement must be executed before DHHS may allocate funds for the program. Memoranda of agreement between DHHS and other affected state agencies must address specifically roles and responsibilities relating to administration, financing, care, and placement of children at risk of institutionalization or other out-of-home placement. Memoranda of agreement between local departments of social services and area mental health programs, and the Administrative Office of the Courts, and the Office of Juvenile Justice (now, Department of
Juvenile Justice and Delinquency Prevention), as appropriate, must address issues pertinent to local implementation of the program.

DHHS, in conjunction with the Office of Juvenile Justice (now, Department of Juvenile Justice and Delinquency Prevention) and other affected agencies, must report on
1. the number of children served and other demographic information;
2. the amount and source of funds expended to implement the program;
3. information about the number of children screened, specific placements of children, and treatment needs of the children served;
4. the average length of stay in residential treatment, transition, and return to home;
5. the number of children diverted from institutions or other out-of-home placements, such as training schools and state psychiatric hospitals;
6. recommendations on areas of the program that need to be improved; and
7. other information relevant to successful implementation of the program.

DHHS must submit a progress report on implementation of the program by February 1, 2001, and a final report by May 1, 2002.

**Services to Children at Risk for Institutionalization or Other Out-of-Home Placement**

With respect to services provided to children who are at risk for institutionalization or other out-of-home placement, section 11.21 of S.L. 2000-67 requires the DHHS Division of Mental Health, Developmental Disabilities, and Substance Abuse Services to
1. eliminate the Eligible Violent and Assaultive Children (“Willie M.”) Program.
2. provide only treatment services that are medically necessary.
3. implement utilization review of services that are provided.
4. collaborate with the Office of Juvenile Justice (now, Department of Juvenile Justice and Delinquency Prevention), the Administrative Office of the Courts, other affected state agencies, local departments of social services, and area mental health programs to eliminate cost shifting and facilitate cost sharing with respect to treatment and placement services.

The division must adopt guiding principles for the provision of services, including the following:
- The service delivery system must be outcome-oriented and evaluation-based.
- Services should be delivered as close as possible to the client’s home.
- Services selected should be those that are most efficient in terms of cost and effectiveness.
- Services should not be provided solely for the convenience of the provider or the client.
- Families and consumers should be involved in decision making throughout treatment planning and delivery.

The division also must implement cost-reduction strategies, including preauthorization for all services except emergency services, levels of care to assist in the development of treatment plans, clinically appropriate services, and state review of individualized service plans for all children served.

DHHS must submit a progress report on implementation of the program by February 1, 2001, and a final report by May 1, 2002.

*Janet Mason*
The 2000 short session was a significant one for registers of deeds. In the short term, the most important act passed was new Article 9 of the Uniform Commercial Code, which limits the kinds of financing statements that will be filed in the offices of registers of deeds and changes the procedures for recording and indexing those statements. In the long term, however, it is very likely that the Uniform Electronic Transactions Act will be viewed as one of the most important developments for the registers in many years. It is by means of that act that the electronic recording of documents will eventually be accomplished.

**Office of the Register of Deeds**

**Security of Electronic Records**

S.L. 2000-71 (S 1260) amends G.S. 132-6.1(c) to provide that no government agency or office is required to disclose security features of its electronic data processing systems, information technology systems, telecommunications networks, or electronic security systems, including hardware or software security, passwords, or security standards, procedures, processes, configurations, software, and codes.

**Fees**

S.L. 2000-167 (S 1529) amends G.S. 161-10(a) to add two new fee provisions. New subsection (8a) adds a fee of $2.00 for access to the Vital Records Computer Network. This fee will be charged when a computer inquiry is made from a local office to the state Vital Records Office. New subsection (19) authorizes registers to charge a fee for performing miscellaneous services such as faxing documents and providing laminated copies of documents. The fee to be charged is the cost of providing the service.
**Electronic Signatures and Commerce**

Two acts, one federal and one state, have recently been passed that authorize the use of electronic signatures on virtually all documents used in commerce. The federal legislation, the Electronic Signatures in Global and National Commerce Act (known as “E-Sign”) (S 761) generally authorizes the use of electronic signatures on any document, provided the parties to the document agree to use them, and also authorizes electronic notarization of documents. An electronic signature is defined as “an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record.” The act preempts any inconsistent state laws, with the exception that if a state has enacted the Uniform Electronic Transactions Act (known as “UETA”), that act governs electronic signatures and commerce. The 2000 General Assembly enacted UETA as Article 40 of Chapter 66 of the General Statutes [S.L. 2000-152 (S 1266)]. This act is more comprehensive than the federal act but generally follows it. These acts, once banks and other major commercial actors begin to take advantage of them, will likely increase the demand for the electronic recording of instruments such as deeds, deeds of trust, and UCC financing statements. For registers of deeds perhaps the most important provision of UETA, as enacted in North Carolina, is G.S. 66-308.11, regarding the retention of electronic records. Subsection (g) of this statute provides: “This section does not preclude a governmental agency of this State from specifying additional requirements for the retention of a record subject to the agency’s jurisdiction.” Pursuant to this provision, a register of deeds can still require that all documents filed for recording be on paper until the office is ready to accept electronic recordings.

**Real Property Records**

**Real Estate Excise Tax**

Two bills make important changes in the real estate excise tax statutes. The first, S.L. 2000-16 (H 1545), amends G.S. 105-228.30 to provide that when an instrument conveying an interest in standing timber is recorded, the excise tax must be paid. It makes no difference whether the instrument is called a timber deed or a contract for the sale of timber, the excise tax is still owed. This act became necessary, if the excise tax was to continue to be collected on timber deeds and contracts, after the decisions in *Mills v. New River Wood Corp.*, 77 N.C. App. 576, 335 S.E.2d 759 (1985), and *Fordham v. Eason*, 351 N.C. 151, 521 S.E.2d 701 (1999). These cases held that contracts (and a timber deed is a contract) for the sale of standing timber conveyed interests in personal property, not real property, and were governed by Article 2 of the Uniform Commercial Code. The act became effective July 1, 2000, and applies to timber deeds and contracts executed on or after that date.

The second bill, S.L. 2000-170 (H 1544), enacts new G.S. 105-228.37 to establish a procedure for requesting a refund of an excise tax that was improperly paid. The procedure requires any person who believes that he or she paid more tax than was due to file a written request for a refund with the board of county commissioners within six months of the date the tax was paid. The board must hold a hearing on the request within ninety days of the date of the request. If the board declines to refund the tax, the taxpayer may appeal the board’s decision to the Secretary of Revenue, and the secretary’s decision is binding on the county. A taxpayer unhappy with the secretary’s decision may appeal to the superior court. If either the county board or the secretary orders a refund, interest may have to be paid on the amount refunded. New G.S. 105-228.37(f) provides that interest begins to accrue on overpayments of the tax thirty days after the request for a refund is filed with the board of county commissioners. The rate of interest is that set by the Secretary of Revenue pursuant to G.S. 105-241.1(i). The current rate is eight percent a year.

Before a tax is refunded, the taxpayer must record a new instrument with the register of deeds showing the correct amount of tax. If no tax was owed because the original instrument was recorded in the wrong county, the correction instrument must state that no tax was owed because it
was recorded in the wrong county. The correction instrument must include the names of the
grantors and grantees in the original instrument and the book and page where that instrument is
recorded. When a taxpayer records a correction instrument pursuant to this procedure, he or she
must inform the register of the reason for recording the correction. The taxpayer must also give the
register a copy of the decision granting the refund. In the case of a correction instrument reducing
the amount of the tax, the taxpayer may record a copy of the original instrument with a statement
such as “Correcting amount of excise tax.” In the case of an instrument recorded to show that the
original instrument was recorded in the wrong county, the taxpayer will have to prepare a
completely new instrument and sign it. This instrument should be acknowledged. After the
correction instrument has been recorded, the register must inform the county finance officer and
the Secretary of Revenue that the correction instrument has been recorded. This notification is
necessary so that the refund can be paid. This notification can be accomplished by sending a copy
of the recorded correction instrument to the finance officer, with a request that the finance officer
transmit it to the secretary.

This act became effective August 2, 2000, and is retroactive to January 1, 2000, which means
that a refund can be requested for any tax paid on or after January 1, 2000. Also, any person who
paid a tax after January 1, 2000, whose time for requesting a refund expires on or before August 1,
2000, has until October 1, 2000, to file a written request for a refund with the board of
commissioners.

Right-of-Way Plans

Effective January 1, 2001, S.L. 2000-68 (S 326) amends G.S. 136-19.4(e) to increase the fee
for filing a Department of Transportation right-of-way plan to $21 for the first page and $5 for
each additional page.

Torrens Land Titles

Session Law 2000-140 (S 1335) amends various provisions of Chapter 43 of the General
Statutes to delete references to a registration of titles book and require that all instruments be
recorded and indexed in the consolidated real property records. These amendments are consistent
with the amendments to the Torrens statutes enacted by the 1999 General Assembly in
S.L. 1999-59. The amendments enacted by S.L. 2000-140 are effective January 1, 2000, the
effective date of the 1999 amendments.

Uniform Commercial Code

Introduction

Session Law 2000-169 (S 1305) rewrites Article 9 of the Uniform Commercial Code, making
numerous significant changes. These changes—with the exception of the fee increases—become
effective July 1, 2001. In summary, the major changes are that the only financing statements that
will be filed in the registers of deeds’ offices are those in which the collateral is as-extracted
collateral, timber to be cut, or fixtures, and the filing fees are doubled, and in some cases more
than doubled. Part I of this discussion of the act reviews the law with regard to financing
statements filed on and after July 1, 2001. Part II reviews the law as it applies to statements
already filed in the registers’ offices as of June 30, 2001. The statutory citations are to the relevant
provisions of new Article 9.
Part I: Financing Statements Filed On and After July 1, 2001

Financing Statements Filed Locally

A “financing statement” is defined to include an initial financing statement and any record relating to the initial statement [G.S. 25-9-102(a)(39)], such as an amendment or a continuation. The only statements to be filed in the office of the register of deeds are those in which the collateral is as-extracted collateral, timber to be cut, or fixtures, all of which are statements related to real property [G.S. 25-9-501(a)(1)]. “As-extracted collateral” includes certain oil, gas, and other minerals and accounts arising out of the sale of such minerals [G.S. 25-9-102(a)(6)]. “Fixtures” are goods that have become so related to a particular parcel of real property that an interest in them arises under real property law [G.S. 25-9-102(a)(41)]. All other financing statements must be filed with the Secretary of State [G.S. 25-9-501(a)(2)].

What the Financing Statement Must Contain, Reasons for Refusing to File

A financing statement must contain the name of the debtor, the name of the secured party or a representative of the secured party, and a description of the collateral [G.S. 25-9-502(a)]. If the statement covers fixtures, timber to be cut, or as-extracted collateral, it must also indicate that it is a real property-related statement, indicate that it is to be filed with the real property records, provide a description of the real property concerned, and if the debtor does not have an interest of record in the real property, provide the name of the record owner [G.S. 25-9-502(b)]. There will be new standard forms for the UCC-1, financing statement, and UCC-3, financing statement changes, and although they are similar to the existing forms, they are not identical (G.S. 25-9-521).

Generally, a statement is filed when it is communicated to the register’s office with the filing fee or accepted by the register [G.S. 25-9-516(a)]. A statement is “communicated” to the office when it is sent as a written document or transmitted by other means—presumably electronic—agreed upon by both the sender and the register [G.S. 25-9-102(a)(18)].

Current Article 9 contains no list of reasons for which a register may refuse to file a statement. New Article 9 remedies this by setting forth the specific grounds for which the register may reject a communicated statement, and these are the only reasons for rejection [G.S. 25-9-520(a)]. The register shall refuse to file a statement for the following reasons [G.S. 25-9-516(b)]:

1. The record is not communicated by a method authorized by the register;
2. An amount equal to or greater than the applicable filing fee is not tendered (note that if the amount tendered is an overpayment, the statement must be accepted);
3. The record is unable to index the statement because
   a. in the case of an initial financing statement, the record does not provide the debtor’s name (G.S. 25-9-503 contains elaborate rules about the debtor’s name. If the debtor is an individual, it must state the individual’s name; if the debtor is a registered organization, such as a corporation or limited liability company, it must state the registered name; if the debtor is a decedent’s estate, it must give the name of the decedent; if the debtor is a trust, it must give the name of the trust; and if the debtor is an organization with no name, it must give the names of the partners, members, or associates.);
   b. in the case of an amendment or correction statement, the record does not identify the initial financing statement by file number and name of debtor or it identifies an initial financing statement that has lapsed;
   c. in the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual that was not previously provided in the financing statement to which the record relates, the record does not identify the debtor’s last name; or
   d. the record does not provide a sufficient description of the real property to which it relates; [G.S. 25-9-108(a) provides that a description of real property is sufficient “if
it reasonably identifies what is described.” Registers should be reluctant to reject a statement on this ground if any description of the real property, such as an address, is given.]

(4) In the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party;

(5) In the case of an initial financing statement or an amendment that provides a name of a debtor that was not previously provided in the financing statement to which the amendment relates, the record does not
   a. provide a mailing address for the debtor;
   b. indicate whether the debtor is an individual or an organization; or
   c. if the financing statement indicates that the debtor is an organization, provide (i) either a type of organization for the debtor, (ii) a jurisdiction of organization for the debtor, or (iii) an organizational number for the debtor or indicate that the debtor has none (this appears to mean that if any one of the three items of information is provided, the statement must be filed);

(6) In the case of an assignment reflected in an initial financing statement or an amendment that makes an assignment, the record does not provide a name and mailing address for the assignee; or

(7) In the case of a continuation statement, the record is not filed within the six-month period prescribed by G.S. 25-9-515(d). (A statement filed earlier than six months before the expiration date should be rejected, as should a statement filed after that date.)

Two additional rules apply to the rejection of tendered financing statements. The first is that if the register of deeds is unable to read or decipher the required information on the statement, then the statement will be deemed to not provide that information. The second is that if a statement does not indicate that it is an amendment or identify an initial financing statement, it is to be treated as an initial financing statement [G.S. 25-9-516(c)]. The absence of the debtor’s or secured party’s signature is not a reason for refusing to file a statement.

When a register of deeds refuses to file a statement for any reason, the register must communicate the refusal to the person who presented the record [G.S. 25-9-520(b)]. Until an office can receive statements electronically and communicate electronically, the communication of refusal must be in writing. The communication of refusal must state that the record has not been filed and give the register’s reasons for the refusal. It must also state the date and time the record would have been filed if the register had filed it. The communication of refusal must be made within three business days after the register receives the record for filing [G.S. 25-9-520(b)]. This three-day requirement apparently means that if the register mails the communication of refusal, it must be mailed within three business days, not that it must be received within that time.

Amendments, Terminations, and Continuations

As under current law, a financing statement may be amended, terminated, or continued. An amendment may add or delete collateral [G.S. 25-9-512(a)], change the name of a debtor [G.S. 25-9-507(c)] or secured party [G.S. 25-9-511(b)], make an assignment [G.S. 25-9-514(b)], continue a statement [G.S. 25-9-512(a)], or terminate a statement [G.S. 25-9-512(a)]. It is important to understand that in the new Article 9, the term “amendment” includes all subsequent filings, including continuations and terminations [G.S. 25-9-512(a)]. These changes, or subsequent filings, must meet the requirements of G.S. 25-9-512(a); that is, they must refer to the file number of the initial financing statement, give the name of the debtor, and a description of the real property to which the collateral is related.

Most financing statements are effective for five years from the date of filing [G.S. 25-9-515(a)], but a statement filed in connection with a manufactured-home transaction is effective for thirty years from the date of filing [G.S. 25-9-515(b)]. Any statement may be continued by filing a continuation statement within six months of the expiration date, and a continuation statement is not effective unless it is filed within the six month period [G.S. 25-9-515(d)], or, if the expiration
date falls on a holiday or weekend, on the next business day. A continuation statement continues the effectiveness of either the initial financing statement or a previous continuation statement for five years from the date the earlier statement would have expired [G.S. 25-9-515(e)].

**Filing and Indexing**

A separate filing and indexing arrangement for financing statements is no longer required. UCC statements may be filed in the real property records and indexed in the real property indexes. When a statement is filed, the register is required to assign a unique filing number to the statement [G.S. 25-9-519(a)(1)]. If the statements are filed in the real property records, this number should be the book and page where the statement is recorded. For example, if the statement is recorded in book 1005 at page 21, the file number should be “1005/21.” The reason for using the book and page as the file number will become apparent as additional indexing requirements are discussed below. The date and time of filing must be entered on the statement, and the register must maintain the filed record for public inspection [G.S. 25-9-519(a)(2) and (3)]. For the record copy, the register may either use one of the multiple copies of the statement submitted for filing or make a separate record copy.

Each statement is to be indexed in the name of the debtor, and any record owner of the real property shown on the statement, on the grantor index as though the debtor and record owner were mortgagors [G.S. 25-9-519(d)(1)]. The secured party is to be indexed on the grantee index as though that party were a mortgagee [G.S. 25-9-519(d)(2)]. If an amendment is filed that adds a debtor, or changes the name of a debtor, an index entry must be made in that name [G.S. 25-9-519(c)(2)]. If the initial financing statement shows an assignment, or an amendment is filed making an assignment, the assignor shall be indexed as grantor and the assignee as grantee [G.S. 25-9-519(e)].

All statements filed subsequent to the initial financing statement that relate to that statement must be indexed in a manner that associates them with the initial statement [G.S. 25-9-519(c)(1)]. This “association” requirement can be met by entering the file number of the initial financing statement (which is the book and page where that statement is recorded) in the description column of the index line for the subsequent statement.

Because these index entries are made in the real property indexes, the Minimum Indexing Standards apply. If the register makes a mistake in indexing a statement, the filing is still valid [G.S. 25-9-517]. Effective January 1, 2003, the indexing of a statement must be completed within three business days after the register receives the statement [G.S. 25-9-519(h)]. The register may not remove a debtor’s name from the index until one year after the financing statement lapses with respect to all secured parties [G.S. 25-9-519(g)]. Since these statements will be indexed in the real property indexes, the index entries will be permanent and will never be deleted.

In addition to these indexing requirements, G.S. 25-9-519(f) requires the register to index the statements in such a way that a record can be retrieved by the name of the debtor and by the file number of the initial financing statement, and that subsequent statements related to an initial statement can be associated and retrieved with the initial statement. This requirement is twofold. First, it means that a searcher in the register’s office should be able to locate a financing statement by using that statement’s file number. This requirement can be satisfied if the file number is the book and page where the statement is recorded. Second, it means that a searcher should be able to locate any subsequent statements by using the file number of the initial financing statement. This requirement can also be met by entering the file number (book and page where recorded) of the initial statement in the description column of each subsequent, related statement. Then, a searcher can check the index for the name of the debtor, and in the description column for any related statements identify the file number of the initial statement. By this procedure, the initial statement and all related statements can be retrieved, and this should satisfy the statutory requirements.
Claim of Inaccurate or Wrongful Filing

A new procedure allows a person to file a correction statement with the register if the person believes that a record indexed in that person’s name is inaccurate or was wrongfully filed [G.S. 25-9-518]. A correction statement must identify the file number of the initial financing statement to which it relates, indicate that it is a correction statement, and contain a statement of why the filer believes the record is inaccurate or misleading. A correction statement should be indexed on the grantor index in the name of the person filing it, and the file number of the initial financing statement to which it relates should be included in the description column. Since it is a notice filing, no grantee index entry is necessary. A correction statement does not affect the validity of any filed record [G.S. 25-9-518(c)]. The act also directs the Secretary of State to study the matter of fraudulent filings against public officials and report her findings and recommendations to the 2001 General Assembly.

Removal and Destruction of Records

The act allows the removal and destruction of records one year after a financing statement is no longer effective (G.S. 25-9-522). If, however, registers of deeds file financing statements and related filings in the real property records, they become part of the permanent records and are never purged.

Information Regarding Filings

A person who files a financing statement or subsequent record may request an acknowledgment of the filing from the register of deeds in either of two ways [G.S. 25-9-523(a)]. First, if the person furnishes a copy of the record, the register may be requested to enter the file number and date and time of filing on the copy and send it to the filer. Second, a person may file a record with no copy and request the register to send an image of the record to the filer that shows the file number and date and time of filing. There is no longer any procedure for obtaining information on a filing similar to the current use of a UCC-11 to make a request for information. The filings should be treated the same as deeds of trust for purposes of providing information about whether they are recorded and against what debtors.

Fees

Effective July 1, 2001, filing fees will be as follows [G.S. 25-9-525(a)];
$30, if the record is in writing and does not exceed two pages;
$45, if the record is in writing and is more than two pages, plus $2 for each page over ten pages; and
$30, if the record is communicated by a medium other than in writing.
It is permissible for a deed of trust or mortgage to be filed as a financing statement [G.S. 25-9-502(c)], and the fee for such a filing is the same as for other deeds of trust [G.S. 25-9-525(e)].
Effective September 1, 2000, the relevant provisions of current Article 9 are amended to increase all fees from $15 to $30. The fee for furnishing a copy of a financing statement or assignment pursuant to G.S. 25-9-407 remains $1 per page (S.L. 2000-169, sections 45, 46, 47, and 48).

Part II: Financing Statements Filed Prior to July 1, 2001

Statements Not Related to Real Property

The act’s treatment of financing statements and related amendments, continuations, and terminations filed with the register of deeds prior to July 1, 2001, depends on whether the statement is related to real property. If a statement is not related to real property (the collateral is
not as-extracted collateral, timber to be cut, or fixtures), the register must not accept for filing any record related to that statement [G.S. 25-9-710(b)]. Generally, if these financing statements are to continue to be effective, new filings must be made in the Secretary of State’s office within one year of July 1, 2001 [G.S. 25-9-703 and -706], and any amendments to these statements must be filed with the Secretary of State [G.S. 25-9-707]. The register is, however, required to retain the indexes and records of these statements filed prior to July 1, 2001, until June 30, 2008 [G.S. 25-9-710(c)]; after June 30, 2008, they may be disposed of [G.S. 25-9-710(e)]. During this time, registers must also accept and process requests for information concerning these statements, just as they would under former G.S. 25-9-407 [G.S. 25-9-710(d)]. The fees for processing these requests are the fees in effect on June 30, 2001 [G.S. 25-9-710(d)], which are $30 for issuing a certificate regarding statements on file for a particular debtor and $1 per page for furnishing a copy of a financing statement or assignment.

**Statements Related to Real Property**

Financing statements related to real property (the collateral is as-extracted collateral, timber to be cut, or fixtures) filed with the register of deeds prior to July 1, 2001, continue to be effective after that date [G.S. 25-9-703(a) and 25-9-705(b)]. The register is not required to process any requests for information regarding these statements [G.S. 25-9-710(f)]. Amendments, continuations, and terminations related to these statements will be filed in the register’s office [G.S. 25-9-705(d) and 25-9-707], and the filing fees applicable to these subsequent filings are those provided in G.S. 25-9-525, discussed in Part I. Although the act contains no directions on this point, it appears that subsequent filings should be recorded in the real property records and indexed in the real property indexes. There is no legal requirement, or practical reason, for them to be filed and indexed with the UCC financing statements. The file number of such a subsequent statement should be the book and page where it is recorded, and the file number of the initial financing statement affected should be entered in the description column of the index.

**Marriage Laws**

**Superior Court Judge as Officiant**

S.L. 2000-58 (H 973) amends G.S. 51-1 to authorize North Carolina superior court judges and superior court judges of other states to perform marriage ceremonies. The act became effective June 30, 2000, and expired September 15, 2000. It is apparent from this early expiration date that the act was passed to accommodate a particular couple who wanted their wedding ceremony performed by a superior court judge, perhaps a relative.

William A. Campbell
While the 2000 General Assembly did not make significant changes in the law regarding land use regulation and planning, notable new laws were enacted regarding floodplain zoning, code enforcement, and transportation planning. In response to the largest natural disaster in the state’s history, state laws on floodplain management were updated. Cities were granted new authority to deal with abandoned houses and dilapidated structures. Legislation was enacted also to encourage coordinated transportation planning in both urban and rural areas of the state. In addition, numerous local bills were enacted to address various land use issues, most notably bills addressing the use of conditional zoning in Mecklenburg County and its municipalities.

**Floodplain Zoning**

The devastating floods resulting from Hurricane Floyd in the fall of 1999 led to proposals to strengthen the state’s laws regarding the regulation of development in flood hazard areas. There were proposals to:

1. designate flood hazard areas that could be more extensive than those on flood hazard maps adopted under the National Flood Insurance Program (NFIP);
2. prohibit various land uses in the floodplain (previous legislation addressed the issue of hog farm waste lagoons in the floodplain);
3. require that development be located at least two feet above the one hundred-year flood level; and
4. limit state disaster relief in communities that failed to adopt ordinances meeting state standards.

These provisions were included in S 1337 and H 1632, as proposed by the state and recommended by the Environmental Review Commission. Several of the provisions proved to be quite controversial and sparked opposition from local government officials and developers.

On June 30 the House Environment and Natural Resources Committee approved a revised version of the bill, substituted it for an unrelated bill previously adopted by the Senate (S 1341), and sent it to the House floor for action. The revised version reduced the required level above which development must be constructed from two feet above the one hundred-year flood level to one foot above that flood level, deleted the limit on disaster relief, and added restrictions on manufactured housing in floodplains. The full House approved the revision on July 6. When this version was received in the Senate it was sent to committee, and it appeared that no action would be taken in the 2000 session. However, on July 13, the last day of the session, the Senate removed the bill from committee and failed to concur in the House amendments. A conference committee was appointed, the conferees agreed on a revised version of the bill, and both the House and Senate approved the conference committee’s version.

S.L. 2000-150 (S 1341) modernizes G.S. 143-215.51 to 143-215.61 to convert the program covered under these provisions from a floodway regulatory program to a floodplain regulatory program. The act defines flood hazard areas as those areas located on the one hundred-year floodplain, as defined on maps prepared pursuant to the NFIP or maps approved by the Department of Crime Control and Public Safety (the state maps must be prepared according to NFIP standards). Local governments are authorized to designate larger areas as flood hazard areas at their discretion. New solid waste disposal facilities, hazardous waste management facilities, salvage yards, and chemical storage facilities are prohibited in the one hundred-year floodplain. Local flood hazard prevention ordinances are authorized but not required. Any local ordinance that is adopted must meet NFIP requirements, prohibit the restricted uses noted above, and provide that any chemical or fuel storage tanks in the floodplain be elevated, watertight, and securely anchored. Local governments are authorized to purchase existing structures in flood hazard areas to prevent damage from flooding and they may use their power of eminent domain to do so, if necessary. If a city does not adopt a flood hazard ordinance within its extraterritorial jurisdiction, the county is then authorized to do so. Effective July 1, 2001, the existence of a flood hazard ordinance becomes a factor in the setting of priorities for allocation of moneys from the state’s Clean Water Revolving Loan and Grant Fund. Also, the Environmental Review Commission is directed to study a variety of flood-related issues, including the need to increase minimum elevation requirements for structures and other measures needed to reduce flood damage. The Environmental Management Commission is directed to study the impacts of development within river basins on the intensity, frequency, and duration of floods, and the commission must submit a report to the Environmental Review Commission on the topic by February 15, 2001.

**Zoning, Subdivision, and Jurisdiction**

No statewide laws were enacted in 2000 regarding zoning or subdivision authority. Local bills were enacted, the most significant being a legislative response to the judicial invalidation of the City of Charlotte’s procedure for making site-specific conditional rezonings.

**Conditional Zoning**

Since the mid-1980s, a number of cities and counties in North Carolina have adopted conditional use district zoning. This zoning technique, pioneered by the City of Greensboro, involves placing property into a zoning district that has no permitted uses or “uses by right.”
However, one or more uses are allowed upon the issuance of a conditional or special use permit. The local government typically processes a request for rezoning into a conditional use district (which by state law can only be considered at the landowner’s request) and an application for a conditional use permit concurrently. By carefully following the required procedures for both the rezoning and the permit decision, the local government avoids what would otherwise be illegal contract zoning.

The problem for cities and counties as regards this process is that it requires that two legally different decisions—the rezoning and the permit decision—be made at the same time. The decisions are usually based on a single hearing, although the legal requirements and procedures for the two types of hearings vary significantly. The rezoning decision, for example, is legislative in nature. Elected officials can discuss the matter with interested citizens at any time, and at the hearing anyone can speak. The decision on rezoning is left to the good judgment and discretion of the elected officials. The conditional use permit decision, on the other hand, is quasi-judicial. Board members are not to discuss the case prior to the hearing and the decision is to be made on the basis of evidence presented at the hearing, where substantial evidence must be presented to establish that the application meets the standards in the ordinance. Further, written findings are required to support the board’s decision.

The practice that had evolved in Charlotte and Mecklenburg County was to treat this process as if it involved regular rezoning. No attempt was made to conduct a quasi-judicial hearing, to make findings, or to limit consideration to evidence presented at the hearing. Some 75 percent of the Charlotte rezonings in 1997–99 were made in this manner. However, neighbors who opposed a conditional use rezoning successfully challenged this process in *Massey v. City of Charlotte*, No. 99-CVS-18764 (April 17, 2000), which was heard by the state’s Special Superior Court Judge for Complex Business Cases. The judge held that the city had no authority to undertake conditional zoning without using a conditional use permit (and without following the requisite procedure for those permits). The judge emphasized that the city did not have statutory authority for what amounted to a purely legislative conditional zoning.

In response, Charlotte, Mecklenburg County, and the other cities within the county sought local legislation to authorize conditional zoning without including a quasi-judicial conditional use permit as part of the process. S.L. 2000-84 (S 1288) accomplishes this for Charlotte, Cornelius, Davidson, Huntersville, Matthews, Mint Hill, and Pineville. S.L. 2000-77 (S 1289) does the same for Mecklenburg County. These bills allow for the creation of “conditional zoning districts” with individualized development standards (termed “rules, regulations, and conditions”) adopted as part of the ordinance. Property can be rezoned to such a district only “in response to and consistent with” a petition filed by the property’s owner. The petition must include a site plan, a specification of the actual use planned, and any rules, regulations, or conditions that will govern development of the site. The petitioner must conduct at least one community meeting on the proposal prior to the official hearing on the rezoning, and the rezoning decision is to be made “in consideration of” relevant land use plans for the area, including the comprehensive plan, strategic plans, district plans, area plans, neighborhood plans, corridor plans, and other land use policy documents. These rezonings may not be adopted between the date of the election of a new governing board and the time that the new board takes office. Both acts expire on August 31, 2001. While these bills provide statutory authority for a purely legislative conditional zoning, other legal issues regarding this procedure (such as contract zoning, spot zoning, and constitutional due process issues) remain unresolved.

**Subdivision Regulations**

One local bill affecting subdivision regulation was adopted in 2000. S.L. 2000-11 (H 1497) amends the definition of subdivision in G.S. 153A-335 for Richmond County to exempt divisions into parcels greater than five acres with no street right-of-way dedications.
Jurisdiction

The General Assembly adopted two local bills affecting extraterritorial jurisdiction for planning and land use regulation. S.L. 2000-78 (S 1363) authorizes a two-mile extraterritorial jurisdiction for the City of Whiteville (extending the one mile the city had under the General Statutes). S.L. 2000-63 (H 1730) repeals the provision of the Village of Sugar Mountain charter that prevented the village from exercising any extraterritorial jurisdiction or using the state annexation statutes.

Local Regulation of Video Poker Establishments

South Carolina outlawed video poker gambling effective July 1, 2000. The General Assembly was concerned that this might result in an influx of video gaming machines into North Carolina. S.L. 2000-151 (S 1542) addresses this concern by imposing substantial state regulations on the location and operation of such machines. Among these regulations is the directive that the only machines that may be operated are those that were lawfully in operation in the state on or before June 30, 2000, and that were listed for taxes here by January 31, 2000. Additionally, any location with machines must be at least 300 feet from another location containing machines. There are restrictions also on the age of players, hours of operation, placement of machines, and advertising.

The act specifies that its main regulatory provision, G.S. 14-306.1, does not preempt any more restrictive local ordinance adopted under either Article 18 of G.S. Chapter 153A, for counties, or Article 19 of G.S. 160A, for municipalities. Thus local zoning provisions can add additional restrictions on video poker establishments.

Building and Housing Code Enforcement

Building Condemnation

S.L. 2000-164 (S 1152) provides an important new tool for cities dealing with dilapidated nonresidential buildings. This legislation amends the municipal building condemnation statutes (G.S. 160A-428 to -432), portions of which date back to 1905. Although the new law expands municipal authority to deal with blighted buildings, the bill is a mixed blessing because it also adds new restrictions on the power to condemn.

It is important to note that the new act does not affect counties. The county building condemnation statutes (G.S. 153A-366 through -372) remain unchanged.

Also, S.L. 2000-164 makes it clear that the building condemnation statutes (sometimes referred to as the unsafe building statutes) may be applied to residential as well as nonresidential structures. (Some municipalities have been reluctant to condemn residences under this authority, relying instead on minimum housing ordinances.) The criteria for condemning a residential structure remain as before (i.e., danger to life because structures are susceptible to fire or because of the bad conditions of walls, overloaded floors, defective construction, decay, unsafe wiring or heating systems, inadequate means of egress, or other causes).

Most of the changes made by S.L. 2000-164, however, apply to the condemnation of nonresidential buildings or other structures. There are now three requirements for condemning a nonresidential building. First, it must be vacant or abandoned. This requirement is new and could serve as an important limitation on the ability of cities to condemn. Second, it must be in such a dilapidated condition that it causes or contributes to blight, disease, or vagrancy or is a fire or safety hazard; that it is dangerous to children; or that it tends to attract persons intent on criminal activities or other activities, which would constitute a public nuisance. This last criterion is new. Finally, the building must be located in a “community development target area.” Fortunately for cities, these target areas are broadly defined so that this limitation should not unduly hamper condemnation efforts. Target areas include economic development zones under G.S. 105-129.3A and “nonresidential development areas” under the Urban Redevelopment Act [G.S. 160A-
503(10)]. However, a city council may also designate as a target area any area with similar characteristics that the city finds in special need of revitalization “for the benefit and welfare of its citizens.” A provision in an earlier version of S 1152 limiting the power to condemn nonresidential buildings to cities with populations greater than 400,000 was deleted.

The new law also expands the remedies available to cities when a building owner fails to comply with an order to take corrective action. S.L. 2000-164 allows a city to have the building or structure removed or demolished without the usual court order. The amounts incurred by a city in connection with such a removal or demolition shall form a lien against the property, which is treated as if it were a special assessment lien. The law directs the city to sell the usable materials from the building and any personal property, fixtures, or appurtenances found in or attached to the removed or demolished building. Any resulting balance remaining from the sale of materials must be deposited with the clerk of superior court and disbursed by the court to the proper party. These procedures are very similar to those that are required when a local government takes direct action under a minimum housing ordinance to remove or demolish property for which the owner has taken no corrective action.

**Minimum Housing Ordinances**

Housing code administrators are authorized under North Carolina law to give an owner of a deteriorating residence the choice of either repairing the building or closing and vacating it. But if the owner chooses the second option, the result may pose difficulties for the city. Boarding up deteriorating buildings can often have a blighting influence on a neighborhood. Many of these buildings suffer decay and neglect and become targets for vandalism. Their condition may further decline and they often become dilapidated in the process.

Since 1989 North Carolina law has allowed certain larger cities to order the demolition of such units if specific conditions were met. To take advantage of this authority under G.S. 160A-443(5a), the city’s governing board must find that the building owner has abandoned any intention to repair or improve the dwelling, and the dwelling must have remained vacant and closed for at least one year after the city ordered code compliance. (For several of the largest cities this one-year period may begin when the housing inspector commenced proceedings against the owner.) The city council must make specific findings and conclude that the vacant, boarded-up unit is inimical to the health, safety, morals, and welfare of the community. If the unit remains in deteriorated condition but is not dilapidated, the owner has ninety additional days in which to repair it or demolish it. If the unit has declined into a dilapidated condition, the owner must then demolish it within another ninety days. If the owner fails to act, the city itself may demolish the dwelling.

S.L. 2000-186 (S 414) expands the applicability of G.S. 160A-443(5a) to include all municipalities located in counties with a population in excess of 71,000. Several dozen counties meet this standard; this statutory authority applies only to cities within those counties, however, and not to the counties themselves. Formerly the statute applied only to cities in counties with a population of greater than 163,000.

**State Review of Building Plans**

G.S. 58-31-40 provides that the Commissioner of Insurance (through the North Carolina Department of Insurance staff) must inspect each state property annually to assess how well each is protected from fire. In addition, the Commissioner has been required to review for fire safety the building plans for any building proposed for use by the state, any local government, or any school district before the sponsoring agency or governmental unit approves those plans. S.L. 2000-122 (H 1699) amends G.S. 58-31-40 to exempt from this requirement those projects (and attendant building plans) of cities, counties, and school districts that include less than 10,000 square feet of space.
**Height Limits**

Local legislation first adopted in 1987 and amended in 1989 and 1993 limits the height of buildings in three beach towns (Holden Beach, Long Beach, and Sunset Beach) to thirty-five feet unless a more-relaxed standard is adopted in a municipal ordinance and approved by town voters in a referendum. S.L. 2000-60 (H 1598) changes the act’s reference from Long Beach to Oak Island (the town’s new name after its consolidation with Yaupon Beach). It also provides that Oak Island’s town council must establish building height limits in accordance with general law, rather than in accordance with this act, with respect to those areas of Oak Island north of the Atlantic Intracoastal Waterway.

**Community Appearance**

In 1999 the state imposed a one-year moratorium on new billboards on I-40 from Orange County to Wilmington. A proposal to extend that moratorium for an additional year produced considerable legislative maneuvering in the closing days of the session. The moratorium extension bill passed the Senate on June 29 and was given a favorable report by the House Judiciary I committee the following day (June 30). It was placed on the calendar for House action the next legislative day (July 5, following a weekend break for the July Fourth holiday). However, when the House took up the bill, it was defeated. Governor Hunt and the bill’s supporters worked successfully overnight to change a few minds, and in a relatively rare move, the House, on July 6, voted to reconsider the bill and then approved it. S.L. 2000-101 (S 1275) extends the moratorium to July 1, 2001.

Abandoned vessels in the state’s waterways are unsightly and sometimes leak fuel and other contaminants that cause water quality degradation. H 1625 proposed to make it a misdemeanor to abandon a vessel in state waters and to authorize the state to remove such a vessel if the last registered owner failed to do so after due notice. S.L. 2000-74 (H 1625) converted this bill to a pilot program for the removal of abandoned vessels in the Neuse River Basin. The plight of several abandoned and leaking vessels near the newly completed Neuse River bridge in New Bern had been the most visible example of this problem noted by the bill’s supporters. The pilot program is to run from July 1, 2000, to January 1, 2003. An abandoned vessel is defined as one that has been left unattended for ninety consecutive days or that is in a wrecked, junked, or substantially dismantled condition. The Department of Environment and Natural Resources (DENR) may remove the vessel and restore the site if the owner fails to do so within specified times (fifteen days after notice for vessel removal, forty-five days for site restoration). The owner is responsible for all costs, and DENR can sell the vessel, its cargo, tackle, and equipment to help recover costs.

Several local bills affecting community appearance also were adopted in 2000. S.L. 2000-108 (H 684) authorizes Apex, Cary, Garner, Kinston, and Morrisville to adopt ordinances regulating the planting, removal, and preservation of trees and shrubs. An ordinance so adopted must exclude property being developed pursuant to a forestry management plan prepared by a registered forester. Provisions in this bill relating to a transferable development rights program in Huntersville, which had been included in 1999, were deleted prior to adoption.

In 1999 Roanoke Rapids was authorized to send an annual notice to chronic violators of the city’s overgrown vegetation ordinance. Two additional cities obtained this authority in 2000. S.L. 2000-33 (H 1606) adds High Point to the original act, and S.L. 2000-38 (H 1555) adds Gastonia. S.L. 2000-104 (S 1359) expands the authority of Winston-Salem to deal with abandoned vehicles, junk vehicles, and vehicles that are safety hazards. The law defines a vehicle that constitutes a safety hazard to be one that is a breeding ground for rats, is leaking gas or oil, is in danger of falling or turning over, or is a source of danger to children. S.L. 2000-106 authorizes Dare County to establish a utility district for the purpose of placing electric and telephone lines underground. S.L. 1999-127 had provided this authority regarding electric lines; this act extends coverage to telephone lines. The utility district is given the authority to assess each electric and
telephone customer a monthly fee (up to $1 for residential customers, $5 for commercial and industrial customers) for the costs involved.

Transportation

Local Government Participation in State Highway Projects

Prior to 1987 it was not uncommon for larger municipalities to advance state highway construction projects in the Transportation Improvement Program (TIP) that they favored by offering to contribute toward or “participate” in the cost of those projects. As far as the North Carolina Department of Transportation (NCDOT) was concerned, municipal financial participation in certain TIP projects freed up state funds that could be used for other TIP projects. However, some smaller units of government found that the projects they supported were constantly postponed so that the state could take advantage of this financial leveraging. Because of strong reaction to this practice, the substantial package of urban transportation legislation adopted by the General Assembly in 1987 (1987 N.C. Sess. Laws Ch. 747) included limitations on the ability of cities to participate in TIP projects. From 1987 until 2000 cities could generally participate in TIP projects only according to a sliding scale based on their populations. Cities with populations under 10,000 could not participate at all, whereas cities with populations greater than 100,000 could contribute no more than 25 percent of a project’s cost.

S.L. 2000-188 (S 1200) removes most of these limitations. It allows, but does not require, a city to participate in the right-of-way and construction costs of a state highway improvement that has been adopted as part of the TIP. However, new G.S. 143-66.3(c1) provides that the participation of a particular city in the cost of a project shall not disadvantage TIP projects elsewhere. Similarly, NCDOT may not reward the participating city by providing additional funding for other projects in that same municipality. However, any state or federal funds that are saved by municipal participation in a TIP project are retained for distribution to the same funding region in which the participating city is located under the formula provided in G.S. 136-17.2A.

A city participates in the cost by reimbursing NCDOT for the city’s portion of the costs NCDOT incurs. However, S.L. 2000-188 provides that NCDOT may charge interest on these amounts owed beginning on a date three years after project construction is initiated. All participation arrangements must be subject to an agreement reached by the city and NCDOT.

The new law also provides Burke, Cabarrus, and Mecklenburg counties with authority to participate in TIP projects in the same manner available to cities.

Metropolitan Planning Organizations

S.L. 2000-80 (H 1288) may seem arcane, but it could turn out to be an important piece of growth management legislation. The legislation encourages, but does not require, the consolidation of existing metropolitan transportation planning organizations (MPOs) throughout the state into larger, more regional organizations. It does, however, require MPOs in federally designated air-quality “non-attainment areas” to develop a joint plan for improving air quality.

S.L. 2000-80 first recognizes MPOs in the state statutes. Federal law (23 U.S.C. § 134) requires a state to organize MPOs for certain urban areas so that they may review and advise the state on transportation projects for which federal funds are to be used. The organization and functioning of these organizations composed of local elected officials had previously been mentioned only in passing in the statutes.

The original thrust of H 1288 was to require certain MPOs in the same region of the state to combine so as to overcome a very fragmented system with multiple MPOs in the same large urban regions. For example, the greater Charlotte region includes no fewer than six MPOs: one for Mecklenburg and Union counties, one for Cabarrus, one for Gaston, one for York County, South Carolina, one for the Hickory area, and one for Rowan County. One merger proposed by the bill,
requiring the MPO for Durham and Orange counties to merge with the one for Wake County, received substantial attention. Opposition to the proposed required mergers resulted in a version that encourages but does not require consolidation.

The new law directs the Governor and the Secretary of Transportation to evaluate the boundaries, structure, and governance of each MPO in the state after the 2000 census or when requested by an MPO. Among the changes in the existing MPO structure that may be considered in such an evaluation are the formation of joint committees or working committees among contiguous nonconsolidated MPOs, the delegation of MPO responsibilities to a regional transportation authority, and changes in the decision-making and voting procedures currently used. NCDOT may also provide staff assistance to MPOs that consider consolidating after January 1, 2001.

Another incentive to consolidation is that beginning with the 2004 State Transportation Improvement Program, NCDOT is required to abide by the project ranking priorities approved by a consolidated MPO or a regional transportation authority given consolidated MPO responsibility. National Highway System, bridge, and Interstate maintenance program projects are excluded from this incentive.

S.L. 2000-80 includes an important mandate: If 25 percent of the territory of an MPO is located within a “non-attainment” area under the federal Clean Air Act, then all such MPOs in the non-attainment area must consult to develop emissions reduction strategies and adopt a single, unified plan for achieving conformity. That plan must be incorporated into the MPO long-range transportation plan. If an MPO fails to comply with this requirement, NCDOT is prohibited from allocating state-funded road construction funds, state matching funds for any road construction or transit capital project, or federal congestion mitigation and air quality improvement program funds to the MPO for a project within its jurisdiction. In addition, an MPO in a non-attainment area must complete an evaluation of its organization and functions and submit its findings to NCDOT within one year of the date the non-attainment area is designated.

The act becomes effective January 1, 2001.

**Rural Planning Organizations**

A related act, S.L. 2000-123 (S 1195), authorizes NCDOT to form rural transportation planning organizations as a complement to the metropolitan planning organizations discussed above. Rural transportation planning organizations (RPOs) are not recognized under federal law; their establishment is strictly a North Carolina initiative. RPOs will be governed by local elected officials (or their designees) and representatives of local transportation systems in the area, as provided in a memorandum of understanding. An RPO represents an area with a population of at least 50,000 that may include territory from at least three but not more than fifteen counties. Areas included within an MPO may not be included within an RPO. An RPO may be operated through a regional economic development agency, regional council of government, chamber of commerce, or local government. An RPO must develop a regional transportation plan, set recommended priorities for projects to be included in the state’s Transportation Improvement Program, and provide information to local governments and other interested parties. S.L. 2000-123 also directs NCDOT to report to the Legislative Transportation Oversight Committee by December 1, 2000, concerning the implementation of the act.

**Congestion Mitigation and Air Quality Improvement Program Funds/Vehicle Emissions**

The bulk of S.L. 2000-134 (H 1638) concerns the use of a new type of vehicle emissions equipment to improve the state’s ambient air quality. This portion of the act is discussed further in Chapter 9, “Environment and Natural Resources.” One additional feature of the act concerns the state’s allocation of congestion mitigation and air quality improvement funds (CMAQ funds) to counties. The act amends G.S. 136-17.2A(a) to exclude CMAQ funds from the state’s
transportation construction funds distribution formula. This formula provides, with certain exceptions, for the distribution of funds for Intrastate System projects and state and federal-aid funds expended under the Transportation Improvement Program. The effect of S.L. 2000-134 is to ensure that counties eligible for CMAQ funds do not receive less state construction money because they also received CMAQ improvement money from the federal government.

**Toll Roads**

S.L. 2000-145 (H 1630) attracted considerable attention in the media this summer. After lengthy debate the General Assembly decided to authorize the construction of a single pilot, privately financed toll road or toll bridge project. NCDOT is authorized to issue a fifty-year license to an applicant/project sponsor but must do so no later than July 1, 2003. A notable feature of the act is that it allows the state to use its power of eminent domain to acquire land for the project if the private sponsor has made all reasonable efforts to acquire the property through negotiated purchase. In such an instance the state is authorized to then transfer the property to the licensee, but only after the licensee reimburses the state for all costs associated with its acquisition. All law enforcement and emergency service personnel will have the same powers and duties on toll project property as they have on any public highway or public vehicular area.

In addition, the act directs NCDOT to study the feasibility of constructing state-owned, state-operated toll roads and to report its findings to the Joint Legislative Transportation Oversight Committee and to the Joint Legislative Transportation Appropriations Subcommittee by February 1, 2001.

**Railroad Studies**

Section 25.15 of the 2000 Appropriations Act (S.L. 2000-67, H 1840) directs NCDOT to use 2000–01 operating funds for passenger rail service for western North Carolina to conduct a study of the feasibility of providing such service. The study is intended to update the 1997 Western North Carolina Rail Passenger Study. It must include a phased project timetable for the implementation of passenger service to western North Carolina, the cost of implementing each phase, and specific interim goals and performance measures to be used to determine plan implementation success. The study is to be submitted by March 10, 2001, to the chairs of the Senate Appropriations Subcommittee on Transportation, to the chairs of the House Appropriations Subcommittee on Transportation, and to the Fiscal Research Division.

Section 8.1 of the 2000 Studies Act (S.L. 2000-138, S 787) makes the Future of the North Carolina Railroad Study Commission a permanent commission and adds several new study topics to its charge. The commission is to study the importance of railroads and railroad infrastructure improvements to economic development in the state, methods to expedite property disputes between railroads and private landowners, and all aspects of the operations, management, and long-range plans for the North Carolina Railroad. The Commissioner is directed to submit an annual report to the General Assembly by the time it convenes each year.

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Local Government Finance

Stormwater Fees

In the late 1980s the federal government imposed stormwater management responsibilities on larger local governments throughout the United States, essentially those cities with populations greater than 100,000. In North Carolina most of the affected local governments chose to finance their stormwater management programs through fees, rather than property taxes, and in 1989 legislation was enacted to allow cities and counties to establish stormwater enterprises. These statutes allowed stormwater fees but only at a level that would pay the cost of the stormwater enterprise itself; the fees could not generate a profit beyond the costs of the enterprise. Some years later a group of churches in Durham challenged the legality of that city’s stormwater enterprise program, alleging that the city was using its stormwater fees to pay for activities that were not appropriately part of the stormwater enterprise. In 1999 the state supreme court agreed with the churches. It held that the statute, which authorized stormwater fees for “structural and natural stormwater and drainage systems,” did not allow a local government to recover the entire cost of the federally mandated program through fees but only those parts related to stormwater infrastructure. The affected local governments would have to find other funding sources for the remainder of their stormwater programs.

Local government advocacy organizations thereupon set out to obtain the broader enabling authority that local governments had thought they had all along. By running their requests through the Environmental Review Commission and getting its support, they were able to have the necessary legislation considered by the 2000 session of the General Assembly. The General Assembly then responded by giving local governments all that they requested. First, S.L. 2000-70 (H 1602) amends the enterprise statutes to redefine a stormwater enterprise as a “stormwater management program designed to protect water quality by controlling the level of pollutants in, and the quantity and flow of, stormwater.” Furthermore, the fee statute now specifically says that local governments may charge fees at the level necessary to “assure that all aspects of stormwater
quality and quantity are managed in accordance with federal and State laws, regulations, and rules.” There should be no future question as to the legality of charging enterprise fees to recover the full cost of the federally mandated stormwater management program. Second, the effective date of the legislation is set at July 15, 1989, the date of the original authorization to have a stormwater enterprise. The intention is to ratify the fees already in existence and foreclose any future lawsuits challenging those fees.

**Taxation of Rental Vehicles**

S.L. 2000-2 (S 1076) removes rental vehicles from the property tax base and replaces the property tax on these vehicles with a gross receipts tax on the business of renting or leasing them. The vehicles that are removed from the property tax base are defined as those vehicles “offered at retail for short-term lease or rental [and] owned or leased by an entity engaged in the business of leasing or renting vehicles to the general public for short-term lease or rental.” (A short-term lease or rental is for less than 365 continuous days.) This exclusion from the tax base is effective for the 2000–01 fiscal year.

To replace the property tax on these vehicles, the legislation authorizes both counties and cities to levy a tax on the gross receipts of businesses engaged in the short-term rental of vehicles to the general public. The vehicles covered by the act are private passenger vehicles, cargo vehicles as large as trucks with a gross vehicle weight of 26,000 pounds, and trailers or semitrailers with a gross vehicle weight of 6,000 pounds or less. The county or city may select a tax rate up to 1.5 percent of gross receipts. This act was effective in mid-May, and many local governments have already acted to enact this new gross receipts tax.

**Qualified Zone Academy Bonds**

In 1997 Congress enacted a four-year authorization for Qualified Zone Academy Bonds (QZABs), codified in section 1397E of the Internal Revenue Code. The legislation established a national limit of $400 million of QZABs for each of the four years of the program’s authorization, and it is not certain that Congress will extend the program once the authorization expires. S.L. 2000-69 (H 1539) authorizes North Carolina counties to issue this specialized form of debt.

A qualified zone academy is a public school or a program within a public school. The school must either be in a federal empowerment zone or enterprise community, or at least 35 percent of the children attending the school or participating in the program must be eligible for free or reduced-cost lunches under the federal School Lunch Act. In other words, the school or program must serve a significant number of children from low-income families. QZABs are issued to help finance the qualified zone academy, and under the new North Carolina statute the proceeds of these bonds may be used to rehabilitate or repair school facilities or to purchase equipment (other than computer equipment) associated with the rehabilitation or repair.

There are two unusual characteristics of QZABs. First, the loans are intended to be interest-free to the borrowing government. Instead of interest, the lenders receive federal tax credits, in the amount that the interest would have been had there been interest. (The federal legislation limits the potential buyers of QZABs to banks, insurance companies, and other corporations actively involved in lending money; it does not permit individuals to buy these bonds.) Second, the federal legislation requires that the borrowing government receive private contributions to the bond-financed project in an amount equal to at least ten percent of bond proceeds. These contributions might be equipment for use in the school or program, technical assistance in developing the curriculum or in training teachers, the time of school employees, paying for internships or field trips, or other property or services. In other states voluntary mentoring by teachers has been a common form of matching contribution.

S.L. 2000-69 places general control of the QZAB program in North Carolina under the State Board of Education. The State Board is to determine which school units in North Carolina are eligible to participate in the program and which school units will use the state’s allocation of these bonds. North Carolina’s allocation, which can be carried over from year to year, was
approximately $9 million in 1998 and 1999 and slightly more than $11 million in 2000. A county may issue QZABs either as general obligation bonds or in the form of installment financing agreements.

**Spay/Neuter Program Funds**

S.L. 2000-163 (S 1184) establishes a new program in the Department of Health and Human Services to encourage dog and cat owners to have their pets spayed or neutered. In addition, the act authorizes state payments to reimburse counties for the cost of providing spaying or neutering for the pets of persons of low income. The state payment program is to be funded by sales of a special rabies tag and a special “animal lovers” license plate.

A county may qualify for state assistance by operating or contracting for the operation of a clinic in which spaying and neutering take place, by paying veterinarians to provide these services, or by offering vouchers to persons of low income. To the extent funds are available, the state will reimburse counties for the full cost of a spaying or neutering operation. If adequate funds are not available, however, the act directs that the available funds be divided into two equal parts. One part will be used to reimburse counties in enterprise tiers 1, 2, and 3, and the other part used to reimburse counties in tiers 4 and 5. Within each group, each county will receive a share of the available funds based on the relative percentage of rabies vaccinations in that county compared to the number of vaccinations in the entire group in the preceding fiscal year.

**Other Grants from State Government**

**Clean water bond reallocation.** S.L. 2000-156 (S 1381) reduces by $200 million the amount of Clean Water Bond proceeds allocated for loans to local governments and reallocates that sum for grants to loan governments. The specific amounts now available for various grant categories are as follows:

- High-unit cost wastewater grants and high-unit cost water supply grants, for governments with credit ratings of less than 75—$37,960,000 in each category.
- High-unit cost wastewater grants and high-unit cost water supply grants, for governments with credit ratings of 75 or higher—$35,040,000 in each category.
- Unsewered community grants—$25,920,000.
- Supplement grants—$22,460,000.
- Capacity grants—$5,620,000.

**Farmland preservation grants.** G.S. 106-744 provides for the North Carolina Farmland Preservation Trust Fund administered by the Commissioner of Agriculture. The Commissioner may use moneys in the fund to buy agricultural conservation easements, and he or she can also use fund moneys to make grants to nonprofit organizations and to counties for those entities to purchase the easements. S.L. 2000-171 (H 1132) establishes matching requirements for counties that receive grants from the fund.

The amount of a county’s match is determined by two factors: (1) whether the county has prepared a countywide farmland protection plan and (2) the county’s enterprise tier under the standards of the William S. Lee Quality Jobs and Business Expansion Act. (A farmland protection plan is a comprehensive effort to maintain small, family-owned farms and a viable agricultural community and requires much more than simply purchasing easements; for example, a plan might include specific plans for agricultural economic development.) If a county has not adopted a farmland protection plan, its matching requirement is 30 percent. If a county has adopted a plan, its match depends on its enterprise tier. Counties in tiers 1, 2, or 3 have no matching requirement, while counties in tiers 4 and 5 have a 15 percent requirement.

**Funds from the tobacco settlement.** S.L. 2000-147 (H 1431) establishes two trust funds to receive portions of the money coming to North Carolina from the Master Settlement Agreement between the states and the tobacco industry. The first is the Health and Wellness Trust Fund, established to make grants to improve individual and community health. Among the potential
recipients of these grants are local governments. The second is the Tobacco Trust Fund, which may make grants to help tobacco farmers and others engaged in tobacco-related businesses and to implement plans to improve agricultural economies. Local governments are eligible recipients of the second category of grants in the Tobacco Trust Fund. These funds are addressed in more detail in Chapter 9, “Environment and Natural Resources” (the Tobacco Trust Fund), and Chapter 10, “Health” (the Health and Wellness Fund).

**Local Government Support of Court Operating Costs**

In 1999 the General Assembly enacted G.S. 153A-212.1 and 160A-289.1, which permit counties and cities, respectively, to contract with the Administrative Office of the Courts in order to pay for additional court system personnel in the areas served by the contracting local government. The 1999 authorizations were limited to paying for additional assistant district attorneys. This year S.L. 2000-67 (H 1840) expands the kinds of court system costs that local governments may pay for to include secretaries for judges, personnel in the clerk’s office, and additional assistant public defenders.

**Bad Check Charges**

North Carolina law regulates bad check charges through the Uniform Commercial Code, specifically in G.S. 25-3-506. The law has conditioned the imposition of bad check charges upon the merchant’s or other payee’s (including local governments) maintenance of a sign at or near the location where the check is received. This sign, the size of which has even been specified by law, was required to give notice of the bad check charge that will be imposed when a check was returned for insufficient funds. S.L. 2000-118 (H 1021) deletes the sign requirement altogether. The maximum bad check charge remains $25.

**Miscellaneous**

**Local government fees; white goods tax.** S.L. 2000-109 (H 1854) deals with a variety of state and local government fees and taxes; three of its provisions are especially relevant to local governments. First, the act raises the fees to be paid to counties for housing persons ordered to pay jail fees pursuant to a probationary sentence. The fee had been $5 per day, but it will now be the same per diem rate that the Department of Correction pays to local jails for housing state prisoners. That rate is currently $18 per day.

Second, the act enacts a new G.S. 66-58.12 that encourages public agencies, including local governments, to increase access to their services through electronic means. The new statute specifically authorizes each public agency to charge a fee to cover its costs in permitting persons to complete transactions through electronic means.

Third, the act repeals the sunset on the white goods tax. This tax had first been authorized in 1994 and had always been subject to a sunset, although the sunset had been extended several times. The tax is now permanent.

**Refunds on the excise tax on conveyances.** S.L. 2000-170 (H 1544) creates a procedure for hearing and acting on requests for refunds of the excise tax on conveyances (or deed stamp tax). Counties collect the tax, and a portion of the proceeds is transmitted to the state, and the new procedure gives a role to both the county commissioners and the Secretary of Revenue. A taxpayer begins the refund process by filing a written request for a refund with the board of county commissioners no later than six months after the tax is paid. The commissioners are to hold a hearing on the matter and make their determination, which they forward to the state. The taxpayer may appeal the commissioners’ ruling to the Secretary of Revenue; if the Secretary agrees with the taxpayer, the county is required to make the refund.

**Utility franchise tax distributions.** In 1991 the General Assembly froze the amount of utility franchise tax proceeds that were to be distributed to cities, as part of a strategy for dealing with a multi-year shortfall in state revenues. During the freeze, any increase in the collections of these
taxes was retained by the state rather than distributed to cities. When the freeze was lifted in 1994, the state retained the amount of growth in franchise tax proceeds that had occurred during the years the freeze was in effect. One effect of this, however, was that a few cities received less after the freeze than they had received before it. Therefore in 1997 the General Assembly enacted legislation that assured those cities that were receiving less that they would at least receive as much as they had received in the last year before the freeze. This was accomplished by marginally reducing the amount distributed to other cities.

Apparently a small number of cities still do not receive the amount of franchise tax proceeds they did before the freeze, and therefore S.L. 2000-128 (H 1473) creates a new hold-harmless provision to help those cities.

### Information Technology

Four bills were enacted involving information technology issues of interest to local governments. The first deals with the protection of computer security systems under the public records law, while the next is concerned with information technology procurement. The third law adopts the Uniform Electronic Transactions Act, while the fourth creates the North Carolina Rural Internet Access Authority. These bills are also discussed in Chapter 12, “Information Technology.”

#### Computer Security Systems under the Public Records Law

S.L. 2000-71 (S 1260) amends the public records law to allow public agencies to protect the security features of their computer systems from disclosure. The act applies to electronic data processing, information technology, and electronic security systems as well as to telecommunications networks. It includes “hardware or software security, passwords, or security standards, procedures, processes, configurations, software, and codes.”

#### New Information Technology Procurement Option

Local governments, including cities, counties, schools, and community colleges, now have an additional option for purchasing the information technology they need. S.L. 2000-130 (H 1564) and 2000-174 (H 1578) make clear that these entities may use the information technology programs, services, or contracts offered by the Office of Information Technology Services (OIT), including information technology procurement. (The second act recodifies, and in effect replaces, the first.) A local government using an OIT-established contract does not have to comply with otherwise applicable competitive bidding requirements. The unit does, however, have to follow the statutes, policies, and rules of OIT, which is now housed in the Governor’s office.

#### Electronic Transactions and Records

The Uniform Electronic Transactions Act, enacted as Article 40 of G.S. Chapter 66 by S.L. 2000-152 (S 1266), joins the Electronic Commerce Act, G.S. Ch. 66, Art. 11A, enacted in 1998, as a harbinger of possible change in the way that local governments do business. The act is modeled on a federal law that would have preempted regulation of this area had the state legislature not acted.

First and most fundamentally, the act legalizes the voluntary use of “electronic signatures” in most types of transactions, private and apparently public, including contracts and the recording of instruments in registers of deeds’ offices. An electronic signature is defined in the act as an electronic sound, symbol, or process attached to, or logically associated with, a record and executed or adopted by a person with the intent to sign the record. The act also recognizes the legal validity of electronic transactions into which the parties have voluntarily entered, and it
requires that electronic records be given legal effect. In contrast, the 1998 Electronic Commerce Act only authorizes the use of electronic signatures in commerce between and with public agencies, and requires that those signatures be capable of being certified. At this time, the relationship between the two acts remains unclear. Various statutory provisions may be read to suggest either that they were intended to complement or to be alternatives to each other.

S.L. 2000-152 also specifies that electronic records, without more, satisfy legal records retention requirements. This broad authorization is tempered somewhat, however, by a proviso that governmental agencies of North Carolina, presumably including both the Department of Cultural Resources and individual cities or counties, may specify additional records retention requirements for records subject to their jurisdiction. Such requirements might include maintaining paper or microfilm copies of permanent records, as is currently required by the State’s records retention and disposition schedules.

Despite the potentially far-reaching effects of the act, there is an important limitation on the law’s application. The use of electronic signatures and engaging in electronic transactions is entirely voluntary. Thus, for example, cities and counties may, but need not, participate in electronic programs related to purchasing, and local governments are not required to buy special equipment to facilitate electronic transactions if they do not wish to do so. (The same is true under the Electronic Commerce Act.) S.L. 2000-152 is also discussed in Chapter 14, “Land Records and Registers of Deeds.”

**Rural Internet Access Authority**

In order to use electronic signatures and other advances in information technology, local governments must first be connected to the Internet. S.L. 2000-149 (S 1 343) recognizes that much of rural North Carolina does not have easy Internet access and may have no high-speed broadband Internet access at all. The act creates the North Carolina Rural Internet Access Authority, governed by a twenty-one-member commission, to manage, oversee, and monitor efforts to provide rural counties with such high-speed access.

The authority is also to serve as the central rural Internet access policy-planning body of the state. It is to implement a coordinated rural Internet access policy by communicating and coordinating with other public and private entities. The authority must develop and recommend to the Governor, the General Assembly, and the newly created North Carolina Rural Redevelopment Authority a plan to provide rural counties with high-speed access, and it must propose funding that may be needed from the Redevelopment Authority and other sources for incentives for the private sector to make necessary investments to achieve the authority’s goals and objectives.

The authority’s specific goals and objectives include

1. providing local dial-up Internet access from every telephone exchange within one year;
2. making high-speed Internet access available to every North Carolina citizen within three years, at prices in rural counties that are comparable to prices in urban North Carolina;
3. establishing two model Telework Centers by January 1, 2002, in either enterprise tier 1 or enterprise tier 2 areas, in existing facilities to the extent practicable;
4. increasing significantly the ownership of computers and related Web devices and promoting Internet subscriptions throughout North Carolina;
5. providing accurate and up-to-date information to citizens through the Internet about telecommunications and Internet services availability;
6. developing government Internet applications to make citizen interactions with government agencies and services easier and more convenient and to facilitate the delivery of more comprehensive programs;
7. using open technology approaches to encourage all potential providers to participate in the implementation of high-speed Internet access with no technology bias;
8. coordinating activities, conducting and sponsoring research, and recommending and advocating regulatory, legislative, and other actions to achieve the authority’s goals and objectives.
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The authority must work with two significant limitations in achieving its goals. It may not levy taxes, and it does not have the power of eminent domain.

As the authority begins its operations, a separate, local information technology study authorized by S.L. 2000-149 will also be taking place. Regional partnerships across the state, consisting of economic development commissions and other named entities, will be studying the information technology infrastructure and other needs of each county within their particular regions. The partnerships will report their results, including any legislative proposals, by November 1, 2001, to the General Assembly’s Joint Select Committee on Information Technology. It is unclear how this study will take account of the work done by the Internet access authority.

The rural Internet access authority has only a limited time to accomplish its tasks. The authority is dissolved and S.L. 2000-149 is repealed effective December 31, 2003. The statutes enacted by the act are repealed effective December 1, 2003.

Miscellaneous Acts

Several of the acts dealing with local government do not fit comfortably under the other headings of this chapter. They are grouped together here.

Municipal Participation in State Highways

Several larger municipalities have through special legislation voluntarily taken a role in funding state highway projects in their areas in recent years. (All municipalities used to have this authority a number of years ago, but it was more recently taken away by the legislature.) These local-state partnerships often help to insure that projects are completed more quickly. However, in addition to blurring the traditional distinction between state-funded roads and city-funded streets (not necessarily a bad thing), they have allowed some cities an advantage in project completion that others did not share.

S.L. 2000-188 (S 1200) levels the parking lot, so to speak. It paves the way for voluntary participation in state road construction by municipalities across the state, no matter what their size. Under the act, all municipalities may, if they wish, participate in the right-of-way and construction cost of a state highway improvement approved by the state Board of Transportation under G.S. 143B-350(f)(4) that is located in the municipality or its extraterritorial jurisdiction.

The act makes clear that important aspects of the Transportation Improvement Program (TIP) are not affected by the new participation rules. The Department of Transportation (DOT) is to insure that participation in a state highway system improvement project does not cause any disadvantage to any other project in the TIP under G.S. 143B-350(f)(4) that is located outside the municipality. Further, DOT cannot enter into an agreement with a city to provide additional total funding for highway construction in the city in exchange for municipal participation in any project contained in the TIP under G.S. 143B-350(f)(4). Finally, any state or federal funds allocated to a project that are made available by municipal participation in a project contained in the TIP under G.S. 143B-350(f)(4) are to remain in the same funding region where they were allocated under the G.S. 136-17.2A distribution formula.

Local Participation in Video Poker Regulation

After South Carolina outlawed video poker gambling, the General Assembly became concerned that a large number of new video gaming machines would be introduced into North Carolina. S.L. 2000-151 (S 1542) addresses this concern by imposing substantial regulations on the location and operation of these machines. It only allows for the operation in North Carolina of those machines that were lawfully in operation in the state on or before June 30, 2000, and that were listed for taxes here by January 31, 2000.
The regulations include a prohibition of more than three machines at any single location, and a requirement that any location with machines be at least 300 feet from another location with machines. Furthermore, no machine may be played by a person younger than eighteen. Finally, there are regulations concerning hours of operation, placement of machines in the establishment, advertising their presence, and the like.

Two provisions of the act will be of particular interest to local governments. These are the sections allowing local governments to adopt more restrictive local ordinances and requiring video game owners regulated by the act to register their machines with county sheriffs.

The act specifies that its main regulatory provision, new G.S. 14-306.1, does not preempt any more restrictive local ordinance lawfully adopted under either Article 18 of G.S. Chapter 153A, for counties, or Article 19 of G.S. 160A, for municipalities. Interestingly, these are the planning and development regulation, rather than the general police power, articles of the statutes. This means that a local video gaming ordinance must be a land use (most likely a zoning) regulation, rather than a freestanding, police power ordinance.

The owner of any video game regulated by G.S. 14-306.1 must register the machine by October 1, 2000, with the sheriff of the county in which the machine is located. The owner must provide specified information under oath on a standardized form supplied by the sheriff. A material false statement in the form subjects the owner to seizure of the machine under G.S. 14-298 in addition to any other punishment imposed by law. Any time that a machine is moved to a different location, the owner must reregister it before it is placed in operation.

Each sheriff must report to the Joint Legislative Commission on Governmental Operations by November 1, 2000, on the total number of machines registered in that county. The sheriff is to itemize how many locations have one, two, or three machines. These reports should give the legislature a good idea of how many machines are legally operating across the state.

The legislature may well consider changes in the operation of the registration and enforcement system during the 2001 session. G.S. 14-306.1(f) directs the North Carolina Sheriffs’ Association, Inc., after consultation with the Division of Alcohol Law Enforcement and the Conference of District Attorneys of North Carolina, to report to this same joint legislative commission by January 1, 2000, its estimates of the costs of registration and of enforcement of G.S. 14-306.1. The association is to suggest fees to make these activities self-supporting and to make recommendations about a system with state registration and primary enforcement at the local level.

**Sub-Metering Water Systems**

S.L. 2000-172 (H 1218), an omnibus environmental bill, provides for the use of sub-meters in consecutive water systems (defined below) in order, according to the act, “to promote water conservation.” Sub-metering occurs when a water system customer installs sub-meters and resells the water to persons occupying the same contiguous premises; a good example is an apartment complex that receives water from a single meter. Presumably when the apartment tenants have to pay separately for water service, they will be encouraged to conserve. The act excuses the person or entity installing the sub-meters and operating the resulting system—called a consecutive water system—from utility monitoring, analysis, and record-keeping requirements. It also makes clear that sub-metering does not impose any new such requirements on the system supplying the water at the main meter or any new maintenance requirements on that system.

**Mountains to Sea State Park Trail Land Condemnation**

S.L. 2000-157 (S 1311) authorizes the Department of Environment and Natural Resources (DENR) to add the Mountains to Sea State Park Trail to the State Parks System and authorizes the Department of Administration to acquire land necessary for the trail. Its condemnation provisions will be of interest to cities and counties, since they give these local governments a brief window of time within which they may veto a proposal to condemn land within their jurisdictions will be condemned for the trail.
Before condemnation proceedings may be initiated, the Department of Administration must notify the board of county commissioners of the county in which the land is located, as well as the city council if it is also located within a city. (The act does not specify whether the required notifications are to be oral or written.) If either local governing board objects in a timely manner, the condemnation proceedings may not be initiated.

The time schedule for notification and objection is extremely tight. DENR must notify the local governing body at least five business days prior to initiating condemnation proceedings, and the local board must notify DENR of its objection to the proceedings within five business days, presumably after receiving the notification.

**Midland Incorporation**

S.L. 2000-91 (H 1771) incorporates the Town of Midland in Cabarrus County subject to a referendum at the November 7, 2000, general election. This was the only incorporation bill acted upon in 2000. Interestingly, the Midland bill did not go through the incorporation commission process that was a major focus of the 1999 session. If the referendum passes, the town will have a four-member council and a mayor who will all serve four-year staggered terms and be elected by the nonpartisan plurality method. The town will operate under the mayor-council plan. A unique feature of the town’s charter is its very detailed description of the town boundaries, which is more than eleven pages long.

**Additional Ambulance Collection Remedies Allowed in More Counties**

S.L. 2000-107 (H 1768) adds Carteret, Orange, and Pender counties to the coverage of G.S. Chapter 44, Article 9B, which will now allow eighty-eight of the state’s counties and the municipalities in those counties to use attachment and garnishment proceedings in the collection of ambulance service charges if the county or municipality either provides, or provides financial support to, the ambulance service, as specified in the act.

**Studies**

Studies of general interest to local government officials found in S.L. 2000-138 (S 787), the 2000 studies act, include the water supply issues study that may be undertaken by the Legislative Research Commission and several of the topics that may be studied by the Revenue Laws Study Committee. If the commission or the committee undertakes these studies, they may report their findings, together with any recommended legislation, to the 2001 General Assembly (the committee is to report upon the legislature’s convening).

The water supply study will examine several topics of concern to cities and counties, both as suppliers of pure water and as those who treat wastewater. It may examine the source and supply of groundwater and surface waters in North Carolina, including interbasin transfer of water; progress toward controlling water pollution; technology available for use in related areas; statewide public and private use of water; and water capacity use area issues.

The Revenue Laws Study Committee may examine several topics related to the ad valorem property tax. These may include tax credits to encourage production of affordable housing, including adjustments to and credits for ad valorem taxes; the homestead exemption; and the positive and negative impacts of state acquisition of land for conservation purposes on local government ad valorem tax revenues. In conducting this last study, the committee may consider efforts by other states and the federal government to mitigate the negative impacts of such acquisition.

_A. Fleming Bell, II_  
_David M. Lawrence_
Local Taxes and Tax Collection

The major development in the area of local taxes to come out of the 2000 legislative session was the exclusion from the property tax of short-term rental vehicles and the replacement of that tax with a gross receipts tax, an entirely new local tax with its own unique administrative procedures. The short session was notable also for its failure to address two of the most significant issues in the property tax: the inadequacy of the homestead exclusion for the low-income elderly and the inequity of the current blanket exemption for continuing care retirement centers.

Assessment

Disabled Veterans’ Motor Vehicles

The Machinery Act, for many years, has classified and excluded from the tax base specially equipped motor vehicles given by the Veterans Administration to disabled veterans who sustained their injuries during World War II, the Korean Conflict, or the Vietnam Era. Veterans whose injuries were sustained during peace time or in an armed conflict other than those listed were not eligible for this benefit. Also, the wording of G.S. 105-275(5), the section providing for this exclusion, has become obsolete due to changes in the way this form of assistance is now provided to veterans. S.L. 2000-18 (H 123) enacts a new exclusion, G.S. 105-275(5a), to classify and exclude from taxation motor vehicles that (1) are owned by disabled veterans who qualify for special automotive equipment under federal law and (2) have been altered with special equipment to accommodate a service-connected disability. It applies to both registered and unregistered vehicles and there appears to be no limit on the number of vehicles for which an eligible individual may qualify. The new exclusion is first effective for registered classified vehicles registered in June, 2000 and for unregistered vehicles listed during the regular listing period in January, 2000. It will also apply to any qualified unregistered vehicle discovered in the calendar...
year 2000. S.L. 2000-18 does not exempt this new classification from the normal requirements of G.S. 105-282.1 requiring annual applications for the benefit of exemptions and exclusions.

**Video Gaming Machines**

One of the most contentious issues facing the 2000 General Assembly was what action, if any, North Carolina should take in response to a recent court decision in South Carolina that outlawed video gaming machines in that state. Many feared that large numbers of the outlawed machines would be relocated in North Carolina, thus introducing on a large scale a form of gambling that has not heretofore been widespread here. The solution finally agreed to by both houses of the General Assembly, S.L. 2000-151 (S 1542), makes it unlawful to operate in North Carolina video gaming machines that pay off with any kind of valuable prize or merchandise unless the machine meets rigorously defined criteria, one of which is that it was listed for 2000–01 taxes no later than January 31, 2000. County assessors should be prepared to certify such listings to the appropriate law enforcement agencies; otherwise, the machine is subject to seizure and destruction. This topic is discussed more fully in Chapter 16, “Local Government and Local Finance.”

**Continuing Care Retirement Centers**

The 1999 session of the General Assembly enacted G.S. 105-278.6A to classify and exclude from the tax base most continuing care retirement facilities for the 1999–2000 tax year. It was anticipated that a special study of this classification would be completed in time for action by the 2000 session. Thus G.S. 105-278.6A was to be repealed as of July 1, 2000, for the 2000—01 tax year. The study was not completed, however, and S.L. 2000-20 (H 1573) extends the life of the exclusion to July 1, 2001.

**Health Care Facilities**

G.S. 131A-21 has provided that “no tax or assessment” may be levied on health care facilities wholly or partially financed with the proceeds of bonds issued by the Medical Care Commission as long as the bonds remain outstanding. This broad language has been understood to refer to ad valorem taxes only (including the intangibles tax before its repeal). S.L. 2000-20 (H 1573) clarifies a number of points that previously have been ambiguous. First, it is now clear that the exemption extends only to “the facility for which the bonds or notes are issued.” Thus it does not extend to furnishings and equipment or to the land on which the facility is located unless that property was acquired with bond proceeds. Second, the exemption will continue if the debt is retired by refunding bonds, but not beyond the maturity date of the original bond issue. Finally, if the bond issue funded more than one project, the exemption will be prorated among them.

**Review and Appeal of Assessments**

S.L. 2000-92 (S 1364) adds Cabarrus County to the coverage of a portion of S.L. 1999-353 that originally applied only to Stokes County. The act permits the board of equalization and review to remain in session following its formal adjournment for the purpose of handling taxpayer appeals related to discoveries, motor vehicles, and audits of present-use value and exempt status. S.L. 2000-40 (H 1656) authorizes the Lincoln County Board of Commissioners to appoint a special board of equalization and review. In addition to the usual powers of a board of equalization and review, the Lincoln board will function also as the review board for purposes of motor vehicle taxation, is authorized to sit in panels in reappraisal years, and will remain in session following formal adjournment for the purpose of handling taxpayer appeals related to discoveries, motor vehicles, and audits of present-use value and exempt status.
Brownfields Properties

S.L. 2000-158 (S 1252) enacts a special classification intended to provide a tax incentive for the redevelopment of properties that have become stigmatized because of known or suspected contamination. Properties of this type are often termed “brownfields” properties. Essentially, the state gives the owner of brownfields property protection from liability in exchange for the owner’s agreement to take measures that will make the property safe. The brownfields program is overseen by the Department of Environment and Natural Resources. In an effort to make participation in the program more attractive, S.L. 2000-158 classifies and excludes from taxation a portion of the appraised value of qualifying improvements on brownfields property for the first five years as follows: Year 1—90 percent; Year 2—75 percent; Year 3—50 percent; Year 4—30 percent; Year 5—10 percent. During these years, the county assessor is directed to appraise the value of the improvements annually and to exclude the indicated percentage of value from the assessed value. S.L. 2000-158 does not affect the tax status of the underlying land.

Public Records

Security of Electronic Records

S.L. 2000-71 (S 1260) amends G.S. 132-6.1(c) to provide that no government agency or office is required to disclose security features of its electronic data processing systems, information technology systems, telecommunications networks, or electronic security systems, including hardware or software security, passwords, or security standards, procedures, processes, configurations, software, and codes.

Collection

Advertisement of Tax Liens

S.L. 2000-140 (S 1335) amends G.S. 105-369(b1) to provide that the notice required by that statute must inform the owner that the names of both the listing owner and the record owner will appear in the tax lien advertisement. The current statute, which requires a notice to be mailed to the listing owner and to the record owner, if different, thirty days before the advertisement is published, provides only that the notice must state that the name of the listing owner will appear in the advertisement. The new advertising requirements, including amended G.S. 105-369(b1), become effective January 1, 2001.

Foreclosures

S.L. 2000-127 (S 393) makes several changes in the Rules of Civil Procedure that are significant for counties that bring foreclosures pursuant to G.S. 105-374. New G.S. 1A-1, Rule 5(a1), requires that in actions in superior court, every brief or memorandum in support of or in opposition to a motion to dismiss, a motion for judgment on the pleadings, a motion for summary judgment, or any other motion seeking a final determination of the rights of the parties shall be served on each of the parties at least two days before the hearing on the motion. “Service” means personal delivery, facsimile transmission, or other means such that the party actually receives the brief or memorandum within the required time. The parties may alter the two-day requirement by consent. The act makes conforming amendments in Rule 6(d) and Rule 56(c). The act also amends Rule 7(b)(1) to require that every motion state with particularity the grounds therefore.
Other Local Taxes

Gross Receipts Tax on Short-Term Rental Vehicles

S.L. 2000-2 (S 1076), with correcting amendments made by S.L. 2000-140 (S 1335), excludes short-term rental vehicles from the property tax and authorizes cities and counties to levy a tax on the gross receipts from the rental of such vehicles at a maximum rate of 1.5 percent. The exclusion of short-term rental vehicles from the property tax is accomplished by adding new G.S. 105-275(42). G.S. 105-282.1(a)(2) is amended to provide that the owner of a short-term rental vehicle is not required to apply for this exclusion. The authorization for counties to levy a gross receipts tax is granted by new G.S. 153A-156 and for cities by new G.S. 160A-215.1. This act applies to tax years beginning on and after July 1, 2000. These effective dates have the following consequences. First, vehicles that are not classified pursuant to G.S. 105-330.1(a) [see G.S. 105-330.1(b) for the list of unclassified vehicles] and that were therefore listed as of January 1, 2000, are exempt from the property tax for 2000; property tax bills for the year 2000 on vehicles covered by this act must be deleted from the system and not billed to the taxpayers. Second, classified motor vehicles the registrations of which were renewed during June 2000 are exempt because the tax year for such vehicles began July 1 (see G.S. 105-330.6 regarding a classified vehicle’s tax year). Classified vehicles the registrations of which were renewed earlier than June 2000 remain taxable for this year but become exempt at the next renewal.

Vehicles Included

The act defines “short-term” rental vehicles by reference to G.S. 105-187.1. By this definition, every rental contract for less than 365 continuous days is included. Three categories of vehicles are subject to the tax, provided they are under short-term rental contracts: (1) passenger vehicles, including a van, minivan, or sport utility vehicle; (2) a cargo-hauling vehicle, including a cargo van, pickup truck, or a truck with a gross vehicle weight of 26,000 pounds or less used predominantly in the transportation of property for other than commercial freight and that does not require the operator to possess a commercial driver’s license; and (3) a trailer or semitrailer with a gross vehicle weight of 6,000 pounds or less.

One of the important tasks for the tax offices of jurisdictions that choose to levy the gross receipts tax is to identify and notify the businesses that engage in the short-term rental of vehicles subject to the tax. Airport rental car businesses are an obvious group of taxpayers. Many automobile dealers also rent vehicles, and some convenience stores rent trailers or small trucks. The Yellow Pages and business directories are obvious sources of information on these businesses.

Administration of the Tax

Cities and counties that choose to levy the gross receipts tax must adopt an ordinance making the levy and stating the effective date. If a taxing unit adopts an ordinance levying the tax after July 1, 2000, it should make the effective date of the tax no earlier than the first day of the month following adoption; this will give the affected businesses time to prepare to collect the tax from their customers.

The transaction that gives rise to the tax occurs at the location of the business from which the customer takes delivery of the vehicle. This means, for example, that if a customer takes delivery of a rental truck in Orange County, North Carolina, and turns it in to a rental business in Nashville, Tennessee, Orange County is owed the tax on the gross receipts from the rental.

In accordance with the position of the Department of Revenue regarding the use tax on short-term rentals (see the department’s Sales Tax Bulletin, Section 35-1), the gross receipts to which the local tax applies includes virtually all charges paid by the customer, including fuel charges, administrative fees, mandatory maintenance agreements, and the rental of optional equipment such
as child seats, furniture blankets, or hand trucks. The state highway use tax is excluded from the gross receipts to which the tax applies.

A rental business located in a municipality may be subject to both a county and a municipal tax, with a maximum combined rate of 3 percent. If a municipality desires to have its tax administered by the county, it must enter into a contract with the county for such administration. This is probably true even for cities that currently have contracts with the county for collection of the property tax, because in most instances those contracts cover only the collection of property taxes, not the administration of other types of taxes.

New G.S. 160A-215.1(a) makes it clear that the gross receipts tax on rentals is in addition to any privilege license tax that a city levies on the same business pursuant to G.S. 160A-211. It is also important to note that this new gross receipts tax is in addition to any municipal license taxes on motor vehicles levied pursuant to G.S. 20-97(b) and (c). These are usually $5 a year but may be higher under local acts and are levied on each vehicle “resident in the city or town.”

The same administrative provisions of Chapter 105 that apply to the state sales tax on rentals, articles 5 and 9, apply to this tax. One of those provisions, G.S. 105-164.16, sets forth the reporting and return requirements. Generally, a taxpayer must file a return by the fifteenth of each month showing the receipts and tax due for the preceding month. The tax is due when the return is filed. Counties and cities levying the tax must furnish to taxpayers forms for filing the returns. Model forms are available from the Ad Valorem Tax Division, N.C. Department of Revenue.

Another important administrative provision is G.S. 105-262, which authorizes the Secretary of Revenue to adopt rules for the administration of state taxes. Boards of county commissioners and city councils may exercise any power in administering the gross receipts tax that is exercised by the secretary, and they therefore have authority to adopt rules for the administration of the tax. Pursuant to this authority, for example, governing boards can adopt rules concerning when a return and payment sent by mail is considered received. It would be consistent with property tax procedures to adopt the rule of G.S. 105-311(b) and G.S. 105-360(d) that a return and payment sent by mail is received on the date shown on a legible postmark affixed by the U.S. Postal Service; otherwise it is received when it actually arrives in the tax office. This rule, and any others adopted, should be included in the ordinance levying the tax.

**Enforcement and Penalties**

Both new G.S. 153A-156 and 160A-215.1 provide that enforcement of the tax is governed by Article 9 of Chapter 105. The most important section in this article is G.S. 105-236, which establishes various penalties. The penalty for a bad check is the same as in the Machinery Act, 10 percent, with a minimum of $1 and a maximum of $1,000. G.S. 105-236(1). The penalty for failure to file a return when due is 5 percent of the tax if the delay is not more than one month, plus 5 percent for each additional month, not to exceed 25 percent of the tax, or $5, whichever is greater. G.S. 105-236(3). The penalty for failure to pay a tax when due is 10 percent of the tax, with a minimum of $5, and is nonrecurring. G.S. 105-236(4). Thus under these provisions, if a taxpayer fails to file a timely return and pay the tax with the return, the total penalty is 15 percent of the tax. The board of county commissioners or the city council may reduce or waive these penalties in a particular case pursuant to G.S. 105-237. The reasons for the reduction or waiver must be stated in the board’s minutes. G.S. 105-260.1 authorizes the Secretary of Revenue to delegate to a deputy or assistant secretary the authority to hold hearings. This statute can be used as authority for the board of commissioners or city council to delegate to the tax collector, manager, finance officer, or other official authority to hear requests from taxpayers for relief from or compromise of penalties and other administrative matters involving collection of this tax.

An additional penalty that is available in the case of corporations and limited liability companies (LLCs) is suspension of their charters by the Secretary of State. G.S. 105-230 provides that if a corporation or LLC fails to file a return or pay a tax for ninety days after it is due, the Secretary of Revenue (whose role is taken by the board of county commissioners or city council) shall inform the Secretary of State, and the Secretary of State shall suspend the charter of the tardy corporation or LLC.
In addition, interest may be charged on delinquent gross receipts taxes. G.S. 105-241.1(i) provides for interest on delinquent taxes in an amount set by the Secretary of Revenue, to be not less than 5 percent or more than 16 percent a year. Under new G.S. 153A-156(f) and G.S. 160A-215.1(f), this authority to set the rate of interest is granted to the city and county governing boards. The amount of annual interest to be applied to this tax should be included in the ordinance levying the tax. We recommend applying the Machinery Act rate of 0.75 percent a month, or 9 percent a year. Interest can only be charged on the principal amount of the tax, not on the tax plus penalties.

The penalty provisions of Article 9 of Chapter 105 appear to be in addition to the enforcement remedies of levy and attachment and garnishment provided in G.S. 153A-147 and G.S. 160A-207. G.S. 153A-156(f) and G.S. 160A-215.1(f) do not specify that the Article 9 remedies are exclusive, and G.S. 153A-147 and G.S. 160A-207 provide that the remedies granted by those statutes are in addition to any other remedies provided by law.

**Privilege License Taxes**

**Pawnbrokers**

In 1999 the General Assembly, by an amendment to G.S. 105-88, reduced the maximum city and county privilege license tax on pawnbrokers from $275 to $100. This change appeared to be unintended because the act that amended G.S. 105-88 did not amend G.S. 153A-152 and G.S. 160A-211 to delete the references to former G.S. 153A-152 and G.S. 160A-211 to delete the references to former G.S. 105-50, which authorized a maximum local tax of $275. S.L. 2000-173 (H 1290) corrects this mistake by amending G.S. 105-88(e) to provide that the tax on pawnbrokers, as allowed by G.S. 153A-152 and G.S. 160A-211, shall govern. This amendment is not effective, however, until July 1, 2001. As of that date, the maximum city and county privilege license tax on pawnbrokers will once again be $275.

**Studies**

S.L. 2000-138 (S 787) authorizes the Revenue Laws Study Committee to study the following property tax–related topics and report its recommendations to the 2001 General Assembly: (1) tax credits, including credits for ad valorem taxes to encourage the production of affordable housing; (2) the homestead exemption; (3) the impacts of state acquisition of land for conservation purposes on local government property tax revenues.

William A. Campbell

Joseph S. Ferrell
Mental Health and Related Laws

This chapter discusses acts of the General Assembly affecting mental health, developmental disabilities, and substance abuse services. Particular attention is given to legislation affecting the public-sector system of services, including area mental health, developmental disabilities, and substance abuse authorities (area authorities), the local governmental entities responsible for providing and contracting for services.

In 2000 the General Assembly ended the Willie M. and Thomas S. programs, established a Child Residential Treatment Services Program, and enacted statutes that regulate the use of restraints and provide for the imposition of fines for violation of licensure laws. The legislature also set the stage for substantial and comprehensive changes to the state’s system of services by establishing a legislative oversight committee with the authority to study and recommend comprehensive changes in the administration, structure, governance, and financing of the state and local entities responsible for services.

Mental Health System Reform

In 1998 and 1999 the General Assembly directed the Office of State Auditor to coordinate a comprehensive study of the state psychiatric hospitals and area authorities (Section 12.35A of S.L. 1998-212, Section 11.36 of 1999-237). The State Auditor contracted with Public Consulting Group, Inc. (PCG) to lead the investigation with the cooperation of the Department of Health and Human Services (DHHS), area authorities, and other interested organizations and individuals. PCG examined the relationship of the state psychiatric hospitals to community mental health programs, as well as how those components interact with and relate to area authorities and the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services (MH/DD/SAS). On April 1, 2000, the State Auditor released the “Study of State Psychiatric Hospitals and Area Mental Health Programs,” which makes numerous findings and
recommendations related to the governance, financing, organizational structure, and service delivery systems of area authorities and MH/DD/SAS.

S.L. 2000-83 (H 1519) endorses the findings of the study and establishes the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services. The Oversight Committee is to develop the Plan for Mental Health System Reform to provide for systematic, phased-in implementation of changes to the mental health system. In developing the plan, which is intended to be fully implemented by July 1, 2005, the Oversight Committee must

1. Review and consider the findings and recommendations of the study.
2. Report to the 2001 General Assembly the changes that should be made to the governance, structure, and financing of the state’s mental health system at the state and local levels. Among other items specified in the act, this report must include an explanation of how, and the extent to which, the proposed changes are in accord with or differ from the recommendations in the State Auditor Study.
3. Study the administration, financing, and delivery of developmental disabilities services. This study must be of greater depth and detail than the State Auditor Study. The Oversight Committee must make a progress report on its study of developmental disabilities services to the 2001 General Assembly upon its convening.
4. Study the feasibility and impact of, and best methods for, downsizing the state’s four psychiatric hospitals, taking into account the need to enhance and improve community services to meet increased demand resulting from downsizing.
5. Consider the impact of mental health system reform on quality of services and patient care and ensure that the plan provides for ongoing review and improvements to quality of services and patient care.
6. Ensure that the plan provides for the active involvement of consumers and families in mental health system reform and implementation.
7. Address the need to enhance and improve substance abuse services, including services for the prevention of substance abuse.
8. Recommend a mental health, developmental disabilities, and substance abuse services benefits package that will provide for basic benefits for these services as well as specific benefits for targeted populations.
9. Take into account the state’s responsibility to enable institutionalized persons and persons at risk for institutionalization to receive services outside of the institution in community-based settings in accordance with the United States Supreme Court decision in *Olmstead v. L.C.*, 527 U.S. 581, 119 S. Ct. 2176, 144 L. Ed. 2d 540 (1999). (In *Olmstead*, the Court held that the unnecessary segregation of individuals with mental disabilities in institutions may constitute discrimination based on disability, in violation of the Americans with Disabilities Act. As a result of the ruling, states risk litigation if they do not develop a comprehensive plan for moving qualified persons with mental disabilities from institutions to less restrictive settings at a reasonable pace.)
10. Identify and address issues pertaining to the administration and provision of mental health services to children.
11. Address issues, problems, strengths, and weaknesses in the current mental health system that are not addressed in the State Auditor Study but that warrant consideration in the development of a reformed mental health system.
12. Consider whether the state should implement a contested case hearings procedure for applicants and recipients of mental health, developmental disabilities, and substance abuse services.

S.L. 2000-83 codifies provisions for the creation, organization, and general purpose of the Oversight Committee by enacting G.S. 120-240. The committee must consist of eight members of the Senate appointed by the President Pro Tempore of the Senate and eight members of the House of Representatives appointed by the Speaker of the House of Representatives. Committee members serve two-year terms, and the President Pro Tempore and Speaker of the House each designate a cochair. To consider and develop specific areas of the Plan for Mental Health System...
Reform, the committee cochairs must appoint subcommittees from the committee membership and invite representatives of the following groups to participate as nonvoting members on each subcommittee:

- providers of mental health, developmental disabilities, and substance abuse services and providers of long-term care, as well as other appropriate providers;
- consumers of mental health, developmental disabilities, and substance abuse services and family members of those consumers;
- state and local government officials, including area authorities;
- representatives of business and industry; and
- members of organizations that advocate on behalf of individuals in need of mental health, developmental disabilities, and substance abuse services.

Beyond developing the Plan for Mental Health System Reform, the Oversight Committee is charged in general to examine, on a continuing basis, systemwide issues affecting the development, financing, administration, and delivery of mental health, developmental disabilities, and substance abuse services, including issues relating to the governance, accountability, and quality of those services. The committee must make ongoing recommendations to the General Assembly on ways to improve the quality and delivery of services and to maintain a high level of administrative effectiveness and efficiency at the state and local levels. In conducting its examination, the committee must study the budget, programs, administrative organization, and policies of DHHS to determine ways in which the General Assembly may encourage improvement in services to North Carolinians.

The Oversight Committee must submit the following reports:

1. To the 2001 General Assembly, upon its convening, a progress report on the development of the Plan for Mental Health System Reform and an outline of an implementation process for downsizing the four state psychiatric hospitals.

2. To the Legislative Study Commission on Mental Health, Developmental Disabilities, and Substance Abuse Services and to the Joint Appropriations Committees on Health and Human Services, by October 1, 2001, and March 1, 2002, progress reports on the development and implementation of the plan.

3. Interim reports on the development and implementation of the plan: to the 2001 General Assembly, by May 1, 2002 (The report must include legislative action necessary to continue the implementation of changes to the governance, structure, and financing of the state mental health system as recommended by the Committee in its January 2001 report to the General Assembly); to the 2003 General Assembly, upon its convening; and to the 2003 General Assembly, by May 1, 2004. (The report must include legislative action necessary to continue phased-in implementation of the plan.)

4. To the 2005 General Assembly, upon its convening, a final report on the Plan for Mental Health System Reform.

On or before October 1, 2000, and on or before March 1, 2001, DHHS must report to the Legislative Study Commission on Mental Health, Developmental Disabilities, and Substance Abuse Services and to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services the status of DHHS’s reorganization efforts pertaining to MH/DD/SAS. The report also must include efforts underway by DHHS to better coordinate policy and administration of the Division of Medical Assistance with policy and administration of MH/DD/SAS.

Of the funds appropriated to DHHS for 2000–01, the General Assembly allocates $350,000 for the comprehensive study of developmental disabilities services and for hiring professional staff to assist the Oversight Committee [Section 11.23 of S.L. 2000-67 (H 1840)].
Appropriations

Current Operations


Last year, the General Assembly cut funding for state-operated residential treatment programs for children and adolescents by $650,000 for 1999–2000 and $960,000 for 2000–01 in anticipation of increased Medicaid revenues. These reductions in appropriations were targeted at the Wright and Whitaker Schools for the Emotionally Disturbed and the residential treatment programs located in Wilson and Butner for violent and assaultive children. This year much of the $22 million in new funding is targeted at treatment services for children, including $8 million to establish the Child Residential Treatment Services Program, designed to provide residential treatment alternatives for children at risk of institutionalization or other out-of-home placement; $1.2 million to develop and operate residential services for autistic children and adolescents at the Murdoch Mental Retardation Center located at Butner; and $4,353,000 in nonrecurring funds to continue mental health services for violent and assaultive children who have been receiving services through the Eligible Violent and Assaultive Children Program (Willie M. Program) that was eliminated effective June 30, 2000. Because last year’s $4,353,000 appropriation for Willie M. Program services was nonrecurring, this year’s $4,353,000 appropriation, while technically an addition to the MH/DD/SAS continuation budget, simply maintains the current level of funding for those services.

Last year the General Assembly appropriated $203,000 for 1999–2000 and $610,000 for 2000–01 to develop and implement an interagency client database for children who receive early intervention services and regional transdisciplinary teams of experts to provide training, technical assistance, and other support services to providers of early intervention services (S.L. 1999-237). Section 11.25 of S.L. 2000-67 appropriates an additional $250,000 in nonrecurring funds for these two initiatives. The remaining increase in appropriations to MH/DD/SAS is allocated as follows:

- $3 million (nonrecurring) for the Mental Health, Developmental Disabilities, and Substance Abuse Services Reserve for System Reform to facilitate the state’s compliance with the United States Supreme Court decision in Olmstead v. L.C. pertaining to the deinstitutionalization of individuals with mental disabilities and to provide funds for the anticipated reform of the public mental health system (see the section “Mental Health System Reform,” above);
- $301,000 (nonrecurring) to match federal funds for housing support for the mentally ill to provide for thirty-eight new housing placements;
- $250,000 (recurring) to the North Carolina Autism Society for additional services for adults with autism;
- $2 million (recurring) to area authorities for substance abuse services;
- $2 million (recurring) to area authorities for developmental disabilities services;
- $1.5 million (recurring) for atypical antipsychotic medications, half of which is to be allocated to facilities operated by DHHS and half to area authorities (Section 11.17 also raises the eligibility level for adults in the Atypical Antipsychotic Medication Program from 125 percent to 150 percent of the federal poverty guidelines.);
- $326,000 (nonrecurring) to provide residential services for children with autism; and
- $150,000 (nonrecurring) to provide training for area authority boards (funds originally appropriated in 1999 but diverted for flood relief).

The appropriations act also eliminates, for the 2000-01 fiscal year only, the $571,526 recurring appropriation for establishing a new neurobehavioral unit at the Black Mountain Center, permitting the unit to open during the 2001–02 fiscal year. In addition to the appropriations to

The state Medicaid program sustained substantial cuts in funding during the 2000 session. The budget act decreases recurring funding for Medicaid by $32.4 million for the fiscal year 2000-01 and transfers an additional $70 million from the Medicaid Reserve Fund to offset reductions in general revenue funding for Medicaid. Changes in Medicaid reimbursement polices are discussed in Chapter 23, “Social Services.”

Federal Block Grant Allocations

Section 5 of S.L. 2000-67 allocates federal block grant funds for fiscal year 2000–01. From the Mental Health Services Block Grant, the General Assembly allocates $4,301,361 (compared to $3,895,179 in 1999–2000) for community-based services provided in accordance with the state’s comprehensive plan for services for persons with severe and persistent mental illness. From the same block grant, the legislature appropriates $1,898,520 for community-based services to children, roughly the same amount appropriated in 1999–2000, while creating a new allocation from the block grant by appropriating $1.5 million for the new Child Residential Treatment Services Program (discussed below).

Allocations from the Substance Abuse Prevention and Treatment Block Grant include $7,216,992 for services for children and adolescents (compared to $7,454,702 in 1999–2000) and $15,043,841 (about $306,000 less than in 1999–2000) for alcohol and drug abuse services provided by community-based and state-operated treatment centers. (The latter includes an unspecified amount for tuberculosis services.) To provide further support for the establishment of the Child Residential Treatment Services Program, the General Assembly allocates $1 million from this block grant.

From the Social Services Block Grant, which funds several DHHS divisions, the General Assembly allocates $3,234,601 (roughly $1.5 million less than in 1999–2000) to MH/DD/SAS and another $5 million, the same as in 1999–2000, for services to individuals who are on the state’s waiting list for developmental disabilities services.

From the Temporary Assistance to Needy Families (TANF) Block Grant, MH/DD/SAS receives three allocations: $3.5 million for substance abuse screening, diagnosis, treatment, and testing of Work First participants; $1,182,280 for substance abuse services for juveniles; and $1 million for the Enhanced Employee Assistance Program, a grant program of financial incentives for private businesses employing former and current Work First recipients. While these TANF allocations are the same as for 1999–2000, this year the General Assembly makes a new $5 million allocation from the TANF block grant to MH/DD/SAS to establish and expand regional residential substance abuse treatment and services for women with children.

Children’s Services

Elimination of Willie M. Program

Section 11.21 of S.L. 2000-67 requires MH/DD/SAS to eliminate the Eligible Violent and Assaultive Children (“Willie M.”) Program effective immediately. The General Assembly approved the first major funding for the Willie M. Program in 1981, in response to a class action lawsuit filed in federal court on behalf of emotionally, mentally, or neurologically handicapped children who had a history of violent or assaultive behavior. The four plaintiffs, including a thirteen-year-old boy named Willie M., alleged that they and other emotionally disturbed and assaultive youth were denied appropriate treatment and education to which they had a right, under a host of federal and state laws, because they were involuntarily placed in institutions by the state. The plaintiffs sought to require the state to provide treatment and educational services needed by
the class members, and the state agreed to take steps toward providing such care when it signed a consent decree approved by the court in 1980 and 1981. As part of the consent agreement, the parties agreed that an independent panel of experts would be established to review and make recommendations with respect to the identification and evaluation of class members and the development and implementation of individual service plans. Functioning as an arm of the court, this review panel served to monitor the state’s compliance with the consent decree.

In 1995 the General Assembly enacted legislation that essentially codified the terms of the consent decree, establishing a contested case hearing process for reviewing the same issues heard by the review panel. Specifically, S.L. 1995-249 enacted Part 7 of Article 4 of G.S. Chapter 122C, which defined the class of clients eligible for Willie M. services (using the term “eligible assaultive and violent children”), required the Department of Human Resources to adopt rules for determining eligibility and for ensuring the provision of services, and provided for administrative review of decisions related to Willie M. identification, evaluation, and treatment. Among other things, the review procedures permitted parents or guardians of assaultive and violent children to appeal the denial of eligibility for services or to obtain review on the grounds that an eligible child is not receiving appropriate services. Arguing that North Carolina had established the necessary infrastructure to meet the needs of Willie M. children, the state persuaded the court to terminate its jurisdiction over the program in January 1998.

Section 11.21 of S.L. 2000-67 repeals Part 7 of Article 4 of G.S. Chapter 122C, the contested case hearing process, and directs MH/DD/SAS to eliminate the Willie M. Program administration, infrastructure, categorical funding designation, and eligibility determination process at the state and local levels. As indicated by language in Section 11.40 of S.L. 1999-237, the General Assembly intends to end the Willie M. Program as a separately administered and funded program and to continue services to former Willie M. Program clients by integrating them into the larger mental health services delivery system.

To “ensure that children at risk for institutionalization or other out-of-home placement are appropriately served by the mental health, developmental disabilities, and substance abuse service system,” Section 11.21 of S.L. 2000-67 also requires MH/DD/SAS to

1. provide only treatment services that are medically necessary;
2. implement utilization review of services provided; and
3. collaborate with the Department of Juvenile Justice and Delinquency Prevention (formerly the Office of Juvenile Justice), the Administrative Office of the Courts, other affected state agencies, local departments of social services, and area mental health programs to eliminate cost shifting and facilitate cost sharing with respect to treatment and placement services.

In addition, MH/DD/SAS must adopt guiding principles for the provision of services, including the following:

- The service delivery system must be outcome-oriented and evaluation-based.
- Services should be delivered as close as possible to the client’s home.
- Services selected should be those that are most efficient in terms of cost and effectiveness.
- Services should not be provided solely for the convenience of the provider or the client.
- Families and consumers should be involved in decision making throughout treatment planning and delivery.

MH/DD/SAS also must implement cost-reduction strategies that include preauthorization for all services except emergency services, levels of care to assist in the development of treatment plans, clinically appropriate services, and state review of individualized service plans for all children served to ensure delivery of appropriate, rather than optimal, treatment and services. DHHS must submit a progress report on implementation of these provisions not later than February 1, 2001, and a final report not later than May 1, 2002, to the House of Representatives.

Child Residential Treatment Services Program

Section 11.19 of S.L. 2000-67 requires DHHS to establish the Child Residential Treatment Services Program and to implement it in consultation with the Department of Juvenile Justice and Delinquency Prevention and other affected state agencies. The purpose of the program is to provide appropriate and medically necessary residential treatment alternatives for children who are at risk of institutionalization or other out-of-home placement. The program must include, among other things, the following:

1. behavioral health screenings for all children at risk of institutionalization or other out-of-home placement;
2. appropriate and medically necessary residential treatment placements, including placements for youth needing substance abuse treatment services, children with serious emotional disturbances, sexually aggressive youth, and deaf children;
3. multidisciplinary case management services;
4. mechanisms to ensure that children are not placed in the custody of a department of social services for the purpose of obtaining mental health residential treatment services;
5. mechanisms to maximize current state and local funds and to expand use of Medicaid funds; and
6. a system of utilization review specific to the program.

S.L. 2000-67 appropriates $8 million from the General Fund and $2.5 million in federal block grant allocations for the program; however, DHHS may not allocate funds for the program until specified memoranda of agreement are executed. Memoranda of agreement between DHHS and other affected state agencies must address roles and responsibilities relating to the administration, financing, care, and placement of children at risk of institutionalization or other out-of-home placement. Memoranda of agreement between local departments of social services and area mental health programs, and the Administrative Office of the Courts, and the Department of Juvenile Justice and Delinquency Prevention, as appropriate, must address issues pertinent to local implementation of the program.

Program funds must be targeted for non-Medicaid eligible children, but may also be used for children who are eligible for Medicaid and to expand the Child Mental Health Systems of Care Project. Services under the program are not an entitlement for non-Medicaid-eligible children served by the program.

DHHS, in conjunction with the Department of Juvenile Justice and Delinquency Prevention and other affected agencies, must report on the following:

1. the number of children served and other demographic information;
2. the amount and source of funds expended to implement the program;
3. information about the number of children screened, specific placements of children, and treatment needs of the children served;
4. the average lengths of stay in residential treatment, in transition, and in return to home;
5. the number of children diverted from institutions or other out-of-home placements, such as training schools and state psychiatric hospitals;
6. recommendations on areas of the program that need to be improved; and
7. other information relevant to successful implementation of the program.

DHHS must submit a progress report on implementation of the program not later than February 1, 2001, and a final report not later than May 1, 2002, to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Human Resources, and the Fiscal Research Division.
Facility Licensure

Enforcement of Licensure Laws

S.L. 2000-55 (S 1179) amends the licensure statutes governing facilities that provide mental illness, developmental disabilities, or substance abuse services (Article 2 of G.S. Chapter 122C). The act grants new rulemaking authority to the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services, and authorizes DHHS to block admission of clients to a facility and impose administrative penalties for violation of licensure rules. In addition, the act requires DHHS to impose a civil penalty on any facility that refuses to allow an authorized representative of DHHS to inspect the premises and records of the facility. (Authority to make such inspections currently exists under G.S. 122C-25.)

The act amends G.S. 122C-23 to authorize the Secretary of DHHS to suspend the admission of any new clients to a licensed facility where the conditions of the facility are detrimental to the health or safety of the clients. The Secretary determines the period of suspension and may remove it only when he or she is satisfied that conditions or circumstances merit removal. In suspending admissions under the statute the Secretary must consider both the degree of sanctions necessary to ensure compliance with G.S. 122C-23 and any implementing rules and the character and degree of impact of conditions at the facility on the health or safety of its clients. A facility may contest a suspension of admissions in accordance with Chapter 150B of the General Statutes. In contesting the suspension of admissions, the facility must file a petition for a contested case within twenty days after DHHS mails notice of suspension of admissions to the licensee.

The act amends G.S. 122C-26 to require the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services to adopt rules for licensable facilities that establish

- personnel requirements of staff;
- qualifications of facility administrators or directors;
- requirements for death reporting including confidentiality provisions related to death reporting; and
- requirements for patient advocates.

Notwithstanding G.S. 150B-21.1(a), the commission must adopt temporary rules to establish these requirements.

S.L. 2000-55 also enacts G.S. 122C-24.1 to require DHHS to impose an administrative penalty on any licensed facility that is found to be in violation of Article 2 (the licensure provisions) or Article 3 (the clients’ rights statutes) of G.S. Chapter 122C or any applicable state or federal laws and regulations governing the licensure or certification of a facility. Penalties imposed under the act commence on the day the violation began.

The act classifies violations as Type A Violations and Type B Violations. A Type A Violation is one that results in death or serious physical harm or results in a substantial risk that death or serious physical harm will occur. Type A Violations must be abated or eliminated immediately and DHHS must require an immediate plan of correction for each Type A Violation. The person making the findings must

- orally and immediately inform the administrator of the facility of the specific findings and what must be done to correct them, and set a date by which the violation must be corrected;
- within ten working days of the investigation, confirm in writing to the administrator the information provided orally; and
- provide a copy of the written confirmation to DHHS.

DHHS must impose a civil penalty of not less $250 nor more than $5,000 for each Type A Violation in facilities or programs that serve nine or fewer persons. For programs that serve ten or more persons, DHHS must impose a civil penalty of not less than $500 nor more than $10,000 for each Type A Violation. If a facility fails to correct a Type A Violation, DHHS must assess a civil penalty not to exceed $500 for each day the deficiency continues beyond the time specified in the plan of correction approved by DHHS or its authorized representative. When a facility under the same management, ownership, or control has received a citation and paid a penalty for violating
the same specific provision of a statute or regulation during the previous twelve months, DHHS must impose a penalty that is treble the amount of the penalty permitted for a Type A Violation.

A Type B Violation means a violation of a statute or rule that directly relates to the health, safety, or welfare of any client or patient, but which does not cause a substantial risk that death or serious physical harm will occur. DHHS must require a plan of correction for each Type B Violation and may require the facility to establish a specific plan of correction within a specific time period to address the violation. If a facility fails to correct a Type B Violation within the time specified for correction by DHHS or its authorized representative, DHHS must assess a civil penalty not to exceed $200 for each day that the deficiency continues beyond the date specified for correction unless there is just reason for the failure.

G.S. 122C-24.1 sets forth the factors that DHHS must consider in determining the amount of the initial penalty and requires DHHS to document findings of fact in support of its penalty determination. DHHS must make a written record of its findings available to all affected parties, including the licensee involved, the clients or patients affected, and the family members or guardians of the clients or patients affected. The act provides that a facility may contest the reasonableness of the amount of any penalty assessed against it by petitioning for an administrative hearing as provided in G.S. Chapter 150B. The act also grants DHHS the authority to bring a civil action in superior court to recover unpaid penalties.

In lieu of assessing an administrative penalty, the Secretary may order a facility to provide staff training if, one, the penalty would be for the facility’s only violation within a twelve-month period preceding the current violation and while the facility is under the same management and, two, the training is specific to the violation, approved by DHHS, and taught by someone approved by DHHS and other than the provider.

Licensure Exception for Nonprofit Substance Abuse Facilities

G.S. 122C-22(a) lists facilities excluded from the licensure provisions otherwise applicable to mental health, developmental disabilities, and substance abuse facilities. Section 11.25A of S.L. 2000-67 amends G.S. 122C-22 to add to the list twenty-four-hour nonprofit facilities established for the purposes of shelter care and recovery from alcohol or other drug addiction through a twelve-step, self-help, peer role modeling, and self-governance approach.

Eliminate Thomas S. Program

Section 11.22 of S.L. 2000-67 requires MH/DD/SAS to terminate the Thomas S. Program effectively immediately. The state was forced to create the Thomas S. Program as a result of a lawsuit commenced in 1982 against the state on behalf of a class of plaintiffs comprising adults with mental retardation who were institutionalized in state psychiatric hospitals, many of whom had no diagnosis of mental illness. A federal district court ruled that the plaintiffs were denied their constitutional rights to safety, liberty, and habilitation or treatment as a consequence of being physically injured, administered antipsychotic drugs inappropriately, secluded excessively, restrained, and subjected to inhumane living conditions. The court enjoined the state from treating class members in violation of their constitutional rights and ruled that the plaintiffs were entitled to prospective relief including protection from aggression and self-abuse, safe drug practices, no unnecessary reliance on bodily restraints, and a full range of habilitation services. The court set up a process for professional case-by-case evaluation of each class member and appointed a special master to hold hearings and make recommendations to the court concerning the identification of class members, the extent to which each member’s rights were violated, the adequacy of treatment of class members, and the scope of additional appropriate relief.

Since the creation of the court-ordered program, Thomas S. Program appropriations have grown at a rate faster than that for the funding of other community-based services, as the court-ordered services generally were required without consideration of the budgetary restraints affecting other services. Once a person with mental retardation accumulated a certain number of days of care in a state psychiatric hospital, he or she automatically became a member of the class of persons entitled to the full range of habilitative services in the Thomas S. Program. To reduce growth of the class size, the state amended the involuntary commitment laws effective January 1, 1997, to reduce the likelihood that persons with mental retardation would be admitted to the state psychiatric hospitals by requiring the diversion of multiply diagnosed persons (persons diagnosed with both mental illness and mental retardation) in need of emergency care to more appropriate crisis and residential services.

Around the same time that the commitment laws were amended, the General Assembly directed the Office of Attorney General to seek to terminate federal court oversight of the program. In response to a motion by the state, in early 1998 the district court terminated jurisdiction over the Thomas S. case, thereby giving the state greater flexibility in determining how to serve persons with mental retardation, including multiply diagnosed adults.

Now the state has ended the program. To “ensure that multiply-diagnosed adults are appropriately served by the mental health, developmental disabilities, and substance abuse service system,” Section 11.22 of S.L. 2000-67 requires MH/DD/SAS to provide only treatment services that are medically necessary, implement utilization review of services provided, and identify savings realized from elimination of the Thomas S. Program administration and infrastructure. In addition, MH/DD/SAS must adopt guiding principles for the provision of services, including the following:

- The service delivery system must be outcome-oriented and evaluation-based.
- Services should be delivered as close as possible to the client’s home.
- Services selected should be those that are most efficient in terms of cost and effectiveness.
- Services should not be provided solely for the convenience of the provider or the client.
- Families and consumers should be involved in decision making throughout treatment planning and delivery.

MH/DD/SAS must also implement cost-reduction strategies that include preauthorization for all services except emergency services, criteria for determining medical necessity, clinically appropriate services, state review of individualized service plans to ensure that plans focus on delivery of appropriate rather than optimal services, and state review of staffing patterns of residential services. Section 11.22 further directs that no state funds may be used for the purchase of single-family or other residential dwellings to house multiply diagnosed adults. DHHS must submit a progress report on implementation of these provisions not later than February 1, 2001, and a final report not later than May 1, 2002, to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Human Resources, and the Fiscal Research Division.

**Death Reports and Use of Restraint and Seclusion in DHHS-Licensed Facilities**

**Mental Health Facilities**

G.S. 122C-60 provides that physical restraint or seclusion in facilities providing mental health, developmental disabilities, or substance abuse services may be used only when there is an imminent danger of abuse or injury to the client, when substantial property damage is occurring, or when the restraint or seclusion is necessary as a measure of therapeutic treatment. All instances of restraint or seclusion must be documented in the client’s record, and each client who is restrained or secluded must be observed frequently and the observation noted in the client record.
Data collection, personnel training, and competency requirements. S.L. 2000-129 (H 1520), effective January 1, 2001, amends G.S. 122C-60 to require facilities to collect data on the use of physical restraint and seclusion and to implement policies and practices that emphasize alternatives to physical restraint and seclusion. Facilities that employ physical restraint or seclusion must collect data that reflects, for each incidence, the type of procedure used, the length of time employed, alternatives considered or employed, and the effectiveness of the procedure or alternative employed. The facility must analyze the data on at least a quarterly basis to monitor effectiveness, determine trends, and take corrective action where necessary, and must make the data available to the DHHS Secretary upon request. Any state or federal law pertaining to the confidentiality of such information continues to apply, and the Secretary must adhere to any state and federal requirements of confidentiality that apply to information received under the new law. DHHS may investigate complaints and inspect a facility at any time to ensure compliance with the act.

Physical restraint and seclusion may be employed only by staff that have been trained and have demonstrated competence in the proper use of and alternatives to these procedures. Facilities must ensure that staff authorized to employ and terminate these procedures are retrained and have demonstrated competence at least annually.

The Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services must adopt rules to implement G.S. 122C-60, as amended, and in adopting rules, the commission must take into consideration federal regulations and national accreditation standards. Rules adopted by the commission must address matters necessary to ensure the safety of clients and others and methods for determining staff competence, including qualifications of trainers and training curricula. Commission rules must also address staff training and competence in

- the use of positive behavioral supports;
- communication strategies for defusing and deescalating potentially dangerous behavior;
- monitoring vital indicators;
- administration of CPR;
- debriefing with clients and staff; and,
- other areas to ensure the safe and appropriate use of restraints and seclusion.

Reporting client deaths. S.L. 2000-129 also creates a new G.S. 122C-31 to require a facility, including psychiatric hospital units licensed under G.S. Chapter 131E, to notify the DHHS Secretary (1) immediately upon the death of any client of the facility that occurs within seven days of physical restraint or seclusion of the client and (2) within three days of the death of any client resulting from violence, accident, suicide, or homicide. If the death of a client of a facility occurs within seven days of the use of physical restraint or seclusion, then the Secretary must immediately initiate an investigation of the death. The Secretary may assess a civil penalty of not less than $500 and not more than $1,000 against a facility that fails to notify the Secretary of a death and its surrounding circumstances when such events are known to the facility.

Upon receipt of notice of a death the Secretary must notify the Governor’s Advocacy Council for Persons with Disabilities that a person with a disability has died. The Secretary must provide the council access to information about the reported death, including information resulting from any investigation of the death by DHHS and from reports received from the Chief Medical Examiner pursuant to G.S. 130A-385. The council must use the information in accordance with its powers and duties under G.S. 143B-403.1 and applicable federal law and regulations.

Facilities or providers that make available confidential information pursuant to these death reporting and investigation requirements must do so in accordance with applicable state or federal confidentiality law, and the Secretary and the council must adhere to state and federal confidentiality requirements in carrying out the requirements of new G.S. 122C-31. The Secretary must establish a standard reporting format for reporting deaths and provide facilities a form for use in complying with the law.
Residential Child-Care Facilities

S.L. 2000-129 imposes some, but not all, of the provisions described above on residential child-care facilities and other facilities licensed under Article 1A of G.S. Chapter 131D. New G.S. 131D-10.5A requires residential child-care facilities that employ the use of physical restraint to collect data on each use of restraint that shows the type of procedure used, the length of time employed, alternatives considered or employed, and the effectiveness of the procedure or alternative employed. The facility must analyze the data on at least a quarterly basis to monitor effectiveness, determine trends, and take corrective action where necessary, and the facility must make the data available to DHHS upon request. Any state or federal law pertaining to the confidentiality of such information continues to apply, and DHHS must adhere to any state and federal requirements of confidentiality that apply to information received under the new law.

The Social Services Commission must adopt rules both governing the documentation of the use of physical restraint in residential child-care facilities and establishing personnel and training requirements related to the use of physical restraints and time-out for residential child-care facility employees.

Facilities licensed under Article 1A of G.S. Chapter 131D must notify DHHS (1) immediately upon the death of any client of the facility that occurs within seven days of physical restraint of the client and (2) within three days of the death of any client resulting from violence, accident, suicide, or homicide. Otherwise, the provisions on death reports described above for mental health facilities apply.

Adult Care Homes

S.L. 2000-129 does not impose restraint-related data collection or personnel training and competency requirements on adult care homes but does apply to such homes the death reporting requirements applicable to mental health facilities, albeit in slightly narrower circumstances. Pursuant to new G.S. 131D-34.1, an adult care home must notify DHHS (1) immediately upon the death of any resident that occurs in the adult care home or that occurs within twenty-four hours of the resident’s transfer to a hospital if the death occurred within seven days of the adult care home’s use of physical restraint or physical hold of the resident and (2) within three days of the death of any adult care home resident resulting from violence, accident, suicide, or homicide. Once these conditions arise to trigger the reporting requirements, the remaining provisions of G.S. 131D-34.1 are the same as those applicable to mental health facilities in G.S. 122C-31, described above.

DHHS Reporting

S.L. 2000-129 requires DHHS to make an annual report to the legislature regarding the compliance of mental health, developmental disabilities, and substance abuse facilities (new G.S. 122C-5); residential child-care facilities (new G.S. 131D-10.6); and adult care homes (G.S. 131D-42) with state law governing the use of physical restraints. DHHS must report each October 1 to the Legislative Study Commission on Mental Health, Developmental Disabilities, and Substance Abuse Services the following information for the preceding fiscal year: (1) the level of compliance of each facility with applicable law governing the use of restraint and seclusion (mental health facilities), restraint and time-out (residential child-care facilities), or physical restraint and physical hold (adult care homes); and (2) the total number of facilities that reported deaths under S.L. 2000-129, the number of deaths reported by each facility, the number of deaths investigated pursuant to the act, and the number found by the investigation to be related to the use of physical restraint, seclusion, time-out, or physical hold.
Chief Medical Examiner

S.L. 2000-129 amends G.S. 130A-385 to provide that, when a death occurs in a facility licensed subject to Articles 2 or 3 of G.S. Chapter 122C, or Articles 1 or 1A of G.S. Chapter 131D, and the deceased was a client or resident of the facility or a recipient of facility services at the time of death, then the Chief Medical Examiner must forward a copy of the medical examiner’s report to the DHHS Secretary within thirty days of receipt of the report from the medical examiner.

Area Authorities

Area Authority Board Member Per Diem

G.S. 122C-120 provides that area board members may receive as compensation for their services a per diem and a subsistence allowance for each day during which they are engaged in the official business of the area board. The statute further provides that the amount of the per diem and subsistence allowance must be established by the area board and must not exceed those authorized by G.S. 138-5, which permits a $15 per diem. Section 11.18 of S.L. 2000-67 amends G.S. 122C-120 to permit the area board to establish a per diem allowance up to $50. The act does not alter the subsistence allowance, but clarifies that reimbursement for subsistence expenses must be according to the rates allowed under G.S. 138-6(a)(3).

Criminal Records Checks for Employment in Area Authorities

G.S. 114-19.3 authorizes the Department of Justice (DOJ) to provide to area authorities and agencies that contract with area authorities criminal record checks of individuals employed by or applying for employment with these entities. This statute also authorizes record checks of individuals who have volunteered to provide direct care or services to children, the sick, the disabled, or the elderly; that “provides direct care or services to children, the sick, the disabled, or the elderly.”

G.S. 114-19.10 authorizes DOJ to provide criminal histories from both the state and national repositories of criminal histories, outlines the procedures for agencies to use when requesting a criminal history check, and permits DOJ to charge a reasonable fee for conducting the checks as long as the fee for a state records check does not exceed $14.

New G.S. 122C-80 requires area authorities and their contract agencies to condition an offer of employment, if the position applied for does not require the applicant to have an occupational license, on the applicant’s consent to a state and national criminal history check when the applicant has been a North Carolina resident for less than five years or to a state criminal history check when the applicant has been a resident of the state for five years or more. When a national criminal history record check is required, the agency requesting the check must provide DOJ with the fingerprints of the individual to be checked.

Area authorities and their contract agencies must not employ any applicant who refuses to consent to a criminal history check. Within five business days of making a conditional offer of employment, the agency must submit to DOJ a request for a criminal history record check with a form signed by the job applicant that demonstrates the applicant’s consent to the check (and use of fingerprints where applicable). The agency also must provide any other identifying information required by the state or national repositories of criminal histories. Any applicant for employment who willfully gives false information on an employment contract that is the basis for a criminal
history check under G.S. 122C-80 is guilty of a Class A1 misdemeanor. The applicant’s conviction of a crime is not, standing alone, a bar to employment. However, if the criminal history check indicates that the applicant has been convicted of a crime that bears upon the applicant’s fitness to have responsibility for the safety and well-being of persons needing mental health, developmental disabilities, or substance abuse services, (including illegal possession or sale of controlled substances, driving while impaired, assault, and other criminal offenses listed in the statute), then the area authority or contract agency must consider the following factors before hiring the applicant:

- the level and seriousness of the crime;
- the date of the crime;
- the applicant’s age at the time of conviction;
- the circumstances surrounding the commission of the crime (if known);
- the relationship between the applicant’s criminal conduct and the job responsibilities of the position to be filled;
- the prison, jail, probation, parole, rehabilitation, and employment records of the applicant since the date of the commission of the crime; and
- the applicant’s subsequent commission of a crime that bears upon the applicant’s fitness to have responsibility for the safety and well-being of agency clients.

Entities covered by the act may employ an applicant conditionally prior to obtaining the results of a criminal history check if the applicant’s consent for the check has been obtained (along with fingerprints, where necessary) and the criminal history check has been requested within five business days of the applicant’s employment.

Criminal history information received pursuant to a criminal records check is confidential and may not be disclosed, except that the agency may disclose to an employee who has been disqualified for employment information that is relevant to the disqualification (but may not provide a copy of the criminal history check to the applicant). The act provides immunity from civil liability to agency officers and employees for failure to employ an individual on the basis of information provided in the applicant’s criminal history check or for failure to check an employee’s criminal history if the employee’s criminal history record check is requested and received in compliance with the act.

S.L. 2000-154 makes similar changes with respect to criminal records check requirements for adult care homes and contract agencies of adult care homes (G.S. 131D-40), nursing homes, nursing home contract agencies, and home health agencies (G.S. 131E-265). The act’s provisions relating to criminal records checks of applicants for employment with adult care homes are discussed in Chapter 21, “Senior Citizens.”

**Health Care Personnel Registry**

G.S. 131E-256 requires DHHS to maintain a registry containing the names of persons who may have neglected or abused residents of health care facilities. (“Health care facilities” is defined to include state-operated facilities, twenty-four-hour facilities, and residential facilities that provide mental health, developmental disabilities, and substance abuse facilities.) Specifically, the registry must contain the names of health care personnel who have been alleged or found to have neglected or abused a resident of a health care facility, misappropriated property of a resident or facility, diverted drugs belonging to a patient or facility, or committed fraud against a health care facility or patient for whom the employee was providing services. Health care facilities must notify DHHS of any substantiated allegations against health care personnel that appear to be related to the foregoing acts and must access the registry before hiring health care personnel.

S.L. 2000-55 (S 1179) amends G.S. 131E-256 to require health care facilities to report all allegations, whether or not substantiated, including injuries of unknown source, that are related to any of the listed acts. Facilities must have evidence that all alleged acts are investigated and must
make every effort to protect residents from harm while the investigation is in progress. The results of investigations must be reported to DHHS within five working days of the initial notification.

S.L. 2000-55 enacts G.S. 131E-256.1, which provides that DHHS may suspend, cancel, or amend a license when a health care facility has substantially failed to comply with the health care personnel registry statute. Any administrative action taken by DHHS must be in accordance with G.S. Chapter 150B.

Studies and Reports

Division of Developmental Disabilities

Section 15.1 of S.L. 2000-138 (S 787), The Studies Act of 2000, amends Section 11.23(b) of S.L. 2000-67 to require DHHS, in consultation with the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, to study whether a new division of developmental disabilities should be established in DHHS. By January 1, 2001, DHHS must report its findings and recommendations to the oversight committee, the House Appropriations Committee on Health and Human Services, and the Senate Appropriations Committee on Human Resources.

Criminal Background Checks in Adult Care Industry

The Studies Act of 2000, at Section 6.4, authorizes the Joint Legislative Health Care Oversight Committee to study further the criminal background checks required for the adult care home industry and the issue of establishing a list of mandatory disqualifying convictions for employment with rest homes, adult care facilities, and home health care agencies in North Carolina.

School Counselors and Social Workers

Section 5.4 of S.L. 2000-138 authorizes the Joint Legislative Education Oversight Committee to study issues related to school counselors and social workers in the public schools, including whether the counselor-student ratio should be reduced from 1:450 to 1:250 and whether counselors should be paid on the school psychologist salary schedule.

Mark Ford Botts
More than thirty bills dealing with motor vehicles or highway safety were considered during the 2000 session of the General Assembly. Less than half of these were enacted into law, and many of those enacted were of a technical nature of interest primarily to automobile dealers or to government officials who regulate the various aspects of the automobile and trucking industry. This chapter summarizes the motor vehicle legislation that is of general public interest or historical significance.

As has been the case in the last several sessions, the most important motor vehicle legislation of 2000 deals with strengthening and clarifying North Carolina’s impaired driving laws. While the remainder of the changes consist mostly of fine-tuning an increasingly complicated body of law, the General Assembly did make significant changes in the laws dealing with oversize loads, tinted windows, and violation of child passenger restraint system requirements.

### Impaired Driving

The Governor’s Task Force on Drunken Driving has again proposed legislation to modify the laws regulating impaired drivers. This year’s legislation focused on the regulation of open containers of alcohol in vehicles, although it also included modifications to the ignition interlock requirements enacted last year. These changes are included in S.L. 2000-155 (H 1499).

**Open containers.** The proposal to modify the regulation of open containers of alcohol in vehicles stems in part from federal requirements. 23 U.S.C. §154 requires states, as a condition of receiving some highway construction funding, to have laws in effect that prohibit the possession of an open alcoholic beverage or the consumption of alcohol in the passenger area of a motor vehicle located on a highway, and the law must apply to all occupants of the vehicle. North Carolina already had a law (G.S. 18B-400) that punished a driver for transporting an open container of spirituous liquor or fortified wine in a motor vehicle. Spirituous liquor is distilled spirits, including whiskey, rum, brandy, and gin. That law does not apply to malt beverages such as beer or to unfortified wine (wine that has an alcohol content produced solely by natural fermentation or the addition of sugars). Other laws prohibit a driver from consuming a malt beverage or unfortified wine while driving (G.S. 18B-400), however, and from driving a vehicle in which there is an open container of alcohol in the passenger area if the driver has drunk any
alcohol and it remains in his or her body (G.S. 20-138.7). None of those laws apply to passengers, and none prohibit driving by a sober driver while an open container of beer or unfortified wine is in the passenger area of the vehicle.

The multiplicity of provisions dealing with this subject and the unwillingness of the legislature to punish a sober driver for transporting open containers of beer and wine, without more, is an indication of the controversy that surrounds this general issue. This year’s debate was no exception. The task force’s original bill would have prohibited transportation of any opened container, subject to certain exceptions allowed by federal law for living quarters in mobile homes, motor homes, and passenger areas of busses and other vehicles in which passengers pay to be transported. That bill was modified to make an important change. As enacted and codified as G.S. 20-138.7(a1), the bill applies to anyone in the vehicle who possesses an open container of any alcoholic beverage, as well as to any passenger who consumes alcohol in a vehicle located on a highway. Unlike the other offenses, this offense does not require the vehicle to be driven. It is also the only one applicable to passengers. This offense applies only to motor vehicles required to be registered with the Division of Motor Vehicles (DMV). Finally, this offense only applies on highways, and not on public vehicular areas.

A person who violates this offense commits an infraction. It is not a moving violation for purposes of assessing driver’s license points.

S.L. 2000-155 makes two additional changes to G.S. 20-138.7(a). That subsection makes it a misdemeanor for a person who has been drinking to transport open containers of alcohol in the passenger area. That law had applied since its enactment to driving on both highways and public vehicular areas (parking lots, business, institutional, and apartment driveways, private subdivision roads, and beaches). S.L. 2000-155 limits its applicability to highways only and also excludes from the offense the driving of motor vehicles not required to be registered with the DMV. This includes, but may not be limited to, certain farm vehicles and golf carts that use a highway only for the purpose of crossing it to reach an adjoining portion of the golf course.

Finally, the legislation directs the Attorney General to contest in court the power of the federal government to condition the receipt of highway funds in this manner. The legislation also establishes a September 30, 2002 sunset date for this offense; if the legislature does not enact legislation to make the offense permanent or to extend it before that date, the statute establishing the offense is repealed on that date.

**Ignition interlocks.** In 1999 the General Assembly enacted legislation that required certain convicted impaired drivers to operate only those vehicles in which ignition interlock devices had been installed. That requirement applies to most repeat offenders and to those who are convicted with an alcohol concentration of 0.16 or more. That legislation applies to persons driving with limited driving privileges and to those who have had their licenses restored after a revocation for the impaired driving conviction. S.L. 2000-155 amends that legislation to require that a person who must use an interlock device as a condition of license restoration must install one of the devices on all vehicles the person owns. If the person can demonstrate that a vehicle is not in his or her possession and is used by another member of the family, the DMV may excuse the person from installing the device on that vehicle. If the person is charged with the offense of driving while license revoked for failing to have a device installed on such a vehicle, he or she may assert that fact as a defense in the criminal prosecution.

The 1999 legislation established an alcohol concentration of 0.04 as the level above which the person subject to the ignition interlock requirement as a condition of license restoration should not drive. S.L. 2000-155 specifies that persons who are multiple offenders or who have convictions for other offenses, such as impaired driving in a commercial vehicle, violation of the zero tolerance for alcohol statute applicable to drivers under age twenty-one, or homicide caused by an impaired driver, are subject to a zero tolerance policy and may not drive with any alcohol in their body. That amendment makes the interlock statute, along with another provision enacted in 1999 that established a zero tolerance for these drivers, an independent condition of restoring their license.

S.L. 2000-155 also sets at 0.00 the blood alcohol concentration allowed for driving a vehicle subject to the interlock requirement imposed on a limited driving privilege. The 1999 legislation
Motor Vehicles

did not specify an alcohol level, although the limited driving privilege statute (G.S. 20-179.3) has since 1983 prohibited driving with any alcohol level. This amendment conforms the alcohol level allowed under the limited privilege–interlock requirement to the general limited driving privilege requirement. It does not, however, require the holder of such a privilege to install an interlock device on all the vehicles he or she owns.

**Out-of-state convictions.** In several places (limited privilege eligibility, determination of sentencing levels, length of revocations) in the impaired driving statutes, out-of-state convictions are treated as prior convictions. The prior convictions are included only if they are substantially “equivalent” to North Carolina’s comparable impaired driving offenses. This act changes that language to only require that the offenses be substantially “similar.”

**Use of breath test readings.** Under current law, the normal procedure for administering a breath test is to require at least two breath samples that come within 0.02 of each other before the test is considered valid. However, if a person refuses to submit a second breath sample (or a subsequent sample if more than two are needed), this will be treated as a refusal to submit to the test and may result in the person’s license being revoked. The results of any reading(s) obtained before the refusal may also be used to establish a specific level of alcohol concentration if the person will not provide a second or subsequent sample. The law required that the refusal be willful before the first sample could be admitted into evidence. The new legislation eliminates the requirement of willfulness.

### Oversize Load Permits and Penalties

G.S. 20-116 and 20-119 set forth the size and weight of vehicles and loads permitted on the highways of North Carolina. The State Department of Transportation (DOT) is authorized by G.S. 20-119 to issue a “special permit” for an oversize or overweight vehicle. For many years the violation of a term or condition of a special permit has been a Class 3 misdemeanor punishable by a fine of not more than $500.

S.L. 2000-109 (H 1854) rewrites G.S. 20-119(d) to replace this punishment provision with civil penalties to be assessed by the DOT against the registered owner of the vehicle in the following amounts:

1. $500 for operating without a permit, moving a load off the route specified in the permit, falsifying information to obtain a permit, failure to comply with the dimension restrictions of a permit, or failing to comply with escort vehicle requirements;
2. $250 for moving a house trailer beyond the distance allowed by the permit;
3. $100 for any other violation of the permit conditions or requirements.

A new subsection, (f), was added to G.S. 20-140 (reckless driving) to provide that a driver is guilty of a Class 2 misdemeanor if he or she drives a commercial motor vehicle, while carrying a load subject to permit requirements, carelessly and heedlessly or without due caution and circumspection. This provision is very similar to the existing reckless driving offense.

This act also adds a new subsection, (j3), to G.S. 20-141 (speed restrictions) making it a Class 2 misdemeanor to drive a commercial motor vehicle, carrying a load subject to permit requirements, at a speed in excess of 15 miles per hour above the posted speed or above a restricted speed set by the permit. G.S. 20-16(c), which sets forth driver’s license points assigned for various offenses, mandates 6 points for a violation of G.S. 20-140(f) or G.S. 20-141(j3).

### Window Tinting Restrictions

In 1985 the General Assembly added provisions to G.S. 20-127 (windows) to restrict the use of dark tinted material on vehicle windows. This law, which was controversial from the start, has been amended in almost every session of the General Assembly since its enactment. Under current law, tinting can be used on side and rear windows as long as the total light transmission is at least
35 percent. In other words, 35 percent of light from the outside must reach the inside of the car. S.L. 2000-75 (H 723) further amended this law by creating a medical exception to the tinting restrictions. Effective July 1, 2000, any person suffering from a condition that causes the person to be “photosensitive to visible light” may obtain a medical exception permit. To obtain this permit the applicant must apply in writing to the state’s Medical Evaluation Program and have his or her doctor complete the required medical evaluation form. This permit is valid for a period of five years, unless a shorter time is prescribed, and may be renewed upon medical recertification. The medical exception is the latest in a long list of exceptions that have been added to this law since its inception. Other exceptions include excursion passenger vehicles, for-hire passenger vehicles, common carriers, mobile homes, ambulances, property hauling vehicles, limousines, and law enforcement vehicles.

Child Restraint Systems

G.S. 20-137.1 requires any driver transporting a passenger less than sixteen years of age to have the passenger secured in a child passenger restraint system, or seatbelt, which meets federal standards. A child less than five years of age (and less than forty pounds in weight) must be secured in a weight-appropriate child passenger restraint system (child safety seat). A violation of this act is punishable by a penalty not to exceed $25, but prior to this year no driver’s license points were imposed, as is the case for most moving violations. S.L. 2000-117 (S 1347) amends G.S. 20-137.1(d) to provide that two driver’s license points shall be assessed pursuant to G.S. 20-16, effective December 1, 2000. A provision prohibiting insurance points for a violation of this act was left in the law, however.

Special License Plates

Special license plates, which originally were intended for vehicles driven by major statewide officeholders, have in recent years become an increasingly popular phenomenon. These plates are currently available to many diverse groups, including former prisoners of war, registers of deeds, and members of square dance clubs. Additional special plates were authorized by S.L. 2000-159 (S 1210), including the following: “Ducks Unlimited,” “Goodness Grows,” “Litter Prevention,” “Omega Psi Phi Fraternity,” and “Support Public Schools.” The Division of Motor Vehicles must receive at least 300 applications for a particular plate before it is developed. Goodness Grows plates cost $25 in addition to the regular registration fee. The other listed plates cost an additional $20. The extra fee derived from the sale of these plates will be distributed as follows:

1. Proceeds from Support Public Schools plates will go to the Fund for the Reduction of Class Size in Public Schools, created pursuant to G.S. 115C-472.10.
2. Proceeds from Ducks Unlimited plates will go to the Wildlife Resources Commission to be used to support the conservation programs of Ducks Unlimited, Inc.
3. Proceeds from the Omega Psi Phi Fraternity plates will go to the United Negro College Fund (U.N.C.F.), Inc., through the Winston-Salem area office for the benefit of U.N.C.F Colleges in North Carolina.
4. Proceeds from the Litter Prevention plates will go to the litter prevention account created pursuant to G.S. 136-125.1
5. Proceeds derived from the Goodness Grows plates will go to the North Carolina Agricultural Promotions, Inc., to be used to promote the sale of North Carolina agricultural products.
Bills That Failed to Pass

As is the case in most sessions of the General Assembly, several interesting motor vehicle proposals were not enacted. These failed bills can be significant because they often reappear a session or so later, sometimes with considerably more support. The following are among those that failed to pass in 2000:

1. H 815 would have amended G.S. 20-158(b) to allow vehicles on a one-way street which intersects with another one-way street to make a left turn on a red light after coming to a complete stop and yielding the right-of-way. Right turns on red have been authorized for many years. This bill was re-referred to the Senate committee on transportation.

2. H 1203 would have amended G.S. 20-140.4 (motorcycles) to exempt from the helmet requirements any motorcycle operator at least twenty-one years of age who had a motorcycle license endorsement for more than twelve months. This bill, which has been considered in previous sessions, was postponed indefinitely in the House.

3. H 1842 would have amended G.S. 20-66 to require vehicles to be registered on a biennial basis rather than annually, as is currently required. This bill also would have authorized two-year vehicle inspection stickers. H 1842 was postponed indefinitely in the House.

James C. Drennan
Ben F. Loeb, Jr.
A number of significant bills concerning personnel matters were introduced during the 2000 session, but only a few of these measures were enacted. Of these, the most important were steps taken to address the anticipated deficit in the Teachers’ and State Employees’ Comprehensive Major Medical Plan. Among other things, the legislature established a reserve fund to cover the anticipated shortfall. Always a focal point is the salary increase for state employees. This year was no exception. After much debate, state employees received a 4.2 percent pay raise and benefits payable under the state and local government retirement system were enhanced. Other notable developments include significant changes to the procedures for contested case hearings and an increase in the state tort claims liability limit.

**State Employees**

**Salary and Retirement Benefit Increases**

The 2000 Appropriations Act, S.L. 2000-67 (H 1840), provided most state employees with a 4.2 percent salary increase and a one-time bonus of $500. Consistent with the requirements of the State Personnel Act, the actual allocation of the pay adjustment was a 2 percent career growth and recognition award and a 2.2 percent cost-of-living adjustment. The bonus, paid in a lump sum in October, is for any person who was a permanent employee on April 1, 2000, and who was in service October 1, 2000.

S.L. 2000-67 also implemented the fourth year of the Excellent Schools Act and enacted a teacher salary schedule that increased salaries by an average of 6.5 percent. School-based administrator salaries continue to be linked to the teacher salary schedule and were also increased. State employees, including all education support personnel, assistants, office staff, and central office employees, received a 4.2 percent salary increase plus a $500 bonus paid in October.

The Governor and the Council of State also received salary increases. The Governor’s salary rose from $113,656 to $118,430 annually. The annual salary for Council of State members increased from $100,310 to $104,523. Salaries of appointed state department heads escalated from $98,003 to $102,119. Other executive branch officials also received 4.2 percent raises, as did most
judicial branch officials, employees of the General Assembly, Community College system personnel, and EPA nonfaculty employees of the University of North Carolina.

In addition, Section 26.20 of S.L. 2000-67 amends the law to enhance benefits payable from the four major public retirement systems. With regard to the Teachers’ and State Employees’ Retirement System (TSERS), this provision increases the defined benefit formula accrual rate from 1.80 percent to 1.81 percent, provides a 3.6 percent post-retirement increase in the allowances of beneficiaries who retired on or before July 1, 1999, and prorates the increase for beneficiaries who retired after July 1, 1999, but before June 30, 2000, and provides for a 0.6 percent increase to those who were retired as of June 1, 2000, to account for the increase in the accrual rate. Under the Local Government Employees’ Retirement System (LGERS), the measure increases the defined benefit formula accrual rate from 1.77 percent to 1.78 percent; provides a 3.8 percent postretirement increase in the allowance of beneficiaries who retired on or before July 1, 1999; and prorates the increase for those who retired after July 1, 1999, but before June 30, 2000, and provides for a 0.6 percent increase to those who retired as of June 1, 2000. Under the Legislative Retirement System (LRS), the law provides a 3.6 percent postretirement increase in the allowances of beneficiaries who retired on or before January 1, 2000, payable effective July 1, 2000, and prorates the increase for those who retired after January 1 but before June 30, 2000. With regard to the Consolidated Judicial Retirement System (CJRS), the section provides for a 2.6 percent postretirement increase in the allowances of beneficiaries who retired on or before July 1, 1999, payable July 1, 2000, and prorates the increase for those who retired after July 1, 1999, but before June 30, 2000.

**Amendments to the State Tort Claims Act**

If a person has been injured as a result of negligence on the part of a state employee acting within the scope of his or her employment, the injured person may be permitted to bring a civil lawsuit to recover damages pursuant to the State Tort Claims Act. The maximum amount an injured person was allowed to recover was $150,000, as set out in G.S. 143-299.2. Section 7A(a) of S.L. 2000-67 amends G.S. 143-299.2 to raise the state tort claims liability limit from $150,000 to $500,000. The unit of government that employed the worker at the time the civil action arose will be responsible for the first $150,000 of damages, and the balance will be paid with funds transferred to the Office of State Budget and Management from state agencies. These funds will come from each agency’s lapsed salaries.

**State Health Plan Changes**

With the health plan covering state employees facing a significant budgetary shortfall, the legislature weighed various options to address the plan’s financial troubles. In S.L. 2000-141 (H 1855), lawmakers approved limits on so-called “lifestyle drugs.” Pursuant to this law, coverage is prohibited for erectile dysfunction, growth hormone, anti-wrinkle, weight loss, and hair growth drugs that are not medically necessary. This law also removes the provision from G.S. 135-40.2(a) requiring that retired employees first hired after October 1, 1995, have twenty or more years of retirement service credit to be eligible for health care coverage on a noncontributory basis.

S.L. 2000-184 (S 432) also made changes to the state health plan. It provides that the comprehensive major medical plan shall cover the cost of one annual Pap smear for any covered female under the plan’s wellness benefit. Additionally, the law allows individuals who have been excluded from membership in the plan for filing fraudulent claims to be considered for reinstatement when they have made full restitution and have had a cessation of coverage for five years.

The General Assembly also established the State Employees’ Reserve, to be used to offset anticipated deficits in the health plan and to provide benefit enhancements to state employees and retirees. A total of $51,700,000 was appropriated to this reserve fund pursuant to Section 26.18 of S.L. 2000-67.
Deputy Industrial Commissioner Pay Equity

Section 26.16 of S.L. 2000-67 requires the Office of State Personnel to conduct a salary equity study of the Deputy Industrial Commissioner class. The Deputy Industrial Commissioners are employed in the North Carolina Industrial Commission under the Department of Commerce. Based on the findings of this study, up to $35,000 from the Reserve on Compensation Increase may be transferred to the Industrial Commission to address salary inequities.

The Studies Act of 2000

S.L. 2000-138 (S 787) authorizes the Legislative Research Commission to study the following issues related to public personnel:

- the compensation and retention of employees of the Department of Correction;
- the receipt and use of federal funds under Title VI of the Civil Rights Act of 1964; and
- the issue of establishing a list of disqualifying criminal convictions for employment with rest homes, adult care facilities, and home health care agencies.

The Studies Act also allows the appropriations subcommittees of the Natural and Economic Resources committees of both the Senate and House of Representatives to study the current organization of the Department of Environment and Natural Resources and authorizes the Joint Legislative Transportation Oversight Committee to study the policy associated with retirement benefits for part-time Department of Transportation employees.

Additionally, pursuant to Section 14.17 of S.L. 2000-67, the Employment Security Commission is directed to study the ability of older and second career workers to secure employment. The study will include determining what efforts have been made by public and private agencies to educate employers on the benefits of hiring, retraining, and retaining mature workers.

Lastly, Section 26.14 of S.L. 2000-67 requires the Office of State Personnel to report on the adequacy of the Salary Adjustment Fund to fund position reallocations, salary range revisions, and in-range salary adjustments.

State and Local Government Employees

Criminal Records Checks for Long Term Care Employees

S.L. 2000-154 (S 1192) moves the provisions of G.S. 114-19.3 that authorize the Department of Justice to provide criminal record checks for persons employed by adult care homes, nursing homes, and home care agencies to G.S. 114-19.10. The law also requires area mental health, developmental disabilities, and substance abuse service authorities to conduct criminal record checks on certain applicants before making a final offer of employment. Pursuant to the law, these entities may make a conditional offer of employment before the completion of the record check if the applicant consents to the record check and the agency submits the request for records within five days after the person begins conditional employment. Finally, the law makes it a Class A1 misdemeanor for an applicant to furnish false information on an employment application that is the basis for a criminal history check and protects agencies from liability for failure to consider criminal history information if the employee’s criminal history record check is requested and received in compliance with the statute.

Modification of Contested Case Procedures

Pursuant to G.S. 126-34.1, aggrieved employees subject to the State Personnel Act may file a contested case in the Office of Administrative Hearings under Article 3 of Chapter 150B of the General Statutes. Under the current scheme, contested cases are heard by an administrative law judge who renders a recommended decision to the State Personnel Commission (SPC). The SPC
conducts an independent review of the administrative law judge’s recommendation and issues a decision rejecting or accepting the judge’s recommendation. The SPC decision is binding on the state agency or university from which the case originated. If the grievant is a local governmental employee subject to the State Personnel Act, the SPC recommends a decision to the local government agency. Grievants who are dissatisfied with the final agency decision have the right to appeal to superior court.

Concern regarding state agencies’ ability to ignore the recommendations of administrative law judges prompted the passage of S.L. 2000-190 (H 968). This law strengthens the weight that must be given to the decisions of administrative law judges by agencies when making final decisions and will impact the procedure for the resolution of employee grievances. S.L. 2000-190 is discussed in more detail in Chapter 24, “State Government.”

**Local Government Employees**

**Firemen’s and Rescue Squad Workers’ Pension Fund**

Pursuant to Section 26.17 of S.L. 2000-67, qualified firefighters and rescue workers have until March 31, 2001, to seek retroactive membership in the North Carolina Firemen’s and Rescue Squad Workers’ Pension Fund. A person seeking retroactive membership must make a lump sum payment of $10 per month dating back to the time he or she first became eligible for membership, plus interest at a rate of 8 percent for each year of retroactive payment.

Section 26.18 of S.L. 2000-67 increases the retirement pension for eligible firefighters and rescue squad workers from $146 to $151 per month.

Section 26.22 of S.L. 2000-67 amends G.S. 58-86-25 to include county fire marshals in the Firemen’s and Rescue Squad Workers’ Pension Fund. The definition of “eligible firemen” is amended to include a county employee whose sole duty is to act as fire marshal, provided the fire marshal attends no less than thirty-six hours of drills and meetings in each calendar year.

**Bills Not Enacted**

There were several bills introduced that would have substantially impacted personnel laws had they passed. These include the following:

- H 923 sought to increase the amount of vacation leave granted to full-time state employees to 112 hours per calendar year. Additionally, this bill would have allowed up to 24 hours of adverse weather leave annually.
- S 1232 would have extended the provisions of the federal Family and Medical Leave Act (FMLA) to state employees. Given recent decisions by the United States Supreme Court, the state may have sovereign immunity from a lawsuit by a state employee to enforce the provisions of the federal FMLA. This bill would have provided state employees a mechanism to enforce the act’s requirements.
- S 1261 proposed sweeping changes to the employee compensation and performance evaluation provisions of the State Personnel Act.
- S 1315 would have provided private counsel to state employees responsible for the administration or enforcement of environmental or public health laws who are sued in a civil action and alleged to be personally liable for damages as a result of an act or omission by the employee during the course of employment.

*L. Lynnette Fuller*
The 2000 legislative session was relatively quiet with respect to issues affecting the state’s senior citizens and government programs for the elderly. Legislators did not resolve their differences with respect to expansion of the property tax exemption for elderly or disabled homeowners, nor did they establish any significant new programs for senior citizens during the 2000 legislative session. The General Assembly did, however, enact a number of laws affecting government programs for senior citizens, long-term care, and retired government employees.

**Government Programs for Senior Citizens**

**Medicaid**

Section 11.5 of the Appropriations Act of 2000, S.L. 2000-67 (H 1840), requires the Department of Health and Human Services (DHHS) to amend the state Medicaid plan to exclude the value of burial plots and the cash value of life insurance policies (when the total face value of all cash value–bearing life insurance policies does not exceed $10,000) in determining the Medicaid eligibility of aged, blind, or disabled persons.

Section 11.5 of S.L. 2000-67 allows DHHS to proceed with planning and development of a program for all-inclusive care for the elderly and requires DHHS to submit a progress report to the Senate and the House Human Resources Appropriations Committees by January 30, 2001.

Section 11.6 of S.L. 2000-67 repeals a provision in the 1999 Appropriations Act (S.L. 1999-237) authorizing DHHS to transfer funds from the State-County Special Assistance program to support the expansion of Medicaid personal care services for adult care home residents.

Additional legislation affecting the Medicaid program is discussed in Chapter 10, “Health,” and Chapter 23, “Social Services.”

**Prescription Drug Program**

In 1999 the General Assembly established a new (but limited and temporary) prescription drug program for persons who are over the age of sixty-five, are not eligible for full Medicaid benefits, have incomes that do not exceed 150 percent of the federal poverty level, and suffer from
diabetes or cardiovascular disease. Section 11.39 of S.L. 2000-67 (H 1840) increases the funding for this program from $500,000 to $1 million for fiscal year 2000–01.

Section 20.2 of S.L. 2000-67 establishes a new Legislative Study Commission on Prescription Drug Assistance for Elderly and Disabled Persons. This twelve-member commission (appointed by the Senate President Pro Tempore, the Speaker of the House, and the Governor) will study the feasibility of assisting all elderly or disabled North Carolinians who need assistance in purchasing prescription drugs because of the lack of government-sponsored or private health insurance coverage for prescription drugs. The commission must make interim reports to the General Assembly on January 1, 2001, and May 1, 2002, and a final report to the 2003 General Assembly.

State-County Special Assistance

S.L. 2000-67 (H 1840) increases the maximum monthly reimbursement rate for adult care homes under the State-County Special Assistance program to $1,062 per resident and appropriates an additional $4.45 million to pay the state’s share of these costs (counties are required to pay one-half the cost of State-County Special Assistance payments for residents of adult care homes). Section 11.12 of S.L. 2000-67 requires the State Auditor to study the cost reimbursement system used to reimburse adult care homes for residents who receive public assistance and to report the results of this study to the Senate and the House Human Resources Appropriations Committees March 1, 2001.

Section 11.13 of S.L. 2000-67 extends for one year (until June 30, 2002) the current demonstration project under which State-County Special Assistance funds may be used to provide in-home services.

Adult Protective Services

In 1999 the General Assembly amended G.S. 108A-103 to establish time frames within which county departments of social services must investigate reports involving the suspected abuse, neglect, or exploitation of disabled adults. S.L. 2000-131 (H 1571) revises these time frames. Under S.L. 2000-131, county social services departments now must initiate investigations in adult protective services cases

• immediately upon receipt of a report that alleges a “danger of death in an emergency as defined in G.S. 108A-101(g).” (The 1999 amendment required that an investigation be initiated immediately if the report alleged a “life threatening” situation.)
• within twenty-four hours if the report alleges a “danger of irreparable harm in an emergency as defined in G.S. 108A-101(g).” (The 1999 amendment required that an investigation be initiated within twenty-four hours if the report alleged abuse as defined in G.S. 131D-20.)
• within seventy-two hours in all other cases. (The 1999 amendment required that an investigation be initiated within forty-eight hours in cases involving suspected neglect or within two weeks in all other cases.)

In cases involving the alleged exploitation of a disabled adult, the county department of social services must complete its investigation within forty-five days from the date of the report. Investigations in other adult protective services cases must be completed within thirty days.

Respite Care

S.L. 2000-50 (H 1514) permanently repeals the provision in G.S. 143B-181.10(c) under which the reimbursement rate under the state respite care program for the temporary out-of-home 1. Some of the issues related to prescription drug assistance programs for the elderly are discussed in an article by Patrick Liedtka, “Does North Carolina Need a Pharmaceutical Assistance Program for Older Adults?” Popular Government 65 (Summer 2000): 37–40.
placement of an elderly or disabled adult could not exceed the reimbursement rate for placement in an adult care home. S.L. 2000-50 also directs the Medical Care Commission to adopt temporary and permanent rules defining the circumstances under which an adult care home may admit residents on a short-term basis for the purpose of caregiver respite.

**Adult Day Care**

The Appropriations Act of 2000, S.L. 2000-67 (H 1840), provides $250,000 in nonrecurring state funding for grants for the start-up costs of new adult day care centers.

**Long-Term Care**

**Long-Term Care Policy and Planning**

Section 11.4 of S.L. 2000-67 (H 1840) requires the Department of Health and Human Services (DHHS), in conjunction with the N.C. Institute of Medicine, to identify screening, level of services, and care planning instruments that will be used by DHHS for all long-term care services; develop a timetable for testing and implementing these instruments; and compile county level data on the number of adults who use DHHS long-term care services and the expenditures for these services by agency and type of program.

Section 11.4 of S.L. 2000-67 also extends until January 2002 the deadline by which DHHS must implement the initial phase of a comprehensive data system that tracks long-term care expenditures, services, consumer profiles, and consumer preferences, and develop a system of statewide long-term care services coordination and case management.

Section 11.3 of S.L. 2000-67 requires DHHS, in conjunction with the N.C. Institute of Medicine, to convene a special work group to develop criterion-based indicators for monitoring the quality of care in nursing homes, adult care homes, assisted living facilities, and home health care programs; to implement these criteria in monitoring long-term care; and to pursue options for the use of these criteria in lieu of the federally mandated criteria for surveying nursing homes under the Medicaid and Medicare programs.

Sections 6.2 and 6.4 of S.L. 2000-138 (S 787) authorize the Joint Legislative Health Care Oversight Committee to study the issue of mandatory disqualifiers for employment in adult care homes, home health care agencies, and other facilities or agencies that provide care and services to elderly persons and to report its findings and legislative recommendations to the 2001 General Assembly.

**Criminal Records Checks for Employment in Long-Term Care Facilities**

G.S. 131D-40 requires a criminal records check of newly hired employees of adult care homes (other than employees who are required to hold an occupational license). Effective January 1, 2001, S.L. 2000-154 (S 1192) amends G.S. 131D-40 and enacts G.S. 114-19.10 to require that when a newly hired employee has been a resident of North Carolina for less than five years, the Department of Justice must conduct a criminal history check of both national and North Carolina criminal records. When a national criminal history check is not required (because the applicant has resided in North Carolina for at least five years), the criminal history check of North Carolina criminal records may be conducted by the Department of Justice or a private entity.

S.L. 2000-154 also amends G.S. 131D-40 to (1) make it a Class A1 misdemeanor for an applicant for employment to willfully give false information on an employment application that is the basis for a criminal history check under G.S. 131D-40; (2) allow an adult care home to employ an applicant conditionally before obtaining the results of a criminal history check if the applicant has consented to the criminal history check and the adult care home requests the criminal history check within five business days of the applicant’s employment; and (3) provide immunity for the
officers and employees of an entity with respect to civil liability for failure to check an employee’s criminal history if a criminal record check of the employee is requested and received in compliance with G.S. 131D-40.

S.L. 2000-154 makes similar changes with respect to the criminal records check requirements for adult care home contract agencies [G.S. 131D-40(a1)] and nursing homes, nursing home contract agencies, and home health agencies [G.S. 131E-265]. The act’s provisions relating to criminal records checks of certain applicants for employment with area mental health authorities are discussed in Chapter 18, “Mental Health and Related Laws.”

Section 6.4 of S.L. 2000-138 (S 787) authorizes the Joint Legislative Health Care Oversight Committee to study additional issues relating to criminal background checks of employees of long-term care facilities and to report its findings and legislative recommendations to the 2001 General Assembly.

**Health Care Personnel Registry**

G.S. 131E-256 requires DHHS to maintain a registry of health care personnel who work in health care facilities (adult care homes, nursing homes, home health agencies, and other designated health care facilities) and are found to have abused or neglected a patient, misappropriated the property of a patient or the facility, diverted drugs belonging to a patient or the facility, or committed fraud against a patient or the facility. Under prior law, health care facilities were required to notify DHHS of all substantiated allegations involving the conduct described in the preceding sentence. S.L. 2000-55 (S 1179) amends G.S. 131E-256 to require that health care facilities notify DHHS of all allegations (regardless of whether the allegations are substantiated) against health care personnel (including injuries from unknown sources) that appear to involve the conduct described above. A facility must investigate all reportable allegations, protect residents from harm while the investigation is in process, and report the results of their investigations to DHHS within five working days of the initial incident report. G.S. 131E-256.1, enacted by S.L. 2000-55, allows DHHS to suspend, cancel, or amend the license of a facility that substantially fails to comply with the requirements of G.S. 131E-256 or the rules promulgated under that section.

**Immunization of Long-Term Care Residents and Employees**

G.S. 131D-9, enacted by S.L. 2000-112 (S 1234), requires that all residents of adult care homes be immunized against pneumococcal disease unless the vaccination is medically contraindicated, would violate a resident’s religious beliefs, or is refused by the resident after he or she is fully informed of the health risks of not being immunized. Effective September 1, 2001, S.L. 2000-112 requires that all residents and employees of adult care homes be annually immunized against the influenza virus unless the vaccination is medically contraindicated, would violate a resident’s or employee’s religious beliefs, or is refused by the resident or employee after he or she is fully informed of the health risks of not being immunized.

S.L. 2000-112 enacts similar immunization requirements with respect to nursing home patients and employees (G.S. 131E-113).

**Regulation of Adult Care Homes**

In 1999 the General Assembly enacted legislation (S.L. 1999-334) transferring rule-making authority with respect to the licensure, inspection, and operation of adult care homes from the Social Services Commission to the Medical Care Commission. S.L. 1999-334, however, failed to amend G.S. 131D-4.3, which authorized the Social Services Commission to adopt rules with respect to training requirements for personal care aides employed by adult care homes, monitoring and supervision of adult care home residents, oversight of and quality of care in adult care homes, and adult care home staffing requirements.
When the Medical Care Commission adopted new rules governing adult care homes pursuant to S.L. 1999-334, owners of adult care homes argued that S.L. 1999-334 had not transferred complete rule-making authority from the Social Services Commission to the Medical Care Commission and that the Medical Care Commission therefore lacked the legal authority to adopt the new rules. In order to remove any doubt with respect to the Medical Care Commission’s regulatory authority with respect to adult care homes, the General Assembly enacted S.L. 2000-111 (S 1215), amending G.S. 131D-4.3 to transfer the Social Services Commission’s rule-making authority under that statute to the Medical Care Commission.

**Extended Moratorium on Construction or Expansion of Adult Care Homes**

In 1997 the General Assembly enacted legislation imposing a moratorium on the construction or expansion of adult care homes. The moratorium was extended in 1998 and 1999. Section 11.9 of S.L. 2000-67 (H 1840) extends this moratorium for an additional year (until September 30, 2001) and requires DHHS to report by March 1, 2001, to the Senate and the House Human Resources Appropriations Committees with respect to the adult care homes covered by the moratorium and related issues.

**Reporting of Certain Deaths in Adult Care Homes**

Effective January 1, 2001, S.L. 2000-129 (H 1520) enacts a new statute, G.S. 131D-34.1, under which an adult care home must notify DHHS (1) immediately upon the death of any resident that occurs in the adult care home or that occurs within twenty-four hours of the resident’s transfer to a hospital if the death occurred within seven days of the adult care home’s use of physical restraint or physical hold of the resident and (2) within three days of the death of any adult care home resident resulting from violence, accident, suicide, or homicide. DHHS may impose a civil penalty of $500 to $1,000 if an adult care home fails to make a report as required by the new statute.

If the death of an adult care home resident occurs within seven days of the use of physical restraint or seclusion, DHHS must immediately initiate an investigation of the death. Upon receipt of notice of a death of an adult care home resident, DHHS must notify the Governor’s Advocacy Council for Persons with Disabilities that a person with a disability has died and provide the council access to the information about each death reported. G.S. 131D-34.2, enacted by S.L. 2000-129, requires DHHS to report annually to the Legislative Study Commission on Mental Health, Developmental Disabilities, and Substance Abuse Services with respect to the compliance of adult care homes with applicable state laws and rules governing the use of physical restraints, the number of deaths reported under G.S. 131D-34.1, and the number of deaths related to the use of physical restraints.

S.L. 2000-129 does not impose on adult care homes the restraint-related data collection or personnel training and competency requirements that the law imposes on mental health facilities and residential child-care facilities. The provisions of S.L. 2000-129 relating to residential child-care facilities and mental health facilities are discussed in Chapter 3, “Children and Families,” and Chapter 18, “Mental Health and Related Laws.”

**Other Legislation Affecting Adult Care Homes**

Section 2 of S.L. 2000-111 (S 1215) amends G.S. 131D-4.5 to require that the rules adopted by the Medical Care Commission regarding the transfer and discharge of adult care home residents offer at least the same protections as federal and state regulations governing the transfer and discharge of nursing home patients.

G.S. 131E-104(b) formerly required that the adult care home portion of a combination nursing/adult care home comply with the administrative rules governing adult care homes. Section 6.1 of S.L. 2000-154 (S 1192) amends G.S. 131E-104 to allow the adult care portion of a combination nursing/adult care home to operate in compliance with either the requirements
applicable to freestanding adult care homes or the higher standard applicable to freestanding nursing homes.

Section 11.10 of S.L. 2000-67 (H 1840) amends G.S. 122A-5.13 to allow adult care homes to use the Fire Protection Fund for the purchase of emergency generators.

**Nursing Homes**

In 1999 the General Assembly enacted legislation (G.S. 131D-7) requiring the disclosure of certain information by adult care homes that provide special care units for persons with Alzheimer’s disease or similar dementias. The General Assembly also considered, but failed to enact, legislation (S 783 and H 977) during the 1999 legislative session that would have imposed similar disclosure requirements with respect to nursing homes and combination nursing/adult care homes that provide special care units for patients with Alzheimer’s disease or similar dementias.

Finishing the work it started in 1999, the 2000 General Assembly enacted a new statute, G.S. 131E-113 [S.L. 2000-154 (S 1192)], requiring nursing homes that operate special care units for patients with Alzheimer’s disease to disclose the following information to DHHS and persons seeking placement in a special care unit: the overall philosophy and mission of the facility and how it relates to the special needs of residents with dementia; the process and criteria for placement, transfer, or discharge to or from the special care unit; the process used for assessment and establishment of a plan of care for such residents; typical staffing patterns related to the needs of residents with dementia; dementia-specific staff training; physical environment features designed specifically for the special care unit; dementia-specific programming; opportunities for family involvement; and additional costs or fees for special care. G.S. 131E-113 is effective January 1, 2001.

Section 11.10 of S.L. 2000-67 (H 1840) amends G.S. 122A-5.13 to allow nursing homes to use the Fire Protection Fund for the purchase of emergency generators.

Section 11.11A of S.L. 2000-67 requires the Community Colleges System Office to work with nursing home providers to develop and implement an on-site Internet training program or other innovative training programs to improve the recruitment and reduce the turnover of certified nursing assistants in nursing facilities, to test it in at least five nursing facilities, and to ensure that the program is evaluated by a committee composed of representatives from the community college system, the N.C. Health Care Facilities Association, and the DHHS Division of Facility Services. A report on the implementation of this program must be made to the N.C. Study Commission on Aging by June 30, 2001. The act allocates $500,000 from funds appropriated to DHHS to develop and implement the training program.

**Assisted Living Facilities**

Section 11.11 of S.L. 2000-67 (H 1840) requires the N.C. Study Commission on Aging to study issues regarding multunit assisted housing with services (MAHS), including: what strategies may be employed to ensure that MAHS facilities register with DHHS as required by G.S. 131D-2(a)(7a); whether persons requesting access to MAHS facilities should be included in the assessment process that is part of the unified portal of entry system for long-term care; and whether an advocacy and oversight system for MAHS facilities should be developed. The commission must report its findings and recommendations to the General Assembly and the chairs of the Senate and the House Human Resources Appropriations Committees February 1, 2000.
Other Legislation of Interest to Senior Citizens

Property Tax (Homestead) Exemption for the Elderly

In 1999 the Senate and House each passed legislation (S 286 and H 1480) to expand the property tax exemption for low-income elderly or disabled homeowners [G.S. 104-277.1(a)], but legislators were unable to resolve their differences with respect to this issue. S.L. 1999-237 directed Senate and House leaders to designate an appropriate legislative committee to study options for expanding the property tax exemption for low-income elderly or disabled homeowners and make recommendations to the General Assembly by May 1, 2000. The General Assembly, however, took no further action with respect to expansion of the homestead exemption for elderly homeowners during the 2000 legislative session apart from authorizing the Revenue Laws Study Committee to study the issue further [S.L. 2000-138 (S 787)].

Property Tax Exemption for Continuing Care Retirement Centers

S.L. 2000-20 (H 1573), which is discussed in greater detail in Chapter 17, “Local Taxes and Tax Collection,” extends until July 1, 2001, the property tax exemption for continuing care retirement centers under G.S. 105-278.6A.

Retirement Benefits for State and Local Government Employees

The Appropriations Act of 2000, S.L. 2000-67 (H 1840), reduces the state’s contribution rate to the Teachers’ and State Employees’ Retirement System (TSERS) from 8.15 percent to 5.33 percent of the state’s payroll for covered employees. Although the reduction in the state’s contribution rate resulted in a $191.3 million decrease in the state’s contributions to TSERS in fiscal year 2000–01, state officials indicated that the reduction in contributions would not affect the retirement system’s fiscal health.

S.L. 2000-67 also amends provisions in G.S. Chapter 135 (TSERS and the Consolidated Judicial Retirement System), G.S. Chapter 128 (the Local Government Employees’ Retirement System [LGERS]), and G.S. Chapter 120 (the Legislative Retirement System) to enhance the retirement benefits payable to state and local government employees. All retired state employees covered by TSERS who retired on or before July 1, 2000, and were receiving retirement benefits on June 1, 2000, received a 0.6 percent increase in the amount of their retirement benefits payable on June 1, 2000. Retired state employees covered by TSERS received an additional, noncumulative 3.6 percent increase in the amount of their retirement benefits payable June 1, 2000, if they retired on or before July 1, 1999, or a pro rata increase if they retired between July 1, 1999, and June 30, 2000. (Retirees under LGERS received increases of 0.6 and 3.8 percent.) The retirement “multiplier” used to compute the full retirement service allowance for state and local government employees who are covered by TSERS or LGERS and retire on or after July 1, 2000, was increased by 0.01 percent to 1.81 percent of average final compensation times the number of years of creditable service under TSERS and 1.78 percent under LGERS.

Health Insurance for Retired State and Local Government Employees

S.L. 2000-141 (H 1855) amends G.S. 135-40.2(a) to delete that section’s requirement that state government retirees who were first hired on or after October 1, 1995, have at least twenty years of retirement service credit to be eligible for medical coverage on a noncontributory basis, thereby effectively extending noncontributory health insurance coverage to all state government retirees. S.L. 2000-141 is discussed in more detail in Chapter 10, “Health.”
Encouraging Retired Teachers to Return to the Classroom

Section 8.24 of S.L. 2000-67 (H 1840) amends G.S. 135-3(8)c. to provide that the computation of postretirement earnings of a retired teacher under that section does not include any earnings while the teacher is employed to teach on a substitute, interim, or permanent basis in any public school if the retired teacher is a beneficiary of the Teachers’ and State Employees’ Retirement System, has been retired for at least twelve months, and has not been employed in any capacity (except as a substitute teacher) with a public school for at least twelve months immediately preceding the effective date of reemployment. This topic is discussed more fully in Chapter 8, “Elementary and Secondary Education.”

Limited Medical Licenses for Retired Physicians

S.L. 2000-5 (H 1153) amends G.S. Chapter 90 to (1) allow the N.C. Medical Board to issue limited volunteer licenses to retired physicians who provide medical services to indigent persons without compensation and (2) limit the liability of these retired physicians. S.L. 2000-5 is discussed in greater detail in Chapter 10, “Health”.

Older Workers Study

Section 14.17 of S.L. 2000-67 (H 1840) directs the Employment Security Commission to study the ability of older and second-career workers to secure employment in North Carolina and to report its findings and recommendations to the Study Commission on Aging and other designated agencies and officials by April 1, 2001.

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Sentencing

Sentencing Services Program

The Sentencing Services Program of the Administrative Office of the Courts (AOC) began as the Community Penalties Program in 1983. The program was designed as a service to defendants and their attorneys. The investigative reports, known as sentencing plans, that AOC staff prepared for defense attorneys emphasized defendants’ prospects for restitution, community service, community treatment, and other alternatives to imprisonment. Attorneys could recommend these plans to sentencing judges, who might base their sentences fully or partially on the recommended plans. The goal of Community Penalties was to divert offenders into non-incarcerative rehabilitative and restorative programs.

Legislation in the 1999 session (S.L. 1999-306) gave the program its present name and changed its mission (see G.S. 7A-770 through 7A-777). The Sentencing Services Program emphasizes providing sentencing information to help sentencing judges make the most effective use of available resources (G.S. 7A-770), rather than diverting offenders from prison. In most counties, the program’s services continue to be provided by private nonprofit corporations under contract with AOC.

The 1999 legislation also put the program under the control of judges rather than defense attorneys. A sentencing judge may request a sentencing plan, and if a plan is prepared it must be
presented to the defense and the prosecution as well as to the judge. The investigation must include the defendant’s criminal record as well as his or her need for rehabilitative services.

S.L. 2000-67 (H 1840) amends G.S. 7A-773.1(d) to emphasize that information obtained by the Sentencing Services Program in preparing a sentencing plan may not be used at trial by the prosecution for any purpose. The measure also revises G.S. 15A-1333 to make it clear that information obtained in the preparation of a sentencing plan, such as a presentence report prepared by a probation officer, is not a public record and can be expunged from the court record on motion of the defendant. Access to the sentencing plan is to be in accordance with the comprehensive sentencing services plan prepared by the program and approved by the senior resident superior court judge in each judicial district.

Department of Correction

Certification of Department of Correction Employees

Under G.S. Chapter 17C, the Criminal Justice Education and Training Standards Commission sets standards for training of criminal justice officers and certifies their qualifications for their jobs. Department of Correction (DOC) correctional, probation, and parole officers are currently within the commission’s jurisdiction.

S.L. 2000-67 (H 1840), Section 17.3, requires the commission to develop “a new certification system for employees in the Department of Correction.” This was not the first time the General Assembly has called for a new system. Last year, S.L. 1999-237, Section 18.14, ordered that a new DOC certification system be completed by July 1, 2000, but that deadline was not met. The current measure calls for a report on a new system by the convening of the 2001 General Assembly, to be made to the chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety.

Section 17.3 also provides that should the commission fail to complete the new system on time, “it is the intent of the General Assembly to develop a new system for the certification of employees of the Department of Correction and to enact that system to coincide with the repeal of the Commission’s authority over the certification of correctional employees effective June 30, 2001.”

If the commission fails to complete the new system by the convening of the 2001 session, S.L. 2000-67, Section 17.3, will go into effect on June 30, 2001, and will amend G.S. 17C-2 to remove state correctional officers and probation/parole officers from the definition of “criminal justice officers,” thereby ending the commission’s authority to set standards and certify the qualifications of DOC personnel. The measure also would amend G.S. 17C-3 to remove the Secretary of Correction from ex officio membership on the commission.

Prisons

Private Prisons Revisited

Private prisons are confinement facilities operated by private firms or organizations under contract with state or local governments. Since private prisons began in North Carolina as part of a national movement to “privatize” corrections, there has been concern about private prisons housing inmates sentenced by other jurisdictions. In 1997 the General Assembly enacted a moratorium forbidding local governments and private organizations in North Carolina from operating correctional facilities for inmates from other jurisdictions until the state Department of Correction (DOC) developed standards for such facilities. The 1998 session limited the moratorium to inmates sentenced by other states (thus removing the moratorium on federal
prisoners) and enacted G.S. 14-256.1, making it a Class H felony for an inmate convicted in another jurisdiction to escape from a private correctional facility in North Carolina (G.S. 14-256.1).

Some of the concern about private prisons involves their legal authority in the event of an escape, riot, or other emergency. For example, the North Carolina Attorney General has advised that the employees of a private prison may not arrest its inmates, neither inside nor outside the prison, unless the employees have obtained certification as municipal law enforcement officers, have been deputized by the sheriff, or have been commissioned as company police officers. Otherwise, private prison employees may only “detain” inmates and use force against them consistent with the common law principles of self-defense and defense of property. The Attorney General also advised that neither the state nor county governments may deputize private prison employees to give them instant law enforcement powers.¹

In the 2000 session, the General Assembly put aside the development of standards for facilities housing out-of-state inmates and simply prohibited housing out-of-state inmates except in federal government facilities. S.L. 2000-67 (H 1840), Section 16.3, adds G.S. 148-37.1, forbidding a municipality, county, or private entity from building or operating any correctional facility for inmates sentenced by a jurisdiction other than North Carolina. The legislation exempts from the ban “facilities owned or operated by the federal government and used exclusively for the confinement of inmates serving sentences for violation of federal law.” This exemption applies only to the extent that the United States Constitution bars state restriction of the federal facilities. It is not clear whether “facilities owned or operated by the federal government” would include in the exemption a private prison operated under contract with the federal government. However, the North Carolina Attorney General has advised that the state cannot prohibit construction or operation of a private prison to hold federal inmates, just as it cannot prohibit federally operated prisons.

### Probation

**Abuser Treatment Program**

S.L. 2000-125 (H 813) amends G.S. 15A-1343(b1) to add as a special condition of probation that may be imposed by a sentencing judge treatment for individuals who abuse their domestic partners. The abuser treatment program selected as such a probationary condition must be one approved by the Department of Administration.

### Parole and Post-Release Supervision

**Post-Release Supervision and Parole Commission**

In 1994 the Structured Sentencing Act (SSA) abolished discretionary parole (early release from prison) for all offenses except drunk driving. Under the SSA, offenders convicted of the most serious felonies, those in Class B1 through E, must receive supervised release nine months before the end of their maximum prison terms, less “earned time” credit for work and program participation while in prison (earned time usually amounts to no more than 17 percent of the maximum term minus nine months).

Supervised release under the SSA involves fewer inmates than did parole under former law. Furthermore, unlike parole, supervised release under the SSA does not involve the exercise of discretion; eligible inmates are automatically given supervised release when they have served the

required time in prison. The Post-Release Supervision and Parole Commission’s function in SSA-supervised release is to develop an aftercare plan for post-release supervision to help an inmate make the transition back into the community. This post-release supervision in most cases only lasts for nine months, unlike parole supervision, which may continue for years.

The SSA has led to a reduction of the commission’s workload. The total number of persons released from prison and currently under supervision has decreased from 20,879 in mid-1995 to 4,645 as of May 31, 2000. Of those 4,645, most (4,025) are on parole under old laws; only 620 are on post-release supervision under the SSA.

However, the commission still has much to do because of the lingering effects of old laws. Nearly one-third of the prison population (the population is 31,717 as of May 31, 2000) remain eligible for discretionary parole under pre-SSA laws because their crimes occurred before the SSA took effect: 8,590 are still eligible for parole under the former Fair Sentencing Act; 834, under earlier laws. Many of these inmates are serving life sentences or long mandatory terms.

The General Assembly in 1999 (S.L. 1999-237, Section 18.1) reduced the commission from five to three members and required it to report by March 2000 on a plan for reducing its staff, calling for a reduction in positions of at least 10 percent between 1999–2000 and 2000–01. In this year’s session, S.L. 2000-67 (H 1840), Section 16.1, requires the commission to report annually, by March 1, to the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety concerning its plan for staff reductions through 2002–03.

**Jails**

**Jail Fees for Probationers**

S.L. 2000-109 (H 1854), Section 5, amends G.S. 7A-313 to provide that “[p]ersons who are ordered to pay jail fees pursuant to a probationary sentence” must pay the county or municipality that operates the jail a per diem fee equal to what DOC pays to local jails for the confinement of certain sentenced prisoners. This rate is currently $18 under Chapter 443, Section 19.21(a), of the 1997 North Carolina Session Laws. The change was effective July 1, 2000, and is applicable to sentences being served on or after that date. As amended, the statute now reads as follows:

7A-313. Uniform jail fees.

Persons who are lawfully confined in jail awaiting trial shall be liable to the county or municipality maintaining the jail in the sum of five dollars ($5.00) for each 24 hours’ confinement, or fraction thereof, except that a person so confined shall not be liable for this fee if the case or proceeding against him is dismissed, or if acquitted, or if judgment is arrested, or if probable cause is not found, or if the grand jury fails to return a true bill.

Persons who are ordered to pay jail fees pursuant to a probationary sentence shall be liable to the county or municipality maintaining the jail at the same per diem rate paid by the Department of Correction to local jails for maintaining a prisoner, as set by the General Assembly in its appropriations acts.

The 2000 legislation is clear, but the statute it amends is not entirely clear. The previous version of G.S. 7A-313 provided that a person lawfully confined in jail awaiting trial as well as one “ordered to pay jail fees pursuant to a probationary sentence” must pay the county or municipality $5 for each twenty-four hours of confinement. However, if not convicted, the person was not liable for the fee (this provision, continued in the present version, conforms to the North Carolina Constitution, Article I, Section 23, which forbids charging jail fees unless the jailed person is found guilty). As amended, the statute keeps the $5 fee for “[p]ersons who are lawfully confined in jail awaiting trial,” but now has a second paragraph setting a higher fee for persons “ordered to pay jail fees pursuant to a probationary sentence.”

The question is what “ordered to pay jail fees pursuant to a probationary sentence” means. It does not seem to include a condition of probation that the offender pay for pretrial jail confinement in connection with the case that led to his or her current probation sentence—
although that payment could be required as a condition of probation\(^2\)—because pretrial confinement, with its fee of $5, is covered in the first paragraph of the statute. What about post-conviction confinement? G.S. 7A-313 does not explicitly authorize a condition of payment for post-conviction jail confinement while on probation.\(^3\) The main statutes on probation, G.S. Chapter 15A, Article 82, similarly do not authorize such a payment condition, nor does G.S. 15A-1351(a), dealing with special probation. Perhaps G.S. 7A-313 was intended to authorize such a condition, or perhaps those who drafted it believed that the condition was already authorized by other law.

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\(^2\) Such a condition would be pursuant to G.S. 15A-1343(b1)(6), which authorizes as a condition of probation the payment of “any fee required by law. . . .”

\(^3\) Such confinement can occur in a sentence of “special probation” pursuant to G.S. 15A-1351(a), in which a convicted offender is placed on probation, with a short period of confinement in jail or prison as a condition of the suspension of a longer term of imprisonment.
Most of the General Assembly’s attention to social services in the 2000 session involved the appropriation and allocation of funds for programs that serve families, children, and disabled adults. General Fund appropriations to the Department of Health and Human Services for fiscal year 2000–01 include $191 million for the Division of Social Services, $25.5 million for NC Health Choice, and more than $1.4 billion for Medical Assistance. In the child welfare area, funds were targeted for staff increases, training, and services for at-risk children and families. In other program areas, the General Assembly increased State-County Special Assistance payments for residents of adult care homes, amended the timetable for investigations in adult protective services cases, and made several adjustments in the Medicaid program.

**Children’s Services**

**Juvenile Code Changes**

Changes in the Juvenile Code relating to termination of parental rights and to the status of guardians of the person appointed for children in abuse, neglect, and dependency proceedings are discussed in Chapter 13, “Juvenile Law.”

**Funds for Child Welfare Staff**

S.L. 2000-67 (H 1840), the Current Operations and Capital Improvement Appropriations Act of 2000, appropriates $7.26 million in Temporary Assistance for Needy Families (TANF) Block Grant funds to the Division of Social Services in the Department of Health and Human Services (DHHS) for fiscal year 2000–01 for child welfare improvements. Section 5.(y) of the act directs that the funds be allocated to the county departments of social services for hiring or contracting additional staff on or after July 1, 2000, to

- investigate and provide services in child protective services cases;
- provide foster care and support services;
- recruit, train, license, and support prospective foster and adoptive families; and
- provide interstate and post-adoption services for eligible families.
**Child Welfare Training**

Section 5.(bb) of S.L. 2000-67 (H 1840) directs that $2 million of TANF Block Grant funds appropriated to the DHHS Division of Social Services for fiscal year 2000–01 be used as follows:

- $350,000 to establish a regional training center in southeastern North Carolina;
- $750,000 to support the Master’s Degree in Social Work/Baccalaureate Degree in Social Work Collaborative;
- $180,000 to provide training for residential child-care facilities;
- $720,000 to provide for various other child welfare training initiatives.

Child welfare services staff initially hired on or after January 1, 1998, are subject to specific minimum training requirements that heretofore have been set out as special provisions in budget acts but have not been codified as part of the General Statutes. Section 11.14 of S.L. 2000-67 repeals those session law provisions and rewrites G.S. 131D-10.6A to make those training requirements part of that section, which already specifies training requirements for foster parents.

**Intensive Family Preservation Services**

S.L. 2000-67 (H 1840) appropriates $2 million in TANF Block Grant funds to the Division of Social Services in DHHS for fiscal year 2000–01 for the Intensive Family Preservation Services Program. Section 5.(l) of the act directs the division, in consultation with local departments of social services and other human services agencies, to use the funds to plan and implement a revised Intensive Family Preservation Services Program. The program must provide intensive services to children and families in cases of

1. abuse, neglect, and dependency, where a child is at imminent risk of removal from the home; and
2. abuse, where a child is not at imminent risk of removal.

The program must be developed and implemented statewide, on a regional basis, and must ensure the application of standardized assessment criteria for determining imminent risk and clear criteria for determining out-of-home placement.

The act requires DHHS to

- reexamine the existing program design to ensure the application of a standardized assessment and clear criteria for determining imminent risk of removal;
- assess the education and skill levels required of staff providing services in the program;
- develop a revised, scientifically rigorous evaluation model for the program (but not including area mental health or juvenile justice programs); and
- report on the use of the funds and the revised evaluation model no later than April 1, 2001.

**State Child Fatality Review Team Reports**

Section 11.14 of S.L. 2000-67 (H 1840) rewrites Section 11.28(a) of S.L. 1999-237 to require the DHHS Division of Social Services to report, by October 1 of each year, on the activities of the State Child Fatality Review Team, including recommendations for changes in the statewide child protection system.

**After-School Services for At-Risk Children**

S.L. 2000-67 (H 1840) appropriates $2 million in TANF Block Grant funds to the DHHS Division of Social Services to expand after-school programs and services for at-risk children. Section 5.(w) of the act directs DHHS to

- develop and implement a program to award grants to community-based programs that demonstrate the ability to reach children at risk of teen pregnancy and of becoming school dropouts;
• award grants to community-based organizations that demonstrate an ability to develop and implement linkages with local social services departments, area mental health programs, schools, and other human services programs in order to provide support services and assistance to the child and family; and
• report by March 1, 2001, on its progress in relation to the grant program.
The funds may be used to establish one coordinator position in the Division of Social Services but may not be used for other state administration.

Closing the Achievement Gap

Identical bills (S 1255 and H 1547) would have established the Commission on Improving the Academic Achievement of Minority and At-Risk Students. Neither bill passed, and the proposed commission was not created, but other parts of the bills were incorporated into the 2000 Appropriations Act as Section 8.28 and Section 11.4A of S.L. 2000-67 (H 1840). Section 8.28 places on the State Board of Education a number of obligations aimed at improving the academic achievement of minority and at-risk students. These are discussed in Chapter 8, “Elementary and Secondary Education.”

Section 11.4A of S.L. 2000-67 directs that $250,000 of funds appropriated to the DHHS Division of Social Services for fiscal year 2000–01 be used to establish and administer a pilot program to help families with children performing below school grade level to strengthen family cohesiveness, functioning, and economic progress and improve their children’s academic performance. The program must be developed and implemented by August 1, 2001, and must include at least eight pilot programs based on components of successful models and concepts. Any nonprofit, tax-exempt organization or local government agency that is part of a collaborative effort to develop a pilot program may serve as the lead agency in applying for and administering grant funds.

Families eligible to participate in a pilot program are those that have
1. at least one child in elementary or middle school who is performing academically at least one year below the child’s grade level;
2. at least one adult member who agrees to participate in the program and in a culturally appropriate assessment of family functioning; and
3. income below 200 percent of the federal poverty level, or at or above 200 percent of the federal poverty level if authorized by requirements of the funding source.

DHHS is required to establish a task force to collaborate with and advise the department on the development and implementation of the program. The task force must include, at a minimum, representatives of
• the Department of Public Instruction;
• the Cooperative Extension Services at North Carolina Agricultural and Technical State University and at North Carolina State University;
• the Department of Juvenile Justice and Delinquency Prevention;
• Workforce Development Boards;
• local education agencies;
• local departments or boards of social services, county commissioners, and health departments;
• community-based organizations that work within low-income communities;
• religious organizations or institutions; and
• charter schools.

Each pilot program must have comparable structures for administration, advice, and technical assistance and must have sound evaluation measures and techniques.

By March 1, 2001, DHHS must make a progress report that includes a plan to implement and evaluate the program. By February 1, 2002, DHHS must make a final report that includes a recommendation as to whether the program should be extended statewide.
Adoption Funds

Section 5.(a) of S.L. 2000-67 (H 1840) appropriates $2.3 million in TANF Block Grant funds to DHHS for the Special Children Adoption Fund for fiscal year 2000–01.

Section 5.(h) of S.L. 2000-67 allocates $511,687 in Social Services Block Grant funds, and Section 11.15 allocates $1.1 million of funds appropriated to DHHS to support the Special Children Adoption Fund for fiscal year 2000–01. Of the latter amount, $400,000 must be reserved for payment to participating private adoption agencies. The Division of Social Services, in consultation with the North Carolina Association of County Directors of Social Services and representatives of licensed private adoption agencies, must develop guidelines for awarding funds to licensed public and private adoption agencies upon the adoption of children with special needs (as described in G.S. 108A-50) and in foster care. No local matching funds are required. In accordance with state rules for allowable costs, the funds may be used for post-adoption services for families whose incomes exceed 200 percent of the federal poverty level.

Section 11.16 of S.L. 2000-67 creates a Special Needs Adoptions Incentive Fund to provide financial assistance to facilitate the adoption of certain children residing in licensed foster care homes, effective January 1, 2001. The fund is intended to remove financial barriers to adoption by foster care families who adopt children with special needs. S.L. 2000-67 appropriates $500,000 for the fund, and these funds must be matched by county funds. The program does not create an entitlement and is subject to the availability of funds. The state Social Services Commission is required to adopt rules for implementation of the program.

Foster Care Independent Living Funds

The federal Independent Living Program provides funds to help prepare foster children for the transition from foster care to independent living. S.L. 2000-67 appropriates $500,000 to the Division of Social Services in DHHS to provide the match for federal Independent Living Program funds and to add one position to coordinate the program.

Child Welfare Data Collection

Section 11.16A of S.L. 2000-67 requires the DHHS Division of Social Services, by April 1, 2001, to report information for North Carolina and comparable states, including significant trends over a five-year period, about the following:
1. demographics on the population under the age of eighteen;
2. the number of child welfare cases, including separate data on reports, investigations, and substantiated cases (information on the definition of these terms must be included);
3. the total number of child welfare services workers; and
4. the total budget, from all available sources, for child welfare services.

DHHS is required to establish a mechanism for reporting this information annually and to develop an estimate of the cost of doing so. The act states that the purpose of the reporting requirement is to generate information for use by the General Assembly as part of a rational decision-making process of identifying and meeting the needs of the child welfare services system.

Other Public Assistance and Social Services Programs

Work First and Temporary Assistance for Needy Families

S.L. 2000-67 (H 1840) appropriates $363 million in federal funding under the Temporary Assistance for Needy Families (TANF) Block Grant (including unspent federal TANF funding carried forward from previous years).

S.L. 2000-67 allocates $237.2 million in federal TANF funding for the state’s Work First program for fiscal year 2000–01: $106.1 million for cash assistance for needy families and
children (a 38 percent reduction from the 1999–2000 TANF appropriation due to declining welfare rolls) and $131.1 million for child care, substance abuse treatment, employment, and other services for families under the Work First program.

S.L. 2000-67 also transfers $76.7 million in TANF funds to the state’s Child Care and Development Fund Block Grant for child day care subsidies and allocates approximately $49 million in TANF funding for administration, staff development, training, and program development; teen and adolescent pregnancy prevention programs; programs to reduce out-of-wedlock births; domestic violence prevention and services; funding for the adoption of special children; funding for foster care, adoption, and child welfare workers; the intensive family preservation program; children’s services under the Social Services Block Grant; substance abuse services for juveniles; residential substance abuse services for women with children; the responsible fatherhood initiative; the Support Our Students program in the Department of Juvenile Justice and Delinquency Prevention; after-school services for at-risk children; and boys and girls clubs.

**Food Stamps**

Section 14.2 of the Studies Act of 2000, S.L. 2000-138 (S 787), directs the Department of Health and Human Services (DHHS), in conjunction with the Department of Agriculture, food banks, and other designated organizations, to conduct a comprehensive study of the Food Stamp program, focusing on reasons for the underutilization of the program. The study must consider the feasibility of additional public outreach efforts, extended business hours for local departments of social services to facilitate the process of obtaining food stamps, and providing transitional food stamp assistance when a family ceases to receive cash assistance under the Work First program. The act directs DHHS to take any actions under current law to increase participation in the Food Stamp program, to make an interim report to the Joint Legislative Public Assistance Commission by December 1, 2000, and to make a final report on its actions, findings, and recommendations to the Commission by March 1, 2001.

**Medicaid**

Despite concerns about a potential $8 million to $22 million shortfall in Medicaid funding at the end of fiscal year 1999–2000, S.L. 2000-67 (H 1840) reduces state funding for Medicaid by an additional $32.4 million for fiscal year 2000–01 and transfers an additional $70 million from the Medicaid Reserve Fund to offset reductions in general revenue funding for Medicaid.

Section 11.5 of S.L. 2000-67 (H 1840) requires DHHS to amend the state Medicaid plan to exclude the value of burial plots and the cash value of life insurance policies (when the total face value of all cash value–bearing life insurance policies does not exceed $10,000) in determining the Medicaid eligibility of aged, blind, or disabled persons.

Section 11.5 of S.L. 2000-67 also requires the legislature’s Fiscal Research Division, with the cooperation of DHHS, to engage an independent consultant to study the amount, sufficiency, scope, and duration of each service provided under the state’s Medicaid program and to submit a final report to the General Assembly by May 1, 2001.

Section 11.5 of S.L. 2000-67 allows DHHS to proceed with planning and development of a program for all-inclusive care for the elderly and requires the department to submit a progress report to the Senate and the House Human Resources Appropriations Committees by January 30, 2001.

Section 11.5 of S.L. 2000-67 also (a) exempts mental health services from Medicaid’s annual twenty-four visit limit if the services are subject to independent utilization review; (b) extends Medicaid coverage of mental health services to children who are eligible for Early Periodic Screening, Diagnosis, and Treatment (EPSDT) when these children are referred by a primary care physician or area mental health program to a licensed or certified psychologist, certified mental health nurse practitioner, or licensed clinical social worker or the services for these children are provided by institutional providers of residential services for children and psychiatric residential
treatment facility services that meet federal and state requirements; and (c) requires DHHS to study the feasibility of authorizing Medicaid reimbursement for EPSDT services by providers who are eligible for reimbursement under the state’s Teachers’ and State Employees’ Comprehensive Major Medical Plan and the Health Choice program.

If the federal Health Care Financing Administration approves the state’s request for a demonstration waiver, Section 11.5 of S.L. 2000-67 authorizes DHHS to provide Medicaid coverage for family planning services to men and women of child-bearing age with family incomes at or below 185 percent of the federal poverty level.

Section 11.6 of S.L. 2000-67 repeals a provision in the 1999 Appropriations Act (S.L. 1999-237) authorizing DHHS to transfer funds from the State-County Special Assistance program to support the expansion of Medicaid personal care services for adult care home residents.

Section 11.6 of S.L. 2000-67 also extends by an additional five years (through fiscal year 2009–10) the period of time over which each county’s share of the nonfederal share of the cost Medicaid personal care services for adult care home residents will be incrementally reduced from 50 to 15 percent and requires that each county’s share of the cost of Medicaid services currently and previously provided by area mental health authorities be increased incrementally each fiscal year until it reaches 15 percent of the nonfederal share of these costs in fiscal year 2009–10.

**Health Choice (Child Health Insurance Program)**

Section 11.8 of S.L. 2000-67 (H 1840) amends G.S. 108A-70.18 to waive the sixty-day waiting period for uninsured children in low-income families under the state’s Health Choice program if the health insurance benefits available to a family of a special needs child (as defined in G.S. 108A-70.23) have been terminated due to a long-term disability or a substantial reduction in or limitation of lifetime medical benefits or a benefit category. Section 11.8 of S.L. 2000-67 also provides that the amount of state spending for Health Choice in fiscal year 2000–01 may not exceed the amount needed to match federal funding for the Child Health Insurance Program.

The General Assembly failed to enact legislation (H 1813) that would have expanded the Health Choice program to all uninsured children in families with incomes at or below 300 percent of the federal poverty level.

**Child Support Enforcement**

Section 13.1 of S.L. 2000-138 (S 787) requires DHHS and the Administrative Office of the Courts, in conjunction with local departments of social services, clerks of court, child support enforcement (IV-D) attorneys, district court judges, and others, to study ways to more effectively coordinate the efforts of the two agencies in regard to the collection and enforcement of child support. This provision is discussed in more detail in Chapter 3, “Children and Families.”

**State-County Special Assistance**

Effective October 1, 2000, S.L. 2000-67 (H 1840) increases the maximum monthly reimbursement rate for adult care homes under the State-County Special Assistance program to $1,062 per resident and appropriates an additional $4.45 million to pay the state’s share of these costs (counties are required to pay half of the cost of State-County Special Assistance payments for residents of adult care homes). Section 11.12 of S.L. 2000-67 requires the State Auditor to study the cost reimbursement system used to reimburse adult care homes for residents who receive public assistance and to report the results of this study to the Senate and the House Human Resources Appropriations Committees by March 1, 2001.

Section 11.13 of S.L. 2000-67 extends for one year (until June 30, 2002) the current demonstration project under which State-County Special Assistance funds may be used to provide in-home services.
Adult Protective Services

In 1999 the General Assembly amended G.S. 108A-103 to establish time frames in which county departments of social services must investigate reports involving the suspected abuse, neglect, or exploitation of disabled adults. S.L. 2000-131 (H 1571) revises these time frames. Under S.L. 2000-131, county social services departments now must initiate investigations in adult protective services cases

- immediately upon receipt of a report that alleges a “danger of death in an emergency as defined in G.S. 108A-101(g).” (The 1999 amendment required that an investigation be initiated immediately if the report alleged a “life threatening” situation.)
- within twenty-four hours if the report alleges a “danger of irreparable harm in an emergency as defined in G.S. 108A-101(g).” (The 1999 amendment required that an investigation be initiated within twenty-four hours if the report alleged abuse as defined in G.S. 131D-20.)
- within seventy-two hours in all other cases. (The 1999 amendment required that an investigation be initiated within forty-eight hours in cases involving suspected neglect or within two weeks in all other cases.)

In cases involving the alleged exploitation of a disabled adult, the county department of social services must complete its investigation within forty-five days from the date of the report. Investigations in other adult protective services cases must be completed within thirty days.

Authority to Regulate Adult Care Homes

In 1999 the General Assembly enacted legislation (S.L. 1999-334) transferring rule-making authority with respect to the licensure, inspection, and operation of adult care homes from the Social Services Commission to the Medical Care Commission. S.L. 1999-334, however, failed to amend G.S. 131D-4.3, which authorized the Social Services Commission to adopt rules with respect to training requirements for personal care aides employed by adult care homes, monitoring and supervision of adult care home residents, oversight of and quality of care in adult care homes, and adult care home staffing requirements.

When the Medical Care Commission adopted new rules governing adult care homes pursuant to S.L. 1999-334, adult care home owners argued that S.L. 1999-334 had not transferred complete rule-making authority from the Social Services Commission to the Medical Care Commission and that the Medical Care Commission therefore lacked the legal authority to adopt the new rules. The Rules Review Commission, however, upheld the Medical Care Commission’s legal authority to adopt the new rules, and the General Assembly subsequently enacted legislation, S.L. 2000-111 (S 1215), amending G.S. 131D-4.3 to transfer all rule-making authority with respect to adult care homes from the Social Services Commission to the Medical Care Commission.

Programs and Services for Senior Citizens

Additional legislation affecting human services and government programs for senior citizens is discussed in Chapter 21, “Senior Citizens.”

Janet Mason

John L. Saxon
This chapter summarizes legislation enacted by the 2000 General Assembly with respect to the organization, structure, and functions of North Carolina’s state government as well as changes to the North Carolina Administrative Procedure Act (APA).

**Changes to State Agencies**

**Department of Juvenile Justice and Delinquency Prevention**

S.L. 2000-137 (H 1804) created the Department of Juvenile Justice and Delinquency Prevention at Chapter 143B, Article 12. The new department was the result of the transfer of all statutory authority, powers, duties, and functions from the Office of Juvenile Justice to the department. This was a Type I transfer as defined in G.S. 143A-6. The legislation provides that all institutions previously operated by the Office of Juvenile Justice and the present central office of the Office of Juvenile Justice, including land, buildings, equipment, supplies, personnel, or other properties rented or controlled by the Office of Juvenile Justice or by the Office of the Governor for the Office of Juvenile Justice, shall be administered by the Department of Juvenile Justice and Delinquency Prevention.

The Department Secretary has the following primary responsibilities:

1. Give leadership to the implementation, as appropriate, of State policy that requires that training schools be phased out as populations diminish.
2. Close a State training school when its operation is no longer justified and transfer State funds appropriated for the operation of that training school to fund community-based programs, to purchase care or services for pre-delinquents, delinquents, or status offenders in community-based or other appropriate programs, or to improve the efficiency of existing training schools, provided the Advisory Budget Commission reviews this action.
3. Administer a sound admission or intake program for juvenile facilities, including the requirement of a careful evaluation of the needs of each juvenile prior to acceptance and placement.
4. Operate juvenile facilities and implement programs that meet the needs of juveniles receiving services and that assist them to become productive, responsible citizens.
Office of State Budget, Planning, and Management

S.L. 2000-67 (H 1840) consolidated the Office of State Budget and Management and the Office of State Planning. The functions of these two agencies are combined in the Office of State Budget, Planning, and Management.

Wilmington Race Riot Commission

S.L. 2000-138 (S 787), Part XVII, created the 1898 Wilmington Race Riot Commission, to be located within the Department of Cultural Resources. The Commission is to develop a historical record of the 1898 Wilmington Race Riot, which was the subject of a series of articles in the Raleigh News & Observer this year. The commission consists of thirteen members, to be appointed to two-year terms by September 1, 2000. The President Pro Tempore of the Senate appoints three members, the Speaker of the House of Representatives appoints three members, and the Governor appoints three members, one of whom must be a historian. In addition, two members each are appointed by the City of Wilmington and the New Hanover County Board of County Commissioners. The commission is to make a final report and recommendations to the General Assembly by December 31, 2002. The report may include suggestions for a permanent marker or memorial of the riot and whether to designate the location where the event took place as a historic site.

Department of Commerce

S.L. 2000-140 (S 1335), Section 76(j), amends G.S. 143B-433 to eliminate the Energy Policy Council and the Energy Division from the Department of Commerce.

Administrative Law

Contested Cases under State APA

S.L. 2000-190 (H 968) changes the interaction between administrative law judges (ALJs) and agencies in making decisions about contested cases. There has been a vigorous debate for years about whether the "recommended decisions" of these judges should be given more deference, or even be made binding, by agencies and courts. H 968 answers that question in the affirmative and makes several other important changes to contested case procedures.

As to the power and standard of review of the ALJ’s decision, the bill amends G.S. 150B-34 (final decisions) to provide that an ALJ shall decide a case based upon the preponderance of the evidence, giving due regard to the demonstrated knowledge and expertise of the agency with respect to facts and inferences within the specialized knowledge of the agency. Prior versions of the bill made ALJ decisions final; the version ultimately adopted permits agency review but eliminates the term “recommended decision” and changes the standards for agency review as follows: an agency must adopt each finding of fact in an ALJ decision unless the finding is clearly contrary to the preponderance of the admissible evidence, giving due regard to the ALJ’s opportunity to evaluate the credibility of witnesses. An agency that does not adopt the ALJ’s findings must, for each finding rejected, state separately and in detail the reason for not adopting the finding and state the evidence in the record relied upon to reach a different decision. Findings not specifically rejected as required by the statute shall be deemed accepted for purposes of judicial review. The bill requires that when an agency makes a finding of fact not contained in the ALJ’s decision, it must set forth separately and in detail the evidence relied upon; such findings must be supported by a preponderance of the evidence in the record. It prohibits the agency from making new findings that are inconsistent with the ALJ’s findings unless those findings were rejected as required above. It clarifies that summary ALJ decisions under G.S. 150B-36(c) are appealable directly to superior court. It adds a new subsection (d), permitting an ALJ to grant
judgment on pleadings or summary judgment that disposes of all issues in a case, and providing for remand of these summary decisions if the agency disagrees (with a right to judicial review by the aggrieved party). The bill also shortens to sixty days the time an agency has to make a final decision, without having to get an extension, after receiving the decision of an ALJ. Under prior law this time period was ninety days.

The standard and substance of judicial review now varies depending on whether an agency adopted the ALJ’s decision or not. If the agency did adopt the decision, the judicial review focuses on whether the agency heard new evidence after receiving the ALJ’s decision and whether the agency followed statutory rules about adopting and rejecting ALJ findings of fact and decisions. If the agency did not adopt the ALJ decision, the court is to conduct a de novo review and it “shall not give deference to any prior decision made in the case and shall not be bound by the findings of fact or the conclusions of law contained in the agency’s final decision.” G.S. 150B-51, as amended. This could be read as a statutory rejection of the federal doctrine of deference to longstanding agency interpretations of their statutes, see *Chevron U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837, 843 (1984). This doctrine had been accepted in several recent North Carolina cases, such as *County of Durham v. North Carolina Department of Environment and Natural Resources*, 131 N.C. App. 395, 507 S.E.2d 310 (1998).

H 968 gives special treatment to decisions in health care certificate of need cases, essentially preserving the status quo and thus furthering the unraveling of the goal of consistency in administrative procedures.

**Rulemaking under State APA**

The 1995 session made major changes in the process of state agency rule making, lengthening the time to finalize a permanent rule change and increasing the legislature’s oversight power for particular rules. This has increased incentives for agencies to use temporary rule-making power, when possible, to effect program changes. Since 1995 there has been a proliferation of legislation containing language in various forms that permits an agency to use temporary rules for a longer period or in a different way than normally allowed. This proliferation of bill-specific administrative procedures undercuts the goal of the Administrative Procedure Act to provide a consistent set of procedures for significant agency actions. The Senate considered a bill (S 1299) recommended by the Joint Legislative Administrative Procedure Oversight Committee (another product of the 1995 changes) to codify and cross-reference various grants of temporary rule-making authority. Another bill (S 1308/H 1597) would have expanded the duties of the Joint Oversight Committee to give it the authority to review bills that make administrative procedural changes. Neither bill was enacted.

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State Taxation

This chapter discusses changes made to state revenue laws during the 2000 session of the General Assembly. Legislators adopted a new system to improve state sales tax collection and a program to facilitate enforcement of tax laws and also made a variety of changes to conform state revenue laws to federal tax law. In addition, the legislature modified the state’s revenue laws regarding economic development incentives and conduit agency financing. Bills affecting local taxes and revenues are discussed in Chapter 16, “Local Government and Local Finance,” and Chapter 17, “Local Taxes and Tax Collection.” Revenue laws affecting particular subject areas are discussed also in Chapter 9, “Environment and Natural Resources,” Chapter 14, “Land Records and Registers of Deeds,” and Chapter 19, “Motor Vehicles.”

Streamlining of Sales Tax System

S.L. 2000-120 (H 1624) seeks to improve the state’s tax collections in several different ways:
- It simplifies and streamlines the sales and use tax collection system for remote and in-state retailers.
- It provides that a remote seller who does not agree to collect the state’s use tax may not use the state’s courts to collect debts owed to it by a purchaser of its product in this state.
- It allows the Department of Revenue to exchange information concerning a taxpayer’s Social Security number with the Division of Motor Vehicles when it is necessary to identify a taxpayer.
- It provides the Department of Revenue with the resources to continue its collection of delinquent tax debts owed by nonresidents and foreign entities for the remainder of this biennium.
- It allows the Department of Revenue to retain necessary funds from revenues it collects from its nonresident delinquent tax debt contracts to obtain assistance in developing a performance-based contract for an automated collection system.
- It provides that, effective January 1, 2001, the penalty for misusing an exemption certificate applies not only to a certificate of resale, but also to a direct pay certificate and a farmer’s certificate.
- It repeals the requirement that a taxpayer report use tax on the income tax return.
The provision dealing with the sales tax exemption certificate (Section 7) becomes effective January 1, 2001. The provisions dealing with the repeal of the use tax reporting requirement (Sections 10 and 11) become effective for taxable years beginning on or after January 1, 2003. The remainder of the act became effective on July 14, 2000.

Once the remote sales and use tax collection system is completed, the fiscal impact could be significant. A recent study by the University of Tennessee estimates that by 2003 the incremental state and local revenue loss on e-commerce transactions will be $238 million for North Carolina. If the current revenue losses on catalog sales and e-commerce transactions are included, the total amount could be over $400 million. It is estimated that the implementation of an automated case management tool would increase delinquent tax collections by $11 million to $30 million annually. Additionally, contracting with collection agencies for out-of-state debts and for long-term delinquent accounts would yield an initial $20 million in additional revenues and an increase in recurring revenues of up to $23 million per year.

This act enables North Carolina to become one of four states to participate in the streamlined sales tax collection system pilot project. The National Governors’ Association recommended the streamlined sales tax collection system. The recommendation addresses the difficulty that states have had in collecting sales and use taxes on purchases from remote retailers. The recommendation provides a simplified collection process that would allow participating retailers to use a computer software program to calculate the amount of tax due to the state on a purchase based upon the customer’s ship-to address. The administration of the program would be the responsibility of the person certified by the state to collect its taxes, not the retailer.

To begin this method of collection, the state must certify a person to act as its tax collector. It is anticipated that the identity of the “certified sales tax collector” will vary depending upon the type of retailer involved. Certain large retailers may choose to act as their own sales tax collector.

To be certified as a sales tax collector, this act requires the Secretary of Revenue to find that the person meets all of the following conditions:

- uses a sales tax collection software program certified by the Secretary (to be certified, the program must be able to determine the applicable tax rate based on a ship-to address, whether or not an item is exempt from tax, and whether or not an exemption certificate is valid, to calculate the tax due, and to generate the reports and returns required by state law);
- agrees to update its certified software program upon notification by the Secretary;
- agrees to integrate the certified software program with the retailer’s system for which the person collects the tax;
- remits the tax due and files the necessary returns on behalf of the retailers for whom the person collects the tax;
- enters into a contract with the Secretary and agrees to comply with the conditions of the contract;
- files a bond or an irrevocable letter of credit with the Secretary in an amount set by the Secretary.

The state assumes responsibility for the costs of the system by contracting with the collector to reimburse the collector for the costs of operating the system and for the costs of integrating the system with those of participating retailers. The amount a collector charges under a contract is considered a cost of collecting the tax and is payable from the amount collected. The payments to the collector will be made on a per transaction basis based on negotiated rates. The per transaction fee could be in the form of a flat per transaction rate, a percentage rate, or a combination of the two types of rates.

Participation in the program by retailers is voluntary. To participate in the program, a retailer must agree to let the certified sales tax collector integrate the certified software with the retailer’s system so that the tax due on a sale can be determined at the time of the sale. The information on the amount of tax due will be available to a customer before completion of a transaction. Once the customer approves the purchase, the retailer will send the transaction through the payment processing system, and the amount paid to the retailer will be the full amount of the purchase plus
tax. A participating retailer will be required to enter into a standing debit authorization agreement with the collector that will enable the collector to debit the retailer’s account on an agreed upon schedule for the amount of tax owed all participating states according to transactions processed by the collector. The collector will be liable for remitting the appropriate tax to the participating states. In the absence of fraud, the participating retailer will not be subject to audits by the states on the transactions it processes using the collector’s software program. A contract with a collector will not be a factor in considering whether a person has a nexus with a state for payment of the tax.

The act also makes the following statutory changes to meet the uniformity features needed to implement the streamlined sales tax collection system successfully:

- It makes the exemption process easier to administer by eliminating the “good faith” requirement when accepting an exemption certificate number from a purchaser on a sale made over the Internet or by other remote means (Section 6). It codifies a long-standing practice of the Department of Revenue to issue “direct pay certificates” to a person who is unsure how property the person purchases should be taxed at the time the property is purchased (Section 1). And it provides that, effective January 1, 2001, the penalty for misusing an exemption certificate applies not only to a certificate of resale, but also to a direct pay certificate and a farmer’s certificate (Sections 7 and 18).

- It establishes a uniform sourcing rule that calculates the amount of tax due on a sale based on its “ship-to address” (Section 2). To accomplish this sourcing rule, the bill expands the current sales tax exemption for printed materials that are shipped out of state and not subsequently used by the purchaser to include all tangible personal property (Section 5).

- It provides that the customer of a retailer who participates in the program may not elect to pay the tax directly to the Secretary rather than to the seller (Section 4).

- It provides that local government sales and use tax rate changes may be made only twice a year and that the local government must give the state at least ninety days notice of any tax rate change (Sections 12 and 13).

**Use of North Carolina Courts by Out-of-State Retailers**

Under current law, a loan made by a person who fails to pay or comply with the state privilege tax statute, G.S. 105-88, may not be collected through the state’s courts. This act extends this exclusion to include debts owed to a retailer who is required by G.S. 105-164.8(b) to collect use tax for the state but refuses to do so if the retailer reported gross sales of at least $5 million on its most-recent federal income tax return (Sections 3 and 9). The exclusion would also apply to any person to whom the debt is assigned. The exclusion would apply only to debts owed on tangible personal property purchased from the retailer. A retailer is required to collect use tax for the state under G.S. 105-164.8(b) if the retailer maintains retail offices in the state, has representatives in the state who solicit business, or purposefully and systematically exploits the market in this state by any media-assisted means, such as direct mail advertising, distribution of catalogs, computer-assisted shopping, television, radio, and so on.

**DMV Disclosures of Social Security Numbers to Department of Revenue**

Under federal law, 42 U.S.C. § 405(c)(2)(C), a state may use a person’s Social Security number for the purpose of identification in the administration of its tax laws. The Department of Revenue has used Social Security numbers to identify taxpayers for many years. Until recently, the department was able to obtain a taxpayer’s Social Security number from the Division of Motor Vehicles (DMV). The department may have asked the DMV for a taxpayer’s Social Security number when the department had more than one number on file for a taxpayer and needed to know which number was correct or when it needed to locate a taxpayer. The exchange of information between the DMV and the Department of Revenue was not addressed by statute. In 1997, the
General Assembly amended the driver’s license law to require all applicants for a driver’s license to provide their Social Security numbers. The legislation gave specific authority for the DMV to disclose Social Security numbers to the Child Support Enforcement Program. The law did not address the disclosure of the numbers to the Department of Revenue. As a result, the practice between the DMV and the Department has stopped.

This act rewrites the driver’s license statute pertaining to Social Security numbers to allow the DMV to disclose a Social Security number to the Department of Revenue for the purpose of verifying taxpayer identification (Section 14). It also provides that the DMV may not use an applicant’s Social Security number as the identifying number for the license holder (Section 15). This clarification resolves a conflict between two subsections in G.S. 20-7: Subsection (b1) provides that an applicant’s Social Security number may not be printed on the license, whereas Subsection (n) says that the license holder’s Social Security number may be the license holder’s identifying number.

**Contract for Collection of Delinquent Tax Debts**

In its 1999 session, the General Assembly allowed the Department of Revenue to contract for the collection of delinquent tax debts owed by nonresidents and foreign entities. A delinquent tax debt is the amount of tax due as stated in a final notice of assessment issued to the taxpayer when the taxpayer no longer has the right to contest the debt. The legislation stated that “[T]he Secretary of Revenue shall contract during the 1999–2001 fiscal biennium for the collection of delinquent tax debts. . . .” However, the legislation provided a funding mechanism for only the first year of the biennium. This act provides funding for the second year of the biennium. It allows the Secretary to retain the costs of the contracts from the amounts collected under the contracts (Section 16).

The Department of Revenue is currently involved in a pilot effort to contract for the collection of out-of-state accounts receivable in conjunction with the Office of the State Controller. On March 16, 2000, the Department sent 1,016 accounts with a value of $927,170.46 to the Office of the State Controller for referral to a collection agency. Within the first thirty days, the revenue department realized a 2.5 percent return.

**Centralize and Automate Debt Collection System**

Also in its 1999 session, the General Assembly authorized the Department of Revenue and the Office of the State Controller to conduct a study of the department’s delinquent collection practices and to present findings and recommendations to the Revenue Laws Study Committee. The Office of the State Controller’s existing contract with PricewaterhouseCoopers (PwC) was modified, and PwC conducted the study. PwC made the following recommendations to improve the department’s debt collection practices:

- Implement an automated case management tool with debt scoring and performance measures. The projected impact of this recommendation would be an increase of delinquent tax collections by $11 million to $30 million annually.
- Centralize the collection process for individual income taxes, installment agreements, low-dollar debts, and wage garnishments. The impact of this recommendation would be a more efficient use of the Department’s resources.
- Contract with collection agencies for out-of-state debts. The impact of this recommendation would be an initial $20 million in additional revenues and $3 million in recurring revenues.
- Contract with collection agencies for long term delinquent accounts. The impact of this recommendation would be up to $20 million in additional revenues per year.

The Department of Revenue would like to implement the recommendations of this study. To centralize its collection process, the department would like to enter into a performance-based contract wherein the person who provides the automated system would be paid from the proceeds
of the system based upon some variable that measures how well the system works. To enable the Secretary of Revenue to obtain assistance in developing a proposal request for the performance-based contract, this act allows the Secretary to draw the amount needed from the revenue collected pursuant to the contracts for the collection of delinquent tax debts owed by nonresidents and foreign entities (Section 17).

**Tax Enforcement**

S.L. 2000-119 (H 1551) makes the following changes to facilitate enforcement of the tax laws.

- It expands the offenses that revenue law enforcement officers may enforce to include misdemeanor offenses as well as felony offenses.
- It authorizes the Secretary of Revenue to administer the oath of office to revenue law enforcement officers.
- It creates a civil penalty for filing a frivolous income tax return.
- It streamlines the procedures that state and local law enforcement agencies must use to report arrests made for the failure to pay tax on unauthorized substances by allowing the agencies to give the information directly to the Department of Revenue.

**Authority of Law Enforcement Agents**

The act expands the offenses that revenue law enforcement officers may enforce to include the following misdemeanor offenses:

- Willful failure to collect, withhold, or pay over tax. G.S. 105-236(8).
- Willful failure to file a return, supply information, or pay tax. G.S. 105-236(9).
- Highway use of dyed diesel or other non-tax-paid fuel. G.S. 105-449.117.
- Miscellaneous fuel tax misdemeanors. G.S. 105-449.120.

Revenue law enforcement officers already have the authority to enforce felony tax violations under G.S. 105-236 and to enforce numerous other offenses under state law when they involve a state tax. The act rewrites G.S. 105-236.1(a) by listing the offenses a revenue law enforcement officer may enforce.

**Secretary to Administer Oath of Office**

The act authorizes the Secretary of Revenue to administer the oath of office to revenue law enforcement officers. The Secretary is not one of the individuals who have general authorization under G.S. 11-7.1 to administer oaths. The Secretary does, however, have authority under G.S. 105-261 to administer an oath to a person with respect to a tax return or report. The act puts the qualifications for becoming a revenue law enforcement officer, including the oath of office, in a separate subsection.

**Civil Penalty for Filing a Frivolous Income Tax Return**

The act creates a civil penalty for filing a frivolous income tax return. In order for a return to be frivolous, it must meet both of the following conditions:

- The return does not include information on which the substantial correctness of the return may be judged, or it contains information that positively indicates the return is incorrect.
- The return evidences an intention to delay or impede the revenue laws of this state or purports to adopt a position that is lacking in seriousness.

The penalty for filing a frivolous return could be up to $500. As with other penalties assessed under Subchapter I of Chapter 105 of the General Statutes, this penalty would be assessed as an
additional tax. This penalty is similar to a penalty imposed on the federal level under Section 6702 of the Internal Revenue Code.

The Criminal Investigations Division of the Department of Revenue requested this change in the law. In its work, the division has investigated cases in which a taxpayer will knowingly file an incorrect return in order to inflate deductions and thus increase the amount of the taxpayer’s refund. For example, a taxpayer may claim extra dependents or exaggerate the amount of charitable contributions. The current penalties do not provide a proper remedy because they are based upon failure to pay the amount of tax due. In most of these cases, there is no amount of tax due because the taxpayer is already due a refund. The offense is that the taxpayer is claiming a greater refund than the taxpayer is entitled to receive.

The creation of a civil penalty for filing a frivolous income tax return could produce $300,000 to $1 million in revenue each year for the General Fund. This part of the act becomes effective December 1, 2000, and applies to arrests or seizures occurring on or after that date.

Streamline Procedures for Reporting on Non-Tax-Paid Unauthorized Substances

The act relieves the State Bureau of Information (SBI) of the burden of reporting drug-related offenses to the Department of Revenue. Under prior law, state and local law enforcement agencies have to report to the SBI, within forty-eight hours, the arrest of any individual in possession of certain threshold amounts of drugs that do not bear unauthorized substances tax stamps. The SBI must then notify the Department of Revenue on a daily basis of the reports it receives. The SBI does not need this information and requested that it be relieved of this responsibility. Effective December 1, 2000, state and law enforcement agencies will report these arrests directly to the Department of Revenue, as opposed to the SBI. The act makes the following conforming changes: It moves the reporting requirement from Chapter 114 to Article 2D of Chapter 105; it also repeals the requirement that the SBI notify the department on the reports it receives.

Insurance Regulatory Charge

S.L. 2000-109 (H 1854) sets the tax rate for the insurance regulatory charge for the 2000 calendar year at 7 percent, the same rate used in the 1999 calendar year. The charge is expected to generate $25.65 million for the 2000–2001 fiscal year.

The insurance regulatory charge is a tax that was enacted in 1991 to defray the state’s cost of regulating the insurance industry. The charge is a percentage of each insurance company’s premiums tax liability. The insurance regulatory charge is imposed on insurance companies that pay the gross premiums tax and, beginning in 2000, on health maintenance organizations and medical service corporations. For health maintenance organizations and medical service corporations, the fee is levied on each company’s hypothetical gross premiums tax liability determined at the 1.9 percent gross premiums tax rate applied to its premiums base. The hypothetical calculation is necessary because medical service corporations pay premiums tax at a rate of 0.5 percent rather than 1.9 percent and because health maintenance organizations do not pay premiums tax.

Prior to 2000, the insurance regulatory charge was imposed only on insurance companies that paid the gross premiums tax. Medical service corporations were exempt, and health maintenance organizations did not pay the regulatory charge because they do not pay a gross premiums tax. Prior to 1995, these entities contributed to the Department of Insurance Fund through insurance audit and examination fees. However, in 1995, the General Assembly eliminated the insurance audit and examination fees for insurance companies, health maintenance organizations, medical corporations, and guaranty associations. The costs of the audits are now paid for by the insurance regulatory charge as part of the costs of regulating the insurance industry.
This act also sets regulatory fees that are discussed in other chapters, including tax rates for the public utility regulatory fee and the North Carolina Electric Membership Corporation regulatory fee for the 2000–2001 fiscal year (Chapter 26, “Utilities and Energy”), and it repeals the July 2001 sunset on the white goods taxes (Chapter 9, “Environment and Natural Resources”).

Conforming State Tax Law with Federal Law

S.L. 2000-126 (H 1559) makes the following changes relating to tax law:

- Update Internal Revenue Code (IRC) Reference. It rewrites the definition of the IRC used in state tax statutes to change the reference date from June 1, 1999, to January 1, 2000. This change became effective for taxable years beginning on or after January 1, 2000.
- Conform Pension Tax Withholding. It requires withholding of state income taxes on an eligible rollover distribution to the extent permitted under federal law. This change becomes effective January 1, 2001.
- Conform Estimated Tax Deadline for farmers and fishers. It returns the withholding law for farmers and fishers to conform with federal law, correcting an inadvertent change made in 1985.
- Clarify Sales Factor. It amends the definition of “sales” for purposes of the apportionment formula to clarify that the receipts of a multistate corporation should include only the net gain realized from the sale or maturity of securities, not the rolled over capital or return of principal and not receipts otherwise exempt from tax.
- Participate in Treasury Offset Program. It enables the Department of Revenue to collect delinquent tax debts owed to the state through the United States Department of the Treasury Offset Program by providing for the imposition of a collection assistance fee. This change was recommended by the Department of Revenue, while the preceding four changes were recommended by the Revenue Laws Study Committee.

The IRC update is expected to reduce General Fund revenues by $2,030,000 in fiscal year 2000–2001 and by $4,350,000 in fiscal year 2001–2. It is expected to increase General Fund revenues by $650,000 in fiscal year 2002–3, $850,000 in fiscal year 2003–4, and $600,000 in fiscal year 2004–5. Conforming the tax deadline and the pension tax withholding and clarifying the sales factor for multistate corporations are expected to have no fiscal impact. Participating in the Treasury Offset Program has a potential revenue gain, but no estimate is yet available. A discussion of each of the act’s provisions follows.

Update Code Reference

Updating the Internal Revenue Code reference makes recent amendments to the code applicable to the state to the extent that state tax law previously tracked federal law. Since the General Assembly updated the state’s reference to the Internal Revenue Code to June 1, 1999, Congress enacted Public Law 106-170, the Tax Relief Extension Act of 1999. That act extended several expired and expiring tax provisions, some of which affect federal taxable income. Since the computation of state taxable income begins with federal taxable income, any changes to federal taxable income affect state taxable income.

This act rewrites the definition of the code to change the reference date from June 1, 1999, to January 1, 2000. The act further provides that the federal tax law changes that could increase an individual’s or a corporation’s state taxable income for the 1999 tax year will not become effective for the 1999 tax year but will instead apply only to taxable years beginning on or after January 1, 2000. This provision is necessary because Article 1, Section 16, of the North Carolina Constitution prohibits the legislature from passing a law that will retroactively increase the tax liability of any taxpayer. There are a few changes in Public Law 106-170 that could increase taxable income for the 1999 tax year. Because the act could not be ratified until after the 2000
session of the 1999 General Assembly convened, these changes were given a delayed effective date.

The following is a summary of the provisions of the Tax Relief Extension Act of 1999 that may affect state taxable income. These changes apply to taxable years beginning on or after January 1, 2000.

- Delayed the sunset of the exclusion from gross income of up to $5,250 annually for employer-provided educational assistance for undergraduate courses. The exclusion would have expired with respect to courses beginning on or after June 1, 2000. Public Law 106-170 extended the exclusion with respect to courses beginning before January 1, 2002.

- Clarified that no charitable contribution deduction is allowed for a transfer to or for the benefit of a charitable organization if, in connection with the transfer, the organization directly or indirectly pays any premium on any personal benefit contract with respect to the transferor. A personal benefit contract is a life insurance, annuity, or endowment contract. The clarification of this provision does not infer that a charitable split-dollar insurance arrangement was allowed under prior law. It does not apply to a person who benefits exclusively under a bona fide charitable gift annuity within the meaning of the code.

- Delayed the sunset of the work opportunity tax credit and the welfare-to-work tax credit. These credits would have expired for wages paid or incurred to a qualified individual who began work for an employer before July 1, 1999. Public Law 106-170 extends these credits for wages paid to qualified individuals who began work for the employer on or after July 1, 1999, and before January 1, 2000. To the extent an employer claims the federal credit, the employer must reduce its federal deduction for wages by the amount of the credit. Since North Carolina does not have a comparable credit, it allows a taxpayer who claims the federal credits to claim a deduction from federal taxable income for the amount by which the employer’s deduction for wages was reduced.

- Delayed the sunset of the expensing of environmental remediation expenditures. The code authorizes taxpayers to treat certain environmental remediation expenditures that would otherwise be chargeable to capital account as deductible in the year paid or incurred. The end of that period of time during which qualifying expenditures can be expensed is extended from January 1, 2001, to January 1, 2002.

- Provided that an option to accelerate the receipt of a payment under a production flexibility contract between the Secretary of Agriculture and a farmer will not accelerate the recognition of income. A taxpayer generally is required to include an item in income no later than the time of its actual or constructive receipt. If a taxpayer has an unrestricted right to demand the payment of an amount, the taxpayer is in constructive receipt of that amount whether or not the taxpayer makes the demand and actually receives the payment. The production flexibility contract payments are to be included in gross income in the year they actually are received. These contracts generally cover crop years 1996 through 2002.

- Prohibited use of the installment method by accrual method taxpayers. Under prior law, the installment method of reporting income from dispositions of property could be used by a taxpayer regardless of whether the taxpayer used the cash method or accrual method of accounting. An accrual method taxpayer is generally required to recognize income when all the events have occurred that fix the right to the receipt of the income and the amount of the income can be determined with reasonable accuracy. The installment method of accounting allows a taxpayer to defer the recognition of income from the disposition of certain property until payment is received, regardless of whether the taxpayer uses the cash method or accrual method of accounting. Public Law 106-170 generally prohibited accrual method taxpayers from using the installment method of reporting income from dispositions of property. It retained the present law regarding the availability of the installment method for dispositions of property used or produced in the
trade or business of farming and for dispositions of timeshares or residential lots if the
taxpayer elects to pay interest under Section 453(l) of the IRC. It did not change the
ability of a cash method taxpayer to use the installment method.

- Added new categories of noncapital assets. Three categories have been added to the list
of assets on which the gain or loss is treated as ordinary income as opposed to a capital
gain or loss. The new categories are: commodities derivatives held by commodities
derivatives dealers, hedging transactions, and supplies of a type regularly consumed by
the taxpayer in the ordinary course of the taxpayer’s trade or business.

- Limited conversion of character of income from constructive ownership transactions.
Public Law 106-170 limited the amount of long-term capital gains a taxpayer can
recognize from derivative transactions with respect to certain pass-through entities to the
amount of gain the taxpayer would have had if the taxpayer owned a direct interest in the
pass-through entity during the term of the derivative contract.

- Delayed sunset on transfers of excess pension benefits to retiree health benefits accounts.
The period of time permitting qualified transfers of excess defined benefit pension plan
assets to retiree health benefits accounts under Section 401(h) of the IRC had been
extended to include transfers that take place before January 1, 2006. The period of time
would have expired on December 31, 2000.

- Allowed a basis reduction to assets of a corporation if stock in the corporation is
distributed by a partnership to a corporate partner. This reduction applies if, after the
distribution, the corporate partner controls the distributed corporation.

- Delayed sunset of exceptions under Subpart F of the IRC for active financing income of
controlled foreign corporations. A foreign corporation is a “controlled foreign
corporation” (CFC) if more than 50 percent of its outstanding voting stock, or more than
50 percent of the value of all its outstanding stock, is owned by U.S. shareholders. A
“U.S. shareholder” is a U.S. citizen or resident, or a U.S. corporation, partnership, estate
or trust, that owns 10 percent or more of the foreign corporation’s total combined voting
stock. In general, the foreign-source income of a foreign corporation is not taxable to its
U.S. shareholders until it is distributed to them. Recognizing that income could be
accumulated in a CFC, thus deferring U.S. tax on this income indefinitely, Congress
enacted the Subpart F provisions of the IRC in 1962. These provisions require certain
items of income to be treated as deemed paid to U.S. shareholders and, therefore, subject
to federal taxation. The income subject to current inclusion under the Subpart F rules
includes foreign personal holding company income, insurance income, and foreign base
comp any services income. Examples of foreign personal holding company income
include dividends, rents, royalties, annuities, net gains from commodity transactions, net
income from foreign currency transactions, and payments in lieu of dividends. Insurance
income subject to inclusion under the Subpart F rules includes any income of a CFC
attributable to the issuing or reinsuring of any insurance or annuity contract in connection
with risks located in a country other than the CFC’s country of organization. “Foreign
base company services income” is income derived from services performed for a related
person outside the country in which the CFC is organized. Temporary exceptions from
foreign personal holding company income, foreign base company services income, and
insurance income apply for Subpart F purposes for certain income that is derived in the
active conduct of a banking, financing, or similar business or in the conduct of an
insurance business. These exceptions were set to expire on December 31, 1999. Public
Law 106-170 extended these exceptions for two years, until January 1, 2002.

Since the state corporate income tax was changed to a percentage of federal taxable income in
1967, the reference date to the Internal Revenue Code has been updated periodically. In discussing
bills to update the IRC reference, the question frequently arises as to why the statutes refer to the
code on a particular date instead of referring to the code and any future amendments to it. The
answer to the question lies in both a policy decision and a potential restraint.
First, the policy reason for specifying a particular date is that, in light of the many changes made in federal tax law from year to year, the state may not want to adopt automatically federal changes, particularly when these changes result in large revenue losses. By pinning references to the IRC to a certain date, the state ensures that it can examine any federal changes before making the changes effective for the state.

Secondly, and more importantly, the North Carolina Constitution imposes an obstacle to a statute that automatically adopts any changes in federal tax law. Article V, Section 2(1), of the state constitution provides in pertinent part that the “power of taxation . . . shall never be surrendered, suspended, or contracted away.” Relying on this provision, the North Carolina court decisions on delegation of legislative power to administrative agencies, and an analysis of the few federal cases on this issue, the Attorney General’s Office concluded, in a memorandum issued in 1977 to the Director of the Tax Research Division of the Department of Revenue, that a “statute which adopts by reference future amendments to the Internal Revenue Code would . . . be invalidated as an unconstitutional delegation of legislative power.”

In 1997, the Revenue Laws Study Committee explored the possibility of legislation that would automatically adopt federal changes to the Internal Revenue Code each year, with legislative review and approval required in the succeeding legislative session. It was hoped that this approach would avoid the practical difficulties that occur when code changes go into effect many months before the General Assembly has a chance to pass legislation adopting the changes. The Attorney General’s Office reviewed the relevant case law in this state and other states before concluding that this approach would be unlikely to withstand a constitutional challenge.

Conform Pension Tax Withholding

Under federal law, tax withholding is required on pensions, annuities, and certain deferred income, including IRAs, unless the taxpayer elects not to have the tax withheld. There is one exception to this rule: A taxpayer may not elect not to have tax withheld from an eligible rollover distribution.

In 1999, the General Assembly passed S.L. 1999-414, which tracks part of the federal law. Under S.L. 1999-414, a pension payer must withhold state income tax on a pension payment other than an eligible rollover distribution if the pension payer was withholding federal income tax on the payment. As under federal law, a recipient of a pension payment that is not an eligible rollover distribution may elect not to have tax withheld from the pension payment. Unlike federal law, S.L. 1999-414 did not require that tax be withheld from an eligible rollover distribution. Effective January 1, 2001, this act requires that North Carolina tax be withheld on eligible rollover distributions to the same extent as under federal law. A taxpayer may not elect not to have the tax withheld. The effect of this change is to conform North Carolina law to federal law in this regard.

Conform Estimated Tax Deadline

The act corrects an inadvertent change made in 1985 by conforming the state’s estimated tax deadline for farmers and fishers to the federal deadline. Federal law forgives the penalty for late payment of estimated taxes by farmers and fishers if the final return is filed, with taxes paid in full, by March 1 following the end of the taxable year. Prior state law erroneously based the forgiveness on the March 1 payment of estimated tax. In 1984, federal law was rewritten to consolidate several Internal Revenue Code sections regarding the payment of estimated tax into one section. In 1985, North Carolina enacted similar legislation consolidating the state statutes into one statute. The exceptions were intended to remain the same, and the Department of Revenue has administered those exceptions in that manner since the federal legislation was enacted.
Clarify Sales Factor

A multistate corporation receiving income from business activity that is taxable in more than one state must allocate and apportion a percentage of its income to North Carolina for purposes of the state’s corporate income and franchise tax law. An excluded corporation apportions its income to the state by multiplying its income by the sales factor. An “excluded corporation” is a corporation engaged in business as a building or construction contractor, a securities dealer, a loan company, or a corporation that receives more than 50 percent of its ordinary gross income from investments or dealings in intangible property. The sales factor is a fraction, the numerator of which is the total sales of the corporation in this state during the income year and the denominator of which is the total sales of the corporation everywhere during the income year.

The definition of “sales” is the gross receipts of the corporation except for receipts from a casual sale of property and receipts otherwise allocated by statute, such as rents, royalties, sales of real property, interest, and net dividends. This act clarifies the definition of “sales” by excluding from gross receipts:

- receipts exempt from taxation and
- the portion of receipts realized from the sale or maturity of securities or other obligations that represents a return of principal.

To include these receipts in the gross amount would distort the sales factor. For example, it is not unusual for working capital to be turned over repeatedly by investing in short-term securities. When the receipts include both principal and interest, the principal may be included in the denominator several times. When the denominator is inflated, the fraction is diluted and thus cannot accurately reflect the true net earnings of the corporation in North Carolina. The act clarifies that only the net gain from the sale or maturity of securities should be included in the sales factor, not the rolled over capital or return of principal and not receipts otherwise exempt from taxation.

Participate in Treasury Offset Program

The Department of Revenue may collect delinquent tax debts owed to the state through the U.S. Department of the Treasury Offset Program. To participate in this method of collection, the state must pay a fee of $9.65 per offset claim to the program, send a certified letter to the delinquent taxpayer at a cost of $3.01, and incur other incidental expenses. The act enables the Department of Revenue to impose a $15.00 collection assistance fee on each tax debt collected through the Treasury Offset Program. The department requested the collection fee because of the cost of participating in the program. The state already imposes a collection assistance fee on debts collected through the state debt setoff collection act. The amount of that fee cannot exceed $15.00. The collection assistance fee authorized by the act is added to the amount of the tax liability submitted to the U.S. Department of the Treasury for setoff. As under the state setoff debt collection act, the collection assistance fee has priority over the debt setoff. Therefore, if the federal setoff covers only part of the tax due, the collection assistance fee has priority over the tax due.

Clarification of Revenue Laws

S.L. 2000-173 (H 1290) makes numerous clarifying and conforming changes to the revenue laws and related statutes as recommended by the Revenue Laws Study Committee. Among the changes made by the act are the following:

1. It reorganizes the sunsets for the William S. Lee Act and the General Business Credits Act so that the sunset language will be codified within each. It also codifies the William S. Lee Study provisions with the sunset. Codifying the sunsets separates the two acts’ sunsets, which were in the same session law, and makes them easier for taxpayers to
find. This section also clarifies the sunset of the Renewable Energy Tax Credits added to the General Business Credits Act in 1999.

2. It clarifies that the $100 local tax limitation enacted in S.L. 1999-438 for loan agencies and other related businesses does not repeal the preexisting local authority to tax pawnbrokers up to $275 a year. This section becomes effective July 1, 2001. This section will allow local governments to regain revenue lost due to the 1999 legislation. Based on a 1996 survey of local governments, if all local governments changed their ordinance in response to the 1999 legislation, they would have experienced a loss of $47,999.

3. It clarifies that a county or city does not share in the distribution of beer and wine tax if the only place where beer and wine sales are authorized in the county or city is a sports club. It also repeals an obsolete subsection.

4. It eliminates the requirement that resident breweries, resident wineries, and nonresident vendors file an invoice with the Secretary and that two copies of the invoice be given to wholesalers and importers. The person will still be required to file a report that contains the information required by the Secretary.

5. It conforms the discount statutes for excise taxes on beer, wine, and liquor to those for tobacco products so that they are uniform. The language, that the discount is not allowed on taxpaid beverages given as free goods for advertising, is removed because similar language is not included in the tobacco product article. The Department of Revenue plans to administer the excise tax on tobacco products and the excise taxes on beer, wine, and liquor through the same computer program.

6. It allows resident breweries, resident wineries, and nonresident vendors to keep information needed to file reports with the Department of Revenue in a format that is useful to them by not restricting them to invoices. These businesses will have to keep records of the information needed to file reports and returns for three years.

7. It repeals the special franchise taxes on telegraph companies and street bus companies. According to the Department of Revenue, there are no taxpayers paying tax under these provisions. With repeal of these special taxes, the general corporate franchise tax will apply to any company that might have otherwise fallen under the provisions of the special taxes.

8. It changes the form of the definition of “manufactured home” in the sales tax law from a restatement of federal standards to a cross-reference to federal standards. This section also codifies an administrative application of the sales tax definition for “manufactured home” to include a modular home that is built on a permanent chassis and is transportable in one or more sections.

9. It clarifies that for purposes of the Highway Use Tax, a retailer must be engaged in the business of selling or leasing motor vehicles, and it clarifies and updates definition language in Chapter 20 of the General Statutes.

10. It allows the Department of Revenue to exchange information with the Division of Adult Probation and Parole of the Department of Correction. This change will assist in collecting the controlled substances tax.

11. It clarifies that motor carrier fuel tax assessments based on presumed mileage are used only if the Department of Revenue considers the presumption reasonable. The section also corrects incorrect terminology and changes sentence order.

12. It changes the method by which tax on fuel is charged at the destination state’s rate when the fuel is simultaneously sold from one supplier, to another supplier, to a customer who picks the fuel up at the rack for export. S.L. 1998-146 attempted to address this situation by expanding the definition of a two-party exchange to include buy-sell agreements as one type of two-party transaction for purposes of the definition of “supplier.” That change created confusion and led to mismatches between terminal operator reports and supplier returns. This section reverts back to the old, narrower definition of two-party exchange and then adds a specific provision allowing the destination state’s tax rate to be paid when the fuel is transferred at the rack pursuant to a buy-sell agreement.
13. It restores to the definition of “user” a provision that was inadvertently deleted and makes conforming changes to reflect the defined term. This added provision, regarding vehicle weight threshold, was formerly provided in G.S. 105-449.9 (repealed). Since users are subject to audit, the vehicle weight threshold will limit the audits to larger vehicles.

14. It conforms the motor fuel excise tax exemption statute to reflect that an unlicensed exporter or distributor is liable for the tax under G.S. 105-449.82(c). This change exempts fuel from the tax only when it is removed by a licensed distributor or licensed exporter.

15. It incorporates a change concerning “locked pumps” made by the federal law in 1998. The federal change already applies in the state, and the bill simply codifies the change and clarifies that a distributor is still eligible for a refund of the excise taxes paid on kerosene if the pump meets the requirements of federal law. A “locked pump” is one that is kept locked by the retailer and must be unlocked by the retailer for each sale of kerosene. Distributors currently may apply for a refund if the dispensing device for the kerosene is not suitable for use in fueling a highway vehicle.

16. It restores a provision making fuel retailers and bulk-end users subject to audit by the Department of Revenue. S.L. 1999-438 repealed the requirement that retailers and bulk-end users obtain licenses. An unintended consequence of this repeal was elimination of the Department’s audit authority over these users and sellers of motor fuel.

17. It moves the tax exemption language for “911” telephone service from G.S. 62A-5 to the corporate income tax statutes. This change makes Articles 1 and 2 of Chapter 62A consistent.

S.L. 2000-140 (S 1335) also makes numerous conforming and technical changes to various revenue statutes and session laws.

**Bill Lee Act Modifications**

Two bills were enacted to modify the state’s revenue laws regarding economic development. S.L. 2000-56 (H 1560) modifies the William S. Lee Quality Jobs and Business Expansion Act (Bill Lee Act) and related economic development laws by enacting application fee changes, extending credit carryforwards, requiring wage standards for grants, prohibiting funding for defaulting grantees, expanding credits, and making technical corrections. This act is also discussed in Chapter 4, “Community Development and Housing.” S.L. 2000-73 (S 1318) modifies the standards regarding tier designations for counties pursuant to the Bill Lee Act.

The Bill Lee Act was enacted in 1996, effective beginning with the 1996 tax year with a 2002 sunset. The Bill Lee Act is a package of state tax incentives and has been modified in each subsequent year. The incentives are primarily in the form of tax credits for investment in machinery and equipment, job creation, worker training, and research and development.

The act requires the Department of Commerce to report annually on the credits allowed by the act. In 1997, the General Assembly added specific issues that the Department of Commerce was required to study and report back on in 1999. Before 1996, North Carolina had made little use of tax incentives to lure businesses to the state. Even without incentives, North Carolina had consistently been one of the top states in attracting industry. The array of credits authorized by the Bill Lee Act was viewed as an experiment, to be evaluated in five years to determine whether the incentives were cost-effective and actually affected behavior or merely provided tax reductions to businesses that would have located or expanded in any case. In 1999, the General Assembly expanded existing tax incentives for businesses, added new tax incentives and tax reductions for specific businesses, and made related changes. The General Assembly also extended the 2002 sunset to 2006.

S.L. 2000-56 further modifies the Bill Lee Act and related economic development laws. A discussion of those modifications follows.
Application Fee Exemptions

To claim a credit under the Bill Lee Act, a taxpayer must provide with the tax return the certification of the Secretary of Commerce that the taxpayer meets all of the eligibility requirements with respect to each credit that the taxpayer claims. The taxpayer must file an application for certification with the Secretary. In 1999, the General Assembly eliminated the $75 application fee for credits claimed in tier one and two counties. For tier three, four, and five counties, the application fee was increased to $500 per credit claimed, with a cap of $1,500 per applicant. S.L. 2000-56 extends the fee exemption to apply not only to credits claimed in tiers one and two, but also to credits claimed in a development zone. A development zone is an area within the corporate limits of a city with a population greater than 5,000. The area, composed of one or more contiguous census tracts or census block groups, must have a population of 1,000 or more. Of the total population, more than 10 percent of residents must be below the poverty level or the area must be adjacent to a tract or group that has more than 20 percent of its population below the poverty level.

This act also clarifies that there is no fee for an application filed with the Department of Revenue concerning the credit for a development zone project. In 1999, the General Assembly created a new tax credit for taxpayers who contribute cash or property to certain nonprofit agencies to be used for an improvement project in a development zone. An improvement project is a project to construct or improve real property for community development purposes or to acquire real property and convert it for community development purposes. The credit allowed is 25 percent of the amount contributed by the taxpayer. The total amount of credits that may be allowed in a taxable year is capped at $4 million. Taxpayers are required to apply to the Secretary of Revenue for these credits. If the total amount of credit applied for in a year exceeds $4 million, the Secretary will reduce each applicant’s credit proportionally.

These changes become effective January 1, 2001, and apply to applications made on or after that date.

Extend Credit Carryforwards

The Bill Lee Act credits may not exceed 50 percent of the tax against which they are claimed. The limitation applies to the cumulative amount of credit claimed by the taxpayer, including carryforwards. As a general rule, any unused portion of a credit may be carried forward for five years. The Bill Lee Act provides two exceptions that allow twenty-year carryforwards. S.L. 2000-56 creates a third exception that allows a ten-year carryforward, effective for taxable years beginning on or after January 1, 2000. The three exceptions are:

1. Any unused portion of a credit with respect to a large investment may be carried forward for twenty years. A large investment is one in which an eligible business purchases or leases, and places in service within a two-year period, $150 million worth of one or more of the following: real property, machinery and equipment, or central administrative office property.

2. Any unused portion of a credit with respect to the technology commercialization credit may be carried forward for twenty years. The General Assembly created the technology investment credit in 1999 as an alternative to the 7 percent credit for investing in machinery and equipment. The credit applies only to investments in machinery and equipment used in production based on technology licensed from a research university. The investments must be located in a tier one, two, or three county and must equal at least $10 million during the taxable year and must total at least $100 million over a five-year period.

3. S.L. 2000-56 allows any unused portion of a credit to be carried forward for ten years if the Secretary of Commerce certifies that the taxpayer will purchase or lease, and place in service in connection with an eligible business within a two-year period, at least $50 million worth of one or more of the following: real property, machinery and equipment, or central office or aircraft property. If the taxpayer fails to make the level of investment
certified within the two-year period, the taxpayer forfeits the enhanced carryforward period.

**Require Wage Standards for Grants**

To be eligible for credits under the Bill Lee Act, the jobs for which a credit is claimed and the jobs at the location with respect to which a credit is claimed must meet the applicable wage standard. For a tier one county, the jobs must pay an average weekly wage that is equal to the average weekly wage for that county. For other tier counties, the average weekly wage must equal 110 percent of the average weekly wage for that county. Effective July 1, 2000, this act requires jobs at the following projects also to meet the Bill Lee Act wage standards:

- A project for which a business seeks a grant from the Industrial Recruitment Competitive Fund. The purpose of this fund is to provide financial assistance to those businesses or industries deemed by the Governor to be vital to a healthy and growing state economy and that are making significant efforts to establish or expand in the state.
- A project for which a local government seeks a loan or grant from the Industrial Development Fund. The purpose of this fund is to assist local government units of the most economically distressed counties in creating jobs in certain industries.

**Prohibit Funding for Defaulting Grantees**

Effective July 1, 2000, the act prohibits the Department of Commerce from making a loan or awarding a grant to any individual, organization, or governmental unit that currently is in default on any loan made by the Department of Commerce.

**Aircraft Maintenance Facility Credit**

The act expands the list of eligible businesses that qualify for a credit under the Bill Lee Act to include an auxiliary subdivision of an interstate passenger air carrier engaged primarily in aircraft maintenance and repair services or aircraft rebuilding. An interstate passenger air carrier is one whose primary business is scheduled passenger air transportation. This change is effective for taxable years beginning on or after January 1, 2001. It allows the air carrier to qualify for the central administrative office credit as well as the credit for creating jobs, credit for investing in machinery and equipment, credit for research and development, and credit for worker training. It also allows the air carrier to qualify for the enhanced twenty-year carryforward for large investments.

**Employee Buyout Incentive**

S.L. 2000-56 revises the test for what constitutes an acquisition by an employee buyout. Prior to 1998, the acquisition of a business by an employee buyout did not qualify for Bill Lee Act credits. The credits were allowed only for new and expanding businesses. As a general rule, the acquisition of a business, or any other transaction by which an existing business reformulates itself as another business, does not create new eligibility in the succeeding business. In 1998, the General Assembly provided an exception from this general rule for a business that has closed, has filed a federally required notice that closure is imminent, or has been purchased in an employee buyout. In these cases, the business is able to qualify for the credits to the same extent as a new business.

Effective May 1, 1999, the act revises the test for what constitutes an acquisition of a business by an employee buyout. The term “acquired” now means that as part of the initial purchase of a business by employees, the purchase must include an agreement whereby the employees, through the employee stock option transaction or other similar mechanism, obtain one of the following:

- ownership of more than 50 percent of the business or
ownership of not less than 40 percent of the business within seven years if the business has tangible assets with a net book value in excess of $100 million and a majority of its operations are located in enterprise tier one, two, or three areas.

**Low-Income Housing Credit Changes**

S.L. 2000-56 expands the applicability of the low-income housing credit and clarifies that the credit is forfeited under certain circumstances. In 1999, the General Assembly enacted a new tax credit for rehabilitating or constructing low-income housing. The credit is equal to a percentage of the amount of the taxpayer’s federal credit for low-income housing with respect to eligible North Carolina low-income housing. The credit is 75 percent for buildings located in tier one or two counties and 25 percent for buildings located in other tiers. This act provides that the 75 percent credit is allowed also for buildings located in a county that has been designated as having sustained severe or moderate damage from a hurricane or hurricane-related disaster, according to the Federal Emergency Management Agency impact map, as revised on September 25, 1999. These counties are Bertie, Beaufort, Bladen, Brunswick, Carteret, Columbus, Craven, Dare, Duplin, Edgecombe, Greene, Halifax, Hertford, Jones, Lenoir, Martin, Nash, New Hanover, Northampton, Onslow, Pasquotank, Pender, Pitt, Washington, Wayne, and Wilson. This change is effective for taxable years beginning on or after January 1, 2001, applies to buildings to which federal credits are allocated on or after January 1, 2001, and expires January 1, 2005.

The qualifying test of what constitutes low-income housing for a building located in a tier three, four, or five county is harder to meet than is the test under federal law. The federal law requires either that at least 20 percent of the residential units are rent-restricted and occupied by individuals whose income is 50 percent or less of area median gross income or that at least 40 percent of the residential units are rent-restricted and occupied by individuals whose income is 60 percent or less of area gross income. The state law for a tier three or four county requires that at least 40 percent of its residential units are rent-restricted and occupied by individuals whose income is 50 percent or less of area median gross income. For a tier five county, the state law requires that at least 40 percent of its residential units are rent-restricted and occupied by individuals whose income is 35 percent or less of area median gross income. If, in one of the five years in which an installment is claimed, the taxpayer no longer qualifies for the federal credit, the taxpayer is no longer eligible for the state credit. S.L. 2000-56 clarifies that if a building in a tier three, four, or five county no longer meets the more stringent state tax credit requirements, the remaining installments of the credit may not be taken, even though the building may continue to qualify for the federal credit. This clarification is effective for taxable years beginning on or after January 1, 2000.

**Modify Credit and Expiration Provisions of the Bill Lee Act**

S.L. 2000-56 makes three changes to credits in the Bill Lee Act and to the credits’ expiration, effective for taxable years beginning on or after January 1, 2000. These changes were recommended by the Revenue Laws Study Committee.

**Jobs Tax Credit Change.** The Department of Commerce asked the Revenue Laws Study Committee to make this change to eliminate a restriction that has the unintended consequence of preventing a taxpayer from taking a tax credit for jobs created under certain circumstances. Under prior law, a taxpayer who met the eligibility requirement of the Bill Lee Act, had five or more employees for at least forty weeks of the taxable year, and hired an additional full-time employee to fill a full-time position located in this state could claim a tax credit for creating a new full-time position. The credit for any specific full-time position may be claimed only once and must be taken in installments over four years. S.L. 2000-56 amends the jobs tax credit by eliminating the forty-week requirement, since it does not serve any apparent purpose.

The forty-week requirement had the unintended effect of denying the job tax credit to certain taxpayers. For example, an employer was not eligible for this credit if the employer began
operations with more than five employees thirteen or more weeks into the taxable year. However, a taxpayer could get around this forty-week requirement by signing a letter of commitment with the Department of Commerce to create at least twenty new full-time jobs in a specific area within a two-year period. This taxpayer would be eligible for a credit in the taxable year after at least twenty employees were hired.

The elimination of the forty-week requirement will have a minimal fiscal impact, since most taxpayers have been able to get around the requirement by signing a letter of commitment. The taxpayers who will benefit from this change are those that did not qualify for a letter of commitment and who began operations with between five and twenty employees more than twelve weeks into the taxable year.

Correct Investment Tax Credit. S.L. 2000-56 corrects a “reverse loophole” in the Bill Lee Act credit for investing in machinery and equipment. Under prior law, if a taxpayer earned a credit for investing in machinery and then, within the seven-year period that installments of the credit are allowed, replaced the machinery with newly acquired machinery, the taxpayer suffered two consequences. The taxpayer lost the remaining installments earned on the original machinery and received no credit for investing in the replacement machinery except to the extent its value exceeded the value of the original machinery. The act corrects this reverse loophole by providing that the remaining installments of the credit for the original machinery may be taken if the value of newly acquired machinery in the same enterprise tier offsets at least 80 percent of the value of the original machinery taken out of service. As under prior law, a new credit is allowed to the extent that the remaining value of the newly acquired machinery creates a net investment increase in excess of the applicable investment threshold, and there is no penalty if the taxpayer replaces the machinery after the end of the seven-year installment period.

Clarify Expiration of Credits. The act clarifies that if a taxpayer who claims a Bill Lee Act credit ceases to engage in the type of business required for qualification for the credit, then the taxpayer loses any remaining installments of the credit (but does not lose accrued carryforwards).

Technical Correction
In 1999, the General Assembly provided a sales tax refund to certain nonprofit insurance companies for state and local taxes they pay on building materials, supplies, fixtures, and equipment that become a part of their real property and on hardware and software for capitalized computer systems. To qualify for these refunds, the insurance company must be operated for the exclusive purposes of providing insurance products to nonprofit charitable organizations and their employees. In addition, the Secretary of Commerce must certify that the insurance company will invest at least $20 million in this state. S.L. 2000-56 adds the following underlined language to clarify that to be eligible for this refund, an insurance company must be operated for the exclusive purpose of providing insurance products to organizations exempt from federal income tax and their employees or to public institutions and their employees. This change became effective May 1, 1999, and applies to taxes paid on or after that date.

Amend Tier Designations
Under the Bill Lee Act, all counties are divided into five enterprise tiers, ranked by economic distress as measured by a formula that combines unemployment, per capita income, and population growth. Those counties in lower-numbered tiers receive more favorable incentives than do those in higher tiers. For example, enterprise tier one and two counties are the counties considered most in need of economic development based on high unemployment, low per capita income, and low population growth.

In 1999, the General Assembly also allowed certain counties to qualify for a lower enterprise tier designation, effective January 1, 2000. The rules for assigning enterprise tier designations were changed to provide that the tier number that would otherwise be assigned by the formula is reduced by one for counties that have a population of less than 50,000 and also have more than 18 percent of their residents below the federal poverty level. Under this change, Alleghany, Ashe,
Beaufort, Cherokee, Perquimans, Scotland, Vance, and Yancey counties moved from tier two to tier one. Bladen, Hoke, Jones, Madison, Pamlico, and Pasquotank counties moved from tier three to tier two. The 1999 change also provided that a county that has a population of less than 25,000 cannot be designated higher than tier three. Finally, the 1999 change provided that a county is designated as tier one if it has a population of less than 10,000 and also has more than 16 percent of its residents living below the federal poverty level. Under this change, Camden, Clay, and Jones qualified as tier one counties.

S.L. 2000-73 (S 1318) amends the Bill Lee Act by providing that an enterprise tier two area may not be redesignated as a higher numbered tier area until it has been an enterprise tier two area for at least two consecutive years. In 1997 (S.L. 1997-277), the General Assembly amended the Bill Lee Act to guarantee that a county that obtained a tier one status could not lose that status for two years. The act extends this guarantee to a county designated as a tier two area. The act is expected to reduce General Fund revenues by $111,000 in fiscal year 2001–2, $233,000 in fiscal year 2002–3, $344,500 in fiscal year 2003–4, and $456,000 in fiscal year 2004–5. The act has no impact on fiscal year 2000–2001 because the credits are taken in the year after the investment and job creation activity take place.

Conduit Agency Financing

S.L. 2000-179 (S 1472) provides specific statutory authority for conduit financing of special-purpose projects through County Industrial Facilities and Pollution Control Financing Authorities and the North Carolina Capital Facilities Finance Agency. In a conduit financing, a governmental entity issues its bonds to finance facilities for a private party, then receives payments from the private party to service the bonds. The “special purpose projects” that may be financed through conduit financing include:

- water systems and facilities;
- sewage disposal systems or facilities;
- public transportation systems, facilities, or equipment;
- public parking facilities;
- public auditoriums and similar facilities;
- recreational facilities;
- solid waste facilities;
- facilities for persons with disabilities and for the disadvantaged, such as Goodwill stores and sheltered workshops, but not including retail establishments unless 75 percent of the inventory is used, donated goods and 75 percent of the employees will be disadvantaged or disabled persons;
- student housing facilities owned by entities other than educational institutions.

S.L. 2000-179 provides specific statutory authority for conduit financing of special purpose projects. If the federal tax law permits tax-exempt bond issues for the type of facility financed, the private party is able to borrow at tax-exempt rates.

Prior to the enactment of this act, conduit financing was available to a limited extent in North Carolina. County Industrial Facilities and Pollution Control Financing Authorities and the N.C. Industrial Facilities and Pollution Control Financing Authority can provide conduit agency financing for private industrial and pollution facilities. The N.C. Educational Facilities Finance Agency can provide conduit financing for educational facilities. Counties and cities may also provide conduit financing directly.

Federal law allows tax-exempt conduit financing for a variety of projects beyond the industrial, pollution control, and educational projects currently authorized in Chapters 159C, 159D, and 115E of the General Statutes. Recent financings have been proposed and entered into for new types of projects, such as recreational facilities to be leased to or operated by a YMCA. The Treasurer’s Office had two concerns about the expansion of the type of projects being financed under the prior law. First, although the projects had a public purpose and satisfied federal
requirements, the North Carolina statutes did not clearly authorize conduit financing for these
types of projects. Second, to the extent that the conduit financing was conducted directly by a local
government, rather than a special purpose authority, the local government’s credit rating was at
risk if the private entity went into default.

S.L. 2000-179 addresses the Treasurer’s concerns by providing specific statutory authority for
conduit financing of special purpose projects. To accomplish this expansion, the act makes the
following changes regarding revenue bonds issued on behalf of private entities:

- it expands the N.C. Educational Facilities Finance Agency to become the N.C. Capital
  Facilities Finance Agency and authorizes the agency to issue bonds on behalf of private
  entities for various projects that have a public purpose (“special purpose projects”);
- it authorizes County Industrial Facilities and Pollution Control Financing Authorities to
  issue bonds on behalf of private entities for various projects that have a public purpose;
- it dissolves the N.C. Industrial Facilities and Pollution Control Financing Authority and
  transfers its powers and duties to the N.C. Capital Facilities Finance Agency.

“Special purpose projects” encompass a variety of private, public-purpose projects. The types
of projects that the act gives County Industrial Facilities and Pollution Control Financing
Authorities and the N.C. Capital Facilities Finance Agency the power to finance are:

- water systems and facilities;
- sewage disposal systems or facilities;
- public transportation systems, facilities, or equipment;
- public parking facilities;
- public auditoriums and similar facilities;
- recreational facilities;
- solid waste facilities;
- facilities for persons with disabilities and for the disadvantaged, such as Goodwill stores
  and sheltered workshops, but not including retail establishments unless 75 percent of the
  inventory is used, donated goods and 75 percent of the employees will be disadvantaged
  or disabled persons.

Student housing facilities owned by entities other than educational institutions also would be
authorized for the Capital Facilities Financing Agency. Under prior law, the N.C. Educational
Facilities Financing Agency could provide conduit financing for student housing facilities owned
or operated by an educational institution. The inclusion in this act of student housing that is not
owned or operated by an educational facility addresses current proposals to finance private,
nonprofit housing for students at various universities, including Appalachian State University,
Fayetteville State University, and North Carolina Agricultural and Technical State University.

S.L. 2000-179 renames the N.C. Educational Facilities Finance Agency and recodifies its
statutes from Chapter 115E to Article 2 of Chapter 159D of the General Statutes to reflect the
broader financing authority given to the agency under this act. Besides educational facilities, the
authority, renamed the N.C. Capital Facilities Finance Agency, may provide conduit financing for
special purpose projects. One reason for the expansion of this authority is to allow the agency to
provide conduit financing for multicounty projects, such as a proposed multicounty recreational
facility to be operated by a YMCA near Winston-Salem. Industrial Facilities and Pollution Control
Financing Authorities created by county governments have limited ability to finance multicounty
projects.

The act also authorizes the N.C. Educational Facilities Finance Agency to take over the
remaining responsibilities of the N.C. Industrial Facilities and Pollution Control Financing
Authority, which is dissolved under this act. The Industrial Facilities and Pollution Control
Financing Authority, created under Chapter 159D of the General Statutes, is a state entity that
issued bonds in the late 1980s and early 1990s for purposes similar to those provided for County
Industrial Facilities and Pollution Control Financing Authorities. The state authority became
moribund in the mid-1990s due to the loss of records regarding its creation and membership.
However, administrative duties regarding its outstanding bonds continue to arise from time to
time. Although additional bonds are not expected to be issued under Chapter 159D for industrial
or pollution control projects, the act makes a few changes to conform the provisions to those governing County Industrial Facilities and Pollution Control Financing Authorities in Chapter 159C and to delete obsolete provisions.

Under S.L. 2000-179, a private entity (either nonprofit or for-profit) could obtain financing from a County Industrial Facilities and Pollution Control Financing Authority or from the N.C. Capital Facilities Finance Agency in order to acquire, construct, and improve a special purpose project. The act authorizes both the initial financing of special purpose projects and the refinancing of preexisting debt for special purpose projects. The financing, usually tax-exempt under federal law, could include revenue bonds or other forms of debt but would not include any financing that pledges the faith or credit of the state, a local government, or any political subdivision. The advantage to private entities of tax-exempt financing is that interest rates on tax-exempt financing are significantly lower than on taxable financing. The private entity must pay for the entire cost of the financing and of the facility being financed.

Besides providing tax-exempt financing for capital facilities for special purpose projects, conduit financing may cover land acquisition, landscaping, site preparation, furniture, and machinery and equipment as well as engineering and architectural services and other administrative expenses related to construction or acquisition of a project. Financing from the N.C. Capital Facilities Finance Agency is not available for projects that discriminate based on race, creed, color, or national origin. The law governing County Industrial Facilities and Pollution Control Financing Authorities does not contain a similar restriction.

Conduit financing through the state would be administered by the N.C. Capital Facilities Finance Agency, which is located in the Department of State Treasurer. The agency has seven members: the State Treasurer, the State Auditor, one member appointed upon the recommendation of the President Pro Tempore of the Senate, one member appointed upon the recommendation of the Speaker of the House of Representatives, and three members appointed by the Governor. The appointive members must be residents of North Carolina and cannot hold another public office. The agency is audited annually and submits an annual report to the Governor and the General Assembly.

A private entity could qualify for financing only if the agency found it to be financially responsible and capable of fulfilling its obligations. Before financing is approved, the agency must find that the qualifying entity has provided adequately for the payment of principal and interest on the bonds and for the operation, repair, and maintenance of the facility to be financed. The act clarifies that the agency, in making this finding, may consider whether the private entity on behalf of whom the bonds will be issued has arranged for delivery of a letter of credit or for any other credit enhancement to secure the obligations. Similar provisions are found in the current law governing County Industrial Facilities and Pollution Control Financing Authorities.

Public notice and a public hearing are required before the bonds may be approved. The governing body of the county, and of any municipality, in which the project will be located must be notified of the hearing.

The agency may issue bonds only if the Local Government Commission approves them. The Local Government Commission sets the interest rates on the bonds and administers their sale. The bonds may be secured by a trust agreement with a corporate trustee, such as a bank. The agency will require the private entity to pay fees, loan repayments, rents, or other charges sufficient to cover the payment of principal and interest on the bonds and the operation, repair, and maintenance of the facility to be financed, and the bonds will be secured by the pledge of these revenues.

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Utilities and Energy

This chapter reviews legislation concerning utilities regulation and energy. Although the volume of legislation on this subject was low, the General Assembly wrestled with several high-profile utility issues this year—electric deregulation (once again postponed), the future of the North Carolina Railroad Company, and unwanted telephone solicitations. On energy issues the General Assembly transferred the programs of the Energy Division from the Department of Commerce to other departments, thereby abolishing the division, and addressed several tax and funding issues.

Electricity

Future of Electric Service

S.L. 2000-67 (H 1840), Section 14.10, extends the funding of the study commission on the Future of Electric Service in North Carolina through June 30, 2006. Created in 1997, the study commission was originally scheduled to file its report and recommendations with the 1999 General Assembly. So far, no consensus has emerged concerning the contentious deregulation issues on the commission’s agenda. For example, there has been disagreement—approaching gridlock—over the handling of sunk investments of the ElectriCities group of suppliers, and there is uncertainty about likely gainers and losers under deregulation.

The new distant target date gives the study commission breathing space to complete its deliberations and seek follow-up legislative action in two, possibly three, full biennial legislative sessions. If answers can be found, the new six-year deadline should allow time to find them.

Railroads

Amendments to North Carolina Railroad Company Act

S.L. 2000-146 (S 1183) adopts some of the recommendations of the study commission created in 1999 to consider the future of the state-owned North Carolina Railroad Company. The company owns valuable railroad rights-of-way that offer enticing possibilities as transportation corridors of the future or, for example, as development lands in growing areas.
S.L. 2000-146 allows, without the consent of the General Assembly, the sale or transfer of state-owned stock in the railroad company to an entity that is wholly owned by the state or pursuant to a reorganization of the company. The act authorizes the railroad company to lease, license, or improve its right-of-way for the purpose of protecting its railroad corridor and franchises—though the study commission’s proposal would have allowed such transactions “for any purpose.” The act authorizes the company to exercise condemnation powers for the purposes that other railroad companies can condemn property. Under the act the company’s franchises and other property may be sold, leased, or encumbered only with the approval of its board of directors.

S.L. 2000-146 creates the criminal offense (a Class 3 misdemeanor) of trespassing on railroad rights-of-way. It requires detailed reports by the railroad company to the General Assembly, including the Joint Legislative Commission on Governmental Operations.

Among the study commission’s recommendations that were not accepted were proposals:

- that a conveyance of property to the railroad company be presumed to include subsurface and air rights;
- that dividends of the company received by the state may be applied only to reduce the company’s obligations or improve its property; and
- that allowed summary removal of encroachments on the company’s property.

**Study Commission**

S.L. 2000-138 (S 787) makes several changes in the statute that created the Future of the North Carolina Railroad Study Commission. It replaces the requirement for a final report with a requirement for annual reports to the General Assembly before the regular legislative session convenes. It refocuses the commission’s study on the importance of railroads to economic development (including short-line railroad improvements); on methods to expedite resolution of property disputes; and on the railroad’s long-range plans, operations, structure and management. It also specifies two-year terms for members of the study commission (who are legislators) and provides for contingencies to cover cases where members cease to serve as legislators.

S.L. 2000-138 repeals two sections of S.L. 2000-146 that would have been inconsistent with the provisions of S.L. 2000-138 concerning reports and duties of the study commission.

**Telecommunications**

**Controlling Telephone Solicitations**

Effective October 1, 2000, S.L. 2000-161 (H 1493) gives residential telephone subscribers some control over unrequested telephone solicitations made to their homes by persons doing business in North Carolina who do not have established business relations with the subscriber and who are not tax-exempt, nonprofit organizations. Solicitations may not be made between 9 P.M. and 8 A.M. At the beginning of a call, telephone solicitors must identify themselves, state their business, and provide a contact phone number and address if requested. The solicitor must terminate the call if the person called does not consent to the call, must remove the subscriber from the contact list if requested, and must not make further calls to subscribers who asked to be removed from the contact list.

Solicitors must not block a subscriber’s use of caller identification. Solicitors using PBX systems that cannot transmit caller identification information, however, are not in violation of the law.

The Attorney General may enforce the act by seeking civil penalties up to $500 per violation and injunctions. Persons who receive more than one illegal solicitation per month also are entitled to injunctive relief and $500 in damages per violation.

Private citizens also are entitled to enforce the private rights of action established by federal law. The Utilities Commission must require local exchange companies to notify residential
subscribers of their rights under federal law and of programs made available by private industry that allow consumers to have their names removed from telemarketing lists.

**Regulatory Fees**

S.L. 2000-109 (H 1854) sets the regulatory fees on public utilities to defray the cost of regulation. Each utility under the Utilities Commission’s jurisdiction will pay 0.09 percent of its jurisdictional revenues earned during each quarter that begins after July 1, 2000. The North Carolina Electric Membership Corporation will pay an annual fee of $200,000 for the 2000–01 fiscal year.

S.L. 2000-140 (S 1335) makes clarifying changes in the statutory framework for the setting of these fees by the General Assembly. It specifically directs that the electric membership corporation regulatory fee shall be paid in quarterly installments.

**Energy**

**Abolition of Energy Division and Transfer of Programs**

Section 14.18 of the 2000 Appropriations Act, S.L. 2000-67 (H 1840), abolished the Energy Division and its vacant positions. It also transferred two of the division’s programs to other state departments. The Residential Energy Conservation Assistance Program (RECAP)—popularly known as the “Weatherization Program”—was transferred to the Department of Health and Human Services. The Energy Efficiency Program and the functions of the Energy Policy Council were transferred to the Department of Administration, with a focus on an energy efficiency program rather than an energy conservation plan. These changes are reflected also in the technical changes act, S.L. 2000-140 (S 1335).

Section 14.15 of S.L. 2000-67 caps the amount of money to be spent on weatherization activities at $8,974,069 for fiscal year 2000-01, the amount spent on weatherization by RECAP in the previous fiscal year. RECAP officials are directed to advise the House and Senate Appropriation Subcommittees on Natural and Economic Resources of the number of rented houses by county that received allocations of weatherization funds.

**The Technical Changes Act**

The technical changes act, S.L. 2000-140 (S 1335), creates a business energy improvement program and a coal and petroleum fuels stocks reporting program.

The Department of Administration is to administer the business energy improvement program as lead state agency. There will be a revolving fund in the department to provide low-interest, secured loans that will encourage businesses to install energy efficient capital improvements. Loans are to be for no more than $500,000 per business entity, and the term of any loan cannot extend longer than seven years.

The Department of Administration (with the approval of the Governor and the Energy Policy Council) may require all coal and petroleum suppliers in North Carolina to report on stocks and storage capacities of coal and petroleum products in a time of imminent or declared energy crisis. If reports are not timely filed, the department may seek a mandatory injunction in district court. When federal reporting requirements are not being met, the department may also collect petroleum products data from prime suppliers (not jobbers, distributors, or retail dealers) who make the first sale of named products into North Carolina. Willful refusal to provide petroleum supply data is a Class I misdemeanor. Individually identifiable energy information is to be kept confidential to the extent necessary to comply with the confidentiality requirements of the reporting agency.
Energy Funding

Once again, the budget bill allocates petroleum overcharge funds accruing to the state from the case of United States v. Exxon and the Stripper Well litigation. This year Section 14.8 of S.L. 2000-67 allocates:

- $2.6 million to RECAP for fiscal year 2000–01;
- $2 million for residential energy related uses to the Housing Finance Agency for fiscal year 2000–01; and
- $1 million for residential energy–related uses to the Community Development Initiative.

Tax Credit for Renewable Energy Sources

S.L. 2000-128 (H 1473) provides a corporate income tax credit of 25 percent of the installation and equipment costs for constructing a facility in North Carolina to manufacture renewable energy equipment. (This includes hydroelectric generators, solar electric or thermal equipment, and wind energy equipment. It also includes biomass equipment to produce, notably, ethanol or methanol or bio-diesel.) The credit replaces one that has been available under G.S. 105-130.28 for facilities that produce photovoltaic equipment.

No double credits are allowed. There is a credit cap of 50 percent of the amount of the tax imposed for the taxable year, reduced by the sum of all credits allowable except for payments made by or on behalf of the taxpayer. The new credit is available for taxable years beginning on or after January 1, 2000, and must be taken in five equal installments—not the entire credit for the taxable year in which the costs are paid. The credit “sunsets,” however: it is repealed for taxable years beginning on or after January 1, 2006.

S.L. 2000-128 also contains an increase in electric and telephone franchise tax distributions to cities that had reduced distributions in 1995–96. This provision is discussed in Chapter 16, “Local Government and Local Finance.”

Local Acts

Dare County Underground Utilities

A 1999 local act established an enabling framework to allow Dare County to create one or more special utility districts for underground electric utility lines and to levy taxes within the district of up to $1 per month for residential customers and $5 per month for commercial and industrial customers. S.L. 1999-127. The taxes were to be collected by electric utilities as part of their monthly bills. Municipalities in Dare County could “annex” themselves to the district with the county’s approval.

S.L. 2000-106 (S 1463) extends this authority to include telephone as well as electric lines, and it re-designates the monthly “tax” as an “assessment.” (No district was created under the 1999 act.) In most other respects it re-enacts the provisions of the 1999 act, except that:

- The special commission that was to govern the district will include non-voting members appointed by the county commissioners and recommended by telephone exchange carriers, by electric utility providers, and by each cable provider, as well as the voting members already included.
- The special commission may order underground cable television lines and other lines on the same pole with electric or telephone lines.
- Underground lines will be coordinated by the district with affected utilities, municipalities, and the North Carolina Department of Transportation.
- The State Auditor will conduct biennial audits of the district at the district’s expense.

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Historically, a great deal of North Carolina’s wildlife and boating law has been contained in local acts that apply only to a particular county or area of the state rather than in general statewide laws. This pattern continued this year, with the General Assembly enacting about twice as many local acts as statewide laws on these subjects. In addition, the statewide laws that were enacted in 2000 are not of major public concern.

Personal Watercraft

G.S. 75A-13.3, which regulates personal watercraft, defines those craft as small vessels using an outboard or propeller-driven motor or an inboard motor powered by a water jet pump as its primary source of power. This craft is designed to be operated by a person sitting, standing, or kneeling on the vessel (more like riding a bicycle than sailing a boat). S.L. 2000-52 (H 541) added a new subsection, (a1), to this statute, providing that no person may operate a personal watercraft at greater than no-wake speed within 100 feet of an anchored vessel, a dock, pier, swim float, marked swimming area, or manually operated vessel, unless the personal watercraft is in a narrow channel (300 feet or less in width). If within a narrow channel, then the craft may not come closer than 50 feet.

New Wildlife Center and Education Center

S.L. 2000-143 (S 1477) provides that the Department of Administration is authorized to acquire, construct, and equip a new state administrative office building (and education center) to be located on the Centennial Campus of North Carolina State University in Raleigh. The department is also authorized to construct and equip a new state wildlife education center in
Currituck County, to be administered by the Wildlife Resources Commission. This act authorizes $13.5 million for the Raleigh structure and $4 million for the Currituck Education Center.

**Local Acts**

As is the case in most sessions, more local wildlife and boating bills than public proposals were enacted. The local bills enacted in 2000 are listed below by county.

**Camden County**

S.L. 2000-12 (H 1542) amends G.S. 14-401.17 to add Camden to a list of counties where it is unlawful to remove or destroy an electronic collar or other device placed on a dog by its owner for the purpose of maintaining control of the animal. A first conviction for a violation of this provision is a Class 3 misdemeanor, and subsequent convictions are Class 2 misdemeanors. Thirty-six counties are now subject to this prohibition.

**Carteret County**

S.L. 2000-41 (H 1659) makes it unlawful to operate a vessel at greater than a “no-wake” speed in (1) Gallant’s Channel from the Duke Maritime Laboratory’s south docks to the rock jetty on the east side of Radio Island or (2) in Bogue Sound, at Salter Path, from Mariner’s Point to the west boundary line of the Salter Path Community and extending 100 feet from the shoreline into the sound.

No-wake speed is an idle or slow speed creating no appreciable wake. This act is enforceable under G.S. 75A-17 as if it were a provision of Chapter 75A of the General Statutes. Violation is a Class 3 misdemeanor.

**Currituck County**

S.L. 2000-14 provides that Currituck County may adopt ordinances to regulate personal watercraft operation in the Atlantic Ocean and other waterways in and adjacent to the county. The governing board of a municipality located within the county may, by resolution, permit a county ordinance adopted pursuant to this act to be applicable within the municipality.

**Duplin County**

S.L. 2000-29 (H 1507) repealed Chapter 1266 of the 1973 Session Laws, which had made it unlawful to set or use a trap of the leg-gripping type in Duplin County.

**Haywood County**

S.L. 2000-105 (S 1454) makes it unlawful to shine a light intentionally upon a deer, or to sweep a light in search of deer, between the hours of one-half hour after sunset and one-half hour before sunrise in Haywood County. This does not prevent: lawful hunting of raccoon and opossum with artificial lights; necessary shining of lights by landholders; lights necessary for normal travel by motor vehicles; or use of lights by campers and others who are not attempting to immobilize deer. Violation of this act is a Class 3 misdemeanor. (Wildlife Commission rules already make this type of prohibition applicable to most counties.)

*Ben F. Loeb, Jr.*