

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009**

**SESSION LAW 2009-451  
SENATE BILL 202**

AN ACT TO MAKE BASE BUDGET APPROPRIATIONS FOR CURRENT OPERATIONS OF STATE DEPARTMENTS, INSTITUTIONS, AND AGENCIES, AND FOR OTHER PURPOSES.

The General Assembly of North Carolina enacts:

**PART I. INTRODUCTION AND TITLE OF ACT**

**INTRODUCTION**

**SECTION 1.1.** The appropriations made in this act are for maximum amounts necessary to provide the services and accomplish the purposes described in the budget. Savings shall be effected where the total amounts appropriated are not required to perform these services and accomplish these purposes and, except as allowed by the State Budget Act, or this act, the savings shall revert to the appropriate fund at the end of each fiscal year.

**TITLE OF ACT**

**SECTION 1.2.** This act shall be known as the "Current Operations and Capital Improvements Appropriations Act of 2009."

**PART II. CURRENT OPERATIONS AND EXPANSION GENERAL FUND**

**CURRENT OPERATIONS AND EXPANSION/GENERAL FUND**

**SECTION 2.1.** Appropriations from the General Fund of the State for the maintenance of the State departments, institutions, and agencies, and for other purposes as enumerated, are made for the fiscal biennium ending June 30, 2011, according to the following schedule:

<b>Current Operations – General Fund</b>	<b>2009-2010</b>	<b>2010-2011</b>
<b>EDUCATION</b>		
Community Colleges System Office	\$ 999,833,122	\$ 1,012,467,778
Department of Public Instruction	7,456,261,240	7,358,833,223
University of North Carolina – Board of Governors		
Appalachian State University	146,887,779	144,187,448
East Carolina University		
Academic Affairs	236,308,845	231,603,085
Health Affairs	54,594,731	54,591,731
Elizabeth City State University	37,652,375	37,192,086
Fayetteville State University	58,668,910	57,857,732
North Carolina Agricultural and Technical State University	102,786,986	100,942,266
North Carolina Central University	94,298,521	93,012,264
North Carolina School of the Arts	27,045,523	26,875,056
North Carolina State University		
Academic Affairs	411,626,246	406,156,905



Agricultural Extension	45,315,457	45,305,822
Agricultural Research	59,503,437	59,476,413
University of North Carolina at Asheville	39,276,956	38,636,109
University of North Carolina at Chapel Hill		
Academic Affairs	302,859,050	297,600,393
Health Affairs	216,773,843	216,773,343
Area Health Education Centers	52,109,208	52,109,208
University of North Carolina at Charlotte	195,043,239	190,876,806
University of North Carolina at Greensboro	171,383,465	168,107,904
University of North Carolina at Pembroke	60,106,081	59,242,397
University of North Carolina at Wilmington	103,758,288	101,481,384
Western Carolina University	87,658,263	86,534,872
Winston-Salem State University	72,507,174	71,708,302
General Administration	42,374,063	42,373,724
University Institutional Programs	(144,494,505)	(130,312,471)
Related Educational Programs	68,821,524	40,217,033
UNC Financial Aid Private Colleges	101,244,515	101,278,515
North Carolina School of Science and Mathematics	18,712,479	18,711,799
UNC Hospitals at Chapel Hill	44,011,882	44,011,882
Total University of North Carolina – Board of Governors	\$ 2,706,834,335	\$ 2,656,552,008

## HEALTH AND HUMAN SERVICES

Department of Health and Human Services		
Central Management and Support	\$ 75,016,712	\$ 74,172,339
Division of Aging	35,899,897	37,282,029
Division of Blind Services/Deaf/HH	8,731,883	8,649,731
Division of Child Development	257,095,576	269,183,962
Division of Education Services	36,669,397	36,844,718
Division of Health Service Regulation	17,926,741	17,914,125
Division of Medical Assistance	2,318,653,169	2,720,196,757
Division of Mental Health	664,385,884	664,695,955
NC Health Choice	77,218,524	81,964,241
Division of Public Health	161,566,120	160,515,329
Division of Social Services	208,179,422	208,589,483
Division of Vocation Rehabilitation	42,006,280	41,020,173
Total Health and Human Services	\$ 3,903,349,605	\$ 4,321,028,842

## NATURAL AND ECONOMIC RESOURCES

Department of Agriculture and Consumer Services	\$ 63,034,434	\$ 60,559,608
Department of Commerce		
Commerce	45,028,421	40,915,209
Commerce State-Aid	21,667,725	15,388,725
NC Biotechnology Center	14,810,000	14,501,900
Rural Economic Development Center	23,907,436	23,832,436
Department of Environment and Natural Resources	201,108,413	190,399,356
Department of Environment and Natural Resources – Clean Water Management Trust Fund	50,000,000	50,000,000
Department of Labor	17,400,807	17,400,863

## JUSTICE AND PUBLIC SAFETY

Department of Correction	\$ 1,313,815,477	\$ 1,326,492,230
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Department of Crime Control and Public Safety	32,566,547	31,951,802
Judicial Department	466,928,250	463,753,479
Judicial Department – Indigent Defense	135,927,989	120,132,010
Department of Justice	89,736,617	88,652,538
Department of Juvenile Justice and Delinquency Prevention	145,654,923	146,727,475
<b>GENERAL GOVERNMENT</b>		
Department of Administration	\$ 67,909,562	\$ 67,446,884
Office of Administrative Hearings	4,155,512	4,111,476
Department of State Auditor	13,427,042	13,255,123
Office of State Controller	23,131,801	23,188,207
Department of Cultural Resources		
Cultural Resources	72,958,434	73,249,990
Roanoke Island Commission	1,990,632	1,990,632
State Board of Elections	4,807,223	6,221,208
General Assembly	54,479,008	56,584,484
Office of the Governor		
Office of the Governor	6,150,309	6,067,739
Office of State Budget and Management	6,502,520	6,407,809
OSBM – Reserve for Special Appropriations	6,466,465	4,161,125
Housing Finance Agency	14,608,417	14,608,417
Department of Insurance		
Insurance	32,180,522	32,242,706
Insurance – Volunteer Safety Workers' Compensation	2,000,000	1,561,846
Office of Lieutenant Governor	944,202	931,703
Department of Revenue	88,961,417	87,790,970
Department of Secretary of State	11,640,359	11,451,488
Department of State Treasurer		
State Treasurer	17,758,565	17,565,400
State Treasurer – Retirement for Fire and Rescue Squad Workers	10,804,671	10,804,671
<b>RESERVES, ADJUSTMENTS, AND DEBT SERVICE</b>		
Salary Adjustment Fund: 2009-2011 Fiscal Biennium	\$ 0	\$ 0
Contingency and Emergency Fund	5,000,000	5,000,000
State Health Plan (S.L. 2009-16)	132,214,752	276,179,709
Reserve for Teachers' and		

State Employees' Retirement Contribution	21,000,000	160,000,000
Judicial Retirement System Contributions	1,300,000	1,300,000
Information Technology Fund	9,361,985	7,840,000
Reserve for Job Development Investment Grants (JDIG)	19,000,000	27,400,000
Statewide Administrative Support	(3,000,000)	(6,600,000)
Biomedical Research Imaging Center (BRIC)	0	0
Convert Contract Employees to State Employees	(2,500,000)	(4,000,000)
Severance Expenditure Reserve	47,957,108	0
Debt Service		
General Debt Service	642,512,753	707,573,496
Federal Reimbursement	1,616,380	1,616,380
<b>TOTAL CURRENT OPERATIONS – GENERAL FUND</b>	<b>\$ 19,003,204,980</b>	<b>\$ 19,555,540,945</b>

## GENERAL FUND AVAILABILITY STATEMENT

**SECTION 2.2.(a)** The General Fund availability used in developing the 2009-2011 biennial budget is shown below:

	<b>FY 2009-2010</b>	<b>FY 2010-2011</b>
Projected Reversions FY 2008-2009	91,967,011	10,524,411
Less Earmarkings of Year End Fund Balance	0	0
Savings Reserve Account	0	0
Repairs and Renovations	0	0
<b>Beginning Unreserved Fund Balance</b>	<b>91,967,011</b>	<b>0</b>
<b>Revenues Based on Existing Tax Structure</b>	<b>16,796,300,000</b>	<b>17,384,400,000</b>
<b>Nontax Revenues</b>		
Investment Income	67,300,000	93,100,000
Judicial Fees	200,700,000	208,300,000
Disproportionate Share	100,000,000	100,000,000
Insurance	77,700,000	81,900,000
Other Nontax Revenues	148,300,000	155,200,000
Highway Trust Fund/Use Tax Reimbursement Transfer	108,500,000	72,800,000
Highway Fund Transfer	17,600,000	17,600,000
<b>Subtotal Nontax Revenues</b>	<b>720,100,000</b>	<b>728,900,000</b>
<b>Total General Fund Availability</b>	<b>17,608,367,011</b>	<b>18,123,824,411</b>
<b>Adjustments to Availability: 2009 Session</b>		
Adjust Transfer from Insurance Regulatory Fund	(1,644,300)	(1,644,300)
Adjust Transfer from Treasurer's Office	(398,880)	(605,833)
Transfer from Disproportionate Share Reserve	25,000,000	0
Transfer of Cash Balances from Special Funds	38,318,305	0
Transfer from Capital and R&R Accounts	24,372,701	0
Transfer from Health and Wellness Trust Fund	5,000,000	5,000,000
Transfer from Tobacco Trust Fund	5,000,000	5,000,000
Transfer Excess Sales Tax for Wildlife Resources Commission	1,650,000	1,650,000

Transfer Funds for Grape Growers Council	900,000	900,000
Department of Revenue Improved Enforcement	60,000,000	90,000,000
Department of Revenue Compliance Initiative	150,000,000	0
Individual Income Surtax	172,800,000	177,100,000
Corporate Income Surtax	23,100,000	25,500,000
Increase Sales Tax Rate	803,500,000	1,061,300,000
Digital Products & Click-Throughs	11,800,000	24,100,000
IRC Conformity	(116,300,000)	(80,900,000)
Adjust Revenue Distributions	22,100,000	0
Increase Excise Taxes	68,800,000	93,800,000
Suspend Corp Income Tax Earmark-Schools	60,500,000	64,500,000
Increase General Government Fees	7,555,995	7,365,196
Increase Justice and Public Safety Fees	47,090,559	51,475,278
Increase Health Services Regulation Fees	1,093,000	1,093,000
<b>Subtotal Adjustments to Availability: 2009 Session</b>	<b>1,410,237,380</b>	<b>1,525,633,341</b>
<b>Revised General Fund Availability</b>	<b>19,018,604,391</b>	<b>19,649,457,752</b>
<b>Less: General Fund Appropriations</b>	<b>19,008,079,980</b>	<b>19,555,540,945</b>
<b>Unappropriated Balance Remaining</b>	<b>10,524,411</b>	<b>93,916,807</b>

**SECTION 2.2.(b)** Notwithstanding the provisions of G.S. 105-187.9(b)(1), the sum to be transferred under that subdivision for the 2009-2010 fiscal year is one hundred six million dollars (\$106,000,000) and for the 2010-2011 fiscal year is seventy-one million dollars (\$71,000,000).

**SECTION 2.2.(c)** Pursuant to G.S. 105-187.9(b)(2), the sum to be transferred under that subdivision for the 2009-2010 fiscal year is two million five hundred thousand dollars (\$2,500,000) and for the 2010-2011 fiscal year is one million eight hundred thousand dollars (\$1,800,000).

**SECTION 2.2.(d)** The appropriations made in this act to the Clean Water Management Trust Fund in the amount of fifty million dollars (\$50,000,000) for each year of the 2009-2011 fiscal biennium are made pursuant to G.S. 113A-253.1 and are not in addition to the statutory appropriation made in G.S. 113A-253.1.

**SECTION 2.2.(e)** The appropriations made in this act to the State Health Plan for each year of the 2009-2011 fiscal biennium are made pursuant to S.L. 2009-16 and are not in addition to the appropriations made in that act.

**SECTION 2.2.(f)** Notwithstanding the provisions of G.S. 115C-546.1, the Secretary of Revenue shall transfer the funds specified in G.S. 115C-546.1(b) to the State Controller for deposit in Nontax Budget Code 19978 (Intrastate Transfers) during the 2009-2011 fiscal biennium to offset continued operations of the State's public schools.

**SECTION 2.2.(g)** Notwithstanding any other provision of law to the contrary, effective July 1, 2009, the following amounts shall be transferred to the State Controller to be deposited in Nontax Budget Code 18878 (Intrastate Transfers) or the appropriate budget code as determined by the State Controller. These funds shall be used to support the General Fund appropriations as specified in this act for the 2009-2011 fiscal biennium.

<b>Budget Code</b>	<b>Fund Code</b>	<b>Description</b>	<b>FY 2009-2010 Amount</b>	<b>FY 2010-2011 Amount</b>
67425		Trust Telecommunication	4,500,000	0
23515	2510	DPI IT Projects – Legacy Updates	3,000,000	0
63501	6801	DPI Trust Special-Teaching Fellows	5,500,000	0
63501	6112	Computer Loan Revolving Fund	120,677	0
63501	6117	Business and Education Technology Alliance	26,336	0
24600	2553	Grape Growers Council	194,929	0
24600	2821	Credit Union Supervision	760,411	0

24600	2851	Cemetery Commission	259,036	0
54600		Commerce Enterprise	10,501,726	0
64605		Utilities Commission/Public Staff	12,008,720	0
64612		NC Rural Electrification Authority	210,240	0
24308	2815	VRS Geodetic Survey & DOT	5,328	0
24317	2339	ADM Fines & Penalties	230,902	0
		Nurse Educators of Tomorrow Scholarship Loan	1,000,000	0

**SECTION 2.2.(h)** Notwithstanding G.S. 143C-9-3, of the funds credited to the Tobacco Trust, the sum of five million dollars (\$5,000,000) shall be transferred from the Department of Agriculture and Consumer Services, Budget Code 23703 (Tobacco Trust Fund), to the State Controller to be deposited in Nontax Budget Code 19978 (Intrastate Transfers) to support General Fund appropriations for the 2009-2010 and 2010-2011 fiscal years. These funds shall be transferred on or after April 30, 2010.

**SECTION 2.2.(i)** Notwithstanding G.S. 143C-9-3, of the funds credited to the Health Trust Account, the sum of five million dollars (\$5,000,000) that would otherwise be deposited in the Fund Reserve shall be transferred from the Department of State Treasurer, Budget Code 23460 (Health and Wellness Trust Fund), to the State Controller to be deposited in Nontax Budget Code 19978 (Intrastate Transfers) to support General Fund appropriations for the 2009-2010 and 2010-2011 fiscal years. These funds shall be transferred on or after April 30, 2010.

**SECTION 2.2.(j)** Notwithstanding G.S. 143C-8-11, the sum of twenty-four million three hundred seventy-two thousand seven hundred one dollars (\$24,372,701) from Capital and Repair and Renovations accounts, as specified in Section 27.11 of this act, shall be transferred to the State Controller to be deposited in Nontax Budget Code 19978 (Intrastate Transfers) for the 2009-2010 fiscal year.

### **PART III. CURRENT OPERATIONS/HIGHWAY FUND**

#### **CURRENT OPERATIONS AND EXPANSION/HIGHWAY FUND**

**SECTION 3.1.** Appropriations from the State Highway Fund for the maintenance and operation of the Department of Transportation and for other purposes as enumerated are made for the fiscal biennium ending June 30, 2011, according to the following schedule:

<b>Current Operations – Highway Fund</b>	<b>2009-2010</b>	<b>2010-2011</b>
Department of Transportation		
Administration	\$ 79,838,391	\$ 80,925,142
Division of Highways		
Administration	33,339,661	33,393,855
Construction	63,943,733	81,580,824
Maintenance	935,999,755	938,245,641
Planning and Research	4,055,402	4,055,402
OSHA Program	355,389	355,389
Ferry Operations	30,126,209	29,726,209
State Aid		
Municipalities	87,813,876	87,840,220
Public Transportation	74,947,962	75,793,962
Airports	17,349,592	17,291,543
Railroads	17,101,153	17,101,153
Governor's Highway Safety	351,779	352,325
Division of Motor Vehicles	101,416,528	101,527,804
Other State Agencies, Reserves, Transfers	289,950,570	271,460,531
<b>Total</b>	<b>\$ 1,736,590,000</b>	<b>\$ 1,739,650,000</b>

#### **HIGHWAY FUND AVAILABILITY STATEMENT**

**SECTION 3.2.** The Highway Fund availability used in developing the 2009-2011 fiscal biennial budget is shown below:

<b>Highway Fund Availability Statement</b>	<b>2009-2010</b>	<b>2010-2011</b>
Beginning Credit Balance	\$ 0	\$ 0
Estimated Revenue	1,736,590,000	1,739,650,000
<b>Total Highway Fund Availability</b>	<b>\$ 1,736,590,000</b>	<b>\$ 1,739,650,000</b>
Unappropriated Balance	\$ 0	\$ 0

**PART IV. HIGHWAY TRUST FUND APPROPRIATIONS**

**HIGHWAY TRUST FUND APPROPRIATIONS**

**SECTION 4.1.** Appropriations from the State Highway Trust Fund for the maintenance and operation of the Department of Transportation and for other purposes as enumerated are made for the biennium ending June 30, 2011, according to the following schedule:

<b>Current Operations – Highway Trust Fund</b>	<b>2009-2010</b>	<b>2010-2011</b>
Intrastate	\$ 367,256,023	\$ 391,723,281
Urban Loops	116,655,736	127,444,319
Aid to Municipalities	41,423,903	43,885,918
Secondary Roads	58,426,789	61,908,548
Program Administration	42,234,720	44,140,320
Turnpike Authority	64,000,000	99,000,000
Transfer to Gen Fund	108,561,829	72,894,864
Debt Service	82,731,000	79,992,750
<b>GRAND TOTAL CURRENT OPERATIONS AND EXPANSION</b>	<b>\$ 881,290,000</b>	<b>\$ 920,990,000</b>

**HIGHWAY TRUST FUND AVAILABILITY STATEMENT**

**SECTION 4.2.** The Highway Trust Fund availability used in developing the 2009-2011 biennial budget is shown below:

<b>Total Highway Trust Fund Availability</b>	<b>\$ 881,290,000</b>	<b>\$ 920,990,000</b>
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**PART V. OTHER APPROPRIATIONS**

**CIVIL FORFEITURE FUNDS**

**SECTION 5.1.(a)** Appropriations. – Appropriations are made from the Civil Penalty and Forfeiture Fund for the fiscal biennium ending June 30, 2011, as follows:

	<b>FY 2009-2010</b>	<b>FY 2010-2011</b>
School Technology Fund	\$ 36,183,251	\$ 18,000,000
State Public School Fund	120,362,790	120,362,790
Total Appropriation	\$156,546,041	\$138,362,790

**SECTION 5.1.(b)** All University of North Carolina campuses shall remit all parking fines held in escrow in the amount of eighteen million one hundred eighty-three thousand two hundred fifty-one dollars (\$18,183,251) to the Civil Penalty and Forfeiture Fund for appropriation.

**EDUCATION LOTTERY**

**SECTION 5.2.(a)** Notwithstanding G.S. 18C-164, the revenue used to support appropriations made in this act is transferred from the State Lottery Fund in the amount of three

hundred sixty-eight million seventy thousand two hundred eight dollars (\$368,070,208) for the 2009-2010 fiscal year.

**SECTION 5.2.(b)** Notwithstanding G.S. 18C-164, the appropriations made from the Education Lottery Fund for the 2009-2010 fiscal year are as follows:

Teachers in Early Grades	99,399,395
Prekindergarten Program	84,635,709
Public School Building Capital Fund	147,228,083
Scholarships for Needy Students	<u>36,807,021</u>
Total Appropriation	\$368,070,208

**SECTION 5.2.(c)** Notwithstanding G.S. 18C-164, the North Carolina State Lottery Commission shall not transfer funds to the Education Lottery Reserve Fund for the 2009-2010 fiscal year or the 2010-2011 fiscal year.

**INFORMATION TECHNOLOGY FUND AVAILABILITY AND APPROPRIATION**

**SECTION 5.3.(a)** The availability used to support appropriations made in this act from the Information Technology Fund established in G.S. 147-33.72H is as follows:

	<b>FY 2009-2010</b>	<b>FY 2010-2011</b>
Interest Income	\$100,000	\$100,000
IT Fund Balance June 30	\$3,123,737	\$1,418,553
NC OneMap Transfer	\$167,549	\$167,549
Appropriation from General Fund	\$9,361,985	\$7,840,000
<b>Total Funds Available</b>	<b>\$12,753,271</b>	<b>\$9,526,102</b>

**SECTION 5.3.(b)** Appropriations are made from the Information Technology Fund for the 2009-2011 fiscal biennium as follows:

<b>Office of Information Technology Services</b>	<b>FY 2009-2010</b>	<b>FY 2010-2011</b>
Information Technology Operations	\$5,350,000	\$4,990,000
Information Technology Projects	\$4,462,733	\$4,077,467
Budget and Performance Management System	\$1,021,985	0
Budget/Committee Reporting System	\$500,000	0
<b>Total</b>	<b>\$11,334,718</b>	<b>\$9,067,467</b>

**APPROPRIATION OF CASH BALANCES**

**SECTION 5.4.(a)** State funds, as defined in G.S. 143C-1-1(d)(25), are appropriated and authorized as provided in G.S. 143C-1-2 for the 2009-2011 fiscal biennium as follows:

- (1) For all budget codes listed in the Base Budget and Performance Management Information sections of "North Carolina State Budget, Recommended Operating Budget 2009-2011, Volumes 1 through 6," and in the Budget Support Document, cash balances and receipts are appropriated up to the amounts specified in Volumes 1 through 6, as adjusted by the General Assembly, for the 2009-2010 fiscal year and the 2010-2011 fiscal year. Funds may be expended only for the programs, purposes, objects, and line items specified in Volumes 1 through 6, or otherwise authorized by the General Assembly. Expansion budget funds listed in those documents are appropriated only as otherwise provided in this act.



- (2) For all budget codes that are not listed in "North Carolina State Budget, Recommended Operating Budget 2009-2011, Volumes 1 through 6," or in the Budget Support Document, cash balances and receipts are appropriated for each year of the 2009-2011 fiscal biennium up to the level of actual expenditures for the 2008-2009 fiscal year, unless otherwise provided by law. Funds may be expended only for the programs, purposes, objects, and line items authorized for the 2008-2009 fiscal year.
- (3) Notwithstanding subdivisions (1) and (2) of this subsection, any receipts that are required to be used to pay debt service requirements for various outstanding bond issues and certificates of participation are appropriated up to the actual amounts received for the 2009-2010 fiscal year and the 2010-2011 fiscal year and shall be used only to pay debt service requirements.
- (4) Notwithstanding subdivisions (1) and (2) of this subsection, cash balances and receipts of funds that meet the definition issued by the Governmental Accounting Standards Board of a trust or agency fund are appropriated for and in the amounts required to meet the legal requirements of the trust agreement for the 2009-2010 fiscal year and the 2010-2011 fiscal year.

**SECTION 5.4.(b)** Receipts collected in a fiscal year in excess of the amounts authorized by this section shall remain unexpended and unencumbered until appropriated by the General Assembly in a subsequent fiscal year, unless the expenditure of overrealized receipts in the fiscal year in which the receipts were collected is authorized by the State Budget Act.

Overrealized receipts are appropriated up to the amounts necessary to implement this subsection.

In addition to the consultation and reporting requirements set out in G.S. 143C-6-4, the Office of State Budget and Management shall report to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division within 30 days after the end of each quarter on any overrealized receipts approved for expenditure under this subsection by the Director of the Budget. The report shall include the source of the receipt, the amount overrealized, the amount authorized for expenditure, and the rationale for expenditure.

**SECTION 5.4.(c)** Notwithstanding subsections (a) and (b) of this section, there is appropriated from the Reserve for Reimbursements to Local Governments and Shared Tax Revenues for each fiscal year an amount equal to the amount of the distributions required by law to be made from that reserve for that fiscal year.

## **OTHER RECEIPTS FROM PENDING GRANT AWARDS**

**SECTION 5.6.** Notwithstanding G.S. 143C-6-4, State agencies may, with approval of the Director of the Budget and after consultation with the Joint Legislative Committee on Governmental Operations, spend funds received from grants awarded subsequent to the enactment of this act. The Office of State Budget and Management shall work with the recipient State agencies to budget grant awards according to the annual program needs and within the parameters of the respective granting entities. Depending on the nature of the award, additional State personnel may be employed on a time-limited basis. The Office of State Budget and Management shall consult with the Joint Legislative Commission on Governmental Operations prior to expending any funds received from grant awards. Funds received from such grants are hereby appropriated and shall be incorporated into the certified budget of the recipient State agency.

## **PART VI. GENERAL PROVISIONS**

### **EXPENDITURES OF FUNDS IN RESERVES LIMITED**

**SECTION 6.1.** All funds appropriated by this act into reserves may be expended only for the purposes for which the reserves were established.

### **BUDGET CODE CONSOLIDATIONS**

**SECTION 6.2.** Notwithstanding G.S. 143C-6-4, the Office of State Budget and Management may adjust the enacted budget by making transfers among purposes or programs for the purpose of consolidating budget and fund codes or eliminating inactive budget and fund

codes. The Office of State Budget and Management shall change the authorized budget to reflect these adjustments.

### **BUDGET REALIGNMENT**

**SECTION 6.3.** Notwithstanding G.S. 143C-6-4(b), the Office of State Budget and Management, in consultation with the Office of the State Controller and the Fiscal Research Division, may adjust the enacted budget by making transfers among purposes or programs for the sole purpose of correctly aligning authorized positions and associated operating costs with the appropriate purposes or programs as defined in G.S. 143C-1-1(d)(23). The Office of State Budget and Management shall change the certified budget to reflect these adjustments only after reporting the proposed adjustments to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division. Under no circumstances shall total General Fund expenditures for a State department exceed the amount appropriated to that department from the General Fund for the fiscal year.

### **ESTABLISHING OR INCREASING FEES PURSUANT TO THIS ACT**

**SECTION 6.4.(a)** Notwithstanding G.S. 12-3.1, an agency is not required to consult with the Joint Legislative Commission on Governmental Operations prior to establishing or increasing a fee as authorized or anticipated in this act.

**SECTION 6.4.(b)** Notwithstanding G.S. 150B-21.1A(a), an agency may adopt an emergency rule in accordance with G.S. 150B-21.1A to establish or increase a fee as authorized by this act if the adoption of a rule would otherwise be required under Article 2A of Chapter 150B of the General Statutes.

### **CONSULTATION REQUIRED BEFORE CREATION OF SPECIAL FUNDS**

**SECTION 6.6B.** Notwithstanding G.S. 143C-1-3 or any other provision of law to the contrary, the Office of State Budget and Management and the Office of the State Controller shall consult with the Joint Legislative Commission on Governmental Operations prior to the establishment of a new special fund as defined in G.S. 143C-1-3.

### **AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 FUNDS APPROPRIATED**

**SECTION 6.6C.(a)** Findings and Purpose. – The General Assembly finds that State government must serve as a facilitator in assisting local governments, communities, families, workers and other individuals, and businesses in accessing 2009 federal recovery and reinvestment funds. The purpose of this section is to fulfill the General Assembly's constitutional duty to appropriate all funds, including federal funding from the American Recovery and Reinvestment Act of 2009 (ARRA), P.L. 111-5, and to direct the use of those funds in a manner that responsibly provides for the economic well-being of the State.

**SECTION 6.6C.(b)** Appropriation of ARRA Funds. – Funds received from ARRA grants and receipts not specified in this act are hereby appropriated in the amounts provided in the notification of award from the federal government or any entity acting on behalf of the federal government to administer federal ARRA funds. Prior to allocation of funds not expressly delineated in this act, the OSBM and affected state agencies shall consult with the Joint Legislative Commission on Governmental Operations.

**SECTION 6.6C.(c)** Use of ARRA Funds. – Notwithstanding G.S. 143C-5-2 and G.S. 143C-6-4, or any other provision of law to the contrary, State agencies may, with approval of the Director of the Budget and in consultation with the North Carolina Office of Economic Recovery and Investment, spend State funds as defined in G.S. 143C-1-1(25) and, in accordance with subsection (b) of this section, funds received from federal receipts and federal grants resulting from enactment of the ARRA and awarded during the 2008-2009 State fiscal year. State agencies may not allocate or otherwise obligate any ARRA funds prior to enactment of this act, except that a State agency, as defined in G.S. 143C-1-1(24), may allocate or otherwise obligate federal funds under this section if the federal government has issued rules or formal guidance stipulating that a state's lack of allocation or obligation would otherwise jeopardize its receipt of federal ARRA funds. Under these limited circumstances, the State may allocate or obligate those funds for the 2008-2009 fiscal year only.

**SECTION 6.6C.(d)** Guidance. – The Office of State Budget and Management shall work with the recipient State agencies to budget federal receipts awarded according to the

annual program needs and within the parameters of the respective granting entities and to incorporate federal funds into the certified budgets of the recipient State agency. State agencies shall not use federal ARRA funds for recurring purposes unless provided for in this act. However, depending on the nature of the award, additional State personnel may be employed on a temporary or time-limited basis. Nothing in this subsection shall be construed to prohibit the use of federal ARRA funds to employ teachers and other school personnel for the 2009-2010 school year.

**SECTION 6.6C.(e)** The State Office of Economic Investment and Recovery may use up to one million dollars (\$1,000,000) during fiscal year 2009-2010 for operating expenses.

**SECTION 6.6C.(f)** Effective Date. – This section is effective when it becomes law.

## **CONTINUATION REVIEW OF CERTAIN FUNDS, PROGRAMS, AND DIVISIONS**

**SECTION 6.6E.(a)** It is the intent of the General Assembly to establish a process to periodically and systematically review the funds, agencies, divisions, and programs financed by State government. This process shall be known as the Continuation Review Program. The Continuation Review Program is intended to assist the General Assembly in determining whether to continue, reduce, or eliminate funding for the State's funds, agencies, divisions, and programs subject to continuation review.

**SECTION 6.6E.(b)** The Appropriations Committees of the House of Representatives and the Senate may review the funds, programs, and divisions listed in this section and shall determine whether to continue, reduce, or eliminate funding for the funds, programs, and divisions, subject to the Continuation Review Program. The Fiscal Research Division may issue instructions to the State departments and agencies subject to continuation review regarding the expected content and format of the reports required by this section. No later than December 1, 2009, the following agencies shall report to the Fiscal Research Division:

- (1) Sentencing Services Program of the Office of Indigent Defense Services – Judicial Department.
- (2) Driver's Education Program – Department of Transportation.
- (3) Prisoner's Education Program – Community College System.
- (4) Parking Office – Department of Administration.
- (5) Young Offenders Forest Conservation Program (BRIDGE) – Department of Environment and Natural Resources.

**SECTION 6.6E.(c)** The continuation review reports required in this section shall include the following information:

- (1) A description of the fund, agency, division, or program mission, goals, and objectives.
- (2) The statutory objectives for the fund, agency, division, or program and the problem or need addressed.
- (3) The extent to which the fund, agency, division, or program's objectives have been achieved.
- (4) The fund, agency, division, or program's functions or programs performed without specific statutory authority.
- (5) The performance measures for each fund, agency, division, or program and the process by which the performance measures determine efficiency and effectiveness.
- (6) Recommendations for statutory, budgetary, or administrative changes needed to improve efficiency and effectiveness of services delivered to the public.
- (7) The consequences of discontinuing funding.
- (8) Recommendations for improving services or reducing costs or duplication.
- (9) The identification of policy issues that should be brought to the attention of the General Assembly.
- (10) Other information necessary to fully support the General Assembly's Continuation Review Program along with any information included in instructions from the Fiscal Research Division.

**SECTION 6.6E.(d)** State departments and agencies identified in subsection (b) of this section shall submit a final report to the General Assembly by March 1, 2010.

## **ESTABLISH SEVERANCE EXPENDITURE RESERVE**

**SECTION 6.6F.(a)** There is established in the Office of State Budget and Management a General Fund reserve budget code for the purpose of funding severance-related obligations to State employees subject to the State Personnel Act, and employees exempt from the State Personnel Act, who are separated from service due to a reduction-in-force action. Severance-related expenditures from this reserve shall include obligations to fund:

- (1) A State employee's severance salary continuation with an age adjustment factor as authorized by G.S. 126-8.5 including employer-related contributions for social security, and
- (2) Noncontributory health premiums for up to 12 months as authorized by G.S. 135-45.2(a)(8) for employees of employing units as defined by G.S. 135-45.1(12).

**SECTION 6.6F.(b)** The Director of the Budget shall allocate funds appropriated in Section 2.1 of this act to the Severance Expenditure Reserve to public agencies to fund severance-related obligations incurred by the agencies as a result of reduction-in-force actions that cause State-supported public employees to be terminated from public employment. Funds appropriated to the Severance Expenditure Reserve shall be expended in their entirety before funds appropriated to a public agency for State-supported personal services expenditures may be used to fund any severance-related obligations. For the purposes of this subsection, the term 'public employee' means an employee of a State agency, department, or institution; The University of North Carolina; the North Carolina Community College System Office; or a local school administrative unit.

## **INFORMATION TECHNOLOGY OPERATIONS**

**SECTION 6.7.(a)** Office of Information Technology Services Budget. – Notwithstanding G.S. 147-33.88, the Office of Information Technology Services shall develop an annual budget for review and approval by the Office of State Budget and Management in accordance with a schedule prescribed by the Director of the Office of State Budget and Management. The approved Office of Information Technology Services budget shall be included in the Governor's budget recommendations to the General Assembly.

The Office of State Budget and Management shall ensure that State agencies have an opportunity to adjust their budgets based on any rate changes proposed by the Office of Information Technology Services.

**SECTION 6.7.(b)** Enterprise Projects. – The State Chief Information Officer shall consult the respective State agency chief information officers to identify specific State agency requirements prior to the initiation of any enterprise project. State agency requirements shall be incorporated into any enterprise agreement signed by the State Chief Information Officer. Enterprise projects shall not exceed the participating State agencies' ability to financially support the contracts.

The State Chief Information Officer shall not enter into any information technology contracts without obtaining written agreements from participating State agencies regarding apportionment of funding. State agencies agreeing to participate in a contract shall:

- (1) Ensure that sufficient funds are budgeted to support their agreed shares of enterprise agreements throughout the life of the contract.
- (2) Transfer the agreed-upon funds to the Office of Information Technology Services in sufficient time for the Office of Information Technology Services to meet contract requirements.

**SECTION 6.7.(c)** Notwithstanding the cash management provisions of G.S. 147-86.11, the Office of Information Technology Services may procure information technology goods and services for periods of up to a total of three years where the terms of the procurement contract require payment of all, or a portion, of the contract purchase price at the beginning of the agreement. All of the following conditions shall be met before payment for these agreements may be disbursed:

- (1) Any advance payment complies with the Office of Information Technology Services budget.
- (2) The State Controller receives conclusive evidence that the proposed agreement would be more cost-effective than a multiyear agreement that complies with G.S. 147-86.11.

- (3) The procurement complies in all other aspects with applicable statutes and rules.
- (4) The proposed agreement contains contract terms that protect the financial interests of the State against contractor nonperformance or insolvency through the creation of escrow accounts for funds, source codes, or both, or by any other reasonable means that have legally binding effect.

The Office of State Budget and Management shall ensure the savings from any authorized agreement shall be included in the Office of Information Technology Services calculation of rates before the Office of State Budget and Management annually approves the proposed rates. The Office of Information Technology Services shall report to the Office of State Budget and Management on any State agency budget impacts resulting from multiyear contracts.

The Office of Information Technology Services shall submit a quarterly written report of any authorizations granted under this subsection to the Joint Legislative Oversight Committee on Information Technology and to the Fiscal Research Division.

**SECTION 6.7.(d)** State agencies developing and implementing information technology projects shall use the State infrastructure to host their projects. The State Chief Information Officer may grant an exception if the State agency can demonstrate any of the following:

- (1) Using an outside contractor would be more cost-effective for the State.
- (2) The Office of Information Technology Services does not have the technical capabilities required to host the application.
- (3) Valid security requirements preclude the use of State infrastructure, and a contractor can provide a more secure environment.

## **GEOGRAPHIC INFORMATION CONSOLIDATION**

**SECTION 6.8.(a)** Findings. – The General Assembly finds that there is a critical need for consolidating the investments made in geographic information systems and developing common infrastructures in order for the State to reap all the potential benefits of geographic information systems at the lowest cost.

**SECTION 6.8.(b)** Implementation Plan. – The recommendations outlined in the 2008 legislative report prepared by the State Chief Information Officer, the Geographic Information Coordinating Council, and the Office of State Budget and Management, made pursuant to Section 6.13 of S.L. 2008-107, entitled "State Geographic Information Consolidation Implementation Plan," shall be implemented in four distinct work streams, as follows:

- (1) Transferring the Center for Geographic Information and Analysis to the Office of the State Chief Information Officer and establishing appropriated funding for staff activities supporting the Geographic Information Coordinating Council, statewide standards, and the coordination of data acquisition.
- (2) Reestablishing the professional services component and refocusing that effort toward current needs of the community while reducing those overhead costs.
- (3) Revitalizing the NC OneMap project by leveraging new technology in the market to reduce costs while increasing utility of the service.

**SECTION 6.8.(c)** Transfers of Agencies, Powers, Duties. – The statutory authority, powers, duties, functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the State agencies and subunits listed in this subsection are transferred from those entities to the State Chief Information Officer, Office of Information Technology Services, with all of the elements of a Type II transfer as defined by G.S. 143A-6:

- (1) The North Carolina Geographic Information Coordinating Council.
- (2) The Center for Geographic Information and Analysis.

The Center for Geographic Information and Analysis shall remain in its current office space unless the State Chief Information Officer determines otherwise.

**SECTION 6.8.(d)** Center for Geographic Information and Analysis Coordination. – The State Chief Information Officer shall coordinate a professional services component for geographic information systems coordination with the Center for Geographic Information and Analysis that is refocused toward current community needs.

**SECTION 6.8.(e)** North Carolina Geographic Information Coordinating Council Coordination. – The State Chief Information Officer, in cooperation with the North Carolina Geographic Information Coordinating Council, shall coordinate the refocusing of the NC OneMap geographic information systems infrastructure project to leverage new technology, to increase the utility of geographic information systems services, and to reduce geographic information systems data layer costs through singly managed contracts.

**SECTION 6.8.(f)** Information Technology Fund. – The Information Technology Fund shall be used for the purpose of acquiring and managing, at the lowest cost, data layers useful to multiple State and local organizations, according to the priorities set by the North Carolina Geographic Information Coordinating Council. The Information Technology Fund may receive private grants and may include State, federal, local, and matching funds. Any funding received for GIS may be used only for that purpose.

**SECTION 6.8.(g)** Geographic Information Systems Funding. – Of the funds appropriated in this act to the Information Technology Fund, the sum of seven hundred forty thousand dollars (\$740,000) for the 2009-2010 fiscal year and the sum of seven hundred forty thousand dollars (\$740,000) for the 2010-2011 fiscal year shall be used to effectuate the transfer of the Center for Geographic Information and Analysis, including the cost of moving personnel positions, as provided by this act.

### **BEACON DATA INTEGRATION**

**SECTION 6.9.(a)** The Office of the State Controller, in cooperation with the State Chief Information Officer, shall continue the implementation of the BEACON Strategic Plan for Data Integration, issued in April 2008. The plan shall be implemented under the governance of the BEACON Project Steering Committee and in conjunction with leadership in appropriate State agencies and with the support and cooperation of the Office of State Budget and Management.

While it is the intent that this initiative provide broad access to information across State government, the plan shall comply with all necessary security measures and restrictions to ensure that access to any specific information held confidential under federal or State law shall be limited to appropriate and authorized persons.

**SECTION 6.9.(b)** The Office of State Controller shall give the Criminal Justice Data Integration Pilot Program first priority for funding and for system development and implementation.

The Office of State Controller shall determine the amount of funding required to (i) fully support the Criminal Justice Data Integration Pilot Program effort and (ii) develop full operational capability in Wake County during the 2009-2010 fiscal year. The Office of State Controller shall not otherwise obligate these funds.

**SECTION 6.9.(c)** By September 1, 2009, the Office of State Controller shall report to the Joint Legislative Oversight Committee on Information Technology and to the Fiscal Research Division on (i) funding requirements and sources of funds for the Criminal Justice Data Integration Pilot Program for the 2009-2010 fiscal year and (ii) the anticipated uses of any remaining funds for the BEACON Data Integration Program. The Office of State Controller shall spend funds to support the BEACON Data Integration Program only as is specifically authorized in Section 6.16(d) of S.L. 2008-107.

By October 1, 2009, the Office of State Controller, in coordination with the State Chief Information Officer, shall also report on future costs for implementing the BEACON Data Integration Program, including outside vendor costs. This report shall include a detailed explanation of potential costs and the efforts participating agencies are making to reduce these costs. This report shall be presented to the Joint Legislative Oversight Committee on Information Technology and written reports shall be provided to the House of Representatives and Senate Appropriations Committees and to the Fiscal Research Division.

### **CRIMINAL JUSTICE DATA INTEGRATION PILOT PROGRAM**

**SECTION 6.10.(a)** The Office of the State Controller, in cooperation with the State Chief Information Officer and under the governance of the BEACON Project Steering Committee, shall continue the development of the Criminal Justice Data Integration Pilot Program in Wake County as specified in Section 6.15 of S.L. 2008-107. The Office of State Controller shall achieve and demonstrate full operational capability of the pilot program in Wake County before the system is expanded to other areas of the State.

**SECTION 6.10.(b)** The Criminal Justice Data Integration Pilot Program shall continue to comply with all necessary security measures and restrictions to ensure that access to any specific information held confidential under federal and State law shall be limited to authorized persons.

**SECTION 6.10.(c)** The Office of State Controller shall develop a detailed plan for the statewide expansion of the Criminal Justice Data Integration Pilot Program. This plan shall include the following:

- (1) An implementation schedule;
- (2) The requirements individual users must meet to participate in the program;
- (3) Detailed cost information for the development and implementation of a statewide system, including any user costs;
- (4) A governance structure for management and oversight of the system; and
- (5) Any other issues associated with the implementation of the system.

The Office of State Controller shall submit this plan to the House of Representatives and Senate Appropriations Committees, the Joint Legislative Oversight Committee on Information Technology, and the Fiscal Research Division by January 31, 2010.

**SECTION 6.10.(d)** The Office of State Controller shall work with the data integration software vendor to ensure that licenses are obtained at the least possible cost.

**SECTION 6.10.(e)** A State agency data center shall host the Criminal Justice Data Integration Pilot Program. The Office of State Controller shall identify a State data center to host the program and shall report its recommendation to the Joint Legislative Oversight Committee on Information Technology by August 31, 2009.

**SECTION 6.10.(f)** Funds appropriated for the Criminal Justice Data Integration Pilot Program shall only be used for that program. The Criminal Justice Data Integration Pilot Program shall have first priority for funds available to the BEACON Data Integration Program.

**SECTION 6.10.(g)** The Office of State Controller shall continue to provide quarterly written reports on the program's progress to the House of Representatives and Senate Appropriations Committees, to the Joint Legislative Oversight Committee on Information Technology, and to the Fiscal Research Division beginning October 1, 2009.

## **UNIVERSITY OF NORTH CAROLINA GENERAL ADMINISTRATION BULK PRICING/PURCHASING OF INFORMATION TECHNOLOGY**

**SECTION 6.11.(a)** The General Administration of The University of North Carolina, with assistance from the Office of Information Technology Services, to the extent practicable, shall consolidate information technology infrastructure purchasing which includes, but is not limited to, personal computer and printer purchases for all 16 State universities, the North Carolina School of Science and Mathematics, and General Administration, by ensuring access to a bulk and shared pricing process that will realize savings through efficiencies. General Administration may choose to utilize the Office of Information Technology Services' or existing bulk contracts of The University of North Carolina. Information technology infrastructure expenditure shall not be authorized by the General Administration of The University of North Carolina without complying with this section.

**SECTION 6.11.(b)** By April 1, 2010, the General Administration of The University of North Carolina shall submit a written report to the Joint Legislative Oversight Committee on Information Technology and to the Fiscal Research Division on the results of the University's bulk pricing and purchasing initiative. The report shall explain the following related to the initiative:

- (1) The procedures established for implementation.
- (2) Any savings realized as a result of the initiative.
- (3) Any issues associated with implementation of this initiative.

## **JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON INFORMATION TECHNOLOGY/ REVIEW AND REPORT ON CURRENT LAW**

**SECTION 6.12.** By April 1, 2010, the Joint Legislative Oversight Committee on Information Technology shall review State information technology-related legislation and develop recommendations for amendment of current laws and shall submit its written report of recommendations for legislative action to the Appropriations Committees of the Senate and the House of Representatives. The Joint Legislative Oversight Committee on Information Technology shall provide interested parties with the opportunity to identify and define pertinent

information technology issues by offering testimony on (i) issues associated with current legislation, (ii) the impact of information technology laws on specific entities; and, (iii) recommendations for improving information technology organization and operations within the State.

**OFFICE OF INFORMATION TECHNOLOGY SERVICES/NETWORK INTEGRATION/FEASIBILITY STUDY AND COORDINATION PLAN**

**SECTION 6.13.(a)** The State Chief Information Officer shall negotiate and coordinate with MCNC to identify efficiencies that might be achieved through increased cooperation and elimination of duplicative efforts in management of the State's network infrastructure operated by the Office of Information Technology Services and by the North Carolina Research and Education Network operated by MCNC. Potential efficiencies include, but are not limited to, shared infrastructure, personnel, contracted services, and support.

**SECTION 6.13.(b)** Based on guidance provided by the Program Evaluation Division and the Fiscal Research Division, the Office of Information Technology Services and the Office of State Budget and Management, in conjunction with MCNC, shall conduct a study to determine the feasibility of coordinating the operation of the North Carolina Research and Education Network and the State network infrastructure. The feasibility study shall define the capabilities and limitations of the Office of Information Technology Services and MCNC and document services currently provided by the Office of Information Technology Services and MCNC. Further, the feasibility study shall identify:

- (1) Current and potential State agency network requirements.
- (2) The organization currently supporting each network requirement.
- (3) Requirements that are currently unsupported by either organization.
- (4) Costs associated with each requirement.
- (5) Potential cost savings resulting from network integration.
- (6) Policy and operational issues associated with the coordination.

The study shall be reviewed by the Program Evaluation Division and the Fiscal Research Division, both of which shall verify the identified efficiencies and cost savings. The Office of Information Technology Services and MCNC shall complete the feasibility study and present it to the Joint Legislative Oversight Committee on Information Technology by October 31, 2009.

**SECTION 6.13.(c)** Following completion of the feasibility study by the Office of State Budget and Management, and if the Program Evaluation Division and the Fiscal Research Division can verify that the efficiencies and savings identified in the study are valid, accurate, and substantial enough to justify increased coordination, then the Office of Information Technology Services and MCNC shall develop a plan to coordinate their operations. The coordination plan shall include at least the following:

- (1) Definition of requirements to achieve statewide integration.
- (2) Detailed information on the allocation of responsibility for each requirement and component.
- (3) An estimate of the associated costs with each requirement or component, including what the costs to each agency would be without coordination.
- (4) Priorities for integration.
- (5) A schedule for implementation.
- (6) Detailed cost information for the development and integration of a single network.
- (7) A governance structure for management and oversight of the network.
- (8) A means for resolution of any issues identified during the feasibility study.

The coordination plan shall be completed by February 28, 2010, and shall be presented to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Oversight Committee on Information Technology.

**SECTION 6.13.(d)** Prior to implementation of the plan, the Office of Information Technology Services and MCNC shall complete a memorandum of agreement that specifies their respective roles and responsibilities and defines payment schedules. By January 1 each year, the Office of State Budget and Management shall report to the Joint Legislative Oversight Committee on Information Technology regarding the status of the coordination plan and the cost savings realized during the previous fiscal year.



## **UPGRADE STATE PORTAL**

**SECTION 6.14.(a)** The Office of State Budget and Management, in coordination with the Office of the State Chief Information Officer, shall develop a detailed plan to upgrade the State portal. The upgrade plan shall include consideration of the need to (i) improve State services for citizens and businesses; (ii) offer online services; (iii) provide crucial, up-to-the-minute emergency information; and (iv) provide a multipurpose, interactive Web portal.

**SECTION 6.14.(b)** Prior to developing the plan, the Office of State Budget and Management shall obtain the advice and assistance of State and local government agencies, businesses operating within the State, and private citizens to ensure that all potential users have the opportunity to submit recommendations for inclusion in the final plan.

The Office of State Budget and Management shall also conduct an inventory of capabilities that are available on other states' portals. With the assistance of State agencies, the Office of State Budget and Management shall prioritize potential capabilities. Based on these priorities, the Office of State Budget and Management shall develop a phased plan to allow incremental implementation that includes a detailed time line for each phase and shall include the cost associated with each phase.

**SECTION 6.14.(c)** The interactive Web portal shall include the capability for citizens, businesses, and State and local government agencies to complete online transactions, obtain live help from State agencies, and access emergency information in real time. The portal shall include appropriate security measures and devices to include encryption, enterprise-class firewalls/gateway security, real-time intrusion prevention and detection, virtual private networks, vulnerability management, and virus protection.

**SECTION 6.14.(d)** By December 1, 2009, the Office of State Budget and Management shall submit the upgrade plan to the Joint Legislative Oversight Committee on Information Technology and to the Fiscal Research Division. The report shall include an explanation of any recommendations that were not included in the final plan with an explanation as to why each was not included and the cost associated with implementation of those items.

## **IMPLEMENT GENERAL SERVICES ADMINISTRATION SCHEDULES FOR STATE INFORMATION TECHNOLOGY PURCHASES**

**SECTION 6.14A.(a)** G.S. 147-33.95(b) is amended by adding a new subdivision to read:

"(2a) Establish procedures to permit State agencies and local government agencies to use the General Services Administration (GSA) Cooperative Purchasing Program to purchase information technology (i) awarded under General Services Administration Supply Schedule 70 Information Technology and (ii) from contracts under the GSA's Consolidated Schedule containing information technology special item numbers."

**SECTION 6.14A.(b)** By October 1, 2009, the Office of Information Technology Services shall report to the Joint Legislative Oversight Committee on Information Technology and Fiscal Research Division on its plan for implementing GSA Schedules for information technology procurement.

## **USE OF ELECTRONIC FORMS AND DIGITAL SIGNATURES**

**SECTION 6.16.(a)** The Office of State Budget and Management shall develop a plan to increase the use of electronic forms and digital signatures throughout State government. In developing the plan, first the Office of State Budget and Management shall conduct an inventory of all paper or electronic forms currently in use by executive branch agencies. The Office of State Budget and Management may hire temporary help for the collection and compiling of the data for the inventory.

**SECTION 6.16.(b)** After completing the inventory, the Office of State Budget and Management shall develop a plan for converting one or more paper forms to an electronic format. The plan shall include a detailed business case for the conversion, including cost, cost savings, cost avoidance, and any impact on productivity.

**SECTION 6.16.(c)** The Office of State Budget and Management shall assess the potential cost of converting all identified forms in the inventory to an electronic format and establish a timetable for achieving conversion as soon as practicable.

**SECTION 6.16.(d)** The Office of Information Technology Services shall provide technical assistance to the Office of State Budget and Management in the development of the plan to increase the use of electronic forms and digital signatures.

**SECTION 6.16.(e)** Executive branch State agencies shall provide all information requested by Office of State Budget and Management in conducting the inventory and in all other issues related to the development of this plan.

**SECTION 6.16.(f)** The Office of State Budget and Management shall submit the plan to the Joint Legislative Oversight Committee on Information Technology on or before March 1, 2010.

**POSITION TRANSFER REPORTS/OFFICE OF INFORMATION TECHNOLOGY SERVICES/OFFICE OF STATE CONTROLLER/OFFICE OF STATE BUDGET AND MANAGEMENT**

**SECTION 6.17.(a)** By November 1, 2009, the Office of State Budget and Management (OSBM), in coordination with the Office of Information Technology Services, shall submit a written report to the Appropriation Committees of the Senate and the House of Representatives, to the Joint Legislative Oversight Committee on Information Technology, and to the Fiscal Research Division regarding the transfer of information technology (IT) positions associated with IT consolidation. The report shall include the following:

- (1) The numbers and types of positions transferred to the Office of Information Technology Services from other State agencies, an explanation as to why each position was moved to the Office of Information Technology Services, the cost associated with each position, and how that cost is allocated.
- (2) The number and types of information technology positions remaining with each State agency, an explanation as to why the positions were retained by the agency, and the total cost for each position.
- (3) The number and location of positions eliminated as a result of IT consolidation and the associated cost savings.
- (4) Any new positions created within the Office of Information Technology Services to support IT consolidation, the reason each position was created, and the associated cost.

**SECTION 6.17.(b)** By November 1, 2009, OSBM, in coordination with the Office of the State Controller, shall submit a written report to the Appropriations Committees of the Senate and House of Representatives, to the Joint Legislative Oversight Committee on Information Technology, and to the Fiscal Research Division on the transfer of positions associated with the implementation of the BEACON HR/Payroll project. The report shall include the following:

- (1) The numbers and types of positions transferred to the Office of the State Controller from other State agencies, an explanation as to why each position was moved to the Office of the State Controller, the cost associated with each position, and how that cost is allocated.
- (2) The number and types of positions remaining with each State agency, an explanation as to why the positions were retained by the agency, and the total cost for each position.
- (3) The number and location of positions eliminated as a result of the implementation of the BEACON HR/Payroll system and the associated cost savings.
- (4) Any new positions created within the Office of the State Controller to support BEACON HR/Payroll, the reason each position was created, and the associated cost.

**INFORMATION TECHNOLOGY CONTRACTED PERSONNEL**

**SECTION 6.18.(a)** Beginning July 1, 2009, and notwithstanding any provision of law to the contrary:

- (1) No contract for information technology personal services, or providing personnel to perform information technology functions, may be established or renewed for any term longer than 12 months unless otherwise specifically required by a contract in effect on June 30, 2009.

- (2) Before any State agency, department, or institution may renew a contract position for information technology personnel, the State agency must report to the Office of State Budget and Management (OSBM), to the Office of State Personnel (OSP), to the Office of Information Technology Services (ITS), and to the Fiscal Research Division (FRD) on the justification for the contract. The report shall explain:
  - a. The proposed duration of the contract position. If the contract term is for more than 12 months, why recruitment for an in-house State employee position is not feasible.
  - b. Whether the contract position requires unique skills for which the State has a short-term need.
  - c. Whether the contract position is required by a specific information technology project and if the position will be terminated upon completion of the project.
  - d. The specific work products and completion time lines for the contract position.
- (3) Contract positions subject to this subsection shall be reviewed and approved by the Statewide Information Technology Procurement Office and shall be entered in the project portfolio management tool.
- (4) Once approved, contract positions will be reviewed by the Office of State Personnel to determine what the market rate is for the type of contractor required, as well as to determine the comparable cost for a State employee. Agencies may not exceed the market rate determined by OSP. However, SAP employees may be paid based on the rate structure currently in use by the State Chief Information Officer for ITS employees.
- (5) After OSP provides cost data, funding for the position is subject to the approval of OSBM.
- (6) Whenever a State agency, department, or institution determines that only a contractor can fill a position and the position is required to perform an ongoing function within the agency, the head of the State agency must develop and implement a plan to hire or train a qualified State employee to fill that position within 12 months. Within 60 days of hiring the contractor, this plan shall be forwarded to the Office of State Budget and Management, to the Office of State Personnel, to the Office of Information Technology Services, to the Joint Legislative Oversight Committee on Information Technology, and to the Fiscal Research Division of the Legislative Services Office.
- (7) Any contract position requiring information technology skills is subject to this provision. OSBM may immediately terminate the funding for any information technology position that is filled without following defined procedures.
- (8) All information technology personnel contracts shall be competitive and shall be subject to competition each time they expire. Exceptions must be approved by ITS, OSP, and OSBM and can only be approved once for a particular individual. Approved exceptions must be immediately reported to the Joint Legislative Oversight Committee on Information Technology and to the Fiscal Research Division of the Legislative Services Office.

**SECTION 6.18.(b)** By October 1, 2009, and monthly thereafter, each State agency, department, and institution employing information technology personal services contractors, or personnel to perform information technology functions, shall provide a detailed report on those contracts to the Office of State Budget and Management, to the Office of State Personnel, to the Office of Information Technology Services, to the Joint Legislative Oversight Committee on Information Technology, and to the Fiscal Research Division of the Legislative Services Office. Each State agency's report shall include at least the following:

- (1) For each contracted information technology position:
  - a. The title of the position, a brief synopsis of the essential functions of the position, and how long the position has existed.
  - b. The name of the individual filling the position and the vendor company, if any, that regularly employs that individual.

- c. The type, start date, and the termination date of the contract.
  - d. The length of time that the individual filling the contracted position has been employed as a contractor.
  - e. The contracted position salary or hourly rate, the number of hours per year, and the total annualized cost of the contracted position.
  - f. The salary and benefits cost for a State employee performing the same function.
  - g. The purchase order number for the position.
- (2) The total annual cost for information technology contractors and the total annual salary and benefits cost for filling the contract positions with State employees.
  - (3) A determination of whether the information technology functions performed by contractors can be performed by State employees, which shall be validated by the Statewide Information Technology Procurement Office.
  - (4) All information required by this subsection related to information technology contractors regardless of the contracting source.

## **STATE INFORMATION TECHNOLOGY INFRASTRUCTURE CONSOLIDATION**

**SECTION 6.19.(a)** The Office of State Budget and Management (OSBM), in conjunction with the State Chief Information Officer (State CIO), shall continue to consolidate State government's information technology infrastructure where a statewide approach would be more economical, reduce security risks, or minimize potential disruption to services. In carrying out the consolidation, the Office of Information Technology Services shall utilize the authority set out in G.S. 147-33.83.

**SECTION 6.19.(b)** Information technology infrastructure includes personal computers, hosting and network environments, the help desk, and information technology security of personal computers, servers, and networks.

**SECTION 6.19.(c)** As part of the consolidation effort, OSBM shall identify (i) contractor positions that have been filled for 12 months or more, beginning March 1, 2009, (ii) the hourly cost of each position, and (iii) any cost savings or other benefits that could be achieved by using State employees to carry out the same duties and responsibilities.

**SECTION 6.19.(d)** In setting consolidation priorities, OSBM and the State CIO shall target IT infrastructure issues that pose significant risk to agency operations or data, or that provide opportunities for immediate cost savings to the State.

**SECTION 6.19.(e)** The consolidation of information technology infrastructure conducted by OSBM and the State CIO shall not include The University of North Carolina and its constituent institutions, the Administrative Office of the Courts, and the General Assembly.

**SECTION 6.19.(f)** Beginning December 1, 2009, and regularly thereafter, the Office of State Budget and Management, in conjunction with the State CIO, shall provide written reports to the Joint Legislative Oversight Committee on Information Technology and the Fiscal Research Division relating to State information technology infrastructure consolidation.

## **PILOT PROGRAM TO ALLOW PUBLIC-PRIVATE PARTNERSHIPS TO MEET DEPARTMENT OF REVENUE TECHNOLOGY NEEDS**

**SECTION 6.20.(a)** To speed the implementation of the Tax Information Management System (TIMS) and the additional components of the Planning and Design Project (PDP) during the 2009-2011 fiscal biennium, the Secretary of the Department of Revenue may enter into public-private arrangements where (i) the funding of projects under the arrangement comes from revenue generated by the project and (ii) the project is related to the implementation of TIMS and additional components of the PDP. As used in this section, the "additional components of the PDP" are Enterprise Data Warehouse, Management Reporting and Decision Analytics, Customer Relationship Management, Enterprise Case Management, and E-Services.

Work under a public-private arrangement may be contracted by requests for proposals, modifications to existing contracts, and purchases using existing contract vehicles.

The Secretary of Revenue shall establish a measurement process to determine the increased revenue attributable to the public-private arrangements. To accomplish this, the

Secretary shall consult subject matter experts outside the Department of Revenue, both within State government and from private industry. The measurement process shall include:

- (1) Calculation of a revenue baseline against which the increased revenue attributable to the project is measured;
- (2) Periodic evaluation to determine if the baseline needs to be modified based on significant measurable changes in the economic environment; and
- (3) Monthly calculation of increased revenue attributable to contracts executed under this program.

Of funds generated from collections above the baseline established by subdivision (1) of this subsection, in both the General and Highway Funds, up to forty-one million dollars (\$41,000,000) may be authorized by the Office of State Budget and Management (i) for the purchases related to the implementation of TIMS and the additional components of the PDP, including payment for services from non-State entities and (ii) toward internal State costs related to the implementation of TIMS and PDP components. The total of any funds expended during the 2009-2011 biennium for implementation of TIMS and the additional PDP components shall not exceed the sum of forty-one million dollars (\$41,000,000).

If the Department of Revenue finds that it cannot generate additional benefits totaling forty-one million dollars (\$41,000,000) in the 2009-2011 biennium, the Department shall immediately notify the Chairs of the House of Representatives and Senate Appropriations Committees and Fiscal Research Division, identify any obligations to vendors, identify options for meeting obligations to vendors, and provide costs associated with each option. The Department shall ensure that this notification is made in sufficient time to allow the General Assembly to properly evaluate the options presented.

**SECTION 6.20.(b)** Notwithstanding G.S. 114-2.3, the Department of Revenue shall engage the services of private counsel with the pertinent information technology and computer law expertise to review requests for proposals, and to negotiate and review contracts associated with TIMS and the additional components of the Planning and Design Project (PDP) (Enterprise Data Warehouse, Management Reporting and Decision Analytics, Customer Relationship Management, Enterprise Case Management, and E-Services).

**SECTION 6.20.(c)** There is established within the Department of Revenue the Oversight Committee for reviewing and approving the benefits measurement methodology and calculation process. The Oversight Committee shall review and approve all contracts executed under this section. This shall include (i) details of each public-private contract, (ii) the benefits from each contract, and (iii) a comprehensive forecast of the benefits of using public-private agreements to implement TIMS and the additional PDP components, including the measurement process established for the Secretary of Revenue. The Oversight Committee shall approve all of the fund transfers for this project.

The members of the Committee shall include the following:

- (1) The State Budget Director;
- (2) The Secretary of the Department of Revenue;
- (3) The State Chief Information Officer;
- (4) Two persons appointed by the Governor;
- (5) One member of the general public having expertise in information technology appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives; and
- (6) One member of the general public having expertise in economic and revenue forecasting appointed by the General Assembly upon recommendation of the President Pro-Tempore of the Senate.

The State Budget Director shall serve as chair of the Committee. The Committee shall set its meeting schedule and adopt its rules of operation by majority vote. A majority of the members constitutes a quorum. Vacancies shall be filled by the appointing authority. Administrative support staff shall be provided by the Department of Revenue. Members of the Committee shall receive reimbursements for subsistence and travel expenses as provided by Chapter 138 of the General Statutes. The Committee shall terminate on June 30, 2011.

**SECTION 6.20.(d)** Beginning October 1, 2009 and quarterly thereafter, the Department of Revenue shall submit reports to the Chairs of the House of Representatives and Senate Committees on Appropriation, to the Joint Legislative Oversight Committee on Information Technology, and to the Fiscal Research Division of the Legislative Services Office. The report shall include (i) details of each public-private contract, (ii) the benefits from

each contract, (iii) a comprehensive forecast of the benefits of using public-private agreements to implement TIMS and the additional PDP components, including cost savings and the acceleration of the project timeline, (iv) and any issues associated with the operation of the public-private partnership. Within 60 days of implementing the public-private partnership, the Department of Revenue shall provide to the Chairs of the House of Representatives and Senate Appropriations Committees, and Fiscal Research Division, a schedule for vendor payments that identifies sources and amounts of funding anticipated as a result of the project's implementation.

**SECTION 6.20.(e)** In addition to the oversight provided by the Oversight Committee established in subsection (c) of this section, the TIMS project shall be subject to existing Information Technology project oversight legislation, including, but not limited to, G.S. 147-33.72C and G.S. 147-33.72E.

## **REPAYMENT OF MEDICAID FUNDS**

**SECTION 6.21.** Notwithstanding Chapter 143C of the General Statutes or any other provision of law, the Director of the Budget shall use funds appropriated in this act to repay any outstanding federal Medicaid funds not repaid pursuant to Section 5 of S.L. 2009-399. If funds available in the Department of Health and Human Services over the 2009-2011 fiscal biennium are not sufficient to repay the funds, the Director may use any funds within the State budget.

The Director of the Budget shall report the amount of funds repaid no later than 30 days after payment to the Joint Legislative Commission on Governmental Operations, the Chairs of the Senate and House of Representatives Appropriations Committees, and the Fiscal Research Division.

## **PART VII. PUBLIC SCHOOLS**

### **CHILDREN WITH DISABILITIES**

**SECTION 7.1.** The State Board of Education shall allocate funds for children with disabilities on the basis of three thousand five hundred dollars and seventy-seven cents (\$3,500.77) per child for a maximum of 168,947 children for the 2009-2010 school year. Each local school administrative unit shall receive funds for the lesser of (i) all children who are identified as children with disabilities, or (ii) twelve and five-tenths percent (12.5%) of the 2009-2010 allocated average daily membership in the local school administrative unit.

The dollar amounts allocated under this section for children with disabilities shall also adjust in accordance with legislative salary increments, retirement rate adjustments, and health benefit adjustments for personnel who serve children with disabilities.

### **FUNDS FOR ACADEMICALLY GIFTED CHILDREN**

**SECTION 7.2.** The State Board of Education shall allocate funds for academically or intellectually gifted children on the basis of one thousand one hundred sixty-three dollars and seven cents (\$1,163.07) per child. A local school administrative unit shall receive funds for a maximum of four percent (4%) of its 2009-2010 allocated average daily membership, regardless of the number of children identified as academically or intellectually gifted in the unit. The State Board shall allocate funds for no more than 58,597 children for the 2009-2010 school year.

The dollar amounts allocated under this section for academically or intellectually gifted children shall also adjust in accordance with legislative salary increments, retirement rate adjustments, and health benefit adjustments for personnel who serve academically or intellectually gifted children.

### **USE OF SUPPLEMENTAL FUNDING IN LOW-WEALTH COUNTIES**

**SECTION 7.3.(a)** Use of Funds for Supplemental Funding. – All funds received pursuant to this section shall be used only: (i) to provide instructional positions, instructional support positions, teacher assistant positions, clerical positions, school computer technicians, instructional supplies and equipment, staff development, and textbooks and (ii) for salary supplements for instructional personnel and instructional support personnel. Local boards of education are encouraged to use at least twenty-five percent (25%) of the funds received pursuant to this section to improve the academic performance of children who are performing

at Level I or II on either reading or mathematics end-of-grade tests in grades 3-8 and children who are performing at Level I or II in grades 4 and 7.

**SECTION 7.3.(b) Definitions.** – As used in this section:

- (1) "Anticipated county property tax revenue availability" means the county-adjusted property tax base multiplied by the effective State average tax rate.
- (2) "Anticipated total county revenue availability" means the sum of the:
  - a. Anticipated county property tax revenue availability,
  - b. Local sales and use taxes received by the county that are levied under Chapter 1096 of the 1967 Session Laws or under Subchapter VIII of Chapter 105 of the General Statutes,
  - c. Sales tax hold harmless reimbursement received by the county under G.S. 105-521, and
  - d. Fines and forfeitures deposited in the county school fund for the most recent year for which data are available.
- (3) "Anticipated total county revenue availability per student" means the anticipated total county revenue availability for the county divided by the average daily membership of the county.
- (4) "Anticipated State average revenue availability per student" means the sum of all anticipated total county revenue availability divided by the average daily membership for the State.
- (5) "Average daily membership" means average daily membership as defined in the North Carolina Public Schools Allotment Policy Manual, adopted by the State Board of Education. If a county contains only part of a local school administrative unit, the average daily membership of that county includes all students who reside within the county and attend that local school administrative unit.
- (6) "County-adjusted property tax base" shall be computed as follows:
  - a. Subtract the present-use value of agricultural land, horticultural land, and forestland in the county, as defined in G.S. 105-277.2, from the total assessed real property valuation of the county,
  - b. Adjust the resulting amount by multiplying by a weighted average of the three most recent annual sales assessment ratio studies,
  - c. Add to the resulting amount the:
    1. Present-use value of agricultural land, horticultural land, and forestland, as defined in G.S. 105-277.2,
    2. Value of property of public service companies, determined in accordance with Article 23 of Chapter 105 of the General Statutes, and
    3. Personal property value for the county.
- (7) "County-adjusted property tax base per square mile" means the county-adjusted property tax base divided by the number of square miles of land area in the county.
- (8) "County wealth as a percentage of State average wealth" shall be computed as follows:
  - a. Compute the percentage that the county per capita income is of the State per capita income and weight the resulting percentage by a factor of five-tenths,
  - b. Compute the percentage that the anticipated total county revenue availability per student is of the anticipated State average revenue availability per student and weight the resulting percentage by a factor of four-tenths,
  - c. Compute the percentage that the county-adjusted property tax base per square mile is of the State-adjusted property tax base per square mile and weight the resulting percentage by a factor of one-tenth,
  - d. Add the three weighted percentages to derive the county wealth as a percentage of the State average wealth.

- (9) "Effective county tax rate" means the actual county tax rate multiplied by a weighted average of the three most recent annual sales assessment ratio studies.
- (10) "Effective State average tax rate" means the average of effective county tax rates for all counties.
- (11) "Local current expense funds" means the most recent county current expense appropriations to public schools, as reported by local boards of education in the audit report filed with the Secretary of the Local Government Commission pursuant to G.S. 115C-447.
- (12) "Per capita income" means the average for the most recent three years for which data are available of the per capita income according to the most recent report of the United States Department of Commerce, Bureau of Economic Analysis, including any reported modifications for prior years as outlined in the most recent report.
- (13) "Sales assessment ratio studies" means sales assessment ratio studies performed by the Department of Revenue under G.S. 105-289(h).
- (14) "State average current expense appropriations per student" means the most recent State total of county current expense appropriations to public schools, as reported by local boards of education in the audit report filed with the Secretary of the Local Government Commission pursuant to G.S. 115C-447.
- (15) "State average adjusted property tax base per square mile" means the sum of the county-adjusted property tax bases for all counties divided by the number of square miles of land area in the State.
- (16) "Supplant" means to decrease local per student current expense appropriations from one fiscal year to the next fiscal year.
- (17) "Weighted average of the three most recent annual sales assessment ratio studies" means the weighted average of the three most recent annual sales assessment ratio studies in the most recent years for which county current expense appropriations and adjusted property tax valuations are available. If real property in a county has been revalued one year prior to the most recent sales assessment ratio study, a weighted average of the two most recent sales assessment ratios shall be used. If property has been revalued the year of the most recent sales assessment ratio study, the sales assessment ratio for the year of revaluation shall be used.

**SECTION 7.3.(c) Eligibility for Funds.** – Except as provided in subsection (g) of this section, the State Board of Education shall allocate these funds to local school administrative units located in whole or in part in counties in which the county wealth as a percentage of the State average wealth is less than one hundred percent (100%).

**SECTION 7.3.(d) Allocation of Funds.** – Except as provided in subsection (f) of this section, the amount received per average daily membership for a county shall be the difference between the State average current expense appropriations per student and the current expense appropriations per student that the county could provide given the county's wealth and an average effort to fund public schools. (To derive the current expense appropriations per student that the county could be able to provide given the county's wealth and an average effort to fund public schools, multiply the county's wealth as a percentage of State average wealth by the State average current expense appropriations per student.) The funds for the local school administrative units located in whole or in part in the county shall be allocated to each local school administrative unit located in whole or in part in the county based on the average daily membership of the county's students in the school units. If the funds appropriated for supplemental funding are not adequate to fund the formula fully, each local school administrative unit shall receive a pro rata share of the funds appropriated for supplemental funding.

**SECTION 7.3.(e) Formula for Distribution of Supplemental Funding Pursuant to This Section Only.** – The formula in this section is solely a basis for distribution of supplemental funding for low-wealth counties and is not intended to reflect any measure of the adequacy of the educational program or funding for public schools. The formula is also not intended to reflect any commitment by the General Assembly to appropriate any additional supplemental funds for low-wealth counties.



**SECTION 7.3.(f) Minimum Effort Required.** – Counties that had effective tax rates in the 1996-1997 fiscal year that were above the State average effective tax rate but that had effective rates below the State average in the 1997-1998 fiscal year or thereafter shall receive reduced funding under this section. This reduction in funding shall be determined by subtracting the amount that the county would have received pursuant to Section 17.1(g) of Chapter 507 of the 1995 Session Laws from the amount that the county would have received if qualified for full funding and multiplying the difference by ten percent (10%). This method of calculating reduced funding shall apply one time only. This method of calculating reduced funding shall not apply in cases in which the effective tax rate fell below the statewide average effective tax rate as a result of a reduction in the actual property tax rate. In these cases, the minimum effort required shall be calculated in accordance with Section 17.1(g) of Chapter 507 of the 1995 Session Laws. If the county documents that it has increased the per student appropriation to the school current expense fund in the current fiscal year, the State Board of Education shall include this additional per pupil appropriation when calculating minimum effort pursuant to Section 17.1(g) of Chapter 507 of the 1995 Session Laws.

**SECTION 7.3.(g) Nonsupplant Requirement.** – A county in which a local school administrative unit receives funds under this section shall use the funds to supplement local current expense funds and shall not supplant local current expense funds. For the 2009-2011 fiscal biennium, the State Board of Education shall not allocate funds under this section to a county found to have used these funds to supplant local per student current expense funds. The State Board of Education shall make a finding that a county has used these funds to supplant local current expense funds in the prior year, or the year for which the most recent data are available, if:

- (1) The current expense appropriation per student of the county for the current year is less than ninety-five percent (95%) of the average of the local current expense appropriations per student for the three prior fiscal years; and
- (2) The county cannot show: (i) that it has remedied the deficiency in funding or (ii) that extraordinary circumstances caused the county to supplant local current expense funds with funds allocated under this section. The State Board of Education shall adopt rules to implement this section.

**SECTION 7.3.(h) Reports.** – The State Board of Education shall report to the Joint Legislative Education Oversight Committee prior to May 1, 2010, if it determines that counties have supplanted funds.

**SECTION 7.3.(i) Department of Revenue Reports.** – The Department of Revenue shall provide to the Department of Public Instruction a preliminary report for the current fiscal year of the assessed value of the property tax base for each county prior to March 1 of each year and a final report prior to May 1 of each year. The reports shall include for each county the annual sales assessment ratio and the taxable values of (i) total real property, (ii) the portion of total real property represented by the present-use value of agricultural land, horticultural land, and forestland, as defined in G.S. 105-277.2, (iii) property of public service companies determined in accordance with Article 23 of Chapter 105 of the General Statutes, and (iv) personal property.

## **SMALL SCHOOL SYSTEM SUPPLEMENTAL FUNDING**

**SECTION 7.4.(a) Funds for Small School Systems.** – Except as provided in subsection (b) of this section, the State Board of Education shall allocate funds appropriated for small school system supplemental funding (i) to each county school administrative unit with an average daily membership of fewer than 3,175 students and (ii) to each county school administrative unit with an average daily membership from 3,175 to 4,000 students if the county in which the local school administrative unit is located has a county-adjusted property tax base per student that is below the State-adjusted property tax base per student and if the total average daily membership of all local school administrative units located within the county is from 3,175 to 4,000 students. The allocation formula shall:

- (1) Round all fractions of positions to the next whole position.
- (2) Provide five and one-half additional regular classroom teachers in counties in which the average daily membership per square mile is greater than four, and seven additional regular classroom teachers in counties in which the average daily membership per square mile is four or fewer.

- (3) Provide additional program enhancement teachers adequate to offer the standard course of study.
- (4) Change the duty-free period allocation to one teacher assistant per 400 average daily membership.
- (5) Provide a base for the consolidated funds allotment of at least seven hundred seventeen thousand three hundred sixty dollars (\$717,360), excluding textbooks, for the 2009-2010 fiscal year and a base of seven hundred seventeen thousand three hundred sixty dollars (\$717,360) for the 2010-2011 fiscal year.
- (6) Allot vocational education funds for grade 6 as well as for grades 7-12. If funds appropriated for each fiscal year for small school system supplemental funding are not adequate to fully fund the program, the State Board of Education shall reduce the amount allocated to each county school administrative unit on a pro rata basis. This formula is solely a basis for distribution of supplemental funding for certain county school administrative units and is not intended to reflect any measure of the adequacy of the educational program or funding for public schools. The formula also is not intended to reflect any commitment by the General Assembly to appropriate any additional supplemental funds for such county administrative units.

**SECTION 7.4.(b) Nonsupplant Requirement.** – A county in which a local school administrative unit receives funds under this section shall use the funds to supplement local current expense funds and shall not supplant local current expense funds. For the 2009-2011 fiscal biennium, the State Board of Education shall not allocate funds under this section to a county found to have used these funds to supplant local per student current expense funds. The State Board of Education shall make a finding that a county has used these funds to supplant local current expense funds in the prior year, or the year for which the most recent data are available, if:

- (1) The current expense appropriation per student of the county for the current year is less than ninety-five percent (95%) of the average of the local current expense appropriations per student for the three prior fiscal years; and
- (2) The county cannot show: (i) that it has remedied the deficiency in funding or (ii) that extraordinary circumstances caused the county to supplant local current expense funds with funds allocated under this section. The State Board of Education shall adopt rules to implement this section.

**SECTION 7.4.(c) Phase-Out Provisions.** – If a local school administrative unit becomes ineligible for funding under this formula because of (i) an increase in the population of the county in which the local school administrative unit is located or (ii) an increase in the county-adjusted property tax base per student of the county in which the local school administrative unit is located, funding for that unit shall be continued for seven years after the unit becomes ineligible.

**SECTION 7.4.(d) Definitions.** – As used in this section:

- (1) "Average daily membership" means within two percent (2%) of the average daily membership as defined in the North Carolina Public Schools Allotment Policy Manual adopted by the State Board of Education.
- (2) "County-adjusted property tax base per student" means the total assessed property valuation for each county, adjusted using a weighted average of the three most recent annual sales assessment ratio studies, divided by the total number of students in average daily membership who reside within the county.
- (3) "Local current expense funds" means the most recent county current expense appropriations to public schools, as reported by local boards of education in the audit report filed with the Secretary of the Local Government Commission pursuant to G.S. 115C-447.
- (4) "Sales assessment ratio studies" means sales assessment ratio studies performed by the Department of Revenue under G.S. 105-289(h).
- (5) "State-adjusted property tax base per student" means the sum of all county-adjusted property tax bases divided by the total number of students in average daily membership who reside within the State.

- (6) "Supplant" means to decrease local per student current expense appropriations from one fiscal year to the next fiscal year.
- (7) "Weighted average of the three most recent annual sales assessment ratio studies" means the weighted average of the three most recent annual sales assessment ratio studies in the most recent years for which county current expense appropriations and adjusted property tax valuations are available. If real property in a county has been revalued one year prior to the most recent sales assessment ratio study, a weighted average of the two most recent sales assessment ratios shall be used. If property has been revalued during the year of the most recent sales assessment ratio study, the sales assessment ratio for the year of revaluation shall be used.

**SECTION 7.4.(e) Reports.** – The State Board of Education shall report to the Joint Legislative Education Oversight Committee prior to May 1, 2010, if it determines that counties have supplanted funds.

**SECTION 7.4.(f) Use of Funds.** – Local boards of education are encouraged to use at least twenty percent (20%) of the funds they receive pursuant to this section to improve the academic performance of children who are performing at Level I or II on either reading or mathematics end-of-grade tests in grades 3-8 and children who are performing at Level I or II on the writing tests in grades 4 and 7.

### **REPLACEMENT SCHOOL BUSES/FUNDS**

**SECTION 7.5.(a)** The State Board of Education may impose any of the following conditions on allotments to local boards of education for replacement school buses:

- (1) The local board of education shall use the funds only to make the first, second, third, or fourth year's payment on a financing contract entered into pursuant to G.S. 115C-528.
- (2) The term of a financing contract entered into under this section shall not exceed four years.
- (3) The local board of education shall purchase the buses only from vendors selected by the State Board of Education and on terms approved by the State Board of Education.
- (4) The Department of Administration, Division of Purchase and Contract, in cooperation with the State Board of Education, shall solicit bids for the direct purchase of school buses and activity buses and shall establish a statewide term contract for use by the State Board of Education. Local boards of education and other agencies shall be eligible to purchase from the statewide term contract. The State Board of Education shall also solicit bids for the financing of school buses.
- (5) A bus financed pursuant to this section shall meet all federal motor vehicle safety regulations for school buses.
- (6) Any other condition the State Board of Education considers appropriate.

**SECTION 7.5.(b)** Any term contract for the purchase or lease-purchase of school buses or school activity buses shall not require vendor payment of the electronic procurement transaction fee of the North Carolina E-Procurement Service.

### **DISCREPANCIES BETWEEN ANTICIPATED AND ACTUAL ADM**

**SECTION 7.6.(a)** If the State Board of Education does not have sufficient resources in the ADM Contingency Reserve line item to make allotment adjustments in accordance with the Allotment Adjustments for ADM Growth provisions of the North Carolina Public Schools Allotment Policy Manual, the State Board of Education may use funds appropriated to State Aid for Public Schools for this purpose.

**SECTION 7.6.(b)** If the higher of the first or second month average daily membership in a local school administrative unit is at least two percent (2%) or 100 students lower than the anticipated average daily membership used for allotments for the unit, the State Board of Education shall reduce allotments for the unit. The reduced allotments shall be based on the higher of the first or second month average daily membership plus one-half of the number of students overestimated in the anticipated average daily membership.

The allotments reduced pursuant to this subsection shall include only those allotments that may be increased pursuant to the Allotment Adjustments for ADM Growth provisions of the North Carolina Public Schools Allotment Policy Manual.

#### **LITIGATION RESERVE FUNDS**

**SECTION 7.7.** The State Board of Education may expend up to five hundred thousand dollars (\$500,000) each year for the 2009-2010 and 2010-2011 fiscal years from unexpended funds for certified employees' salaries to pay expenses related to litigation.

#### **PROTECTION OF THE CLASSROOM WHILE MAXIMIZING FLEXIBILITY**

**SECTION 7.8.(a)** The State Board of Education is authorized to adopt emergency rules in accordance with G.S. 150B-21.1A to grant maximum flexibility to local school administrative units regarding the expenditure of State funds. These rules shall not be subject to the limitations on transfers of funds between funding allotment categories set out in G.S. 115C-105.25. These rules:

- (1) Shall authorize the transfer of textbook funds to other allotments to manage funding cuts; and
- (2) Shall not permit the transfer of funds from school-based positions to the central office.

**SECTION 7.8.(b)** For fiscal years 2009-2010 and 2010-2011, local school administrative units shall make every effort to reduce spending whenever and wherever such budget reductions are appropriate with the goal of protecting direct classroom services and services for students at risk and children with special needs. Local school administrative units shall implement administrative and other operating efficiencies and minimize the dismissal of classroom-based personnel by maximizing funds received from the American Recovery and Reinvestment Act of 2009 (ARRA), P.L. 111-5. Notwithstanding G.S. 115C-301 or any other law, local school administrative units shall have the maximum flexibility to use allotted teacher positions to maximize student achievement in grades 4-12. Allocation of teachers and class size requirements in grades K-3 shall remain unchanged.

**SECTION 7.8.(c)** Within 14 days of the date this act becomes law, the State Board of Education shall notify each local school administrative unit and charter school of the amount the unit must reduce from the State General Fund appropriations. The State Board shall determine the amount of the reduction for each unit on the basis of average daily membership.

**SECTION 7.8.(d)** Each unit shall report to the Department of Public Instruction on the flexibility budget reductions it has identified for the unit within 30 days of the date this act becomes law.

#### **NORTH CAROLINA VIRTUAL PUBLIC SCHOOLS**

**SECTION 7.9.(a)** The North Carolina Virtual Public School (NCVPS) program shall report to the State Board of Education and shall maintain an administrative office at the Department of Public Instruction.

**SECTION 7.9.(b)** The Director of NCVPS shall continue to ensure that course quality standards are established and met and that all e-learning opportunities offered by State-funded entities to public school students are consolidated under the North Carolina Virtual Public School program, eliminating course duplication.

**SECTION 7.9.(c)** Subsequent to course consolidation, the Director shall prioritize e-learning course offerings for students residing in rural and low-wealth county local school administrative units, in order to expand available instructional opportunities. First-available e-learning instructional opportunities should include courses required as part of the standard course of study for high school graduation and AP offerings not otherwise available.

**SECTION 7.9.(d)** Beginning with the 2010-2011 fiscal year, the State Board of Education shall implement an allotment formula for e-learning developed pursuant to Section 7.16(d) of S.L. 2006-66.

The North Carolina Virtual Public School (NCVPS) shall be available at no cost to all high school students in North Carolina who are enrolled in North Carolina's public schools, Department of Defense schools, and schools operated by the Bureau of Indian Affairs.

The Department of Public Instruction shall communicate to local school administrative units all applicable guidelines regarding the enrollment of nonpublic school students in these courses.

**SECTION 7.9.(e)** The State Board of Education shall project funds needed to operate the North Carolina Virtual Public School (NCVPS) for fiscal year 2009-2010. In order to ensure funds are available, the State Board of Education is directed to utilize funding sources in the following order:

- (1) The General Fund appropriation for NCVPS;
- (2) Available American Recovery and Reinvestment Act of 2009 funds; and
- (3) Up to six million dollars (\$6,000,000) from the School Technology appropriation.

**SECTION 7.9.(f)** NCVPS shall only provide high school courses.

**SECTION 7.9.(g)** The State Board of Education shall report to the Joint Legislative Education Oversight Committee and the Fiscal Research Division by December 15, 2009, on its implementation of this section.

If the State Board of Education fails to report a new allotment formula for NCVPS to the Joint Legislative Education Oversight Committee and the Fiscal Research Division by December 15, 2009, the State Treasurer, the Office of State Budget and Management, and the Office of State Controller shall prevent the expenditure of funds related to the operation of the State Board of Education.

## **LEARN AND EARN ONLINE**

**SECTION 7.10.(a)** Funds are appropriated in this act for the Learn and Earn Online program. This program will allow high school students to enroll in college courses to qualify for college credit. Online courses shall be made available to students through The University of North Carolina and the North Carolina Community College System.

**SECTION 7.10.(b)** Funds shall be used for:

- (1) Course tuition and only those technology and course fees and textbooks required for course participation; and
- (2) A liaison position in the Department of Public Instruction to coordinate with The University of North Carolina and the North Carolina Community College System and to communicate course availability and related information to high school administrators, teachers, and counselors.

**SECTION 7.10.(c)** The State Board of Education shall determine the allocation of Learn and Earn Online course offerings across the State.

**SECTION 7.10.(d)** The State Board of Education shall allot funds for tuition, fees, and textbooks on the basis of and after verification of the credit hour enrollment of high school students in Learn and Earn Online courses. The Office of State Budget and Management shall transfer sufficient funds from the State Public School Fund to the Community Colleges System Office for courses offered by community colleges.

**SECTION 7.10.(e)** The University of North Carolina program shall report to The University of North Carolina Board of Governors, and the North Carolina Community College program shall report to the State Board of Community Colleges. The Department of Public Instruction shall report to the State Board of Education.

**SECTION 7.10.(f)** Both The University of North Carolina and the North Carolina Community College System shall provide oversight and coordination, including coordination with the Department of Public Instruction and with the North Carolina Virtual Public School (NCVPS), to avoid course duplication.

**SECTION 7.10.(g)** The programs shall establish course quality and rigor standards and shall conduct course evaluations to ensure that the online courses meet the established standards.

**SECTION 7.10.(h)** Local school administrative units may purchase textbooks for Learn and Earn Online courses through the Department of Public Instruction's textbook warehouse in the same manner as textbooks that have been adopted for public school students by the State Board of Education.

**SECTION 7.10.(i)** G.S. 115D-1.2(a) reads as rewritten:

"(a) Notwithstanding 115D-1, a ~~public school~~ student enrolled in grades 9, 10, 11, or 12 and participating in the Learn and Earn Online program shall be permitted to enroll in online courses through a community college for college credit. Students participating in the Learn and Earn Online program may enroll in Learn and Earn Online courses regardless of the college service areas in which they reside."

**SECTION 7.10.(j)** For the 2009-2011 biennium, high school students attending a nonpublic school may enroll in any Learn and Earn Online course with space available that has been offered to but not filled by any eligible public school student. Notwithstanding subsection (h) of this section, nonpublic school students shall be responsible for supplying their own textbooks and other instructional materials.

**SECTION 7.10.(k)** Funds appropriated for Learn and Earn Online that are unexpended or unencumbered at the end of each fiscal year shall not revert but shall remain available for expenditure.

**SECTION 7.10.(l)** Subsection (k) of this section becomes effective June 30, 2009.

### **ABCS OF PUBLIC EDUCATION**

**SECTION 7.11.(a)** Notwithstanding G.S. 115C-105.36, the State Board of Education shall place a one-year moratorium on financial awards paid to school personnel in the 2009-2010 fiscal year based on 2008-2009 student academic performance.

**SECTION 7.11.(b)** The State Board of Education shall develop a plan to restructure the ABCs Accountability System and report the restructuring plan to the Governor and Joint Legislative Education Oversight Committee by January 31, 2010.

The State Board of Education shall not implement a plan unless authorized by an act of the 2010 Regular Session of the General Assembly.

### **SCHOOL CONNECTIVITY INITIATIVE**

**SECTION 7.12.(a)** Up to three hundred fifty thousand dollars (\$350,000) may be transferred annually to the Office of the Governor for NC Virtual (NCV) within the Education Cabinet and for the Education E-Learning Portal. These funds shall be used to provide services to coordinate e-learning activities across all State educational agencies and to make the Education E-Learning Portal fully operational by December 1, 2009.

**SECTION 7.12.(b)** Section 7.6(a) of S.L. 2008-107 reads as rewritten:

**"SECTION 7.6.(a)** Up to ~~six~~ three hundred thousand dollars (~~\$600,000~~)(\$300,000) may be transferred annually through June 30, 2013, to the Friday Institute at North Carolina State University to evaluate the effectiveness of using technology and its impact on 21<sup>st</sup> Century Teaching and Learning outcomes approved by the State Board of Education. The Friday Institute shall report annually to the State Board of Education on the evaluation ~~results, including recommendations for continued implementation of the school connectivity initiative that improves teaching and learning results.~~"

**SECTION 7.12.(c)** Funds allocated to the School Connectivity Initiative shall carry forward to the next fiscal year until the project is fully implemented by June 30, 2010.

**SECTION 7.12.(d)** Subsection (c) of this section becomes effective on June 30, 2009.

### **DROPOUT PREVENTION GRANTS**

**SECTION 7.13.(a)** Dropout Prevention Grants. – The Committee on Dropout Prevention, as reestablished in Section 7.14 of S.L. 2008-107, may use the funds appropriated in this act to provide grants to new recipients and to extend additional funding to organizations that received funding previously.

**SECTION 7.13.(b)** Criteria for Dropout Prevention Grants. – The following criteria apply to all types of dropout prevention grants approved by the Committee:

- (1) Grants shall be issued in varying amounts up to a maximum of one hundred seventy-five thousand dollars (\$175,000).
- (2) These grants shall be provided to innovative programs and initiatives that target students at risk of dropping out of school and that demonstrate the potential to (i) be developed into effective, sustainable, and coordinated dropout prevention and reentry programs in middle schools and high schools and (ii) serve as effective models for other programs.
- (3) Grants shall be distributed geographically throughout the State and throughout the eight educational districts as defined in G.S. 115C-65. No more than three grants shall be awarded in any one county under this section in a single fiscal year.
- (4) Grants may be made to local school administrative units, schools, local agencies, or nonprofit organizations. Applications from nonprofits shall be

subject to the additional fiscal accountability controls described in subsection (e) of this section.

- (5) Grants shall be to programs and initiatives that hold all students to high academic and personal standards.
- (6) Grant applications shall state (i) how grant funds will be used, (ii) what, if any, other resources will be used in conjunction with the grant funds, (iii) how the program or initiative will be coordinated to enhance the effectiveness of existing programs, initiatives, or services in the community, and (iv) a process for evaluating the success of the program or initiative.
- (7) Programs and initiatives that receive grants under this section shall be based on best practices for helping at-risk students achieve successful academic progress, preventing students from dropping out of school, or for increasing the high school completion rate for those students who already have dropped out of school.
- (8) Priority for grants shall be given to proposals that (i) demonstrate input from the local community and coordination with other available programs or resources and (ii) provide clear plans for sustaining the program in future years when State funding will no longer be provided.
- (9) Grantees shall assure their compliance with applicable laws and rules regulating conflicts of interest.
- (10) Priority for grants shall be given to programs that would serve students in local schools that have a four-year cohort graduation rate of less than sixty-five percent (65%). The Committee shall establish a grant rating cutoff score at such a level as to allow for consideration of all viable grants in this priority category. The Committee may require grantees to provide supplemental information in response to any prior reviewer comments.
- (11) Priority for grants shall be given to proposals demonstrating the potential for success.
- (12) The demonstrated need for a grant, level of collaboration, ability to increase attendance, persistence, academic success, ability to increase parental involvement, and graduation shall be given more weight than the quality of the written grant.
- (13) Grants shall be made no later than November 1, 2009.

The Committee shall report to the Joint Legislative Commission on Dropout Prevention and High School Graduation and the Joint Legislative Education Oversight Committee on the grants awarded under this section by March 1, 2010.

**SECTION 7.13.(c) Evaluation.** – The Committee shall evaluate the impact of the dropout prevention grants awarded under this section. In evaluating the impact of the grants, the Committee shall consider:

- (1) How grant funds were used, including the services provided for teen pregnancy prevention and for pregnant and parenting teens;
- (2) The success of the program or initiative, as indicated by the evaluation process stated in its grant application;
- (3) The extent to which the program or initiative has improved students' attendance, test scores, persistence, and graduation rates;
- (4) How the program or initiative was coordinated to enhance the effectiveness of existing programs, initiatives, or services in the community;
- (5) What, if any, other resources were used in conjunction with the grant funds;
- (6) The sustainability of the program;
- (7) The number, gender, ethnicity, and grade level of students being served as well as whether the students left school due to pregnancy or parenting responsibilities;
- (8) The potential for the program to serve as a model for achieving successful academic progress for at-risk students; and
- (9) Other indicators of the impact of the grant on dropout prevention.

The recipients of the dropout prevention grants awarded under this section shall report to the Committee on Dropout Prevention by January 31, 2011, and by September 30, 2011. The reports shall provide information to assist the Committee in conducting its evaluation. The reports shall include a statement that the recipients used grant funds for the

purposes appropriated by the General Assembly and complied with applicable laws, regulations, and terms and conditions of the grant documents. The Committee shall make an interim report of the results of its evaluation of the grants awarded under this section by March 31, 2011, to the Joint Legislative Commission on Dropout Prevention and High School Graduation and to the Joint Legislative Education Oversight Committee. The Committee shall make a final report of the results of its evaluation of the grants awarded under subsection (c) of this section by November 15, 2011, to the Joint Legislative Commission on Dropout Prevention and High School Graduation and to the Joint Legislative Education Oversight Committee.

**SECTION 7.13.(d) Program Modification.** – The Committee shall develop a formal process for allowing grant recipients to modify their programs which includes, at a minimum, a formal review by the Committee prior to the allowance of any changes to the program that will result in activities not included in the grant application.

**SECTION 7.13.(e) Additional Requirements for Nonprofit Organizations Receiving Dropout Prevention Grants.** – As a condition for release of grant funds to a grantee, the Committee shall require each grantee to enter into a contract that requires the grantee to be (i) subject to monitoring by the Committee, (ii) fidelity bonded unless the grant is for less than one hundred thousand dollars (\$100,000), (iii) subject to audit oversight by the State Auditor, and (iv) subject to the requirements of Article 6, Part 3 of Chapter 143C of the General Statutes.

**SECTION 7.13.(f)** Of the funds appropriated in this act for dropout prevention, the sum of:

- (1) One hundred thousand dollars (\$100,000) for the 2009-2010 and 2010-2011 fiscal years may be used to extend a current contract or to issue a request for proposals from qualified vendors on a competitive basis to contract as a consultant to assist with the evaluation. The factors to be considered in awarding the contract shall be identified in the request for proposals;
- (2) Up to one hundred seventy-five thousand dollars (\$175,000) for the 2009-2010 and 2010-2011 fiscal years may be used by the Department of Public Instruction for its administrative assistance to the Committee and to provide technical assistance under this section;
- (3) Three hundred thousand dollars (\$300,000) in nonrecurring funds shall be used by the North Carolina Congress of Parents and Teachers, Incorporated, a nonprofit organization, to continue the North Carolina PTA Parent Involvement/Dropout Prevention Initiative; and
- (4) Fifty percent (50%) of the remainder shall be used by the Committee on Dropout Prevention to award grants to new recipients, and fifty percent (50%) shall be used to award successive grants to previous grant recipients. All grants shall be awarded in accordance with subsection (b) of this section.

**SECTION 7.13.(g)** Grant funds shall be expended by June 30 of the first full fiscal year following the issuance of the grants.

#### **DEPARTMENT OF PUBLIC INSTRUCTION/BUDGET FLEXIBILITY**

**SECTION 7.14.** Notwithstanding G.S. 143C-6-4, the Department of Public Instruction may reorganize, if necessary, to implement the budget reductions set out in this act. The Department shall report to the Joint Legislative Commission on Governmental Operations on any reorganization.

#### **BUSINESS EDUCATION TECHNOLOGY ALLIANCE**

**SECTION 7.15.(a)** G.S. 115C-102.15 is repealed.

**SECTION 7.15.(b)** The State Controller shall transfer the fund balance from the Business Education Technology Alliance Fund to Nontax Budget Code 19978 (Intra State Transfers) to support General Fund appropriations for the 2009-2010 fiscal year.

#### **NORTH CAROLINA 1:1 LEARNING PROJECT**

**SECTION 7.17.(a)** Funds appropriated for the North Carolina 1:1 Learning Project that are unexpended or unencumbered at the end of the 2008-2009 fiscal year shall not revert but shall remain available for expenditure through June 30, 2010. State funds may be used to develop a statewide plan for extending the program to additional high schools.

**SECTION 7.17.(b)** This section becomes effective June 30, 2009.



## **ASSESSMENT AND ACCOUNTABILITY**

**SECTION 7.18.(a)** Funds appropriated in this act for assessment and accountability shall be used to develop new end-of-course and end-of-grade tests, identify national assessments, or both, as determined by the State Board of Education. The development of any new tests replacing end-of-course and end-of-grade tests shall be aligned with the new essential standards and included in the State Board of Education's new accountability restructuring plan.

**SECTION 7.18.(b)** Notwithstanding G.S. 115C-174.11, the State Board of Education shall investigate and pilot a developmentally appropriate diagnostic assessment for students in elementary grades during the 2009-2010 school year. This assessment will (i) enable teachers to determine student learning needs and individualize instruction and (ii) ensure that students are adequately prepared for the next level of coursework as set out by the standard course of study.

The State Board of Education shall report the results of the pilot to the Joint Legislative Education Oversight Committee, the Fiscal Research Division, and the Office of State Budget and Management, by December 1, 2010.

**SECTION 7.18.(c)** Funds appropriated for assessment and accountability that remain unexpended and unencumbered at the end of the 2009-2010 fiscal year shall not revert but shall remain available for expenditure through June 30, 2011.

## **DEVELOPMENT OF A PREK-20 DATA SYSTEM**

**SECTION 7.19.(a)** The Department of Public Instruction, with the cooperation and assistance of the North Carolina Community College System and The University of North Carolina, shall collaboratively develop and systematically determine the technical specifications and data standards for a PreK-20 data system to centralize student data collected about students enrolled in prekindergarten programs through doctoral programs. The PreK-20 data system shall build upon the current capacity, programs, and initiatives of the Department of Public Instruction, the North Carolina Community College System, and The University of North Carolina.

The Department of Public Instruction, in collaboration with the North Carolina Community College System and The University of North Carolina, shall also develop a strategy for tracking students for five years after they complete their education at a North Carolina public educational institution.

The General Assembly urges private colleges and universities to advise and assist the Department of Public Instruction, the North Carolina Community College System, and The University of North Carolina on the implementation of this section.

**SECTION 7.19.(b)** The PreK-20 data standards and specifications shall include:

- (1) The types and forms of data to be included in a PreK-20 data system, including longitudinal data and the use of a unique student identifier;
- (2) The capacity of a shared PreK-20 data system;
- (3) The degree and extent of cooperation between a shared PreK-20 data system and the current data collection systems of the Department of Public Instruction, the North Carolina Community College System, and The University of North Carolina;
- (4) The minimum capacity and technical specifications needed for each data system to feed into a shared PreK-20 data system;
- (5) The ability for data in a shared PreK-20 data system to be understood and used by interested stakeholders, including federal and other State agencies; and
- (6) The feasibility of broadening the PreK-20 data system to include other sources of data that are needed for a unified statewide data collection system.

**SECTION 7.19.(c)** Standards and specifications shall conform to the guidelines and instructions governing any funds received through the American Recovery and Reinvestment Act of 2009 for this purpose.

**SECTION 7.19.(d)** Standards and specifications shall be submitted to the Education Cabinet no later than January 1, 2010. The Education Cabinet shall review these standards and submit its recommendations regarding them to the Joint Legislative Education

## ELIMINATE CERTAIN TESTS

**SECTION 7.20.(a)** G.S. 115C-174.10 reads as rewritten:

### "§ 115C-174.10. Purposes of the Statewide Testing Program.

The ~~three~~ testing programs in this Article have three purposes: (i) to assure that all high school graduates possess those minimum skills and that knowledge thought necessary to function as a member of society; (ii) to provide a means of identifying strengths and weaknesses in the education process in order to improve instructional delivery; and (iii) to establish additional means for making the education system at the State, local, and school levels accountable to the public for results."

**SECTION 7.20.(c)** G.S. 115C-174.11 reads as rewritten:

### "§ 115C-174.11. Components of the testing program.

(a) Assessment Instruments for First and Second Grades. – The State Board of Education shall adopt and provide to the local school administrative units developmentally appropriate individualized assessment instruments consistent with the Basic Education Program for the first and second grades, rather than standardized tests. Local school administrative units may use these assessment instruments provided to them by the State Board for first and second grade students, and shall not use standardized tests except as required as a condition of receiving a federal grant under the Reading First Program.

#### (b) ~~Competency Testing Program.~~

(1) ~~The State Board of Education shall adopt tests or other measurement devices which may be used to assure that graduates of the public high schools and graduates of nonpublic schools supervised by the State Board of Education pursuant to the provisions of Part 1 of Article 39 of this Chapter possess the skills and knowledge necessary to function independently and successfully in assuming the responsibilities of citizenship.~~

(2) ~~The tests shall be administered annually to all ninth grade students in the public schools. Students who fail to attain the required minimum standard for graduation in the ninth grade shall be given remedial instruction and additional opportunities to take the test up to and including the last month of the twelfth grade. Students who fail to pass parts of the test shall be retested on only those parts they fail. Students in the ninth grade who are enrolled in special education programs or who have been officially designated as eligible for participation in such programs may be excluded from the testing programs.~~

(3) ~~The State Board of Education shall:~~

a. ~~Adopt one or more nationally standardized tests or other nationally standardized equivalent measures that measure competencies in the verbal and quantitative areas; or~~

b. ~~Develop and validate alternate means and standards for demonstrating minimum competence. These standards must be as difficult as the tests adopted pursuant to subdivision (1) of this subsection.~~

~~The State Board of Education shall adopt a policy to identify which students and under what circumstances students may pass one of these tests in lieu of the testing requirement of subdivision (2) of this subsection.~~

(3a) ~~Students with disabilities who fail to pass the competency test adopted pursuant to subdivision (2) of this subsection after two attempts shall be given the opportunity to take and pass one of the alternate tests adopted pursuant to subdivision (3) of this subsection.~~

(4) ~~Repealed by Session Laws 1996, Second Extra Session, c. 18, s. 18.14.~~

#### (c) Annual Testing Program.

(1) The State Board of Education shall adopt a system of annual testing for grades three through 12. These tests shall be designed to measure progress toward reading, communication skills, and mathematics for grades three through eight, and toward competencies designated by the State Board for grades nine through 12. The State Board may develop and implement a plan

for high school end-of-course tests that must be aligned with the content standards developed under G.S. 115C-12(9c). Students who do not pass the tests adopted for eighth grade shall be provided remedial instruction in the ninth grade. ~~This assistance shall be calculated to prepare the students to pass the competency test administered under subsection (b) of this section.~~

- (2) If the State Board of Education finds that additional testing in grades three through 12 is desirable to allow comparisons with national indicators of student achievement, that testing shall be conducted with the smallest size sample of students necessary to assure valid comparisons with other states."

**SECTION 7.20.(d)** G.S. 115C-174.12 reads as rewritten:

**"§ 115C-174.12. Responsibilities of agencies.**

(a) The State Board of Education shall establish policies and guidelines necessary for minimizing the time students spend taking tests administered through State and local testing programs, for minimizing the frequency of field testing at any one school, and for otherwise carrying out the provisions of this Article. These policies and guidelines shall include the following:

- (1) Schools shall devote no more than two days of instructional time per year to the taking of practice tests that do not have the primary purpose of assessing current student learning;
- (2) Students in a school shall not be subject to field tests or national tests during the two-week period preceding the administration of end-of-grade tests, end-of-course tests, or the school's regularly scheduled final exams; and
- (3) No school shall participate in more than two field tests at any one grade level during a school year unless that school volunteers, through a vote of its school improvement team, to participate in an expanded number of field tests.

These policies shall reflect standard testing practices to insure reliability and validity of the sample testing. The results of the field tests shall be used in the final design of each test. The State Board of Education's policies regarding the testing of children with disabilities shall (i) provide broad accommodations and alternate methods of assessment that are consistent with a child's individualized education program and section 504 (29 U.S.C. § 794) plans, (ii) prohibit the use of statewide tests as the sole determinant of decisions about a child's graduation or promotion, and (iii) provide parents with information about the Statewide Testing Program and options for students with disabilities. The State Board shall report its proposed policies and proposed changes in policies to the Joint Legislative Education Oversight Committee prior to adoption.

The State Board of Education may appoint an Advisory Council on Testing to assist in carrying out its responsibilities under this Article.

(b) The Superintendent of Public Instruction shall be responsible, under policies adopted by the State Board of Education, for the statewide administration of the testing program provided by this Article.

(b1) The Superintendent shall notify local boards of education by October 1 of each year of any field tests that will be administered in their schools during the school year, the schools at which the field tests will be administered, and the specific field tests that will be administered at each school.

(c) Local boards of education shall cooperate with the State Board of Education in implementing the provisions of this Article, including the regulations and policies established by the State Board of Education. Local school administrative units shall use the annual ~~and competency testing programs tests~~ to fulfill the purposes set out in this Article. Local school administrative units are encouraged to continue to develop local testing programs designed to diagnose student ~~needs further needs.~~

**REMOVE BARRIERS TO LATERAL ENTRY INTO TEACHING**

**SECTION 7.21.(a)** The State Board of Education shall:

- (1) Review the lateral entry program and identify and remove from it barriers to the lateral entry of skilled individuals from the private sector into the teaching profession;

- (2) Reduce the coursework requirements for lateral entry by consolidating the required competencies into fewer courses and fewer semester hours of coursework; and
- (3) Provide additional opportunities for individuals to complete coursework online and at community colleges.

**SECTION 7.21.(b)** The State Board of Education shall report to the Joint Legislative Education Oversight Committee by January 15, 2010, on its implementation of this section.

#### **NO PAY DECREASE FOR TEACHERS WHO BECOME ASSISTANT PRINCIPALS**

**SECTION 7.22.(a)** G.S. 115C-285(a) is amended by adding a new subdivision to read:

"§ 115C-285. **Salary.**

(a) Principals and supervisors shall be paid promptly when their salaries are due provided the legal requirements for their employment and service have been met. All principals and supervisors employed by any local school administrative unit who are to be paid from local funds shall be paid promptly as provided by law and as State-allotted principals and supervisors are paid.

Principals and supervisors paid from State funds shall be paid as follows:

- ...
- (8) A teacher who becomes an assistant principal without a break in service shall be paid, on a monthly basis, at least as much as he or she would earn as a teacher employed by that local school administrative unit."

**SECTION 7.22.(b)** This section becomes effective July 1, 2009, and applies to all persons initially employed as assistant principals on or after that date.

#### **TEACHERS FOR GEOGRAPHICALLY ISOLATED K-12 SCHOOLS**

**SECTION 7.26.** The State Board of Education shall modify its policy on the allotment of additional classroom teachers to schools containing grades K-12 when consolidation is not feasible due to the geographic isolation of the school. In administering this policy with regard to a school located in a local school administrative unit in which the average daily membership is less than 1.5 per square mile, the State Board of Education shall, at a minimum:

- (1) Allot teachers to the geographically isolated school on the basis of one classroom teacher per grade level; and
- (2) Allot teachers to the remainder of the local school administrative unit under the regular teacher allotment formula.

The State Board of Education may allot additional teachers to the local school administrative unit if demographic conditions warrant.

#### **ENSURE ACCESS TO THE EVAAS SYSTEM**

**SECTION 7.27.** The State Board of Education shall use funds appropriated to the State Public School Fund for the 2009-2011 fiscal biennium to ensure that all local school administrative units and charter schools have access to SAS EVAAS (Education Value Added Assessment System).

#### **LOCAL BOARDS MUST INFORM PUBLIC ABOUT SCHOOL REPORT CARDS**

**SECTION 7.28.** G.S. 115C-47 is amended by adding a new subdivision to read:  
"§ 115C-47. **Powers and duties generally.**

In addition to the powers and duties designated in G.S. 115C-36, local boards of education shall have the power or duty:

- ...
- (58) To Inform the Public About the North Carolina School Report Cards Issued by the State Board of Education. – Each local board of education shall ensure that the report card issued for it by the State Board of Education receives wide distribution to the local press or otherwise."

#### **PLAN FOR STATEWIDE MOTOR COACH PERMIT**

**SECTION 7.29.(a)** The State Board of Education, in conjunction with the Division of Motor Vehicles, shall develop a plan for a Statewide permit for commercial motor coach companies that seek to contract with local school systems to transport students, school personnel, and other persons authorized by the school system on school-sponsored trips. The purpose of the permit shall be (i) to ensure student safety, (ii) to ensure safe operations by motor coach companies, (iii) to minimize paperwork, (iv) to minimize visits to the motor coach companies by local school systems, and (v) to minimize the need for motor coach companies to respond to multiple requests for information from multiple local school systems.

**SECTION 7.29.(b)** In developing the plan for a permit, the State Board of Education and the Division of Motor Vehicles shall consult with the North Carolina School Boards Association, the State Highway Patrol, the North Carolina Pupil Transportation Association, the North Carolina Motor Coach Association, the Federal Motor Carrier Safety Administration, and other interested parties.

**SECTION 7.29.(c)** The components of the plan shall include, but not be limited to, all of the following:

- (1) Scope of the permit.
- (2) Standards for issuing the permit.
- (3) Duration of the permit.
- (4) Process for required inspections.
- (5) Entity to conduct required inspections.
- (6) Conditions for revoking the permit.
- (7) Renewal process.
- (8) Schedule of fees to cover the cost of implementation and administration.
- (9) Application form and other required documentation.
- (10) Dissemination of current permit holders to school systems.
- (11) Estimate of costs to implement and number of new positions required.
- (12) Impact on motor coach companies that have interstate operations.
- (13) Other related issues.

**SECTION 7.29.(d)** The State Board of Education and the Division of Motor Vehicles shall consult on the proposed plan to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division by January 1, 2010. Before the plan is implemented, the Commission shall make any recommendations, including proposed legislation, to the 2009 General Assembly in 2010.

## **NBPTS APPLICATION COSTS**

**SECTION 7.30.(a)** For the 2010-2011 fiscal year, if the cost of application fees for teachers applying for certification by the National Board for Professional Teaching Standards exceeds three million two hundred seventy-four thousand five hundred dollars (\$3,274,500), funds from the State Public School Fund shall be used to pay the excess amount.

**SECTION 7.30.(b)** G.S. 115C-296.2 reads as rewritten:

### **"§ 115C-296.2. National Board for Professional Teaching Standards Certification.**

(a) State Policy. – It is the goal of the State to provide opportunities and incentives for good teachers to become excellent teachers and to retain them in the teaching profession; to attain this goal, the State shall support the efforts of teachers to achieve national certification by providing approved paid leave time for teachers participating in the process, ~~paying the participation fee, lending teachers the participation fee, and~~ paying a significant salary differential to teachers who attain national certification from the National Board for Professional Teaching Standards (NBPTS).

The National Board for Professional Teaching Standards (NBPTS) was established in 1987 as an independent, nonprofit organization to establish high standards for teachers' knowledge and performance and for development and operation of a national voluntary system to assess and certify teachers who meet those standards. Participation in the program gives teachers the time and the opportunity to analyze in a systematic way their professional development as teachers, successful teaching strategies, and the substantive areas in which they teach. Participation also gives teachers an opportunity to demonstrate superior ability and to be compensated as superior teachers. To receive NBPTS certification, a teacher must successfully (i) complete a process of developing a portfolio of student work and videotapes of teaching and learning activities and (ii) participate in NBPTS assessment center simulation exercises, including performance-based activities and a content knowledge examination.

(b) Definitions. – As used in this subsection:

- (1) A "North Carolina public school" is a school operated by a local board of education, the Department of Health and Human Services, the Department of Correction, the Department of Juvenile Justice and Delinquency Prevention or The University of North Carolina; a school affiliated with The University of North Carolina; or a charter school approved by the State Board of Education.
- (2) A "teacher" is a person who:
  - a. Either:
    1. Is certified to teach in North Carolina; or
    2. Holds a certificate or license issued by the State Board of Education that meets the professional license requirement for NBPTS certification;
  - b. Is a State-paid employee of a North Carolina public school;
  - c. Is paid on the teacher salary schedule; and
  - d. Fulfills one of the following:
    1. Spends at least seventy percent (70%) of his or her work time in classroom instruction, if the employee is employed as a teacher. Most of the teacher's remaining time shall be spent in one or more of the following: mentoring teachers, doing demonstration lessons for teachers, writing curricula, developing and leading staff development programs for teachers;
    2. Spends at least seventy percent (70%) of his or her work time in work within the employee's area of certification or licensure, if the employee is employed in an area of NBPTS certification other than direct classroom instruction; or
    3. Serves as a full-time mentor under subsection (e1) of this section.

(c) Payment of the NBPTS Participation Fee; Paid Leave. – The State shall ~~pay the NBPTS participation fee~~ and shall provide up to three days of approved paid leave to all teachers participating in the NBPTS program who:

- (1) Have completed three full years of teaching in a North Carolina public school; and
- (2) Have (i) not previously received State funds for participating in any certification area in the NBPTS program, (ii) repaid any State funds previously received for the NBPTS certification process, or (iii) received a waiver of repayment from the State Board of Education.

Teachers participating in the program shall take paid leave only with the approval of their supervisors.

~~(d) Repayment by a Teacher Who Does Not Complete the Process. — A teacher for whom the State pays the participation fee who does not complete the process shall repay the certification fee to the State.~~

~~Repayment is not required if a teacher does not complete the process due to the death or disability of the teacher. Upon the application of the teacher, the State Board of Education may waive the repayment requirement if the State Board finds that the teacher was unable to complete the process due to the illness of the teacher, the death or catastrophic illness of a member of the teacher's immediate family, parental leave to care for a newborn or newly adopted child, or other extraordinary circumstances.~~

(d1) Repayment of the Application Fee. — A teacher shall repay the application fee to the State Education Assistance Authority within three years.

All funds appropriated to, or otherwise received by, the Authority to provide loans to teachers pursuant to this section, all funds received as repayment of loans, and all interest earned on these funds shall be placed in a trust fund. This fund shall be used only for loans made pursuant to this section and administrative costs of the Authority.

~~(e) Repayment by a Teacher Who Does Not Teach for a Year After Completing the Process. — A teacher for whom the State pays the participation fee who does not teach for a year in a North Carolina public school after completing the process shall repay the certification fee to the State.~~

~~Repayment is not required if a teacher does not teach in a North Carolina public school for at least one year after completing the process due to the death or disability of the teacher. Upon the application of the teacher, the State Board of Education may extend the time before which a teacher must either teach for a year or repay the participation fee if the State Board finds that the teacher is unable to teach the next year due to the illness of the teacher, the death or catastrophic illness of a member of the teacher's immediate family, parental leave to care for a newborn or newly adopted child, or other extraordinary circumstances.~~

(e1) Assignment of Teachers With NBPTS Certification to Serve as Full-Time Mentors. – A local board of education may assign teachers with NBPTS certification to serve as full-time mentors as follows:

- (1) The maximum number of teachers with NBPTS certification that a local board of education may assign to serve as full-time mentors is the greater of (i) five or (ii) five percent (5%) of the number of teachers with NBPTS certification it has employed during the school year immediately preceding the assignment of teachers as full-time mentors.
- (2) A teacher must teach in a classroom for at least two years after receiving NBPTS certification to be eligible for assignment as a full-time mentor.
- (3) A teacher must have completed the mentor training required by the teacher's local school administrative unit to be eligible for assignment as a full-time mentor.
- (4) A teacher may serve as a full-time mentor for up to three consecutive years.
- (5) After service as a full-time mentor, a teacher must teach in a classroom for at least three years to be eligible for reassignment as a full-time mentor.
- (6) A teacher serving as a full-time mentor shall be school-based, work at one or more schools, and mentor each year at least 15 newly hired teachers who are in their first through third year of teaching.

(f) Rules. – The State Education Assistance Authority shall adopt rules and guidelines regarding the loan and repayment of the NBPTS application fee. The State Board shall adopt policies and guidelines to implement the remainder of this section."

**SECTION 7.30.(c)** Subsection (b) of this section becomes effective July 1, 2010, and applies beginning with the 2010-2011 school year.

## SCHOOL TECHNOLOGY PLANS

**SECTION 7.31.** Part 3A of Article 8 of Chapter 115C of the General Statutes reads as rewritten:

"Part 3A. School Technology.

### "§ 115C-102.5. Commission on School Technology created; membership.

(a) There is created the Commission on School Technology. The Commission shall be located administratively in the Department of Public ~~Instruction~~ ~~Instruction~~, but shall exercise all its prescribed statutory powers independently of the Department of Public Instruction.

The purpose of the Commission shall be to advise the State Board of Education on the development of a State School Technology Plan that (i) ensures the effective use of technology is built into the North Carolina Public School System for the purpose of preparing a globally competitive workforce and citizenry for the 21st century and (ii) ensures equity and access to school technology for all segments of the public school population in North Carolina.

The Commission shall meet at least twice each fiscal year and shall provide input and feedback on the State School Technology Plan prior to approval.

- (b) The Commission shall consist of the following ~~19~~ members:
- (1) The State Superintendent of Public Instruction or a designee;
  - (2) One representative of The University of North Carolina, appointed by the President of The University of North Carolina;
  - (3) One representative of the North Carolina Community College System, appointed by the President of the North Carolina Community College System;
  - (4) ~~A person with management responsibility concerning information technology related State Government functions, designated by the Secretary of Commerce;~~
  - (5) ~~Four~~ Two members appointed by the Governor;

- (6) ~~Six~~ Two members appointed by the President Pro Tempore of the Senate two of whom shall be members of the Senate. One of these six members shall be appointed by the President Pro Tempore of the Senate to serve as cochair; Senate;
- (7) ~~Six~~ Two members appointed by the Speaker of the House of Representatives two of whom shall be members of the House of Representatives. One of these six members shall be appointed by the Speaker of the House of Representatives to serve as cochair; and Representatives; and
- (8) ~~The Secretary of Health and Human Services or a designee.~~
- (9) The State Chief Information Officer, or a designee.

In appointing members pursuant to subdivisions (5), (6), and (7) of this subsection, the appointing persons shall select individuals with technical or applied knowledge or experience in learning and instructional management technologies or individuals with expertise in curriculum or instruction who have successfully used learning and instructional management technologies.

No producers, vendors, or consultants to producers or vendors of learning or instructional management technologies shall serve on the Commission.

Members shall serve for two-year terms. Vacancies in terms of members shall be filled by the appointing officer. Persons appointed to fill vacancies shall qualify in the same manner as persons appointed for full terms.

(c) Repealed by Session Laws 1997-443, s. 8.26(a).

(d) Members of the Commission who are also members of the General Assembly shall be paid subsistence and travel expenses at the rate set forth in G.S. 120-3.1. Members of the Commission who are officials or employees of the State shall receive travel allowances at the rate set forth in G.S. 138-6. All other members of the Commission shall be paid the per diem and allowances set forth in G.S. 138-5.

(d1) The Chair of the State Board of Education shall select the Commission member or members who shall serve as chair or cochairs of the Commission.

(e) ~~The Department of Public Instruction, the Department of Community Colleges, and the Office of Information Technology Services~~ Instruction shall provide requested professional and clerical staff to the Commission. ~~The Commission may also employ professional and clerical staff and may hire outside consultants to assist it in its work. The Commission shall use an outside consultant to perform a requirements analysis for learning and instructional management technologies on a statewide basis that is based on information gathered from each local school administrative unit and that considers the needs of teachers, students, and administrators.~~

**"§ 115C-102.6. Duty to ~~prepare a requirements analysis and propose a State school technology plan.~~**

~~The Commission shall prepare a requirements analysis and~~ State Board of Education shall propose a State school technology plan for improving student performance in the public schools through the use of learning and instructional management technologies, that ensures the effective use of technology is built into the North Carolina Public School System for the purpose of preparing a globally competitive workforce and citizenry for the 21st century. The Commission on School Technology will advise the State Board of Education on the State School Technology Plan and its components.

~~In developing this plan, the Commission shall:~~

- (1) ~~Assess factors related to the current use of learning and instructional management technologies in the schools, including what is currently being used, how the current use of technology relates to the standard course of study, how the effectiveness of learning and instructional management technologies is being evaluated, how schools are paying for learning and instructional management technologies, and what training school employees have received in the use of learning and instructional management technology and networks.~~
- (2) ~~Identify the instructional goals that can be met through the use of learning and instructional management technologies. The goals may include teaching the standard course of study, reaching students with a broad range of abilities, and ensuring that all students have access to a complete curriculum~~



regardless of the geographical location or the financial resources of the school.

- (3) ~~Examine the types of learning and instructional management technologies available to meet the identified instructional goals, including computers, audiovisual aids, science laboratory equipment, vocational education equipment, and distance learning networks. The Commission shall consider the compatibility and accessibility of different types of learning and instructional management technologies, including compatibility with the planned statewide broadband ISDN network, and whether they may be easily communicated from one site to another. The Commission shall also consider linkages between learning and instructional management technologies and existing State and local administrative systems.~~
- (4) ~~Develop a basic level of learning and instructional management technology for every school in the State. The basic level may include:
  - a. ~~A computer lab with student stations or a specified number of student computer stations in each classroom for the use of instructional software such as computer assisted instruction, integrated learning systems, instructional management systems, and applications software such as word processing, database, spreadsheet, and desktop publishing.~~
  - b. ~~A computer workstation in every classroom for teachers to use in preparation and delivery of instruction and for administrative record keeping.~~
  - c. ~~A television monitor and video cassette recorder in every classroom to take advantage of open air broadcast programs, satellite programs, and instructional video tapes available from the library/media center.~~
  - d. ~~Computer workstations at each elementary and secondary school, housed in the library/media center, for individual students to use for basic skills instructional software.~~
  - e. ~~A telecommunications line, modem, and software in each school's library/media center that will allow students and teachers access to external databases and resources for research purposes.~~
  - f. ~~The availability of telephones for teachers.~~
  - g. ~~Initial training for the principal and teachers from each school in the use of the new technology.~~~~
- (5) ~~Consider staffing required to operate the learning and instructional management technologies and options for maintaining the equipment.~~
- (6) ~~Consider the types of staff development necessary to maximize the benefits of learning and instructional management technologies and determine the appropriate ways to provide the necessary staff development.~~
- (7) ~~Develop a cost analysis of any plans and proposals that it develops.~~

**"§ 115C-102.6A. Elements of the State school technology plan.**

(a) ~~The State school technology plan shall be a long-term comprehensive State implementation plan for using funds from the State School Technology Fund and other sources to improve student performance in the public schools through the use of learning and instructional management technologies. The purpose of the plan shall be to provide a cost-effective foundation of flexible and long-lasting technology and infrastructure to promote substantial gains in student achievement.~~

(b) ~~In developing the plan the Commission shall consider and plan for the relationship of the North Carolina Information Highway to the plan. In particular the plan shall establish priorities for the acquisition of school technologies including how the Information Highway fits into those priorities.~~

- (c) ~~Components of the State school technology plan shall include at least the following:
  - (1) ~~Common technical standards and uniform practices and procedures that provide statewide economies of scale in procurements, training, support, planning, and operations.~~
  - (2) ~~Conceptual technical architecture that includes:
    - a. ~~Principles – Statements of direction, goals, and concepts to guide the development of technical architecture;~~~~~~

- b. Standards for interoperability – Detailed specifications to ensure hardware, software, databases, and other products that may have been developed independently or purchased from different vendors or manufacturers will work together, to the extent that interoperability facilitates meeting instructional or administrative goals; and
  - c. Implementation strategies – Approaches or guidelines for developing and installing the components of the technical infrastructure.
- (3) A quality assurance policy for all school technology projects, training programs, systems documentation, and maintenance plans.
  - (4) Policies and procedures for the fair and competitive procurement of school technology that provide local school administrative units with a vendor-neutral operating environment in which different school technology hardware, software, and networks operate together easily and reliably, to the extent feasible consistent with meeting instructional or administrative goals. The operating environment includes all hardware and software components and configurations necessary to accomplish the integrated functions for school technology such as (i) types and sizes of computer platforms, telecommunications equipment, and associated communications protocols; (ii) operating systems for the computer processors; (iii) applications and other operating and support software; and (iv) other equipment, items, and software, such as printers, terminals, data and image storage devices, and other input, output, and storage devices.
  - (5) A comprehensive policy for inventory control.
  - (6) Parameters for continuous, ongoing training for all personnel involved in the use of school technology. Training shall focus on the integration of technology and instruction and on the use of particular applications.
  - (7) Recommendations to the State Board of Education of requirements for preservice teacher training on the integration of teaching and school technology.
  - (8) Proposals for leadership training on the use of school technology to improve instruction and as a management tool.
  - (9) Development of expertise at the State and regional levels on school technology.
  - (10) Flexibility to enable local school administrative units and individual schools to meet individual school unit and building needs.
  - (11) Flexibility to meet the needs of all students, allow support to students with a wide range of abilities, and ensure access to challenging curricula and instruction for children at risk of school failure.
  - (12) Use of technologies to support challenging ~~State~~ State, federal, and local educational performance goals.
  - (13) Effective and integrated use of technologies compatible with (i) the standard course of study, (ii) the State assessment program, and (iii) related student data management.
  - (14) Use of technologies as a communication, instructional, and management tool and for problem-solving, exploration, and advanced skills.
  - (15) Proposals for addressing equipment needs for ~~vocational education, Tech Prep, and science instruction.~~ State curricula areas.
  - (16) Specifications for minimum components of local school system technology plans.
  - (17) A baseline template for:
    - a. Technology and service application infrastructure, including broadband connectivity, personnel recommendations, and other resources needed to operate effectively from the classroom desktop to local, regional, and State networks, and
    - b. An evaluation component that provides for local school administrative unit accountability for maintaining quality upgradeable systems.

**"§ 115C-102.6B. Approval of State school technology plan.**

~~(a) The Commission shall present the State school technology plan it develops to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Education Oversight Committee for their comments prior to January 1, 1995. At least every two years thereafter, the Commission shall develop any necessary modifications to the State school technology plan and present them to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Education Oversight Committee. The State Board of Education shall review, revise as needed, and approve the State School Technology Plan at a minimum every two years in the odd-numbered year, beginning in 2011. The plan shall be updated more often, as required, as in cases where significant changes occur related to Board goals, curriculum standards, and available technology.~~

~~(b) After presenting the plan or any proposed modifications to the plan to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Education Oversight Committee, the Commission The Board shall submit the plan or any proposed modifications to (i) to the State Chief Information Officer for approval of the technical components of the plan set out in G.S. 115C-102.6A(1) through (4), and (ii) the State Board of Education for information purposes only. The State Board shall adopt a plan that includes the components of a plan set out in G.S. 115C-103.6A(1) through (16).~~

~~At (4). At least one-fourth of the members of any technical committee that reviews the plan for the State Chief Information Officer shall be people actively involved in primary or secondary education.~~

~~The Board shall report annually by February 1 of each year to the Joint Legislative Education Oversight Committee on the status of the State School Technology Plan.~~

~~(c) If no changes are made to the plan or the proposed modifications to the plan after the submission to the State Chief Information Officer and the State Board of Education, the plan or the proposed modifications shall take effect upon approval by the State Chief Information Officer and the State Board of Education.~~

**"§ 115C-102.6C. Approval of local school system technology plans.**

~~(a) Each local board of education shall develop a local school system technology plan that is aligned with and meets the requirements of the State school technology plan. In developing a local school system technology plan, a local board of education is encouraged to incorporate this plan into its strategic planning and to bring together stakeholders from various areas of the local school administrative unit, including curriculum leaders, teachers, administrators, representatives from technology services and instructional technology, and finance, as well as other departments of the unit as required. In addition, the local board is encouraged to coordinate its planning with other agencies of State and local government, including other local school administrative units.~~

~~The Office of Information Technology Services shall assist the local boards of education in developing the parts of the plan related to its technological aspects, to the extent that resources are available to do so. The Department of Public Instruction shall assist the local boards of education in developing the instructional and technological aspects of the plan.~~

~~Each local board of education shall submit the local plan it develops to the Office of Information Technology Services the Department of Public Instruction for its evaluation of the parts of the plan related to its technological aspects and to the Department of Public Instruction for its evaluation of the technological and instructional aspects of the plan. The State Board of Education, after consideration of the evaluations of the Office of Information Technology Services and the Department of Public Instruction, shall approve all local plans that comply with the requirements of the State school technology plan.~~

~~(b) After a local school system technology plan is approved by the State Board of Education, all State funds spent by the local board of education for any aspect of school technology shall be used to implement the local school system technology plan.~~

~~(c) After a local school system technology plan is approved by the State Board of Education, the local board of education may use funds in the State School Technology Fund dollars that are allocated to the local school administrative unit to implement the plan. plan shall not be expended until the plan has been approved by the State Board of Education.~~

**"§ 115C-102.6D. Establishment of the State School Technology Fund; allocation and use of funds.**

~~(a) There is established under the control and direction of the State Board of Education the State School Technology Fund. This fund shall be a nonreverting special revenue fund~~

consisting of any monies appropriated to it by the General Assembly and any monies credited to it under G.S. 20-81.12 from the sale of School Technology special license plates.

(b) Funds in the State School Technology Fund shall be allocated to local school administrative units as directed by the General Assembly. Funds allocated to each local school administrative unit shall be credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3.

~~(c) Each local school administrative unit with a local school system technology plan approved by the State Board of Education may use funds allocated to it to implement its local plan or as otherwise specified by the General Assembly.~~

(d) No local school administrative unit may access technology-related funds until the State Board of Education has approved its school technology plan.

**"§ 115C-102.7. Monitoring and evaluation of State and local school system technology plans; reports.**

(a) ~~The Commission~~ Department of Public Instruction shall monitor and evaluate the development and implementation of the State and local school system technology plans. The evaluation shall consider the effects of technology on student learning, the effects of technology on students' workforce readiness, the effects of technology on teacher productivity, and the cost-effectiveness of the technology.

(a1) Repealed by Session Laws 1997-18, s. 15(k).

~~(b) The Commission shall provide notice of meetings, copies of minutes, and periodic briefings to the Office of Information Technology Services.~~

(c) The Department of Public Instruction shall randomly check local school system technology plans to ensure that local school administrative units are implementing their plans as approved. The Department shall report to the State Board of Education ~~and the State Chief Information Officer~~ on which local school administrative units are not complying with their plans. The report shall include the reasons these local school administrative units are out of compliance and a recommended plan of action to support each of these local school administrative units in carrying out their plans."

## **IDEA FUNDS**

**SECTION 7.32.(a)** To the extent that federal law and the conditions of federal grants permit, the General Assembly urges local school administrative units to redirect IDEA funds received under the American Recovery and Reinvestment Act of 2009 to other at-risk students.

**SECTION 7.32.(b)** Local school administrative units receiving IDEA funds under the American Recovery and Reinvestment Act of 2009 shall report to the Joint Legislative Education Oversight Committee on the detailed expenditure of funds by March 15, 2010, and by March 15, 2011.

## **ACCESS TO NCVPS AND LEARN AND EARN ONLINE**

**SECTION 7.33.** Notwithstanding section 7.10(j) of this act, the State Board shall report to the Joint Legislative Education Oversight Committee and the Fiscal Research Division prior to December 1, 2009, on (i) its policy regarding access for nonpublic school children to the North Carolina Virtual Public School (NCVPS) Program and Learn and Earn Online and (ii) funding sources it authorizes, including tuition, for nonpublic school students in the programs.

## **EDUCATION STABILIZATION FUNDS**

**SECTION 7.34.** Local school administrative units may use funds received from the State Fiscal Stabilization Fund authorized in Title XIV of the American Recovery and Reinvestment Act of 2009 to offset budget cuts in the primary budget formulae for the State of North Carolina. For the purpose of distributing Education Stabilization Funds only, the following allotment categories, presented in no particular order, constitute the primary budget formulae:

- (1) Classroom Teachers;
- (2) Instructional Support Personnel – Certified;
- (3) Instructional Support Personnel – Noncertified;
- (4) Noninstructional Support Personnel;
- (5) Children with Disabilities;

- (6) Teacher Assistants;
- (7) Transportation of Pupils;
- (8) At-Risk Student Services/Alternative Schools;
- (9) Career Technical Education – Months of Employment;
- (10) Career Technical Education – Program Support Funds;
- (11) Classroom Materials/Instructional Supplies/Equipment;
- (12) Mentor Positions;
- (13) Academically or Intellectually Gifted;
- (14) Limited English Proficiency;
- (15) School Technology Fund;
- (16) Staff Development;
- (17) Textbooks;
- (18) School Building Administration;
- (19) Central Office Administration; and
- (20) Driver Training.

### **SALARY OF TEACHERS WITH GRADUATE DEGREES**

**SECTION 7.35.** G.S. 115C-302.1 is amended by adding a new subsection to read:

"(b1) The State Board of Education shall maintain the same policies related to masters pay for teachers that were in effect for the 2008-2009 fiscal year."

### **ABOLISH COMPUTER LOAN REVOLVING FUND**

**SECTION 7.36.(a)** Article 32B of Chapter 115C of the General Statutes is repealed.

**SECTION 7.36.(b)** The State Controller shall transfer the fund balance from the Computer Loan Revolving Fund to Nontax Budget Code 19978 (Intra State Transfers) to support General Fund appropriations for the 2009-2010 fiscal year.

### **LOANS FROM STATE LITERARY FUND PROHIBITED**

**SECTION 7.37.(a)** G.S. 115C-458 reads as rewritten:

"~~§ 115C-458. Loans by State Board from State Literary Fund.~~

The State Literary Fund includes all funds derived from the sources enumerated in Sec. 6, Article IX, of the Constitution, and all funds that may be hereafter so derived, together with any interest that may accrue thereon. This Fund shall be separate and distinct from other funds of the State.

~~The State Board of Education, under such rules and regulations as it may deem advisable, not inconsistent with the provisions of this Article, may make loans from the State Literary Fund to the counties for the use of local boards of education under such rules and regulations as it may adopt and according to law for the purpose of aiding in the erection and equipment of school plants, maintenance buildings and transportation garages. No warrant for the expenditure of money for such purposes shall be issued except upon the order of the Superintendent of Public Instruction with the approval of the State Board of Education.~~

The State Literary Fund shall be faithfully appropriated and used exclusively for establishing and maintaining a uniform system of free public schools."

**SECTION 7.37.(b)** The title of Article 32 of Chapter 115C of the General Statutes reads as rewritten:

"Article 32.

~~Loans from State Literary Fund."~~

**SECTION 7.37.(c)** G.S. 115C-460 through G.S. 115C-467 are repealed.

**SECTION 7.37.(d)** Subsection (c) of this section does not apply to outstanding loans from the State Literary Fund.

**SECTION 7.37.(e)** There is appropriated from the State Literary Fund to the Department of Public Instruction the unencumbered cash balance of the Fund for the 2009-2010 fiscal year for school technology.

### **CHARTER SCHOOL EVALUATION**

**SECTION 7.38.(a)** Of the funds appropriated to State Aid to Local School Administrative Units, up to fifty thousand dollars (\$50,000) a year for the 2009-2010 and 2010-2011 fiscal years shall be used by the North Carolina Center for Public Policy Research,

Inc., to evaluate charter schools. In particular, the evaluation shall consider the advantages and disadvantages of North Carolina's method of financing charter school operations, as well as the extent to which charter schools have accomplished the following six objectives, which are set out in G.S. 115C-238.29A:

- (1) Improve student learning;
- (2) Increase learning opportunities for all students, with special emphasis on expanded learning experiences for students who are identified as at risk of academic failure or academically gifted;
- (3) Encourage the use of different and innovative teaching methods;
- (4) Create new professional opportunities for teachers, including the opportunities to be responsible for the learning program at the school site;
- (5) Provide parents and students with expanded choices in the types of educational opportunities that are available within the public school system; and
- (6) Hold the schools established under this Part accountable for meeting measurable student achievement results and provide the schools with a method to change from rule-based to performance-based accountability systems.

**SECTION 7.38.(b)** The State Board of Education shall report the results of its evaluation to the Joint Legislative Education Oversight Committee and the Fiscal Research Division.

#### **GOVERNOR'S SCHOOL TUITION**

**SECTION 7.39.(a)** G.S. 115C-12 is amended by adding a new subdivision to read: "**§ 115C-12. Powers and duties of the Board generally.**

The general supervision and administration of the free public school system shall be vested in the State Board of Education. The State Board of Education shall establish policy for the system of free public schools, subject to laws enacted by the General Assembly. The powers and duties of the State Board of Education are defined as follows:

- ...
- (36) Duty to charge tuition for the Governor's School of North Carolina. – The State Board of Education shall implement a five-hundred-dollar (\$500.00) tuition charge for students attending the Governor's School of North Carolina.

**SECTION 7.39.(b)** This section becomes effective January 1, 2010, and applies to sessions of Governor's School beginning after that date.

#### **SCHOOL CALENDAR PILOT PROGRAM**

**SECTION 7.40.** The State Board of Education shall establish a school calendar pilot program in the Wilkes County Schools. The purpose of the pilot program is to determine whether and to what extent a local school administrative unit can save money during this extreme fiscal crisis by consolidating the school calendar.

Notwithstanding G.S. 115C-84.2(a)(1), the school calendar for the 2009-2010 calendar year for the Wilkes County Schools shall include a minimum of 180 days or 1,000 hours of instruction covering at least nine calendar months. Notwithstanding G.S. 115C-84.2(d), the opening date for students shall not be before August 24.

If the Wilkes County Board of Education adds instructional hours to previously scheduled days under this section, the local school administrative unit is deemed to have a minimum of 180 days of instruction and teachers employed for a 10-month term are deemed to have been employed for the days being made up and shall be compensated as if they had worked the days being made up.

The State Board of Education shall report to the Joint Legislative Education Oversight Committee by March 15, 2010, on the administration of the pilot program, cost-savings realized by it, and its impact on student achievement.

#### **MORE TEACHERS IN CLASSROOM**

**SECTION 7.41.(a)** Session Law 2008-86 is repealed.

**SECTION 7.41.(b)** This section becomes effective January 1, 2011.

## **PART VIII. COMMUNITY COLLEGES**

### **COMMUNITY COLLEGE FACULTY SALARY PLAN**

#### **SECTION 8.1.(a)**

- (1) It is the intent of the General Assembly to encourage community colleges to make faculty salaries a priority and to reward colleges that have taken steps to achieve the national average community college faculty salary, therefore:
  - a. If the average faculty salary at a community college is one hundred percent (100%) or more of the national average community college faculty salary, the college may transfer up to eight percent (8%) of the State funds allocated to it for faculty salaries.
  - b. If the average faculty salary at a community college is at least ninety-five percent (95%) but less than one hundred percent (100%) of the national average community college faculty salary, the college may transfer up to six percent (6%) of the State funds allocated to it for faculty salaries.
  - c. If the average faculty salary at a community college is at least ninety percent (90%) but less than ninety-five percent (95%) of the national average community college faculty salary, the college may transfer up to five percent (5%) of the State funds allocated to it for faculty salaries.
  - d. If the average faculty salary at a community college is at least eighty-five percent (85%) but less than ninety percent (90%) of the national average community college faculty salary, the college may transfer up to three percent (3%) of the State funds allocated to it for faculty salaries.
  - e. If the average faculty salary at a community college is eighty-five percent (85%) or less of the national average community college faculty salary, the college may transfer up to two percent (2%) of the State funds allocated to it for faculty salaries.

Except as provided by subdivision (2) of this subsection, a community college shall not transfer a greater percentage of the State funds allocated to it for faculty salaries than is authorized by this subsection.

- (2) With the approval of the State Board of Community Colleges, a community college at which the average faculty salary is eighty-five percent (85%) or less of the national average may transfer a greater percentage of the State funds allocated to it for faculty salaries than is authorized by sub-subdivision e. of subdivision (1) of this subsection. The State Board shall approve the transfer only for purposes that directly affect student services.

The State Board of Community Colleges shall adopt guidelines to implement the provisions of this subdivision.

- (3) A local community college may use all State funds allocated to it except for Literacy Funds and Funds for Customized Training to increase faculty salaries.

#### **SECTION 8.1.(b)** As used in this section:

- (1) "Average faculty salary at a community college" means the total nine-month salary from all sources of all nine-month, full-time, curriculum faculty at the college, as determined by the North Carolina Community College System on October 1 of each year.
- (2) "National average community college faculty salary" means the nine-month, full-time, curriculum salary average, as published by the Integrated Postsecondary Education Data System (IPEDS), for the most recent year for which data are available.

**SECTION 8.1.(c)** The State Board of Community Colleges shall adopt guidelines to implement the provisions of this section.

### **USE OF BASIC SKILLS FUNDS**

**SECTION 8.2.** Notwithstanding any other provision of law, a local community college may use up to five percent (5%) of the Literacy Funds allocated to it by the State Board

of Community Colleges to procure instructional technology for literacy labs. This technology may include computers, instructional software and software licenses, scanners for testing, and classroom projection equipment.

#### **FINANCIAL AID PROGRAM ADMINISTRATIVE COSTS**

**SECTION 8.4.** G.S. 115D-40.1(c) reads as rewritten:

"(c) Administration of Program. – The State Board shall adopt rules and policies for the disbursement of the financial assistance provided in this section. Degree, diploma, and certificate students must complete a Free Application for Federal Student Aid (FAFSA) to be eligible for financial assistance. The State Board may contract with the State Education Assistance Authority for administration of these financial assistance funds. These funds shall not revert at the end of each fiscal year but shall remain available until expended for need-based financial assistance.

The State Board shall ensure that at least one counselor is available at each college to inform students about federal programs and funds available to assist community college students including, but not limited to, Pell Grants and HOPE and Lifetime Learning Tax Credits and to actively encourage students to utilize these federal programs and funds. The interest earned on the funds provided in this section may be used to support the costs of administering the Community College Grant Program."

#### **CARRYFORWARD OF NORTH CAROLINA RESEARCH CAMPUS BIOTECHNOLOGY TRAINING FUNDS**

**SECTION 8.5.(a)** Funds appropriated in S.L. 2006-66, S.L. 2007-323, and S.L. 2008-103 for the Rowan-Cabarrus Community College Biotechnology Training Center and Greenhouse at the North Carolina Research Campus in Kannapolis shall not revert, but shall remain available until expended.

**SECTION 8.5.(b)** This section becomes effective June 30, 2009.

#### **LEARN AND EARN ONLINE FUNDS**

**SECTION 8.6.(a)** Community college student enrollments in Learn and Earn Online shall be considered regular budget full-time equivalent in the curriculum enrollment formula regardless of the term during which the instruction is provided. The North Carolina Community College System may only seek reimbursement from the Department of Public Instruction for technology, course fees, and textbooks required for course participation.

**SECTION 8.6.(b)** The Office of State Budget and Management shall transfer sufficient funds from the State Public School Fund to the Community Colleges System Office to implement subsection (b) of this section.

#### **CARRYFORWARD OF COLLEGE INFORMATION SYSTEM FUNDS**

**SECTION 8.7.(a)** Funds appropriated in this act to the Community Colleges System Office for the College Information System shall not revert at the end of the 2008-2009 fiscal year but shall remain available until expended. These funds may be used to purchase periodic system upgrades.

**SECTION 8.7.(b)** Notwithstanding G.S. 143C-6-4, the Community Colleges System Office may, subject to the approval of the Office of State Budget and Management and in consultation with the Office of Information Technology Services, use funds appropriated in this act for the College Information System to create a maximum of three positions if doing so is cost-effective. Personnel positions created pursuant to this subsection shall be dedicated to maintaining and administering information technology and software upgrades to the College Information System.

**SECTION 8.7.(c)** Subsection (a) of this section becomes effective July 1, 2009.

#### **MODIFY MULTICAMPUS AND OFF CAMPUS CENTER REPORT DATE**

**SECTION 8.8.** G.S. 115D-5(o) reads as rewritten:

"(o) The General Assembly finds that additional data are needed to determine the adequacy of multicampus and off-campus center funds; therefore, multicampus colleges and colleges with off-campus centers shall report annually, beginning September 1, 2005, to the Community Colleges System Office on all expenditures by line item of funds used to support their multicampuses and off-campus centers. The Community Colleges System Office shall



report on these expenditures to the Education Appropriation Subcommittees of the House of Representatives and the Senate, the Office of State Budget and Management, and the Fiscal Research Division by ~~October 1~~ December 1 of each year."

**REPEAL REPORT ON THE USE OF COMMUNITY COLLEGE FACILITIES BY PRIVATE BUSINESSES**

**SECTION 8.9.** G.S. 115D-5(q) is repealed.

**ELIMINATE SOME TUITION WAIVERS**

**SECTION 8.11.(a)** G.S. 115B-2(a)(1) is repealed.

**SECTION 8.11.(b)** G.S. 115B-2.1 is repealed.

**SECTION 8.11.(c)** G.S. 115B-5(a) is repealed.

**SECTION 8.11.(d)** Effective July 1, 2009, G.S. 115D-5(b) reads as rewritten:

"(b) In order to make instruction as accessible as possible to all citizens, the teaching of curricular courses and of noncurricular extension courses at convenient locations away from institution campuses as well as on campuses is authorized and shall be encouraged. A pro rata portion of the established regular tuition rate charged a full-time student shall be charged a part-time student taking any curriculum course. In lieu of any tuition charge, the State Board of Community Colleges shall establish a uniform registration fee, or a schedule of uniform registration fees, to be charged students enrolling in extension courses for which instruction is financed primarily from State funds; provided, however, that the State Board of Community Colleges may provide by general and uniform regulations for waiver of tuition and registration fees for persons not enrolled in elementary or secondary schools taking courses leading to a high school diploma or equivalent certificate, for training courses for volunteer firemen, local fire department personnel, volunteer rescue and lifesaving department personnel, local rescue and lifesaving department personnel, Radio Emergency Associated Citizens Team (REACT) members when the REACT team is under contract to a county as an emergency response agency, local law-enforcement officers, patients in State alcoholic rehabilitation centers, all full-time custodial employees of the Department of Correction, employees of the Department's Division of Community Corrections and employees of the Department of Juvenile Justice and Delinquency Prevention required to be certified under Chapter 17C of the General Statutes and the rules of the Criminal Justice and Training Standards Commission, trainees enrolled in courses conducted under the New and Expanding Industry Program, clients of sheltered workshops, clients of adult developmental activity programs, students in Health and Human Services Development Programs, juveniles of any age committed to the Department of Juvenile Justice and Delinquency Prevention by a court of competent jurisdiction, prison inmates, members of the North Carolina State Defense Militia as defined in G.S. 127A-5 and as administered under Article 5 of Chapter 127A of the General Statutes, and elementary and secondary school employees enrolled in courses in first aid or cardiopulmonary resuscitation (CPR). Provided further, tuition shall be waived for up to six hours of credit per academic semester for senior citizens age 65 or older who are qualified as legal residents of North Carolina attending institutions operating under this Chapter as set forth in Chapter 115B of the General Statutes, Tuition Waiver for Senior Citizens. Provided further, tuition shall also be waived for all courses taken by high school students at community colleges, including students in early college and middle college high school programs, in accordance with G.S. 115D-20(4) and this section."

**SECTION 8.11.(e)** Effective July 1, 2010, G.S. 115D-5(b), as rewritten by subsection 8.11(d) of this section, reads as rewritten:

"(b) In order to make instruction as accessible as possible to all citizens, the teaching of curricular courses and of noncurricular extension courses at convenient locations away from institution campuses as well as on campuses is authorized and shall be encouraged. A pro rata portion of the established regular tuition rate charged a full-time student shall be charged a part-time student taking any curriculum course. In lieu of any tuition charge, the State Board of Community Colleges shall establish a uniform registration fee, or a schedule of uniform registration fees, to be charged students enrolling in extension courses for which instruction is financed primarily from State funds; provided, however, that the State Board of Community Colleges may provide by general and uniform regulations for waiver of tuition and registration fees for persons not enrolled in elementary or secondary schools taking courses leading to a high school diploma or equivalent certificate, for training courses for volunteer firemen, local

fire department personnel, volunteer rescue and lifesaving department personnel, local rescue and lifesaving department personnel, Radio Emergency Associated Citizens Team (REACT) members when the REACT team is under contract to a county as an emergency response agency, local law-enforcement officers, patients in State alcoholic rehabilitation centers, all full-time custodial employees of the Department of Correction, employees of the Department's Division of Community Corrections and employees of the Department of Juvenile Justice and Delinquency Prevention required to be certified under Chapter 17C of the General Statutes and the rules of the Criminal Justice and Training Standards Commission, trainees enrolled in courses conducted under the New and Expanding Industry Program, clients of sheltered workshops, clients of adult developmental activity programs, students in Health and Human Services Development Programs, juveniles of any age committed to the Department of Juvenile Justice and Delinquency Prevention by a court of competent jurisdiction, ~~prison inmates~~, members of the North Carolina State Defense Militia as defined in G.S. 127A-5 and as administered under Article 5 of Chapter 127A of the General Statutes, and elementary and secondary school employees enrolled in courses in first aid or cardiopulmonary resuscitation (CPR). Provided further, tuition shall be waived for up to six hours of credit per academic semester for senior citizens waived for up to six hours of credit per academic semester for senior citizens age 65 or older who are qualified as legal residents of North Carolina. Provided further, tuition shall also be waived for all courses taken by high school students at community colleges, including students in early college and middle college high school programs, in accordance with G.S. 115D-20(4) and this section."

**CONTINUING EDUCATION FEES**

**SECTION 8.12.** The fees charged for community college continuing education courses shall be based on the number of hours of class time. The fees shall be:

<u>Class Hours</u>	<u>Cost</u>
1-24	\$ 65.00;
25-50	\$120.00;
51+	\$175.00.

**CONSOLIDATE NURSING AND ALLIED HEALTH ALLOTMENTS**

**SECTION 8.13.** The State Board of Community Colleges shall consolidate the Nursing categorical allotment into the Allied Health categorical allotment before distributing funds appropriated in this act. These funds shall be awarded to community colleges based on the full-time equivalent (FTE) enrollment in allied health programs.

**CUSTOMIZED TRAINING PROGRAM**

**SECTION 8.14.(a)** Funds appropriated in this act for the Customized Training Program that unexpended and unencumbered on June 30, 2010, may, subject to cash availability and the approval of the Office of State Budget and Management, be carried forward into the 2010-2011 fiscal year for equipment purchases. These funds shall be distributed through the Educational Equipment Reserve.

**SECTION 8.14.(b)** Projects that create or retain jobs in North Carolina shall receive first priority for funds appropriated for the Customized Training Program.

**SECTION 8.14.(c)** G.S. 115D-5.1(f) is amended by adding a new subsection to read:

"(f) The State Board shall report on an annual basis to the Joint Legislative Education Oversight Committee on:

- ...
- (1a) The types of services sought by the company, whether for new, expanding, or existing industry."

**COMMUNITY COLLEGES URGED TO PARTICIPATE IN FEDERAL STUDENT LOAN PROGRAMS**

**SECTION 8.15.** The General Assembly urges all community colleges to participate in federal student loan programs.

**NORTH CAROLINA MILITARY BUSINESS CENTER**

**SECTION 8.16.** The funds appropriated in this act to the Community Colleges System Office for the NC Military Business Center shall be used for the continued operations of the NC Military Business Center. The Military Business Center shall provide services to residents and businesses throughout the State. The purpose of the business center is to serve as a coordinator and facilitator for small- and medium-sized businesses throughout the State seeking to win and complete federal contracts, with a focus on military-related contracts. Activities of the business center shall include:

- (1) Training and mentoring eligible businesses on effectively marketing their products and services to military and other federal clients and contracting offices.
- (2) Assisting eligible businesses with any required accreditations and qualifications for government contracting.
- (3) Teaching eligible businesses about federal set-aside programs and how to take advantage of these programs directly or through partnering with other eligible businesses.
- (4) Training and assisting clients with the registration, proposal development, and bidding processes related to military and other federal contracts.
- (5) Training eligible businesses on legal and regulatory compliance.
- (6) Designing and implementing mentoring programs to facilitate the development of interrelationships between eligible businesses.
- (7) Forecasting the need for and assisting eligible businesses in obtaining advanced certifications and accreditations and advanced manufacturing skills and technologies.
- (8) Working with Small Business Centers throughout the State to carry out these activities on a statewide basis.
- (9) The maintenance of an Internet-based system to match the knowledge, skills, and abilities of active-duty military personnel, veterans, and their families throughout the State with the needs of North Carolina businesses.
- (10) The study of community resources and existing business capacity to meet the current and future needs of the military and the development of proposals for further developing community resources and developing or recruiting new businesses to meet those needs.
- (11) The marketing of the services provided by the Military Business Center.

#### **REVISE COLLEGE FUNDING FORMULA CATEGORIES**

**SECTION 8.17.(a)** The State Board of Community Colleges shall revise the college funding formula categories to accurately reflect where the colleges are spending their money. The revised formulas shall ensure that adequate funds are available for campus security, including the hiring of personnel, contracted professional services, surveillance cameras, call boxes, alert systems, and other equipment-related expenditures.

**SECTION 8.17.(b)** The State Board of Community Colleges shall adopt emergency rules in accordance with G.S. 150B-21.1A for the 2009-2011 fiscal biennium to grant community colleges the flexibility to transfer funds as necessary to minimize the impact of budget reductions on the educational program, including the elimination of State funding for maintenance of plant.

#### **FIRE TRAINING COORDINATORS**

**SECTION 8.18.** All community college fire training coordinators shall be under the direct supervision of the Community Colleges System Office. There shall be one fire training coordinator in the eastern part of the State, one in the central part of the State, and one in the western part of the State.

#### **CONTINUATION REVIEW OF THE PRISONER EDUCATION PROGRAM**

**SECTION 8.19.** The continuation review of the community college prisoner education program that is required by Section 6.6E of this act shall be prepared jointly by the Department of Correction and the Community Colleges System Office. The report shall include:

- (1) Information on the total cost of the program;

- (2) An analysis of the appropriate source of funding, including an analysis of prisoners' ability to pay;
- (3) A review of which programs are most vital to the prisoner population and a priority order for restoration of the programs;
- (4) An analysis of the cost per FTE to provide these programs to the prison population compared to the cost for the general population, including the FTE costs for curriculum, continuing education, and basic skills courses; and
- (5) An analysis of the feasibility of limiting access to the education program to those prisoners who will be released within a certain time frame and to programs that lower recidivism rates.

#### **STUDY OF EFFICIENT AND EFFECTIVE COMMUNITY COLLEGE ADMINISTRATION**

**SECTION 8.20.** The Joint Legislative Program Evaluation Oversight Committee shall include in the 2010-2011 Work Plan for the Program Evaluation Division of the General Assembly a study of the most efficient and effective way to administer the local community colleges system. In the course of the study, the Program Evaluation Division shall consider the advisability of consolidating community college administration and strategies for ensuring access for students. The Program Evaluation Division shall submit the study to the Joint Legislative Program Evaluation Oversight Committee, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division at a date to be determined by the Joint Legislative Program Evaluation Oversight Committee.

#### **NO STATE FUNDS FOR INTERCOLLEGIATE ATHLETICS**

**SECTION 8.21.** No State funds, student tuition receipts or student aid funds shall be used to create, support, maintain, or operate an intercollegiate athletics program at a community college.

#### **FUNDING FOR HIGH SCHOOL STUDENTS ENROLLED IN COMMUNITY COLLEGES, COLLEGES, AND UNIVERSITIES**

**SECTION 8.22.** The Community Colleges System Office, with the cooperation and assistance of the Department of Public Instruction and the Board of Governors of The University of North Carolina, shall study issues related to funding for high school students enrolled in community college, college, and university courses. The study shall include an analysis of the cost of serving these students by grade level and an analysis of how the State can most efficiently and effectively pay for those expenditures. The Department of Public Instruction, the Community Colleges System Office, and the Board of Governors shall jointly report the results of the study to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division by January 15, 2010.

#### **FUNDING FOR NEW MULTICAMPUS COLLEGES**

**SECTION 8.23.** The State Board of Community Colleges shall study the cost of funding all of the multicampus colleges in the North Carolina Community College System and shall develop a mechanism for ensuring that newly established multicampus colleges are funded at the same level as existing multicampus colleges. The Board shall further explore recommendations for including new multicampus colleges in the continuation budget. The State Board of Community Colleges shall report the results of its study to the Joint Legislative Education Oversight Committee by February 15, 2010.

#### **MANAGEMENT FLEXIBILITY REDUCTION/COMMUNITY COLLEGES**

**SECTION 8.24.** The management flexibility reduction for the North Carolina Community College System shall be allocated by the State Board of Community Colleges in a manner that accounts for the unique needs of each college and provides for the equitable distribution of funds to the institutions consistent with G.S. 115D-5(a). Before taking reductions to instructional budgets, the community colleges shall consider reducing budgets for senior and middle management personnel and for programs that have both low-enrollment and low-postgraduate success. Colleges shall minimize the impact on student support services and on the retraining of dislocated workers. The community colleges shall also review their

institutional funds to determine whether there are monies available in those funds that can be used to assist with operating costs before taking reductions in instructional budgets.

### **HICKORY METROPOLITAN HIGHER EDUCATION CENTER**

**SECTION 8.25.(a)** Notwithstanding any other provision of law or any agreement to the contrary among any units of the Community College System and any constituent institution of The University of North Carolina, Catawba Valley Community College shall continue to serve as the fiscal agent for the Hickory Metropolitan Higher Education Center (Center).

**SECTION 8.25.(b)** The Center shall not, solely as a result of any existing agreement among any institutions of the Community College System and any constituent institution of The University of North Carolina, end any agreement with any other accredited college or university to offer courses at the Center.

## **PART IX. UNIVERSITIES**

### **USE OF ESCHEAT FUND FOR NEED-BASED FINANCIAL AID PROGRAMS**

**SECTION 9.1.(a)** There is appropriated from the Escheat Fund income to the Board of Governors of The University of North Carolina the sum of one hundred twenty-three million six hundred forty-one thousand forty dollars (\$123,641,040) for each of fiscal years 2009-2010 and 2010-2011, to the State Board of Community Colleges the sum of thirteen million nine hundred eighty-one thousand two hundred two dollars (\$13,981,202) for each of fiscal years 2009-2010 and 2010-2011, and to the Department of Administration, Division of Veterans Affairs, the sum of six million five hundred twenty thousand nine hundred sixty-four dollars (\$6,520,964) for each of fiscal years 2009-2010 and 2010-2011. These funds shall be allocated by the State Educational Assistance Authority (SEAA) for need-based student financial aid in accordance with G.S. 116B-7. If the interest income generated from the Escheat Fund is less than the amounts referenced in this section, the difference may be taken from the Escheat Fund principal to reach the appropriations referenced in this section; however, under no circumstances shall the Escheat Fund principal be reduced below the sum required in G.S. 116B-6(f). If any funds appropriated under this section remain uncommitted for need-based financial aid as of the end of a fiscal year, the funds shall be returned to the Escheat Fund, but only to the extent the funds exceed the amount of the Escheat Fund income for that fiscal year.

The General Assembly encourages the State Education Assistance Authority to try not to reduce the Escheat Fund principal below the sum of two hundred million dollars (\$200,000,000) in complying with this section, but also acknowledges that current economic factors may not make that feasible. All limitations on asset allocation of Escheat Funds invested by the State Treasurer shall be calculated at the time of investment.

**SECTION 9.1.(b)** The State Education Assistance Authority shall perform all of the administrative functions necessary to implement this program of financial aid. The SEAA shall conduct periodic evaluations of expenditures of the scholarship programs to determine if allocations are utilized to ensure access to institutions of higher learning and to meet the goals of the respective programs. SEAA may make recommendations for redistribution of funds to The University of North Carolina, Department of Administration, and the President of the Community College System regarding their respective scholarship programs, who then may authorize redistribution of unutilized funds for a particular fiscal year.

**SECTION 9.1.(c)** There is appropriated from the Escheat Fund to the Board of Governors of The University of North Carolina the sum of one million one hundred fifty-seven thousand dollars (\$1,157,000) for the 2010-2011 fiscal year to be allocated to the SEAA for need-based student financial aid to be used in accordance with G.S. 116B-7 and this act. The SEAA shall use these funds only to provide scholarship loans (known as the Millennium Teaching Scholarship Loan Program) to North Carolina high school seniors interested in preparing to teach in the State's public schools who also enroll at any of the Historically Black Colleges and Universities that do not have Teaching Fellows. An allocation of 20 grants of six thousand five hundred dollars (\$6,500) each shall be given to the three universities without any Teaching Fellows for the purposes specified in this subsection. The SEAA shall administer these funds and shall establish any additional criteria needed to award these scholarship loans,

the conditions for forgiving the loans, and the collection of the loan repayments when necessary.

**SECTION 9.1.(d)** The State Education Assistance Authority shall transfer to the Escheat Fund the balance of any monies appropriated by this section that are not disbursed for need-based student financial aid; however, the State Education Assistance Authority may retain the interest on those monies that is paid to the State Education Assistance Authority at the beginning of the 2009-2010 fiscal year and at the beginning of the 2010-2011 fiscal year.

**THE EDUCATION ACCESS REWARDS NORTH CAROLINA SCHOLARS FUND  
REDUCE/MAXIMUM GRANT AWARDS FOR 2009-2010 FISCAL YEAR AND  
REPEAL EARN SCHOLARS FUND IN 2010-2011 FISCAL YEAR.**

**SECTION 9.2.(a)** Of the funds appropriated by this act from the General Fund to the State Education Assistance Authority the sum of sixteen million two hundred twenty-five thousand dollars (\$16,225,000) for the 2009-2010 fiscal year shall be allocated to the Education Access Rewards North Carolina Scholars Fund (EARN).

**SECTION 9.2.(b)** There is appropriated from the Escheat Fund to the State Education Assistance Authority the sum of thirty-seven million four hundred eighty-nine thousand dollars (\$37,489,000) for the 2009-2010 fiscal year to be allocated to EARN.

**SECTION 9.2.(c)** The funds appropriated in subsections (a) and (b) of this section shall be used only to fund EARN grants for the 2009-2010 academic year.

**SECTION 9.2.(d)** Notwithstanding G.S. 116-209.26(d), the maximum grant for which a student is eligible for an EARN Scholarship shall be two thousand dollars (\$2,000) for the 2009-2010 academic year. The State Education Assistance Authority shall pay the full amount of the grants awarded pursuant to this section in the 2009-2010 fall academic semester.

**SECTION 9.2.(e)** Effective July 1, 2010, G.S. 116-209.26 is repealed.

**SECTION 9.2.(f)** The campus financial aid offices at each eligible postsecondary institution as defined in G.S. 116-209.26 are encouraged to work with EARN recipients to secure replacement financial aid for the 2010-2011 academic year and appropriate subsequent academic years.

**TRANSFERS OF CASH BALANCES TO THE GENERAL FUND**

**SECTION 9.3.(a)** Notwithstanding any other provision of law, the unencumbered cash balance remaining in the Future Teachers Financial Aid fund on June 30, 2009, shall be transferred to the State Controller to be deposited in Nontax Budget Code 19978 (Intra State Transfers).

**SECTION 9.3.(b)** Notwithstanding any other provision of law, the unencumbered cash balance of the General Fund appropriation remaining in the Education Access Rewards North Carolina (EARN) Scholars fund on June 30, 2009, shall be transferred to the State Controller to be deposited in Nontax Budget Code 19978 (Intra State Transfers).

**TRANSFER FUNDING TO ROANOKE ISLAND COMMISSION FOR PERFORMING  
ARTS**

**SECTION 9.4.** The General Assembly finds that in order to expand opportunities for students involved in the performing arts, existing funding for the Summer Institute on Roanoke Island should not be allocated to one specific University of North Carolina institution but instead be allocated directly to the Roanoke Island Commission, so that any interested University of North Carolina institution may have the opportunity to participate in summer arts enrichment and education programs. Therefore, of the funds appropriated by this act to the Board of Governors of The University of North Carolina and allocated to the Summer Institute of the University of North Carolina School of the Arts on Roanoke Island program for the 2009-2011 fiscal biennium, the sum of four hundred sixty-one thousand six hundred forty-six dollars (\$461,646) shall be transferred for the 2009-2010 fiscal year to the Roanoke Island Commission, and the sum of four hundred sixty-one thousand six hundred forty-six dollars (\$461,646) shall be transferred for the 2010-2011 fiscal year to the Roanoke Island Commission. The Roanoke Island Commission may use these funds to contract with any of the constituent institutions of The University of North Carolina System to provide music and drama students an education in a professional performing environment while providing a public service to the State. Any available funds may be used to contract with community-based or

nonprofit performing arts groups or other performing arts groups supported with State or local funds to provide music and drama on Roanoke Island.

#### **UNC CENTER FOR ALCOHOL STUDIES**

**SECTION 9.5.(a)** G.S. 20-7(i1) reads as rewritten:

"(i1) Restoration Fee. – Any person whose drivers license has been revoked pursuant to the provisions of this Chapter, other than ~~G.S. 20-17(2)~~, G.S. 20-17(a)(2) shall pay a restoration fee of fifty dollars (\$50.00). A person whose drivers license has been revoked under ~~G.S. 20-17(2)~~ G.S. 20-17(a)(2) shall pay a restoration fee of ~~seventy-five dollars (\$75.00) until the end of the fiscal year in which the cumulative total amount of fees deposited under this subsection in the General Fund exceeds ten million dollars (\$10,000,000), and shall pay a restoration fee of fifty dollars (\$50.00) thereafter, seventy-five dollars (\$75.00).~~ The fee shall be paid to the Division prior to the issuance to such person of a new drivers license or the restoration of the drivers license. The restoration fee shall be paid to the Division in addition to any and all fees which may be provided by law. This restoration fee shall not be required from any licensee whose license was revoked or voluntarily surrendered for medical or health reasons whether or not a medical evaluation was conducted pursuant to this Chapter. The fifty-dollar (\$50.00) fee, and the first fifty dollars (\$50.00) of the seventy-five-dollar (\$75.00) fee, shall be deposited in the Highway Fund. The remaining twenty-five dollars (\$25.00) of the seventy-five-dollar (\$75.00) fee shall be deposited in the General Fund of the State. The Office of State Budget and Management shall ~~certify to the Department of Transportation and the General Assembly when the cumulative total amount of fees deposited in the General Fund under this subsection exceeds ten million dollars (\$10,000,000), and shall annually report to the General Assembly the amount of fees deposited in the General Fund under this subsection.~~

It is the intent of the General Assembly to annually appropriate from the funds deposited in the General Fund under this subsection the sum of five hundred thirty-seven thousand four hundred fifty-five dollars (\$537,455) to the Board of Governors of The University of North Carolina to be used for the operating expenses of the Bowles Center for Alcohol Studies Endowment at The the University of North Carolina at Chapel Hill, but not to exceed this cumulative total of ten million dollars (\$10,000,000).Hill."

**SECTION 9.5.(b)** Of the funds appropriated by this act to the Board of Governors of The University of North Carolina the sum of five hundred thirty-seven thousand four hundred fifty-five dollars (\$537,455) for the 2009-2010 fiscal year and the sum of five hundred thirty-seven thousand four hundred fifty-five dollars (\$537,455) for the 2010-2011 fiscal year shall be used for the operating expenses of the Bowles Center for Alcohol Studies at the University of North Carolina at Chapel Hill.

#### **REPEAL FULL TUITION GRANT FOR GRADUATES OF NORTH CAROLINA SCHOOL OF SCIENCE AND MATHEMATICS WHO ATTEND A STATE UNIVERSITY**

**SECTION 9.6.(a)** G.S. 116-238.1(a) reads as rewritten:

"(a) There is granted to each State resident who graduates from the North Carolina School of Science and Mathematics and who enrolls as a full-time student in a constituent institution of The University of North Carolina a sum to be determined by the General Assembly as a tuition grant. The tuition grant shall be for four consecutive academic years and shall cover the tuition cost at the constituent institution in which the student is enrolled. The tuition grant shall be distributed to the student as provided by this section. The grant provided by this section is only available to a student enrolled at the North Carolina School of Science and Mathematics for the 2008-2009 academic year or earlier."

**SECTION 9.6.(b)** Effective July 1, 2014, G.S. 116-238.1, as amended by this section, is repealed.

#### **CLOSING THE ACHIEVEMENT GAP/GRANTS**

**SECTION 9.7.(a)** Funds appropriated by this act for the 2009-2010 fiscal year and for the 2010-2011 fiscal year to the Board of Governors of The University of North Carolina and allocated to the North Carolina Historically Minority Colleges and Universities Consortium (HMCUC) for "Closing the Achievement Gap" shall be used for the sole purpose of supporting the operations and program activities of the HMCUC. These funds shall be used by the HMCUC members for the public purposes of developing and implementing after-school

programs designed to close the academic achievement gap and improving the academic performance of youth at risk of academic failure and school dropout; provided, however, that the HMCUC may use up to one hundred thousand dollars (\$100,000) each fiscal year to cover the cost of administering the grants. The HMCUC also may allocate funds to a community-based and faith-based organization that is located in close proximity to the HMCUC member institution for the public purposes stated in this section.

**SECTION 9.7.(b)** The North Carolina Historically Minority Colleges and Universities Consortium shall report to the Joint Legislative Education Oversight Committee and to the Fiscal Research Division by May 1 of each year regarding the number of programs funded by the Consortium to Close the Achievement Gap, the location and program structure of the programs, the amount allocated to the programs, and purposes for which the funds were awarded, the cost of administering and managing the funds, and any other information requested by the Committee or Fiscal Research Division. The grants awarded pursuant to this section also shall include as a term of the grant that the recipient of the grant report to the Joint Legislative Education Oversight Committee and to the Fiscal Research Division regarding the amount of the grant received, the program and purposes for which the grant was requested, the methodology used to implement the grant program and purposes, the results of the program funded by the grant, and any other information requested by the Joint Legislative Education Oversight Committee and the Fiscal Research Division.

## **AMEND LEGISLATIVE TUITION GRANT FOR PART-TIME STUDENTS**

**SECTION 9.8.(a)** G.S. 116-21.2 reads as rewritten:

**"§ 116-21.2. Legislative tuition grants to aid students and licensure students attending private institutions of higher education.**

(a) Grants for Students. – In addition to any funds appropriated pursuant to G.S. 116-19 and in addition to all other financial assistance made available to institutions, or to persons attending these institutions, there is granted to each North Carolina undergraduate student attending an approved institution as defined in G.S. 116-22, a sum, to be determined by the General Assembly for each academic year which shall be distributed to the undergraduate student as provided by this subsection. A full-time North Carolina undergraduate student shall be awarded the full amount of the tuition grant provided by this section. A part-time North Carolina undergraduate student who is enrolled to take at least ~~six~~nine hours of academic credit per semester shall be awarded a tuition grant in an amount that is calculated on a pro rata basis.

(a1) Grants for Licensure Students. – The legislative tuition grant provided by this section shall also be granted to each full-time licensure student who is enrolled in a program intended to result in a license in teaching or nursing at an approved institution. The legislative tuition grant provided by this section shall be awarded on a pro rata basis to any part-time licensure student who is enrolled to take at least ~~six~~nine hours of undergraduate academic credit per semester in a program intended to result in a license in teaching or nursing at an approved institution. The legislative tuition grant and prorated legislative tuition grant authorized under this subsection shall be paid for undergraduate courses only. If a course is required for licensure, but is designated as both an undergraduate and graduate course, for purposes of this subsection, the course shall be considered an undergraduate course.

(b) Administration of Grants. – The tuition grants provided for in this section shall be administered by the State Education Assistance Authority pursuant to rules adopted by the State Education Assistance Authority not inconsistent with this section. The State Education Assistance Authority shall not approve any grant until it receives proper certification from an approved institution that the student or licensure student applying for the grant is eligible. Upon receipt of the certification, the State Education Assistance Authority shall remit at the times as it prescribes the grant to the approved institution on behalf, and to the credit, of the student or licensure student.

(c) Student or Licensure Student Change of Status; Audits. – In the event a full-time student on whose behalf a grant has been paid in accordance with subsection (a) of this section or a full-time licensure student on whose behalf a grant has been paid in accordance with subsection (a1) of this section is not enrolled and carrying a minimum academic load as of the tenth classroom day following the beginning of the school term for which the grant was paid, the institution shall refund the full amount of the grant to the State Education Assistance Authority. If a part-time student on whose behalf a prorated grant has been paid in accordance



with subsection (a) of this section or a part-time licensure student on whose behalf a prorated grant has been paid in accordance with subsection (a1) of this section is not enrolled and carrying a minimum academic load of ~~six~~nine credit hours per semester in the undergraduate class as of the tenth classroom day following the beginning of the school term for which the grant was paid, the institution shall refund the full amount of the grant to the State Education Assistance Authority. If the matriculated status of a full-time student or a full-time licensure student changes to a matriculated status of part-time student or part-time licensure student by the tenth classroom day following the beginning of the school term for which the grant was paid, the institution shall refund only the difference between the amount of the full-time grant awarded and the amount of the part-time grant that is awarded pursuant to this section. Each approved institution shall be subject to examination by the State Auditor for the purpose of determining whether the institution has properly certified eligibility and enrollment of students and licensure students and credited grants paid on behalf of them.

(d) Shortfall. – In the event there are not sufficient funds to provide each eligible student or licensure student with a full or prorated grant as provided by subsection (a) of this section or a full or a prorated grant as provided by subsection (a1) of this section:

- (1) The Board of Governors of The University of North Carolina, with the approval of the Office of State Budget and Management, may transfer available funds to meet the needs of the programs provided by subsections (a), (a1), and (b) of this section; and
- (2) Each eligible student and licensure student shall receive a pro rata share of funds then available for the remainder of the academic year within the fiscal period covered by the current appropriation.

(e) Reversions. – Any remaining funds shall revert to the General Fund."

**SECTION 9.8.(b)** This section applies to academic semesters beginning on or after July 1, 2009.

#### **GRADUATE NURSE SCHOLARSHIP PROGRAM FOR FACULTY PRODUCTION/REVERT PART OF FUND BALANCE**

**SECTION 9.9.** The sum of one million dollars (\$1,000,000) is transferred from the fund balance of the Graduate Nurse Scholarship Program for Faculty Production (also known as Nurse Educators of Tomorrow Scholarship Loan) to the General Fund.

#### **CODIFY AND INCREASE UNC UNDERGRADUATE TUITION SURCHARGE**

**SECTION 9.10.(a)** Article 14 of Chapter 116 of the General Statutes is amended by adding a new section to read:

**"§ 116-143.7. Tuition surcharge.**

(a) The Board of Governors of The University of North Carolina shall impose a twenty-five percent (25%) tuition surcharge on students who take more than 140 degree credit hours to complete a baccalaureate degree in a four-year program or more than one hundred ten percent (110%) of the credit hours necessary to complete a baccalaureate degree in any program officially designated by the Board of Governors as a five-year program. Courses and credit hours taken include those taken at a constituent institution or accepted for transfer. In calculating the number of degree credit hours taken:

- (1) Included are courses that a student:
  - a. Fails.
  - b. Does not complete unless the course was officially dropped by the student pursuant to the academic policy of the appropriate constituent institution.
- (2) Excluded are credit hours earned through:
  - a. The College Board's Advanced Placement Program, CLEP examinations, or similar programs.
  - b. Institutional advanced placement, course validation, or any similar procedure for awarding course credit.
  - c. Summer term or extension programs.

(b) No surcharge shall be imposed on any student who exceeds the degree credit hour limits within the equivalent of four academic years of regular term enrollment or within five academic years of regular term enrollment in a degree program officially designated by the Board of Governors as a five-year program.

(c) Upon application by a student, the tuition surcharge shall be waived if the student demonstrates that any of the following have substantially disrupted or interrupted the student's pursuit of a degree: (i) a military service obligation, (ii) serious medical debilitation, (iii) a short-term or long-term disability, or (iv) other extraordinary hardship. The Board of Governors shall establish the appropriate procedures to implement the waiver provided by this subsection."

**SECTION 9.10.(b)** G.S. 116-143.7(a), as enacted by subsection (a) of this section, reads as rewritten:

"(a) The Board of Governors of The University of North Carolina shall impose a ~~twenty five percent (25%)~~ fifty percent (50%) tuition surcharge on students who take more than 140 degree credit hours to complete a baccalaureate degree in a four-year program or more than one hundred ten percent (110%) of the credit hours necessary to complete a baccalaureate degree in any program officially designated by the Board of Governors as a five-year program. Courses and credit hours taken include those taken at that constituent institution or accepted for transfer. In calculating the number of degree credit hours taken:

- (1) Included are courses that a student:
  - a. Fails.
  - b. Does not complete unless the course was officially dropped by the student pursuant to the academic policy of the appropriate constituent institution.
- (2) Excluded are credit hours earned through:
  - a. The College Board's Advanced Placement Program, CLEP examinations, or similar programs.
  - b. Institutional advanced placement, course validation, or any similar procedure for awarding course credit.
  - c. Summer term or extension programs."

**SECTION 9.10.(c)** Subsection (a) of this section is effective beginning with the 2009-2010 academic year; subsection (b) of this section is effective beginning with the 2010-2011 academic year.

## **ENROLLMENT GROWTH REPORTING**

**SECTION 9.11.** G.S. 116-30.7 reads as rewritten:

**"§ 116-30.7. Biennial projection of enrollment growth for The University of North Carolina.**

By ~~September 1~~ October 15 of each even-numbered year, the General Administration of The University of North Carolina shall provide to the Joint Education Legislative Oversight Committee and to the Office of State Budget and Management a projection of the total student enrollment in The University of North Carolina that is anticipated for the next biennium. The enrollment projection shall be divided into the following categories and shall include the projected growth for each year of the biennium in each category at each of the constituent institutions: undergraduate students, graduate students (students earning master's and doctoral degrees), ~~first year~~ first professional students, and any other categories deemed appropriate by General Administration. The projection shall also distinguish between on-campus and distance education students. The projections shall be considered by the Director of the Budget when determining the amount the Director proposes to fund as the continuation requirement for the enrollment increase in the university system pursuant to G.S. 143C-3-5(b)."

## **TRANSFER THE NORTH CAROLINA CENTER FOR THE ADVANCEMENT OF TEACHING TO THE STATE BOARD OF EDUCATION**

**SECTION 9.13.(a)** The North Carolina Center for the Advancement of Teaching (NCCAT) is transferred from the Board of Governors of The University of North Carolina to the State Board of Education. The Center shall be located administratively under the State Board of Education but shall exercise its powers and duties through its own board of trustees. The board of trustees shall have full authority regarding all aspects of employment and contracts for the North Carolina Center for the Advancement of Teaching in accordance with State personnel policies and contract procedures.

This transfer shall include (i) ownership, possession, and control of its properties located at Cullowhee and Ocracoke, including buildings, grounds, personal property, vehicles, and equipment and (ii) the resources, assets, liabilities, and operations maintained, possessed,

or controlled by the North Carolina Center for the Advancement of Teaching prior to the transfer.

Upon the transfer, all duties and responsibilities of The University of North Carolina regarding NCCAT, including Western Carolina University, shall cease except as may be agreed upon by The University of North Carolina, Western Carolina University, the State Board of Education, and NCCAT; provided, however, that these parties shall work cooperatively in coordination with appropriate State agencies to effect an efficient and orderly transfer of duties and responsibilities to be completed on or before November 1, 2009.

The State shall reallocate to Western Carolina University the land grant that is the original parcel of NCCAT real property located in Cullowhee if it is no longer used or occupied by NCCAT.

**SECTION 9.13.(b)** G.S. 116-74.6 is recodified as G.S. 115C-296.5.

**SECTION 9.13.(c)** G.S. 115C-296.5 reads as rewritten:

**"§ 115C-296.5. North Carolina Center for the Advancement of Teaching established; Teaching; powers and duties of trustees; trustees; reporting requirement.**

(a) ~~The Board of Governors of The University of North Carolina established the North Carolina Center for the Advancement of Teaching pursuant to Section 74 of S.L. 1985-479. The Center shall be a center of The University of North Carolina Board of Governors. It shall be the function of the The North Carolina Center for the Advancement of Teaching (hereinafter called "NCCAT"), through itself or agencies with which it may contract, to contract, shall:~~

- (1) ~~provide~~ Provide career teachers with opportunities to study advanced topics in the sciences, arts, and humanities and to engage in informed discourse, assisted by able mentors and outstanding leaders from all walks of life; ~~and otherwise to offer opportunity and~~
- (2) Offer opportunities for teachers to engage in scholarly pursuits, ~~through pursuits through~~ a center dedicated exclusively to the advancement of teaching as an art and as a profession.

(b) Priority for admission to NCCAT opportunities shall be given to teachers with teaching experience of 15 years or less.

(c) NCCAT may also provide training and support for beginning teachers to enhance their skills and in support of the State's effort to recruit and retain beginning teachers.

(d) ~~The Board of Governors of The University of North Carolina shall establish the The Board of Trustees of the North Carolina Center for the Advancement of Teaching Board of Trustees and shall delegate to the Board of Trustees shall hold all the powers and duties the Board of Governors considers necessary or appropriate for the effective discharge of the functions of NCCAT.~~

(e) The Executive Director shall submit a copy of the NCCAT annual report to the Chair of the State Board of Education at the time of issuance."

**SECTION 9.13.(d)** G.S. 116-74.7 is recodified as G.S. 115C-296.6.

**SECTION 9.13.(e)** G.S. 115C-296.6 reads as rewritten:

**"§ 115C-296.6. Composition of board of trustees; terms; officers.**

(a) The NCCAT Board of Trustees shall be composed of the following membership:

- (1) ~~Three~~ Two ex officio members: ~~the President of The University of North Carolina, the Chairman of the State Board of Education and the State Superintendent of Public Instruction, and the Chancellor of Western Carolina University, Instruction or their designees;~~
- (2) Two members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate;
- (3) Two members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives; and
- (4) Eight members appointed by the ~~Board of Governors, Governor,~~ Governor, one from each of the eight educational regions.

The appointing authorities shall give consideration to assuring, through Board membership, the statewide mission of NCCAT.

(b) Members of the NCCAT Board of Trustees shall serve four-year terms. Members may serve two consecutive four-year terms. The Board shall elect a new ~~chairman~~ chair every two years from its membership. The ~~Chairman~~ chair may serve two consecutive two-year terms as ~~chairman~~ chair.

(c) ~~The chief administrative officer of NCCAT shall be an executive director. The Board of Governors of The University of North Carolina shall appoint the executive director and set the compensation of the executive director on the recommendation of the President of The University of North Carolina. The President shall recommend the executive director from a list of not fewer than two names nominated by the NCCAT Board of Trustees.~~

~~The executive director shall report to and serve at the pleasure of the President of The University of North Carolina; provided that the President shall not terminate the employment of the executive director without prior consultation with the NCCAT Board of Trustees. director who shall be appointed by the NCCAT Board of Trustees."~~

**SECTION 9.13.(f)** G.S. 126-5(c1) is amended by adding a new subdivision to read:

"(29) The Executive Director, Deputy Director, all other directors, assistant and associate directors, and center fellows of the North Carolina Center for the Advancement of Teaching."

**SECTION 9.13.(g)** Existing appointed members of the NCCAT Board of Trustees shall continue to serve until their current terms expire. Their successors shall be appointed as provided in G.S. 115C-296.6, as recodified and rewritten by subsections (d) and (e) of this section.

### **COASTAL DEMONSTRATION WIND TURBINES**

**SECTION 9.14.(a)** Of the funds received by the State and appropriated by United States Public Law 111-005, the American Recovery and Reinvestment Act of 2009, and appropriated in this act to the State Energy Office for the 2009-2010 fiscal year, the sum of three hundred thousand dollars (\$300,000) in nonrecurring funds shall be allocated to The University of North Carolina to continue the coastal sounds wind energy study set forth in Section 9.12 of S.L. 2008-107. The University shall contract with a third party by October 1, 2009, to design, permit, procure, construct, establish, operate, and reclaim as appropriate at the end of their economic life up to three demonstration turbines and necessary support facilities in the sounds or off the coast of North Carolina by September 1, 2010.

Any contract entered into between The University and a third party pursuant to this section shall ensure that The University is provided appropriate access to the demonstration turbines and necessary support facilities for research purposes. The actual number and placement of the wind turbines and necessary support facilities shall be determined by the coastal sounds wind energy study in coordination with participating entities. The Director of the Budget shall ensure that any available federal funds are secured by the State to construct the demonstration turbines and necessary support facilities. The University may negotiate and execute any rights-of-way, easements, leases, and any other agreements necessary to construct, establish, and operate the demonstration turbines and supporting facilities, notwithstanding any other provisions of law governing such negotiation and execution of any rights-of-way, easements, leases, or other required agreements required for the facilities authorized under this section.

**SECTION 9.14.(b)** With respect to the demonstration wind turbines and necessary support facilities authorized by subsection (a) of this section, the facilities authorized under this act shall be constructed in accordance with the provisions of general law applicable to the construction of State facilities, except that the State Property Office shall expedite and grant all easements and use agreements required for construction of the facilities without payment of any fee, royalty, or other cost. Notwithstanding any other provision of law, construction of the facilities authorized by this section shall be exempt from the following statutes and rules implementing those statutes: G.S. 143-48 through 143-64, 143-128, 143-129, 143-132, 113A-1 through 113A-10, 113A-50 through 113A-66, and 113A-116 through 113A-128. If Senate Bill 1068, 2009 Regular Session, becomes law, the provisions of Part 12 of Article 21 of Chapter 143 of the General Statutes as enacted by that act shall not apply to the facilities authorized by this section. With respect to any other environmental permits required for construction of the facilities, the Department of Environment and Natural Resources is directed to expedite permitting of the project to the extent allowed by law and shall waive any application fees that would be otherwise applicable to applications for permits required for the facilities and, where possible under applicable law, issue all permits within 40 days of receipt of a complete application.

**SECTION 9.14.(c)** The North Carolina Utilities Commission is directed to facilitate and expedite wind energy pilot projects developed pursuant to this act that come within its jurisdiction to the extent allowed by law and consistent with State statute. A wind turbine constructed pursuant to this section shall be exempt from the requirements of G.S. 62-110.1. For such wind turbines owned by a public utility, upon an application by the public utility seeking a rider to recover the costs of such project, the Utilities Commission shall establish an annual rider for the public utility to recover the just and reasonable costs, including the utility's cost of debt and equity, of such project upon completion.

**SECTION 9.14.(d)** The energy generated by the wind turbines constructed pursuant to this act shall be allocated between The University of North Carolina and a third party with which The University enters into a contract pursuant to subsection (a) of this section. The allocation shall be determined by written agreement between the parties. For the purposes of this demonstration project, for every 1 megawatt-hour (MWh) generated by the project, The University shall receive one renewable energy certificate (REC), including all environmental attributes, benefits, and credits. The third party described in subsection (a) of this section shall be deemed to have received 3.0 RECs for every 1 MWh of electricity generated by the project solely in order to meet the obligations of the NC Renewable Energy and Energy Efficiency Portfolio Standard (REPS) of G.S. 62-133.8(b) and shall not be subject to the provisions of G.S. 62.133.8(h).

**SECTION 9.14.(e)** The University of North Carolina is authorized to delegate its responsibilities herein to a constituent institution which shall, in turn, receive the RECs.

#### **AMEND AID TO PRIVATE MEDICAL SCHOOLS**

**SECTION 9.15.(a)** G.S. 116-21.5 is repealed.

**SECTION 9.15.(b)** Chapter 116 of the General Statutes is amended by adding a new section to read:

**"§ 116-21.6. Private medical schools – medical student grants.**

(a) Funding for Medical Student Grants. – Funds shall be appropriated each year in the Current Operations Appropriations Act to the Board of Governors of The University of North Carolina to provide grants to medical students who are North Carolina residents and who enroll in and attend medical school at either Duke University or Wake Forest University.

(b) Student Eligibility for Grants. – In addition to all other financial assistance made available to medical students who are attending medical school at either Duke University or Wake Forest University, there is awarded to each medical student who is a North Carolina resident and who is enrolled in and attending medical school at either Duke University or Wake Forest University a grant of five thousand dollars (\$5,000) for each academic year, which shall be disbursed as provided by this section.

(c) Administration of Grants. – The grants provided for in this section shall be administered by the Board of Governors pursuant to rules adopted by the Board of Governors not inconsistent with this section. The Board of Governors shall not approve any grant until it receives proper certification from the appropriate medical school that the student applying for the grant is eligible. Upon receipt of the certification, the Board of Governors shall remit at the times as it prescribes the grant to the medical school on behalf, and to the credit, of the medical student.

The Board of Governors shall adopt rules for determining which students are residents of North Carolina for the purposes of these grants. The Board of Governors also shall make any rules as necessary to ensure that these funds are used directly for instruction in the medical programs of the schools and not for religious or other nonpublic purposes. The Board of Governors shall encourage the two medical schools to orient students toward primary care, consistent with the directives of G.S. 143-613(a). The two schools shall supply information necessary for the Board to comply with G.S. 143-613(d).

(d) Medical Student Change of Status. – In the event a medical student on whose behalf a grant has been paid in accordance with this section terminates his or her enrollment in medical school, the medical school shall refund the full amount of the grant to the Board of Governors.

(e) Authority to Transfer Funds if Appropriation Insufficient. – If the funds appropriated in the Current Operations Appropriations Act to the Board of Governors of The University of North Carolina for grants to students who are eligible for a grant under this section are insufficient to cover the enrolled students in accordance with this section, then the

Board of Governors may transfer unused funds from other programs in the Related Educational Programs budget code to cover the extra students.

(f) Reversions. – Any remaining funds shall revert to the General Fund.

(g) Document Number of Medical School Graduates Who Remain in North Carolina. – The Board of Governors shall encourage Duke University School of Medicine and Wake Forest University School of Medicine to document the number of graduates each year who either enter residencies or locate their practices in North Carolina and to report that information annually to the Board of Governors. The Board of Governors shall report annually to the Joint Legislative Education Oversight Committee regarding the information received from the two medical schools pursuant to this subsection."

#### **DISTINGUISHED PROFESSOR ENDOWMENT TRUST FUND/PRIORITIZE USE OF FUNDS**

**SECTION 9.16.** Notwithstanding Part 4A of Article 1 of Chapter 116 of the General Statutes, of the funds appropriated by this act to the Board of Governors of The University of North Carolina and allocated to the Distinguished Professors Endowment Trust Fund established in G.S. 116-41.14, the sum of eight million dollars (\$8,000,000) for the 2009-2010 fiscal year and the sum of eight million dollars (\$8,000,000) for the 2010-2011 fiscal year shall first be used to match the grant from the C.D. Spangler Foundation. The balance of funds remaining from each appropriation of eight million dollars (\$8,000,000), if any, after matching the grant from the C.D. Spangler Foundation, shall be used to address the backlog of professorships awaiting State matching funds.

#### **PHASE OUT FUTURE TEACHERS SCHOLARSHIP LOAN PROGRAM**

**SECTION 9.18.(a)** Notwithstanding any other provision of law, scholarship loans from the Future Teachers of North Carolina Scholarship Loan Fund established by G.S. 116-209.38 for the 2010-2011 academic year shall be awarded only to students who are seniors for that academic year and who are scheduled to graduate no later than the end of the 2010-2011 academic year.

**SECTION 9.18.(b)** All financial obligations to any student awarded a scholarship loan from the Future Teachers of North Carolina Scholarship Loan Fund before July 1, 2011, shall be fulfilled provided the student remains eligible under the provisions of the Future Teachers of North Carolina Scholarship Loan Fund. All contractual agreements between a student awarded a scholarship loan from the Future Teachers of North Carolina Scholarship Loan Fund before July 1, 2011, and the State Education Assistance Authority remain enforceable, and the provisions of G.S. 116-209.38 that would be applicable but for this section shall remain applicable with regard to any scholarship loan awarded before July 1, 2011.

**SECTION 9.18.(c)** Effective July 1, 2011, G.S. 116-209.38 is repealed.

#### **UNC MANAGEMENT FLEXIBILITY REDUCTION**

**SECTION 9.19.** The management flexibility reduction for The University of North Carolina shall not be allocated by the Board of Governors to the constituent institutions and affiliated entities using an across-the-board method but in a manner that recognizes the importance of the academic mission and differences among The University of North Carolina entities. Before taking reductions in instructional budgets, the Board of Governors and the campuses of the constituent institutions shall consider reducing budgets for senior and middle management personnel, centers and institutes, low enrollment degree programs, speaker series, and nonacademic activities. The Board of Governors and the campuses of the constituent institutions also shall review the institutional trust funds and the special funds held by or on behalf of the The University of North Carolina and its constituent institutions to determine whether there are monies available in those funds that can be used to assist with operating costs before taking reductions in instructional budgets. In addition, the campuses of the constituent institutions also shall require their faculty to have a teaching workload equal to the national average in their Carnegie classification. Budget reductions shall not be considered in funding available for need-based financial aid.

#### **REDUCE NUMBER OF COURSES UNC FACULTY AND STAFF MAY TAKE TUITION-FREE**

**SECTION 9.21.** G.S. 116-143(d) reads as rewritten:

"(d) Notwithstanding the above provision relating to the abolition of free tuition, the Board of Governors of The University of North Carolina may, in its discretion, provide regulations under which a full-time faculty member of the rank of full-time instructor or above, and any full-time staff member of The University of North Carolina may during the period of normal employment enroll for not more than ~~three~~two courses per year in The University of North Carolina free of charge for tuition, provided such enrollment does not interfere with normal employment obligations and further provided that such enrollments are not counted for the purpose of receiving general fund appropriations."

#### **NO SPECIAL TALENT TUITION WAIVERS FOR STUDENT ATHLETES**

**SECTION 9.22.(a)** G.S. 116-143(c) reads as rewritten:

"(c) Inasmuch as the giving of tuition and fee waivers, or especially reduced rates, represent in effect a variety of scholarship awards, the said practice is hereby prohibited except when expressly authorized by statute or by the Board of Governors of The University of North Carolina; and, furthermore, it is hereby directed and required that all budgeted funds expended for scholarships of any type must be clearly identified in budget reports. The Board of Governors of The University of North Carolina shall not authorize a reduced rate of tuition for the special talent of athletics."

**SECTION 9.22.(b)** No policy adopted by the Board of Governors to authorize a special tuition rate for students who have athletics as a special talent shall be implemented.

#### **CAMPUS-INITIATED TUITION INCREASES**

**SECTION 9.23.(a)** Notwithstanding any other provision of law, no campus-initiated tuition increase for students who are North Carolina residents shall be approved by the Board of Governors of The University of North Carolina or implemented for the 2010-2011 academic year except as provided otherwise by this section.

**SECTION 9.23.(b)** Any campus-initiated increases for the professional and graduate programs for the 2010-2011 academic year that were approved by the Board of Governors of The University of North Carolina between February 2007 and February 2009 for the graduate and professional schools may be implemented for the 2010-2011 academic year.

#### **ESTABLISH JOINT LEGISLATIVE STUDY COMMITTEE ON STATE FUNDED STUDENT FINANCIAL AID**

**SECTION 9.24.(a)** In order to ensure all North Carolinians have access to attend undergraduate, graduate, and professional degree programs at institutions of higher education there is created the Joint Legislative Study Committee on State Funded Student Financial Aid. The Committee shall consist of 10 members. The Speaker of the House of Representatives shall appoint five members, and the President Pro Tempore of the Senate shall appoint five members. The State Treasurer, The University of North Carolina, the North Carolina Community College System, and the North Carolina State Education Assistance Authority shall cooperate with this study. The State's private colleges and universities and the North Carolina Independent Colleges and Universities are also encouraged to cooperate with the study.

The Speaker of the House of Representatives and the President Pro Tempore of the Senate each shall appoint a cochair for the Committee. The Committee may meet at any time upon the joint call of the cochairs. Vacancies on the Committee shall be filled by the same appointing authority as made the initial appointment.

The Committee, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Committee may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02.

Subject to the approval of the Legislative Services Commission, the Committee may meet in the Legislative Building or the Legislative Office Building. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. The House of Representatives' and the Senate's Director of Legislative Assistants shall assign clerical staff to the Committee, and the expenses relating to the clerical employees shall be borne by the Committee. Members of the Committee shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1, 138-5, or 138-6, as appropriate.

**SECTION 9.24.(b)** The Committee shall study all of the following:

- (1) How best to use State funds to provide grants, loans, and scholarships to students for the purpose of attending undergraduate, graduate, and professional degree programs at institutions of higher education within North Carolina. As part of its study, the Committee shall also examine the availability and sustainability of existing State, federal, and private funding sources for student grants, loans, and scholarships.
- (2) How best to administer State funded student financial aid. As part of its study the Committee shall review any action or pending action by the federal government regarding the federal funding that supports the administration of student financial aid in the State. The Committee shall also examine the sustainability and efficiency of the current governance structure for awarding student financial aid at the State level and the linkage of that governance structure to federal student loan programs and to student loan programs funded through escheats.
- (3) The current governance of the North Carolina State Education Assistance Authority (NCSEAA).
- (4) The feasibility of consolidating scholarship, loan, and grant programs for North Carolinians including all programs for which eligibility is based on the Free Application for Federal Student Aid (FAFSA).
- (5) The feasibility of consolidating loans, grants, and scholarships available for teacher education students.
- (6) The qualifications for each loan, scholarship, and grant administered by the North Carolina State Education Assistance Authority, the purpose for which the aid is awarded, and any other criteria that make the scholarship and grant either similar to other scholarships in the same category or that make the scholarship unique from others in its category.
- (7) Marketing strategies for grant, loans, and scholarships and how to make the information more transparent, understandable, and accessible to the general public and to the students who may be interested in applying for financial aid.
- (8) Any other issues the Committee deems relevant to this study.

**SECTION 9.24.(c)** The Committee may make an interim report of its findings and recommendations, including any legislative recommendations, to the 2009 General Assembly, 2010 Regular Session, and shall submit a final report of its findings and recommendations, including any legislative recommendations, to the 2011 General Assembly. The Committee shall terminate upon filing its final report or upon the convening of the 2011 General Assembly, whichever is earlier.

**SECTION 9.24.(d)** From the funds appropriated by this act to the General Assembly for the 2009-2010 fiscal year and for the 2010-2011 fiscal year, the Legislative Services Commission may allocate monies to fund the work of the Committee.

## **UNC BOARD OF GOVERNORS REVIEW SEPARATION AND TRANSITION POLICY FOR UNC ADMINISTRATORS**

**SECTION 9.25.** The Board of Governors of The University of North Carolina shall review its current policies regarding the salary payments and other payments made to its top administrators (from the level of President of The University of North Carolina through dean level) as part of a transition and separation package when any of these administrators voluntarily or involuntarily terminates employment in the administrative position and moves down to a lesser position of employment on either a permanent or temporary basis within The University of North Carolina. The Board of Governors shall report to the Joint Legislative Education Oversight Committee by April 1, 2010, its findings and recommendations for changes to the policies, if any.

## **PART X. DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **CHILD CARE SUBSIDY RATES**

**SECTION 10.1.(a)** The maximum gross annual income for initial eligibility, adjusted biennially, for subsidized child care services shall be seventy-five percent (75%) of the State median income, adjusted for family size.



**SECTION 10.1.(b)** Fees for families who are required to share in the cost of care shall be established based on a percent of gross family income and adjusted for family size. Fees shall be determined as follows:

FAMILY SIZE	PERCENT OF GROSS FAMILY INCOME
1-3	10%
4-5	9%
6 or more	8%.

**SECTION 10.1.(c)** Payments for the purchase of child care services for low-income children shall be in accordance with the following requirements:

- (1) Religious-sponsored child care facilities operating pursuant to G.S. 110-106 and licensed child care centers and homes that meet the minimum licensing standards that are participating in the subsidized child care program shall be paid the one-star county market rate or the rate they charge privately paying parents, whichever is lower.
- (2) Licensed child care centers and homes with two or more stars shall receive the market rate for that rated license level for that age group or the rate they charge privately paying parents, whichever is lower.
- (3) Nonlicensed homes shall receive fifty percent (50%) of the county market rate or the rate they charge privately paying parents, whichever is lower.
- (4) Maximum payment rates shall also be calculated periodically by the Division of Child Development for transportation to and from child care provided by the child care provider, individual transporter, or transportation agency, and for fees charged by providers to parents. These payment rates shall be based upon information collected by market rate surveys.

**SECTION 10.1.(d)** Provisions of payment rates for child care providers in counties that do not have at least 50 children in each age group for center-based and home-based care are as follows:

- (1) Except as applicable in subdivision (2) of this subsection, payment rates shall be set at the statewide or regional market rate for licensed child care centers and homes.
- (2) If it can be demonstrated that the application of the statewide or regional market rate to a county with fewer than 50 children in each age group is lower than the county market rate and would inhibit the ability of the county to purchase child care for low-income children, then the county market rate may be applied.

**SECTION 10.1.(e)** A market rate shall be calculated for child care centers and homes at each rated license level for each county and for each age group or age category of enrollees and shall be representative of fees charged to parents for each age group of enrollees within the county. The Division of Child Development shall also calculate a statewide rate and regional market rates for each rated license level for each age category.

**SECTION 10.1.(f)** Facilities licensed pursuant to Article 7 of Chapter 110 of the General Statutes and facilities operated pursuant to G.S. 110-106 may participate in the program that provides for the purchase of care in child care facilities for minor children of needy families. No separate licensing requirements shall be used to select facilities to participate. In addition, child care facilities shall be required to meet any additional applicable requirements of federal law or regulations. Child care arrangements exempt from State regulation pursuant to Article 7 of Chapter 110 of the General Statutes shall meet the requirements established by other State law and by the Social Services Commission.

County departments of social services or other local contracting agencies shall not use a provider's failure to comply with requirements in addition to those specified in this subsection as a condition for reducing the provider's subsidized child care rate.

**SECTION 10.1.(g)** Payment for subsidized child care services provided with Work First Block Grant funds shall comply with all regulations and policies issued by the Division of Child Development for the subsidized child care program.

**SECTION 10.1.(h)** Noncitizen families who reside in this State legally shall be eligible for child care subsidies if all other conditions of eligibility are met. If all other conditions of eligibility are met, noncitizen families who reside in this State illegally shall be eligible for child care subsidies only if at least one of the following conditions is met:

- (1) The child for whom a child care subsidy is sought is receiving child protective services or foster care services.
- (2) The child for whom a child care subsidy is sought is developmentally delayed or at risk of being developmentally delayed.
- (3) The child for whom a child care subsidy is sought is a citizen of the United States.

#### **CHILD CARE ALLOCATION FORMULA**

**SECTION 10.2.(a)** The Department of Health and Human Services shall allocate child care subsidy voucher funds to pay the costs of necessary child care for minor children of needy families. The mandatory thirty percent (30%) Smart Start subsidy allocation under G.S. 143B-168.15(g) shall constitute the base amount for each county's child care subsidy allocation. The Department of Health and Human Services shall use the following method when allocating federal and State child care funds, not including the aggregate mandatory thirty percent (30%) Smart Start subsidy allocation:

- (1) Funds shall be allocated to a county based upon the projected cost of serving children under age 11 in families with all parents working who earn less than seventy-five percent (75%) of the State median income.
- (2) No county's allocation shall be less than ninety percent (90%) of its State fiscal year 2001-2002 initial child care subsidy allocation.

**SECTION 10.2.(b)** The Department of Health and Human Services may reallocate unused child care subsidy voucher funds in order to meet the child care needs of low-income families. Any reallocation of funds shall be based upon the expenditures of all child care subsidy voucher funding, including Smart Start funds, within a county.

**SECTION 10.2.(c)** Notwithstanding subsection (a) of this section, the Department of Health and Human Services shall allocate up to twenty million dollars (\$20,000,000) in federal block grant funds and State funds appropriated for fiscal years 2009-2010 and 2010-2011 for child care services. These funds shall be allocated to prevent termination of child care services. Funds appropriated for specific purposes, including targeted market rate adjustments given in the past, may also be allocated by the Department separately from the allocation formula described in subsection (a) of this section.

#### **CHILD CARE FUNDS MATCHING REQUIREMENT**

**SECTION 10.3.** No local matching funds may be required by the Department of Health and Human Services as a condition of any locality's receiving its initial allocation of child care funds appropriated by this act unless federal law requires a match. If the Department reallocates additional funds above twenty-five thousand dollars (\$25,000) to local purchasing agencies beyond their initial allocation, local purchasing agencies must provide a twenty percent (20%) local match to receive the reallocated funds. Matching requirements shall not apply when funds are allocated because of a disaster as defined in G.S. 166A-4(1).

#### **FACILITATE AND EXPEDITE USE OF CHILD CARE SUBSIDY FUNDS**

**SECTION 10.4.** The Division of Child Development of the Department of Health and Human Services shall adopt temporary policies that facilitate and expedite the prudent expenditure of child care subsidy funds. These policies will address the following:

- (1) Permitting the local purchasing agencies to issue time-limited vouchers to assist counties in managing onetime, nonrecurring subsidy funding.
- (2) Extending the current 30/60 day job search policy to six months when a recipient experiences a loss of employment.
- (3) Providing an upfront job search period of six months for applicants who have lost employment since October 1, 2008.
- (4) Providing a job search period of six months for recipients who complete school and are entering the job market.
- (5) Notwithstanding any other provision of law, extending the 24-month education time limit for an additional 12 months for a child care recipient who has lost a job since October 1, 2008, or otherwise needs additional training to enhance his or her marketable skills for job placement due to the economic downturn and who has depleted his or her 24-month allowable education time.

- (6) Lowering the number of hours a parent must be working in order to be eligible for subsidy to assist parents who are continuing to work but at reduced hours.

### **CHILD CARE REVOLVING LOAN**

**SECTION 10.5.** Notwithstanding any law to the contrary, funds budgeted for the Child Care Revolving Loan Fund may be transferred to and invested by the financial institution contracted to operate the Fund. The principal and any income to the Fund may be used to make loans, reduce loan interest to borrowers, serve as collateral for borrowers, pay the contractor's cost of operating the Fund, or pay the Department's cost of administering the program.

### **EARLY CHILDHOOD EDUCATION AND DEVELOPMENT INITIATIVES ENHANCEMENTS**

**SECTION 10.7.(a)** Administrative costs shall be equivalent to, on an average statewide basis for all local partnerships, not more than eight percent (8%) of the total statewide allocation to all local partnerships. For purposes of this subsection, administrative costs shall include costs associated with partnership oversight, business and financial management, general accounting, human resources, budgeting, purchasing, contracting, and information systems management.

**SECTION 10.7.(b)** The North Carolina Partnership for Children, Inc., and all local partnerships shall use competitive bidding practices in contracting for goods and services on contract amounts as follows:

- (1) For amounts of five thousand dollars (\$5,000) or less, the procedures specified by a written policy to be developed by the Board of Directors of the North Carolina Partnership for Children, Inc.
- (2) For amounts greater than five thousand dollars (\$5,000), but less than fifteen thousand dollars (\$15,000), three written quotes.
- (3) For amounts of fifteen thousand dollars (\$15,000) or more, but less than forty thousand dollars (\$40,000), a request for proposal process.
- (4) For amounts of forty thousand dollars (\$40,000) or more, a request for proposal process and advertising in a major newspaper.

**SECTION 10.7.(c)** The North Carolina Partnership for Children, Inc., and all local partnerships shall, in the aggregate, be required to match no less than fifty percent (50%) of the total amount budgeted for the program in each fiscal year of the biennium as follows: contributions of cash equal to at least fifteen percent (15%) and in-kind donated resources equal to no more than five percent (5%) for a total match requirement of twenty percent (20%) for each fiscal year. The North Carolina Partnership for Children, Inc., may carry forward any amount in excess of the required match for a fiscal year in order to meet the match requirement of the succeeding fiscal year. Only in-kind contributions that are quantifiable shall be applied to the in-kind match requirement. Volunteer services may be treated as an in-kind contribution for the purpose of the match requirement of this subsection. Volunteer services that qualify as professional services shall be valued at the fair market value of those services. All other volunteer service hours shall be valued at the statewide average wage rate as calculated from data compiled by the Employment Security Commission in the Employment and Wages in North Carolina Annual Report for the most recent period for which data are available. Expenses, including both those paid by cash and in-kind contributions, incurred by other participating non-State entities contracting with the North Carolina Partnership for Children, Inc., or the local partnerships, also may be considered resources available to meet the required private match. In order to qualify to meet the required private match, the expenses shall:

- (1) Be verifiable from the contractor's records.
- (2) If in-kind, other than volunteer services, be quantifiable in accordance with generally accepted accounting principles for nonprofit organizations.
- (3) Not include expenses funded by State funds.
- (4) Be supplemental to and not supplant preexisting resources for related program activities.
- (5) Be incurred as a direct result of the Early Childhood Initiatives Program and be necessary and reasonable for the proper and efficient accomplishment of the Program's objectives.
- (6) Be otherwise allowable under federal or State law.

- (7) Be required and described in the contractual agreements approved by the North Carolina Partnership for Children, Inc., or the local partnership.
- (8) Be reported to the North Carolina Partnership for Children, Inc., or the local partnership by the contractor in the same manner as reimbursable expenses.

Failure to obtain a twenty percent (20%) match by June 30 of each fiscal year shall result in a dollar-for-dollar reduction in the appropriation for the Program for a subsequent fiscal year. The North Carolina Partnership for Children, Inc., shall be responsible for compiling information on the private cash and in-kind contributions into a report that is submitted to the Joint Legislative Commission on Governmental Operations in a format that allows verification by the Department of Revenue. The same match requirements shall apply to any expansion funds appropriated by the General Assembly.

**SECTION 10.7.(d)** The Department of Health and Human Services shall continue to implement the performance-based evaluation system.

**SECTION 10.7.(e)** The Department of Health and Human Services and the North Carolina Partnership for Children, Inc., shall ensure that the allocation of funds for Early Childhood Education and Development Initiatives for State fiscal years 2009-2010 and 2010-2011 shall be administered and distributed in the following manner:

- (1) Capital expenditures are prohibited for fiscal years 2009-2010 and 2010-2011. For the purposes of this section, "capital expenditures" means expenditures for capital improvements as defined in G.S. 143C-1-1(d)(5).
- (2) Expenditures of State funds for advertising and promotional activities are prohibited for fiscal years 2009-2010 and 2010-2011.

**SECTION 10.7.(f)** A county may use the county's allocation of State and federal child care funds to subsidize child care according to the county's Early Childhood Education and Development Initiatives Plan as approved by the North Carolina Partnership for Children, Inc. The use of federal funds shall be consistent with the appropriate federal regulations. Child care providers shall, at a minimum, comply with the applicable requirements for State licensure pursuant to Article 7 of Chapter 110 of the General Statutes.

**SECTION 10.7.(g)** For fiscal years 2009-2010 and 2010-2011, the local partnerships shall spend an amount for child care subsidies that provides at least fifty-two million dollars (\$52,000,000) for the TANF maintenance of effort requirement and the Child Care Development Fund and Block Grant match requirement. The Department of Health and Human Services shall determine the level of funds that need to be expended in order to draw down all federal recovery funds and shall direct the local partnerships to spend at least at the determined level. The local partnerships shall not spend at a level less than that directed by the Department.

## **TASK FORCE ON THE CONSOLIDATION OF EARLY CHILDHOOD EDUCATION AND CARE**

**SECTION 10.7A.(a)** Intent. – It is the intent of the General Assembly that not later than July 1, 2010, certain agencies and programs relating to early childhood education and care shall be consolidated.

**SECTION 10.7A.(b)** Task Force Established. – There is established the Joint Legislative Task Force on the Consolidation of Early Childhood Education and Care (Task Force). The Department of Health and Human Services and the Department of Public Instruction shall work with the Task Force to develop a Consolidation Plan (Plan) to implement the Plan as approved by the 2010 Regular Session of the 2009 General Assembly.

**SECTION 10.7A.(c)** Task Force Membership. – Appointments to the Task Force shall be as follows:

- a. Three members of the House of Representatives appointed by the Speaker of the House of Representatives.
- b. Three members of the Senate appointed by the President Pro Tempore of the Senate.
- c. Three members appointed by the Governor.
- d. Any additional ad hoc members the Governor deems beneficial to achieve the goals of the Task Force.

Appointments to the Task Force shall be made no later than September 1, 2009.

Vacancies in the Task Force or a vacancy as chair of the Task Force resulting from the resignation of a member or otherwise shall be filled in the same manner in which the original appointment was made.

**SECTION 10.7A.(d) Duties of the Task Force. –**

- (1) In consultation with the Department of Health and Human Services and the Department of Public Instruction, develop a Plan for a highly coordinated and efficient system of early childhood education and care.
- (2) Not later than January 15, 2010, establish and appoint a transition team to implement the Plan approved by the General Assembly. The transition team shall be responsible for guiding the transition from the multiagency/multiprogram system now in place to a consolidated system and to ensure continuity and quality of existing services to young children, families, and early childhood programs and personnel.
- (3) Adhere to the following principles in the development and implementation of the Plan approved by the General Assembly:
  - a. Ensuring high quality programs.
  - b. Ensuring core functions remain intact.
  - c. Maintaining the strengths and effectiveness of each program.
  - d. Identifying and proposing efficiencies.
  - e. Identifying needed improvements.
  - f. Streamlining administrative savings.
  - g. Promoting a seamless delivery of services from birth through kindergarten.
  - h. Any other principles the Task Force deems relevant.
- (4) Consider the following agencies and functions for consolidation:
  - a. The North Carolina Partnership for Children, Inc.
  - b. The More at Four program.
  - c. Title I Prekindergarten programs.
  - d. Preschool Exceptional Children.
  - e. Early Intervention programs.
  - f. Head Start Collaboration.
  - g. Child Care Regulatory and Subsidy.
  - h. Licensing and Regulatory Functions.
  - i. Workforce Professional Development and Recognition.
  - j. Quality Initiatives.
- (5) Consult with appropriate State departments, agencies, and board representatives on issues related to early childhood education and care.
- (6) In developing the Plan, review and consider the proposal included in Ensuring School Readiness for North Carolina's Children: Bringing the Parts Together to Create an Integrated Early Care and Education System, November 2004.

**SECTION 10.7A.(e) Chair; Meetings. –** The Speaker of the House of Representatives and the President Pro Tempore of the Senate shall each designate one member to serve as cochair of the Task Force.

The cochairs shall call the initial meeting of the Task Force on or before October 1, 2009. The Task Force shall subsequently meet upon such notice and in such manner as its members determine. A majority of the members of the Task Force shall constitute a quorum.

**SECTION 10.7A.(f) Expenses of Members. –** Members of the Task Force shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate.

**SECTION 10.7A.(g) Cooperation by Government Agencies. –** The Task Force may call upon any department, agency, institution, or officer of the State or any political subdivision thereof for facilities, data, or other assistance.

**SECTION 10.7A.(h) Report. –** The Task Force shall report its findings and recommendations by March 15, 2010, to the Joint Legislative Commission on Governmental Operations, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, the House of Representatives Subcommittee on Education, the Senate Appropriations Committee on

Education, and the Fiscal Research Division. The Task Force shall terminate upon filing its final report.

**SECTION 10.7A.(i) Proposal.** – After reviewing the report submitted by the Task Force, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Education, and the Senate Appropriations Committee on Education shall develop language and a budget proposal by May 30, 2010, to present to the 2010 Regular Session of the 2009 General Assembly to implement the consolidation of early childhood education and care programs, which consolidation shall become effective July 1, 2010.

**SECTION 10.7A.(j) Funding.** – The Legislative Services Officer shall allocate funds to carry out the duties of the Task Force.

**SECTION 10.7A.(k) Effective Date.** – This section becomes effective July 1, 2009. Effective July 1, 2010, the Consolidation, as contained in the Plan approved by the 2010 Regular Session of the 2009 General Assembly, shall be implemented.

### **ADMINISTRATIVE ALLOWANCE FOR COUNTY DEPARTMENTS OF SOCIAL SERVICES**

**SECTION 10.10.** The Division of Child Development of the Department of Health and Human Services shall increase the allowance that county departments of social services may use for administrative costs from four percent (4%) to five percent (5%) of the county's total child care subsidy funds allocated in the Child Care Development Fund Block Grant plan. The increase shall be effective for the 2009-2010 fiscal year.

### **INCREASE CHILD CARE LICENSING FEES FOR CHILD CARE FACILITIES**

**SECTION 10.11.** Effective the seventh calendar day after the date this act becomes law, G.S. 110-90(1a) reads as rewritten:

**"§ 110-90. Powers and duties of Secretary of Health and Human Services.**

The Secretary shall have the following powers and duties under the policies and rules of the Commission:

- ...
- (1a) To establish a fee for the licensing of child care ~~centers-facilities~~. The fee does not apply to a religious-sponsored child care ~~center-facility~~ operated pursuant to a letter of compliance. The amount of the fee may not exceed the amount listed in this subdivision.

<b>Capacity of <del>Center</del>Facility</b>	<b>Maximum Fee</b>
12 or fewer children	<del>\$ 35.00</del> \$52.00
13-50 children	<del>\$125.00</del> \$187.00
51-100 children	<del>\$250.00</del> \$375.00
101 or more children	<del>\$400.00</del> \$600.00

...."

### **MENTAL HEALTH CHANGES**

**SECTION 10.12.(a)** For the purpose of mitigating cash flow problems that many non-single-stream local management entities (LMEs) experience at the beginning of each fiscal year, the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall adjust the timing and method by which allocations of service dollars are distributed to each non-single-stream LME. To this end, the allocations shall be adjusted such that at the beginning of the fiscal year the Department shall distribute not less than one-twelfth of the LME's continuation allocation and subtract the amount of the adjusted distribution from the LME's total reimbursements for the fiscal year.

**SECTION 10.12.(b)** Of the funds appropriated in this act to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, the sum of twenty million one hundred twenty-one thousand six hundred forty-four dollars (\$20,121,644) for the 2009-2010 fiscal year and the sum of twenty million one hundred twenty-one thousand six hundred forty-four dollars (\$20,121,644) for the 2010-2011 fiscal year shall be allocated for the purchase of local inpatient psychiatric beds or bed days. These beds or bed days shall be distributed across the State according to need as

determined by the Department. The Department shall enter into contracts with the LMEs and community hospitals for the management of these beds or bed days. Local inpatient psychiatric beds or bed days shall be managed and controlled by the LME, including the determination of which local or State hospital the individual should be admitted to pursuant to an involuntary commitment order. Funds shall not be allocated to LMEs but shall be held in a statewide reserve at the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services to pay for services authorized by the LMEs and billed by the hospitals through the LMEs. LMEs shall remit claims for payment to the Division within 15 working days of receipt of a clean claim from the hospital and shall pay the hospital within 30 working days of receipt of payment from the Division. If the Department determines (i) that an LME is not effectively managing the beds or bed days for which it has responsibility, as evidenced by beds or bed days in the local hospital not being utilized while demand for services at the State psychiatric hospitals has not reduced, or (ii) the LME has failed to comply with the prompt payment provisions of this subsection, the Department may contract with another LME to manage the beds or bed days, or, notwithstanding any other provision of law to the contrary, may pay the hospital directly. The Department shall develop reporting requirements for LMEs regarding the utilization of the beds or bed days. Funds appropriated in this section for the purchase of local inpatient psychiatric beds or bed days shall be used to purchase additional beds or bed days not currently funded by or through LMEs and shall not be used to supplant other funds available or otherwise appropriated for the purchase of psychiatric inpatient services under contract with community hospitals, including beds or bed days being purchased through Hospital Utilization Pilot funds appropriated in S.L. 2007-323. Not later than March 1, 2010, the Department shall report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Fiscal Research Division on a uniform system for beds or bed days purchased (i) with local funds, (ii) from existing State appropriations, (iii) under the Hospital Utilization Pilot, and (iv) purchased using funds appropriated under this subsection.

**SECTION 10.12.(c)** The Secretary of the Department of Health and Human Services shall not take any action prior to January 1, 2010, that would result in the merger or consolidation of LMEs operating on January 1, 2008, or that would establish consortia or regional arrangements for the same purpose, except that LMEs that do not meet the catchment area requirements of G.S. 122C-115 as of January 1, 2010, may initiate, continue, or implement the LMEs' merger or consolidation plans to overcome noncompliance with G.S. 122C-115. This subsection does not prohibit LMEs from voluntarily merging if they are contiguous or consolidating administrative functions.

**SECTION 10.12.(d)** Of the funds appropriated in this act to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, for mobile crisis teams, the sum of five million seven hundred thousand dollars (\$5,700,000) shall be distributed to LMEs to support 30 mobile crisis teams. The new mobile crisis units shall be distributed over the State according to need as determined by the Department.

**SECTION 10.12.(e)** The Department of Health and Human Services may create a midyear process by which it can reallocate State service dollars away from LMEs that do not appear to be on track to spend the LMEs' full appropriation and toward LMEs that appear able to spend the additional funds.

**SECTION 10.12.(f)**

- (1) The Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall continue implementation of the current Supports Intensity Scale (SIS) assessment tool pilot project if the pilot project has demonstrated that the SIS tool:
  - a. Is effective in identifying the appropriate array and intensity of services, including residential supports or placement, for individuals assessed.
  - b. Is valid for determining intensity of support related to resource allocation for CAP-MR/DD, public and private ICF-MR facilities, developmental disability group homes, and other State- or federally funded services.

- c. Is used by an assessor that does not have a pecuniary interest in the determinations resulting from the assessment.
  - d. Determines the level of intensity and type of services needed from developmental disability service providers.
- (2) The Department shall report on the progress of the pilot project by May 1, 2010. The Department shall submit the report to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division. The report shall include the following:
- a. The infrastructure that will be needed to assure that the administration of the assessment tool is independent from service delivery, the qualifications of assessors, training and management of data, and test-retest accountability.
  - b. The cost to (i) purchase the tool, (ii) implement the tool, (iii) provide training, and (iv) provide for future expansion of the tool statewide.

### **MH/DD/SAS HEALTHCARE INFORMATION SYSTEM PROJECT**

**SECTION 10.12A.** Of the funds appropriated to the Department of Health and Human Services for the 2009-2011 fiscal biennium, the Department may use a portion of these funds to continue to develop and implement a health care information system for State institutions operated by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services. G.S. 143C-6-5 does not apply to this section.

### **REENACT 2007 SPECIAL PROVISION ON COLLABORATION ON SCHOOL-BASED CHILD AND FAMILY TEAM INITIATIVE**

**SECTION 10.13.** Section 10.9 of S.L. 2007-323 is reenacted for the 2009-2011 fiscal biennium.

### **LME FUNDS FOR SUBSTANCE ABUSE SERVICES**

**SECTION 10.15.(a)** Consistent with G.S. 122C-2, the General Assembly strongly encourages Local Management Entities (LMEs) to use a portion of the funds appropriated for substance abuse treatment services to support prevention and education activities.

**SECTION 10.15.(b)** An LME may use up to one percent (1%) of funds allocated to it for substance abuse treatment services to provide nominal incentives for consumers who achieve specified treatment benchmarks, in accordance with the federal substance abuse and mental health services administration best practice model entitled Contingency Management.

**SECTION 10.15.(c)** In providing treatment and services for adult offenders and increasing the number of Treatment Accountability for Safer Communities (TASC) case managers, local management entities shall consult with TASC to improve offender access to substance abuse treatment and match evidence-based interventions to individual needs at each stage of substance abuse treatment. Special emphasis should be placed on intermediate punishment offenders, community punishment offenders at risk for revocation, and Department of Correction (DOC) releasees who have completed substance abuse treatment while in custody.

In addition to the funds appropriated in this act to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, to provide substance abuse services for adult offenders and to increase the number of TASC case managers, the Department shall allocate up to three hundred thousand dollars (\$300,000) to TASC. These funds shall be allocated to TASC before funds are allocated to LMEs for mental health services, substance abuse services, and crisis services.

**SECTION 10.15.(d)** In providing drug treatment court services, LMEs shall consult with the local drug treatment court team and shall select a treatment provider that meets all provider qualification requirements and the drug treatment court's needs. A single treatment provider may be chosen for non-Medicaid-eligible participants only. A single provider may be chosen who can work with all of the non-Medicaid-eligible drug treatment court participants in a single group. During the 52-week drug treatment court program, participants shall receive an



array of treatment and aftercare services that meets the participant's level of need, including step-down services that support continued recovery.

## **TOTAL QUALITY MANAGEMENT**

**SECTION 10.16.** The Secretary of the Department of Health and Human Services shall implement a Total Quality Management Program in hospitals and other State facilities for the purpose of providing a high level of customer service by well-trained staff throughout the organization. The focus of this management approach shall be on meeting customer needs by providing high-quality services.

The Department shall involve staff at all levels of the organization by soliciting suggestions and input into decision making by managers. The Department shall create staff committees composed of a representative distribution of rank and file employees, to evaluate policy changes and identify training opportunities and other necessary improvements.

The Department shall submit a report on the status of the Total Quality Management Program, including any activities associated with its implementation within State facilities, to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Fiscal Research Division not later than March 1, 2010.

## **IOM STUDIES**

**SECTION 10.18.** Funds appropriated in this act from the Substance Abuse Prevention and Treatment Block Grant to the Department of Health and Human Services for North Carolina Institute of Medicine (NCIOM) studies shall be allocated in accordance with Section 10.78(ff) of this act.

## **DHHS DATA COLLECTION REVIEW AND STREAMLINING**

**SECTION 10.18B.** The Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall review all data collection instruments used by the Department and local management entities and shall streamline the amount of paperwork involved with patient data reporting by physicians and providers.

## **LME ALLOCATION AND FUND BALANCE REDUCTIONS**

**SECTION 10.19A.(a)** The Department of Health and Human Services shall reduce the allocation of State funds to each LME by ten percent (10%) in each fiscal year. In no event shall an LME that has a fund balance or other resources available reduce or otherwise adversely affect services due to the reduction in State funds in each fiscal year. LMEs that have fund balances or other resources shall use those funds to supplant the reduction in State funds in each fiscal year. Monies from fund balances shall be used exclusively to provide services to LME clients, even if the dollar amount of the funds in the fund balance exceeds what is necessary to supplant the reduction in State funds. The use of fund balance monies to provide services is subject to the prior approval of the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services. The Division shall track fund balance usage of each LME to ensure that the amount used from the fund balance in each fiscal year is at least equal to the reduction in State funds for that fiscal year and is used to provide services and for no other purpose.

**SECTION 10.19A.(b)** In order to ensure that funds allocated to LMEs for mental health, developmental disabilities, and substance abuse services are used to the maximum extent possible to provide these services and for other authorized purposes, the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall develop and implement a format for use by LMEs to account for the LME's fund balance in each fiscal year. The format shall include categories reflecting the source and original purpose of MH/DD/SA funds in an LME or county fund balance. The format shall be developed such that the fund balance information provided indicates the amount of funds in the fund balance at a given time, the source and amount of funds dispensed from the fund balance throughout the fiscal year and the purposes for which funds are dispensed, the amount, if any, of funds in the fund balance that were allocated but not used for mental health, developmental disabilities, and substance abuse services, and other information the Department

determines necessary to ensure that funds allocated for mental health, developmental disabilities, and substance abuse services are used for authorized purposes. LMEs shall begin using the format developed by the Department not later than January 1, 2010.

**SECTION 10.19A.(c)** The Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall require quarterly reporting from LMEs in the format required under subsection (a) of this section. The Department of Health and Human Services shall report the results of the quarterly reports to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division on or before May 1, 2010.

#### **TRANSITION OF UTILIZATION MANAGEMENT OF COMMUNITY-BASED SERVICES TO LOCAL MANAGEMENT ENTITIES**

**SECTION 10.20.** Consistent with the findings of the Mercer evaluation of Local Management Entities (LMEs), the Department of Health and Human Services shall collaborate with LMEs to enhance their administrative capabilities to assume utilization management responsibilities for the provision of community-based mental health, developmental disabilities, and substance abuse services. The Department may, with approval of the Office of State Budget and Management, use funds available to implement this section.

#### **MENTAL HEALTH TRUST FUND ALLOCATIONS**

**SECTION 10.21.** Notwithstanding any other provision of law to the contrary, funds allocated from the Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs (Fund) in the 2007-2009 fiscal biennium shall not revert to the Fund nor otherwise be withheld but shall be allocated to those programs for which the funds were originally obligated.

#### **WESTERN REGIONAL MAINTENANCE OPERATIONS**

**SECTION 10.21A.(a)** In coordination with Broughton Hospital, the Western School for the Deaf, the J. Iverson Riddle Developmental Center, and elected representatives of the workers in each trade assigned to Western Regional Maintenance (WRM), the Department of Health and Human Services shall develop and implement a plan for western regional maintenance operations that increases efficiency, improves facility support, and is more responsive to WRM customers. The plan shall provide for the following:

- (1) WRM programs shall be decentralized.
- (2) Staff shall be assigned directly to each facility and shall report to designated facility managers.
- (3) Supervisors shall be responsible for filling work orders and supervising team members. Eliminate supervisor positions that are not needed to effectively carry out all supervisory duties.
- (4) Make available to each supported organization general maintenance workers to allow the completion of simple tasks without requiring work orders through a central location.
- (5) The maintenance programs of each facility shall share equipment and expertise to the extent possible to achieve savings.

**SECTION 10.21A.(b)** The Department shall decentralize the maintenance activities at the Butner facilities.

**SECTION 10.21A.(c)** The Department of Health and Human Services shall report on the implementation of these changes not later than October 1, 2009, to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

#### **CAP-MR/DD STATE FUND SERVICE ELIGIBILITY**

**SECTION 10.21B.** Except as otherwise provided in this section for former Thomas S. recipients, CAP-MR/DD recipients are not eligible for any State-funded services except for those services for which there is not a comparable service in the CAP-MR/DD waiver. The excepted services are limited to guardianship, room and board, and time-limited supplemental

staffing to stabilize residential placement. Former Thomas S. recipients currently living in community placements may continue to receive State-funded services.

### **COST-SHARING FOR SERVICES IN EARLY CHILDHOOD INTERVENTION PROGRAMS**

**SECTION 10.21C.** The Department of Health and Human Services shall bill third-party payers, including public and private insurers, for services provided by the First Family Infant and Preschool Program (FIPP). In order to ensure maximum realization of receipts from third-party payers for services provided, the Department shall take whatever administrative and billing actions are necessary to coordinate FIPP with the Children's Developmental Services Agency (CDSA), taking into account the age range of children served by CDSA and FIPP. In addition, the Department shall pursue all available cost-sharing for services, including grants, development of a sliding fee scale for individual payers, and accessing available child care subsidies for eligible families. Receipts from billings shall be used to offset State general funds.

### **AUTISM SPECTRUM DISORDER AND PUBLIC SAFETY STUDY**

**SECTION 10.21D.(a)** There is established the Joint Study Committee on Autism Spectrum Disorder and Public Safety (Committee). The Committee shall consist of members and co-chairs appointed by the President Pro Tempore of the Senate and the Speaker of the House of Representatives. The Committee and the terms of the members shall expire when the Committee submits a final report to the General Assembly. Members serve at the pleasure of the appointing officer.

**SECTION 10.21D.(b)** The Committee shall study ways to increase the availability of appropriate autism-specific education and training to public safety personnel, first responder units, judges, district attorneys, magistrates, and related organizations. The Committee may also study any other issue it deems relevant to Autism Spectrum Disorder and public safety.

**SECTION 10.21D.(c)** The Committee shall meet upon the call of its co-chairs. A quorum of the Committee is a majority of its members. No action may be taken except by a majority vote at a meeting at which a quorum is present.

**SECTION 10.21D.(d)** The Committee, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and Article 5A of Chapter 120 of the General Statutes. The Committee may contract for professional, clerical, or consultant services, as provided by G.S. 120-32.02.

**SECTION 10.21D.(e)** Members of the Committee shall receive per diem, subsistence, and travel allowance as provided in G.S. 120-3.1, and G.S. 138-5 and G.S. 138-6, as appropriate.

**SECTION 10.21D.(f)** The expenses of the Committee shall be considered expenses incurred for the joint operation of the General Assembly. Funds for the Committee shall be as appropriated to the General Assembly for this purpose.

**SECTION 10.21D.(g)** The Legislative Services Officer shall assign professional and clerical staff to assist the Committee in its work. The Director of Legislative Assistants of the House of Representatives and the Director of Legislative Assistants of the Senate shall assign clerical support staff to the Committee.

**SECTION 10.21D.(h)** The Committee may meet at various locations around the State in order to promote greater public participation in its deliberations.

**SECTION 10.21D.(i)** The Committee may submit an interim report on the results of its study, including any proposed legislation, to the members of the Senate and the House of Representatives on or before May 1, 2010, by filing a copy of the report with the Office of the President Pro Tempore of the Senate, the Office of the Speaker of the House of Representatives, and the Legislative Library. The Committee shall submit a final report on the results of its study, including any proposed legislation, to the members of the Senate and the House of Representatives on or before December 31, 2010, by filing a copy of the report with the Office of the President Pro Tempore of the Senate, the Office of the Speaker of the House of Representatives, and the Legislative Library. The Committee shall terminate on December 31, 2010, or upon the filing of its final report, whichever occurs first.

### **TRANSFER OF CENTRAL REGIONAL HOSPITAL PATIENTS FROM RALEIGH CAMPUS TO BUTNER CAMPUS**

**SECTION 10.21E.** Upon final resolution in favor of the Department of Health and Human Services in the matter of the temporary restraining order issued in Disability Rights North Carolina, et al. v. North Carolina Department of Health and Human Services (Wake County No. 08 CVS 16725), and notwithstanding any other provision of law to the contrary, the Secretary of Health and Human Services shall plan and execute the orderly transfer of patients from the Raleigh Campus of Central Regional Hospital to the Butner Campus of Central Regional Hospital. It is the intent of the General Assembly that this transfer of patients be accomplished in a safe and timely manner. Upon completion of the transfer, the Secretary shall actively pursue full accreditation with the Joint Commission (formerly the Joint Commission on the Accreditation of Healthcare Organizations or "JCAHO") for Central Regional Hospital. The Department may temporarily continue to operate at the Raleigh Campus of Central Regional Hospital the Psychiatric Residential Treatment Facility for Children, minimum security forensic and research units, and the Wake-Dix Overflow Unit.

#### **CASTLE SERVICES THIRD-PARTY BILLING**

**SECTION 10.21F.** The Center for Acquisition for Spoken Languages through Listening Enrichment (CASTLE) shall begin billing third-party payers for its services. The receipts from these billings shall be used to offset program requirements supported by General Funds. CASTLE shall explore sources for potential payers, including Child Development Services Agencies, NC Health Choice, Medicaid, and other grant funds. CASTLE shall report on the amount and source of receipts to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division by December 1, 2009.

#### **VITAL RECORDS FEES**

**SECTION 10.22.** Effective the fourteenth calendar day after the date this act becomes law, G.S. 130A-93.1 reads as rewritten:

**"§ 130A-93.1. Fees for vital records copies or search; automation fund.**

- (a) The State Registrar shall collect, process, and utilize fees for services as follows:
- (1) A fee not to exceed ~~fifteen dollars (\$15.00)~~ twenty-four dollars (\$24.00) shall be charged for issuing ~~any a~~ a first copy of a vital record or for conducting a routine search of the files for the record when no copy is made. A fee of fifteen dollars (\$15.00) shall be charged for each additional certificate copy requested from the same search. When certificates are issued or searches conducted for statewide issuance by local agencies using databases maintained by the State Registrar, the local agency shall charge ~~this fee these fees~~ and shall ~~forward five dollars (\$5.00) of this fee~~ retain ten dollars (\$10.00) of these fees to cover local administrative costs and forward the remaining fees to the State Registrar for the purposes established in subsection (b) of this section.
  - (2) A fee not to exceed fifteen dollars (\$15.00) for in-State requests and not to exceed twenty dollars (\$20.00) for out-of-state requests shall be charged in addition to the fee charged under subdivision (1) of this subsection and to all shipping and commercial charges when expedited service is specifically requested.
  - (2a) The fee for a copy of a computer or microform database shall not exceed the cost to the agency of making and providing the copy.
  - (3) Except as provided in subsection (b) of this section, fees collected under this subsection shall be used by the Department for public health purposes.
- (b) The Vital Records Automation Account is established as a nonreverting account within the Department. Five dollars (\$5.00) of each fee collected pursuant to subdivision (a)(1) shall be credited to this Account. The Department shall use the revenue in the Account to fully automate and maintain the vital records system. When funds sufficient to fully automate and maintain the system have accumulated in the Account, fees shall no longer be credited to the Account but shall be used as specified in subdivision (a)(3) of this section."

#### **CHANGES TO COMMUNITY-FOCUSED ELIMINATING HEALTH DISPARITIES INITIATIVE**

**SECTION 10.23.(a)** Funds appropriated in this act from the General Fund to the Department of Health and Human Services for the Community-Focused Eliminating Health Disparities Initiative (CFEHDI) shall be used to provide grants-in-aid to local public health departments, American Indian tribes, and faith-based and community-based organizations to close the gap in the health status of African-Americans, Hispanics/Latinos, and American Indians as compared to the health status of white persons. These grants shall focus on the use of preventive measures to support healthy lifestyles. The areas of focus on health status shall be infant mortality, HIV-AIDS and sexually transmitted infections, cancer, diabetes, and homicides and motor vehicle deaths.

**SECTION 10.23.(b)** Funds appropriated in this act to the Department of Health and Human Services, Division of Public Health, for the CFEHDI shall be awarded as a grant-in-aid to honor the memory of the following recently deceased members of the General Assembly: Bernard Allen, John Hall, Robert Holloman, Howard Hunter, Jeanne Lucas, Vernon Malone, and William Martin. These funds shall be used for concerted efforts to address large gaps in health status among North Carolinians who are African-American, as well as disparities among other minority populations in North Carolina.

**SECTION 10.23.(c)** The Department of Health and Human Services shall report on the following with respect to funds appropriated to the CFEHDI for the 2009-2010 fiscal year. The report shall address the following:

- (1) Which community programs and local health departments received CFEHDI grants.
- (2) The amount of funding each program or local health department received.
- (3) Which of the minority populations were served by the programs or local health departments.
- (4) Which counties were served by the programs or local health departments.
- (5) What activities were planned and implemented by the programs or local health departments to fulfill the community focus of the CFEHDI program.
- (6) How the activities implemented by the programs or local health departments fulfilled the goal of reducing health disparities among minority populations.

The report shall also include specific activities undertaken pursuant to subsection (a) of this section to address large gaps in health status among North Carolinians who are African-American and other minority populations in this State. The Department shall submit the report not later than March 15, 2010, to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

## **FUNDS FOR SCHOOL NURSES**

**SECTION 10.24.(a)** All funds appropriated for the school nurse initiative shall be used to supplement and not supplant other State, local, or federal funds appropriated or allocated for this purpose. Communities shall maintain their current level of effort and funding for school nurses. These funds shall not be used for funding nurses for State agencies. All funds shall be used for direct services.

**SECTION 10.24.(b)** All school nurses funded with State funds shall participate, as needed, in child and family teams.

**SECTION 10.24.(c)** Of the funds appropriated to the Department of Health and Human Services, Division of Public Health, for the 2009-2010 and 2010-2011 fiscal years, the sum of one million dollars (\$1,000,000) in each fiscal year shall be used to hire 20 additional school health nurses, bringing the total number of school nurses supported by DHHS to 232. The distribution of additional school nurses shall be made according to the criteria established by the Department in 2006.

## **AIDS DRUG ASSISTANCE PROGRAM**

**SECTION 10.25.(a)** For the 2009-2010 and 2010-2011 fiscal years, the Department may, within existing Aids Drug Assistance Program (ADAP) resources, adjust the financial eligibility criterion of the ADAP up to an amount not exceeding three hundred percent (300%) of the federal poverty level in order to serve as many eligible North Carolinians living with HIV disease as possible within existing resources plus any new federal resources. If a waiting list develops as a result of the eligibility criterion being raised, the Department shall give first priority to those individuals on the waiting list with income at or below one hundred

twenty-five percent (125%) of the federal poverty level, and second priority to those individuals with income above one hundred twenty-five percent (125%) and at or below two hundred fifty percent (250%) of federal poverty guidelines.

**SECTION 10.25.(b)** The Department of Health and Human Services (DHHS) shall work with the Department of Correction (DOC) to use DOC funds to purchase pharmaceuticals for the treatment of DOC inmates with HIV/AIDS in a manner that allows these funds to be accounted for as State matching funds in DHHS' drawdown of federal Ryan White funds.

## **PUBLIC HEALTH IMPROVEMENT PLAN**

**SECTION 10.26.(a)** The Department of Health and Human Services (DHHS) shall develop a five-year Public Health Improvement Plan (Plan) by March 31, 2010. In developing the Plan the Secretary shall:

- (1) Adopt a list of services and activities performed by local health departments that qualify as core public health functions of statewide significance.
- (2) Adopt a list of performance measures with the intent of improving health status indicators applicable to core public health functions of statewide significance that local health departments (LHDs) must provide.
- (3) Identify a set of health status indicators to be given priority by LHDs.

Under the Plan, all priorities and health status indicators must incorporate as an essential activity the disparity of diseases amongst populations and locales.

**SECTION 10.26.(b)** In order for measurable benefits to be realized through the implementation of the Plan, the Plan shall include the adoption of levels of performance necessary to promote:

- (1) Uniformity across local health departments,
- (2) Best evidence-based services,
- (3) National standards of performance,
- (4) Innovations in public health practice, and
- (5) Reduction of geographic and racial health disparities.

LHDs shall have the flexibility and opportunity to use the resources available to achieve the required performance measures in a manner that best suits the LHD.

**SECTION 10.26.(c)** The Plan will address the need to provide county health departments with financial incentives to encourage and increase local investment in public health functions. County governments shall not supplant existing local funding with State incentive resources. The Secretary may revise the list of activities and performance measures as appropriate, but before doing so, the Secretary shall provide a written explanation of the rationale for the addition, deletion, or revision.

**SECTION 10.26.(d)** In developing the Plan the Secretary shall establish and chair the Public Health Improvement Plan Task Force (Task Force), the members and expertise of which shall include:

- (1) Local health departments,
- (2) Department staff,
- (3) Individuals and entities with expertise in the development of performance measures, accountability, and systems management,
- (4) Experts in development of evidence-based medical guidelines or public health practice guidelines, and
- (5) Individuals and entities that will be affected by the performance measures.

**SECTION 10.26.(e)** The implementation schedule for the Plan shall be as follows:

- (1) July 1, 2009, establish the Task Force to develop the Plan,
- (2) March 31, 2010, submit the Plan to the 2010 Regular Session of the 2009 General Assembly,
- (3) July 1, 2010, implement the Plan, and
- (4) November 15, 2011, and annually thereafter, report on Plan implementation.

**SECTION 10.26.(f)** The Department will identify the programmatic activities and funding in the Division of Public Health associated with the core functions and activities in the Plan. Funds associated with these activities shall be subject to a flexible spending formula adopted by the Department, as follows:

- (1) Beginning in SFY 2010-2011, the flexible spending formula will begin to replace the current spending with a more effective method of funding public health activities at the local level and achieving the results expected.

- (2) The Task Force shall identify a reliable and consistent source of State revenue to fund the flexible spending formula.
- (3) If sufficient additional revenue is available to implement the Plan, a separate set-aside of available funds would be created. This set-aside would be available to contiguous LHDs that seek to address a specific women's health, child health, or adult health disease or chronic condition, and in doing so, choose to merge into a single Local Health District, thus saving administrative dollars to be focused on public health issues.

**SECTION 10.26.(g)** Funds appropriated to the Department for flexible spending shall be distributed to county health departments as follows:

- (1) Each of the county health departments will receive a base amount to be determined by the DHHS.
- (2) The balance of funds in the Flexible Spending Account is to be distributed to the counties on the basis of a formula that takes into consideration the following elements:
  - a. Population,
  - b. Per capita income,
  - c. Rates of:
    1. Infant mortality,
    2. Teenage pregnancy,
    3. Tobacco use,
    4. Cancer,
    5. Heart disease,
    6. Diabetes, and
    7. Stroke.
  - d. Percent of minorities in the county,
  - e. Body Mass Index (BMI) of public school students, and
  - f. Other factors as the Secretary may find necessary to achieve the goals of the Plan.
- (3) The use of the funds by the LHD would reflect the core public health functions. It will be incumbent upon the LHD to use the funds in a manner that assures its achievement of the performance measures adopted by the Secretary.

**SECTION 10.26.(h)** To ensure compliance with Department directives, the Task Force shall consider requiring each county health department to submit to the Secretary such data as the Secretary determines is necessary to allow the Secretary to assess whether the county health department has used the funds in a manner consistent with achieving the performance measures associated with this Plan.

**SECTION 10.26.(i)** Beginning November 15, 2011, and biannually thereafter, the Secretary shall report to the Governor and the General Assembly on:

- (1) The distribution of funds to LHDs,
- (2) The use of these funds by LHDs,
- (3) The specific effect the funding from this Plan has had on:
  - a. LHDs' performance,
  - b. Health status indicators, and
  - c. Health disparities.

The Secretary's initial report will focus on implementation. Subsequent reports will evaluate trends in performance and expenditures.

## **REPLACEMENT OF RECEIPTS FOR CHILD DEVELOPMENT SERVICE AGENCIES**

**SECTION 10.26A.** Receipts earned by the Child Development Service Agencies (CDSAs) from any public or private third-party payer shall be budgeted on a recurring basis to replace reductions in State appropriations to CDSAs.

## **HEALTH INFORMATION TECHNOLOGY**

**SECTION 10.27.(a)** The Department of Health and Human Services, in cooperation with the State Chief Information Officer and the North Carolina Office of Economic Recovery and Investment, shall coordinate health information technology (HIT)

policies and programs within the State of North Carolina. The Department's goal in coordinating State HIT policy and programs shall be to avoid duplication of efforts and to ensure that each State agency, public entity, and private entity that undertakes health information technology activities associated with the American Recovery and Reinvestment Act of 2009 (ARRA) does so within the area of its greatest expertise and technical capability and in a manner that supports coordinated State and national goals, which shall include at least all of the following:

- (1) Ensuring that patient health information is secure and protected, in accordance with applicable law.
- (2) Improving health care quality, reducing medical errors, reducing health disparities, and advancing the delivery of patient-centered medical care.
- (3) Providing appropriate information to guide medical decisions at the time and place of care.
- (4) Ensuring meaningful public input into HIT infrastructure development.
- (5) Improving the coordination of information among hospitals, laboratories, physician offices, and other entities through an effective infrastructure for the secure and authorized exchange of health care information.
- (6) Improving public health services and facilitating early identification and rapid response to public health threats and emergencies, including bioterrorist events and infectious disease outbreaks.
- (7) Facilitating health and clinical research.
- (8) Promoting early detection, prevention, and management of chronic diseases.

**SECTION 10.27.(b)** The Department of Health and Human Services shall establish and direct a HIT management structure that is efficient and transparent and that is compatible with the Office of the National Health Coordinator for Information Technology (National Coordinator) governance mechanism. The HIT management structure shall be responsible for all of the following:

- (1) Developing a State plan for implementing and ensuring compliance with national HIT standards and for the most efficient, effective, and widespread adoption of HIT.
- (2) Ensuring that (i) specific populations are effectively integrated into the State plan, including aging populations, populations requiring mental health services, and populations utilizing the public health system; and (ii) unserved and underserved populations receive priority consideration for HIT support.
- (3) Identifying all HIT stakeholders and soliciting feedback and participation from each stakeholder in the development of the State plan.
- (4) Ensuring that existing HIT capabilities are considered and incorporated into the State plan.
- (5) Identifying and eliminating conflicting HIT efforts where necessary.
- (6) Identifying available resources for the implementation, operation, and maintenance of health information technology, including, but not limited to, the ARRA, with emphasis on identifying resources and available opportunities for North Carolina institutions of higher education.
- (7) Ensuring that the appropriate State entities receive all the necessary information and support to successfully compete for funding included in the ARRA.
- (8) Ensuring that potential State plan participants are aware of HIT policies and programs and the opportunity for improved health information technology.
- (9) Monitoring HIT efforts and initiatives in other States and replicating successful efforts and initiatives in North Carolina.
- (10) Monitoring the development of the National Coordinator's strategic plan and ensuring that all stakeholders are aware of and in compliance with its requirements.
- (11) Monitoring the progress and recommendations of the HIT Policy and Standards Committees and ensuring that all stakeholders remain informed of the Committee's recommendations.
- (12) Monitoring all studies and reports provided to the United States Congress and reporting to the Joint Legislative Oversight Committee on Information



Technology and the Fiscal Research Division on the impact of report recommendations on State efforts to implement coordinated HIT.

**SECTION 10.27.(c)** Beginning October 1, 2009, the Department of Health and Human Services shall provide quarterly written reports on the status of HIT efforts to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division. The report shall include the following:

- (1) Current status of federal HIT initiatives.
- (2) Current status of State HIT efforts and initiatives among both public and private entities.
- (3) A breakdown of current public and private funding sources and dollar amounts for State HIT initiatives.
- (4) Department efforts to coordinate HIT initiatives within the State and any obstacles or impediments to coordination.
- (5) HIT research efforts being conducted within the State and sources of funding for research efforts.
- (6) Opportunities for stakeholders to participate in HIT funding and other efforts and initiatives during the next quarter.
- (7) Issues associated with the implementation of HIT in North Carolina and recommended solutions to these issues.

### **HOSPITAL-ACQUIRED INFECTIONS**

**SECTION 10.28.** The Department of Health and Human Services shall apply for federal funds that are available through the American Recovery and Reinvestment Act of 2009, P.L. 111-5, to implement a mandatory statewide hospital-acquired infections surveillance and reporting system, as recommended by the Joint Study Committee on Hospital Infection Control and Disclosure.

### **MEN'S HEALTH**

**SECTION 10.29.** The Department of Health and Human Services, Division of Public Health, shall use funds available to delegate to the Chronic Disease Prevention and Control Office the responsibility for ensuring attention to the prevention of disease and improvement in the quality of life for men over their entire lifespan. The Department shall develop strategies for achieving these goals, which shall include (i) developing a strategic plan to improve health care services, (ii) building public health awareness, and (iii) developing initiatives within existing programs.

### **IMMUNIZATION CHANGES**

**SECTION 10.29A.(a)** G.S. 130A-153(a) reads as rewritten:

"(a) The required immunization may be obtained from a physician licensed to practice medicine or from a local health department. Local health departments shall administer required and State-supplied immunizations at no cost to the patient, patients who are uninsured or underinsured and have family incomes below two hundred percent (200%) of the federal poverty level. ~~The Department shall provide the vaccines for use by the local health departments.~~ A local health department may redistribute these vaccines only in accordance with the rules of the Commission."

**SECTION 10.29A.(b)** G.S. 130A-433(b) reads as rewritten:

"(b) ~~A~~ Except as otherwise provided in G.S. 130A-153(a), a health care provider who receives vaccine from the State may charge no more than a reasonable fee established by the Commission for Public Health for the administration of the vaccine. ~~Vaccines provided by the State to local health departments for administration shall be administered at no cost to the patient.~~"

### **FACILITATION OF ENROLLMENT AND REENROLLMENT OF ELIGIBLE CHILDREN IN MEDICAID AND NC HEALTH CHOICE**

**SECTION 10.30.** The Department of Health and Human Services shall increase its efforts to simplify the eligibility determination and recertification process to facilitate the enrollment and reenrollment of eligible Medicaid and NC Health Choice individuals. The Department shall also:

- (1) Explore various opportunities through public awareness campaigns and enlisting community organizations to alert families of the opportunities of Medicaid and NC Health Choice to provide preventive health care to their children; and
- (2) Pursue opportunities in the federal Children's Health Insurance Program Reauthorization Act (CHIPRA) to enhance outreach efforts and enrollment for children in Medicaid and NC Health Choice. These enhancements include funding for outreach and enrollment activities and implementation of the "Express Lane" option that uses agencies that determine eligibility for TANF, IV-D SNAP, Head Start, and School Lunch programs to enroll children.

The Department shall also submit a Medicaid State Plan Amendment to take advantage of recent federal legislation (CHIPRA) allowing states to provide medical assistance to children and pregnant women who are lawfully residing in the United States.

## **NC HEALTH CHOICE TRANSITION**

**SECTION 10.31.(a)** The Secretary of the Department of Health and Human Services shall develop and implement a plan for assuming administrative responsibility for the North Carolina Health Choice for Children program by transitioning all administrative oversight activities from the Executive Administrator and Board of Trustees of the State Health Plan for Teachers and State Employees to the Division of Medical Assistance. The transition of all administrative oversight from the State Health Plan to the Division of Medical Assistance shall be completed not later than July 1, 2010. The Secretary shall report to the Joint Legislative Health Care Oversight Committee and the Committee on Employee Hospital and Medical Benefits at least 30 days prior to effecting the transition of the responsibilities for the administration from the Executive Administrator and Board of Trustees of the State Health Plan for Teachers and State Employees to the Department.

**SECTION 10.31.(b)** In consultation with the Department of Health and Human Services, Division of Medical Assistance, and other appropriate organizations, the Office of State Budget and Management shall conduct an independent analysis of the cost to determine appropriate staffing levels to manage and implement the transition of NC Health Choice from the State Health Plan to the Division to ensure that the transition of NC Health Choice occurs with minimal disruption and that the Division has adequate staffing and an organizational structure that fits with its existing structure. The Office of State Budget and Management shall report with staffing recommendations by March 1, 2010, to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division.

## **NC HEALTH CHOICE/PROCEDURES FOR CHANGING MEDICAL POLICY**

**SECTION 10.32.** Chapter 108A of the General Statutes is amended by adding a new section to read:

**"§ 108A-54.3. Procedures for changing medical policy.**

The Department shall develop, amend, and adopt medical coverage policy in accordance with the following:

- (1) During the development of new medical coverage policy or amendment to existing medical coverage policy applicable to the North Carolina Health Choice Program for Children, consult with and seek the advice of the Physician Advisory Group and other organizations the Secretary deems appropriate. The Secretary shall also consult with and seek the advice of officials of the professional societies or associations representing providers who are affected by the new medical coverage policy or amendments to existing medical coverage policy.
- (2) At least 45 days prior to the adoption of new or amended medical coverage policy, the Department shall:
  - a. Publish the proposed new or amended medical coverage policy on the Department's Web site;
  - b. Notify all North Carolina Health Choice Program for Children providers of the proposed, new, or amended policy; and

- c. Upon request, provide persons copies of the proposed medical coverage policy.
- (3) During the 45-day period immediately following publication of the proposed new or amended medical coverage policy, accept oral and written comments on the proposed new or amended policy.
- (4) If, following the comment period, the proposed new or amended medical coverage policy is modified, then the Department shall do all of the following, at least 15 days prior to its adoption:
  - a. Notify all North Carolina Health Choice Program for Children providers of the proposed policy.
  - b. Upon request, provide persons notice of amendments to the proposed policy.
  - c. Accept additional oral or written comments during this 15-day period."

### **NC HEALTH CHOICE MEDICAL POLICY**

**SECTION 10.33.** Unless required for compliance with federal law, the Department shall not change medical policy affecting the amount, sufficiency, duration, and scope of NC Health Choice health care services and who may provide services until the Division of Medical Assistance has prepared a five-year fiscal analysis documenting the increased cost of the proposed change in medical policy and submitted it for Departmental review. If the fiscal impact indicated by the fiscal analysis for any proposed medical policy change exceeds one million dollars (\$1,000,000) in total requirements for a given fiscal year, then the Department shall submit the proposed medical policy change with the fiscal analysis to the Office of State Budget and Management and the Fiscal Research Division. The Department shall not implement any proposed medical policy change exceeding one million dollars (\$1,000,000) in total requirements for a given fiscal year unless the source of State funding is identified and approved by the Office of State Budget and Management. For medical policy changes exceeding one million dollars (\$1,000,000) in total requirements for a given fiscal year that are required for compliance with federal law, the Department shall submit the proposed medical policy or policy interpretation change with a five-year fiscal analysis to the Office of State Budget and Management prior to implementing the change. The Department shall provide the Office of State Budget and Management and the Fiscal Research Division a quarterly report itemizing all medical policy changes with total requirements of less than one million dollars (\$1,000,000).

### **NC HEALTH CHOICE ENROLLMENT**

**SECTION 10.34.** The Department of Health and Human Services may, in the NC Health Choice Program for the 2009-2010 fiscal year, allow enrollment to grow by not more than 9,098 children.

### **NCHC FUNDS REDUCTION/CCNC**

**SECTION 10.35.(a)** Effective July 1, 2009, G.S. 108A-70.21(b) reads as rewritten:  
 "(b) Benefits. – Except as otherwise provided for eligibility, fees, deductibles, copayments, and other cost sharing charges, health benefits coverage provided to children eligible under the Program shall be equivalent to coverage provided for dependents under the Predecessor Plan.

In addition to the benefits provided under the Predecessor Plan, the following services and supplies are covered under the Health Insurance Program for Children established under this Part:

- (1) Oral examinations, teeth cleaning, and topical fluoride treatments twice during a 12-month period, full mouth X-rays once every 60 months, supplemental bitewing X-rays showing the back of the teeth once during a 12-month period, sealants, extractions, other than impacted teeth or wisdom teeth, therapeutic pulpotomies, space maintainers, root canal therapy for permanent anterior teeth and permanent first molars, prefabricated stainless steel crowns, and routine fillings of amalgam or other tooth colored filling material to restore diseased teeth.

- (1a) Orthognathic surgery to correct functionally impairing malocclusions when orthodontics was approved and initiated while the child was covered by Medicaid and the need for orthognathic surgery was documented in the orthodontic treatment plan.
- (2) Vision: Scheduled routine eye examinations once every 12 months, eyeglass lenses or contact lenses once every 12 months, routine replacement of eyeglass frames once every 24 months, and optical supplies and solutions when needed. Optical services, supplies, and solutions must be obtained from licensed or certified ophthalmologists, optometrists, or optical dispensing laboratories. Eyeglass lenses are limited to single vision, bifocal, trifocal, or other complex lenses necessary for a Plan enrollee's visual welfare. Coverage for oversized lenses and frames, designer frames, photosensitive lenses, tinted contact lenses, blended lenses, progressive multifocal lenses, coated lenses, and laminated lenses is limited to the coverage for single vision, bifocal, trifocal, or other complex lenses provided by this subsection. Eyeglass frames are limited to those made of zylonite, metal, or a combination of zylonite and metal. All visual aids covered by this subsection require prior approval. Upon prior approval refractions may be covered more often than once every 12 months.
- (3) Hearing: Auditory diagnostic testing services and hearing aids and accessories when provided by a licensed or certified audiologist, otolaryngologist, or other approved hearing aid specialist. Prior approval is required for hearing aids, accessories, earmolds, repairs, loaners, and rental aids.
- (4) Over the counter medications: Selected over the counter medications provided the medication is covered under the State Medical Assistance Plan. Coverage shall be subject to the same policies and approvals as required under the Medicaid program.
- (5) Routine diagnostic examinations and tests: annual routine diagnostic examinations and tests, including x-rays, blood and blood pressure checks, urine tests, tuberculosis tests, and general health check-ups that are medically necessary for the maintenance and improvement of individual health are covered.

No benefits are to be provided for services and materials under this subsection that do not meet the standards accepted by the American Dental Association.

The Department shall provide services to children enrolled in the NC Health Choice Program through Community Care of North Carolina (CCNC) and shall pay Community Care of North Carolina providers for these services as allowed under Medicaid. The Department shall pay for these services only if sufficient information is available to the Department for utilization management of the services provided through CCNC."

**SECTION 10.35.(b)** The Department of Health and Human Services, Division of Medical Assistance, shall reduce or eliminate funding for per member, per month fees paid to Community Care of North Carolina (CCNC) if sufficient information is not available to the Department for utilization management of the provider services.

## **REPORT ON DHHS POSITION ELIMINATIONS**

**SECTION 10.35A.** The Secretary of the Department of Health and Human Services may achieve the savings from position eliminations by reducing a lesser number of positions than prescribed in the money report for Department of Health and Human Services. If the Secretary determines that the designated positions targeted for elimination in the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services jeopardize services, patient safety, quality of patient care, certification or accreditation, the Secretary may reduce other operating expense to meet these savings. The Secretary shall report on the number of positions eliminated in the budget for the 2009-2010 fiscal year. The report shall include the total number of positions, including positions filled and vacant positions, and savings generated through salary and fringe benefits and any severance paid out. The Secretary shall submit the report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division on or before March 1, 2010.

## **RURAL HEALTH LOAN REPAYMENTS**

**SECTION 10.35B.** The Department of Health and Human Services, Office of Rural Health and Community Care, shall use funds appropriated in this act for loan repayment to medical, dental, and psychiatric providers in communities and State hospitals to combine all loan repayment programs in order to achieve efficient and effective management of the programs. The loan repayment programs to be combined under this section are (i) the Physician Loan Repayment Program, (ii) the Psychiatric Loan Repayment Program, and (iii) the Loan Repayment Initiative at State Facilities.

## **COMMUNITY CARE OF NORTH CAROLINA**

**SECTION 10.36.(a)** Given the primary care case management foundation established by Community Care of North Carolina (CCNC), the Department shall build upon that foundation to ensure quality care and cost control of care provided to Medicaid patients.

**SECTION 10.36.(b)** The Department shall contract with CCNC participating physicians and local CCNC networks to manage the care of Medicaid recipients through a per member per month reimbursement.

**SECTION 10.36.(c)** The Department shall ensure that, through CCNC participating physicians and networks, the Department is striving to follow tenets adapted from the National Committee of Quality Assurance's (NCQA) national measures for patient-centered Medical Homes Models. The Department shall consult with local CCNC networks to achieve all of the following:

- (1) Identify priority diseases, conditions, and patients for care management.
- (2) Develop, adopt, and implement protocols for consistent and effective care management of those diseases, conditions, and patients.
- (3) Identify data elements necessary for effective delivery and management of medical care and care management services.
- (4) Develop and implement a system to measure, analyze, and report clinical performance and service performance by physicians and networks.

**SECTION 10.36.(d)** Consistent with subdivision (1) of subsection (c) of this section, the Department shall (i) identify baseline data on priority diseases, conditions, patients, and populations, and on physicians and networks; (ii) identify patient, physician, and network performance measures, and (iii) develop and implement data systems to gather, analyze, and report on those performance measures. The Department shall begin work immediately to implement this subsection.

**SECTION 10.36.(e)** The Department shall report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division no later than December 31, 2009, on the performance measures adopted pursuant to subsection (d) of this section. Beginning July 1, 2010, and every six months thereafter, the Department shall submit a report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division evaluating the performance of each of the 14 CCNC Networks based on the performance measures adopted pursuant to subsection (d) of this section.

**SECTION 10.36.(f)** The Department shall conduct a Request for Proposal process to solicit bids from qualified outside entities with proven experience in conducting actuarial and health care studies and evaluations to annually report on the Medicaid cost savings achieved by the CCNC networks during a 12-month period. Beginning December 31, 2010, and every year thereafter, the Department shall submit a report on the Medicaid cost savings achieved by the CCNC networks, which shall include children, adults, and the aged, blind, and disabled, to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

## **COMMUNITY HEALTH CENTER CHANGES**

**SECTION 10.37.** Of the funds appropriated in this act for Community Health Grants, the sum of six million eight hundred sixty thousand dollars (\$6,860,000) in recurring funds for the 2009-2010 fiscal year and the sum of six million eight hundred sixty thousand dollars (\$6,860,000) for the 2010-2011 fiscal year shall be allocated as grants on a competitive

basis to rural health centers, free clinics, public health departments, school-based health centers, qualified health centers, and other nonprofit organizations that provide primary care and preventive health services to uninsured and indigent persons.

#### **LIABILITY INSURANCE**

**SECTION 10.38.(a)** The Secretary of the Department of Health and Human Services, the Secretary of the Department of Environment and Natural Resources, and the Secretary of the Department of Correction may provide medical liability coverage not to exceed one million dollars (\$1,000,000) per incident on behalf of employees of the Departments licensed to practice medicine or dentistry, on behalf of all licensed physicians who are faculty members of The University of North Carolina who work on contract for the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services for incidents that occur in Division programs, and on behalf of physicians in all residency training programs from The University of North Carolina who are in training at institutions operated by the Department of Health and Human Services. This coverage may include commercial insurance or self-insurance and shall cover these individuals for their acts or omissions only while they are engaged in providing medical and dental services pursuant to their State employment or training.

**SECTION 10.38.(b)** The coverage provided under this section shall not cover any individual for any act or omission that the individual knows or reasonably should know constitutes a violation of the applicable criminal laws of any state or the United States or that arises out of any sexual, fraudulent, criminal, or malicious act or out of any act amounting to willful or wanton negligence.

**SECTION 10.38.(c)** The coverage provided pursuant to this section shall not require any additional appropriations and shall not apply to any individual providing contractual service to the Department of Health and Human Services, the Department of Environment and Natural Resources, or the Department of Correction, with the exception that coverage may include physicians in all residency training programs from The University of North Carolina who are in training at institutions operated by the Department of Health and Human Services and licensed physicians who are faculty members of The University of North Carolina who work for the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services.

#### **DHHS SPECIAL APPROPRIATIONS**

**SECTION 10.39.** Of the funds appropriated in this act to the Department of Health and Human Services:

- (1) \$100,000 for the 2009-2010 fiscal year shall be allocated to support Special Olympics; and
- (2) \$300,000 for the 2009-2010 fiscal year shall be allocated to support services provided by the Jim Catfish Hunter Chapter of the ALS Association. These funds shall be expended only for services provided within North Carolina.

#### **DHHS PAYROLL DEDUCTION FOR CHILD CARE SERVICES**

**SECTION 10.40.** Subject to rules adopted by the State Controller, an employee of the Department of Health and Human Services may authorize, in writing, the periodic deduction from the employee's salary or wages for employment by the State, a designated lump sum to be paid to satisfy the cost of services received for child care provided by the Department.

#### **MEDICAID MANAGEMENT INFORMATION SYSTEM (MMIS) FUNDS/IMPLEMENTATION OF MMIS**

**SECTION 10.41.(a)** Of the funds appropriated in this act to the Department of Health and Human Services (Department), the sum of ten million seven hundred sixty-five thousand one hundred fifty-three dollars (\$10,765,153) for fiscal year 2009-2010 and the sum of eight million sixty-four thousand one hundred twenty-eight dollars (\$8,064,128) for fiscal year 2010-2011 shall be (i) deposited to the Department's information technology budget code and (ii) used to match federal funds for the procurement, design, development, and implementation of the new Medicaid Management Information System (MMIS) and to fund the central management of the project. The Department shall utilize all prior year earned revenues

received for the MMIS. In the event that the Department does not receive prior year earned revenues in the amounts authorized by this section, the Department is authorized, with approval of the Office of State Budget and Management, to utilize other overrealized receipts and funds appropriated to the Department to achieve the level of funding specified in this section for the MMIS.

**SECTION 10.41.(b)** The Department shall make full development of the replacement MMIS a top priority. During the development and implementation of MMIS, the Department shall develop plans to ensure the timely and effective implementation of enhancements to the system to provide the following capabilities:

- (1) Receiving and tracking premiums or other payments required by law.
- (2) Compatibility with the administration of the Health Information System.

The Department shall make every effort to expedite the implementation of the enhancements. The Office of Information Technology Services shall work in cooperation with the Department to ensure the timely and effective implementation of the MMIS and enhancements. The contract between the Department and the contract vendor shall contain an explicit provision requiring that the MMIS have the capability to fully implement the administration of NC Health Choice, NC Kids' Care, Ticket to Work, Families Pay Part of the Cost of Services under the CAP-MR/DD, CAP Children's Program, and all relevant Medicaid waivers and the Medicare 646 waiver as it applies to Medicaid eligibles. The Department must have detailed cost information for each requirement before signing the contract. Any contract between the Department and a vendor for the MMIS that does not contain the explicit provision required under this subsection is void on its face. Notwithstanding any other provision of law to the contrary, the Secretary of the Department does not have the authority to sign a contract for the MMIS if the contract does not contain the explicit provision required under this section.

**SECTION 10.41.(c)** Notwithstanding G.S. 114-2.3, the Department shall engage the services of private counsel with the pertinent information technology and computer law expertise to review requests for proposals and to negotiate and review contracts associated with MMIS. The counsel engaged by the Department shall review the MMIS contract between the Department and the vendor to ensure that the requirements of subsection (a) of this section are met in their entirety.

**SECTION 10.41.(d)** The Department shall develop a comprehensive schedule for the development and implementation of the MMIS that fully incorporates federal and State project management and review requirements. The Department shall ensure that the schedule is as accurate as possible. Any changes to the design, development, and implementation schedule shall be reported as part of the Department's quarterly MMIS reporting requirements. The Department shall submit the schedule to the Chairs of the House of Representatives Committee on Appropriations and the House of Representatives Subcommittee on Health and Human Services, the Chairs of the Senate Committee on Appropriations and the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division. Any change to key milestones in either schedule shall be immediately reported to the Chairs of the House of Representatives Committee on Appropriations and the House of Representatives Subcommittee on Health and Human Services, the Chairs of the Senate Committee on Appropriations and the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division with a full explanation of the reason for the change.

**SECTION 10.41.(e)** Beginning July 1, 2009, the Department shall make quarterly reports on changes in the functionality and projected costs of the MMIS. The first quarterly submission shall contain a final report on the contract award to include total costs and functionality of the MMIS. Each report shall be made to the Chairs of the House of Representatives Committee on Appropriations and the House of Representatives Subcommittee on Health and Human Services, the Chairs of the Senate Committee on Appropriations and the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division. A copy of the final report on the contract award also shall be submitted to the Joint Legislative Commission on Governmental Operations.

**SECTION 10.41.(f)** Upon initiation of the NC MMIS Program Reporting and Analytics Project and the Division of Health Services Regulation Project, the Department shall submit all reports regarding functionality, schedule, and cost in the next regular cycle of reporting identified in subsections (d) and (e) of this section. The Department shall ensure that the solution developed in the Reporting and Analytics Project supports the capability, in its initial implementation, to interface with the North Carolina Teachers' and State Employees'

Health Plan. The costs for this capability shall be negotiated prior to the award of the Reporting and Analytics Project contract. The Reporting and Analytics Project solution must be completed simultaneously with the replacement MMIS.

## **NORTH CAROLINA FAMILIES ACCESSING SERVICES THROUGH TECHNOLOGY (NC FAST) FUNDS**

**SECTION 10.42.** The sum of eighteen million three hundred twenty-seven thousand four hundred seventy-eight dollars (\$18,327,478) is appropriated from Budget Code 24441, Fund Code 2006, to the Department of Health and Human Services, Division of Central Management Services, for the 2009-2010 fiscal year. These funds shall be used for the development and implementation of North Carolina Families Accessing Services Through Technology (NC FAST). Funds will be placed in the Department's information technology budget code and will match federal funds for project implementation.

## **PROGRAM ON PREVENTION OF ABUSE AND NEGLECT**

**SECTION 10.43.(a)** The Children's Trust Fund, a program on prevention of abuse and neglect, is transferred from the Department of Public Instruction to the Division of Social Services in the Department of Health and Human Services, as if by a Type I transfer as defined in G.S. 143A-6, with all the elements of such a transfer.

**SECTION 10.43.(b)** G.S. 7B-1301 reads as rewritten:

### **"§ 7B-1301. Program on Prevention of Abuse and Neglect.**

(a) ~~The State Board of Education~~ Department of Health and Human Services, through the ~~Department of Public Instruction~~ Division of Social Services, shall implement the Program on Prevention of Abuse and Neglect. ~~The Department of Public Instruction~~ Division of Social Services ~~subject to the approval of the State Board of Education~~, shall provide the staff and support services for implementing this program.

(b) In order to carry out the purposes of this Article:

- (1) ~~The Department of Public Instruction shall review applications and make recommendations to the State Board of Education concerning the awarding of contracts under this Article.~~
- (2) ~~The State Board of Education~~ Division of Social Services shall review applications and contract with public or private nonprofit organizations, agencies, schools, or with qualified individuals to operate community-based educational and service programs designed to prevent the occurrence of abuse and neglect. Every contract entered into by the ~~State Board of Education~~ Division of Social Services shall contain provisions that at least twenty-five percent (25%) of the total funding required for a program be provided by the administering organization in the form of in-kind or other services and that a mechanism for evaluation of services provided under the contract be included in the services to be performed. In addition, every proposal to the ~~Department of Public Instruction~~ Division of Social Services for funding under this Article shall include assurances that the proposal has been forwarded to the local department of social services for comment so that the ~~Department of Public Instruction~~ Division of Social Services may consider coordination and duplication of effort on the local level as criteria ~~in making recommendations to the State Board of Education level.~~
- (3) ~~The State Board of Education with the assistance of the Department of Public Instruction~~ Division of Social Services shall develop appropriate guidelines and criteria for awarding contracts under this Article. These criteria shall include, but are not limited to: documentation of need within the proposed geographical impact area; diversity of geographical areas of programs funded under this Article; demonstrated effectiveness of the proposed strategy or program for preventing abuse and neglect; reasonableness of implementation plan for achieving stated objectives; utilization of community resources including volunteers; provision for an evaluation component that will provide outcome data; plan for dissemination of the program for implementation in other communities; and potential for future funding from private sources.



- (4) ~~The State Board of Education with the assistance of the Department of Public Instruction~~ Division of Social Services shall develop guidelines for regular monitoring of contracts awarded under this Article in order to maximize the investments in prevention programs by the Children's Trust Fund and to establish appropriate accountability measures for administration of contracts.
- (5) ~~The State Board of Education~~ Division of Social Services shall develop a State plan for the prevention of abuse and neglect for submission to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(c) To assist in implementing this Article, the ~~State Board of Education~~ Division of Social Services may accept contributions, grants, or gifts in cash or otherwise from persons, associations, or corporations. All monies received by the ~~State Board of Education~~ Division of Social Services from contributions, grants, or gifts and not through appropriation by the General Assembly shall be deposited in the Children's Trust Fund. Disbursements of the funds shall be on the authorization of the ~~State Board of Education or that Board's duly authorized representative~~ Department of Health and Human Services. In order to maintain an effective expenditure and revenue control, the funds are subject in all respects to State law and regulations, but no appropriation is required to permit expenditure of the funds.

(d) Programs contracted for under this Article are intended to prevent abuse and neglect of juveniles. Abuse and neglect prevention programs are defined to be those programs and services which impact on juveniles and families before any substantiated incident of abuse or neglect has occurred. These programs may include, but are not limited to:

- (1) Community-based educational programs on prenatal care, perinatal bonding, child development, basic child care, care of children with special needs, and coping with family stress; and
- (2) Community-based programs relating to crisis care, aid to parents, and support groups for parents and their children experiencing stress within the family unit.

(e) No more than twenty percent (20%) of each year's total awards may be utilized for funding State-level programs to coordinate community-based programs."

**SECTION 10.43.(c)** G.S. 7B-1302 reads as rewritten:

**"§ 7B-1302. Children's Trust Fund.**

(a) There is established a fund to be known as the "Children's Trust Fund," in the Department of State Treasurer, which shall be funded by a portion of the marriage license fee under G.S. 161-11.1 and a portion of the special license plate fee under G.S. 20-81.12. The money in the Fund shall be used by the ~~State Board of Education~~ Division of Social Services to fund abuse and neglect prevention programs so authorized by this Article.

(b) The Department of ~~Public Instruction~~ Health and Human Services shall report annually on revenues and expenditures of the Children's Trust Fund to the Joint Legislative Commission on Governmental Operations."

**INTENSIVE FAMILY PRESERVATION SERVICES FUNDING AND PERFORMANCE ENHANCEMENTS**

**SECTION 10.44.(a)** Notwithstanding the provisions of G.S. 143B-150.6, the Intensive Family Preservation Services (IFPS) Program shall provide intensive services to children and families in cases of abuse, neglect, and dependency where a child is at imminent risk of removal from the home and to children and families in cases of abuse where a child is not at imminent risk of removal. The Program shall be developed and implemented statewide on a regional basis. The IFPS shall ensure the application of standardized assessment criteria for determining imminent risk and clear criteria for determining out-of-home placement.

**SECTION 10.44.(b)** The Department of Health and Human Services shall require that any program or entity that receives State, federal, or other funding for the purpose of Intensive Family Preservation Services shall provide information and data that allows for:

- (1) An established follow-up system with a minimum of six months of follow-up services.
- (2) Detailed information on the specific interventions applied, including utilization indicators and performance measurement.
- (3) Cost-benefit data.

- (4) Data on long-term benefits associated with Intensive Family Preservation Services. This data shall be obtained by tracking families through the intervention process.
- (5) The number of families remaining intact and the associated interventions while in IFPS and 12 months thereafter.
- (6) The number and percentage by race of children who received Intensive Family Preservation Services compared to the ratio of their distribution in the general population involved with Child Protective Services.

**SECTION 10.44.(c)** The Department shall establish performance-based funding protocol and shall only provide funding to those programs and entities providing the required information specified in subsection (b) of this section. The amount of funding shall be based on the individual performance of each program.

## **FOSTER CARE AND ADOPTION ASSISTANCE PAYMENTS**

**SECTION 10.45.(a)** The maximum rates for State participation in the foster care assistance program are established on a graduated scale as follows:

- (1) \$475.00 per child per month for children aged birth through 5;
- (2) \$581.00 per child per month for children aged 6 through 12; and
- (3) \$634.00 per child per month for children aged 13 through 18.

**SECTION 10.45.(b)** The maximum rates for the State adoption assistance program are established consistent with the foster care rates as follows:

- (1) \$475.00 per child per month for children aged birth through 5;
- (2) \$581.00 per child per month for children aged 6 through 12; and
- (3) \$634.00 per child per month for children aged 13 through 18.

**SECTION 10.45.(c)** In addition to providing board payments to foster and adoptive families of HIV-infected children, as prescribed in Section 23.28 of Chapter 324 of the 1995 Session Laws, any additional funds remaining that were appropriated for this purpose shall be used to provide medical training in avoiding HIV transmission in the home.

**SECTION 10.45.(d)** The maximum rates for the State participation in HIV foster care and adoption assistance are established on a graduated scale as follows:

- (1) \$800.00 per child per month with indeterminate HIV status;
- (2) \$1,000 per child per month confirmed HIV-infected, asymptomatic;
- (3) \$1,200 per child per month confirmed HIV-infected, symptomatic; and
- (4) \$1,600 per child per month terminally ill with complex care needs.

**SECTION 10.45.(e)** The State and a county participating in foster care and adoption assistance shall each contribute fifty percent (50%) of the nonfederal share of the cost of care for a child placed by a county department of social services or child placing agency in a family foster home or residential child care facility. A county shall be held harmless from contributing fifty percent (50%) of the nonfederal share of the cost for a child placed in a family foster home or residential child care facility under an agreement with that provider as of October 31, 2008, until the child leaves foster care or experiences a placement change.

**SECTION 10.45.(f)** The Department of Health and Human Services may establish foster care and adoption assistance rates based on the United States Department of Agriculture (USDA) "Expenditures on Children by Families" index subject to State appropriations for each fiscal year.

## **CHILD SUPPORT PROGRAM/ENHANCED STANDARDS**

**SECTION 10.46.** G.S. 110-129.1(a) reads as rewritten:

"(a) In addition to other powers and duties conferred upon the Department of Health and Human Services, Child Support Enforcement Program, by this Chapter or other State law, the Department shall have the following powers and duties:

- ...
- (9) Implement and maintain performance standards for each of the State and county child support enforcement offices across the State. The performance standards shall include the following:
    - a. Cost per collections.
    - b. Consumer satisfaction.
    - c. Paternity establishments.
    - d. Administrative costs.

- e. Orders established.
- f. Collections on arrearages.
- g. Location of absent parents.
- h. Other related performance measures.

The Department shall monitor the performance of each office and shall implement a system of reporting that allows each local office to review its performance as well as the performance of other local offices. The Department shall publish an annual performance report that includes the statewide and local office performance of each child support office."

## **ELIMINATE STATE FUNDING FOR CHILD SUPPORT OFFICES**

**SECTION 10.46A.(a)** G.S. 110-141 reads as rewritten:

### **"§ 110-141. Effectuation of intent of Article.**

The North Carolina Department of Health and Human Services shall supervise the administration of ~~this the~~ program in accordance with federal law and shall cause the provisions of this Article to be effectuated and to secure child support from absent, deserting, abandoning and nonsupporting parents.

~~Effective July 1, 1986, the entity, whether the board of county commissioners or the Department of Health and Human Services, that is administering, or providing for the administration of, this program in each county on June 30, 1986, shall continue to administer, or provide for the administration of, this program in that county, with one exception. If a county program is being administered by the Department of Health and Human Services on June 30, 1986, and if the board of county commissioners of this county desires on or after that date to assume responsibility for the administration of the program, the board of county commissioners shall notify the Department of Health and Human Services between July 1 and September 1 of the current fiscal year. The obligations of the board of county commissioners to assume responsibility for the administration of the program shall not commence prior to July 1 of the subsequent fiscal year. Until that time, it is the responsibility of the Department of Health and Human Services to administer or provide for the administration of the program in the county.~~

Effective July 1, 2010, each child support enforcement program being administered by the Department of Health and Human Services on behalf of counties shall be administered, or the administration provided for, by the board of county commissioners of those counties. Until July 1, 2010, it shall be the responsibility of the Department of Health and Human Services to administer or provide for the administration of the program in those counties.

A county may negotiate alternative arrangements to the procedure outlined in G.S. 110-130 for designating a local person or agency to administer the provisions of this Article in that county."

**SECTION 10.46A.(b)** Counties affected by this section shall submit plans to the Department of Health and Human Services, Division of Social Services, no later than January 1, 2010, outlining the proposed operation of child support enforcement programs. The Division shall establish the criteria to be included within county plans for operations and review submitted plans to ensure the appropriate transitioning of administrative and programmatic responsibility.

## **CHILD CARING INSTITUTIONS**

**SECTION 10.47.** Until the Social Services Commission adopts rules setting standardized rates for child caring institutions as authorized under G.S. 143B-153(8), the maximum reimbursement for child caring institutions shall not exceed the rate established for the specific child caring institution by the Department of Health and Human Services, Office of the Controller. In determining the maximum reimbursement, the State shall include county and IV-E reimbursements.

## **SPECIAL CHILDREN ADOPTION FUND**

**SECTION 10.48.** Part 4 of Article 2 of Chapter 108A of the General Statutes is amended by adding the following new section to read:

### **"§ 108A-50.2. Special Children Adoption Fund.**

(a) Funds appropriated by the General Assembly to the Department of Health and Human Services, Division of Social Services, for the Special Children Adoption Fund shall be

used as provided in this section. The Division of Social Services of the Department of Health and Human Services, in consultation with the North Carolina Association of County Directors of Social Services and representatives of licensed private adoption agencies, shall develop guidelines for the awarding of funds to licensed public and private adoption agencies upon the adoption of children described in G.S. 108A-50 and in foster care. Payments received from the Special Children Adoption Fund by participating agencies shall be used exclusively to enhance the adoption services. No local match shall be required as a condition for receipt of these funds. In accordance with State rules for allowable costs, the Special Children Adoption Fund may be used for post-adoption services for families whose income exceeds two hundred percent (200%) of the federal poverty level.

(b) Of the total funds appropriated for the Special Children Adoption Fund each year, twenty percent (20%) of the total funds available shall be reserved for payment to participating private adoption agencies. If the funds reserved in this subsection for payments to private agencies have not been spent on or before March 31 of each State fiscal year, the Division of Social Services may reallocate those funds, in accordance with this section, to other participating adoption agencies.

(c) The Division of Social Services shall monitor the total expenditures in the Special Children Adoption Fund and redistribute unspent funds to ensure that the funds are used in accordance with the guidelines established in subsection (a) of this section."

#### **LIMITATION ON STATE ABORTION FUND**

**SECTION 10.49.** The limitations on funding of the performance of abortion established in Section 23.27 of Chapter 324 of the 1995 Session Laws, as amended by Section 23.8A of Chapter 507 of the 1995 Session Laws, apply to the 2009-2010 and 2010-2011 fiscal years.

#### **CHILD WELFARE POSTSECONDARY SUPPORT PROGRAM/USE OF ESCHEAT FUND**

**SECTION 10.50.(a)** There is appropriated from the Escheat Fund income to the Department of Health and Human Services the sum of three million one hundred sixty-eight thousand two hundred fifty dollars (\$3,168,250) for the 2009-2010 fiscal year. These funds shall be used to support the child welfare postsecondary support program for the educational needs of foster youth aging out of the foster care system and special needs children adopted from foster care after age 12 by providing assistance with the "cost of attendance" as that term is defined in 20 U.S.C. § 10871l. The Department shall collaborate with the State Education Assistance Authority to develop policies and procedures for the distribution of these funds.

If the interest income generated from the Escheat Fund is less than the amounts referenced in this section, the difference may be taken from the Escheat Fund principal to reach the appropriations referenced in this section; however, under no circumstances shall the Escheat Fund principal be reduced below the sum required in G.S. 116B-6(f).

Funds appropriated by this subsection shall be allocated by the State Education Assistance Authority.

The purpose for which funds are appropriated under this section is in addition to other purposes for which Escheat Fund income is distributed under G.S. 116B-7 and shall not be construed to otherwise affect the distribution of funds under G.S. 116B-7.

**SECTION 10.50.(a1)** Of the funds appropriated from the General Fund to the Department of Health and Human Services, the sum of three million one hundred sixty-eight thousand two hundred fifty dollars (\$3,168,250) for the 2010-2011 fiscal year shall be used to support the child welfare postsecondary support program for the educational needs of foster youth aging out of the foster care system and special needs children adopted from foster care after age 12 by providing assistance with the "cost of attendance" as that term is defined in 20 U.S.C. § 10871l.

Funds appropriated by this subsection shall be allocated by the State Education Assistance Authority.

**SECTION 10.50.(b)** Of the funds appropriated from the General Fund to the Department of Health and Human Services the sum of fifty thousand dollars (\$50,000) for the 2009-2010 fiscal year and the sum of fifty thousand dollars (\$50,000) for the 2010-2011 fiscal year shall be allocated to the North Carolina State Education Assistance Authority (SEAA).

The SEAA shall use these funds only to perform administrative functions necessary to manage and distribute scholarship funds under the child welfare postsecondary support program.

**SECTION 10.50.(c)** Of the funds appropriated from the General Fund to the Department of Health and Human Services the sum of five hundred thousand dollars (\$500,000) for the 2009-2010 fiscal year and the sum of five hundred thousand dollars (\$500,000) for the 2010-2011 fiscal year shall be used to contract with an entity to develop and administer the child welfare postsecondary support program described under subsection (a) of this section, which development and administration shall include the performance of case management services.

**SECTION 10.50.(d)** Funds appropriated to the Department of Health and Human Services for the child welfare postsecondary support program shall be used only for students attending public institutions of higher education in this State.

#### **TANF BENEFIT IMPLEMENTATION**

**SECTION 10.51.(a)** The General Assembly approves the plan titled "North Carolina Temporary Assistance for Needy Families State Plan FY 2009-2011," prepared by the Department of Health and Human Services and presented to the General Assembly. The North Carolina Temporary Assistance for Needy Families State Plan covers the period October 1, 2009, through September 30, 2011. The Department shall submit the State Plan, as revised in accordance with subsection (b) of this section, to the United States Department of Health and Human Services, as amended by this act or any other act of the 2009 General Assembly.

**SECTION 10.51.(b)** The counties approved as Electing Counties in the North Carolina Temporary Assistance for Needy Families State Plan FY 2009-2011, as approved by this section are: Beaufort, Caldwell, Catawba, Lenoir, Lincoln, Macon, and Wilson.

**SECTION 10.51.(c)** Counties that submitted the letter of intent to remain as an Electing County or to be redesignated as an Electing County and the accompanying county plan for fiscal years 2009 through 2011, pursuant to G.S. 108A-27(e), shall operate under the Electing County budget requirements effective July 1, 2009. For programmatic purposes, all counties referred to in this subsection shall remain under their current county designation through September 30, 2009.

**SECTION 10.51.(d)** For the 2009-2010 fiscal year, Electing Counties shall be held harmless to their Work First Family Assistance allocations for the 2008-2009 fiscal year, provided that remaining funds allocated for Work First Family Assistance and Work First Diversion Assistance are sufficient for payments made by the Department on behalf of Standard Counties pursuant to G.S. 108-27.11(b).

**SECTION 10.51.(e)** In the event that Departmental projections of Work First Family Assistance and Work First Diversion Assistance for the 2009-2010 fiscal year indicate that remaining funds are insufficient for Work First Family Assistance and Work First Diversion Assistance payments to be made on behalf of Standard Counties, the Department is authorized to deallocate funds, of those allocated to Electing Counties for Work First Family Assistance in excess of the sums set forth in G.S. 108A-27.11, up to the requisite amount for payments in Standard Counties. Prior to deallocation, the Department shall obtain approval by the Office of State Budget and Management. If the Department adjusts the allocation set forth in subsection (d) of this section, then a report shall be made to the Joint Legislative Commission on Governmental Operations, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

#### **OFFICE OF EDUCATION SERVICES/FUNDS TRANSFER**

**SECTION 10.51A.(a)** There is transferred from the Office of Education Services Trust Fund, Budget Code 66424, the sum of one hundred seventy-five thousand three hundred twenty-one dollars (\$175,321) to the Office of Education Services General Fund, Budget Code 14424. These funds shall be used to support the operations of the North Carolina School for the Deaf at Morganton, Eastern North Carolina School for the Deaf at Wilson, and Governor Morehead School for the Blind. Donations and bequests to these schools shall be used in accordance with their designated purpose.

**SECTION 10.51A.(b)** The Department of Health and Human Services shall, in consultation with the State Board of Education and the Department of Public Instruction, develop and recommend plans to achieve efficiencies of scale and ensure the appropriate

education of students with visual and hearing impairments. Not later than May 1, 2010, the Department shall report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, the Joint Legislative Commission on Governmental Operations, and the Fiscal Research Division.

#### **EVALUATION OF CONSOLIDATION OF ADMINISTRATIVE FUNCTIONS OF COUNTY DEPARTMENTS OF SOCIAL SERVICES**

**SECTION 10.52.(a)** The Program Evaluation Division of the North Carolina General Assembly shall study the consolidation of administrative functions among county departments of social services.

In conducting the study, the Program Evaluation Division shall identify opportunities for functional consolidation, affected administrative functions, estimated cost savings, and requisite policy changes, if applicable, to accommodate the consolidation of administrative functions among county departments of social services. The Department of Health and Human Services, Division of Social Services, shall not consolidate these administrative functions except as directed by an act of the General Assembly.

**SECTION 10.52.(b)** The Program Evaluation Division shall report its findings and recommendations to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division by December 1, 2010.

#### **ENHANCE MARKETING OF PUBLIC ASSISTANCE AVAILABILITY**

**SECTION 10.53.** To ensure that working families are aware of the availability of assistance from Food and Nutrition Services programs and Medical Assistance, the Division of Medical Assistance, Division of Social Services, and county departments of social services shall enhance the marketing of available services, including Food and Nutrition Services and Medical Assistance for prospective recipients.

#### **NON-MEDICAID REIMBURSEMENT CHANGES**

**SECTION 10.55.(a)** Providers of medical services under the various State programs, other than Medicaid, offering medical care to citizens of the State shall be reimbursed at rates no higher than those under the North Carolina Medical Assistance Program.

The Department of Health and Human Services may reimburse hospitals at the full prospective per diem rates without regard to the Medical Assistance Program's annual limits on hospital days. When the Medical Assistance Program's per diem rates for inpatient services and its interim rates for outpatient services are used to reimburse providers in non-Medicaid medical service programs, retroactive adjustments to claims already paid shall not be required.

Notwithstanding the provisions of this section, the Department of Health and Human Services may negotiate with providers of medical services under the various Department of Health and Human Services programs, other than Medicaid, for rates as close as possible to Medicaid rates for the following purposes: contracts or agreements for medical services and purchases of medical equipment and other medical supplies. These negotiated rates are allowable only to meet the medical needs of its non-Medicaid eligible patients, residents, and clients who require such services that cannot be provided when limited to the Medicaid rate.

Maximum net family annual income eligibility standards for services in these programs shall be as follows:

DSB Medical Eye Care	125% FPL
DSB Independent Living <55	125% FPL
DSB Independent Living 55>	200% FPL
DSB Vocational Rehabilitation	125% FPL
DVR Independent Living	125% FPL
DVR Vocational Rehabilitation	125% FPL

The Department of Health and Human Services shall contract at, or as close as possible to, Medicaid rates for medical services provided to residents of State facilities of the Department.

**SECTION 10.55.(b)** Subject to the prior approval of the Office of State Budget and Management, the Secretary shall reduce provider rates for services rendered for the

Medical Eye Care, Independent Living, and Vocational Rehabilitation programs within the Division of Services for the Blind, and Independent Living and Vocational Rehabilitation programs within the Division of Vocational Rehabilitation to accomplish the reduction in funds for this purpose enacted in this act.

#### **DIVISION OF SERVICES FOR THE DEAF AND THE HARD OF HEARING/FUNDS TRANSFER AND APPROPRIATION**

**SECTION 10.56.(a)** Notwithstanding G.S. 62-157, on July 1, 2009, the State Controller shall transfer four million five hundred thousand dollars (\$4,500,000) from the Special Account for Telecommunications Relay Service to Nontax Budget Code 19978 (Intra State Transfers) to support General Fund appropriations for the 2009-2010 fiscal year.

**SECTION 10.56.(b)** Of funds available in Budget Code 67425, Fund Code 6725, and Fund Code 6726, the sum of up to one million five hundred thousand dollars (\$1,500,000) shall be transferred to Budget Code 24410 for Information Technology Projects in the Department of Health and Human Services, Division of Central Management and Support for the Data Collection and Case Management Systems initiative. This initiative shall also be supported with federal funds from the Rehabilitation Act. Funds made available under this section shall be used for the development and implementation of a data collection and case management information system to replace the current system in use by the Division of Services for the Blind, Division of Services for the Deaf and the Hard of Hearing, and the Division of Vocational Rehabilitation Services. The Department shall use federal funds first and then State funds, only as necessary, from Budget Code 67425. In accordance with G.S. 143C-1-2(b), funds appropriated for this project shall not revert to the fund from which they came until the project is complete.

**SECTION 10.56.(c)** G.S. 62-157 is amended by adding a new subsection to read:

"(d1) The Department of Health and Human Services shall utilize revenues from the wireless surcharge collected under subsection (i) of this section to fund the Regional Resource Centers within the Division of Services for the Deaf and the Hard of Hearing, in accordance with G.S. 143B-216.33, G.S. 143B-216.34, and Chapter 8B of the General Statutes."

**SECTION 10.56.(d)** G.S. 62-157(e) reads as rewritten:

"(e) Administration of Service. – The Department of Health and Human Services shall administer the statewide telecommunications relay service program, including its establishment, operation, and promotion. The Department may contract out the provision of this service for four-year periods to one or more service providers, using the provisions of G.S. 143-129. The Department shall administer the Regional Resource Centers within the Division of Services for the Deaf and the Hard of Hearing in accordance with G.S. 143B-216.33, G.S. 143B-216.34, and Chapter 8B of the General Statutes."

**SECTION 10.56.(e)** The State Controller shall transfer from the Special Account for Telecommunications Relay Service to Budget Code 14450 receipts sufficient to meet the authorized requirements for operation of the Regional Resource Centers within the Division of Services for the Deaf and the Hard of Hearing, as determined by the Office of State Budget and Management.

**SECTION 10.56.(f)** If, upon the transfer and appropriation of funds under this section, funds within the Special Account for Telecommunications Relay Service are insufficient to maintain a reasonable margin of reserve for operation of the statewide telecommunications relay service, as determined pursuant to G.S. 62-157, the Department of Health and Human Services shall petition the North Carolina Utilities Commission to reset the surcharges set forth in G.S. 62-157.

#### **STATE-COUNTY SPECIAL ASSISTANCE**

**SECTION 10.57.(a)** The eligibility of Special Assistance recipients residing in adult care homes on August 1, 1995, shall not be affected by an income reduction in the Special Assistance eligibility criteria resulting from adoption of the Rate Setting Methodology Report and Related Services, providing these recipients are otherwise eligible. The maximum monthly rate for these residents in adult care home facilities shall be one thousand two hundred thirty-one dollars (\$1,231) per month per resident.

**SECTION 10.57.(b)** Effective October 1, 2009, the maximum monthly rate for residents in adult care home facilities shall be one thousand one hundred eighty-two dollars (\$1,182) per month per resident unless adjusted by the Department in accordance with

subsection (d) of this section. The eligibility of Special Assistance recipients residing in adult care homes on September 30, 2009, shall not be affected by an income reduction in the Special Assistance eligibility criteria resulting from the adoption of this maximum monthly rate, provided these recipients are otherwise eligible.

**SECTION 10.57.(c)** The maximum monthly rate for residents in Alzheimer/Dementia special care units shall be one thousand five hundred fifteen dollars (\$1,515) per month per resident unless adjusted by the Department in accordance with subsection (d) of this section.

**SECTION 10.57.(d)** Notwithstanding any other provision of this section, the Department of Health and Human Services shall review activities and costs related to the provision of care in adult care homes and shall determine what costs may be considered to properly maximize allowable reimbursement available through Medicaid personal care services for adult care homes (ACH-PCS) under federal law. As determined, and with any necessary approval from the Centers for Medicare and Medicaid Services (CMS), and the approval of the Office of State Budget and Management, the Department may transfer necessary funds from the State-County Special Assistance program within the Division of Social Services to the Division of Medical Assistance and may use those funds as State match to draw down federal matching funds to pay for such activities and costs under Medicaid's personal care services for adult care homes (ACH-PCS), thus maximizing available federal funds. The established rate for State-County Special Assistance set forth in subsections (b) and (c) of this section shall be adjusted by the Department to reflect any transfer of funds from the Division of Social Services to the Division of Medical Assistance and related transfer costs and responsibilities from State-County Special Assistance to the Medicaid personal care services for adult care homes (ACH-PCS). Subject to approval by the Centers for Medicare and Medicaid Services (CMS) and prior to implementing this section, the Department may disregard a limited amount of income for individuals whose countable income exceeds the adjusted State-County Special Assistance rate. The amount of the disregard shall not exceed the difference between the Special Assistance rate prior to the adjustment and the Special Assistance rate after the adjustment and shall be used to pay a portion of the cost of the ACH-PCS and reduce the Medicaid payment for the individual's personal care services provided in an adult care home. In no event shall the reimbursement for services through the ACH-PCS exceed the average cost of the services as determined by the Department from review of cost reports as required and submitted by adult care homes. The Department shall report any transfers of funds and modifications of rates to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

**SECTION 10.57.(e)** The Department of Health and Human Services shall recommend rates for State-County Special Assistance and for Adult Care Home Personal Care Services. The Department may recommend rates based on appropriate cost methodology and cost reports submitted by adult care homes that receive State-County Special Assistance funds and shall ensure that cost reporting is done for State-County Special Assistance and Adult Care Home Personal Care Services to the same standards as apply to other residential service providers.

## **MEDICAID**

**SECTION 10.58.(a)** Use of Funds, Allocation of Costs, Other Authorizations. –

- (1) Use of funds. – Funds appropriated in this act for services provided in accordance with Title XIX of the Social Security Act (Medicaid) are for both the categorically needy and the medically needy.
- (2) Allocation of nonfederal cost of Medicaid. – The State shall pay one hundred percent (100%) of the nonfederal costs of all applicable services listed in this section. In addition, the State shall pay one hundred percent (100%) of the federal Medicare Part D clawback payments under the Medicare Modernization Act of 2004.
- (3) Use of funds for development and acquisition of equipment and software. – If first approved by the Office of State Budget and Management, the Division of Medical Assistance, Department of Health and Human Services, may use funds that are identified to support the cost of development and acquisition of equipment and software and related operational costs through



contractual means to improve and enhance information systems that provide management information and claims processing. The Department of Health and Human Services shall identify adequate funds to support the implementation and first year's operational costs that exceed funds allocated for the 2009-2010 and 2010-2011 fiscal years for the new contract for the fiscal agent for the Medicaid Management Information System.

- (4) Reports. – Unless otherwise provided, whenever the Department of Health and Human Services is required by this section to report to the General Assembly, the report shall be submitted to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division of the Legislative Services Office. Reports shall be submitted on the date provided in the reporting requirement.

**SECTION 10.58.(b) Policy.**

- (1) Volume purchase plans and single source procurement. – The Department of Health and Human Services, Division of Medical Assistance, may, subject to the approval of a change in the State Medicaid Plan, contract for services, medical equipment, supplies, and appliances by implementation of volume purchase plans, single source procurement, or other contracting processes in order to improve cost containment.
- (2) Cost containment programs. – The Department of Health and Human Services, Division of Medical Assistance, may undertake cost containment programs, including contracting for services, preadmissions to hospitals, and prior approval for certain outpatient surgeries before they may be performed in an inpatient setting.
- (3) Fraud and abuse. – The Division of Medical Assistance, Department of Health and Human Services, shall provide incentives to counties that successfully recover fraudulently spent Medicaid funds by sharing State savings with counties responsible for the recovery of the fraudulently spent funds.
- (4) Medical policy. – Unless required for compliance with federal law, the Department shall not change medical policy affecting the amount, sufficiency, duration, and scope of health care services and who may provide services until the Division of Medical Assistance has prepared a five-year fiscal analysis documenting the increased cost of the proposed change in medical policy and submitted it for Departmental review. If the fiscal impact indicated by the fiscal analysis for any proposed medical policy change exceeds three million dollars (\$3,000,000) in total requirements for a given fiscal year, then the Department shall submit the proposed medical policy change with the fiscal analysis to the Office of State Budget and Management and the Fiscal Research Division. The Department shall not implement any proposed medical policy change exceeding three million dollars (\$3,000,000) in total requirements for a given fiscal year unless the source of State funding is identified and approved by the Office of State Budget and Management. For medical policy changes exceeding three million dollars (\$3,000,000) in total requirements for a given fiscal year that are required for compliance with federal law, the Department shall submit the proposed medical policy or policy interpretation change with the five-year fiscal analysis to the Office of State Budget and Management prior to implementing the change. The Department shall provide the Office of State Budget and Management and the Fiscal Research Division a quarterly report itemizing all medical policy changes with total requirements of less than three million dollars (\$3,000,000).

**SECTION 10.58.(c) Eligibility.** – Eligibility for Medicaid shall be determined in accordance with the following:

- (1) Medicaid and Work First Family Assistance. –
  - a. Income eligibility standards. – The maximum net family annual income eligibility standards for Medicaid and Work First Family

Assistance and the Standard of Need for Work First Family Assistance shall be as follows:

Family Size	<b>CATEGORICALLY NEEDY – WFFA*</b>	<b>MEDICALLY NEEDY</b>	
	Standard of Need & Families and Families and Children Income Level	WFFA* Payment Level	Children & AA, AB, AD* Income Level
1	\$4,344	\$2,172	\$2,900
2	5,664	2,832	3,800
3	6,528	3,264	4,400
4	7,128	3,564	4,800
5	7,776	3,888	5,200
6	8,376	4,188	5,600
7	8,952	4,476	6,000
8	9,256	4,680	6,300

\*Work First Family Assistance (WFFA); Aid to the Aged (AA); Aid to the Blind (AB); and Aid to the Disabled (AD).

- b. The payment level for Work First Family Assistance shall be fifty percent (50%) of the standard of need. These standards may be changed with the approval of the Director of the Budget.
  - c. The Department of Health and Human Services shall provide Medicaid coverage to 19- and 20-year-olds in accordance with federal rules and regulations.
  - d. Medicaid enrollment of categorically needy families with children shall be continuous for one year without regard to changes in income or assets.
- (2) For the following Medicaid eligibility classifications for which the federal poverty guidelines are used as income limits for eligibility determinations, the income limits will be updated each April 1 immediately following publication of federal poverty guidelines. The Department of Health and Human Services, Division of Medical Assistance, shall provide Medicaid coverage to the following:
- a. All elderly, blind, and disabled people who have incomes equal to or less than one hundred percent (100%) of the federal poverty guidelines.
  - b. Pregnant women with incomes equal to or less than one hundred eighty-five percent (185%) of the federal poverty guidelines and without regard to resources. Services to pregnant women eligible under this subsection continue throughout the pregnancy but include only those related to pregnancy and to those other conditions determined by the Department as conditions that may complicate pregnancy.
  - c. Infants under the age of one with family incomes equal to or less than two hundred percent (200%) of the federal poverty guidelines and without regard to resources.
  - d. Children aged one through five with family incomes equal to or less than two hundred percent (200%) of the federal poverty guidelines and without regard to resources.
  - e. Children aged six through 18 with family incomes equal to or less than one hundred percent (100%) of the federal poverty guidelines and without regard to resources.
  - f. Family planning services to men and women of childbearing age with family incomes equal to or less than one hundred eighty-five

percent (185%) of the federal poverty guidelines and without regard to resources.

- g. Workers with disabilities described in G.S. 108A-54.1 with unearned income equal to or less than one hundred fifty percent (150%) of the federal poverty guidelines.
- (3) The Department of Health and Human Services, Division of Medical Assistance, shall provide Medicaid coverage to adoptive children with special or rehabilitative needs regardless of the adoptive family's income.
- (4) The Department of Health and Human Services, Division of Medical Assistance, shall provide Medicaid coverage to "independent foster care adolescents," ages 18, 19, and 20, as defined in section 1905(w)(1) of the Social Security Act [42 U.S.C. § 1396d(w)(1)], without regard to the adolescent's assets, resources, or income levels.
- (5) ICF and ICF/MR work incentive allowances. – The Department of Health and Human Services may provide an incentive allowance to Medicaid-eligible recipients of ICF and ICF/MR services, who are regularly engaged in work activities as part of their developmental plan, and for whom retention of additional income contributes to their achievement of independence. The State funds required to match the federal funds that are required by these allowances shall be provided from savings within the Medicaid budget or from other unbudgeted funds available to the Department. The incentive allowances may be as follows:

<b>Monthly Net Wages</b>	<b>Monthly Incentive Allowance</b>
\$1.00 to \$100.99	Up to \$50.00
\$101.00 to \$200.99	\$80.00
\$201.00 to \$300.99	\$130.00
\$301.00 and greater	\$212.00

- (6) The Department of Health and Human Services, Division of Medical Assistance, shall provide Medicaid coverage to women who need treatment for breast or cervical cancer and who are defined in 42 U.S.C. § 1396a.(a)(10)(A)(ii)(XVIII).

**SECTION 10.58.(d)** Services and Payment Bases. – The Department shall spend funds appropriated for Medicaid services in accordance with the following schedule of services and payment bases. All services and payments are subject to the language at the end of this subsection. Unless otherwise provided, services and payment bases will be as prescribed in the State Plan as established by the Department of Health and Human Services and may be changed with the approval of the Director of the Budget.

- (1) Hospital inpatient. – Payment for hospital inpatient services will be prescribed by the State Plan as established by the Department of Health and Human Services.
- (2) Hospital outpatient. – Eighty percent (80%) of allowable costs or a prospective reimbursement plan as established by the Department of Health and Human Services.
- (3) Nursing facilities. – Nursing facilities providing services to Medicaid recipients who also qualify for Medicare must be enrolled in the Medicare program as a condition of participation in the Medicaid program. State facilities are not subject to the requirement to enroll in the Medicare program. Residents of nursing facilities who are eligible for Medicare coverage of nursing facility services must be placed in a Medicare-certified bed. Medicaid shall cover facility services only after the appropriate services have been billed to Medicare.
- (4) Physicians, certified nurse midwife services, certified registered nurse anesthetists, nurse practitioners. – Fee schedules as developed by the Department of Health and Human Services.
- (5) Community Alternative Program, EPSDT Screens. – Payments in accordance with rate schedule developed by the Department of Health and Human Services.

- (6) Home health and related services, durable medical equipment. – Payments according to reimbursement plans developed by the Department of Health and Human Services.
- (7) Hearing aids. – Wholesale cost plus dispensing fee to provider.
- (8) Rural health clinical services. – Provider-based, reasonable cost, nonprovider-based, single-cost reimbursement rate per clinic visit.
- (9) Family planning. – Negotiated rate for local health departments. For other providers see specific services, e.g., hospitals, physicians.
- (10) Independent laboratory and X-ray services. – Uniform fee schedules as developed by the Department of Health and Human Services.
- (11) Ambulatory surgical centers.
- (12) Private duty nursing, clinic services, prepaid health plans.
- (13) Intermediate care facilities for the mentally retarded.
- (14) Chiropractors, podiatrists, optometrists, dentists.
- (15) Limitations on dental coverage. – Dental services shall be provided on a restricted basis in accordance with criteria adopted by the Department to implement this subsection.
- (16) Medicare Buy-In. – Social Security Administration premium.
- (17) Ambulance services. – Uniform fee schedules as developed by the Department of Health and Human Services. Public ambulance providers will be reimbursed at cost.
- (18) Optical supplies. – Payment for materials is made to a contractor in accordance with 42 C.F.R. § 431.54(d). Fees paid to dispensing providers are negotiated fees established by the State agency based on industry charges.
- (19) Medicare crossover claims. – The Department shall apply Medicaid medical policy to Medicare claims for dually eligible recipients. The Department shall pay an amount up to the actual coinsurance or deductible or both, in accordance with the State Plan, as approved by the Department of Health and Human Services. The Department may disregard application of this policy in cases where application of the policy would adversely affect patient care.
- (20) Physical therapy, occupational therapy, and speech therapy. – Services for adults and EPSDT-eligible children. Payments are to be made only to qualified providers at rates negotiated by the Department of Health and Human Services.
- (21) Personal care services. – Payment in accordance with the State Plan developed by the Department of Health and Human Services.
- (22) Case management services. – Reimbursement in accordance with the availability of funds to be transferred within the Department of Health and Human Services.
- (23) Hospice.
- (24) Medically necessary prosthetics or orthotics. – In order to be eligible for reimbursement, providers must be licensed or certified by the occupational licensing board or the certification authority having authority over the provider's license or certification. Medically necessary prosthetics and orthotics are subject to prior approval and utilization review.
- (25) Health insurance premiums.
- (26) Medical care/other remedial care. – Services not covered elsewhere in this section include related services in schools; health professional services provided outside the clinic setting to meet maternal and infant health goals; and services to meet federal EPSDT mandates.
- (27) Pregnancy-related services. – Covered services for pregnant women shall include nutritional counseling, psychosocial counseling, and predelivery and postpartum home visits by maternity care coordinators and public health nurses.
- (28) Drugs. – Reimbursements. Reimbursements shall be available for prescription drugs as allowed by federal regulations plus a professional services fee per month, excluding refills for the same drug or generic

equivalent during the same month. Payments for drugs are subject to the provisions of this subdivision or in accordance with the State Plan adopted by the Department of Health and Human Services, consistent with federal reimbursement regulations. Payment of the professional services fee shall be made in accordance with the State Plan adopted by the Department of Health and Human Services, consistent with federal reimbursement regulations. The professional services fee shall be five dollars and sixty cents (\$5.60) per prescription for generic drugs and four dollars (\$4.00) per prescription for brand-name drugs. Adjustments to the professional services fee shall be established by the General Assembly. In addition to the professional services fee, the Department may pay an enhanced fee for pharmacy services.

Limitations on quantity. – The Department of Health and Human Services may establish authorizations, limitations, and reviews for specific drugs, drug classes, brands, or quantities in order to manage effectively the Medicaid pharmacy program, except that the Department shall not impose limitations on brand-name medications for which there is a generic equivalent in cases where the prescriber has determined, at the time the drug is prescribed, that the brand-name drug is medically necessary and has written on the prescription order the phrase "medically necessary."

Dispensing of generic drugs. – Notwithstanding G.S. 90-85.27 through G.S. 90-85.31, or any other law to the contrary, under the Medical Assistance Program (Title XIX of the Social Security Act), and except as otherwise provided in this subsection for drugs listed in the narrow therapeutic index, a prescription order for a drug designated by a trade or brand name shall be considered to be an order for the drug by its established or generic name, except when the prescriber has determined, at the time the drug is prescribed, that the brand-name drug is medically necessary and has written on the prescription order the phrase "medically necessary." An initial prescription order for a drug listed in the narrow therapeutic drug index that does not contain the phrase "medically necessary" shall be considered an order for the drug by its established or generic name, except that a pharmacy shall not substitute a generic or established name prescription drug for subsequent brand or trade name prescription orders of the same prescription drug without explicit oral or written approval of the prescriber given at the time the order is filled. Generic drugs shall be dispensed at a lower cost to the Medical Assistance Program rather than trade or brand-name drugs. As used in this subsection, "brand name" means the proprietary name the manufacturer places upon a drug product or on its container, label, or wrapping at the time of packaging; and "established name" has the same meaning as in section 502(e)(3) of the Federal Food, Drug, and Cosmetic Act, as amended, 21 U.S.C. § 352(e)(3).

Prior authorization. – The Department of Health and Human Services shall not impose prior authorization requirements or other restrictions under the State Medical Assistance Program on medications prescribed for Medicaid recipients for the treatment of (i) mental illness, including, but not limited to, medications for schizophrenia, bipolar disorder, major depressive disorder or (ii) HIV/AIDS, except that the Department of Health and Human Services shall continually review utilization of medications under the State Medical Assistance Program prescribed for Medicaid recipients for the treatment of mental illness, including, but not limited to, medications for schizophrenia, bipolar disorder, or major depressive disorder. The Department may, however, with respect to drugs to treat mental illnesses, develop guidelines and measures to ensure appropriate usage of these medications, including FDA-approved indications and dosage levels. The Department may also require retrospective clinical justification for the use of multiple psychotropic drugs for a Medicaid patient. For individuals 18 years of age and under who are prescribed three or more psychotropic medications, the Department shall implement clinical edits that target inefficient, ineffective, or potentially harmful prescribing patterns. When

such patterns are identified, the Medical Director for the Division of Medical Assistance and the Chief of Clinical Policy for the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services shall require a peer-to-peer consultation with the target prescribers. Alternatives discussed during the peer-to-peer consultations shall be based upon:

- a. Evidence-based criteria available regarding efficacy or safety of the covered treatments; and
- b. Policy approval by a majority vote of the North Carolina Physicians Advisory Group (NCPAG).

The target prescriber has final decision-making authority to determine which prescription drug to prescribe or refill.

(29) Other mental health services. – Unless otherwise covered by this section, coverage is limited to:

- a. Services as defined by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services and approved by the Centers for Medicare and Medicaid Services (CMS) when provided in agencies meeting the requirements of the rules established by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services and reimbursement is made in accordance with a State Plan developed by the Department of Health and Human Services not to exceed the upper limits established in federal regulations, and

- b. For children eligible for EPSDT services provided by:

1. Licensed or certified psychologists, licensed clinical social workers, certified clinical nurse specialists in psychiatric mental health advanced practice, nurse practitioners certified as clinical nurse specialists in psychiatric mental health advanced practice, licensed psychological associates, licensed professional counselors, licensed marriage and family therapists, licensed clinical addictions specialists, and certified clinical supervisors, when Medicaid-eligible children are referred by the Community Care of North Carolina primary care physician, a Medicaid-enrolled psychiatrist, or the area mental health program or local management entity, and
2. Institutional providers of residential services as defined by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services and approved by the Centers for Medicare and Medicaid Services (CMS) for children and Psychiatric Residential Treatment Facility services that meet federal and State requirements as defined by the Department.

- c. For Medicaid-eligible adults, services provided by licensed or certified psychologists, licensed clinical social workers, certified clinical nurse specialists in psychiatric mental health advanced practice, and nurse practitioners certified as clinical nurse specialists in psychiatric mental health advanced practice, licensed psychological associates, licensed professional counselors, licensed marriage and family therapists, certified clinical addictions specialists, and licensed clinical supervisors, Medicaid-eligible adults may be self-referred.

- d. Payments made for services rendered in accordance with this subdivision shall be to qualified providers in accordance with approved policies and the State Plan. Nothing in sub-subdivision b. or c. of this subdivision shall be interpreted to modify the scope of practice of any service provider, practitioner, or licensee, nor to modify or attenuate any collaboration or supervision requirement related to the professional activities of any service provider, practitioner, or licensee. Nothing in sub-subdivision b. or c. of this subdivision shall be interpreted to require any private health insurer

or health plan to make direct third-party reimbursements or payments to any service provider, practitioner, or licensee.

Notwithstanding G.S. 150B-21.1(a), the Department of Health and Human Services may adopt temporary rules in accordance with Chapter 150B of the General Statutes further defining the qualifications of providers and referral procedures in order to implement this subdivision. Coverage policy for services defined by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services under sub-subdivisions a. and b.2. of this subdivision shall be established by the Division of Medical Assistance.

**SECTION 10.58.(e) Provider Performance Bonds and Visits. –**

- (1) Subject to the provisions of this subdivision, the Department may require Medicaid-enrolled providers to purchase a performance bond in an amount not to exceed one hundred thousand dollars (\$100,000) naming as beneficiary the Department of Health and Human Services, Division of Medical Assistance, or provide to the Department a validly executed letter of credit or other financial instrument issued by a financial institution or agency honoring a demand for payment in an equivalent amount. The Department may require the purchase of a performance bond or the submission of an executed letter of credit or financial instrument as a condition of initial enrollment, reenrollment, or reinstatement if:

- a. The provider fails to demonstrate financial viability,
- b. The Department determines there is significant potential for fraud and abuse,
- c. The Department otherwise finds it is in the best interest of the Medicaid program to do so.

The Department shall specify the circumstances under which a performance bond or executed letter of credit will be required.

- (1a) The Department may waive or limit the requirements of this paragraph for individual Medicaid-enrolled providers or for one or more classes of Medicaid-enrolled providers based on the following:

- a. The provider's or provider class's dollar amount of monthly billings to Medicaid.
- b. The length of time an individual provider has been licensed, endorsed, certified, or accredited in this State to provide services.
- c. The length of time an individual provider has been enrolled to provide Medicaid services in this State.
- d. The provider's demonstrated ability to ensure adequate record keeping, staffing, and services.
- e. The need to ensure adequate access to care.

In waiving or limiting requirements of this paragraph, the Department shall take into consideration the potential fiscal impact of the waiver or limitation on the State Medicaid Program. The Department shall provide to the affected provider written notice of the findings upon which its action is based and shall include the performance bond requirements and the conditions under which a waiver or limitation apply. The Department may adopt temporary rules in accordance with G.S. 150B-21.1 as necessary to implement this provision.

- (2) Reimbursement is available for up to 30 visits per recipient per fiscal year for the following professional services: hospital outpatient providers, physicians, nurse practitioners, nurse midwives, clinics, health departments, optometrists, chiropractors, and podiatrists. The Department of Health and Human Services shall adopt medical policies in accordance with G.S. 108A-54.2 to distribute the allowable number of visits for each service or each group of services consistent with federal law. In addition, the Department shall establish a threshold of some number of visits for these services. The Department shall ensure that primary care providers or the appropriate CCNC network are notified when a patient is nearing the

established threshold to facilitate care coordination and intervention as needed.

Prenatal services, all EPSDT children, emergency room visits, and mental health visits subject to independent utilization review are exempt from the visit limitations contained in this subdivision. Subject to appropriate medical review, the Department may authorize exceptions when additional care is medically necessary. Routine or maintenance visits above the established visit limit will not be covered unless necessary to actively manage a life threatening disorder or as an alternative to more costly care options.

**SECTION 10.58.(f) Exceptions and Limitations on Services; Authorization of Co-Payments and Other Services. –**

- (1) Exceptions to service limitations, eligibility requirements, and payments. – Service limitations, eligibility requirements, and payment bases in this section may be waived by the Department of Health and Human Services, with the approval of the Director of the Budget, to allow the Department to carry out pilot programs for prepaid health plans, contracting for services, managed care plans, or community-based services programs in accordance with plans approved by the United States Department of Health and Human Services or when the Department determines that such a waiver will result in a reduction in the total Medicaid costs for the recipient.
- (2) Co-payment for Medicaid services. – The Department of Health and Human Services may establish co-payments up to the maximum permitted by federal law and regulation.

**SECTION 10.58.(g) Rules, Reports, and Other Matters. –**

- (1) Rules. – The Department of Health and Human Services may adopt temporary or emergency rules according to the procedures established in G.S. 150B-21.1 and G.S. 150B-21.1A when it finds that these rules are necessary to maximize receipt of federal funds within existing State appropriations, to reduce Medicaid expenditures, and to reduce fraud and abuse. The Department of Health and Human Services shall adopt rules requiring providers to attend training as a condition of enrollment and may adopt temporary or emergency rules to implement the training requirement.

Prior to the filing of the temporary or emergency rules authorized under this subsection with the Rules Review Commission and the Office of Administrative Hearings, the Department shall consult with the Office of State Budget and Management on the possible fiscal impact of the temporary or emergency rule and its effect on State appropriations and local governments.

- (2) Changes to Medicaid program; reports. – The Department shall report on any change it anticipates making in the Medicaid program that impacts the type or level of service, reimbursement methods, or waivers, any of which require a change in the State Plan or other approval by the Centers for Medicare and Medicaid Services (CMS). Except for waiver applications, the Department shall submit the report to the entities listed in subdivision (4) of subsection (a) of this section and to the Joint Legislative Health Care Oversight Committee at the same time it submits the proposed changes to CMS for approval. At the time the Department is considering or developing a waiver application, it shall inform the Fiscal Research Division of the proposed waiver and shall provide the Fiscal Research Division with information on (i) how the proposed waiver, if approved, would change or affect services and specific populations and (ii) the estimated fiscal impact of the waiver. The Department shall not submit the proposed waiver application to CMS until after it has provided the proposed waiver information specified in this subdivision to the Fiscal Research Division for its review.

**MEDICAID PROVIDER FEE**



**SECTION 10.58A.** Effective September 1, 2009, the Department of Health and Human Services, Division of Medical Assistance, shall charge an enrollment fee of one hundred dollars (\$100.00) to each provider enrolling in the Medicaid program for the first time. The fee shall be charged to all providers at recertifying every three years.

### **ACCELERATED DHHS PROCUREMENT PROCESS TO ACHIEVE BUDGET REDUCTIONS**

**SECTION 10.58B.(a)** Notwithstanding any other provision of law to the contrary, the Department of Health and Human Services may modify or extend existing contracts or as necessary enter into sole source contracts to timely achieve the provisions of this act. Any such modifications or contract extensions or sole source contracts must be approved by the Secretary of the Department of Administration and reported to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Fiscal Research Division, and the Office of State Budget and Management. This subsection applies to the following activities and shall expire six months from the date of enactment of this act:

- (1) Maximizing technology to increase third-party recovery, increase cost avoidance activities, identify provider overbilling and other abuse or program integrity activities;
- (2) Implementing prior authorization efforts in imaging and other high-cost services;
- (3) Providing technical assistance to enhance care coordination, analysis, and reports to assess provider compliance and performance;
- (4) Conducting independent assessments; and
- (5) Providing technology services to establish physician/provider online attestation reporting and assist CCNC in care management activities.

**SECTION 10.58B.(b)** The Department shall report on the activities conducted under this section to the House Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division on or before April 1, 2010.

### **DMA CONTRACT SHORTFALL**

**SECTION 10.59.(a)** Budget approval is required by the Office of State Budget and Management prior to the Department of Health and Human Services, Division of Medical Assistance, entering into any new contract or the renewal or amendment of existing contracts that exceed the current contract amounts.

**SECTION 10.59.(b)** The Division of Medical Assistance shall make every effort to effect savings within its operational budget and use those savings to offset its contract shortfall. Notwithstanding G.S. 143C-6-4(b)(3), the Department may use funds appropriated in this act to cover the contract shortfall in the Division of Medical Assistance if insufficient funds exist within the Division.

### **MEDICAID COST CONTAINMENT ACTIVITIES**

**SECTION 10.60.(a)** The Department of Health and Human Services may use up to five million dollars (\$5,000,000) in the 2009-2010 fiscal year and up to five million dollars (\$5,000,000) in the 2010-2011 fiscal year in Medicaid funds budgeted for program services to support the cost of administrative activities when cost-effectiveness and savings are demonstrated. The funds shall be used to support activities that will contain the cost of the Medicaid Program, including contracting for services, hiring additional staff, or providing grants through the Office of Rural Health and Community Care to plan, develop, and implement cost containment programs.

Medicaid cost containment activities may include prospective reimbursement methods, incentive-based reimbursement methods, service limits, prior authorization of services, periodic medical necessity reviews, revised medical necessity criteria, service provision in the least costly settings, plastic magnetic striped Medicaid identification cards for issuance to Medicaid enrollees, fraud detection software or other fraud detection activities, technology that improves clinical decision making, credit balance recovery and data mining services, and other cost containment activities. Funds may be expended under this section only after the Office of State Budget and Management has approved a proposal for the expenditure

submitted by the Department. Proposals for expenditure of funds under this section shall include the cost of implementing the cost containment activity and documentation of the amount of savings expected to be realized from the cost containment activity.

**SECTION 10.60.(b)** The Department shall provide a copy of proposals for expenditures under this section to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division. On or before April 1, 2010, the Department shall report on the methods used to achieve savings and the amount saved by these methods. If the Department deploys fraud detection software, a report on the software implementation and fraud detection results shall be submitted to the House and Senate Appropriations Subcommittees on Health and Human Services and the Fiscal Research Division of the General Assembly not later than April 1, 2010.

#### **MEDICAID SPECIAL FUND TRANSFER**

**SECTION 10.61.** Of the funds transferred to the Department of Health and Human Services for Medicaid programs pursuant to G.S. 143C-9-1, there is appropriated from the Medicaid Special Fund to the Department of Health and Human Services the sum of forty-three million dollars (\$43,000,000) for the 2009-2010 fiscal year and the sum of forty-three million dollars (\$43,000,000) for the 2010-2011 fiscal year. These funds shall be allocated as prescribed by G.S. 143C-9-1(b) for Medicaid programs. Notwithstanding the prescription in G.S. 143C-9-1(b) that these funds not reduce State general revenue funding, these funds shall replace the reduction in general revenue funding effected in this act. The Department may also use funds in the Medicaid Special Fund to fund the settlement of the Disproportionate Share Hospital payment audit issues between the Department of Health and Human Services and the federal government related to fiscal years 1997-2002, and funds are appropriated from the Fund for the 2009-2010 fiscal year for this purpose.

#### **EXTEND IMPLEMENTATION OF COMMUNITY ALTERNATIVES PROGRAMS REIMBURSEMENT SYSTEM**

**SECTION 10.62.** Full implementation for the Community Alternatives Programs reimbursement system shall be not later than 12 months after the date on which the replacement Medicaid Management Information System becomes operational and stabilized.

#### **ACCOUNTING FOR MEDICAID RECEIVABLES AS NONTAX REVENUE**

**SECTION 10.64.(a)** Receivables reserved at the end of the 2009-2010 and 2010-2011 fiscal years shall, when received, be accounted for as nontax revenue for each of those fiscal years.

**SECTION 10.64.(b)** For the 2009-2010 fiscal year, the Department of Health and Human Services shall deposit from its revenues one hundred twenty-four million nine hundred ninety-four thousand nine hundred fifty-four dollars (\$124,994,954) with the Department of State Treasurer to be accounted for as nontax revenue. For the 2010-2011 fiscal year, the Department of Health and Human Services shall deposit from its revenues one hundred million dollars (\$100,000,000) with the Department of State Treasurer to be accounted for as nontax revenue. These deposits shall represent the return of General Fund appropriations provided to the Department of Health and Human Services to provide indigent care services at State-owned and operated mental hospitals. The treatment of any revenue derived from federal programs shall be in accordance with the requirements specified in the Code of Federal Regulations, Volume 2, Part 225.

#### **FAMILIES PAY PART OF THE COST OF SERVICES UNDER THE CAP-MR/DD PROGRAM AND THE CAP-CHILDREN'S PROGRAM BASED ON FAMILY INCOME**

**SECTION 10.65.(a)** Subject to approval from the Centers for Medicare and Medicaid Services (CMS), the Department of Health and Human Services, Division of Medical Assistance, shall, in consultation with the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, and Community Alternatives Program (CAP) stakeholders, develop a schedule of cost-sharing requirements for families of children with incomes above the Medicaid allowable limit to share in the costs of their child's Medicaid expenses under the CAP-MR/DD (Community Alternatives Program for Mental Retardation

and Developmentally Disabled) and the CAP-C (Community Alternatives Program for Children). The cost-sharing amounts shall be based on a sliding scale of family income and shall take into account the impact on families with more than one child in the CAP programs. In developing the schedule, the Department shall also take into consideration how other states have implemented cost-sharing in their CAP programs. The Division of Medical Assistance may establish monthly deductibles as a means of implementing this cost-sharing. The Department shall provide for at least one public hearing and other opportunities for individuals to comment on the imposition of cost-sharing under the CAP program schedule.

**SECTION 10.65.(b)** The Division of Medical Assistance shall also, in collaboration with the Controller's Office of the Department of Health and Human Services, the Division of Information Resource Management (DIRM), and the new vendor of the replacement Medicaid Management Information System, develop business rules, program policies and procedures, and define relevant technical requirements.

**SECTION 10.65.(c)** Prior to seeking approval from CMS, but not later than October 1, 2009, the Department shall report to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs, and to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division. The report shall include a summary of comments the Department has received at the public hearing, business rules, policies and procedures, and technical requirements of the initiative and shall also indicate any barriers to implementing the cost-sharing.

#### **IMPLEMENTATION PLAN FOR FOUR TIERS OF CAP-MR/DD PROGRAM**

**SECTION 10.65A.(a)** For the purposes of improving efficiency in the expenditure of available funds and effectively identifying and meeting the needs of CAP-MR/DD eligible individuals, on or before April 1, 2010, the Department of Health and Human Services, Division of Medical Assistance, in conjunction with the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall submit to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services a plan for the implementation of Tiers 1 through 4 of the CAP-MR/DD program. The plan shall describe the implementation of Tiers 1 and 4 and the proposed implementation of Tiers 2 and 3, and revisions of Tier 4, and shall include detail on each of the following:

- (1) The array and intensity level of services that will be available under each of the four Tiers;
- (2) The range of costs for the array and intensity level of services under each of the four Tiers;
- (3) How the relative intensity of need for each current and future CAP-MR/DD eligible individual will be reliably determined; and
- (4) How the determination of intensity of need will be used to assign individuals appropriately into one of the four Tiers.

The Department may develop an application to the Centers for Medicare and Medicaid services for additional Medicaid waivers for Tiers 2 and 3 of the CAP-MR/DD program. The Department shall not submit the application until after it has submitted the plan required under this subdivision. Nothing in this subdivision obligates the General Assembly to appropriate additional funds for the CAP-MR/DD waiver.

**SECTION 10.65A.(b)** The Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, in conjunction with local management entities (LMEs) shall review the services funded through the Division received by individuals with developmental disabilities who are not currently being served through the CAP-MR/DD waiver to determine (i) if those individuals could be better served through the CAP-MR/DD Tier 1 waiver, and (ii) if the State appropriations currently funding services for those individuals would be sufficient to provide the nonfederal match for those individuals if they became eligible for the CAP-MR/DD Tier 1 waiver. The Division shall report its findings by March 1, 2010, to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

**SECTION 10.65A.(c)** Of the funds appropriated to the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services and currently used for State-funded services for people with CAP slots, the sum of eight million dollars (\$8,000,000) for the 2009-2010 fiscal year shall be transferred to the Division of Medical Assistance. Of these funds, the sum of four million dollars (\$4,000,000) shall be used by the Division of Medical Assistance for Tier 1 CAP-MR/DD slots, and the remaining four million dollars (\$4,000,000) shall be used by the Division of Medical Assistance to ensure that only a partial freeze of CAP slots shall be implemented for the 2009-2011 fiscal biennium. Among those individuals who are not receiving CAP slots but are receiving developmental disability services, the Division shall move these individuals into Tier 1 slots as soon as possible.

**SECTION 10.65A.(d)** The Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall report on the number and geographic distribution of CAP slots by LME by October 1, 2009. The Department shall submit the report to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services.

**SECTION 10.65A.(e)** The Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall implement a plan to equitably distribute all CAP-MR/DD slots among LMEs. The Plan shall specifically address those LMEs that, in the Department's determination, have fewer than their equitable share of CAP-MR/DD slots.

**SECTION 10.65A.(f)** The Piedmont Behavioral Health (PBH) LME shall be deemed by the Department as a demonstration model in the PBH LME catchment area. The Department shall also adopt as part of the demonstration model the PBH 1915(b) and 1915(c) Medicaid waivers, and single-stream funding for State services funds, which include funds previously transferred from State institution budgets.

#### **PREFERRED DRUG LIST PROGRAM**

**SECTION 10.66.(a)** In the event insufficient savings are realized from enhancing the utilization management of the Prescription Advantage List, increasing the utilization of generic drugs in place of brand-name drugs and increasing rebate collections on generic drugs, the Department of Health and Human Services shall establish and implement a preferred drug list program under the Division of Medical Assistance. The Department shall submit a medical assistance State Plan amendment to the Centers for Medicare and Medicaid Services (CMS) of the United States Department of Health and Human Services to implement the program.

**SECTION 10.66.(b)** The pharmaceutical and therapeutics committee of the Physician's Advisory Group (PAG) shall provide ongoing review of the preferred drug list. Members of the committee shall submit conflict of interest disclosure statements to the Department and shall have an ongoing duty to disclose conflicts of interest not included in the original disclosure.

**SECTION 10.66.(c)** The Department, in consultation with the PAG, shall adopt and publish policies and procedures relating to the preferred drug list, including:

- (1) Guidelines for the presentation and review of drugs for inclusion on the preferred drug list,
- (2) The manner and frequency of audits of the preferred drug list for appropriateness of patient care and cost-effectiveness,
- (3) An appeals process for the resolution of disputes, and
- (4) Such other policies and procedures as the Department deems necessary and appropriate.

The Department and the pharmaceutical and therapeutics committee shall consider all therapeutic classes of prescription drugs for inclusion on the preferred drug list, except medications for treatment of human immunodeficiency virus or acquired immune deficiency syndrome shall not be subject to consideration for inclusion on the preferred drug list.

The Department shall maintain an updated preferred drug list in electronic format and shall make the list available to the public on the Department's Internet Web site.

The Department shall: (i) enter into a multistate purchasing pool; (ii) negotiate directly with manufacturers or labelers; (iii) contract with a pharmacy benefit manager for negotiated discounts or rebates for all prescription drugs under the medical assistance program; or (iv) effectuate any combination of these options in order to achieve the lowest available price for such drugs under such program.

The Department may negotiate supplemental rebates from manufacturers that are in addition to those required by Title XIX of the federal Social Security Act. The committee shall consider a product for inclusion on the preferred drug list if the manufacturer provides a supplemental rebate. The Department may procure a sole source contract with an outside entity or contractor to conduct negotiations for supplemental rebates.

**SECTION 10.66.(d)** This section becomes effective if the Department cannot demonstrate by June 1, 2010, that twenty-five million dollars (\$25,000,000) in prescription drug savings have been realized by employing the methods outlined in subsection (a) of this section.

#### **MEDICAID APPEALS/FUNDS DO NOT REVERT**

**SECTION 10.67.** The Office of Administrative Hearings shall enter into a Memorandum of Agreement (MOA) with the Department of Health and Human Services for the funds transferred from the Department to the Office of Administrative Hearings in the 2008-2009 fiscal year for mediation services provided for Medicaid applicants and recipient appeals and contracted services necessary to conduct the appeals process. The MOA will facilitate the Department's ability to draw down federal Medicaid funds to support this administrative function.

#### **CLARIFYING CHANGES TO STATE MEDICAID RESPONSIBILITIES**

**SECTION 10.68.** Consistent with Sections 31.16.1(c) and (d) of S.L. 2007-323 that require the State to assume responsibility for the nonfederal share of the costs of medical services provided under the Medicaid Program starting June 1, 2009, the counties shall neither bear any responsibility for settlement payments to providers nor refunds of expenditures for program service claims paid on or before June 1, 2009. Counties will continue to participate in their share of administrative costs.

#### **AUTHORIZE THE DIVISION OF MEDICAL ASSISTANCE TO TAKE CERTAIN STEPS TO EFFECTUATE COMPLIANCE WITH BUDGET REDUCTIONS IN THE MEDICAID PROGRAM**

**SECTION 10.68A.(a)** For the purpose of enabling the Department of Health and Human Services, Division of Medical Assistance, to achieve the budget reductions enacted in this act for the Medicaid program, the Department may take the following actions, notwithstanding any other provision of this act or other State law or rule to the contrary and subject to the requirements of subsection (e) of this section:

- (1) Electronic transactions. –
  - a. Within 60 days of notification of its procedures via the DMA Web site, Medicaid providers shall follow the Department's established procedures for securing electronic payments. No later than September 1, 2009, the Department shall cease routine provider payments by check.
  - b. Effective September 1, 2009, all Medicaid providers shall file claims electronically to the fiscal agent. Nonelectronic claims submission may be required when it is in the best interest of the Department.
  - c. Effective September 1, 2009, enrolled Medicaid providers shall submit Preadmission Screening and Annual Resident Reviews (PASARR) through the Department's Web-based tool or through a vendor with interface capability to submit data into the Web-based PASARR.
- (2) Clinical coverage. – The Department of Health and Human Services, Division of Medical Assistance, shall amend applicable clinical policies and submit applicable State Plan amendments to CMS to implement the budget reductions authorized in the following clinical coverage areas in this act:
  - a. Consolidate and reduce Targeted Case Management and case management functions bundled within other Medicaid services.
  - b. Take appropriate action to lower the cost of HIV case management, including tightening service hours and limiting administrative costs. The Department shall maintain HIV case management as a

- stand-alone service outside of departmental efforts to consolidate case management services.
- c. Eliminate coverage of therapeutic camps. The Department shall report on or before October 1, 2009, on the plan to transition children out of mental health residential therapeutic camps. The Department shall submit the report to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services.
- (3) Medicaid Personal Care Service provision. – Upon the enactment of this act, the Division of Medical Assistance shall implement the following new criteria for personal care services (PCS):
- a. Independent assessment by an entity that does not provide direct PCS services for evaluation of the recipient prior to initiation of service. The independent assessment will determine the qualifying Activities of Daily Living (ADL), the level of assistance required, and the amount and scope of PCS to be provided, according to policy criteria.
  - b. Independent assessment or review from the assigned Community Care of North Carolina (CCNC) physician of the continued qualification for PCS services under the revised PCS policy criteria.
  - c. Establishment of time limits on physician service orders and reauthorization in accordance with the recipient's diagnosis and acuity of need.
  - d. Add the following items to the list of tasks that are not covered by this service: nonmedical transportation, errands and shopping, money management, cueing, and prompting, guiding, or coaching.
  - e. Online physician attestation of medical necessity.
  - f. If sufficient reduction in cost is not achieved with the revised policy, the Secretary shall direct the Division of Medical Assistance to further modify the policy to achieve targeted cost savings.
- Recipients currently receiving PCS services shall be reviewed under the above criteria, and those recipients not meeting the new criteria shall be terminated from the service within 30 days of the review. The Department shall review usage of personal care services in adult care homes to determine if overuse is occurring and shall report its findings to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division on or before December 1, 2009.
- (4) MH/DD/SA Personal Care and Personal Assistance Services Provision. – A denial, reduction, or termination of Medicaid-funded personal care services shall result in a similar denial, reduction, or termination of State-funded MH/DD/SA personal care and personal assistance services.
- (5) Community Support and other MH/DD/SA services. – The Department of Health and Human Services shall transition community support child and adult, individual and group services to other defined services on or before June 30, 2010. The Division of Medical Assistance and the Division of MH/DD/SA shall take the steps necessary for the Medicaid and the State-funded community support program to provide for transition and discharge planning to recipients currently receiving community support services. The following shall occur:
- a. The Department shall submit to CMS: (i) revised service definitions that separate case management functions from the Community Support definition and (ii) a new service definition for peer support services for adults with mental illness and/or substance abuse disorders.
  - b. No new admissions for community support individual or group shall be allowed during this transition period unless the Department determines appropriate alternative services are not available, in which case limited community support services may be provided

- during the transition period. LMEs will be responsible for referring eligible consumers to appropriate alternative services.
- c. Authorizations currently in effect as of the date of enactment of this act remain valid. Any new authorization or subsequent reauthorization is subject to the provisions of this act.
  - d. No community support services shall be provided in conjunction with other enhanced services. Until CMS approves the new case management definition, professional level community support may be provided in conjunction with residential Level III and IV to assist in recipient discharge planning. Up to a maximum of 24 hours of case management (professional level) functions may be provided over a 90-day authorization period as approved by the prior authorization vendor.
  - e. The current moratorium on community support provider endorsement shall remain in effect.
  - f. A provider of community support services whose endorsement has been withdrawn or whose Medicaid participation has been terminated is not entitled to payment during the period the appeal is pending, and the Department shall make no payment to the provider during that period. If the final agency decision is in favor of the provider, the Department shall remove the suspension, commence payment for valid claims, and reimburse the provider for payments withheld during the period of appeal.
  - g. Effective 60 days from the enactment of this act, the paraprofessional level of community support shall be eliminated, and from this date the Department shall not use any Medicaid or State funds to pay for this level of service.
  - h. Thirty days after the enactment of this act, any concurrent request shall be accompanied with a discharge plan. Submission of the discharge plan will be a required document for a request to be considered complete. Failure to submit the discharge plan will result in the request being returned as "unable to process." Discharge from the service must occur within 90 days after the submission of the discharge plan.
  - i. Any community support provider that ceases to function as a provider shall provide written notification to DMA, the Local Management Entity, recipients, and the prior authorization vendor 30 days prior to closing of the business.
  - j. Medical and financial record retention is the responsibility of the provider and shall be in compliance with the record retention requirements of their Medicaid provider agreement or State-funded services contract. Records shall also be available to State, federal, and local agencies.
  - k. Failure to comply with notification, recipient transition planning, or record maintenance shall result in suspension of further payment until such failure is corrected. In addition, failure to comply shall result in denial of enrollment as a provider for any Medicaid or State-funded service. A provider (including its officers, directors, agents, or managing employees or individuals or entities having a direct or indirect ownership interest or control interest of five percent (5%) or more as set forth in Title XI of the Social Security Act) that fails to comply with the required record retention may be subject to sanctions, including exclusion from further participation in the Medicaid program, as set forth in Title XI.
- (6) Community Support Team. – Authorization for a Community Support Team shall be based upon medical necessity as defined by the Department and shall not exceed 18 hours per week. The Division of Medical Assistance shall do an immediate rate study of the Community Support Team to bring the average cost of service per recipient in line with Assertive Community

Treatment Team (ACTT) services. The Division shall also revise provider qualifications and tighten the service definition to contain costs in this line item. Not later than December 1, 2009, the Division of Medical Assistance shall report its findings on the rate study and any actions it has taken to conform with this subdivision to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services.

- (7) MH Residential. – The Department of Health and Human Services shall restructure the Medicaid child mental health, developmental disabilities, and substance abuse residential services to ensure that total expenditures are within budgeted levels. All restructuring activities shall be in compliance with federal and State law or rule. The Divisions of Medical Assistance and Mental Health, Developmental Disabilities, and Substance Abuse Services shall establish a team inclusive of providers, LMEs, and other stakeholders to assure effective transition of recipients to appropriate treatment options. The restructuring shall address all of the following:
- a. Submission of the therapeutic family service definition to CMS.
  - b. The Department shall reexamine the entrance and continued stay criteria for all residential services. The revised criteria shall promote least restrictive services in the home prior to residential placement. During treatment, there must be inclusion in community activities and parent or legal guardian participation in treatment.
  - c. Require all existing residential providers or agencies to be nationally accredited within one year of enactment of this act. Any providers enrolled after the enactment of this act shall be subject to existing endorsement and nationally accrediting requirements. In the interim, providers who are nationally accredited will be preferred providers for placement considerations.
  - d. Before a child can be admitted to Level III or Level IV placement, one or more of the following shall apply:
    1. Placement shall be a step down from a higher level placement such as a psychiatric residential treatment facility or inpatient.
    2. Multisystemic therapy or intensive in-home therapy services have been unsuccessful.
    3. The Child and Family Team has reviewed all other alternatives and recommendations and recommends Level III or IV placement due to maintaining health and safety.
    4. Transition or discharge plan shall be submitted as part of the initial or concurrent request.
  - e. Length of stay is limited to no more than 120 days. Any exceptions granted will require an independent psychiatric assessment, Child and Family Team review of goals and treatment progress, family or discharge placement setting are actively engaged in treatment goals and objectives and active participation of the prior authorization of vendor.
  - f. Submission of discharge plan is required in order for the request to be considered complete. Failure to submit a complete discharge plan will result in the request being returned as unable to process.
  - g. Any residential provider that ceases to function as a provider shall provide written notification to DMA, the Local Management Entity, recipients, and the prior authorization vendor 30 days prior to closing of the business.
  - h. Record maintenance is the responsibility of the provider and must be in compliance with record retention requirements. Records shall also be available to State, federal, and local agencies.
  - i. Failure to comply with notification, recipient transition planning, or record maintenance shall be grounds for withholding payment until such activity is concluded. In addition, failure to comply shall be



conditions that prevent enrollment for any Medicaid or State-funded service.

- j. On or before October 1, 2009, the Department shall report on its plan for transitioning children out of Level III and Level IV group homes. The Department shall submit the reports to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services.
- (8) Reduce Medicaid rates. – Subject to the prior approval of the Office of State Budget and Management, the Secretary shall reduce Medicaid provider rates to accomplish the reduction in funds for this purpose enacted in this act. The Secretary shall consider the impact on access to care through primary care providers and critical access hospitals and may adjust the rates accordingly. The rate reduction applies to all Medicaid private and public providers with the following exceptions: federally qualified health clinics, rural health centers, State institutions, hospital outpatient, pharmacies, and the noninflationary components of the case-mix reimbursement system for nursing facilities. Medicaid rates predicated upon Medicare fee schedules shall follow Medicare reductions but not Medicare increases unless federally required. Inflationary increases for Medicaid providers paying provider fees (private ICF-MRs and nursing facilities) can occur if the State share of the increases can be funded with provider fees.
- (9) Medicaid identification cards. – The Department shall issue Medicaid identification cards to recipients on an annual basis with quarterly updates.
- (10) The Department of Health and Human Services shall develop a plan for the consolidation of case management services. The plan shall address the time line and process for implementation, the vendors involved, the identification of savings, and the Medicaid recipients affected by the consolidation. Consolidation under this subdivision does not apply to HIV case management. By December 1, 2009, the Department shall report on the plan to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

**SECTION 10.68A.(b)** G.S. 108A-54.2(1) reads as rewritten:

- "(1) During the development of new medical coverage policy or amendment to existing medical coverage policy, consult with and seek the advice of the Physician Advisory Group of the ~~North Carolina Medical Society~~ and other organizations the Secretary deems appropriate. The Secretary shall also consult with and seek the advice of officials of the professional societies or associations representing providers who are affected by the new medical coverage policy or amendments to existing medical coverage policy."

**SECTION 10.68A.(c)** At least 30 days prior to the adoption of new or amended medical coverage policies necessitated by the reductions to the Medicaid program enacted in this act, the Department shall:

- (1) Publish the proposed new or amended medical coverage policies via the Medicaid Bulletin published on the Department's Web site, which shall include an invitation to readers to send written comments on the proposed new or amended policies to the Department's mailing address, including e-mail.
- (2) Notify via direct mail the members of the Physician Advisory Group (PAG) of the proposed policies.
- (3) Update the policies published on the Web site to reflect any changes made as a result of written comments received from the PAG and others.
- (4) Provide written notice to recipients about changes in policy.

**SECTION 10.68A.(d)** The Department of Health and Human Services shall not implement any actions directed by this act if the Department determines that such actions would jeopardize the receipt of ARRA funds appropriated or allocated to the Department.

**CO-PAYMENTS FOR TICKET TO WORK**

**SECTION 10.69.** G.S. 108A-54.1(d) reads as rewritten:

**"§ 108A-54.1. Medicaid buy-in for workers with disabilities.**

...

(d) Fees, Premiums, and Co-Payments. – Individuals who participate in HCWD and have countable income greater than one hundred fifty percent (150%) of FPG shall pay an annual enrollment fee of fifty dollars (\$50.00) to their county department of social services. Individuals who participate in HCWD and have countable income greater than or equal to two hundred percent (200%) of FPG shall pay a monthly premium in addition to the annual fee. The Department shall set a sliding scale for premiums, which is consistent with applicable federal law. An individual with countable income equal to or greater than four hundred fifty percent (450%) of FPG shall pay not less than one hundred percent (100%) of the cost of the premium, as determined by the Department. The premium shall be based on the experience of all individuals participating in the Medical Assistance Program. Individuals who participate in HCWD are subject to co-payments equal to those required under the ~~North Carolina Health Choice Program~~. Medical Assistance Program."

**INFORMATION ON MEDICAID WAIVERS**

**SECTION 10.72A.(a)** The Department of Health and Human Services, Division of Medical Assistance, in conjunction with the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, shall report on the feasibility and efficacy of applying for Medicaid waivers from the Centers for Medicare and Medicaid Services. The report shall recommend whether the following waivers should be pursued and the reasons therefore:

- (1) An 1115 waiver to permit individuals that test positive for HIV and have incomes at or below two hundred percent (200%) of the federal poverty level access to Medicaid services. The report and recommendation shall indicate the number of people that may be eligible for Medicaid services under the waiver, the resulting cost and cost savings to the State if all potentially eligible individuals applied for assistance, and the programmatic and technical impact should the waiver be implemented.
- (2) An 1115 waiver or other available Medicaid options to provide interconceptional coverage to low-income women with incomes below one hundred eighty-five percent (185%) of the federal poverty guidelines who have given birth to a high-risk infant. A high-risk infant is defined as weighing less than 1,500 grams, is born less than 34 weeks gestation, is born with a congenital anomaly, or who has died within the first 28 days of life. Interconceptional care would be limited to two years following the birth of a high-risk infant, or until a subsequent birth, whichever comes first. The report and recommendations should include estimated cost savings from improved birth outcomes that will offset the cost of providing Medicaid coverage to this targeted population.
- (3) A 1915(c) waiver to permit individuals who sustain traumatic brain injury after age 22 to access home and community-based Medicaid services. The report and recommendation shall include the estimated cost to implement the waiver.
- (4) A waiver to prevent a Medicaid recipient from losing Medicaid eligibility due to Social Security and Railroad Retirement cost-of-living adjustments and federal poverty level adjustments. The report and recommendation shall provide the cost to cover all affected persons effective April 1, 2009.

The Department shall provide for each waiver the estimated time needed to prepare the waiver application and the earliest date upon which the waiver, if approved by CMS, could be implemented.

**SECTION 10.72A.(b)** The Department shall submit its report and recommendations to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, the Fiscal Research Division, and the Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services by March 1, 2010.

**MEDICAID PROVIDER PAYMENT SUSPENSION**

**SECTION 10.73A.(a)** The Department of Health and Human Services may suspend payment to any North Carolina Medicaid provider against whom the Division of Medical Assistance has instituted a recoupment action, termination of the NC Medicaid Administrative Participation Agreement, or referral to the Medicaid Fraud Investigations Unit of the North Carolina Attorney General's Office. The suspension of payment shall be in the amount under review and shall continue during the pendency of any appeal filed at the Department, the Office of Administrative Hearings, or State or federal courts. If the provider appeals the final agency decision and the decision is in favor of the provider, the Department shall reimburse the provider for payments for all valid claims suspended during the period of appeal.

**SECTION 10.73A.(b)** Entering into a Medicaid Administrative Participation Agreement with the Department does not give rise to any property or liberty right in continued participation as a provider in the North Carolina Medicaid program.

**SECTION 10.73A.(c)** The Department shall not make any payment to a provider unless and until all outstanding Medicaid recoupments, assessments, or overpayments have been repaid in full to the Department, together with any applicable penalty and interest charges, or unless and until the provider has entered into an approved payment plan.

#### NC NOVA

**SECTION 10.75.** The Department of Health and Human Services, Division of Health Service Regulation, may use up to eighty-eight thousand dollars (\$88,000) for fiscal year 2009-2010 and ninety-three thousand seven hundred dollars (\$93,700) for fiscal year 2010-2011 of existing resources to continue the NC New Organizational Vision Award certification program. The Division shall use federal civil monetary penalty receipts as a source of support for this initiative, when appropriate.

#### DHSR LICENSE FEE INCREASES

**SECTION 10.76.(a)** G.S. 131D-2(b) reads as rewritten:

"(b) Licensure; inspections. –

(1) The Department of Health and Human Services shall inspect and license, under rules adopted by the Medical Care Commission, all adult care homes for persons who are aged or mentally or physically disabled except those exempt in subsection (c) of this section. Licenses issued under the authority of this section shall be valid for one year from the date of issuance unless revoked earlier by the Secretary for failure to comply with any part of this section or any rules adopted hereunder. Licenses shall be renewed annually upon filing and the Department's approval of the renewal application. The Department shall charge each adult care home with six or fewer beds a nonrefundable annual license fee in the amount of ~~two hundred fifty dollars (\$250.00)~~ three hundred fifteen dollars (\$315.00). The Department shall charge each adult care home with more than six beds a nonrefundable annual license fee in the amount of ~~three hundred fifty dollars (\$350.00)~~ three hundred sixty dollars (\$360.00) plus a nonrefundable annual per-bed fee of ~~twelve dollars and fifty cents (\$12.50)~~ seventeen dollars and fifty cents (\$17.50). A license shall not be renewed nor a new license issued for a change of ownership of an adult care home if outstanding fees, fines, and penalties imposed by the State against the home have not been paid. Fines and penalties for which an appeal is pending are exempt from consideration. The renewal application shall contain all necessary and reasonable information that the Department may by rule require. Except as otherwise provided in this subdivision, the Department may amend a license by reducing it from a full license to a provisional license for a period of not more than 90 days whenever the Department finds that:

- a. The licensee has substantially failed to comply with the provisions of Articles 1 and 3 of Chapter 131D of the General Statutes and the rules adopted pursuant to these Articles;
- b. There is a reasonable probability that the licensee can remedy the licensure deficiencies within a reasonable length of time; and

- c. There is a reasonable probability that the licensee will be able thereafter to remain in compliance with the licensure rules for the foreseeable future.

The Department may extend a provisional license for not more than one additional 90-day period upon finding that the licensee has made substantial progress toward remedying the licensure deficiencies that caused the license to be reduced to provisional status.

The Department may revoke a license whenever:

- a. The Department finds that:
1. The licensee has substantially failed to comply with the provisions of Articles 1 and 3 of Chapter 131D of the General Statutes and the rules adopted pursuant to these Articles; and
  2. It is not reasonably probable that the licensee can remedy the licensure deficiencies within a reasonable length of time; or
- b. The Department finds that:
1. The licensee has substantially failed to comply with the provisions of Articles 1 and 3 of Chapter 131D of the General Statutes and the rules adopted pursuant to these Articles; and
  2. Although the licensee may be able to remedy the deficiencies within a reasonable time, it is not reasonably probable that the licensee will be able to remain in compliance with licensure rules for the foreseeable future; or
- c. The Department finds that the licensee has failed to comply with the provisions of Articles 1 and 3 of Chapter 131D of the General Statutes and the rules adopted pursuant to these Articles, and the failure to comply endangered the health, safety, or welfare of the patients in the facility.

The Department may also issue a provisional license to a facility, pursuant to rules adopted by the Medical Care Commission, for substantial failure to comply with the provisions of this section or rules adopted pursuant to this section. Any facility wishing to contest the issuance of a provisional license shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days after the Department mails written notice of the issuance of the provisional license."

**SECTION 10.76.(a1)** If House Bill 456, 2009 Regular Session, becomes law, G.S. 131D-2.5 as enacted by that act reads as rewritten:

**"§ 131D-2.5. License fees.**

The Department shall charge each adult care home with six or fewer beds a nonrefundable annual license fee in the amount of ~~two hundred fifty dollars (\$250.00)~~ three hundred fifteen dollars (\$315.00). The Department shall charge each adult care home with more than six beds a nonrefundable annual license fee in the amount of ~~three hundred fifty dollars (\$350.00)~~ three hundred sixty dollars (\$360.00) plus a nonrefundable annual per-bed fee of ~~twelve dollars and fifty cents (\$12.50)~~ seventeen dollars and fifty cents (\$17.50)."

**SECTION 10.76.(b)** G.S. 131E-147 reads as rewritten:

**"§ 131E-147. Licensure requirement.**

(a) No person shall operate an ambulatory surgical facility without a license obtained from the Department.

(b) Applications shall be available from the Department, and each application filed with the Department shall contain all necessary and reasonable information that the Department may by rule require. A license shall be granted to the applicant upon a determination by the Department that the applicant has complied with the provisions of this Part and the rules promulgated by the Commission under this Part. The Department shall charge the applicant a nonrefundable annual base license fee in the amount of ~~seven hundred dollars (\$700.00)~~ eight hundred fifty dollars (\$850.00) plus a nonrefundable annual per-operating room fee in the amount of ~~fifty dollars (\$50.00)~~ seventy-five dollars (\$75.00)."

**SECTION 10.76.(c)** G.S. 131E-167(a) reads as rewritten:

"(a) Applications for certification shall be available from the Department, and each application filed with the Department shall contain all necessary and reasonable information

that the Department may by rule require. A certificate shall be granted to the applicant for a period not to exceed one year upon a determination by the Department that the applicant has substantially complied with the provisions of this Article and the rules promulgated by the Department under this Article. The Department shall charge the applicant a nonrefundable annual certification fee in the amount of ~~two hundred fifty dollars (\$250.00)~~ three hundred eighty-five dollars (\$385.00)."

**SECTION 10.76.(d)** G.S. 131E-138(c) reads as rewritten:

"(c) An application for a license shall be available from the Department, and each application filed with the Department shall contain all information requested by the Department. A license shall be granted to the applicant upon a determination by the Department that the applicant has complied with the provisions of this Part and the rules promulgated by the Commission under this Part. The Department shall charge the applicant a nonrefundable annual license fee in the amount of ~~four hundred dollars (\$400.00)~~ five hundred ten dollars (\$510.00)."

**SECTION 10.76.(e)** G.S. 131E-77 reads as rewritten:

**"§ 131E-77. Licensure requirement.**

(a) No person or governmental unit shall establish or operate a hospital in this state without a license. An infirmary is not required to obtain a license under this Part.

(b) The Commission shall prescribe by rule that any licensee or prospective applicant seeking to make specified types of alteration or addition to its facilities or to construct new facilities shall submit plans and specifications before commencement to the Department for preliminary inspection and approval or recommendations with respect to compliance with the applicable rules under this Part.

(c) An applicant for licensing under this Part shall provide information related to hospital operations as requested by the Department. The required information shall be submitted by the applicant on forms provided by the Department and established by rule.

(d) The Department shall renew each license in accordance with the rules of the Commission. The Department shall charge the applicant a nonrefundable annual base license fee plus a nonrefundable annual per-bed fee as follows:

Facility Type	Number of Beds	Base Fee	Per-Bed Fee
General Acute Hospitals:	1-49 beds	\$250.00	<del>\$12.50</del> <u>\$17.50</u>
	50-99 beds	\$350.00	<del>\$12.50</del> <u>\$17.50</u>
	100-199 beds	\$450.00	<del>\$12.50</del> <u>\$17.50</u>
	200-399 beds	\$550.00	<del>\$12.50</del> <u>\$17.50</u>
	400-699 beds	\$750.00	<del>\$12.50</del> <u>\$17.50</u>
	700+ beds	\$950.00	<del>\$12.50</del> <u>\$17.50</u>
Other Hospitals:		\$500.00	<del>\$12.50</del> <u>\$17.50</u>

(e) The Department shall issue the license to the operator of the hospital who shall not transfer or assign it except with the written approval of the Department. The license shall designate the number and types of inpatient beds, the number of operating rooms, and the number of gastrointestinal endoscopy rooms.

(f) The operator shall post the license on the licensed premises in an area accessible to the public."

**SECTION 10.76.(f)** G.S. 122C-23(h) reads as rewritten:

"(h) The Department shall charge facilities licensed under this Chapter a nonrefundable annual base license fee plus a nonrefundable annual per-bed fee as follows:

Type of Facility	Number of Beds	Base Fee	Per-Bed Fee
Facilities (non-ICF/MR):	0 beds	<del>\$175.00</del> <u>\$215.00</u>	\$0
	1 to 6 beds	<del>\$250.00</del> <u>\$305.00</u>	\$0
	More than 6 beds	<del>\$350.00</del> <u>\$475.00</u>	<del>\$12.50</del> <u>\$17.50</u>
ICF/MR Only:	1 to 6 beds	<del>\$650.00</del> <u>\$845.00</u>	\$0
	More than 6 beds	<del>\$650.00</del> <u>\$800.00</u>	<del>\$12.50</del> <u>\$17.50"</u>

**SECTION 10.76.(g)** G.S. 131E-102(b) reads as rewritten:

"(b) Applications shall be available from the Department, and each application filed with the Department shall contain all necessary and reasonable information that the Department may

by rule require. A license shall be granted to the applicant upon a determination by the Department that the applicant has complied with the provisions of this Part and the rules promulgated under this Part. The Department shall charge the applicant a nonrefundable annual license fee in the amount of ~~four hundred fifty dollars (\$450.00)~~ four hundred twenty dollars (\$420.00) plus a nonrefundable annual per-bed fee of ~~twelve dollars and fifty cents (\$12.50)~~ seventeen dollars and fifty cents (\$17.50)."

**SECTION 10.76.(h)** G.S. 131E-202(b) reads as rewritten:

"(b) The Department shall provide applications for hospice licensure. Each application filed with the Department shall contain all information requested therein. A license shall be granted to the applicant upon determination by the Department that the applicant has complied with the provisions of this Article and with the rules adopted by the Commission thereunder. Each license shall be issued only for the premises and persons named therein, shall not be transferable or assignable except with the written approval of the Department, and shall be posted in a conspicuous place on the licensed premises. The Department shall charge the applicant a nonrefundable annual license fee in the amount of four hundred dollars (\$400.00)."

**SECTION 10.76.(i)** This section becomes effective the seventh calendar day after the date this act becomes law.

### **DHSR INITIAL LICENSURE FEES NEW FACILITIES**

**SECTION 10.77.** Effective the seventh calendar day after the date this act becomes law, Article 16 of Chapter 131E of the General Statutes is amended by adding the following new section to read:

**"§ 131E-272. Initial licensure fees for new facilities.**

The following fees are initial licensure fees for new facilities and are applicable as follows:

<u>Facility Type</u>	<u>Number of Beds</u>	<u>Initial License Fee</u>	<u>Initial Bed Fee</u>
<u>Adult Care Licensure</u>	<u>More than 6</u>	<u>\$400.00</u>	<u>\$19.00</u>
	<u>6 or Fewer</u>	<u>\$350.00</u>	<u>\$ -</u>
<u>Acute and Home Care</u> <u>General Acute Hospitals</u>	<u>1-49</u>	<u>\$550.00</u>	<u>\$19.00</u>
	<u>50-99</u>	<u>\$750.00</u>	<u>\$19.00</u>
	<u>100-199</u>	<u>\$950.00</u>	<u>\$19.00</u>
	<u>200-399</u>	<u>\$1150.00</u>	<u>\$19.00</u>
	<u>400-699</u>	<u>\$1550.00</u>	<u>\$19.00</u>
	<u>700+</u>	<u>\$1950.00</u>	<u>\$19.00</u>
<u>Other Hospitals</u>		<u>\$1050.00</u>	<u>\$19.00</u>
<u>Home Care</u>	<u>-</u>	<u>\$560.00</u>	<u>\$ -</u>
<u>Ambulatory Surgical Ctrs.</u>	<u>-</u>	<u>\$900.00</u>	<u>\$85.00</u>
<u>Hospice (Free Standing)</u>	<u>-</u>	<u>\$450.00</u>	<u>\$ -</u>
<u>Abortion Clinics</u>	<u>-</u>	<u>\$750.00</u>	<u>\$ -</u>
<u>Cardiac Rehab. Centers</u>	<u>-</u>	<u>\$425.00</u>	<u>\$ -</u>
<u>Nursing Home &amp; L&amp;C</u>			
	<u>Nursing Homes</u>	<u>\$470.00</u>	<u>\$19.00</u>
	<u>All Others</u>	<u>\$ -</u>	<u>\$19.00</u>
<u>Mental Health Facilities</u>			
	<u>Nonresidential</u>	<u>\$265.00</u>	<u>\$ -</u>
	<u>Non ICF-MR</u>	<u>\$350.00</u>	<u>\$ -</u>
	<u>ICF-MR only</u>	<u>\$900.00</u>	<u>\$ -</u>
	<u>Non ICF-MR</u>	<u>\$525.00</u>	<u>\$19.00</u>
	<u>ICF-MR only</u>	<u>\$850.00</u>	<u>\$19.00."</u>

### **DHHS BLOCK GRANTS**

**SECTION 10.78.(a)** Appropriations from federal block grant funds are made for the fiscal year ending June 30, 2010, according to the following schedule:

TEMPORARY ASSISTANCE TO NEEDY FAMILIES  
(TANF) BLOCK GRANT

Local Program Expenditures

Division of Social Services

01.	Work First Family Assistance	\$87,036,636
02.	Work First County Block Grants	94,453,315
03.	Child Protective Services – Child Welfare Workers for Local DSS	14,452,391
04.	Child Welfare Collaborative	1,614,484

Division of Child Development

05.	Subsidized Child Care Program	61,087,077
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Division of Public Health

06.	Teen Pregnancy Initiatives	450,000
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DHHS Administration

07.	Division of Social Services	1,093,176
08.	Office of the Secretary	75,392
09.	Office of the Secretary/DIRM – TANF Automation Projects	720,000
10.	Office of the Secretary/DIRM – NC FAST Implementation	1,200,000

Transfers to Other Block Grants

Division of Child Development

11.	Transfer to the Child Care and Development Fund	84,330,900
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Division of Social Services

12.	Transfer to Social Services Block Grant for Child Protective Services – Child Welfare Training in Counties	2,550,000
13.	Transfer to Social Services Block Grant for Maternity Homes	943,002
14.	Transfer to Social Services Block Grant for Teen Pregnancy Prevention Initiatives	2,500,000
15.	Transfer to Social Services Block Grant for County Departments of Social Services for Children's Services	4,500,000
16.	Transfer to Social Services Block Grant for	

Foster Care Services	390,000
<b>TOTAL TEMPORARY ASSISTANCE TO NEEDY FAMILIES (TANF) BLOCK GRANT</b>	<b>\$357,396,373</b>

**TEMPORARY ASSISTANCE TO NEEDY FAMILIES (TANF)  
CONTINGENCY FUNDS**

**Local Program Expenditures**

Division of Social Services

01.	Work First Family Assistance	\$2,236,284
02.	Work First – Boys and Girls Clubs	1,600,000
03.	Work First – After-school Services For At-Risk Children	1,639,714
04.	Work First – After-school Programs For At-Risk Youth in Middle Schools	400,000
05.	Work First – Connect, Inc. (Work Central)	440,000
06.	Work First – Citizens Schools Program	360,000
07.	County Demonstration Grants	3,239,789
08.	Adoption Services – Special Children's Adoption Fund	3,000,000
09.	Family Violence Prevention	1,760,000
10.	Work First Functional Assessment	600,000
11.	Electing County State Funding Swap Out	2,378,213
12.	State Subsidized Child Care Funding Swap	12,452,484

<b>TOTAL TEMPORARY ASSISTANCE TO NEEDY FAMILIES (TANF) CONTINGENCY FUNDS</b>	<b>\$30,106,484</b>
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**SOCIAL SERVICES BLOCK GRANT**

**Local Program Expenditures**

Divisions of Social Services and Aging and Adult Services

01.	County Departments of Social Services (Transfer from TANF – \$4,500,000)	\$ 28,868,189
02.	State In-Home Services Fund	2,101,113
03.	State Adult Day Care Fund	2,155,301
04.	Child Protective Services/CPS Investigative Services-Child Medical Evaluation Program	609,455
05.	Foster Care Services (Transfer from TANF – \$390,000)	2,372,619



06.	Maternity Homes (Transfer from TANF)	943,002
07.	Special Children Adoption Incentive Fund	500,000
08.	Child Protective Services-Child Welfare Training for Counties (Transfer from TANF)	2,550,000
09.	Home and Community Care Block Grant (HCCBG)	1,834,077
Division of Mental Health, Developmental Disabilities, and Substance Abuse Services		
10.	Mental Health Services Program	422,003
11.	Developmental Disabilities Services Program	5,000,000
12.	Mental Health Services-Adult and Child/Developmental Disabilities Program/ Substance Abuse Services-Adult	3,234,601
Division of Child Development		
13.	Subsidized Child Care Program	3,150,000
Division of Vocational Rehabilitation		
14.	Vocational Rehabilitation Services – Easter Seal Society/UCP Community Health Program	188,263
Division of Public Health		
15.	Teen Pregnancy Prevention Initiatives (Transfer from TANF)	2,500,000
DHHS Program Expenditures		
Division of Aging and Adult Services		
16.	UNC-CARES Training Contract	247,920
Division of Services for the Blind		
17.	Independent Living Program	3,633,077
Division of Health Service Regulation		
18.	Adult Care Licensure Program	411,897
19.	Mental Health Licensure and Certification Program	205,668
DHHS Administration		
20.	Division of Aging and Adult Services	688,436
21.	Division of Social Services	892,624
22.	Office of the Secretary/Controller's Office	138,058

23.	Office of the Secretary/DIRM	87,483
24.	Division of Child Development	15,000
25.	Division of Mental Health, Developmental Disabilities, and Substance Abuse Services	29,665
26.	Division of Health Service Regulation	235,625
27.	Office of the Secretary-NC Inter-Agency Council for Coordinating Homeless Programs	250,000
28.	Office of the Secretary	48,053
Transfers to Other State Agencies		
Department of Administration		
29.	NC Commission of Indian Affairs In-Home Services for the Elderly	203,198
Transfers to Other Block Grants		
Division of Public Health		
30.	Transfer to Preventive Health Services Block Grant for HIV/STD Prevention and Community Planning	145,819
TOTAL SOCIAL SERVICES BLOCK GRANT		\$ 63,661,146
LOW-INCOME HOME ENERGY ASSISTANCE BLOCK GRANT		
Local Program Expenditures		
Division of Social Services		
01.	Low-Income Energy Assistance Program (LIEAP)	\$ 25,909,124
02.	Crisis Intervention Program (CIP)	20,224,269
Office of the Secretary – Office of Economic Opportunity		
03.	Weatherization Program	1,000,000
04.	Heating Air Repair & Replacement Program (HARRP)	3,385,583
Local Administration		
Division of Social Services		
05.	County DSS Administration	3,608,360
Office of the Secretary – Office of Economic Opportunity		
06.	Local Residential Energy Efficiency Service Providers – Weatherization	420,035
07.	Local Residential Energy Efficiency Service	

Providers – HARRP	195,910
DHHS Administration	
08. Division of Social Services	275,000
09. Division of Mental Health, Developmental Disabilities, and Substance Abuse Services	8,128
10. Office of the Secretary/DIRM	269,935
11. Office of the Secretary/Controller's Office	12,332
12. Office of the Secretary/Office of Economic Opportunity – Weatherization	294,874
13. Office of the Secretary/Office of Economic Opportunity – HARRP	137,574
Transfers to Other State Agencies	
14. Department of Administration – N.C. State Commission of Indian Affairs	67,042
<b>TOTAL LOW-INCOME HOME ENERGY ASSISTANCE BLOCK GRANT</b>	<b>\$ 55,808,166</b>
<b>CHILD CARE AND DEVELOPMENT FUND BLOCK GRANT</b>	
Local Program Expenditures	
Division of Child Development	
01. Subsidized Child Care Services (CCDF)	\$144,097,307
02. Contract Subsidized Child Care Services Support	507,617
03. Subsidized Child Care Services (Transfer from TANF)	84,330,900
04. Quality and Availability Initiatives	23,985,876
04A. CASTLE Program for Preschool Classes and Teacher Training	575,000
Division of Social Services	
05. Local Subsidized Child Care Services Support	\$16,594,417
DHHS Administration	
Division of Child Development	
06. DCD Administrative Expenses	6,539,277
Division of Central Administration	
07. DHHS Central Administration – DIRM Technical Services	763,356

TOTAL CHILD CARE AND DEVELOPMENT FUND  
BLOCK GRANT \$277,393,750

CHILD CARE AND DEVELOPMENT FUND BLOCK GRANT RECEIVED THROUGH  
THE AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA)

Local Program Expenditures

Division of Child Development

01.	Subsidized Child Care Services (CCDF)	\$53,993,329
02.	Contract Subsidized Child Care Services Support	29,030

DHHS Program Expenditures

Division of Child Development

03.	Quality and Availability Initiatives	7,719,144
04.	TEACH	3,800,000

Local Administration

Division of Social Services

05.	Subsidy Services Support	2,001,631
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TOTAL CHILD CARE AND DEVELOPMENT FUND  
BLOCK GRANT RECEIVED THROUGH ARRA \$67,543,143

MENTAL HEALTH SERVICES BLOCK GRANT

Local Program Expenditures

01.	Mental Health Services – Adult	\$ 5,877,762
02.	Mental Health Services – Child	3,921,991
03.	Comprehensive Treatment Service Program	1,500,000
04.	Mental Health Services – UNC School of Medicine, Department of Psychiatry	300,000
05.	Administration	100,000

TOTAL MENTAL HEALTH SERVICES BLOCK GRANT \$ 11,699,753

SUBSTANCE ABUSE PREVENTION  
AND TREATMENT BLOCK GRANT

Local Program Expenditures

Division of Mental Health, Developmental Disabilities, and Substance Abuse Services

01.	Substance Abuse Services – Adult	\$ 22,008,080
02.	Substance Abuse Treatment Alternative for Women	8,069,524

03.	Substance Abuse – HIV and IV Drug	5,116,378
04.	Substance Abuse Prevention – Child	7,186,857
05.	Substance Abuse Services – Child	4,940,500
06.	Institute of Medicine	250,000
07.	Administration	250,000
Division of Public Health		
08.	Risk Reduction Projects	633,980
09.	Aid-to-Counties	209,576
10.	Maternal Health	37,779
TOTAL SUBSTANCE ABUSE PREVENTION AND TREATMENT BLOCK GRANT		\$ 48,702,674

MATERNAL AND CHILD HEALTH BLOCK GRANT

Local Program Expenditures

Division of Public Health

01.	Children's Health Services	7,534,865
02.	Women's Health	7,701,691
03.	Oral Health	38,041

DHHS Program Expenditures

Division of Public Health

04.	Children's Health Services	1,359,636
05.	Women's Health	135,452
06.	State Center for Health Statistics	179,483
07.	Quality Improvement in Public Health	14,646
08.	Health Promotion	88,746
09.	Office of Minority Health	55,250
10.	Immunization Program – Vaccine Distribution	382,648

DHHS Administration

Division of Public Health

11.	Division of Public Health Administration	631,966
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TOTAL MATERNAL AND CHILD

HEALTH BLOCK GRANT \$ 18,122,424

PREVENTIVE HEALTH SERVICES BLOCK GRANT

Local Program Expenditures

Division of Public Health

01.	NC Statewide Health Promotion	\$1,730,653
02.	Services to Rape Victims	197,112
03.	HIV/STD Prevention and Community Planning (Transfer from Social Services Block Grant)	145,819

DHHS Program Expenditures

Division of Public Health

04.	NC Statewide Health Promotion	1,699,044
05.	Oral Health	70,000
06.	State Laboratory of Public Health	16,600

TOTAL PREVENTIVE HEALTH SERVICES BLOCK GRANT \$3,859,228

COMMUNITY SERVICES BLOCK GRANT

Local Program Expenditures

Office of Economic Opportunity

01.	Community Action Agencies	\$ 16,673,336
02.	Limited Purpose Agencies	926,297

DHHS Administration

03.	Office of Economic Opportunity	926,296
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TOTAL COMMUNITY SERVICES BLOCK GRANT \$ 18,525,929

COMMUNITY SERVICES BLOCK GRANT RECEIVED THROUGH THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (ARRA)

Local Program Expenditures

Office of Economic Opportunity

01.	Community Action Agencies	\$ 24,668,537
02.	Limited Purpose Agencies	1,312,156

DHHS Administration Expenditures

03.	Division of Social Services	262,431
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TOTAL COMMUNITY SERVICES BLOCK GRANT

**GENERAL PROVISIONS**

**SECTION 10.78.(b)** Information to Be Included in Block Grant Plans. – The Department of Health and Human Services shall submit a separate plan for each Block Grant received and administered by the Department, and each plan shall include the following:

- (1) A delineation of the proposed allocations by program or activity, including State and federal match requirements.
- (2) A delineation of the proposed State and local administrative expenditures.
- (3) An identification of all new positions to be established through the Block Grant, including permanent, temporary, and time-limited positions.
- (4) A comparison of the proposed allocations by program or activity with two prior years' program and activity budgets and two prior years' actual program or activity expenditures.
- (5) A projection of current year expenditures by program or activity.
- (6) A projection of federal Block Grant funds available, including unspent federal funds from the current and prior fiscal years.

**SECTION 10.78.(c)** Changes in Federal Fund Availability. – If the Congress of the United States increases the federal fund availability for any of the Block Grants administered by the Department of Health and Human Services from the amounts appropriated in this section, the Department shall allocate the increase proportionally across the program and activity appropriations identified for that Block Grant in this section. In allocating an increase in federal fund availability, the Department shall not propose funding for new programs or activities not appropriated in this section.

If the Congress of the United States decreases the federal fund availability for any of the Block Grants administered by the Department of Health and Human Services from the amounts appropriated in this section, the Department shall reduce State administration by at least the percentage of the reduction in federal funds. After determining the State administration, the remaining reductions shall be allocated proportionately across the program and activity appropriations identified for that Block Grant in this section.

Prior to allocating the change in federal fund availability, the proposed allocation must be approved by the Office of State Budget and Management. If the Department adjusts the allocation of any Block Grant due to changes in federal fund availability, then a report shall be made to the Joint Legislative Commission on Governmental Operations, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

**SECTION 10.78.(d)** Appropriations from federal Block Grant funds are made for the fiscal year ending June 30, 2010, according to the schedule enacted for State fiscal year 2009-2010 or until a new schedule is enacted by the General Assembly.

**SECTION 10.78.(e)** All changes to the budgeted allocations to the Block Grants administered by the Department of Health and Human Services that are not specifically addressed in this section shall be approved by the Office of State Budget and Management, and a report shall be submitted to the Joint Legislative Commission on Governmental Operations for review prior to implementing the changes. All changes to the budgeted allocations to the Block Grants shall be reported immediately to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division. This subsection does not apply to Block Grant changes caused by legislative salary increases and benefit adjustments.

**TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) BLOCK GRANT AND TANF CONTINGENCY FUNDS**

**SECTION 10.78.(f)** The sum of one million ninety-three thousand one hundred seventy-six dollars (\$1,093,176) appropriated in this section in the TANF Block Grant to the Department of Health and Human Services, Division of Social Services, for the 2009-2010 fiscal year shall be used to support administration of TANF-funded programs.

**SECTION 10.78.(g)** The sum of one million seven hundred sixty thousand dollars (\$1,760,000) appropriated under this section in TANF Contingency funds to the Department of Health and Human Services, Division of Social Services, for the 2009-2010 fiscal year shall be used to provide domestic violence services to Work First recipients. These funds shall be used

to provide domestic violence counseling, support, and other direct services to clients. These funds shall not be used to establish new domestic violence shelters or to facilitate lobbying efforts. The Division of Social Services may use up to seventy-five thousand dollars (\$75,000) in TANF funds to support one administrative position within the Division of Social Services to implement this subsection.

Each county department of social services and the local domestic violence shelter program serving the county shall develop jointly a plan for utilizing these funds. The plan shall include the services to be provided and the manner in which the services shall be delivered. The county plan shall be signed by the county social services director or the director's designee and the domestic violence program director or the director's designee and submitted to the Division of Social Services by December 1, 2009. The Division of Social Services, in consultation with the Council for Women, shall review the county plans and shall provide consultation and technical assistance to the departments of social services and local domestic violence shelter programs, if needed.

The Division of Social Services shall allocate these funds to county departments of social services according to the following formula: (i) each county shall receive a base allocation of five thousand dollars (\$5,000); and (ii) each county shall receive an allocation of the remaining funds based on the county's proportion of the statewide total of the Work First caseload as of July 1, 2009, and the county's proportion of the statewide total of the individuals receiving domestic violence services from programs funded by the Council for Women as of July 1, 2009. The Division of Social Services may reallocate unspent funds to counties that submit a written request for additional funds.

**SECTION 10.78.(h)** The sum of one million six hundred thirty-nine thousand seven hundred fourteen dollars (\$1,639,714) appropriated in this section in TANF Contingency funds to the Department of Health and Human Services, Division of Social Services, for the 2009-2010 fiscal year shall be used to expand after-school programs and services for at-risk children. The Department shall develop and implement a grant program to award grants to community-based programs that demonstrate the ability to reach children at risk of teen pregnancy, school dropout, and gang participation. The Department shall award grants to community-based organizations that demonstrate the ability to develop and implement linkages with local departments of social services, area mental health programs, schools, and other human services programs in order to provide support services and assistance to the child and family. These funds may be used to fund one position within the Division of Social Services to coordinate at-risk after-school programs and shall not be used for other State administration.

**SECTION 10.78.(i)** The sum of fourteen million four hundred fifty-two thousand three hundred ninety-one dollars (\$14,452,391) appropriated in this section to the Department of Health and Human Services, Division of Social Services, in the TANF Block Grant for the 2009-2010 fiscal year for child welfare improvements shall be allocated to the county departments of social services for hiring or contracting staff to investigate and provide services in Child Protective Services cases; to provide foster care and support services; to recruit, train, license, and support prospective foster and adoptive families; and to provide interstate and postadoption services for eligible families.

**SECTION 10.78.(j)** The sum of three million dollars (\$3,000,000) appropriated in this section in TANF Contingency funds to the Department of Health and Human Services, Special Children Adoption Fund, for the 2009-2010 fiscal year shall be used in accordance with G.S. 108A-50.2, as enacted in Section 10.48 of this act. 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, shall develop guidelines for the awarding of funds to licensed public and private adoption agencies upon the adoption of children described in G.S. 108A-50 and in foster care. Payments received from the Special Children Adoption Fund by participating agencies shall be used exclusively to enhance the adoption services program. No local match shall be required as a condition for receipt of these funds.

**SECTION 10.78.(k)** The sum of one million two hundred thousand dollars (\$1,200,000) in this section appropriated to the Department of Health and Human Services in the TANF Block Grant for the 2009-2010 fiscal year shall be used to implement N.C. FAST (North Carolina Families Accessing Services through Technology). The N.C. FAST Program involves the entire automation initiative through which families access services and local departments of social services deliver benefits, supervised by the Department of Health and Human Services, Divisions of Social Services, Aging and Adult Services, Medical Assistance,



and Child Development. The statewide automated initiative shall be implemented in compliance with federal regulations in order to ensure federal financial participation in the project. The Department of Health and Human Services shall report on its compliance with this subsection to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division no later than January 1, 2010.

**SECTION 10.78.(l)** The sum of four hundred thousand dollars (\$400,000) appropriated in this section to the Department of Health and Human Services, Division of Social Services, in TANF Contingency funds for the 2009-2010 fiscal year shall be used to expand after-school programs for at-risk children attending middle school. The Department shall develop and implement a grant program to award funds to community-based programs demonstrating the capacity to reach children at risk of teen pregnancy, school dropout, and gang participation. These funds shall not be used for training or administration at the State level. All funds shall be distributed to community-based programs, focusing on those communities where similar programs do not exist in middle schools.

**SECTION 10.78.(m)** In implementing the TANF Block Grants, the Department of Health and Human Services shall review policies, programs, and initiatives to ensure that they support men in their role as fathers and strengthen fathers' involvement in their children's lives. The Department shall encourage county departments of social services to ensure their Work First programs emphasize responsible fatherhood and increased participation by noncustodial fathers.

**SECTION 10.78.(n)** The sum of four hundred forty thousand dollars (\$440,000) appropriated in this section to the Department in TANF Contingency funds for the 2009-2010 fiscal year shall be transferred to Connect, Inc. Connect, Inc., shall report on the number of people served and the services received as a result of the receipt of funds. The report shall contain expenditure data, including the amount of funds used for administration and direct training. The report shall also include the number of people who have been employed as a direct result of services provided by Connect, Inc., including the length of employment in the new position. The Department of Health and Human Services shall evaluate the program and ensure that services provided are not duplicative of local employment security commissions in the nine counties served by Connect, Inc. The evaluation report shall be submitted to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division no later than May 1, 2010.

**SECTION 10.78.(o)** The sum of one million six hundred thousand dollars (\$1,600,000) appropriated in this section to the Department in TANF Contingency funds for Boys and Girls Clubs for the 2009-2010 fiscal year shall be used to make grants for approved programs. The Department of Health and Human Services, in accordance with federal regulations for the use of TANF Block Grant funds, shall administer a grant program to award funds to the Boys and Girls Clubs across the State in order to implement programs that improve the motivation, performance, and self-esteem of youths and to implement other initiatives that would be expected to reduce gang participation, school dropout, and teen pregnancy rates. The Department shall encourage and facilitate collaboration between the Boys and Girls Clubs and Support Our Students, Communities in Schools, and similar programs to submit joint applications for the funds if appropriate.

**SECTION 10.78.(p)** The Department of Health and Human Services, Division of Social Services, shall continue implementing county demonstration grants that began in the 2006-2007 fiscal year. The county demonstration grants may be awarded for up to three years with all projects ending no later than the end of fiscal year 2009-2010. The purpose of the county demonstration grants is to identify best practices that can be used by counties to improve the work participation rates. The Division of Social Services is authorized to establish two time-limited positions to manage the grant award process and monitor the demonstration projects through fiscal year 2009-2010.

Funding provided under the county demonstration grants shall not be used to supplant local funds, and counties shall be required to maintain the current level of effort and funding for the Work First program.

The Department of Health and Human Services, Division of Social Services, shall report on the status of county demonstration grants implemented pursuant to this subsection to the House of Representatives Appropriations Subcommittee on Health and Human Services,

the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division no later than February 1, 2010.

**SECTION 10.78.(q)** The sum of one million six hundred fourteen thousand four hundred eighty-four dollars (\$1,614,484) appropriated in this section to the Department of Health and Human Services in the TANF Block Grant for the 2009-2010 fiscal year shall be used to continue support for the Child Welfare Collaborative.

**SECTION 10.78.(r)** The sum of three hundred sixty thousand dollars (\$360,000) appropriated to the Department of Health and Human Services, Division of Social Services, under this section in TANF Contingency funds for the 2009-2010 fiscal year shall be used to continue support for the Citizens Schools Program, a three-year urban/rural dropout prevention pilot program in the Durham and Vance county public school systems.

#### **TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) EMERGENCY CONTINGENCY FUNDS RECEIVED THROUGH THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (ARRA)**

**SECTION 10.78.(s)** The Department of Health and Human Services, Division of Social Services, shall demonstrate qualifying conditions and apply to the U.S. Department of Health and Human Services, Administration for Children & Families, for federal funding available through the Emergency Contingency Fund for State TANF Programs created by the American Recovery and Reinvestment Act of 2009.

Of the funds for which the Division qualifies, the sum of one million nine hundred fifty-nine thousand and twenty dollars (\$1,959,020) shall be used to implement a Conversion Pay for Performance Work First Benefits Program to improve work participation among Work First Family Assistance recipients.

If, based on increased Work First Family Assistance caseloads and payments, the Division of Social Services qualifies for funding in excess of the amount appropriated in this section, such additional Emergency Contingency Funds shall be used to support the Work First Family Assistance program.

#### **SOCIAL SERVICES BLOCK GRANT**

**SECTION 10.78.(t)** Social Services Block Grant funds appropriated to the North Carolina Inter-Agency Council for Coordinating Homeless Programs and funds appropriated for child medical evaluations are exempt from the provisions of 10A NCAC 71R .0201(3).

**SECTION 10.78.(u)** The sum of two million five hundred fifty thousand dollars (\$2,550,000) appropriated in this section in the Social Services Block Grant to the Department of Health and Human Services, Division of Social Services, for the 2009-2010 fiscal year shall be used to support various child welfare training projects as follows:

- (1) Provide a regional training center in southeastern North Carolina.
- (2) Provide training for residential child caring facilities.
- (3) Provide for various other child welfare training initiatives.

**SECTION 10.78.(v)** The sum of nine hundred forty-three thousand two dollars (\$943,002) appropriated in this section to the Department of Health and Human Services in the Social Services Block Grant for the 2009-2010 fiscal year shall be used to support maternity home services.

**SECTION 10.78.(w)** The sum of two million three hundred seventy-two thousand six hundred nineteen dollars (\$2,372,619) appropriated in this section in the Social Services Block Grant for child caring agencies for the 2009-2010 fiscal year shall be allocated in support of State foster home children.

**SECTION 10.78.(x)** The Department of Health and Human Services is authorized, subject to the approval of the Office of State Budget and Management, to transfer Social Services Block Grant funding allocated for departmental administration between divisions that have received administrative allocations from the Social Services Block Grant.

**SECTION 10.78.(y)** Social Services Block Grant funds appropriated for the Special Children's Adoption Incentive Fund will require fifty percent (50%) local match.

#### **LOW-INCOME HOME ENERGY ASSISTANCE BLOCK GRANT**

**SECTION 10.78.(z)** Additional emergency contingency funds received may be allocated for Energy Assistance Payments or Crisis Intervention Payments without prior consultation with the Joint Legislative Commission on Governmental Operations. Additional

funds received shall be reported to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division upon notification of the award. The Department of Health and Human Services shall not allocate funds for any activities, including increasing administration, other than assistance payments, without prior consultation with the Joint Legislative Commission on Governmental Operations.

In addition to funds available for weatherization appropriated within the Low-Income Home Energy Assistance Block Grant, funds available through the American Recovery and Reinvestment Act of 2009 shall be used to continue to enhance weatherization activities coordinated by local agencies.

#### **CHILD CARE AND DEVELOPMENT FUND BLOCK GRANT**

**SECTION 10.78.(aa)** Payment for subsidized child care services provided with federal TANF funds shall comply with all regulations and policies issued by the Division of Child Development for the subsidized child care program.

**SECTION 10.78.(bb)** If funds appropriated through the Child Care and Development Fund Block Grant for any program cannot be obligated or spent in that program within the obligation or liquidation periods allowed by the federal grants, the Department may move funds to child care subsidies, unless otherwise prohibited by federal requirements of the grant, in order to use the federal funds fully.

**SECTION 10.78.(cc)** Funds from the Child Care and Development Fund Block Grant received through the American Recovery and Reinvestment Act of 2009 shall be used to increase access to child care subsidy. To help address the economic downturn and increasing unemployment in North Carolina, the Department of Health and Human Services, Division of Child Development, shall adopt temporary policies that facilitate and expedite the prudent expenditure of these funds as follows:

- (1) Permit the local purchasing agencies to issue time-limited vouchers to assist counties in managing onetime, nonrecurring subsidy funding.
- (2) Extend the current 30/60-day job search policy to six months when a recipient experiences a loss of employment.
- (3) Provide an up-front job search period of six months for applicants who have lost employment since October 1, 2008.
- (4) Provide a job search period of six months for recipients that complete school and are entering the job market.
- (5) Notwithstanding any other provision of law, extend the 24-month education time limit for an additional 12 months for a child care recipient who has lost a job since October 1, 2008, or otherwise needs additional training to enhance his or her marketable skills for job placement due to the economic downturn and who has depleted his or her 24-month allowable education time.
- (6) Lower the number of hours a parent must be working in order to be eligible for subsidy to assist parents who are continuing to work but at reduced hours.

**SECTION 10.78.(dd)** If American Recovery and Reinvestment Act of 2009 funds appropriated through the Child Care and Development Fund Block Grant for any program cannot be obligated or spent in that program within the obligation or liquidation periods allowed by the federal grants, the Department may move funds to child care subsidies, unless otherwise prohibited by federal requirements of the grant, in order to use the federal funds fully.

#### **MENTAL HEALTH BLOCK GRANT**

**SECTION 10.78.(ee)** The sum of one million five hundred thousand dollars (\$1,500,000) appropriated in this section in the Mental Health Block Grant to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, for the 2009-2010 fiscal year and the sum of four hundred twenty-two thousand three dollars (\$422,003) appropriated in this section in the Social Services Block Grant to the Department of Health and Human Services, Division of Social Services, for the 2009-2010 fiscal year shall be used to continue a Comprehensive Treatment Services Program for Children.

**SECTION 10.78.(ee1)** Of the three hundred thousand dollars (\$300,000) appropriated for the UNC School of Medicine, Department of Psychiatry, for the 2009-2010 fiscal year, the sum of two hundred thousand dollars (\$200,000) shall be used to: (i) expand the Department of Psychiatry's Schizophrenia Treatment and Evaluation Program (STEP) into a community setting, (ii) provide training for the next generation of psychiatrists, social workers, psychologists, and nurses to address the current workforce crisis, (iii) provide statewide training and consultation in evidence-based practices, and (iv) provide ongoing support for the STEP and OASIS clinics.

Of the three hundred thousand dollars (\$300,000) appropriated for the UNC School of Medicine, Department of Psychiatry, for the 2009-2010 fiscal year, the sum of one hundred thousand dollars (\$100,000) shall be used to provide bridge funding for OASIS, a statewide program providing targeted, intense interventions to individuals in the early stages of schizophrenia when chronicity and disability may be most preventable. Funds shall be used to support OASIS as foundation support ends, allowing OASIS to transition to funding through private insurance, Medicaid, State appropriations for Mental Health, Developmental Disabilities, and Substance Abuse Services, and other funding streams.

### **SUBSTANCE ABUSE PREVENTION AND TREATMENT BLOCK GRANT**

**SECTION 10.78.(ff)** The sum of two hundred fifty thousand dollars (\$250,000) appropriated in this section in the Substance Abuse Prevention and Treatment Block Grant to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, for the 2009-2010 fiscal year for the North Carolina Institute of Medicine (NCIOM) shall be used to study the following:

- (1) The availability of Medicaid and State-funded mental health, developmental disabilities, and substance abuse services to active duty, reserve, and veteran members of the military and National Guard. The study should discuss the current availability of services, the extent of use, and any gaps in services.
- (2) Issues related to cost, quality, and access to appropriate and affordable health care for all North Carolinians. The NC Institute of Medicine (NCIOM) may use funds appropriated for the 2007-2009 fiscal biennium to continue the work of its Health Access Study Group to study these issues. The Health Access Study Group may include in its study the matters contained in Sections 31.1, 31.2, and 31.3 of S.L. 2008-181 and also may monitor federal health-related legislation to determine how the legislation would impact costs, quality, and access to health care.
- (3) Short-term and long-term strategies to address issues within adult care homes that provide residence to persons who are frail and elderly and to persons suffering from mental illness.

The Institute shall make an interim report to the Governor's Office, the Joint Legislative Health Care Oversight Committee, and the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services no later than January 15, 2010, which may include recommendations and proposed legislation, and shall issue its final report with findings, recommendations, and suggested legislation to the 2011 General Assembly upon its convening. In the event members of the General Assembly serve on the NCIOM Health Access Study Group, they shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1. The Health Access Study Group may include in its study the matters contained in Sections 31.1, 31.2, and 31.3 of S.L. 2008-181 and also may monitor federal health-related legislation to determine how the legislation would impact costs, quality, and access to health care.

### **MATERNAL AND CHILD HEALTH BLOCK GRANT**

**SECTION 10.78.(gg)** If federal funds are received under the Maternal and Child Health Block Grant for abstinence education, pursuant to section 912 of Public Law 104-193 (42 U.S.C. § 710), for the 2009-2010 fiscal year, then those funds shall be transferred to the State Board of Education to be administered by the Department of Public Instruction. The Department of Public Instruction shall use the funds to establish an abstinence until marriage education program and shall delegate to one or more persons the responsibility of implementing the program and G.S. 115C-81(e1)(4) and (4a). The Department of Public

Instruction shall carefully and strictly follow federal guidelines in implementing and administering the abstinence education grant funds.

The sum of three hundred ninety-one thousand six hundred forty-two dollars (\$391,642) identified for expanded activities and salaries in the Department of Health and Human Services Block Grant Plan Management Plan for the 2009-2010 fiscal year funding request shall be used for current ongoing activities only.

**SECTION 10.78.(hh)** The Department of Health and Human Services shall ensure that there will be follow-up testing in the Newborn Screening Program.

#### **COMMUNITY SERVICES BLOCK GRANT**

**SECTION 10.78.(ii)** In accordance with the intent of the American Recovery and Reinvestment Act of 2009, the North Carolina General Assembly strongly encourages recipients of Community Services Block Grant and Community Services Block Grant Recovery funds to enhance cooperation with county departments of social services and regional food banks to increase benefits enrollment for eligible persons.

**SECTION 10.78.(jj)** The sum of two hundred sixty-two thousand four hundred thirty-one dollars (\$262,431) appropriated in this section in the Community Services Block Grant, received through the American Recovery and Reinvestment Act of 2009 (ARRA), to the Department of Health and Human Services, Division of Social Services, for the 2009-2010 fiscal year shall be used for coordination activities relating to the identification and enrollment of eligible individuals and families in federal, State, and local benefit programs.

### **PART XI. DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES**

#### **COMMERCIAL FERTILIZER FEES**

**SECTION 11.1.** Effective September 1, 2009, G.S. 106-671(a) reads as rewritten:

"(a) For the purpose of defraying expenses on the inspection and of otherwise determining the value of commercial fertilizers in this State, there shall be paid to the Department of Agriculture and Consumer Services a charge of ~~twenty-five cents (25¢)~~fifty cents (50¢) per ton on all commercial fertilizers other than packages of five pounds or less. Inspection fees shall be paid on all tonnage distributed into North Carolina to any person not having a valid reporting permit. On individual packages of five pounds or less there shall be paid in lieu of the tonnage fee an annual registration fee of twenty-five dollars (\$25.00) for each brand offered for sale, sold, or distributed; provided that any per annum (fiscal) tonnage of any brand sold in excess of one hundred tons may be subject to the charge of ~~twenty-five cents (25¢)~~fifty cents (50¢) per ton on any amount in excess of one hundred tons as provided herein. Whenever any manufacturer of commercial fertilizer shall have paid the charges required by this section his goods shall not be liable to further tax, whether by city, town, or county; provided, this shall not exempt the commercial fertilizers from an ad valorem tax."

#### **INCREASE PESTICIDE REGISTRATION FEE**

**SECTION 11.2.** Effective August 15, 2009, G.S. 143-442(b) reads as rewritten:

"(b) The applicant shall pay an annual registration fee of ~~one hundred dollars (\$100.00)~~one hundred fifty dollars (\$150.00) plus an additional annual assessment for each brand or grade of pesticide registered. The annual assessment shall be fifty dollars (\$50.00) if the applicant's gross sales of the pesticide in this State for the preceding 12 months for the period ending September 30th were more than five thousand dollars (\$5,000.00) and twenty-five dollars (\$25.00) if gross sales were less than five thousand dollars (\$5,000.00). An additional two hundred dollars (\$200.00) delinquent registration penalty shall be assessed against the registrant for each brand or grade of pesticide which is marketed in North Carolina prior to registration as required by this Article. In the case of multi-year registration, the annual fee and additional assessment for each year shall be paid at the time of the initial registration. The Board shall give a pro rata refund of the registration fee and additional assessment to the registrant in the event that registration is canceled by the Board or by the United States Environmental Protection Agency."

#### **BOARD OF AGRICULTURE REVIEW OF FEE SCHEDULES**

**SECTION 11.3.** G.S. 106-6.1 reads as rewritten:

"§ 106-6.1. Fees.

(a) A board or commission within the Department of Agriculture and Consumer Services may establish fees or charges for the services it provides. The Board of Agriculture, subject to the provisions of Chapter 146 of the General Statutes, may establish a rate schedule for the use of facilities operated by the Department of Agriculture and Consumer Services.

(b) No later than February 1 of each odd-numbered year, the Board of Agriculture shall review all fees under its authority to determine whether any of these fees should be changed and report its findings to the House of Representatives and Senate Appropriations Subcommittees on Natural and Economic Resources and the Fiscal Research Division. The report required by this subsection shall include all of the information reported to the Office of State Budget and Management for its Biennial Fee Report and all of the following:

- (1) The names of the programs or divisions supported by the fee.
- (2) The total expenditures of the programs or divisions.
- (3) Any recommendations for increasing or decreasing the amount of the fee.
- (4) An evaluation of inflation since the last change to the amount of the fee.
- (5) Any other information deemed relevant to the review."

## **PART XII. DEPARTMENT OF LABOR**

### **DEPARTMENT OF LABOR/APPRENTICESHIP PROGRAM**

**SECTION 12.1.** Effective August 15, 2009, Chapter 94 of the General Statutes is amended by adding a new section to read as follows:

**"§ 94-12. Fees.**

The following fees are imposed on each apprentice who is covered by a written apprenticeship agreement entered into under this Chapter: (i) a new registration fee of fifty dollars (\$50.00); and (ii) an annual fee of fifty dollars (\$50.00). Each fee authorized by this section is payable as thirty dollars (\$30.00) by the sponsor and twenty dollars (\$20.00) by the apprentice. The sponsor shall collect the fees authorized by this section from the apprentice and remit the total fees owed by the sponsor and the apprentice to the Department of Labor. The fees are departmental receipts and must be applied to the costs of administering the apprenticeship program. The Commissioner may adopt rules pursuant to Chapter 150B of the General Statutes to implement this section. The provisions of this section shall not apply to the State, a department or agency of the State, or any political subdivision of the State or an apprentice of the State, a department or agency of the State, or any political subdivision of the State."

### **DEPARTMENT OF LABOR/REVIEW ALL FEES BIENNIALLY**

**SECTION 12.2.** Article 1 of Chapter 95 of the General Statutes is amended by adding a new section to read as follows:

**"§ 95-14.1. Department review fees biennially.**

No later than February 1 of each odd-numbered year, the Department of Labor shall review all fees charged under its authority to determine whether any of the fees should be changed and shall report its findings to the House of Representatives and Senate Appropriations Subcommittees on Natural and Economic Resources and the Fiscal Research Division. The report required by this section shall include all of the information reported to the Office of State Budget and Management for its Biennial Fee Report and all of the following:

- (1) The names of the programs or divisions supported by the fee.
- (2) The total expenditures of the programs or divisions.
- (3) Any recommendations for increasing or decreasing the amount of the fee.
- (4) An evaluation of inflation since the last change to the amount of the fee.
- (5) Any other information deemed relevant to the review."

### **DEPARTMENT OF LABOR/TRANSFER SPECIAL FUNDS TO GENERAL FUND AND TO APPRENTICESHIP PROGRAM**

**SECTION 12.3.(a)** The Department of Labor shall, in consultation with the Office of State Budget and Management and the Office of the State Controller, transfer any unencumbered cash balance on June 30, 2009, in the Elevator and Amusement Device Bureau Special Fund (23800-2320) and the Boiler Bureau Special Fund (23800-2310) to a General Fund code and permanently close the Special Funds.

**SECTION 12.3.(b)** The Department of Labor shall, in consultation with the Office of State Budget and Management and the Office of the State Controller, transfer any unencumbered cash balance on June 30, 2009, in the Pre-Apprenticeship Special Fund (23800-2422) to the Apprenticeship Program to be used for operating expenses in the 2009-2010 fiscal year and permanently close the Special Fund.

### **PART XIII. DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES**

#### **REVISE CLEAN WATER MANAGEMENT TRUST FUND OPERATIONS LIMIT**

**SECTION 13.1.** Notwithstanding G.S. 113A-253(d), of the funds appropriated to the Clean Water Management Trust Fund for each fiscal year of the 2009-2011 fiscal biennium, no more than two million one hundred thousand dollars (\$2,100,000) may be used for administrative and operating expenses of the Board of Trustees of the Clean Water Management Trust Fund and its staff.

#### **DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES REVIEW OF FEE SCHEDULES**

**SECTION 13.1A.** G.S. 143B-279.2 reads as rewritten:

**"§ 143B-279.2. Department of Environment and Natural Resources – duties.**

It shall be the duty of the Department:

- (1) To provide for the protection of the environment;
- (1a) To administer the State Outer Continental Shelf (OCS) Task Force and coordinate State participation activities in the federal outer continental shelf resource recovery programs as provided under the OCS Lands Act Amendments of 1978 (43 USC §§ 1801 et seq.) and the OCS Lands Act Amendments of 1986 (43 USC §§ 1331 et seq.).
- (1b) To provide for the protection of the environment and public health through the regulation of solid waste and hazardous waste management and the administration of environmental health programs.
- (2) Repealed by Session Laws 1997-443, s. 11A.5.
- (2a) To provide and keep a museum or collection of the natural history of the State and to maintain the North Carolina Biological Survey; and
- (3) To provide for the management of the State's natural resources.
- (4) No later than February 1 of each odd-numbered year, to review all fees charged under any program under its authority to determine whether any of these fees should be changed and submit a report to the House and Senate Appropriations Subcommittees on Natural and Economic Resources and the Fiscal Research Division that includes all of the following:
  - a. The most recent Biennial Fee Report submitted by the Department to the Office of State Budget and Management.
  - b. A list of each fee charged under any program under the Department's authority that, for each fee, identifies the program, if any, and the division of the Department, if any, that is supported by the fee; the total expenditures for each program supported by fees; an evaluation of any inflationary change since the last change to the amount of the fee; and any other information deemed relevant to this review.
  - c. The Department's findings resulting from its review under this subdivision and any recommendations to increase or decrease any of these fees."

#### **DENR TO STUDY ADVISABILITY OF ELIMINATING OR CONSOLIDATING ANY ENVIRONMENTAL BOARDS, COMMISSIONS, OR COUNCILS**

**SECTION 13.1B.** The Department of Environment and Natural Resources shall, in consultation with the Fiscal Research Division, study the advisability of eliminating or consolidating any boards, commissions, or councils that are located within the Department of Environment and Natural Resources for organizational, budgetary, or administrative purposes and that are involved in environmental policy-making in North Carolina, with powers and duties ranging from advisory to rule making and quasi-judicial. In conducting this study, the Department of Environment and Natural Resources shall consider whether the number of these

environmental boards, commissions, and councils has created any inefficiency or duplication in overall environmental program delivery and whether the members that comprise an environmental board, commission, or council generally have the time and expertise necessary to address the environmental issues coming before them. No later than May 1, 2010, the Department of Environment and Natural Resources shall report its findings and any recommendations resulting from the study under this section, including any legislative or administrative proposals, to the Chairs of the House and Senate Appropriations Subcommittees on Natural and Economic Resources and the Fiscal Research Division.

### **JOINT DEPARTMENTAL STUDY OF TRANSFERRING GRADE "A" MILK SANITATION PROGRAM**

**SECTION 13.1C.** The Department of Environment and Natural Resources and the Department of Agriculture and Consumer Services shall, in consultation with the Fiscal Research Division, jointly study the feasibility and the advisability of transferring the Grade "A" Milk Sanitation Program under Part 9 of Article 8 of Chapter 130A of the General Statutes that is currently located within the Division of Environmental Health of the Department of Environment and Natural Resources to the Department of Agriculture and Consumer Services. When conducting the study under this section, the Department of Environment and Natural Resources and the Department of Agriculture and Consumer Services may consult with entities outside the two departments, including entities regulated by either department. No later than May 1, 2010, the Department of Environment and Natural Resources and the Department of Agriculture and Consumer Services shall submit a report of their findings and any recommendations and legislative or administrative proposals to the Chairs of the House and Senate Appropriations Subcommittees on Natural and Economic Resources and the Fiscal Research Division. This report shall include all of the following:

- (1) A description and assessment of the current budget and staffing levels for the Grade "A" Milk Sanitation Program within the Department of Environment and Natural Resources.
- (2) A description and assessment of the current budget and staffing levels for the Dairy Section within the Food Program of the Food and Drug Protection Division of the Department of Agriculture and Consumer Services.
- (3) An evaluation of the advisability of transferring the Grade "A" Milk Sanitation Program to the Department of Agriculture and Consumer Services, including the fiscal impact of the transfer and any efficiency gains or losses.

### **JOINT STUDY OF DENR SPECIAL FUNDS**

**SECTION 13.1F.** The Department of Environment and Natural Resources, the Office of State Budget and Management, the Office of the State Controller, and the Fiscal Research Division shall jointly study the special funds within the Department of Environment and Natural Resources as of July 1, 2009. When conducting the study under this section, the Department of Environment and Natural Resources, the Office of State Budget and Management, the Office of the State Controller, and the Fiscal Research Division shall jointly evaluate each of these special funds to determine whether the receipts of each of these special fund are over- or under-realized. No later than May 1, 2010, the Department of Environment and Natural Resources, the Office of State Budget and Management, the Office of the State Controller, and the Fiscal Research Division shall report the results of this study, including their findings, recommendations, and any legislative proposals, to the Environmental Review Commission and the House and Senate Appropriations Subcommittees on Natural and Economic Resources. The report under this section shall include all of the following:

- (1) A description of each of the special funds within the Department that were evaluated under this section.
- (2) The sources of funds of each of these special funds.
- (3) A list of these special funds that should be permanently closed.
- (4) A list of these special funds that should be transferred to the General Fund.
- (5) A list of these special funds that should remain as special funds.
- (6) Any organizational or legal barriers to the creation or elimination of any of these special funds.
- (7) Any changes in statutes needed as a result of this study.



## **CLOSE/TRANSFER CERTAIN DENR SPECIAL FUNDS**

**SECTION 13.1G.(a)** The Office of State Budget and Management, in conjunction with the Office of the State Controller and the Department of Environment and Natural Resources, shall close all of the following special funds within the Department and transfer any unencumbered cash balance of each as of June 30, 2009, to the North Carolina Aquariums Fund (Special Fund code 24300-2865):

- (1) Special Activities Roanoke Island (Special Fund code 24308-2850).
- (2) Events Roanoke Island (Special Fund code 24308-2851).
- (3) Special Activities Pine Knoll Shores (Special Fund code 24308-2860).
- (4) Events Pine Knoll Shores (Special Fund code 24308-2861).
- (5) Special Activities Fort Fisher (Special Fund code 24308-2855).
- (6) Events Fort Fisher (Special Fund code 24308-2856).

**SECTION 13.1G.(b)** The Office of State Budget and Management, in conjunction with the Office of the State Controller and the Department of Environment and Natural Resources, shall close the Governor's Cup Trust Fund (Special Fund code 24302-2991), a special fund within the Department, and transfer any unencumbered cash balance of that fund as of June 30, 2009, to the Division of Marine Fisheries (General Fund budget code 14300-1315).

**SECTION 13.1G.(c)** The Office of State Budget and Management, in conjunction with the Office of the State Controller and the Department of Environment and Natural Resources, shall close the Environmental Education Certification special fund (Special Fund code 24308-2105) within the Department and transfer any unencumbered cash balance of that fund as of June 30, 2009, to the Office of Environmental Education (General Fund budget code 14300-1120).

**SECTION 13.1G.(d)** The Office of State Budget and Management, in conjunction with the Office of the State Controller and the Department of Environment and Natural Resources, shall transfer to the General Fund any unencumbered cash balance as of June 30, 2009, in the special fund within the Department, ADM – Fines & Penalties (Special Fund code 24317-2339); move this special fund from a Special Fund code to a General Fund code; and permanently close the special fund.

**SECTION 13.1G.(e)** The Office of State Budget and Management, in conjunction with the Office of the State Controller and the Department of Environment and Natural Resources, shall transfer to the General Fund any unencumbered cash balance as of June 30, 2009, in each of the following special funds within the Department and permanently close each of these special funds:

- (1) DWQ – Groundwater Protection Permit Fees (Special Fund code 24300-2332).
- (2) DLR – SB7 Landslide Mapping (Special Fund code 24310-2766).
- (3) DLR – VRS Geodetic Survey & DOT (Special Fund code 24308-2815).

**SECTION 13.1G.(f)** The Office of State Budget and Management, in conjunction with the Office of the State Controller and the Department of Environment and Natural Resources, shall transfer to the Information Technology Fund (Special Fund code 24667) any unencumbered cash balance as of June 30, 2009, in each of the following special funds within the Department and permanently close each of these special funds:

- (1) ADM – CGIA NGPOCS4 – Urban (Special Fund code 24300-2914).
- (2) ADM – CGIA (Special Fund code 24300-2915).
- (3) ADM – CGIA GIS Conference (Special Fund code 24300-2917).

## **FOOD AND LODGING INSPECTION FEES INCREASES**

**SECTION 13.2.(a)** Effective August 15, 2009, G.S. 130A-248(d) reads as rewritten:

"(d) The Department shall charge each establishment subject to this section, except nutrition programs for the elderly administered by the Division of Aging of the Department of Health and Human Services, establishments that prepare and sell meat food products or poultry products, and public school cafeterias, an annual fee of ~~fifty dollars (\$50.00)~~ seventy-five dollars (\$75.00). The Commission shall adopt rules to implement this subsection. Fees collected under this subsection shall be used for State and local food, lodging, and institution sanitation programs and activities. No more than thirty-three and one-third percent (33 1/3%) of

the fees collected under this subsection may be used to support State health programs and activities."

**SECTION 13.2.(b)** Effective August 15, 2009, G.S. 130A-248(e) reads as rewritten:

"(e) In addition to the fees under subsection (d) of this section, the Department may charge a fee of ~~two hundred dollars (\$200.00)~~ two hundred fifty dollars (\$250.00) for plan review of plans for prototype franchised or chain facilities for food establishments subject to this section. All of the fees collected under this subsection may be used to support the State food, lodging, and institution sanitation programs and activities under this Part."

**SECTION 13.2.(c)** G.S. 130A-248(f) reads as rewritten:

"(f) Any local health department may charge a fee not to exceed ~~two hundred dollars (\$200.00)~~ two hundred fifty dollars (\$250.00) for plan review by that local health department of plans for food establishments subject to this section that are not subject to subsection (e) of this section. All of the fees collected under this subsection may be used for local food, lodging, and institution sanitation programs and activities. No food establishment that pays a fee under subsection (e) of this section is liable for a fee under this subsection."

### **RADIATION PROTECTION SECTION SUPPORTED BY FEES/INCREASE FEES**

**SECTION 13.3.(a)** G.S. 104E-19 reads as rewritten:

#### **"§ 104E-19. Fees.**

(a) ~~In order to meet the anticipated costs of administering the educational and training programs in G.S. 104E-11(e), of enforcing and carrying out the inspection provisions in G.S. 104E-7(a)(7) and G.S. 104E-11(a), and of administering the licensing program in G.S. 104E-10.3, the Department is authorized to charge and collect such reasonable fees as it may by rule establish. An annual fee in the amount set by the Department is imposed on a person who is required to be registered or licensed under this Chapter. The Department must set the fees at amounts that provide revenue to offset its costs in performing its duties under this Chapter.~~

(b) Repealed by Session Laws 1987, c. 850, s. 13.

(c) The annual fees under subsection (a) of this section shall not exceed the maximum amounts as follows:

- (1) For tanning facilities: two hundred dollars (\$200.00) for the first piece of tanning equipment and thirty dollars (\$30.00) for each additional piece of tanning equipment.
- (2) For the following categories of facilities registered to use X-ray tubes or X-ray equipment: clinics, chiropractors, dentists, educational, government, podiatrists, industrial, physicians, veterinarians, and other; two hundred dollars (\$200.00) for the first X-ray tube or piece of X-ray equipment and thirty dollars (\$30.00) for each additional X-ray tube or piece of X-ray equipment.
- (3) For the following categories of facilities registered to use X-ray tubes or X-ray equipment: industrial medical, health departments, and service; three hundred dollars (\$300.00) for the first X-ray tube or piece of X-ray equipment and forty dollars (\$40.00) for each additional X-ray tube or piece of X-ray equipment.
- (4) For the following categories of facilities registered to use X-ray tubes or X-ray equipment: hospitals and industrial radiography; four hundred dollars (\$400.00) for the first X-ray tube or piece of X-ray equipment and fifty dollars (\$50.00) for each additional X-ray tube or piece of X-ray equipment."

**SECTION 13.3.(b)** G.S. 104E-9(a)(8) reads as rewritten:

"(8) ~~To establish annual fees for activities under this Chapter based on actual administrative costs to be applied to training, enforcement, and inspection pursuant to the provisions of this Chapter and to charge and collect fees from operators and users of low-level radioactive waste facilities pursuant to the provisions of this Chapter. To establish fees in accordance with G.S. 104E-19.~~

**SECTION 13.3.(c)** Notwithstanding G.S. 104E-19, as amended by this section, the Department of Environment and Natural Resources shall impose the following annual fees

during the 2009-2010 fiscal year on a person who is required to be registered or licensed to use sources of radiation under Chapter 104E of the General Statutes:

- (1) For tanning facilities: one hundred thirty-five dollars (\$135.00) for the first piece of tanning equipment and twenty-two dollars (\$22.00) for each additional piece of tanning equipment.
- (2) For the following categories of facilities registered to use X-ray tubes or X-ray equipment: educational, government, and veterinarians; ninety dollars (\$90.00) for the first X-ray tube or piece of X-ray equipment and sixteen dollars (\$16.00) for each additional X-ray tube or piece of X-ray equipment.
- (3) For the following categories of facilities registered to use X-ray tubes or X-ray equipment: chiropractors, dentists, podiatrists, industrial, physicians, and other; one hundred twenty-five dollars (\$125.00) for the first X-ray tube or piece of X-ray equipment and twenty dollars (\$20.00) for each additional X-ray tube or piece of X-ray equipment.
- (4) For the following categories of facilities registered to use X-ray tubes or X-ray equipment: industrial medical, health departments, and service; one hundred eighty dollars (\$180.00) for the first X-ray tube or piece of X-ray equipment and, for industrial medical and health departments, twenty-five dollars (\$25.00) for each additional X-ray tube or piece of X-ray equipment.
- (5) For the following categories of facilities registered to use X-ray tubes or X-ray equipment: hospitals and industrial radiography; two hundred seventy-five dollars (\$275.00) for the first X-ray tube or piece of X-ray equipment and thirty-five dollars (\$35.00) for each additional X-ray tube or piece of X-ray equipment.

**SECTION 13.3.(d)** Notwithstanding G.S. 104E-19, as amended by this section, the Department of Environment and Natural Resources shall impose the following annual fees during the 2010-2011 fiscal year on a person who is required to be registered or licensed to use sources of radiation under Chapter 104E of the General Statutes:

- (1) For tanning facilities: one hundred sixty-five dollars (\$165.00) for the first piece of tanning equipment and twenty-five dollars (\$25.00) for each additional piece of tanning equipment.
- (2) For the following categories of facilities registered to use X-ray tubes or X-ray equipment: educational, government, and veterinarians; one hundred twenty dollars (\$120.00) for the first X-ray tube or piece of X-ray equipment and twenty dollars (\$20.00) for each additional X-ray tube or piece of X-ray equipment.
- (3) For the following categories of facilities registered to use X-ray tubes or X-ray equipment: chiropractors, dentists, podiatrists, industrial, physicians, and other; one hundred sixty-five dollars (\$165.00) for the first X-ray tube or piece of X-ray equipment and twenty-two dollars (\$22.00) for each additional X-ray tube or piece of X-ray equipment.
- (4) For the following categories of facilities registered to use X-ray tubes or X-ray equipment: industrial medical, health departments, and service; two hundred forty dollars (\$240.00) for the first X-ray tube or piece of X-ray equipment and, for industrial medical and health departments, thirty dollars (\$30.00) for each additional X-ray tube or piece of X-ray equipment.
- (5) For the following categories of facilities registered to use X-ray tubes or X-ray equipment: hospitals and industrial radiography; three hundred sixty dollars (\$360.00) for the first X-ray tube or piece of X-ray equipment and forty dollars (\$40.00) for each additional X-ray tube or piece of X-ray equipment.

**SECTION 13.3.(e)** The annual fees under subsection (c) and subsection (d) of this section shall provide revenue to offset the Department's costs in performing its duties under Chapter 104E of the General Statutes during the 2009-2011 fiscal biennium. Subsection (c) of this section is effective July 1, 2009, but the Department of Environment and Natural Resources shall delay collecting the annual fees under subsection (c) of this section until August 15, 2009. Subsections (a), (b), and (d) of this section are effective when this act becomes law.

## **EXPAND PERMISSIBLE USES OF THE SOLID WASTE MANAGEMENT TRUST FUND**

**SECTION 13.3A.** G.S.130A-309.12(a) is amended by adding a new subdivision to read:

"(6) Providing funding for the activities of the Division of Pollution Prevention and Environmental Assistance."

## **CHANGE DISTRIBUTION OF SCRAP TIRE NET TAX PROCEEDS**

**SECTION 13.3B.(a)** G.S. 105-187.19(b) reads as rewritten:

"(b) Each quarter, the Secretary shall credit eight percent (8%) of the net tax proceeds to the Solid Waste Management Trust Fund and shall credit ~~twenty-two percent (22%) of the net tax proceeds to the Scrap Tire Disposal Account Fund,~~ seventeen percent (17%) of the net tax proceeds to the Scrap Tire Disposal Account, two and one-half percent (2.5%) of the net tax proceeds to the Inactive Hazardous Sites Cleanup Fund, and two and one-half percent (2.5%) of the net tax proceeds to the Bernard Allen Memorial Emergency Drinking Water Fund. The Secretary shall distribute the remaining seventy percent (70%) of the net tax proceeds among the counties on a per capita basis according to the most recent annual population estimates certified to the Secretary by the State Budget Officer."

**SECTION 13.3B.(b)** G.S. 130A-309.54 reads as rewritten:

"§ 130A-309.54. **Use of scrap tire tax proceeds.**

Article 5B of Chapter 105 imposes a tax on new tires to provide funds for the disposal of ~~scrap tires-tires,~~ for the cleanup of inactive hazardous waste sites under Part 3 of this Article, and for all the purposes for which the Bernard Allen Memorial Emergency Drinking Water Fund may be used under G.S. 87-98. A county may use proceeds of the tax distributed to it under that Article only for the disposal of scrap tires pursuant to the provisions of this Part or for the abatement of a nuisance pursuant to G.S. 130A-309.60."

## **INCREASE CAP FOR VOLUNTARY REMEDIAL ACTIONS AT INACTIVE HAZARDOUS DISPOSAL SITES/DENR MONITORING FEE**

**SECTION 13.3C.(a)** G.S. 130A-310.9(a) reads as rewritten:

"(a) No one owner, operator, or other responsible party who voluntarily participates in the implementation of a remedial action program under G.S. 130A-310.3 or G.S. 130A-310.5 may be required to pay in excess of ~~three million dollars (\$3,000,000)~~ five million dollars (\$5,000,000) for the cost of implementing a remedial action program at a single inactive hazardous substance or waste disposal site. The owner, operator, or other responsible party who voluntarily participates in the implementation of a remedial action program under G.S. 130A-310.3 or G.S. 130A-310.5 shall be required to pay in addition to the cost of implementing the remedial action program a fee of one thousand dollars (\$1,000) to be used for the Department's cost of monitoring and enforcing the remedial action program. The limitation of liability contained in this ~~section-subsection~~ applies only to the cost of implementation of implementing the program and does not apply to the cost of the development of the remedial action plan. to the fee under this subsection. The limitation of liability contained in this subsection does not apply to the cost of developing the remedial action plan."

**SECTION 13.3C.(b)** This section applies to any voluntary remedial action program that is developed or implemented on or after the effective date of this section and also applies to any voluntary remedial action program that is pending as of the effective date of this section.

## **USE OF SOLID WASTE DISPOSAL TAX PROCEEDS**

**SECTION 13.3E.** G.S. 130A-295.9 reads as rewritten:

"§ 130A-295.9. **Solid waste disposal tax; use of proceeds.**

It is the intent that the proceeds of the solid waste disposal tax imposed by Article 5G of Chapter 105 of the General Statutes shall be used only for the following purposes:

- (1) Funds credited pursuant to G.S. 105-187.63(1) to the Inactive Hazardous Sites Cleanup Fund shall be used by the Department of Environment and Natural Resources to fund the assessment and remediation of pre-1983 ~~landfills. Uplandfills,~~ landfills. Uplandfills, except up to seven percent (7%) of the funds credited under this subdivision may be used to fund staff to administer contracts for the assessment and remediation of pre-1983 landfills. ~~administrative~~

expenses related to the assessment and remediation of inactive hazardous waste sites.

- (2) Funds credited pursuant to G.S. 105-187.63(3) to the Solid Waste Management Trust Fund shall be used by the Department of Environment and Natural Resources to fund grants to State agencies and units of local government to initiate or enhance local recycling programs and to provide for the management of difficult to manage solid waste, including abandoned mobile homes and household hazardous waste. Up to seven percent (7%) of the funds credited under this subdivision may be used by the Department to administer this Part."

## **NEW LEASE PURCHASE/INSTALLMENT CONTRACTS FOR FORESTRY EQUIPMENT**

**SECTION 13.6.** Prior to the Division of Forest Resources of the Department of Environment and Natural Resources entering into either a new lease purchase contract for the purchase of forestry equipment or a new installment contract for the purchase of forestry equipment, the Division of Forest Resources shall submit a detailed list of the forestry equipment to be purchased under the contract to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division. Prior to the Department of Administration entering into either a new lease purchase contract for the purchase of forestry equipment or a new installment contract for the purchase of forestry equipment on behalf of the Division of Forest Resources, the Department of Administration shall submit a detailed list of the forestry equipment to be purchased under the contract to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division. If a list is modified after it is submitted under this section, the modified list shall be submitted to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division prior to entering into the contract.

## **GRASSROOTS SCIENCE PROGRAM**

**SECTION 13.7.(a)** Of the funds appropriated in this act to the Department of Environment and Natural Resources for the Grassroots Science Program, the sum of three million four hundred eleven thousand seven hundred thirteen dollars (\$3,411,713) for the 2009-2010 fiscal year and the sum of three million four hundred eleven thousand seven hundred thirteen dollars (\$3,411,713) for the 2010-2011 fiscal year is allocated as grants-in-aid for each fiscal year as follows:

	2009-2010	2010-2011
Aurora Fossil Museum	\$57,875	\$57,875
Cape Fear Museum	\$157,787	\$157,787
Carolina Raptor Center	\$109,931	\$109,931
Catawba Science Center	\$143,429	\$143,429
Colburn Earth Science Museum, Inc.	\$73,054	\$73,054
Core Sound Waterfowl Museum	\$49,000	\$49,000
Discovery Place	\$649,608	\$649,608
Eastern NC Regional Science Center	\$49,000	\$49,000
Fascinate-U	\$79,451	\$79,451
Granville County Museum Commission, Inc.–Harris Gallery	\$55,294	\$55,294
Greensboro Children's Museum	\$132,374	\$132,374
The Health Adventure Museum of Pack Place Education, Arts and Science Center, Inc.	\$152,499	\$152,499
Highlands Nature Center	\$77,683	\$77,683
Imagination Station	\$84,313	\$84,313
The Iredell Museums, Inc.	\$60,080	\$60,080
Kidsenses	\$79,656	\$79,656
Museum of Coastal Carolina	\$76,460	\$76,460
The Natural Science Center of Greensboro, Inc.	\$182,627	\$182,627

North Carolina Museum of Life and Science	\$372,229	\$372,229
Pisgah Astronomical Research Institute	\$49,000	\$49,000
Port Discover: Northeastern North Carolina's Center for Hands-On Science, Inc.	\$49,000	\$49,000
Rocky Mount Children's Museum	\$70,809	\$70,809
Schiele Museum of Natural History and Planetarium, Inc.	\$224,956	\$224,956
Sci Works Science Center and Environmental Park of Forsyth County	\$143,569	\$143,569
Sylvan Heights Waterfowl Park and Eco-Center	\$49,000	\$49,000
Western North Carolina Nature Center	\$110,621	\$110,621
Wilmington Children's Museum	\$72,408	\$72,408
Total	\$3,411,713	\$3,411,713

**SECTION 13.7.(b)** No later than March 1, 2010, the Department of Environment and Natural Resources shall report to the Fiscal Research Division all of the following information for each museum that receives funds under this section:

- (1) The actual operating budget for the 2008-2009 fiscal year.
- (2) The proposed operating budget for the 2009-2010 fiscal year.
- (3) The total attendance at the museum during the 2009 calendar year.

**SECTION 13.7.(c)** No later than March 1, 2011, the Department of Environment and Natural Resources shall report to the Fiscal Research Division all of the following information for each museum that receives funds under this section:

- (1) The actual operating budget for the 2009-2010 fiscal year.
- (2) The proposed operating budget for the 2010-2011 fiscal year.
- (3) The total attendance at the museum during the 2010 calendar year.

**SECTION 13.7.(d)** As a condition for qualifying to receive funding under this section, all of the following documentation shall, no later than November 1 of each year of the 2009-2011 fiscal biennium, be submitted for each museum under this section to the Department of Environment and Natural Resources for fiscal years ending between July 1, 2007, and June 30, 2008, and only those costs that are properly documented under this subsection are allowed by the Department in calculating the distribution of funds under this section:

- (1) Each museum under this section shall submit its IRS (Internal Revenue Service) Form 990 to show its annual operating expenses, its annual report, and a reconciliation that explains any differences between expenses as shown on the IRS Form 990 and the annual report.
- (2) Each friends association of a museum under this section shall submit its IRS Form 990 to show its reported expenses for the museum, its annual report, and a reconciliation that explains any differences between expenses as shown on the IRS Form 990 and the annual report, unless the association does not have both an IRS Form 990 and an annual report available; in which case, it shall submit either an IRS Form 990 or an annual report.
- (3) The chief financial officer of each county or municipal government that provides funds for the benefit of the museum shall submit a detailed signed statement of documented costs spent for the benefit of the museum that includes documentation of the name, address, title, and telephone number of the person making the assertion that the museum receives funds from the county or municipality for the benefit of the museum.
- (4) The chief financial officer of each county or municipal government or each friends association that provides indirect or allocable costs that are not directly charged to a museum under this section but that benefit the museum shall submit in the form of a detailed statement enumerating each cost by type and amount that is verified by the financial officer responsible for the completion of the documentation and that includes the name, address, title, and telephone number of the person making the assertion that the county,

municipality, or association provides indirect or allocable costs to the museum.

**SECTION 13.7.(e)** As used in subsection (d) of this section, "friends association" means a nonprofit corporation established for the purpose of supporting and assisting a museum that receives funding under this section.

**SECTION 13.7.(f)** The Department of Environment and Natural Resources shall study the advisability of the Department developing for museums that are members of the Grassroots collaborative, a competitive and need-based grant program for operating expense support, to be implemented and administered by the Office of Environmental Education within the Department, and shall study the advisability of using this competitive and need-based grant program for the 2011-2012 fiscal year and thereafter for specific museums that are members of the Grassroots collaborative in lieu of the allocations provided in subsection (a) of this section. In conducting this study, the Department shall, in consultation with the Fiscal Research Division and the Grassroots collaborative, consider establishing a process for applying for these grants, criteria for evaluating applications, and a process for allocating grants. The process and criteria should include giving special consideration to small museums and to the variation in access to development staff. No later than May 1, 2010, the Department shall submit a report to the Joint Legislative Commission on Governmental Operations, the House of Representatives and Senate Appropriations Subcommittees on Natural and Economic Resources, and the Fiscal Research Division on the results of its study under this section, including its findings, recommendations, and any legislative or administrative proposals.

#### **FOREST DEVELOPMENT FUND**

**SECTION 13.9.** G.S. 113A-192(c) through G.S. 113A-192(e) are repealed.

#### **STUDY ACCESS TO STATE PARKS**

**SECTION 13.9B.** The Division of Parks and Recreation of the Department of Environment and Natural Resources, in consultation with the Fiscal Research Division, shall study the costs and benefits of charging parking fees for parking at any or all State parks within the State Parks System. In the study, the Division shall consider each State park separately when determining the advisability of charging parking fees and the amount of any such parking fees. The Division also shall consider charging a separate parking fee for parking on a daily, weekly, monthly, and annual basis. The Division shall evaluate various mechanisms for collecting the parking fees and determine the collection method that is most reliable, efficient, and convenient to the public for each parking fee. No later than March 1, 2010, the Division shall report the results of the study to the Joint Legislative Commission on Governmental Operations, the House and Senate Appropriations Subcommittees on Natural and Economic Resources, and the Fiscal Research Division. This report shall include the date by which the Division should begin to collect parking fees under this section, the amount of revenue that the Division expects to raise on average in parking fees for any fiscal year, and the expected cost of collecting this revenue.

#### **BEAVER DAMAGE CONTROL PROGRAM FUNDS**

**SECTION 13.10.** G.S. 113-291.10(f) reads as rewritten:

"(f) Each county that volunteers to participate in this program for a given fiscal year shall provide written notification of its wish to participate no later than September 30 of that year and shall commit the sum of four thousand dollars (\$4,000) in local funds no later than September 30 of that year. At least three hundred forty-nine thousand dollars (\$349,000) each fiscal year of the biennium shall be paid from funds available to the Wildlife Resources Commission to provide the State share necessary to support this program, provided the sum of at least twenty-five thousand dollars (\$25,000) in federal funds is available each fiscal year of the biennium to provide the federal share."

#### **CAP WILDLIFE RESOURCES FUND ANNUAL SALES TAX RECEIPTS**

**SECTION 13.11.** Notwithstanding G.S. 105-164.44B, during the 2009-2010 fiscal year and the 2010-2011 fiscal year, the Secretary of Revenue shall transfer at the end of each quarter from the State sales and use tax net collections received by the Department of Revenue under Article 5 of Chapter 105 of the General Statutes to the State Treasurer for the Wildlife Resources Fund one-fourth of the amount transferred the preceding fiscal year plus or minus

the percentage of that amount by which the total collection of State sales and use taxes increased or decreased during the preceding fiscal year, not to exceed twenty-one million five hundred thousand dollars (\$21,500,000).

## **PART XIV. DEPARTMENT OF COMMERCE**

### **ONE NORTH CAROLINA FUND**

**SECTION 14.1.** Of the funds appropriated in this act to the One North Carolina Fund for the 2009-2010 fiscal year, the Department of Commerce may use up to three hundred thousand dollars (\$300,000) to cover its expenses in administering the One North Carolina Fund and other economic development incentive grant programs during the 2009-2010 fiscal year.

### **ONE NORTH CAROLINA FUNDS/USE OF CASH BALANCE**

**SECTION 14.2.** Of the funds appropriated to the One North Carolina Fund in prior fiscal years that are unencumbered and unexpended as of June 30, 2009, or that become unencumbered or unexpended thereafter, the sum of one million dollars (\$1,000,000) shall be transferred for the 2009-2010 fiscal year to the North Carolina Minority Support Center.

### **SMALL BUSINESS ASSISTANCE FUND**

**SECTION 14.3.(a)** Part 2I of Article 10 of Chapter 143B of the General Statutes reads as rewritten:

"Part 2I. ~~One North Carolina Small Business Program Assistance.~~

"Subpart A. ~~One North Carolina Small Business Program.~~"

**SECTION 14.3.(b)** Part 2I of Article 10 of Chapter 143B of the General Statutes is amended by adding a new Subpart to read:

"Subpart B. Small Business Assistance Fund.

**§ 143B-437.89. Establishment of fund; use of moneys; application for moneys from the fund; disbursal; repayment; inspections; rules; reports.**

(a) Fund Established. – A revolving, special revenue fund to be known as the Small Business Jobs Preservation and Emergency Assistance Fund is established in the Department of Commerce. This Fund shall be administered by the Department. The Department shall be responsible for receipt and disbursement of all moneys as provided in this section. Interest earnings shall be credited to the Fund. The Fund consists of revenue resulting from funds appropriated by the State, repayments of principal of and interest on loans, fees, and other amounts received by the Department with respect to financial assistance provided by the Department, and any other public or private funds made available to the Fund.

(b) Department Authority; Loan Terms. – The Department may approve for disbursements of moneys in the Fund to small businesses in accordance with the provisions of this section. The Department shall develop criteria, technical specifications, policies, and procedures to be used in determining whether the conditions of this section are satisfied and whether the activities described in the application are otherwise consistent with the purposes of this section. As used in this section, "moneys" means a disbursement from the Fund in the form of a loan, and "small business" means a business whose annual receipts and number of full-time employees, combined with the annual receipts and full-time employees of all related persons, did not exceed one million dollars (\$1,000,000) or 100 full-time employees. A small business may apply for a loan for:

- (1) Up to eighty percent (80%) of the projected cost of the proposed activities, subject to repayment within five years at the prime rate plus four percent (4%).
- (2) Up to eighty percent (80%) of the projected cost of the proposed activities, subject to repayment within 10 years at the prime rate plus six percent (6%).
- (3) Up to eighty percent (80%) of the projected cost of the proposed activities, subject to repayment within 15 years at the prime rate plus eight percent (8%).

(c) Eligible Purposes. – Moneys in the Fund shall be used for any of the following eligible purposes:

- (1) To provide emergency bridge loans where clear and apparent ability to repay has been established but credit remains unavailable.



(2) To lend for other purposes related to small business job preservation as approved or recommended by the Department.

(d) Application. – Any small business may apply for moneys from the Fund by submitting an application to the Department. The application shall list each of the following:

(1) The proposed activities for which the moneys are to be used.

(2) The amount of moneys requested for these activities.

(3) Projections of the dollar amount of private investment that is expected to occur as a direct result of the proposed activities.

(4) An explanation of the nature of the private investment that will result from the proposed activities.

(5) A requirement for any reports, disclosures, or information required by this section or necessary for the Department to fulfill its duties under this section.

(6) The total compensation received for the previous year from the small business and all related persons for each of the five highest-compensated employees of the small business.

(7) Any additional or supplemental information required by the Department upon written request.

(e) Determination. – The Department shall review an application submitted by a small business, determine whether the activities listed in the application are activities that are eligible for moneys from the Fund, and determine which applicants are selected to receive moneys from the Fund. A small business whose application is denied may file a new or amended application.

(f) Limitation. – A small business that is selected may not receive moneys from the Fund pursuant to this section with an aggregate total of more than thirty-five thousand dollars (\$35,000).

(g) Disbursements of Moneys. – The Department shall not disburse moneys for any loans until the small business has confirmed a method of repayment for the loan. The terms for repayment established for a given loan shall apply through the period of that loan. A small business that has been selected to receive moneys shall use the full amount of the moneys for the activities that were approved pursuant to subsection (b) of this section. Moneys are deemed used if the small business is legally committed to spend the moneys on the approved activities. For purposes of this section, approved activities do not include an increase in the total compensation of any employee identified in the application under subdivision (d)(6) of this section. A small business shall lose any moneys that have not been used within three years of being selected. These unused moneys shall be credited to the Fund. A small business that loses moneys pursuant to this subsection may file a new application. Any moneys repaid or credited to the Fund pursuant to this subsection shall be available to other applicants as long as the Fund exists.

(h) Cost Report. – After activities financed in whole or in part pursuant to this section have been completed, the small business shall report the actual cost of the project to the Department. If the actual costs of the activities exceed the projected cost upon which the moneys were based, the small business may submit an application to the Department for additional moneys for the difference. If the actual costs of the activities are less than the projected cost, the small business shall arrange to pay the difference to the Fund according to terms set by the Department.

(i) Inspection. – Inspection of a project for which moneys have been awarded may be performed by personnel of the Department. No person may be approved to perform inspections who is an officer or employee of the small business to which the moneys were disbursed or who is an owner, officer, employee, or agent of a contractor or subcontractor engaged in the activities for which the moneys were disbursed.

(j) Administration. – The Department may adopt, modify, and repeal rules establishing the procedures to be followed in the administration of this section and interpreting and applying the provisions of this section, as provided in the Administrative Procedure Act.

(k) Legislative Reports. – The Department shall prepare and file on or before September 1 of each year with the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division a consolidated report for the preceding fiscal year concerning the allocation of moneys authorized by this section, including a separate listing of the moneys disbursed to historically underutilized businesses. The report shall set forth for the preceding fiscal year itemized and total allocations from the Fund. The Department also shall prepare a summary report of all allocations made from the Fund for each fiscal year; the total funds

received and allocations made; the total amount of moneys repaid to the Fund; and the total unallocated funds in the Fund.

Small businesses that have been selected to receive moneys from the Fund shall prepare and file a report that shall include the following information:

- (1) The total amount of private funds that was committed and the amount that was invested in activities for which moneys from the Fund were made available during the preceding fiscal year.
- (2) The total amount and character of moneys received from the Fund during the preceding fiscal year.
- (3) The total amount of moneys repaid to the Fund during the preceding fiscal year.
- (4) A description of how moneys from the Fund and funds from private investors were used during the preceding fiscal year.
- (5) Details regarding the types of private investment created or stimulated, the dates of this activity, the amount of public money involved, and any other pertinent information, including any jobs created, businesses started, and number of jobs retained due to the approved activities.

(m) Administrative Expenses. – The Department may use up to fifty thousand dollars (\$50,000) of the funds in the Small Business Jobs Preservation and Emergency Assistance Fund for expenses related to the administration of the Fund."

#### **WANCHESE SEAFOOD INDUSTRIAL PARK/OREGON INLET FUNDS**

**SECTION 14.4.(a)** Funds appropriated to the Department of Commerce for the 2009-2010 fiscal year for the Wanchese Seafood Industrial Park that are unexpended and unencumbered as of June 30, 2009, shall not revert to the General Fund on June 30, 2009, but shall remain available to the Department to be expended by the Wanchese Seafood Industrial Park for operations, maintenance, repair, and capital improvements in accordance with Article 23C of Chapter 113 of the General Statutes. These funds shall be in addition to funds available to the North Carolina Seafood Industrial Park Authority for operations, maintenance, repair, and capital improvements under Article 23C of Chapter 113 of the General Statutes.

**SECTION 14.4.(b)** Funds appropriated to the Department of Commerce for the 2009-2010 fiscal year for the Oregon Inlet Project that are unexpended and unencumbered as of June 30, 2009, shall not revert to the General Fund on June 30, 2009, but shall remain available to the Department to be expended by the Wanchese Seafood Industrial Park for securing adequate channel maintenance of the Oregon Inlet and for operations, maintenance, repair, and capital improvements in accordance with Article 23C of Chapter 113 of the General Statutes. These funds shall be in addition to funds available to the North Carolina Seafood Industrial Park Authority for operations, maintenance, repair, and capital improvements under Article 23C of Chapter 113 of the General Statutes.

**SECTION 14.4.(c)** This section becomes effective June 30, 2009.

#### **ECONOMIC DEVELOPMENT FUNDS/REPORTING REQUIREMENTS**

**SECTION 14.5.(a)** G.S. 143B-437.02(k) reads as rewritten:

"(k) Monitoring and Reports. – The Department is responsible for monitoring compliance with the performance criteria under each site development agreement and for administering the repayment in case of default. The Department shall pay for the cost of this monitoring from funds appropriated to it for that purpose or for other economic development purposes.

~~Within two months after the end of each calendar quarter,~~ On September 1 of each year until all funds have been expended, the Department shall report to the Joint Legislative Commission on Governmental Operations regarding the Site Infrastructure Development Program. This report shall include a listing of each agreement negotiated and entered into during the preceding ~~quarter,~~ year, including the name of the business, the cost/benefit analysis conducted by the Committee during the application process, a description of the project, and the amount of the site development incentive expected to be paid under the agreement during the current fiscal year. The report shall also include detailed information about any defaults and repayment during the preceding ~~quarter,~~ year. The Department shall publish this report on its web site and shall make printed copies available upon request."

**SECTION 14.5.(b)** G.S. 143B-437.012(m) reads as rewritten:

"(m) Monitoring and Reports. – The Department is responsible for monitoring compliance with the performance criteria under each grant agreement and for administering the repayment in case of default. The Department shall pay for the cost of this monitoring from funds appropriated to it for that purpose or for other economic development purposes.

~~Within two months after the end of each calendar quarter, On September 1 of each year until all funds have been expended, the Department shall report to the Joint Legislative Commission on Governmental Operations regarding the Job Maintenance and Capital Development Fund. This report shall include a listing of each grant awarded and each agreement entered into under this section during the preceding quarter-year, including the name of the business, the cost/benefit analysis conducted by the Committee during the application process, a description of the project, and the amount of the grant expected to be paid under the agreement during the current fiscal year. The report shall also include detailed information about any defaults and repayment during the preceding quarter-year. The Department shall publish this report on its Web site and shall make printed copies available upon request."~~

**SECTION 14.5.(c)** G.S. 143B-437.83 reads as rewritten:

**"§ 143B-437.83. Reports.**

The Department of Commerce shall publish a report on the use of funds in the One North Carolina Small Business Account ~~at the end of each fiscal quarter.~~ on September 1 of each year until all funds have been expended. The report shall contain information on the disbursement and use of funds allocated under the One North Carolina Small Business Program. The report is ~~due no later than one month after the end of the fiscal quarter and must be submitted to the following:~~

- (1) The Joint Legislative Commission on Governmental Operations.
- (2) The chairs of the House of Representatives and Senate Finance Committees.
- (3) The chairs of the House of Representatives and Senate Appropriations Committees.
- (4) The Fiscal Research Division of the General Assembly."

**SECTION 14.5.(d)** G.S. 143B-438.13(d) is repealed.

**SECTION 14.5.(e)** G.S. 143B-438.17 reads as rewritten:

**"§ 143B-438.17. Reporting.**

~~(a) Beginning July 1, 2005, the Department of Commerce, in conjunction with the Employment Security Commission and the Community Colleges System Office, shall publish a monthly written report on the Trade Jobs for Success (TJS) initiative. The monthly report shall provide information on the commitment, disbursement, and use of funds and the status of any grant proposals or waivers requested on behalf of the Trade Jobs for Success initiative. The monthly report shall be submitted to the Governor and to the Fiscal Research Division of the General Assembly.~~

~~(b) Beginning October 1, 2005, the Department of Commerce, in conjunction with the Employment Security Commission and the Community Colleges System Office, shall publish a quarterly written report on the Trade Jobs for Success initiative. The quarterly report shall include legislative proposals and recommendations regarding statutory changes needed to maximize the effectiveness and flexibility of the TJS initiative. Copies of the quarterly report shall be provided to the Joint Legislative Commission on Governmental Operations, to the chairs of the Senate and House of Representatives Appropriations Committees, and to the Fiscal Research Division of the General Assembly.~~

~~(c) Beginning January 1, 2006, the Department of Commerce, in conjunction with the Employment Security Commission and the Community Colleges System Office, shall publish a comprehensive annual written report on the Trade Jobs for Success initiative. The annual report shall include a detailed explanation of outcomes and future planning for the TJS initiative. initiative and legislative proposals and recommendations regarding statutory changes needed to maximize the effectiveness and flexibility of the TJS initiative. Copies of the annual report shall be provided to the Governor, to the Joint Legislative Commission on Governmental Operations, to the chairs of the Senate and House of Representatives Appropriations Committees, and to the Fiscal Research Division of the General Assembly."~~

**SECTION 14.5.(g)** G.S. 143B-472.80(5) is repealed.

**STUDY STATE AIRCRAFT FLEETS**

**SECTION 14.6.** The Program Evaluation Division of the General Assembly (Division) shall study the number, use, and effectiveness of the State's aircraft fleets. The study

shall consider ways to achieve efficiency savings and whether it is desirable or feasible to sell any of the aircraft or to transfer any of the aircraft to another State agency. No later than May 1, 2010, the Division shall prepare a report of the findings and recommendations of the study and submit it to the House of Representatives and Senate Appropriations Committees and the Fiscal Research Division.

#### **EXECUTIVE AIRCRAFT/USE FOR ECONOMIC DEVELOPMENT PRIORITY**

**SECTION 14.7.** G.S. 143B-437.011 reads as rewritten:

**"§ 143B-437.011. Executive aircraft used for economic development; other uses.**

The use of executive aircraft by the Department of Commerce for economic development purposes shall take precedence over all other uses. The Department of Commerce shall annually review the rates charged for the use of executive aircraft and shall adjust the rates, as necessary, to account for upgraded aircraft and inflationary increases in operating costs, including jet fuel prices. If an executive aircraft is not being used by the Department of Commerce for economic development purposes, priority of use shall be given first to the Governor, second to the Council of State, and third to other State officials purposes, the aircraft may be used by the Governor or a State official who is employed by an agency that does not have its own aircraft and is traveling on State business. If an executive aircraft is used to attend athletic events or for any other purpose related to collegiate athletics, the rate charged shall be equal to the direct cost of operating the aircraft as established by the aircraft's manufacturer, adjusted for inflation."

#### **NER BLOCK GRANTS**

**SECTION 14.8.(a)** Appropriations from federal block grant funds are made for the fiscal year ending June 30, 2010, according to the following schedule:

##### **COMMUNITY DEVELOPMENT BLOCK GRANT**

01. State Administration	\$	1,000,000
02. Urgent Needs and Contingency		1,000,000
03. Scattered Site Housing		13,200,000
04. Economic Development		8,710,000
05. Small Business/Entrepreneurship		1,000,000
06. Community Revitalization		13,000,000
07. State Technical Assistance		450,000
08. Housing Development		1,500,000
09. Infrastructure		5,140,000
<b>TOTAL COMMUNITY DEVELOPMENT BLOCK GRANT – 2009 Program Year</b>	<b>\$</b>	<b>45,000,000</b>

**SECTION 14.8.(b)** Decreases in Federal Fund Availability. – If federal funds are reduced below the amounts specified above after the effective date of this act, then every program in each of these federal block grants shall be reduced by the same percentage as the reduction in federal funds.

**SECTION 14.8.(c)** Increases in Federal Fund Availability for Community Development Block Grant. – Any block grant funds appropriated by the Congress of the United States in addition to the funds specified in this section shall be expended as follows: each program category under the Community Development Block Grant shall be increased by the same percentage as the increase in federal funds.

**SECTION 14.8.(d)** Limitations on Community Development Block Grant Funds. – Of the funds appropriated in this section for the Community Development Block Grant, the following shall be allocated in each category for each program year: up to one million dollars (\$1,000,000) may be used for State Administration; not less than one million dollars (\$1,000,000) may be used for Urgent Needs and Contingency; up to thirteen million two hundred thousand dollars (\$13,200,000) may be used for Scattered Site Housing; eight million seven hundred ten thousand dollars (\$8,710,000) may be used for Economic Development; up to one million dollars (\$1,000,000) may be used for Small Business/Entrepreneurship; not less than thirteen million dollars (\$13,000,000) shall be used for Community Revitalization; up to four hundred fifty thousand dollars (\$450,000) may be used for State Technical Assistance; up to one million five hundred thousand dollars (\$1,500,000) may be used for Housing Development; up to five million one hundred forty thousand dollars (\$5,140,000) may be used for Infrastructure. If federal block grant funds are reduced or increased by the Congress of the United States after the effective date of this act, then these reductions or increases shall be allocated in accordance with subsection (b) or (c) of this section, as applicable.

**SECTION 14.8.(e)** Increase Capacity for Nonprofit Organizations. – Assistance to nonprofit organizations to increase their capacity to carry out CDBG-eligible activities in partnership with units of local government is an eligible activity under any program category in accordance with federal regulations. Capacity building grants may be made from funds available within program categories, program income, or unobligated funds.

**SECTION 14.8.(f)** The Department of Commerce shall consult with the Joint Legislative Commission on Governmental Operations prior to reallocating Community Development Block Grant Funds. Notwithstanding the provisions of this subsection, whenever the Director of the Budget finds that:

- (1) A reallocation is required because of an emergency that poses an imminent threat to public health or public safety, the Director of the Budget may authorize the reallocation without consulting the Commission. The Department of Commerce shall report to the Commission on the reallocation no later than 30 days after it was authorized and shall identify in the report the emergency, the type of action taken, and how it was related to the emergency.
- (2) The State will lose federal block grant funds or receive less federal block grant funds in the next fiscal year unless a reallocation is made. The Department of Commerce shall provide a written report to the Commission on the proposed reallocation and shall identify the reason that failure to take action will result in the loss of federal funds. If the Commission does not hear the issue within 30 days of receipt of the report, the Department may take the action without consulting the Commission.

**SECTION 14.8.(g)** By September 1, 2009, the Division of Community Assistance, Department of Commerce, shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of Community Development Block Grant Funds appropriated in the prior fiscal year.

**NER CDBG/AMERICAN RECOVERY AND REINVESTMENT ACT 2009**

**SECTION 14.9.(a)** Appropriations from federal block grant funds are made for the 2009-2010 fiscal year, according to the following schedule:  
COMMUNITY DEVELOPMENT BLOCK GRANT

01. Administration:		
State	\$	604,030.50
Local Governments		604,030.50
02. Infrastructure		5,872,553
03. Housing		3,000,000
04. Special Projects		2,000,000

TOTAL COMMUNITY DEVELOPMENT

BLOCK GRANT – Recovery  
2009-2010 Fiscal Year

\$ 12,080,614

**SECTION 14.9.(b)** Limitations on Community Development Block Grant Funds. –

Of the funds appropriated in this section for the Community Development Block Grant, the following shall be allocated: up to one million two hundred eight thousand and sixty-one dollars (\$1,208,061) may be used for Administration; up to five million eight hundred seventy-two thousand five hundred fifty-three dollars (\$5,872,553) may be used for Infrastructure; up to three million dollars (\$3,000,000) may be used for Housing; and up to two million dollars (\$2,000,000) may be used for Special Projects.

**SECTION 14.9.(c)** The Department of Commerce shall consult with the Joint Legislative Commission on Governmental Operations prior to reallocating Community Development Block Grant Recovery Funds appropriated under this section.

**MAIN STREET GRANT FUNDS**

**SECTION 14.10.** Part 15 of Article 10 of Chapter 143B of the General Statutes reads as rewritten:

~~"Part 15. Main Street Financial Incentive Fund Solutions.~~

**"§ 143B-472.35. Establishment of fund; use of moneys; funds; application for grants and loans; grants; disbursement; repayment; inspections; rules; reports.**

(a) ~~A revolving fund~~ to be known as the Main Street ~~Financial Incentive Solutions~~ Fund is established in the Department of Commerce. This Fund shall be administered by the Department of Commerce. The Department of Commerce shall be responsible for receipt and disbursement of all ~~moneys~~ funds as provided in this section. Interest earnings shall be credited to the Main Street ~~Financial Incentive Solutions~~ Fund.

(b) ~~Moneys~~ Funds in the Main Street ~~Financial Incentive Solutions~~ Fund shall be available to ~~the North Carolina cities affiliated with the North Carolina Main Street Center Program~~ micropolitan cities in development tier two and three counties in the State. For purposes of this section, a "micropolitan city" is a city located within the State with a population, according to the most recent U.S. census, of between 10,000 and 50,000 people. ~~Moneys~~ Funds in the Main Street ~~Financial Incentive Solutions~~ Fund shall be used for any of the following eligible activities:

- (1) The acquisition or rehabilitation of properties in connection with private investment in a designated downtown ~~area;~~ area.
- (2) The establishment of revolving loan programs for private investment in a designated downtown ~~area;~~ area.
- (3) The subsidization of interest rates for these revolving loan ~~programs;~~ programs.
- (4) The establishment of facade incentive grants in connection with private investment in a designated downtown ~~area;~~ area.
- (5) Market studies, design studies, design assistance, or strategic planning efforts, provided the activity can be shown to lead directly to private investment in a designated downtown ~~area;~~ area.
- (6) Any approved project that provides construction or rehabilitation in a designated downtown area and can be shown to lead directly to private investment in the designated downtown ~~area; and~~ area.
- (7) Public improvements and public infrastructure within a designated downtown area, provided these improvements are necessary to create or stimulate private investment in the designated downtown area.

(c) ~~Any North Carolina micropolitan city affiliated with the North Carolina Main Street Center Program located within a development tier two or three county may apply for moneys assistance from the Main Street Financial Incentive Solutions Fund by submitting an application to the Main Street Center in the Division of Community Assistance, Department of Commerce. Any city affiliated with the North Carolina Main Street Center Program may apply for a grant equal to ten percent (10%) of the projected cost of the for a proposed project. A city may apply for additional moneys as one or more loans from the Fund. Specifically, a city may apply for a loan for:~~

- (1) ~~Up to fifteen percent (15%) of the projected cost of the proposed project in excess of the amount to be received as a grant, subject to repayment within fifteen years at five percent (5%) interest;~~

- (2) ~~Up to twenty percent (20%) of the projected cost of the proposed project in excess of the amount to be received as a grant, subject to repayment within ten years at eight percent (8%) interest; and~~
  - (3) ~~Up to thirty five percent (35%) of the projected cost of the proposed project in excess of the amount to be received as a grant, subject to repayment within seven years at ten percent (10%) interest.~~
- (c1) The application shall ~~list~~ include each of the following:
- (1) A copy of the consensus local economic development plan developed by the micropolitan city in conjunction with the Department's Main Street Program and the city's regional economic development commission or its local council of government or both.
  - (1a) The proposed activities for which the moneys-funds are to be used and the projected cost of the project;project.
  - (2) The amount of grant moneys and any loansfunds requested for these activities;activities.
  - (3) Projections of the dollar amount of private investment that is expected to occur in the designated downtown area as a direct result of the city's proposed activities;activities.
  - (4) Whether local public dollars are required to match any grant plus any loan moneysfunds according to the provisions of subdivision (g)(2) of this section, and if so, the amount of local public dollars required;funds required.
  - (5) An explanation of the nature of the private investment in the designated downtown area that will result from the city's proposed activities;activities.
  - (6) Projections of the time needed to complete the city's proposed activities;activities.
  - (7) Projections of the time needed to realize the private investment that is expected to result from the city's proposed activities; andactivities.
  - (8) Identification of the proposed source of funds to be used for repayment of any loan obligations.
  - (9) Any additional or supplemental information requested by the Division.

~~The applicant shall furnish additional or supplemental information upon written request.~~

(d) A committee, comprised of representatives of: the Division of Community Assistance of the Department of Commerce, the North Carolina Main Street Program, the Local Government Commission, and the League of Municipalities ~~shall~~ shall do each of the following:

- (1) Review a city's ~~application~~ application.
- (2) Determine whether the activities listed in the application are activities that are eligible for a ~~loan, and grant~~.
- (3) Determine which applicants are selected to receive ~~moneys-funds~~ from the Main Street ~~Financial Incentive~~ Solutions Fund.

A city whose application is denied may file a new or amended application.

(e) A Main Street City that is selected may not receive a grant ~~plus any loans~~ pursuant to this section totaling less than twenty thousand dollars (\$20,000) or more than three hundred thousand dollars (\$300,000).

~~The Department of Commerce may not disburse moneys for any loans until the city has confirmed a method of repayment of the loan. The terms for repayment established for a given loan shall apply throughout the period of that loan.~~

~~The Department of Commerce shall establish an account in the amount of the grant plus any loans for each city that is selected. These moneys shall be disbursed as expended through warrants drawn on the Department of Commerce.~~

- (g) (1) A city that has been selected to receive a grant ~~plus any loans~~ shall use the full amount of the grant ~~plus any loans~~ for the activities that were approved pursuant to subsection (d) of this section. ~~Moneys-Funds~~ are deemed used if the city is legally committed to spend the ~~moneys-funds~~ on the approved activities.
- (2) If a city has received approval to use the grant ~~plus any loans~~ for public improvements or public infrastructure, that city shall be required to raise, before ~~moneys-funds~~ for these public improvements may be drawn from the city's account, local public funds to match the amount of the grant ~~plus any~~

~~loans~~ from the Main Street ~~Financial Incentive Solutions~~ Fund on the basis of at least one local public dollar (\$1.00) for every one dollar (\$1.00) from the Main Street ~~Financial Incentive Solutions~~ Fund. This match requirement applies only to those ~~moneys funds~~ received for public improvements or public infrastructure and is in addition to the requirement set forth in subdivision (1) of this subsection.

- (3) A city that fails to satisfy the condition set forth in subdivision (1) of this subsection shall lose any ~~moneys funds~~ that have not been used within three years of being selected. These unused ~~moneys funds~~ shall be credited to the Main Street ~~Financial Incentive Solutions~~ Fund. A city that fails to satisfy the conditions set forth in subdivisions (1) and (2) of this subsection may file a new application.
- (4) Any ~~moneys funds~~ repaid or credited to the Main Street ~~Financial Incentive Solutions~~ Fund pursuant to subdivision (3) of this subsection shall be available to other applicants as long as the Main Street ~~Financial Incentive Solutions~~ Fund is in effect.

~~(h) Each city is authorized to agree to apply any available revenues of that city to the repayment of a loan obligation to the extent the generation of these revenues is within the power of that city to enter into covenants to take action in order to generate these revenues; provided:~~

- ~~(1) The agreement to use this source of funds to make repayment or the covenant to generate these revenues does not constitute a pledge of the city's taxing power; and~~
- ~~(2) The repayment agreement specifically identifies the source of funds to be pledged.~~

~~(i) After a project financed in whole or in part pursuant to this section has been completed, the city shall report the actual cost of the project to the Department of Commerce. If the actual cost of the project exceeds the projected cost upon which the grant plus any loans were was based, the city may submit an application to the Department of Commerce for a grant or loans for the difference. If the actual cost of the project is less than the projected cost, the city shall arrange to pay the difference to the Main Street ~~Financial Incentive Solutions~~ Fund according to terms set by the Department.~~

~~(j) Inspection of a project for which a grant plus any loans have has been awarded may be performed by personnel of the Department of Commerce. No person may be approved to perform inspections who is an officer or employee of the unit of local government to which the grant plus any loans were was made or who is an owner, officer, employee, or agent of a contractor or subcontractor engaged in the construction of any project for which the grant plus any loans were was made.~~

~~(k) The Department of Commerce may adopt, modify, and repeal rules establishing the procedures to be followed in the administration of this section and regulations interpreting and applying the provisions of this section, as provided in the Administrative Procedure Act.~~

~~(l) The Department of Commerce and cities that have been selected to receive a grant plus any loans from the Main Street ~~Financial Incentive Solutions~~ Fund shall prepare and file on or before ~~July 31~~ September 1 of each year with the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division a consolidated report for the preceding fiscal year concerning the allocation of grants plus any loans authorized by this section.~~

The portion of the annual report prepared by the Department of Commerce shall set forth for the preceding fiscal year itemized and total allocations from the Main Street ~~Financial Incentive Solutions~~ Fund for ~~grants and loans~~ grants. The Department of Commerce shall also prepare a summary report of all allocations made from the fund for each fiscal year; the total funds received and allocations made; ~~the total amount of loan moneys repaid to the Fund, made~~ and the total unallocated funds in the Fund.

The portion of the report prepared by the city shall ~~include~~ include each of the following:

- (1) The total amount of private funds that was committed and the amount that was invested in the designated downtown area during the preceding fiscal ~~year~~ year.
- (2) The total amount of local public matching funds that was raised, if required by subdivision (g)(2) of this ~~section~~ section.



- (3) The total amount of ~~grant plus any loans~~ grants received from the Main Street ~~Financial Incentive~~ Solutions Fund during the preceding fiscal ~~year;~~ year.
- (4) ~~The total amount of loan moneys repaid to the Main Street Financial Incentive Fund during the preceding fiscal year;~~
- (5) A description of how the grant ~~and loan moneys~~ funds and funds from private investors were used during the preceding fiscal ~~year;~~ year.
- (6) Details regarding the types of private investment created or stimulated, the dates of this activity, the amount of public money involved, and any other pertinent information, including any jobs created, businesses started, and number of jobs retained due to the approved activities.

(m) The Department of Commerce may use up to fifty thousand dollars (\$50,000) of the funds in the Main Street Solutions Fund for expenses related to the administration of the Fund."

## **TOURIST DESTINATION MARKETING**

**SECTION 14.11.** The Department of Commerce shall promote historically underutilized businesses and supplier diversity within the State when marketing the State of North Carolina. Promotional efforts may include advertising with minority media outlets and with minorities in the motorsports industry. The Department and businesses that contract with the Department to promote historically underutilized businesses and supplier diversity shall make a good-faith effort to achieve diversity in the bidding and awarding of marketing and advertising contracts.

## **NC GREEN BUSINESS FUND/FUNDS**

**SECTION 14.12.** Of the funds received by the State under the American Recovery and Reinvestment Act of 2009 and appropriated in this act to the State Energy Office, Department of Commerce, for the 2009-2010 fiscal year, the sum of five million dollars (\$5,000,000) in nonrecurring funds shall be allocated to the North Carolina Green Business Fund in the Department of Commerce.

## **BIOFUELS CENTER OF NORTH CAROLINA**

**SECTION 14.13.** Of the funds received by the State under the American Recovery and Reinvestment Act of 2009 and appropriated in this act to the State Energy Office, Department of Commerce, for the 2009-2010 fiscal year, the sum of four million dollars (\$4,000,000) in nonrecurring funds shall be allocated to the Biofuels Center of North Carolina. These funds shall be used for costs related to implementing the North Carolina Strategic Plan for Biofuels Leadership developed under S.L. 2006-206.

## **EXTEND DEADLINE FOR TWENTY PERCENT REDUCTION OF PETROLEUM PRODUCTS USE FOR STATE FLEETS/CLARIFY REPORT REQUIREMENT**

**SECTION 14.14.(a)** Section 19.5(a) of S.L. 2005-276 reads as rewritten:

**"SECTION 19.5.(a)** All State agencies, universities, and community colleges that have State-owned vehicle fleets shall develop and implement plans to improve the State's use of alternative fuels, synthetic lubricants, and efficient vehicles. The plans shall achieve a twenty percent (20%) reduction or displacement of the current petroleum products consumed by ~~January 1, 2010.~~ July 1, 2011. Before implementation of any plan, all affected agencies shall report their plan to the ~~Department of Administration.~~ The Department of Administration ~~The Department of Administration~~ State Energy Office within the Department of Commerce. The State Energy Office shall compile a report on the plans submitted and report to the Joint Legislative Commission on Governmental Operations. Agencies shall implement their plans by January 1, 2006. Reductions may be met by petroleum or oils displaced through the use of biodiesel, ethanol, synthetic oils or lubricants, other alternative fuels, the use of hybrid electric vehicles, other fuel-efficient or low-emission vehicles, or additional methods as may be approved by the State Energy Office, thereby reducing the amount of harmful emissions. The plan shall not impede mission fulfillment of the agency and shall specifically address a long-term cost-benefit analysis, allowances for changes in vehicle usage, total miles driven, and exceptions due to technology, budgetary limitations, and emergencies."

**SECTION 14.14.(b)** Section 19.5(c) of S.L. 2005-276 reads as rewritten:

~~"SECTION 19.5.(c) Agencies shall report by September 1, 2006, and annually thereafter on September 1, through September 1, 2011, to the Department of Administration State Energy Office within the Department of Commerce on the efforts undertaken to achieve the reductions. The Department of Administration State Energy Office shall compile and forward a report to the Joint Legislative Commission on Governmental Operations by November 1, 2006, and annually thereafter on November 1, through November 1, 2011, on the agencies' progress in meeting their plans."~~

#### **INDUSTRIAL COMMISSION FEES/COMPUTER SYSTEM REPLACEMENT**

**SECTION 14.15.** The North Carolina Industrial Commission may retain the additional revenue generated as a result of an increase in the fee charged to parties for the filing of compromised settlements. These funds shall be used for the purpose of replacing existing computer hardware and software used for the operations of the Commission. These funds may also be used to prepare any assessment of hardware and software needs prior to purchase and to develop and administer the needed databases and new Electronic Case Management System, including the establishment of two time-limited positions for application development and support and mainframe migration. The Commission may not retain any fees under this section unless they are in excess of the former two-hundred-dollar (\$200.00) fee charged by the Commission for filing a compromised settlement.

#### **INDUSTRIAL COMMISSION/SAFETY EDUCATION SECTION**

**SECTION 14.16.(a)** G.S. 97-73 reads as rewritten:

**"§ 97-73. Fees.**

(a) Claims. – The Industrial Commission may establish by rule a schedule of fees for examinations conducted, reports made, documents filed, and agreements reviewed under this Article. The fees shall be collected in accordance with rules adopted by the Industrial Commission.

(b), (c) Repealed by Session Laws 2003-284, s. 10.33(d), effective July 1, 2003.

(d) Safety. – A fee in the amount set by the Industrial Commission is imposed on an employer for whom the Industrial Commission provides an educational training program on how to prevent or reduce accidents or injuries that result in workers' compensation claims or a person for whom the Industrial Commission provides other educational services. The fees are departmental receipts."

**SECTION 14.16.(b)** The Industrial Commission shall report the fees established pursuant to this section to the Joint Legislative Commission on Governmental Operations by September 1, 2009.

#### **EMPLOYMENT SECURITY COMMISSION FUNDS**

**SECTION 14.17.(a)** Funds from the Employment Security Commission Reserve Fund shall be available to the Employment Security Commission of North Carolina to use as collateral to secure federal funds and to pay the administrative costs associated with the collection of the Employment Security Commission Reserve Fund surcharge. The total administrative costs paid with funds from the Reserve in the 2009-2010 fiscal year shall not exceed two million five hundred thousand dollars (\$2,500,000).

**SECTION 14.17.(b)** There is appropriated from the Employment Security Commission Reserve Fund to the Employment Security Commission of North Carolina the sum of twenty million dollars (\$20,000,000) for the 2009-2010 fiscal year to be used for the following purposes:

- (1) Nineteen million five hundred thousand dollars (\$19,500,000) for the operation and support of local Employment Security Commission offices.
- (2) Two hundred thousand dollars (\$200,000) for the State Occupational Information Coordinating Committee to develop and operate an interagency system to track former participants in State education and training programs.
- (3) Three hundred thousand dollars (\$300,000) to maintain compliance with Chapter 96 of the General Statutes, which directs the Commission to employ the Common Follow-Up Management Information System to evaluate the effectiveness of the State's job training, education, and placement programs.

**SECTION 14.17.(c)** There is appropriated from the Employment Security Commission Reserve Fund to the Employment Security Commission of North Carolina an

amount not to exceed one million dollars (\$1,000,000) for the 2009-2010 fiscal year to fund State initiatives not currently funded through federal grants.

**SECTION 14.17.(d)** There is appropriated from the Employment Security Commission Reserve Fund to the Employment Security Commission of North Carolina an amount not to exceed one million five hundred thousand dollars (\$1,500,000) for the 2009-2010 fiscal year to fund a system upgrade to the Common Follow-Up Management Information System.

**SECTION 14.17.(e)** The Employment Security Commission of North Carolina may use funds in the Employment Security Commission Reserve Fund to contract with nonprofit organizations to provide dislocated workers with assistance in obtaining health care benefits, receiving vocational training, and securing employment.

## **EMPLOYMENT SECURITY COMMISSION/AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009**

**SECTION 14.18.** Of the funds credited to and held in the State of North Carolina's account in the Unemployment Trust Fund by the Secretary of the Treasury of the United States pursuant to and in accordance with section 903 of the Social Security Act, the Employment Security Commission of North Carolina may expend the sum of fourteen million six hundred forty-seven thousand three hundred ninety-seven dollars (\$14,647,397) for the 2009-2011 fiscal biennium for the following purposes:

- (1) Implementing and administering the provisions of State law that qualify the State for the incentive payments.
- (2) Improved outreach to individuals who might be eligible by virtue of these provisions.
- (3) The improvement of unemployment benefits and tax operations, including responding to increased demand for unemployment benefits.
- (4) Staff-assisted reemployment services for unemployment claimants.

## **COMMERCE/ENTERPRISE FUNDS AND SPECIAL FUNDS**

**SECTION 14.19.(a)** The Office of State Budget and Management, in conjunction with the Office of the State Controller and the Department of Commerce, shall close the North Carolina Grape Growers Council Fund (Budget Code 24600-2553) and transfer the remaining fund balances to the General Fund.

**SECTION 14.19.(b)** The Office of State Budget and Management, in conjunction with the Office of the State Controller and the Department of Commerce, shall transfer the cash balances remaining in the following funds as of June 30, 2009, to the General Fund:

- (1) 24600-2241 – Rural Electrification Authority Administration
- (2) 24600-2553 – North Carolina Grape Growers Council
- (3) 24600-2821 – Credit Union Supervision
- (4) 24600-2851 – Cemetery Commission
- (5) 54600-5211 – Utilities – Commission Staff
- (6) 54600-5217 – Utilities – Gas Pipeline Safety
- (7) 54600-5221 – Utilities – Public Staff
- (8) 54600-5811 – State Banking Commission
- (9) 54600-5881 – ABC Commission
- (10) 54600-5882 – ABC Warehouse
- (11) 64605 Commerce – Utilities Commission – Public Staff
- (12) 64612 Commerce – North Carolina Rural Electrification Authority

**SECTION 14.19.(c)** The Office of State Budget and Management, in conjunction with the Office of the State Controller and the Department of Commerce, shall transfer the following fund codes from Budget Code 24600 – Commerce Special Funds to Budget Code 24609 – Commerce Special Fund General Fund:

- (1) 2533 – One North Carolina Fund
- (2) 2534 – One North Carolina Small Business Account
- (3) 2581 – JDIG Fees
- (4) 2582 – JDIG Special Revenue Fund
- (5) 2711 – Industrial Development Fund
- (6) 2712 – Industrial Development Utility Account

**SECTION 14.19.(d)** The Office of State Budget and Management, in conjunction with the Office of the State Controller and the Department of Commerce, shall transfer the following fund codes from Budget Code 24600 – Commerce Special Funds to Budget Code 54600 – Commerce Enterprise Funds:

- (1) 24600-2241 – Rural Electrification Authority Administration
- (2) 24600-2821 – Credit Union Supervision
- (3) 24600-2851 – Cemetery Commission

**SECTION 14.19.(e1)** Notwithstanding any other provision of law, beginning in the 2009-2010 fiscal year, the cash balances remaining in the following Fund codes on June 30 of each fiscal year that are greater than twenty percent (20%) of the operating budget for each Fund shall revert to the General Fund:

- (1) 24600-2241 – Rural Electrification Authority Administration
- (2) 24600-2821 – Credit Union Supervision
- (3) 24600-2851 – Cemetery Commission
- (4) 54600-5211 – Utilities – Commission Staff
- (5) 54600-5217 – Utilities – Gas Pipeline Safety
- (6) 54600-5221 – Utilities – Public Staff
- (7) 54600-5811 – State Banking Commission
- (8) 54600-5881 – ABC Commission
- (9) 54600-5882 – ABC Warehouse
- (10) 64605 Commerce – Utilities Commission – Public Staff
- (11) 64612 Commerce – North Carolina

**SECTION 14.19.(e2)** Prior to the expenditure of any of the cash balance that does not revert to the General Fund as required by subsection (e1) of this section, the agency responsible for administering the Fund shall report on the planned expenditure of the cash balance to the Joint Legislative Oversight Committee on Governmental Operations.

**SECTION 14.19.(f)** G.S. 105-113.81A is repealed.

## **STATE BANKING COMMISSION/FEEES & ASSESSMENT CHANGES EFFECTIVE JULY 1**

**SECTION 14.20.** G.S. 53-122(e) reads as rewritten:

"(e) In the first half of each calendar year, the State Banking Commission shall review the estimated cost of maintaining the office of the Commissioner of Banks for the next fiscal year. If the estimated fees and assessments provided for under this section shall exceed the estimated cost of maintaining the office of the Commissioner of Banks for the next fiscal year, then the State Banking Commission may reduce by uniform percentage the fees and assessments provided for in this section. If the estimated fees and assessments provided for under this section shall be less than the estimated cost of maintaining the office of the Commissioner of Banks for the next fiscal year, then the State Banking Commission may increase by uniform percentage the fees and assessments provided for in this section to an amount which will increase the amount of the fees and assessments to be collected to an amount at least equal to the estimated cost of maintaining the office of the Commissioner of Banks for the next fiscal year. ~~In no event shall any surplus at the end of any fiscal year resulting from the collection of fees and assessments pursuant to this section revert to the general fund.~~ The State Banking Commission shall report to the Joint Legislative Commission on Governmental Operations its conclusion that the estimated fees and assessments should be reduced or increased. Any reduction or increase of estimated fees and assessments provided for under this section shall become effective July 1 of the next fiscal year."

## **COUNCIL OF GOVERNMENT FUNDS**

**SECTION 14.21.(a)** Of the funds appropriated in this act to the Department of Commerce, the sum of four hundred twenty-five thousand dollars (\$425,000) for the 2009-2010 fiscal year and the sum of four hundred twenty-five thousand dollars (\$425,000) for the 2010-2011 fiscal year shall only be used as provided by this section. Each regional council of government or lead regional organization is allocated up to twenty-five thousand dollars (\$25,000) for the 2009-2010 and the 2010-2011 fiscal years.

**SECTION 14.21.(b)** A regional council of government may use funds allocated to it by this section only to assist local governments in grant applications, economic development,

community development, support of local industrial development activities, and other activities as deemed appropriate by the member governments.

**SECTION 14.21.(c)** Funds allocated by this section shall be paid by electronic transfer in two equal installments each fiscal year. Upon receipt of the report required by subsection (e) of this section, the first installment shall be paid no later than September 15 of each year.

**SECTION 14.21.(d)** Funds allocated by this section shall not be used for payment of dues or assessments by the member governments and shall not supplant funds appropriated by the member governments.

**SECTION 14.21.(e)** By September 1 of each year, and more frequently as requested, each council of government or lead regional organization shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division of the General Assembly on prior State fiscal year program activities, objectives, and accomplishments, and prior State fiscal year itemized expenditures and fund sources. Each council of government or lead regional organization shall provide to the Fiscal Research Division of the General Assembly a copy of the organization's annual audited financial statement within 30 days of issuance of the statement.

### **STATE-AID REPORTING REQUIREMENTS**

**SECTION 14.22.(a)** The North Carolina Institute of Minority Economic Development, Inc., Land Loss Prevention Project, North Carolina Minority Support Center, North Carolina Community Development Initiative, Inc., North Carolina Association of Community Development Corporations, Inc., North Carolina Biotechnology Center, North Carolina Center for Automotive Research, Inc., Biofuels Center of North Carolina, High Point Market Authority, and Partnership for the Sounds, Inc., shall do the following:

- (1) By September 1 of each year, and more frequently as requested, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on prior State fiscal year program activities, objectives, and accomplishments, and prior State fiscal year itemized expenditures and fund sources.
- (2) Provide to the Fiscal Research Division a copy of the organization's annual audited financial statement within 30 days of issuance of the statement.

**SECTION 14.22.(b)** Remaining allotments after September 1 shall not be released to any nonprofit organization that does not satisfy the reporting requirements provided in subsection (a) of this section.

### **DEFENSE AND SECURITY TECHNOLOGY ACCELERATOR**

**SECTION 14.23.** All funds appropriated by this act for the Defense and Security Technology Accelerator project shall be used to advance and support the facilitation of federal appropriations and grants allocated for federal contracts and laboratory facilities designed to support and facilitate projects related to the United States Department of Defense.

### **NORTH CAROLINA INDIAN ECONOMIC DEVELOPMENT INITIATIVE**

**SECTION 14.24.** Of the funds appropriated in this act for the 2009-2010 fiscal year to the Department of Commerce, Budget Code 14600, the sum of one hundred thousand dollars (\$100,000) shall be transferred to Budget Code 14601, Commerce State-Aid, for the North Carolina Indian Economic Development Initiative.

### **REGIONAL ECONOMIC DEVELOPMENT COMMISSION ALLOCATIONS**

**SECTION 14.25.(a)** Funds appropriated in this act to the Department of Commerce for regional economic development commissions shall be allocated to the following commissions in accordance with subsection (b) of this section: Western North Carolina Regional Economic Development Commission, Research Triangle Regional Partnership, Southeastern North Carolina Regional Economic Development Commission, Piedmont Triad Partnership, Northeastern North Carolina Regional Economic Development Commission, North Carolina's Eastern Region Economic Development Partnership, and Carolinas Partnership, Inc.

**SECTION 14.25.(b)** Funds appropriated pursuant to subsection (a) of this section shall be allocated to each regional economic development commission as follows:

- (1) First, the Department shall establish each commission's allocation by determining the sum of allocations to each county that is a member of that commission. Each county's allocation shall be determined by dividing the county's development factor by the sum of the development factors for eligible counties and multiplying the resulting percentage by the amount of the appropriation. As used in this subdivision, the term "development factor" means a county's development factor as calculated under G.S. 143B-437.08; and
- (2) Next, the Department shall subtract from funds allocated to the North Carolina's Eastern Region Economic Development Partnership the sum of three hundred eight thousand six hundred sixty-six dollars (\$308,666) in the 2009-2010 fiscal year, which sum represents: (i) the total interest earnings in the prior fiscal year on the estimated balance of seven million five hundred thousand dollars (\$7,500,000) appropriated to the Global TransPark Development Zone in Section 6 of Chapter 561 of the 1993 Session Laws; and (ii) the total interest earnings in the prior fiscal year on loans made from the seven million five hundred thousand dollars (\$7,500,000) appropriated to the Global TransPark Development Zone in Section 6 of Chapter 561 of the 1993 Session Laws; and
- (3) Next, the Department shall redistribute the sum of three hundred eight thousand six hundred sixty-six dollars (\$308,666) in the 2009-2010 fiscal year to the seven regional economic development commissions named in subsection (a) of this section. Each commission's share of this redistribution shall be determined according to the development factor formula set out in subdivision (1) of this subsection. This redistribution shall be in addition to each commission's allocation determined under subdivision (1) of this subsection.

**SECTION 14.25.(c)** No more than one hundred twenty thousand dollars (\$120,000) in State funds shall be used for the annual salary of any one employee of a regional economic development commission.

**SECTION 14.25.(d)** The General Assembly finds that successful economic development requires the collaboration of the State, regions of the State, counties, and municipalities. Therefore, the regional economic development commissions are encouraged to seek supplemental funding from their county and municipal partners to continue and enhance their efforts to attract and retain business in the State.

#### **SET REGULATORY FEE FOR UTILITIES COMMISSION**

**SECTION 14.26.(a)** The percentage rate to be used in calculating the public utility regulatory fee under G.S. 62-302(b)(2) is twelve one-hundredths of one percent (0.12%) for each public utility's North Carolina jurisdictional revenues earned during each quarter that begins on or after July 1, 2009.

**SECTION 14.26.(b)** The electric membership corporation regulatory fee imposed under G.S. 62-302(b1) for the 2009-2010 fiscal year is two hundred thousand dollars (\$200,000).

**SECTION 14.26.(c)** This section becomes effective July 1, 2009.

#### **RURAL ECONOMIC DEVELOPMENT CENTER**

**SECTION 14.27.(a)** Of the funds appropriated in this act to the North Carolina Rural Economic Development Center, Inc. (Rural Center), the sum of four million six hundred two thousand four hundred thirty-six dollars (\$4,602,436) for the 2009-2010 fiscal year and the sum of four million five hundred twenty-seven thousand four hundred thirty-six dollars (\$4,527,436) for the 2010-2011 fiscal year shall be allocated as follows:

	2009-2010	2010-2011
Center Administration, Technical Assistance, & Oversight	\$1,555,000	\$1,523,000
Research and Demonstration Grants	\$351,000	\$344,000
Institute for Rural Entrepreneurship	\$136,000	\$134,000
Community Development Grants	\$987,436	\$987,436
Microenterprise Loan Program	\$185,000	\$182,000

Water/Sewer/Business Development		
Matching Grants	\$840,000	\$821,000
Statewide Water/Sewer Database	\$ 95,000	\$ 93,000
Agricultural Advancement Consortium	\$110,000	\$107,000

**SECTION 14.27.(b)** Funds allocated in subsection (a) of this section for community development grants shall support development projects and activities within the State's minority communities. Any new or previously funded community development corporation, as that term is defined in subsection (c) of this section, is eligible to apply for community development grant funds. However, no community development grant funds shall be released to a community development corporation unless the corporation can demonstrate that there are no outstanding or proposed assessments or other collection actions against the corporation for any State or federal taxes, including related penalties, interest, and fees.

**SECTION 14.27.(c)** For purposes of this section, the term "community development corporation" means a nonprofit corporation:

- (1) Chartered pursuant to Chapter 55A of the General Statutes;
- (2) Tax-exempt pursuant to section 501(c)(3) of the Internal Revenue Code of 1986;
- (3) Whose primary mission is to develop and improve low-income communities and neighborhoods through economic and related development;
- (4) Whose activities and decisions are initiated, managed, and controlled by the constituents of those local communities; and
- (5) Whose primary function is to act as deal maker and packager of projects and activities that will increase their constituencies' opportunities to become owners, managers, and producers of small businesses, affordable housing, and jobs designed to produce positive cash flow and curb blight in the targeted community.

**SECTION 14.27.(d)** The Rural Center shall provide a report containing detailed budget, personnel, and salary information to the Office of State Budget and Management in the same manner as State departments and agencies in preparation for biennium budget requests.

**SECTION 14.27.(e)** By September 1 of each year, and more frequently as requested, the Rural Center shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on prior State fiscal year program activities, objectives, and accomplishments and prior State fiscal year itemized expenditures and fund sources.

## **RURAL ECONOMIC DEVELOPMENT CENTER/INFRASTRUCTURE PROGRAM**

**SECTION 14.28.(a)** Of the funds appropriated in this act to the North Carolina Rural Economic Development Center, Inc. (Rural Center), the sum of nineteen million three hundred five thousand dollars (\$19,305,000) for the 2009-2010 fiscal year and the sum of nineteen million three hundred five thousand dollars (\$19,305,000) for the 2010-2011 fiscal year shall be allocated as follows:

- (1) To continue the North Carolina Infrastructure Program. The purpose of the Program is to provide grants to local governments to construct critical water and wastewater facilities and to provide other infrastructure needs, including technology needs, to sites where these facilities will generate private job-creating investment. At least fifteen million dollars (\$15,000,000) of the funds appropriated in this act for each year of the biennium must be used to provide grants under this Program.
- (2) To provide matching grants to local governments in distressed areas and equity investments in public-private ventures that will productively reuse vacant buildings and properties, with priority given to towns or communities with populations of less than 5,000.
- (3) To provide economic development research and demonstration grants.

**SECTION 14.28.(b)** The Rural Center may contract with other State agencies, constituent institutions of The University of North Carolina, and colleges within the North Carolina Community College System for certain aspects of the North Carolina Infrastructure Program, including design of Program guidelines and evaluation of Program results.

**SECTION 14.28.(c)** During each year of the 2009-2011 biennium, the Rural Center may use up to three hundred eighty-five thousand dollars (\$385,000) of the funds

appropriated in this act to cover its expenses in administering the North Carolina Economic Infrastructure Program.

**SECTION 14.28.(d)** Of the funds appropriated in subsection (a) of this section to the Rural Center for the 2009-2010 fiscal year, the sum of one million five hundred forty-four thousand four hundred dollars (\$1,544,400) shall be transferred to the Department of Environment and Natural Resources to be used to provide the State match to draw down maximum federal funds for the Clean Water State Revolving Loan Fund.

**SECTION 14.28.(e)** By September 1 of each year, and more frequently as requested, the Rural Center shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division concerning the progress of the North Carolina Economic Infrastructure Program in the prior State fiscal year.

#### **OPPORTUNITIES INDUSTRIALIZATION CENTERS FUNDS**

**SECTION 14.30.(a)** Of the funds appropriated in this act to the North Carolina Rural Economic Development Center, Inc. (Rural Center), the sum of three hundred forty-three thousand dollars (\$343,000) for the 2009-2010 fiscal year and the sum of three hundred thirty-six thousand dollars (\$336,000) for the 2010-2011 fiscal year shall be equally distributed among the certified Opportunities Industrialization Centers (OI Centers).

**SECTION 14.30.(b)** By September 1 of each year, and more frequently as requested, the Rural Center shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on OI Centers receiving funds pursuant to subsection (a) of this section. The report shall include data for each OI Center on all itemized expenditures and all fund sources for the prior State fiscal year. The report shall also contain a written narrative on prior fiscal year program activities, objectives, and accomplishments that were funded with funds appropriated in subsection (a) of this section.

**SECTION 14.30.(c)** The Rural Center shall ensure that each OI Center files annually with the State Auditor a financial statement in the form and on the schedule prescribed by the State Auditor.

**SECTION 14.30.(d)** No funds appropriated under this act shall be released to an OI Center listed in subsection (a) of this section if the OI Center has any overdue tax debts, as that term is defined in G.S. 105-243.1, at the federal or State level.

#### **RURAL ECONOMIC DEVELOPMENT CENTER/CLEAN WATER PARTNERS FUNDING**

**SECTION 14.31.** By September 1 of each year, and more frequently as requested, the North Carolina Rural Economic Development Center, Inc., shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division concerning the progress of the water/sewer improvement grants (commonly referred to as funding for Clean Water Partners) as appropriated in Section 13.13A of S.L. 2007-323 and Section 13.8 of S.L. 2008-107. Each report shall include a list of grants made since the last report, the total amount contracted, and the amount of funds remaining. This reporting requirement shall replace all previous reporting requirements and shall remain in effect until all funds from this program are expended.

#### **RURAL ECONOMIC DEVELOPMENT CENTER/AMERICAN RECOVERY AND REINVESTMENT ACT FUNDS**

**SECTION 14.32.** If the North Carolina Rural Economic Development Center, Inc., (Rural Center) finds that North Carolina will not maximize the amount of funding for water and wastewater projects the State could receive under the American Recovery and Reinvestment Act of 2009, the Rural Center shall use funds appropriated to the Rural Center in this act to maximize such funding.

#### **RURAL CENTER/PROVIDE ASSISTANCE TO RURAL COMMUNITIES TO ACCESS FEDERAL FUNDS**

**SECTION 14.33.** The North Carolina Rural Economic Development Center, Inc. (Rural Center), shall provide assistance to rural communities in applying for funds under the American Recovery and Reinvestment Act of 2009. The assistance shall include, but not be limited to, advice on writing grants, applying for funds, and reviewing grant proposals.



## **PART XV. JUDICIAL DEPARTMENT**

### **TRANSFER OF EQUIPMENT AND SUPPLY FUNDS**

**SECTION 15.1.** Funds appropriated to the Judicial Department in the 2009-2011 fiscal biennium for equipment and supplies shall be certified in a reserve account. The Administrative Office of the Courts may transfer these funds to the appropriate programs and between programs as the equipment priorities and supply consumptions occur during the operating year. These funds shall not be expended for any other purpose.

### **GRANT FUNDS**

**SECTION 15.2.** Notwithstanding G.S. 143C-6-9, the Administrative Office of the Courts may use up to the sum of one million five hundred thousand dollars (\$1,500,000) from funds available to the Department to provide the State match needed in order to receive grant funds. Prior to using funds for this purpose, the Department shall report to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety and to the Joint Legislative Commission on Governmental Operations on the grants to be matched using these funds.

### **DEATH PENALTY LITIGATION FUNDS**

**SECTION 15.3.** Of the funds appropriated in this act to the Office of Indigent Defense Services for the 2009-2011 fiscal biennium, the Office may use up to the sum of three hundred seventy-six thousand one hundred twenty-five dollars (\$376,125) for the 2009-2010 fiscal year and up to the sum of three hundred seventy-six thousand one hundred twenty-five dollars (\$376,125) for the 2010-2011 fiscal year to contract with the Center for Death Penalty Litigation to provide training, consultation, brief banking, and other assistance to attorneys representing indigent capital defendants. The Office of Indigent Defense Services shall report by February 1 of each year in the biennium to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety on the activities funded by this section.

### **REPORT ON BUSINESS COURTS**

**SECTION 15.4.** The Administrative Office of the Courts shall report to the Chairs of the House of Representatives and Senate Appropriations Committees and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety by March 1 of each year on the activities of each North Carolina Business Court site, including the number of new, closed, and pending cases, average age of pending cases, and annual expenditures for the prior fiscal year.

### **COLLECTION OF WORTHLESS CHECK FUNDS**

**SECTION 15.5.** Notwithstanding the provisions of G.S. 7A-308(c), the Judicial Department may use any balance remaining in the Collection of Worthless Checks Fund on June 30, 2009, for the purchase or repair of office or information technology equipment during the 2009-2010 fiscal year. Prior to using any funds under this section, the Judicial Department shall report to the Joint Legislative Commission on Governmental Operations and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety on the equipment to be purchased or repaired and the reasons for the purchases.

### **DISPUTE RESOLUTION FEES**

**SECTION 15.6.** Notwithstanding the provisions of G.S. 143C-1-2(b), certification and renewal fees collected by the Dispute Resolution Commission are nonreverting and are only to be used at the direction of the Commission.

### **REIMBURSEMENT FOR USE OF PERSONAL VEHICLES**

**SECTION 15.7.** Notwithstanding the provisions of G.S. 138-6(a)(1), the Judicial Department, during the 2009-2011 fiscal biennium, may elect to establish a per-mile reimbursement rate for transportation by privately owned vehicles at a rate less than the business standard mileage rate set by the Internal Revenue Service.

### **GUIDELINES FOR MAXIMIZING EFFICIENCY OF PROCEEDINGS**

**SECTION 15.9.** By December 1, 2009, the Administrative Office of the Courts shall develop guidelines to be applied to maximize efficient use of the time of probation officers and court personnel participating in probation revocation proceedings. The Administrative Office of the Courts may also adopt guidelines for maximizing the efficient use of the time of law enforcement personnel participating in the Criminal District Courts.

#### **ELIMINATE SPECIAL ALLOWANCE FOR SUPERIOR COURT JUDGES**

**SECTION 15.10.** G.S. 7A-44(a) reads as rewritten:

"(a) A judge of the superior court, regular or special, shall receive the annual salary set forth in the Current Operations Appropriations Act, and in addition shall be paid the same travel allowance as State employees generally by G.S. 138-6(a)(1) and (2), provided that no travel allowance be paid for travel within his county of residence. ~~In addition, a judge of the superior court shall be allowed seven thousand dollars (\$7,000) per year, payable monthly, in lieu of necessary subsistence expenses while attending court or transacting official business at a place other than in the county of his residence and in lieu of other professional expenses incurred in the discharge of his official duties.~~ The Administrative Officer of the Courts may also reimburse superior court judges, in addition to the above funds for ~~travel and subsistence, travel,~~ for travel and subsistence expenses incurred for professional education."

#### **CLARIFY THAT DWI TREATMENT COURTS ARE A TYPE OF DRUG TREATMENT COURT UNDER THE DRUG TREATMENT COURT ACT**

**SECTION 15.11.** G.S. 7A-791 reads as rewritten:

"§ 7A-791. **Purpose.**

The General Assembly recognizes that a critical need exists in this State for judicial programs that will reduce the incidence of alcohol and other drug abuse or dependence and crimes, including the offense of driving while impaired, delinquent acts, and child abuse and neglect committed as a result of alcohol and other drug abuse or dependence, and child abuse and neglect where alcohol and other drug abuse or dependence are significant factors in the child abuse and neglect. It is the intent of the General Assembly by this Article to create a program to facilitate the creation of local drug treatment court ~~programs.~~ programs and driving while impaired (DWI) treatment court programs."

#### **OFFICE OF INDIGENT DEFENSE SERVICES EXPANSION FUNDS**

**SECTION 15.12.** The Judicial Department, Office of Indigent Defense Services, may use up to the sum of two million five hundred one thousand one hundred fifty dollars (\$2,501,150) in appropriated funds during the 2009-2010 fiscal year and up to the sum of two million four hundred thirty-three thousand seven hundred dollars (\$2,433,700) in appropriated funds during the 2010-2011 fiscal year for the expansion of existing public defender offices currently providing legal services to the indigent population under the oversight of the Office of Indigent Defense Services, or for the creation of new public defender offices within existing public defender districts currently providing those services, by creating up to 20 new attorney positions and 10 new support staff positions. These funds may be used for salaries, benefits, equipment, and related expenses. Prior to using funds for this purpose, the Office of Indigent Defense Services shall report to the Chairs of the House of Representatives and the Senate Appropriations Subcommittees on Justice and Public Safety on the proposed expansion.

#### **OFFICE OF INDIGENT DEFENSE SERVICES REPORT**

**SECTION 15.13.(a)** The Office of Indigent Defense Services shall report to the Chairs of the House of Representatives and Senate Appropriations Committees and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety by March 1 of each year on:

- (1) The volume and cost of cases handled in each district by assigned counsel or public defenders;
- (2) Actions taken by the Office to improve the cost-effectiveness and quality of indigent defense, including the capital case program;
- (3) Plans for changes in rules, standards, or regulations in the upcoming year; and
- (4) Any recommended changes in law or funding procedures that would assist the Office in improving the management of funds expended for indigent

defense services, including any recommendations concerning the feasibility and desirability of establishing regional public defender offices.

**SECTION 15.13.(b)** In its March 1, 2010, report, the Office of Indigent Defense Services shall provide a progress report on the pilot program for alternative scheduling authorized by Section 14.1 of S.L. 2008-107. In its March 1, 2011, report, the Office of Indigent Defense Services shall provide a final report on that pilot program.

**SECTION 15.13.(c)** In its March 1, 2010, report, the Office of Indigent Defense Services shall provide a progress report on the feasibility study directed by Section 14.7 of S.L. 2008-107 on developing a statewide system for obtaining indigent case information when counsel is first appointed. In its March 1, 2011, report, the Office of Indigent Defense Services shall provide a final report on that feasibility study.

#### **INDIGENT DEFENSE SERVICES/STATE MATCH FOR GRANTS**

**SECTION 15.14.** Notwithstanding G.S. 143C-6-9, the Office of Indigent Defense Services may use the sum of up to fifty thousand dollars (\$50,000) from funds available to provide the State matching funds needed to receive grant funds. Prior to using funds for this purpose, the Office shall report to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Commission on Governmental Operations on the grants to be matched using these funds.

#### **OFFICE OF INDIGENT DEFENSE SERVICES FLEXIBILITY**

**SECTION 15.15.** Notwithstanding the provisions of G.S. 143C-6-9, in implementing reductions to the 2009-2011 budget for legal training and resources, the Office of Indigent Defense Services may use available funds as needed for registration fees, academic services, travel, and book purchases.

#### **SENTENCING SERVICES FLEXIBILITY**

**SECTION 15.16.** In implementing the reduction to Sentencing Services' budget, the Director of the Office of Indigent Defense Services may close programs in certain districts in the State based on current and historical performance, local support and interest, the amount of funding to be saved, and other relevant factors. The Director may choose not to contract with certain nonprofit programs or to eliminate certain State-funded programs and associated positions.

#### **STUDY STRATEGIES TO REDUCE DEMAND FOR SERVICES OF OFFICE OF INDIGENT DEFENSE SERVICES**

**SECTION 15.17.** The Office of Indigent Defense Services shall consult with the Administrative Office of the Courts, the Conference of District Attorneys, the North Carolina Sentencing and Policy Advisory Commission, and other court system actors in formulating proposals aimed at reducing future costs, including the possibility of decriminalizing minor misdemeanor offenses for which jail sentences are rarely or never imposed and improving the manner in which potentially capital cases are screened and processed. The Office shall include any proposals in its reports during the 2009-2011 fiscal biennium.

#### **TRAVEL EXPENSES FOR DISTRICT COURT JUDGES, DISTRICT ATTORNEYS, ASSISTANT DISTRICT ATTORNEYS, PUBLIC DEFENDERS, AND ASSISTANT PUBLIC DEFENDERS**

**SECTION 15.17B.(a)** G.S. 7A-144(a) reads as rewritten:

"(a) Each judge shall receive the annual salary provided in the Current Operations Appropriations Act, and reimbursement on the same basis as State employees generally, for his or her necessary ~~travel and subsistence expenses~~ expenses and for travel expenses when on official business outside the judge's county of residence. For purposes of this subsection, the term "official business" does not include regular, daily commuting between a judge's home and the court. Travel distances, for purposes of reimbursement for mileage, shall be determined according to the travel policy of the Administrative Office of the Courts."

**SECTION 15.17B.(b)** G.S. 7A-65(a) reads as rewritten:

"(a) The annual salary of:

- (1) District attorneys shall be as provided in the Current Operations Appropriations Act.

- (2) Full-time assistant district attorneys shall be as provided in the Current Operations Appropriations Act.

When traveling on official business, each district attorney and assistant district attorney is entitled to reimbursement for his or her subsistence ~~and travel~~ expenses to the same extent as State employees generally. When traveling on official business outside his or her county of residence, each district attorney and assistant district attorney is entitled to reimbursement for travel expenses to the same extent as State employees generally. For purposes of this subsection, the term "official business" does not include regular, daily commuting between a person's home and the district attorney's office. Travel distances, for purposes of reimbursement for mileage, shall be determined according to the travel policy of the Administrative Office of the Courts."

**SECTION 15.17B.(c)** G.S. 7A-498.7 is amended by adding a new subsection to read:

"(c1) When traveling on official business, each public defender and assistant public defender is entitled to reimbursement for his or her subsistence expenses to the same extent as State employees generally. When traveling on official business outside his or her county of residence, each public defender and assistant public defender is entitled to reimbursement for travel expenses to the same extent as State employees generally. For purposes of this subsection, the term "official business" does not include regular, daily commuting between a person's home and the public defender's office. Travel distances, for purposes of reimbursement for mileage, shall be determined according to the travel policy of the Administrative Office of the Courts."

**DIVIDE PROSECUTORIAL DISTRICT 11 INTO DISTRICTS 11A AND 11B**

**SECTION 15.17E.(a)** G.S. 7A-60(a1) reads as rewritten:

"(a1) The counties of the State are organized into prosecutorial districts, and each district has the counties and the number of full-time assistant district attorneys set forth in the following table:

Prosecutorial District	Counties	No. of Full-Time Asst. District Attorneys
...		
<del>11</del> <u>11A</u>	Harnett, <del>Johnston</del> , Lee	<del>19</del> <u>9</u>
<u>11B</u>	<u>Johnston</u>	<u>10</u>
...."		

**SECTION 15.17E.(b)** The district attorney position established for District 11B by subsection (a) of this section shall be filled by the district attorney currently serving District 11 who resides in Johnston County. The district attorney position established for District 11A by subsection (a) of this act shall be filled by appointment of the Governor for the remainder of the term expiring January 1, 2013. A district attorney for District 11A shall be elected in 2012 for a four-year term commencing January 1, 2013.

**SECTION 15.17E.(c)** This section becomes effective January 15, 2011, or the date of preclearance under Section 5 of the Voting Rights Act of 1965, whichever is later.

**MANDATORY APPOINTMENT FEE IN CRIMINAL CASES/REPORT ON COLLECTION OF INDIGENT APPOINTMENT FEES**

**SECTION 15.17L.(a)** G.S 7A-455.1 reads as rewritten:

**"§ 7A-455.1. Appointment fee in criminal cases.**

(a) ~~Each person for whom~~ In every criminal case in which counsel is appointed ~~in a criminal case at the trial level shall~~ at the trial level, the judge shall order the defendant to pay to the clerk of court an appointment fee of fifty dollars (\$50.00). No fee shall be due unless the person is convicted.

(b) The mandatory fifty-dollar (\$50.00) fee may not be remitted or revoked by the court and shall be added to any amounts the court determines to be owed for the value of legal services rendered to the defendant and shall be collected in the same manner as attorneys' fees are collected for such representation.

(c) Repealed by Session Laws 2005-250 s. 3, effective August 4, 2005.

(d) Inability, failure, or refusal to pay the appointment fee shall not be grounds for denying appointment of counsel, for withdrawal of counsel, or for contempt.

(e) The appointment fee required by this section shall be assessed only once for each attorney appointment, regardless of the number of cases to which the attorney was assigned. An additional appointment fee shall not be assessed if the charges for which an attorney was appointed were reassigned to a different attorney.

(f) Of each appointment fee collected under this section, the sum of forty-five dollars (\$45.00) shall be credited to the Indigent Persons' Attorney Fee Fund and the sum of five dollars (\$5.00) shall be credited to the Court Information Technology Fund under G.S. 7A-343.2. These fees shall not revert.

(g) The Office of Indigent Defense Services shall adopt rules and develop forms to govern implementation of this section."

**SECTION 15.17I.(b)** The Administrative Office of the Courts shall monitor the collection of indigent appointment fees under G.S. 7A-455.1 and the recoupment rates for each office of the clerk of superior court and shall report quarterly on its findings to the Joint Legislative Commission on Governmental Operations.

## **BIENNIAL REPORT ON EFFECTIVENESS OF PROGRAMS RECEIVING JUVENILE CRIME PREVENTION COUNCIL (JCPC) GRANTS**

**SECTION 15.17J.** Article 4 of Chapter 164 of the General Statutes is amended by adding a new section to read:

### **"§ 164-49. Biennial report on effectiveness of JCPC grant recipients.**

The Judicial Department, through the North Carolina Sentencing and Policy Advisory Commission, shall conduct biennial studies on the effectiveness of programs receiving Juvenile Crime Prevention Council grant funding in North Carolina. Each study shall be based upon a sample of juveniles admitted to programs funded with JCPC grants and document subsequent involvement in both the juvenile justice system and criminal justice system for at least two years following the sample admittance. All State agencies shall provide data as requested by the Commission.

The Sentencing and Policy Advisory Commission shall report the results of the first effectiveness study to the Chairs of the Senate and House of Representatives Appropriations Committees and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by May 1, 2011, and future reports shall be made by May 1 of each odd-numbered year."

## **INCREASE CERTAIN COURT FEES**

**SECTION 15.20.(a)** G.S. 7A-304(a) reads as rewritten:

"(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and collected, except that when the judgment imposes an active prison sentence, costs shall be assessed and collected only when the judgment specifically so provides, and that no costs may be assessed when a case is dismissed.

...  
(2a) For the upgrade, maintenance, and operation of the judicial and county courthouse phone systems, the sum of ~~one dollar (\$1.00)~~, three dollars (\$3.00), to be credited to the Court Information Technology Fund.

...  
(3b) For the services, staffing, and operations of the Criminal Justice Education and Standards Commission and the Sheriffs' Education and Training Standards Commission, the sum of two dollars (\$2.00) to be remitted to the Department of Justice. One dollar and thirty cents (\$1.30) of this sum shall be used exclusively for the Criminal Justice Education and Standards Commission, and seventy cents (70¢) shall be used exclusively for the Sheriffs' Education and Training Standards Commission.

...  
(4a) For support of the General Court of Justice, the sum of five dollars (\$5.00) for all offenses arising under Chapter 20 of the General Statutes, to be remitted to the State Treasurer.

...

- (6) For support of the General Court of Justice, the sum of ~~one hundred dollars (\$100.00)~~ two hundred dollars (\$200.00) is payable by a defendant who fails to appear to answer the charge as scheduled, unless within 20 days after the scheduled appearance, the person either appears in court to answer the charge or disposes of the charge pursuant to ~~G.S. 7A-146~~. G.S. 7A-146, and the sum of twenty-five dollars (\$25.00) is payable by a defendant who fails to pay a fine, penalty, or costs within 20 days of the date specified in the court's judgment. Upon a showing to the court that the defendant failed to appear because of an error or omission of a judicial official, a prosecutor, or a law-enforcement officer, the court shall waive ~~this fee. This fee~~ the fee for failure to appear. ~~These fees shall be remitted to the State Treasurer.~~
- (7) For the services of the State Bureau of Investigation laboratory facilities, the district or superior court judge shall, upon conviction, order payment of the sum of ~~three hundred dollars (\$300.00)~~ six hundred dollars (\$600.00) to be remitted to the Department of Justice for support of the State Bureau of Investigation. This cost shall be assessed only in cases in which, as part of the investigation leading to the defendant's conviction, the laboratories have performed DNA analysis of the crime, tests of bodily fluids of the defendant for the presence of alcohol or controlled substances, or analysis of any controlled substance possessed by the defendant or the defendant's agent. The court may waive or reduce the amount of the payment required by this subdivision upon a finding of just cause to grant such a waiver or reduction.
- (8) For the services of any crime laboratory facility operated by a local government or group of local governments, the district or superior court judge shall, upon conviction, order payment of the sum of ~~three hundred dollars (\$300.00)~~ six hundred dollars (\$600.00) to be remitted to the general fund of the local governmental unit that operates the laboratory to be used for law enforcement purposes. The cost shall be assessed only in cases in which, as part of the investigation leading to the defendant's conviction, the laboratory has performed DNA analysis of the crime, test of bodily fluids of the defendant for the presence of alcohol or controlled substances, or analysis of any controlled substance possessed by the defendant or the defendant's agent. The costs shall be assessed only if the court finds that the work performed at the local government's laboratory is the equivalent of the same kind of work performed by the State Bureau of Investigation under subdivision (7) of this subsection. The court may waive or reduce the amount of the payment required by this subdivision upon a finding of just cause to grant such a waiver or reduction."

**SECTION 15.20.(b)** Effective July 1, 2010, G.S. 7A-304(a), as rewritten by subsection (a) of this section, reads as rewritten:

"(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and collected, except that when the judgment imposes an active prison sentence, costs shall be assessed and collected only when the judgment specifically so provides, and that no costs may be assessed when a case is dismissed.

...  
 (2a) For the upgrade, maintenance, and operation of the judicial and county courthouse phone systems, the sum of ~~three dollars (\$3.00)~~, four dollars (\$4.00), to be credited to the Court Information Technology Fund.

...  
 (4a) For support of the General Court of Justice, the sum of ~~five dollars (\$5.00)~~ ten dollars (\$10.00) for all offenses arising under Chapter 20 of the General Statutes, to be remitted to the State Treasurer.

...."

**SECTION 15.20.(c)** G.S. 7A-304 is amended by adding a new subsection to read:

"(f) The court may allow a defendant owing costs under this section to either make payment in full when costs are assessed or make payment on an installment plan arranged with the court. Defendants making use of an installment plan shall pay a onetime setup fee of twenty

dollars (\$20.00) to cover the additional costs to the court of receiving and disbursing installment payments. Fees collected under this section shall be remitted to the State Treasurer for support of the General Court of Justice."

**SECTION 15.20.(d)** G.S. 7A-305(a) reads as rewritten:

"(a) In every civil action in the superior or district court, except for actions brought under Chapter 50B of the General Statutes, shall be assessed:

- (1) For the use of the courtroom and related judicial facilities, the sum of twelve dollars (\$12.00) in cases heard before a magistrate, and the sum of sixteen dollars (\$16.00) in district and superior court, to be remitted to the county in which the judgment is rendered, except that in all cases in which the judgment is rendered in facilities provided by a municipality, the facilities fee shall be paid to the municipality. Funds derived from the facilities fees shall be used in the same manner, for the same purposes, and subject to the same restrictions, as facilities fees assessed in criminal actions.
- (1a) For the upgrade, maintenance, and operation of the judicial and county courthouse phone systems, the sum of ~~one dollar (\$1.00)~~, three dollars (\$3.00), to be credited to the Court Information Technology Fund.
- (2) For support of the General Court of Justice, the sum of ninety-three dollars (\$93.00) in the superior court, except that if a case is assigned to a special superior court judge as a complex business case under G.S. 7A-45.3, an additional ~~two hundred dollars (\$200.00)~~ one thousand dollars (\$1,000) shall be paid upon its assignment, and the sum of ~~seventy-three dollars (\$73.00)~~ seventy-five dollars (\$75.00) in the district court except that if the case is assigned to a magistrate the sum shall be ~~sixty-three dollars (\$63.00)~~ fifty-five dollars (\$55.00). Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of two dollars and five cents (\$2.05) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4, and ninety-five cents (\$.95) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.19."

...."

**SECTION 15.20.(e)** Effective July 1, 2010, G.S. 7A-305(a), as rewritten by subsection (d) of this section, reads as rewritten:

"(a) In every civil action in the superior or district court, except for actions brought under Chapter 50B of the General Statutes, shall be assessed:

- (1) For the use of the courtroom and related judicial facilities, the sum of twelve dollars (\$12.00) in cases heard before a magistrate, and the sum of sixteen dollars (\$16.00) in district and superior court, to be remitted to the county in which the judgment is rendered, except that in all cases in which the judgment is rendered in facilities provided by a municipality, the facilities fee shall be paid to the municipality. Funds derived from the facilities fees shall be used in the same manner, for the same purposes, and subject to the same restrictions, as facilities fees assessed in criminal actions.
- (1a) For the upgrade, maintenance, and operation of the judicial and county courthouse phone systems, the sum of ~~three dollars (\$3.00)~~, four dollars (\$4.00), to be credited to the Court Information Technology Fund.

...."

**SECTION 15.20.(f)** G.S. 7A-306(a) reads as rewritten:

"(a) In every special proceeding in the superior court, the following costs shall be assessed:

- (1a) For the upgrade, maintenance, and operation of the judicial and county courthouse phone systems, the sum of ~~one dollar (\$1.00)~~, three dollars (\$3.00), to be credited to the Court Information Technology Fund.
- (2) For support of the General Court of Justice the sum of ~~forty dollars (\$40.00)~~ seventy-five dollars (\$75.00). In addition, in proceedings involving land, except boundary disputes, if the fair market value of the land involved is over one hundred dollars (\$100.00), there shall be an additional sum of thirty cents (30¢) per one hundred dollars (\$100.00) of value, or major fraction

thereof, not to exceed a maximum additional sum of two hundred dollars (\$200.00). Fair market value is determined by the sale price if there is a sale, the appraiser's valuation if there is no sale, or the appraised value from the property tax records if there is neither a sale nor an appraiser's valuation. Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of two dollars and five cents (\$2.05) of each ~~forty-dollar (\$40.00)~~seventy-five-dollar (\$75.00) General Court of Justice fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4."

**SECTION 15.20.(g)** Effective July 1, 2010, G.S. 7A-306(a)(1a), as amended by subsection (f) of this section, reads as rewritten:

"(1a) For the upgrade, maintenance, and operation of the judicial and county courthouse phone systems, the sum of ~~three dollars (\$3.00)~~, four dollars (\$4.00), to be credited to the Court Information Technology Fund."

**SECTION 15.20.(h)** G.S. 7A-307 reads as rewritten:

**"§ 7A-307. Costs in administration of estates.**

(a) In the administration of the estates of decedents, minors, incompetents, of missing persons, and of trusts under wills and under powers of attorney, in trust proceedings under G.S. 36A-23.1, and in collections of personal property by affidavit, the following costs shall be assessed:

...  
(1a) For the upgrade, maintenance, and operation of the judicial and county courthouse phone systems, the sum of ~~one dollar (\$1.00)~~, three dollars (\$3.00), to be credited to the Court Information Technology Fund.

(2) For support of the General Court of Justice, the sum of ~~fifty dollars (\$50.00)~~,seventy-five dollars (\$75.00), plus an additional forty cents (40¢) per one hundred dollars (\$100.00), or major fraction thereof, of the gross estate, not to exceed six thousand dollars (\$6,000). Gross estate shall include the fair market value of all personalty when received, and all proceeds from the sale of realty coming into the hands of the fiduciary, but shall not include the value of realty. In collections of personal property by affidavit, the fee based on the gross estate shall be computed from the information in the final affidavit of collection made pursuant to G.S. 28A-25-3 and shall be paid when that affidavit is filed. In all other cases, this fee shall be computed from the information reported in the inventory and shall be paid when the inventory is filed with the clerk. If additional gross estate, including income, comes into the hands of the fiduciary after the filing of the inventory, the fee for such additional value shall be assessed and paid upon the filing of any account or report disclosing such additional value. For each filing the minimum fee shall be fifteen dollars (\$15.00). Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of two dollars and five cents (\$2.05) of each ~~fifty-dollar (\$50.00)~~seventy-five-dollar (\$75.00) General Court of Justice fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4.

....  
**SECTION 15.20.(i)** Effective July 1, 2010, G.S. 7A-307(a)(1a), as amended by subsection (h) of this section, reads as rewritten:

"(1a) For the upgrade, maintenance, and operation of the judicial and county courthouse phone systems, the sum of ~~three dollars (\$3.00)~~, four dollars (\$4.00), to be credited to the Court Information Technology Fund."

**SECTION 15.20.(j)** G.S. 20-135.2A(e) reads as rewritten:

"(e) Any driver or front seat passenger who fails to wear a seat belt as required by this section shall have committed an infraction and shall pay a penalty of twenty-five dollars and fifty cents (\$25.00)~~(\$25.50)~~ plus the following court costs in the sum of seventy-five dollars (\$75.00): costs: the General Court of Justice fee provided for in G.S. 7A-304(a)(4), the telephone facilities fee provided for in G.S. 7A-304(a)(2a), and the law enforcement training and certification fee provided for in G.S. 7A-304(a)(3b). Any rear seat occupant of a vehicle who fails to wear a seat belt as required by this section shall have committed an infraction and



shall pay a penalty of ten dollars (\$10.00) and no court costs. Court costs assessed under this section are for the support of the General Court of Justice and shall be remitted to the State Treasurer. Conviction of an infraction under this section has no other consequence."

**SECTION 15.20.(k)** G.S. 20-140.4 reads as rewritten:

**"§ 20-140.4. Special provisions for motorcycles and mopeds.**

(a) No person shall operate a motorcycle or moped upon a highway or public vehicular area:

- (1) When the number of persons upon such motorcycle or moped, including the operator, shall exceed the number of persons which it was designed to carry.
- (2) Unless the operator and all passengers thereon wear on their heads, with a retention strap properly secured, safety helmets of a type that complies with Federal Motor Vehicle Safety Standard (FMVSS) 218.

(b) Violation of any provision of this section shall not be considered negligence per se or contributory negligence per se in any civil action.

(c) Any person convicted of violating this section shall have committed an infraction and shall be fined according to G.S. 20-135.2A(e) and (f) pay a penalty of twenty-five dollars and fifty cents (\$25.50) plus the following court costs: the General Court of Justice fee provided for in G.S. 7A-304(a)(4), the telephone facilities fee provided for in G.S. 7A-304(a)(2a), and the law enforcement training and certification fee provided for in G.S. 7A-304(a)(3b). Conviction of an infraction under this section has no other consequence.

(d) No drivers license points or insurance surcharge shall be assessed on account of violation of this section."

**SECTION 15.20.(l)** G.S. 7A-308(a) reads as rewritten:

"(a) The following miscellaneous fees and commissions shall be collected by the clerk of superior court and remitted to the State for the support of the General Court of Justice:

- (1) Foreclosure under power of sale in deed of trust or mortgage.. ~~\$75.00~~ \$150.00  
If the property is sold under the power of sale, an additional amount will be charged, determined by the following formula: forty-five cents (.45) per one hundred dollars (\$100.00), or major fraction thereof, of the final sale price. If the amount determined by the formula is less than ten dollars (\$10.00), a minimum ten dollar (\$10.00) fee will be collected. If the amount determined by the formula is more than five hundred dollars (\$500.00), a maximum five hundred-dollar (\$500.00) fee will be collected.
- ...
- (3) Confession of judgment ..... 25.00
- ...
- (17) Criminal record search except if search is requested by an agency of the State or any of its political subdivisions or by an agency of the United States or by a petitioner in a proceeding under Article 2 of General Statutes Chapter 20 ..... ~~15.00~~ 25.00

...."  
**SECTION 15.20.(m)** G.S. 7A-321 reads as rewritten:

**"7A-321. Collection of offender fines and fees assessed by the court; collection assistance fee.**

(c) Should the Judicial Department use any method listed in subdivision (b)(1) or (2) of this section to collect ~~fines, fees, and costs~~ fines owed by offenders not sentenced to supervised probation, the ~~department~~ Department may not charge any additional cost of collection pursuant to ~~G.S. 115C-437~~ G.S. 115C-437 or G.S. 7A-304(f).

(d) The court shall retain a collection assistance fee in the amount of ten percent (10%) of any cost or fee collected by the Department pursuant to this Article or Chapter 20 of the General Statutes and remitted to an agency of the State or any of its political subdivisions, other than a cost or fee listed in this subsection. The court shall remit the collection assistance fee to the State Treasurer for the support of the General Court of Justice.

The collection assistance fee shall not be retained from the following:

- (1) Costs and fees designated by law for remission to or use by an agency or program of the Judicial Department or for support of the General Court of Justice.

(2) Costs and fees designated by law for remission to the General Fund."

**SECTION 15.20.(n)** Subsections (a), (j), and (k) of this section become effective September 1, 2009, and apply to all costs assessed or collected on or after that date, except that in misdemeanor or infraction cases disposed of on or after that date by written appearance, waiver of trial or hearing, and plea of guilt or admission of responsibility pursuant to G.S. 7A-180(4) or G.S. 7A-273(2), in which the citation or other criminal process was issued before that date, the cost shall be the lesser of those specified in G.S. 7A-304(a), as amended by subsection (a) of this section, or those specified in the notice portion of the defendant's or respondent's copy of the citation or other criminal process, if any costs are specified in that notice.

Subsection (b) of this section becomes effective July 1, 2010, and applies to all costs assessed or collected on or after that date, except that in misdemeanor or infraction cases disposed of on or after that date by written appearance, waiver of trial or hearing, and plea of guilt or admission of responsibility pursuant to G.S. 7A-180(4) or G.S. 7A-273(2), in which the citation or other criminal process was issued before that date, the cost shall be the lesser of those specified in G.S. 7A-304(a), as amended by subsection (b) of this section, or those specified in the notice portion of the defendant's or respondent's copy of the citation or other criminal process, if any costs are specified in that notice.

Subsections (e), (g), and (i) of this section become effective July 1, 2010, and apply to fees assessed or collected on or after that date. Subsection (m) becomes effective July 1, 2009. The remainder of this section becomes effective September 1, 2009, and applies to fees assessed or collected on or after that date.

## **PART XVI. DEPARTMENT OF JUSTICE**

### **PRIVATE PROTECTIVE SERVICES AND ALARM SYSTEMS LICENSING BOARDS PAY FOR USE OF STATE FACILITIES AND SERVICES**

**SECTION 16.1.** The Private Protective Services and Alarm Systems Licensing Boards shall pay the appropriate State agency for the use of physical facilities and services provided to those Boards by the State.

### **USE OF SEIZED AND FORFEITED PROPERTY TRANSFERRED TO STATE LAW ENFORCEMENT AGENCIES BY THE FEDERAL GOVERNMENT**

**SECTION 16.2.(a)** Assets transferred to the Departments of Justice, Correction, and Crime Control and Public Safety during the 2009-2011 fiscal biennium pursuant to applicable federal law shall be credited to the budgets of the respective departments and shall result in an increase of law enforcement resources for those departments. The Departments of Justice, Correction, and Crime Control and Public Safety shall report to the Joint Legislative Commission on Governmental Operations upon receipt of the assets and, before using the assets, shall report on the intended use of the assets and the departmental priorities on which the assets may be expended.

**SECTION 16.2.(b)** The General Assembly finds that the use of assets transferred pursuant to federal law for new personnel positions, new projects, acquisition of real property, repair of buildings where the repair includes structural change, and construction of or additions to buildings may result in additional expenses for the State in future fiscal periods. Therefore, the Department of Justice, the Department of Correction, and the Department of Crime Control and Public Safety are prohibited from using these assets for such purposes without the prior approval of the General Assembly.

**SECTION 16.2.(c)** Nothing in this section prohibits North Carolina law enforcement agencies from receiving funds from the United States Department of Justice, the United States Department of the Treasury, and the United States Department of Health and Human Services.

### **CERTAIN LITIGATION EXPENSES TO BE PAID BY CLIENTS**

**SECTION 16.3.** Client departments, agencies, and boards shall reimburse the Department of Justice for reasonable court fees, attorney travel and subsistence costs, and other costs directly related to litigation in which the Department of Justice is representing the department, agency, or board.

## **NC LEGAL EDUCATION ASSISTANCE FOUNDATION REPORT ON FUNDS DISBURSED**

**SECTION 16.4.** The North Carolina Legal Education Assistance Foundation shall report by March 1 of each year to the Joint Legislative Commission on Governmental Operations and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety on the expenditure of State funds, the purpose of the expenditures, the number of attorneys receiving funds, the average award amount, the average student loan amount, the number of attorneys on the waiting list, and the average number of years for which attorneys receive loan assistance.

## **HIRING OF SWORN STAFF POSITIONS FOR THE STATE BUREAU OF INVESTIGATION**

**SECTION 16.5.** The Department of Justice may hire sworn personnel to fill vacant positions in the State Bureau of Investigation only in the following circumstances: (i) the position's regular responsibilities involve warrant executions, property searches, criminal investigations, or arrest activities that are consistent in frequency with the responsibilities of other sworn agents; (ii) the position is a promotion for a sworn agent who was employed at the State Bureau of Investigation prior to July 1, 2007; (iii) the position is a forensic drug chemist position which requires "responding to clandestine methamphetamine laboratories" as a primary duty; (iv) the position is a forensic impressions analyst position which requires "responding to clandestine methamphetamine laboratories" as a primary duty; or (v) the position primarily involves supervising sworn personnel.

## **PART XVII. DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY**

### **REPORT ON THE USE OF ILLEGAL IMMIGRATION PROJECT FUNDS**

**SECTION 17.1.** No later than March 1, 2010, the North Carolina Sheriffs' Association, Inc., shall submit a report to the Chairs of the House and Senate Appropriations Committees and the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety on the operations and effectiveness of the Illegal Immigration Project. The report shall include all of the following:

- (1) An overview of the program.
- (2) The program budget.
- (3) A summary of work done with funds received, which shall include the following information:
  - a. The total number of law enforcement agencies that received funding from the program for officer training and technical assistance.
  - b. The total number of officers trained and provided with technical assistance.
  - c. The total number of training and technical assistance sessions administered.
  - d. Copies of educational/informational materials distributed.
- (4) Recommendations on ways that federal, State, and local resources can be used to further improve the effectiveness of the Illegal Immigration Project and other immigration enforcement initiatives.

### **TRANSFER OF STATE CAPITOL POLICE TO THE DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY**

**SECTION 17.3.(a)** The State Capitol Police is hereby transferred by a Type I transfer, as defined in G.S. 143A-6, from the Department of Administration to the Department of Crime Control and Public Safety.

**SECTION 17.3.(b)** G.S. 143-340(21) and (22) are repealed.

**SECTION 17.3.(c)** G.S. 143-341.1 is repealed.

**SECTION 17.3.(d)** G.S. 143B-475(a), as amended by S.L. 2009-397, reads as rewritten:

"(a) All functions, powers, duties and obligations heretofore vested in the following subunits of the following departments are hereby transferred to and vested in the Department of Crime Control and Public Safety:

- (1) The National Guard, Department of Military and Veterans ~~Affairs~~; Affairs.

- (2) Civil Preparedness, Department of Military and Veterans ~~Affairs;Affairs.~~
- (3) State Civil Air Patrol, Department of Military and Veterans ~~Affairs;Affairs.~~
- (4) State Highway Patrol, Department of ~~Transportation;Transportation.~~
- (5) State Board of Alcoholic Control Enforcement Division, Department of ~~Commeree;Commerce.~~
- (6) Governor's Crime Commission, Department of Natural and Economic ~~Resources;Resources.~~
- (7) Crime Control Division, Department of Natural and Economic ~~Resources;Resources.~~
- (8) Criminal Justice Information System Board, Department of Natural and Economic ~~Resources; andResources.~~
- (9) Criminal Justice Information System Security and Privacy Board, Department of Natural and Economic Resources.
- (10) The Commercial Vehicle, Oversize/Overweight, Motor Carrier Safety Regulation and Mobile Home and Manufactured Housing regulatory and enforcement functions of the Department of Transportation, Division of Motor Vehicles Enforcement Section.
- (11) Emergency Management Division, Department of Crime Control and Public Safety. The purpose of this subdivision is to statutorily vest in the Department the powers previously conferred on the Division by executive order or otherwise.
- (12) State Capitol Police, Department of Administration."

**SECTION 17.3.(e)** G.S. 143B-476(a) reads as rewritten:

"(a) The head of the Department of Crime Control and Public Safety is the Secretary of Crime Control and Public Safety, who shall be known as the Secretary. The Secretary shall have such powers and duties as are conferred on him by this Chapter, delegated to him by the Governor, and conferred on him by the Constitution and laws of this State. These powers and duties include:

- (1) Accepting gifts, bequests, devises, grants, matching funds and other considerations from private or governmental sources for use in promoting the work of the Governor's Crime ~~Commission;Commission.~~
- (2) Making grants for use in pursuing the objectives of the Governor's Crime ~~Commission;Commission.~~
- (3) Adopting rules as may be required by the federal government for federal grants-in-aid for criminal justice purposes and to implement and carry out the regulatory and enforcement duties assigned to the Department of Crime Control and Public Safety as provided by the various commercial vehicle, oversize/overweight, motor carrier safety, motor fuel, and mobile and manufactured home statutes.
- (4) Ascertaining the State's duties concerning grants to the State by the Law Enforcement Assistance Administration of the United States Department of Justice, and developing and administering a plan to ensure that the State fulfills its ~~duties; andduties.~~
- (5) Administering the Assistance Program for Victims of Rape and Sex Offenses.
- (6) Appointing, with the Governor's approval, a special police officer to serve as Director of the State Capitol Police Division."

**SECTION 17.3.(f)** Article 11 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 9. State Capitol Police Division.

**"§ 143B-509.1. State Capitol Police Division – powers and duties,**

(a) Division Established. – There is hereby established, within the Department of Crime Control and Public Safety, the State Capitol Police Division, which shall be organized and staffed in accordance with applicable laws and regulations and within the limits of authorized appropriations.

(b) Purpose. – The State Capitol Police Division shall serve as a special police agency of the Department of Crime Control and Public Safety. The Director of the State Capitol Police, appointed by the Secretary pursuant to G.S. 143B-476(6), with the approval of the Governor, may appoint as special police officers such reliable persons as he may deem necessary.

(c) Appointment of Officers. – Special police officers appointed pursuant to this section may not exercise the power of arrest until they shall take an oath, to be administered by any person authorized to administer oaths, as required by law.

(d) Jurisdiction of Officers. – Each special police officer of the State Capitol Police shall have the same power of arrest as the police officers of the City of Raleigh. Such authority may be exercised within the same territorial jurisdiction as exercised by the police officers of the City of Raleigh, and in addition thereto the authority of a deputy sheriff may be exercised on property owned, leased, or maintained by the State located in the County of Wake.

(f) Public Safety. – The Director of the State Capitol Police, or the Director's designee, shall exercise at all times those means that, in the opinion of the Director or the designee, may be effective in protecting all State buildings and grounds, except for the State legislative buildings and grounds as defined in G.S. 120-32.1(d), and the persons within those buildings and grounds from fire, bombs, bomb threats, or any other emergency or potentially hazardous conditions, including both the ordering and control of the evacuation of those buildings and grounds. The Director, or the Director's designee, may employ the assistance of other available law enforcement agencies and emergency agencies to aid and assist in evacuations of those buildings and grounds."

## **STUDY CONSOLIDATION OF LAW ENFORCEMENT AGENCIES**

**SECTION 17.4.** The Office of State Budget and Management shall study the feasibility of consolidating the law enforcement agencies in the executive branch of State government for the purpose of coordinating the activities of these agencies, and reducing duplication and overlapping of law enforcement responsibilities, training, and technical assistance among State law enforcement agencies. The Office of State Budget and Management shall report its findings and recommendations by February 1, 2010, to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee.

## **ASSIST SHERIFFS' ENFORCEMENT OF SEX OFFENDER REGISTRATION LAWS**

**SECTION 17.4A.** Subsection 11(a) of S.L. 2008-220 reads as rewritten:

**"SECTION 11.(a)** Funds are authorized to be allocated to the Governor's Crime Commission for award as grants to eligible sheriffs' offices to assist with the enforcement of the State's sex offender laws. The grants shall be awarded specifically to enhance and support law efforts by sheriffs to do the following: (i) process and conduct in-person sex offender registrations, (ii) monitor compliance of sex offenders as required under Article 27A of Chapter 14 of the General Statutes, and (iii) conduct activities to investigate and apprehend persons who commit reportable offenses as defined under Article 27A of Chapter 14 of the General Statutes. Eligible sheriffs' offices are required to provide non-State matching funds equal to ~~fifty percent (50%)~~ twenty-five percent (25%) of the grant amount awarded under this section, one-half of which may be in in-kind contributions."

## **LAW ENFORCEMENT SUPPORT SERVICES FEES**

**SECTION 17.5.** Effective September 1, 2009, Article 11 of Chapter 143B of the General Statutes is amended by adding a new section to read:

### **"§ 143B-475.2. Fees for services.**

A fee in the amount set by the Department is imposed on the entities listed in this section. The fees are departmental receipts and are applied to the Department's costs in providing services to these entities. The fees apply to the following:

- (1) A local law enforcement agency that employs more than 25 officers and that receives equipment from the Department, whether by transfer, loan, or procurement under an agreement with the United States Department of Defense.
- (2) A person for whom the Department stores evidence."

## **INCREASE CHARITABLE BINGO LICENSING FEE**

**SECTION 17.6.** Effective September 1, 2009, G.S. 14-309.7(a) reads as rewritten:

**"(a)** An exempt organization may not operate a bingo game at a location without a license. Application for a bingo license shall be made to the Department of Crime Control and Public Safety on a form prescribed by the Department. The Department shall charge an annual application fee of ~~one hundred dollars (\$100.00)~~ two hundred dollars (\$200.00) to defray the

cost of issuing bingo licenses and handling bingo audit reports. The fees collected shall be deposited in the General Fund of the State. This license shall expire one year after the granting of the license. This license may be renewed yearly, if the applicant pays the application fee and files an audit with the Department pursuant to G.S. 14-309.11. A copy of the application and license shall be furnished to the local law-enforcement agency in the county or municipality in which the licensee intends to operate before bingo is conducted by the licensee."

#### **INCREASE FEES FOR LICENSING BOXERS AND FOR TICKETS SOLD AT BOXING EVENTS**

**SECTION 17.7.(a)** G.S. 143-655(a) reads as rewritten:

"(a) License Fees. – The Division shall collect the following license fees:

Announcer	\$75.00
Contestant	<del>\$37.50</del> <u>\$50.00</u>
Judge	\$75.00
Manager	\$150.00
Matchmaker	\$300.00
Promoter	\$450.00
Referee	\$75.00
Timekeeper	\$75.00
Second	<del>\$37.50</del> <u>\$50.00.</u> "

**SECTION 17.7.(b)** G.S. 143-655(b1) reads as rewritten:

"(b1) Admission Fees. – The Division shall collect a fee in the amount of ~~one dollar and fifty cents (\$1.50)~~ two dollars (\$2.00) per each ticket sold to attend events regulated in this Article."

**SECTION 17.7.(c)** This section becomes effective September 1, 2009.

#### **INCREASE REGISTRATION FEE FOR DEEDS OF TRUST AND MORTGAGES**

**SECTION 17.8.(a)** G.S. 161-10(a)(1a) reads as rewritten:

"(1a) Deeds of Trust, Mortgages, and Cancellation of Deeds of Trust and Mortgages. – For registering or filing any deed of trust or mortgage, whether written, printed, or typewritten, the fee shall be ~~twenty-two dollars (\$22.00)~~ twenty-eight dollars (\$28.00) for the first page plus three dollars (\$3.00) for each additional page or fraction thereof.

When a deed of trust or mortgage is presented for registration that contains one or more additional instruments, the fee shall be ten dollars (\$10.00) for each additional instrument. A deed of trust or mortgage contains one or more additional instruments if such additional instrument or instruments has or have different legal consequences or intent, each of which is separately executed and acknowledged and could be recorded alone.

For recording records of satisfaction, or the cancellation of record by any other means, of deeds of trust or mortgages, there shall be no fee."

**SECTION 17.8.(b)** Article 1 of Chapter 161 of the General Statutes is amended by adding a new section to read:

##### **§ 161-11.5. Fees for General Fund support.**

Five dollars (\$5.00) of each fee collected by the register of deeds for registering or filing a deed of trust or mortgage pursuant to G.S. 161-10(a)(1a) shall be remitted by the register of deeds to the county finance officer, who shall remit the funds to the State Treasurer to be credited to the General Fund as nontax revenue. The county finance officer shall remit the funds to the State Treasurer on a monthly basis."

**SECTION 17.8.(c)** G.S. 161-11.3 reads as rewritten:

##### **§ 161-11.3. Automation Enhancement and Preservation Fund.**

Ten percent (10%) of the fees collected pursuant to G.S. 161-10 and retained by the ~~county~~ county, or three dollars and twenty cents (\$3.20) in the case of a fee collected pursuant to G.S. 161-10(a)(1a) for the first page of a deed of trust or mortgage, shall be set aside annually and placed in a nonreverting Automation Enhancement and Preservation Fund, the proceeds of which shall be expended on computer or imaging technology and needs associated with the preservation and storage of public records in the office of the register of deeds. Nothing in this section shall be construed to affect the duty of the board of county commissioners to furnish supplies and equipment to the office of the register of deeds."

**SECTION 17.8.(d)** This section becomes effective October 1, 2009, and applies to deeds of trust and mortgages registered or filed on or after that date.

## **PART XVIII. DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION**

### **ANNUAL EVALUATION OF COMMUNITY PROGRAMS**

**SECTION 18.1.** The Department of Juvenile Justice and Delinquency Prevention shall conduct an evaluation of the Eckerd and Camp Woodson wilderness camp programs and of multipurpose group homes.

In conducting the evaluation of each of these programs, the Department shall consider whether participation in each program results in a reduction of court involvement among juveniles. The Department also shall identify whether the programs are achieving the goals and objectives of the Juvenile Justice Reform Act, S.L. 1998-202. The Department shall report the results of the evaluation to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, the chairs of the Senate and House of Representatives Appropriations Committees and the chairs of the Subcommittees on Justice and Public Safety of the Senate and House of Representatives Appropriations Committees by March 1 of each year.

### **REPORTS ON CERTAIN PROGRAMS**

**SECTION 18.2.(a)** Project Challenge North Carolina, Inc., shall report to the Department of Juvenile Justice and Delinquency Prevention and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by April 1 each year on the operation and the effectiveness of its program in providing alternative dispositions and services to juveniles who have been adjudicated delinquent or undisciplined. The report shall include information on:

- (1) The source of referrals for juveniles.
- (2) The types of offenses committed by juveniles participating in the program.
- (3) The amount of time those juveniles spend in the program.
- (4) The number of juveniles who successfully complete the program.
- (5) The number of juveniles who commit additional offenses after completing the program.
- (6) The program's budget and expenditures, including all funding sources.

**SECTION 18.2.(b)** The Juvenile Assessment Center shall report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the effectiveness of the Center by April 1 each year. The report shall include information on the number of juveniles served and an evaluation of the effectiveness of juvenile assessment plans and services provided as a result of these plans. In addition, the report shall include information on the Center's budget and expenditures, including all funding sources.

### **STATE FUNDS MAY BE USED AS FEDERAL MATCHING FUNDS**

**SECTION 18.3.** Funds appropriated in this act to the Department of Juvenile Justice and Delinquency Prevention for the 2009-2010 fiscal year may be used as matching funds for the Juvenile Accountability Incentive Block Grants. If North Carolina receives Juvenile Accountability Incentive Block Grants or a notice of funds to be awarded, the Office of State Budget and Management and the Governor's Crime Commission shall consult with the Department of Juvenile Justice and Delinquency Prevention regarding the criteria for awarding federal funds. The Office of State Budget and Management, the Governor's Crime Commission, and the Department of Juvenile Justice and Delinquency Prevention shall report to the Appropriations Committees of the Senate and House of Representatives and the Joint Legislative Commission on Governmental Operations prior to allocation of the federal funds. The report shall identify the amount of funds to be received for the 2009-2010 fiscal year, the amount of funds anticipated for the 2009-2010 fiscal year, and the allocation of funds by program and purpose.

### **TREATMENT STAFFING MODEL AT YOUTH DEVELOPMENT CENTERS**

**SECTION 18.4.** The Department shall implement the staffing treatment model presented to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee as part of the Department's November 14, 2006, report regarding the joint use with the Department of Correction of the Swannanoa Youth Development Center campus.

The staffing levels of the new youth development centers shall be capped at 66 staff for a 32-bed facility and 198 staff for the 96-bed facility for the 2009-2011 fiscal biennium. Staffing ratios shall be no more than 2.1 staff per every juvenile committed at every other existing youth development center.

#### **ESTABLISHMENT OF A GANG PREVENTION AND INTERVENTION PILOT PROGRAM**

**SECTION 18.5.(a)** As part of the Governor's Comprehensive Gang Initiative, the Department of Juvenile Justice and Delinquency Prevention shall establish a two-year Gang Prevention and Intervention Pilot Program that will focus on youth at risk for gang involvement and those who are already associated with gangs and gang activity. The Department of Juvenile Justice and Delinquency Prevention shall:

- (1) Ensure that measurable performance indicators and systems are put in place to evaluate the effectiveness of the pilot program, and
- (2) Conduct both process- and outcome-focused evaluations of the pilot program to determine community and institutional impacts of the pilot program pertaining to gang behavior, desistance, and activities. These evaluations may consider the degree of successful implementation of the program and measurable changes in gang-related and gang-affiliated behaviors noted in institutional, court system, communities, and related programs.

**SECTION 18.5.(b)** The Department of Juvenile Justice and Delinquency Prevention shall report to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the implementation and continuing operation of the pilot program by April 1 each year. The report shall include information on the number of juveniles served and an evaluation of the effectiveness of the pilot program. In addition, the report shall include the information set out in subsection (a) of this section.

#### **ELIMINATE SUPPORT OUR STUDENTS PROGRAM**

**SECTION 18.6.** Part 5A of Article 3 of Chapter 143B of the General Statutes is repealed.

#### **JUVENILE CRIME PREVENTION COUNCIL (JCPC) GRANT REPORTING AND CERTIFICATION**

**SECTION 18.7.** On or before October 1 of each year, the Department of Juvenile Justice and Delinquency Prevention shall submit to the Joint Legislative Commission on Governmental Operations and the Appropriations Committees of the Senate and House of Representatives a list of the recipients of the grants awarded, or preapproved for award, from funds appropriated to the Department for local Juvenile Crime Prevention Council grants, including:

- (1) The amount of the grant awarded.
- (2) The membership of the local committee or council administering the award funds on the local level.
- (3) The type of program funded.
- (4) A short description of the local services, programs, or projects that will receive funds.
- (5) Identification of any programs that received grant funds at one time but for which funding has been eliminated by the Department.
- (6) The number of at-risk, diverted, and adjudicated juveniles served by each county.
- (7) The Department's actions to ensure that county JCPCs prioritize funding for dispositions of intermediate and community-level sanctions for



court-adjudicated juveniles under minimum standards adopted by the Department.

- (8) The total cost for each funded program, including the cost per juvenile and the essential elements of the program.

A written copy of the list and other information regarding the projects shall also be sent to the Fiscal Research Division of the General Assembly.

### **ESTABLISH YOUTH ACCOUNTABILITY PLANNING TASK FORCE**

**SECTION 18.9.(a)** Task Force Established. – There is established within the Department of Juvenile Justice and Delinquency Prevention the Youth Accountability Planning Task Force. The Department of Juvenile Justice and Delinquency Prevention shall provide professional and clerical staff and other services and supplies, including meeting space, as needed for the Task Force to carry out its duties in an effective manner.

**SECTION 18.9.(b)** Membership. – The Task Force shall consist of 21 members. The following members or their designees shall serve as ex officio members:

- (1) The Secretary of the Department of Juvenile Justice and Delinquency Prevention.
- (2) The Director of the Administrative Office of the Courts.
- (3) The Secretary of the Department of Health and Human Services.
- (4) The Secretary of the Department of Correction.
- (5) The Secretary of the Department of Crime Control and Public Safety.
- (6) The Superintendent of Public Instruction.
- (7) The Secretary of the Department of Administration, or a designee having knowledge of programs and services for youth and young adults.
- (8) The Juvenile Defender in the Office of Indigent Defense.
- (9) One representative from the Governor's Crime Commission, appointed by the Governor.
- (10) One representative from the North Carolina Sentencing and Policy Advisory Commission, appointed by the Governor.

The remaining members shall be appointed as follows:

- (11) Three members of the House of Representatives appointed by the Speaker of the House of Representatives.
- (12) Three members of the Senate appointed by the President Pro Tempore of the Senate.
- (13) Two chief court counselors, appointed by the Governor, one to be from a rural county and one from an urban county.
- (14) One present or former chief district court judge or superior court judge appointed by the Chief Justice of the North Carolina Supreme Court.
- (15) One police chief appointed by the President Pro Tempore of the Senate.
- (16) One district attorney appointed by the Speaker of the House of Representatives.

Appointments to the Task Force shall be made no later than October 1, 2009. A vacancy in the Task Force or a vacancy as chair of the Task Force resulting from the resignation of a member or otherwise shall be filled in the same manner in which the original appointment was made.

**SECTION 18.9.(c)** Chair; Meetings. – The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate one member to serve as cochair of the Task Force.

The cochairs shall call the initial meeting of the Task Force on or before November 1, 2009. The Task Force shall subsequently meet upon such notice and in such manner as its members determine. A majority of the members of the Task Force shall constitute a quorum.

**SECTION 18.9.(d)** The Office of the Governor shall provide staff to the Task Force at the request of the Task Force.

**SECTION 18.9.(e)** Cooperation by Government Agencies. – The Task Force may call upon any department, agency, institution, or officer of the State or any political subdivision thereof for facilities, data, or other assistance.

**SECTION 18.9.(f)** Duties of Task Force. – The Task Force shall determine whether the State should amend the laws concerning persons 16 and 17 years of age who commit crimes or infractions, including a determination of whether the Juvenile Code or the

Criminal Procedure Act should be revised to provide appropriate sanctions, services, and treatment for those offenders and a study of expanding the jurisdiction of the Department of Juvenile Justice and Delinquency Prevention to include persons 16 and 17 years of age who commit crimes or infractions. As part of its study, the Task Force shall also develop an implementation plan that may be used if it is determined that it is appropriate to expand the jurisdiction of the Department of Juvenile Justice and Delinquency Prevention to include persons 16 and 17 years of age who commit crimes or infractions. In particular, the Task Force shall consider all of the following:

- (1) The costs to the State court system and State and local law enforcement.
- (2) The relevant State laws that should be conformed or amended as a result of revising the definition of delinquent juvenile to include 16- and 17-year-old persons, including the motor vehicle and criminal laws, the laws regarding expunction of criminal records, and other juvenile laws. The Task Force shall make recommendations to the General Assembly regarding proposed legislative amendments.
- (3) Proposals to eliminate the racial disparity in complaints, commitments, community program availability, utilization and success rates, and other key decision and impact points in the juvenile justice process.
- (4) Proposals regarding community programs that would provide rehabilitative services to juveniles in a treatment-oriented environment and incorporate best practices as recommended in subdivision (3) of this subsection.
- (5) The total cost of expanding the jurisdiction of the Department of Juvenile Justice and Delinquency Prevention to include persons who are 16 and 17 years of age who commit crimes or infractions under State law or under an ordinance of local government.
- (6) The implications of revising the definition of delinquent juvenile to include 16- and 17-year-olds, as it relates to other laws based on age, including laws requiring school attendance and drivers license laws.
- (7) Whether standards should be established for determining when a juvenile should be transferred to superior court, including whether there should be presumptions that certain offenses should or should not result in a transfer to superior court.
- (8) Whether a 16- or 17-year-old who is alleged to have committed a felony motor vehicle offense should be considered a juvenile or an adult.
- (9) Any other related issues that the Task Force considers necessary.

**SECTION 18.9.(g)** Consultation. – The Task Force shall consult with appropriate State departments, agencies, and board representatives on issues related to juvenile justice administration.

**SECTION 18.9.(h)** Report. – The Task Force shall submit an interim report to the 2010 Regular Session of the 2009 General Assembly, with copies to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and to the Appropriations Subcommittees on Justice and Public Safety of both houses and shall submit a final report of its findings and recommendations, including legislative, administrative, and funding recommendations, by January 15, 2011, to the General Assembly, the Governor, and the citizens of the State. The Task Force shall terminate upon filing its final report.

**SECTION 18.9.(i)** Funding. – The Task Force may apply for, receive, and accept grants of non-State funds or other contributions as appropriate to assist in the performance of its duties. The Department of Juvenile Justice and Delinquency Prevention may also use funds appropriated to it to carry out the study and devise the implementation plan.

## **PART XIX. DEPARTMENT OF CORRECTION**

### **INMATE ROAD SQUADS AND LITTER CREWS**

**SECTION 19.1.** Of the funds appropriated to the Department of Transportation in this act, the sum of nine million forty thousand dollars (\$9,040,000) per year shall be transferred by the Department to the Department of Correction during the 2009-2010 and 2010-2011 fiscal years for the cost of operating medium custody inmate road squads, as authorized by G.S. 148-26.5, and minimum custody inmate litter crews. This transfer shall be made quarterly in the amount of two million two hundred sixty thousand dollars (\$2,260,000).

The Department of Transportation may use funds appropriated in this act to pay an additional amount exceeding the nine million forty thousand dollars (\$9,040,000), but those payments shall be subject to negotiations among the Department of Transportation, the Department of Correction, and the Office of State Budget and Management prior to payment by the Department of Transportation.

The Office of State Budget and Management shall conduct a study, in consultation with the Department of Correction and the Department of Transportation, to determine the actual cost and cost/benefit of operating medium custody road squads and minimum custody litter crews. The Office of State Budget and Management shall report the results of this study to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and to the Joint Legislative Transportation Oversight Committee by March 1, 2010. The study shall include a recommendation on whether or not the amount transferred from the Department of Transportation to the Department of Correction for this work is adequate.

#### **FEDERAL GRANT REPORTING**

**SECTION 19.2.** The Department of Correction, the Department of Justice, the Department of Crime Control and Public Safety, the Judicial Department, and the Department of Juvenile Justice and Delinquency Prevention shall report by May 1 of each year to the Joint Legislative Commission on Governmental Operations, the Chairs of the House of Representatives and Senate Appropriations Committees, and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety on federal grant funds received or preapproved for receipt by those departments. The report shall include information on the amount of grant funds received or preapproved for receipt by each department, the use of the funds, the State match expended to receive the funds, and the period to be covered by each grant. If the department intends to continue the program beyond the end of the grant period, the department shall report on the proposed method for continuing the funding of the program at the end of the grant period. Each department shall also report on any information it may have indicating that the State will be requested to provide future funding for a program presently supported by a local grant.

#### **REIMBURSE COUNTIES FOR HOUSING AND EXTRAORDINARY MEDICAL COSTS FOR INMATES, PAROLEES, AND POST-RELEASE SUPERVISEES AWAITING TRANSFER TO STATE PRISON SYSTEM**

**SECTION 19.3.** Notwithstanding G.S. 143C-6-9, the Department of Correction may use funds available to the Department for the 2009-2011 biennium to pay the sum of forty dollars (\$40.00) per day as reimbursement to counties for the cost of housing convicted inmates, parolees, and post-release supervisees awaiting transfer to the State prison system, as provided in G.S. 148-29. The Department shall report quarterly to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, the Chairs of the House of Representatives and Senate Appropriations Committees, and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety on the expenditure of funds to reimburse counties for prisoners awaiting transfer and on its progress in reducing the jail backlog.

#### **USE OF CLOSED PRISON FACILITIES**

**SECTION 19.4.(a)** In conjunction with the closing of prison facilities, including small expensive prison units recommended for consolidation by the Government Performance Audit Committee, the Department of Correction shall consult with the county or municipality in which the unit is located, with the elected State and local officials, and with State and federal agencies about the possibility of converting that unit to other use. The Department may also consult with any private for-profit or nonprofit firm about the possibility of converting the unit to other use. In developing a proposal for future use of each unit, the Department shall give priority to converting the unit to other criminal justice use. Consistent with existing law and the future needs of the Department of Correction, the State may provide for the transfer or the lease of any of these units to counties, municipalities, State agencies, or private firms wishing to convert them to other use. The Department of Correction may also consider converting some of the units recommended for closing from one security custody level to another, where that

conversion would be cost-effective. A prison unit under lease to a county pursuant to the provisions of this section for use as a jail is exempt for the period of the lease from any of the minimum standards adopted by the Secretary of Health and Human Services pursuant to G.S. 153A-221 for the housing of adult prisoners that would subject the unit to greater standards than those required of a unit of the State prison system.

Prior to any transfer or lease of these units, the Department of Correction shall report on the terms of the proposed transfer or lease to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee. The Department of Correction also shall provide annual summary reports to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the conversion of these units to other use and on all leases or transfers entered into pursuant to this section.

**SECTION 19.4.(b)** The Department of Correction shall study the feasibility of establishing probation revocation centers at closed prison facilities. The Department shall consult with counties to explore cost-sharing of these facilities. The Department shall report its findings to the Chairs of the Appropriations Subcommittees on Justice and Public Safety by February 1, 2010.

#### **LIMIT USE OF OPERATIONAL FUNDS**

**SECTION 19.5.** Funds appropriated in this act to the Department of Correction for operational costs for additional facilities shall be used for personnel and operating expenses set forth in the budget approved by the General Assembly in this act. These funds shall not be expended for any other purpose, except as provided for in this act, and shall not be expended for additional prison personnel positions until the new facilities are within 120 days of projected completion, except that the Department may establish critical positions prior to 120 days of completion representing no more than twenty percent (20%) of the total estimated number of positions.

#### **CENTER FOR COMMUNITY TRANSITIONS/CONTRACT AND REPORT**

**SECTION 19.6.** The Department of Correction may continue to contract with The Center for Community Transitions, Inc., a nonprofit corporation, for the purchase of prison beds for minimum security female inmates during the 2009-2011 biennium. The Center for Community Transitions, Inc., shall report by February 1 of each year to the Joint Legislative Commission on Governmental Operations on the annual cost per inmate and the average daily inmate population compared to bed capacity using the same methodology as that used by the Department of Correction.

#### **PAROLE ELIGIBILITY REPORT/MUTUAL AGREEMENT PAROLE PROGRAM/MEDICAL RELEASE PROGRAM**

**SECTION 19.8.(a)** The Post-Release Supervision and Parole Commission shall, with the assistance of the North Carolina Sentencing and Policy Advisory Commission and the Department of Correction, analyze the amount of time each inmate who is eligible for parole on or before July 1, 2010, has served compared to the time served by offenders under Structured Sentencing for comparable crimes. The Commission shall determine if the person has served more time in custody than the person would have served if sentenced to the maximum sentence under the provisions of Article 81B of Chapter 15A of the General Statutes. The "maximum sentence," for the purposes of this section, shall be calculated as set forth in subsection (b) of this section.

**SECTION 19.8.(b)** For the purposes of this section, the following rules apply for the calculation of the maximum sentence:

- (1) The offense upon which the person was convicted shall be classified as the same felony class as the offense would have been classified if committed after the effective date of Article 81B of Chapter 15A of the General Statutes.
- (2) The minimum sentence shall be the maximum number of months in the presumptive range of minimum durations in Prior Record Level VI of G.S. 15A-1340.17(c) for the felony class determined under subdivision (1)

of this subsection. The maximum sentence shall be calculated using G.S. 15A-1340.17(d), (e), or (e1).

- (3) If a person is serving sentences for two or more offenses that are concurrent in any respect, then the offense with the greater classification shall be used to determine a single maximum sentence for the concurrent offenses. The fact that the person has been convicted of multiple offenses may be considered by the Commission in making its determinations under subsection (a) of this section.

**SECTION 19.8.(c)** The Post-Release Supervision and Parole Commission shall report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and to the Chairs of the House of Representatives and Senate Appropriations Committees, and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety by April 1, 2010. The report shall include the following: the class of the offense for which each parole-eligible inmate was convicted and whether an inmate had multiple criminal convictions. The Commission shall reinstate the parole review process for each offender who has served more time than that person would have under Structured Sentencing as provided by subsections (a) and (b) of this section.

The Commission shall also report on the number of parole-eligible inmates reconsidered in compliance with this section and the number who were actually paroled.

**SECTION 19.8.(d)** The Department of Correction and the Post-Release Supervision and Parole Commission shall report by March 1 of each year to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety and to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the number of inmates enrolled in the mutual agreement parole program, the number completing the program and being paroled, and the number who enrolled but were terminated from the program. The information should be based on the previous calendar year.

**SECTION 19.8.(e)** The Department of Correction and the Post-Release Supervision and Parole Commission shall report by March 1 of each year to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety and to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the number of inmates proposed for release, considered for release, and granted release under Chapter 84B of Chapter 15A of the General Statutes, providing for the medical release of inmates who are either permanently and totally disabled, terminally ill, or geriatric.

## **FEDERAL GRANT MATCHING FUNDS**

**SECTION 19.9.** Notwithstanding the provisions of G.S. 143C-6-9, the Department of Correction may use up to the sum of one million two hundred thousand dollars (\$1,200,000) during the 2009-2010 fiscal year from funds available to the Department to provide the State match needed in order to receive federal grant funds. Prior to using funds for this purpose, the Department shall report to the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Commission on Governmental Operations on the grants to be matched using these funds.

## **REPORTS ON NONPROFIT PROGRAMS**

**SECTION 19.10.(a)** Funds appropriated in this act to the Department of Correction to support the programs of Harriet's House may be used for program operating costs, the purchase of equipment, and the rental of real property to serve women released from prison with children in their custody. Harriet's House shall report by February 1 of each year to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety on the expenditure of State appropriations and on the effectiveness of the program, including information on the number of clients served, the number of clients who successfully complete the Harriet's House program, and the number of clients who have been rearrested within three years of successfully completing the program. The report shall provide financial and program data for the complete fiscal year prior to the year in which the report is submitted. The financial report shall identify all funding sources and amounts.

**SECTION 19.10.(b)** Summit House shall report by February 1 of each year to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on

Justice and Public Safety on the expenditure of State appropriations and on the effectiveness of the program, including information on the number of clients served, the number of clients who have had their probation revoked, the number of clients who successfully complete the program while housed at Summit House, Inc., and the number of clients who have been rearrested within three years of successfully completing the program. The report shall provide financial and program data for the complete fiscal year prior to the year in which the report is submitted. The financial report shall identify all funding sources and amounts.

**SECTION 19.10.(c)** Women at Risk shall report by February 1 of each year to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety on the expenditure of State funds and on the effectiveness of the program, including information on the number of clients served, the number of clients who have had their probation revoked, the number of clients who have successfully completed the program, and the number of clients who have been rearrested within three years of successfully completing the program. The report shall provide financial and program data for the complete fiscal year prior to the year in which the report is submitted. The financial report shall identify all funding sources and amounts.

**SECTION 19.10.(d)** Our Children's Place shall report by February 1 of each year to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety on the status of the planning, design, and construction of Our Children's Place, the proposed program components and evaluation measures, and on the projected number of inmates and their children to be served. The report shall also provide financial data, including the expenditure of State funds and all funding sources and amounts.

## **CRIMINAL JUSTICE PARTNERSHIP**

**SECTION 19.11.(a)** Notwithstanding any other provision of law, a county may use funds appropriated pursuant to the Criminal Justice Partnership Act, Article 6A of Chapter 143B of the General Statutes, to provide more than one community-based corrections program.

**SECTION 19.11.(b)** Effective July 1, 2009, the Department of Correction shall recalculate the county allocation funding formula mandated under G.S. 143B-273.15 using updated data.

**SECTION 19.11.(c)** Notwithstanding the provisions of G.S. 143B-273.15 specifying that grants to participating counties are for the full fiscal year and that unobligated funds are returned to the State-County Criminal Justice Partnership Account at the end of the grant period, the Department of Correction may reallocate unspent or unclaimed funds distributed to counties participating in the State-County Criminal Justice Partnership Program in an effort to maintain the level of services realized in previous fiscal years.

**SECTION 19.11.(d)** The Department of Correction may not deny funds to a county to support both a residential program and a day reporting center if the Department of Correction determines that the county has a demonstrated need and a fully developed plan for each type of sanction.

**SECTION 19.11.(e)** The Department of Correction shall report by March 1 of each year to the Chairs of the House of Representatives and Senate Appropriations Committees, the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety, and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the status of the State-County Criminal Justice Partnership Program. The report shall include the following information:

- (1) The amount of funds carried over from the prior fiscal year;
- (2) The dollar amount and purpose of grants awarded to counties as discretionary grants for the current fiscal year;
- (3) Any counties the Department anticipates will submit requests for new implementation grants;
- (4) An update on efforts to ensure that all counties make use of the electronic reporting system, including the number of counties submitting offender participation data via the system;
- (5) An analysis of offender participation data received, including data on each program's utilization and capacity;

- (6) An analysis of comparable programs prepared by the Division of Research and Planning, Department of Correction, including a comparison of programs in each program type on selected outcome measures developed by the Division of Community Corrections in consultation with the Fiscal Research Division and the Division of Research and Planning, and a summary of the reports prepared by county Criminal Justice Partnerships Advisory Boards;
- (7) A review of whether each sentenced offender program is meeting established program goals developed by the Division of Community Corrections in consultation with the Division of Research and Planning and the State Criminal Justice Partnership Advisory Board;
- (8) The number of community offenders and intermediate offenders served by each county program;
- (9) The amount of Criminal Justice Partnership funds spent on community offenders and intermediate offenders; and
- (10) A short description of the services and programs provided by each partnership, including who the service providers are and the amount of funds each service provider receives.

## **REPORT ON PROBATION AND PAROLE CASELOADS**

**SECTION 19.12.(a)** The Department of Correction shall report by March 1 of each year to the chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on caseload averages for probation and parole officers. The report shall include:

- (1) Data on current caseload averages and district averages for probation/parole officer positions;
- (2) Data on current span of control for chief probation officers;
- (3) An analysis of the optimal caseloads for these officer classifications;
- (4) An assessment of the role of surveillance officers;
- (5) The number and role of paraprofessionals in supervising low-risk caseloads;
- (6) An update on the Department's implementation of the recommendations contained in the National Institute of Correction study conducted on the Division of Community Corrections in 2004 and 2008;
- (7) The process of assigning offenders to an appropriate supervision level based on a risk assessment and an examination of other existing resources for assessment and case planning, including the Sentencing Services Program in the Office of Indigent Defense Services and the range of screening and assessment services provided by the Division of Mental Health, Developmental Disability, and Substance Abuse Services in the Department of Health and Human Services; and
- (8) Data on cases supervised solely for the collection of court-ordered payments.

**SECTION 19.12.(b)** The Department of Correction shall conduct a study of probation/parole officer workload. The study shall include analysis of the type of offenders supervised, the distribution of the probation/parole officers' time by type of activity, the caseload carried by the officers, and comparisons to practices in other states. The study shall be used to determine whether the caseload goals established by the Structured Sentencing Act are still appropriate, based on the nature of the offenders supervised and the time required to supervise those offenders.

**SECTION 19.12.(c)** The Department of Correction shall report the results of the study and recommendations for any adjustments to caseload goals to the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety by January 1, 2011.

**SECTION 19.12.(d)** The Department of Correction shall report by March 1 of each year to the Chairs of the House and Senate Appropriations Committees, the Chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety, and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the following:

- (1) The number of sex offenders enrolled on active and passive GPS monitoring.

- (2) The caseloads of probation officers assigned to GPS-monitored sex offenders.
- (3) The number of violations.
- (4) The number of absconders.
- (5) The projected number of offenders to be enrolled by the end of the 2009-2010 fiscal year and the end of the 2010-2011 fiscal year.
- (6) The total cost of the program, including a per-offender cost.

## **REPORT ON INMATE WELFARE AND CORRECTION ENTERPRISES**

**SECTION 19.13.** The Department of Correction, in consultation with the Office of State Budget and Management, shall study the feasibility of budgeting positions currently funded from the Inmate Welfare Fund and the Correction Enterprise Fund from the General Fund instead. The Department shall report its findings by April 1, 2010, to the chairs of the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety and to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee.

## **PRE-SENTENCE INVESTIGATIONS FEASIBILITY STUDY**

**SECTION 19.14.** The Department of Correction and the Administrative Office of the Courts shall conduct a feasibility study of conducting pre-sentence investigations on all offenders convicted of felonies for which the sentencing judge has the option of intermediate or active punishments. This feasibility study shall be conducted as a pilot implementation, incorporating a variety of districts across the State reflecting both rural and urban settings, as well as diversity of programming available within the district.

The Department of Correction and the Administrative Office of the Courts shall report the results of the study by May 1, 2010, to the Chairs of the House of Representatives and Senate Appropriations Committees, the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety, and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee.

## **STUDY INCARCERATED MOTHERS PROGRAM**

**SECTION 19.15.(a)** Our Children's Place, Inc., a nonprofit corporation, shall submit to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by October 1, 2009, a comprehensive plan for the implementation of a contractual program to house incarcerated women with their children. This plan shall include criteria for placement, minimum standards for custody and security, and projections of costs for implementation, including presumptive funding sources and memoranda of intent from affected agencies.

**SECTION 19.15.(b)** The Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee shall make recommendations to the 2010 Session of the 2009 General Assembly concerning the establishment of a program to house incarcerated women with their children. These recommendations shall address legal issues related to the custody of the children while in the program.

## **AUTHORIZE STATE RETIREES AND LOCAL GOVERNMENTAL EMPLOYEES TO PURCHASE FROM CORRECTION ENTERPRISES**

**SECTION 19.16.** G.S. 148-132 reads as rewritten:

### **"§ 148-132. Distribution of products and services.**

The Division of Correction Enterprises is empowered and authorized to market and sell products and services produced by Correction Enterprises to any of the following entities:

- (1) Any public agency or institution owned, managed, or controlled by the State.
- (2) Any county, city, or town in this State.
- (3) Any federal, state, or local public agency or institution in any other state of the union.
- (4) An entity or organization that has tax-exempt status pursuant to section 501(c)(3) of the Internal Revenue Code and also receives local, state, or federal grant funding.
- (5) Any current employee or retiree of the State of North Carolina, ~~Carolina~~ or of a unit of local government of this State, verified through State-issued



identification, or through proof of retirement status, but ~~a State employee's purchases by a State or local governmental employee or retiree~~ may not exceed two thousand five hundred dollars (\$2,500) during any calendar year. Products purchased by State and local governmental employees and retirees under this section may not be resold."

## **ACCOMMODATIONS FOR PROBATION OFFICES**

**SECTION 19.19.** G.S. 15-209 reads as rewritten:

**"§ 15-209. Accommodations for probation ~~officers~~ offices.**

(a) The county commissioners in each county in which a probation officer serves office exists shall provide, in or near the courthouse, suitable office space for such officer those probation officers assigned to the county who have probationary caseloads and their administrative support. This requirement does not include management staff of the Department of Correction, nonprobation staff, or other Department of Correction employees.

(b) If a county is unable to provide the space required under subsection (a) of this section for any reason, it may elect to request that the Department of Correction lease space for the probation office and receive reimbursement from the county for the leased space. If a county fails to reimburse the Department for such leased space, the Secretary of Correction may request that the Administrative Office of the Courts transfer the unpaid amount to the Department from the county's court and jail facility fee remittances."

## **INMATE MEDICAL SERVICES/REQUEST FOR PROPOSALS**

**SECTION 19.20.(a)** The Department of Correction shall obtain medically necessary services for inmates committed to its custody from providers and medical facilities that participate in the provider network of the claims processing contractor for the State Health Plan for Teachers and State Employees (Plan). Providers and facilities under contract with the Plan's claims processor to provide services to covered members of the Plan shall provide medically necessary services to inmates in the Department's custody and shall be paid by the Department through the Plan's claims processor for services provided in an amount equal to the rate paid by the claims processor for Plan beneficiaries for medically necessary services. If the medically necessary services provided are not included in the Plan's reimbursement schedule, the Department may pay the reasonable and customary rate for the services. The requirements of this subsection apply to all medical and facility services provided outside the correctional facility, including hospitalizations, professional services, medical supplies, and other medications provided to any inmate confined in a correctional facility.

**SECTION 19.20.(b)** The Department of Correction, in consultation with the State Health Plan, shall issue a Request for Proposals (RFP) for a contractor to process claims for medical services provided to inmates in the custody of the Department, to provide medical management services to the Department, and to develop and manage a medical professional and facility provider network to serve the medical needs of inmates. The State Health Plan shall provide the Department with any technical and consultative assistance in developing and evaluating the RFP. The Department shall issue the RFP by April 1, 2010. The Department shall not enter into any long-term contracts for claims processing or health care services before or during the pendency of the RFP process.

**SECTION 19.20.(c)** The Department of Correction shall consult with the Division of Medical Assistance in the Department of Health and Human Services to develop protocols for prisoners who would otherwise be eligible for Medicaid if they were not incarcerated to access Medicaid while in custody or under extended limits of confinement. The Department may make recommendations to the 2010 Regular Session of the 2009 General Assembly for special purpose facilities designed to house inmates but preserve Medicaid eligibility.

**SECTION 19.20.(d)** The Department of Correction shall, whenever possible, seek to make use of its own hospitals and health care facilities to provide health care services to inmates. To the extent that the Department of Correction must utilize other facilities and services to provide health care services to inmates, the Department shall, to the extent possible, use community hospitals with unused available capacity or other health care facilities in a region to accomplish that goal. The Department shall work to ensure that care usage is distributed equitably among all hospitals or other appropriate health care facilities in a region, unless doing so would jeopardize the health of the inmate.

**SECTION 19.20.(e)** Subsection (a) of this section becomes effective October 1, 2009, and applies to provider contracts executed or renewed with the claims processing contractor for the State Health Plan on and after that date. Subsection (a) of this section expires upon the effective date of the execution of a contract authorized under subsection (b) of this section.

#### **JUSTICE REINVESTMENT PROJECT**

**SECTION 19.22.** Of the funds appropriated to the Department of Correction for the 2009-2010 fiscal year, the Department may use up to the sum of one hundred thousand dollars (\$100,000) in nonrecurring funds if necessary to secure technical assistance from the Council of State Governments to participate in the national Justice Reinvestment Project. This technical assistance will support the work of the Justice Reinvestment Project to develop policies and recommendations to reduce prison overcrowding and to manage the offender population. The North Carolina Sentencing and Policy Advisory Commission shall provide any data or other support requested by the Justice Reinvestment Project in the process of developing these policies and recommendations.

#### **REPEAL JAILED MISDEMEANANT PAYMENTS**

**SECTION 19.22A.** G.S. 148-32.1(a) is repealed.

#### **GATES COUNTY CORRECTIONAL INSTITUTE WASTEWATER FACILITY TRANSFER**

**SECTION 19.22B.(a)** Section 120 of Chapter 1066 of the 1989 Session Laws, as amended by Section 109(c) of Chapter 900 of the 1991 Session Laws, reads as rewritten:

"Sec. 120. The Department of Correction shall permit the Gates County Board of Education to tie the wastewater treatment systems of the Gates County Junior High School and the Gates County High School into the wastewater treatment system of the Gates County Correctional Center. The Department of Correction shall continue to operate the wastewater treatment system for at least six months after closing of the Gates County Correctional Center, and then shall transfer the facility to Gates County for operation by that county or another unit of local government designated by Gates County. The transfer may be in accordance with G.S. 160A-274 or other applicable law."

**SECTION 19.22B.(b)** The Department of Correction shall continue to fund the operation of the wastewater treatment system for the six-month period from funds available to the Department.

#### **COMMUNITY WORK CREW FEE**

**SECTION 19.24.** Article 3 of Chapter 148 of the General Statutes is amended by adding a new section to read:

**§ 148-32.2. Community work crew fee.**

The Department of Correction may charge a fee to any unit of local government to which it provides, upon request, a community work crew. The amount of the fee shall be no more than the cost to the Department to provide the crew to the unit of local government, not to exceed a daily rate of one hundred fifty dollars (\$150.00) per work crew."

#### **INCREASE FEE FOR COMMUNITY SERVICE WORK PROGRAM**

**SECTION 19.26.(a)** G.S. 15A-1371(i) reads as rewritten:

"(i) A fee of two hundred twenty-five dollars (~~\$200.00~~) (\$225.00) shall be paid by all persons who participate in the Community Service Parole Program. That fee must be paid to the clerk of court in the county in which the parolee is released. The fee must be paid in full within two weeks unless the Post-Release Supervision and Parole Commission, upon a showing of hardship by the person, allows the person additional time to pay the fee. The parolee may not be required to pay the fee before the person begins the community service unless the Post-Release Supervision and Parole Commission specifically orders that the person do so. Fees collected under this subsection shall be deposited in the General Fund. The fee imposed under this subsection may be paid as prescribed by the supervising parole officer."

**SECTION 19.26.(b)** G.S. 20-179.4(c) reads as rewritten:

"(c) A fee of two hundred twenty-five dollars (~~\$200.00~~) (\$225.00) shall be paid by all persons serving a community service sentence. That fee shall be paid to the clerk of court in the

county in which the person is convicted. The fee shall be paid in full within two weeks unless the court, upon a showing of hardship by the person, allows additional time to pay the fee. The person may not be required to pay the fee before beginning the community service unless the court specifically orders the person to do so."

**SECTION 19.26.(c)** G.S. 143B-262.4(b) reads as rewritten:

"(b) Unless a fee is assessed pursuant to G.S. 20-179.4 or G.S. 15A-1371(i), a fee of two hundred ~~twenty-five~~ dollars (~~\$200.00~~) (\$225.00) shall be paid by all persons who participate in the program or receive services from the program staff. Fees collected pursuant to this subsection shall be deposited in the General Fund. If the person is convicted in a court in this State, the fee shall be paid to the clerk of court in the county in which the person is convicted. If the person is participating in the program as a result of a deferred prosecution or similar program, the fee shall be paid to the clerk of court in the county in which the agreement is filed. Persons participating in the program for any other reason shall pay the fee to the clerk of court in the county in which the services are provided by the program staff. The fee shall be paid in full within two weeks from the date the person is ordered to perform the community service, and before the person may participate in the community service program, except that:

- (1) A person convicted in a court in this State may be given an extension of time or allowed to begin the community service before the person pays the fee by the court in which the person is convicted; or
- (2) A person performing community service pursuant to a deferred prosecution or similar agreement may be given an extension of time or allowed to begin community service before the fee is paid by the official or agency representing the State in the agreement."

**SECTION 19.26.(d)** Effective December 1, 2009, Section 13(b) of S.L. 2009-372 is amended by deleting "~~two hundred dollars (\$200.00)~~" in the first sentence of G.S. 15A-1371(i) and substituting "~~two hundred twenty-five (\$225.00) dollars~~".

**SECTION 19.26.(e)** Effective December 1, 2009, Section 17 of S.L. 2009-372 is amended by deleting "two hundred dollars (\$200.00)" in the first sentence of G.S. 143B-262.4(b) and substituting "two hundred twenty-five dollars (\$225.00)".

**SECTION 19.26.(f)** This section becomes effective September 1, 2009.

## **PART XXA. DEPARTMENT OF ADMINISTRATION**

### **INCREASE MARRIAGE LICENSE FEE**

**SECTION 20A.4.(a)** G.S. 161-10(a)(2) reads as rewritten:

- "(2) Marriage Licenses. – For issuing a license ~~fifty dollars (\$50.00)~~; sixty dollars (\$60.00); for issuing a delayed certificate with one certified copy twenty dollars (\$20.00); and for a proceeding for correction of an application, license or certificate, with one certified copy ten dollars (\$10.00)."

**SECTION 20A.4.(b)** G.S. 161-11.2 reads as rewritten:

"~~Twenty dollars (\$20.00)~~ Thirty dollars (\$30.00) of each fee collected by a register of deeds for issuance of a marriage license pursuant to G.S. 161-10(a)(2) shall be forwarded by the register of deeds to the county finance officer, who shall forward the funds to the Department of Administration to be credited to the Domestic Violence Center Fund established under G.S. 50B-9. The register of deeds shall forward the fees to the county finance officer as soon as practical. The county finance officer shall forward the fees to the Department of Administration within 60 days after receiving the fees. The Register of Deeds shall inform the applicants that ~~twenty dollars (\$20.00)~~ thirty dollars (\$30.00) of the fee for a marriage license shall be used for Domestic Violence programs."

**SECTION 20A.4.(c)** This section becomes effective September 1, 2009, and applies to licenses issued on or after that date.

### **ALLOW DOMESTIC VIOLENCE TASK FORCE OF PAMLICO COUNTY TO ESTABLISH ITS OWN DOMESTIC VIOLENCE CENTER**

**SECTION 20A.6.** For program year 2009-2010, the provisions of G.S. 50B-9(1) and any other protocol, policy, or guideline related to the timing of any grant application shall not exclude the Domestic Violence Task Force of Pamlico County as an eligible domestic violence center pursuant to G.S. 50B-9.

## **PART XXB. DEPARTMENT OF CULTURAL RESOURCES**

### **ARCHIVES AND RECORDS MANAGEMENT PROGRAM FEE**

**SECTION 20B.3.(a)** Article 1 of Chapter 161 of the General Statutes is amended by adding a new section to read:

**"§ 161-11.6. Fees for archival of records.**

In addition to any other fees collected pursuant to this Article, the register of deeds shall collect a fee of five dollars (\$5.00) for each deed filed, registered, or recorded. The register of deeds shall forward the fees collected to the county finance officer. The county finance officer shall, on a monthly basis, remit the fees to the Department of Cultural Resources for the purpose of offsetting the costs of the Archives and Records Management Program less two percent (2%) of the amount of the fees collected to cover the county's administrative costs."

**SECTION 20B.3.(b)** G.S. 121-5 is amended by adding a new subsection to read:

"(e) Program Funding. – Fees credited to the Department under G.S. 161-11.6 shall be used to offset the Department's costs in providing essential records management and archival services for public records pursuant to Chapter 121 and Chapter 132 of the General Statutes."

**SECTION 20B.3.(c)** This section becomes effective October 1, 2009, and applies to all deeds filed, registered, or recorded on or after that date.

## **PART XXC. OFFICE OF THE STATE AUDITOR**

### **NORTH CAROLINA PARTNERSHIP FOR CHILDREN, INC., TO CONDUCT AUDITS OF LOCAL PARTNERSHIPS**

**SECTION 20C.1.(a)** G.S. 143B-168.12(c) reads as rewritten:

"(c) The North Carolina Partnership shall require each local partnership to place in each of its contracts a statement that the contract is subject to monitoring by the local partnership and North Carolina Partnership, that contractors and subcontractors shall be fidelity bonded, unless the contractors or subcontractors receive less than one hundred thousand dollars (\$100,000) or unless the contract is for child care subsidy services, that contractors and subcontractors are subject to audit oversight by the State Auditor, and that contractors and subcontractors shall be subject to the requirements of ~~G.S. 143C-6-14~~.G.S. 143C-6-22. Organizations subject to G.S. 159-34 shall be exempt from this requirement."

**SECTION 20C.1.(b)** G.S. 143B-168.14(b) reads as rewritten:

"(b) Each local partnership shall be subject to audit and review by the ~~State Auditor under Article 5A of Chapter 147 of the General Statutes. The State Auditor~~North Carolina Partnership. The North Carolina Partnership shall ~~conduct~~ contract for annual financial and compliance audits of local partnerships that are rated "needs improvement" in performance assessments authorized in G.S. 143B-168.12(a)(7). Local partnerships that are rated "superior" or "satisfactory" in performance assessments authorized in G.S. 143B-168.12(a)(7) shall undergo biennial financial and compliance audits as contracted for by the ~~State Auditor~~North Carolina Partnership. The North Carolina Partnership shall provide the State Auditor with a copy of each audit conducted pursuant to this subsection."

## **PART XXI. DEPARTMENT OF INSURANCE**

### **SET INSURANCE REGULATORY CHARGE**

**SECTION 21.1.(a)** The percentage rate to be used in calculating the insurance regulatory charge under G.S. 58-6-25 is five and one-half percent (5.5%) for the 2009 calendar year.

**SECTION 21.1.(b)** The percentage rate to be used in calculating the insurance regulatory charge under G.S. 58-6-25 is six percent (6%) for the 2010 calendar year.

**SECTION 21.1.(c)** This section is effective when it becomes law.

### **PREMIUM FINANCE COMPANY LICENSE FEE REVISIONS**

**SECTION 21.2.(a)** G.S. 58-35-5(e) reads as rewritten:

"(e) There shall be two types of licenses issued to an insurance premium finance company:

- (1) An "A" type license shall be issued to insurance premium finance companies whose business of insurance premium financing is limited to the financing of

insurance premiums of one insurance agent or agency and whose primary function is to finance only the insurance premium of such agent or agency. The license fee for an "A" type license shall be ~~three hundred dollars (\$300.00)~~ six hundred dollars (\$600.00) for each license year or part thereof.

- (2) A "B" type license shall be issued to an insurance premium finance company whose business of insurance premium financing is not limited to the financing of insurance premiums of one insurance agent or agency and whose primary function is to finance the insurance premiums of more than one insurance agent or agency. The license fee for a "B" type license shall be ~~one thousand two hundred dollars (\$1,200)~~ two thousand four hundred dollars (\$2,400) for each license year or part thereof.

A branch office license may be issued for either an "A" type or "B" type license to the second and any subsequent locations where the company operates an office. The fee for the branch office license shall be ~~fifty dollars (\$50.00)~~ one hundred dollars (\$100.00) for each license year or part thereof. The examination fee when required by this section shall be two hundred fifty dollars (\$250.00) per application."

**SECTION 21.2.(b)** This section becomes effective August 15, 2009.

## **BUILDING CODE OFFICIALS CERTIFICATION RENEWAL LATE FEE INCREASE**

**SECTION 21.3.** G.S. 143-151.16 reads as rewritten:

**"§ 143-151.16. Certification fees; renewal of certificates; examination fees.**

(a) The Board shall establish a schedule of fees to be paid by each applicant for certification as a qualified Code-enforcement official. Such fee shall not exceed twenty dollars (\$20.00) for each applicant.

(b) A certificate, other than a probationary certificate, as a qualified Code-enforcement official issued pursuant to the provisions of this Article must be renewed annually on or before the first day of July. Each application for renewal must be accompanied by a renewal fee to be determined by the Board, but not to exceed ten dollars (\$10.00). The Board is authorized to charge an extra ~~two dollar (\$2.00)~~ four dollar (\$4.00) late renewal fee for renewals made after the first day of July each year.

...."

## **MANUFACTURING HOUSING BOARD LICENSE FEE REVISIONS**

**SECTION 21.4.** G.S. 143-143.11 reads as rewritten:

**"§ 143-143.11. License required; application for license.**

(a) It shall be unlawful for any manufactured home manufacturer, dealer, salesperson, or set-up contractor to engage in business as such in this State without first obtaining a license from the Board for each place of business operated by the licensee, as provided in this Part. The fact that a person is licensed by the Board as a set-up contractor or a dealer does not preempt any other licensing boards' applicable requirements for that person.

(b) Application for the license shall be made to the Board at such time, in such form, and contain information the Board requires, and shall be accompanied by the fee established by the Board. The fee shall not exceed ~~three hundred dollars (\$300.00)~~ three hundred fifty dollars (\$350.00) for each license issued. In addition to the license fee, the Board may also charge an applicant a fee to cover the cost of the criminal history record check required by G.S. 143-143.10A.

(c) In the application, the Board shall require information relating to the matters set forth in G.S. 143-143.13 as grounds for refusal of a license, and information relating to other pertinent matters consistent with safeguarding the public interest. All of this information shall be considered by the Board in determining the fitness of the applicant. Once the Board has determined that an applicant is fit, the Board must provide the applicant a license for each place of business operated by the applicant.

(d) All licenses shall expire, unless revoked or suspended, on June 30 of each year following the date of issue.

(e) Every licensee shall, on or before the first day of July of each year, obtain a renewal of a license for the next year by applying to the Board, completing the necessary hours of continuing education required under G.S. 143-143.11B, and paying the required renewal fee for each place of business operated by the licensee. The renewal fee shall not exceed ~~three hundred dollars (\$300.00)~~ three hundred fifty dollars (\$350.00) for each license issued. Upon failure to

renew by the first day of July, a license automatically expires. The license may be renewed at any time within one year after its lapse upon payment of the renewal fee and a late filing fee. The late filing fee shall not exceed ~~three hundred dollars (\$300.00)~~three hundred fifty dollars (\$350.00).

(f) Repealed by Session Laws 2005-297, s. 1, effective August 22, 2005.

(g) Notwithstanding the provisions of subsection (a), the Board may provide by rule that a manufactured home salesperson will be allowed to engage in business during the time period after making application for a license but before such license is granted.

(h) As a prerequisite to obtaining a license under this Part, a person may be required to pass an examination prescribed by the Board that is based on the Code, this Part, and any other subject matter considered relevant by the Board."

#### **COLLECTION AGENCY LICENSE FEE INCREASE**

**SECTION 21.5.(a)** G.S. 58-70-35 reads as rewritten:

**"§ 58-70-35. Application fee; issuance of permit; contents and duration.**

(a) Upon the filing of the application and information required by this Article, the applicant shall pay a nonrefundable fee of ~~five hundred dollars (\$500.00)~~one thousand dollars (\$1,000), and no permit may be issued until this fee is paid. Fees collected under this subsection shall be used in paying the expenses incurred in connection with the consideration of such applications and the issuance of such permits.

...."

**SECTION 21.5.(b)** This section becomes effective August 15, 2009.

#### **MOTOR CLUB LICENSE FEE INCREASE**

**SECTION 21.6.(a)** G.S. 58-69-10 reads as rewritten:

**"§ 58-69-10. Applications for licenses; fees; bonds or deposits.**

Licenses hereunder shall be obtained by filing ~~written application therefor~~a written application with the Commissioner in such form and manner as the Commissioner shall require. As a prerequisite to issuance of a license:

- (1) The applicant shall furnish to the Commissioner such data and information as the Commissioner may deem reasonably necessary to enable him to determine, in accordance with the provisions of G.S. 58-69-15, whether or not a license should be issued to the applicant.
- (1a) If the applicant has never been issued a motor club license it shall be required to submit an audited financial statement. If the applicant has previously been licensed the Commissioner may require that the financial statement be audited if it is reasonably necessary to determine whether or not a license should be issued to the applicant.
- (2) If the applicant is a motor club it shall be required to pay to the Commissioner a nonrefundable annual license fee of ~~three hundred dollars (\$300.00)~~six hundred dollars (\$600.00) and to deposit or file with the Commissioner a bond, in favor of the State of North Carolina and executed by a surety company duly authorized to transact business in this State, in the amount of fifty thousand dollars (\$50,000), or securities of the type hereinafter specified in the amount of fifty thousand dollars (\$50,000), pledged to or made payable to the State of North Carolina and conditioned upon the full compliance by the applicant with the provisions of this Article and the regulations and orders issued by the Commissioner pursuant thereto, and upon the good faith performance by the applicant of its contracts for motor club services.
- (3) If the applicant is a branch or district office of a motor club licensed under this Article it shall pay to the Commissioner a nonrefundable license fee of ~~fifty dollars (\$50.00)~~one hundred dollars (\$100.00).
- (4) If the applicant is a franchise motor club it shall pay to the Commissioner a nonrefundable annual license fee of ~~one hundred dollars (\$100.00)~~two hundred dollars (\$200.00) and shall deposit or file with the Commissioner a bond, in favor of the State of North Carolina and executed by a surety company duly authorized to transact business in this State, in the amount of fifty thousand dollars (\$50,000), or securities of the type hereinafter

specified in the amount of fifty thousand dollars (\$50,000), pledged to or made payable to the State of North Carolina and conditioned upon the full compliance by the applicant with the provisions of this Article and the regulations and orders issued by the Commissioner pursuant thereto and upon the good faith performance by the applicant of its contracts for motor club services.

- (5) Any applicant depositing securities under this section shall do so in the form and manner as prescribed in Article 5 of this Chapter, and the provisions of Article 5 of this Chapter, shall be applicable to securities pledged under this Article."

**SECTION 21.6.(b)** This section becomes effective August 15, 2009.

### **BAIL BONDSMEN AND RUNNERS FEE INCREASES**

**SECTION 21.7.(a)** G.S. 58-71-55 reads as rewritten:

"§ 58-71-55. License fees.

A nonrefundable license fee of ~~one hundred dollars (\$100.00)~~ two hundred dollars (\$200.00) shall be paid to the Commissioner with each application for license as a bail bondsman and a license fee of ~~sixty dollars (\$60.00)~~ one hundred twenty dollars (\$120.00) shall be paid to the Commissioner with each application for license as a runner."

**SECTION 21.7.(b)** This section becomes effective August 15, 2009.

### **HOME INSPECTOR LICENSE FEE INCREASES**

**SECTION 21.8.** G.S. 143-151.57 reads as rewritten:

"§ 143-151.57. Fees.

(a) Maximum Fees. – The Board may adopt fees that do not exceed the amounts set in the following table for administering this Article:

<u>Item</u>	<u>Maximum Fee</u>
Application for home inspector license	<del>\$25.00</del> <u>35.00</u>
Application for associate home inspector	<del>15.00</del> <u>20.00</u>
Home inspector examination	<del>75.00</del> <u>80.00</u>
Issuance <u>or renewal</u> of home inspector license	<del>150.00</del> <u>160.00</u>
Issuance <u>or renewal</u> of associate home inspector license	<del>100.00</del> <u>110.00</u>
Late renewal of home inspector license	<del>25.00</del> <u>30.00</u>
Late renewal of associate home inspector license	<del>15.00</del> <u>20.00</u>
Application for course approval	150.00
Renewal of course approval	75.00
Course fee, per credit hour per license	5.00
Credit for unapproved continuing education course	50.00
Copies of Board rules or licensure standards	Cost of printing and mailing.

(b) Subsequent Application. – An individual who applied for a license as a home inspector and who failed the home inspector examination is not required to pay an additional application fee if the individual submits another application for a license as a home inspector. The individual must pay the examination fee, however, to be eligible to take the examination again."

### **CCRC APPLICATION AND ANNUAL DISCLOSURE FILING FEE INCREASES**

**SECTION 21.9.(a)** G.S. 58-64-5 reads as rewritten:

"§ 58-64-5. License.

(a) No provider shall engage in the business of offering or providing continuing care in this State without a license to do so obtained from the Commissioner as provided in this Article. It is a Class 1 misdemeanor for any person, other than a provider licensed under this Article, to advertise or market to the general public any product similar to continuing care through the use of such terms as "life care", "continuing care", or "guaranteed care for life", or similar terms, words, or phrases. The licensing process may involve a series of steps pursuant to rules adopted by the Commissioner under this Article.

(b) The application for a license shall be filed with the Department by the provider on forms prescribed by the Department and within a period of time prescribed by the Department; and shall include all information required by the Department pursuant to rules adopted by it

under this Article including, but not limited to, the disclosure statement meeting the requirements of this Article and other financial and facility development information required by the Department. The application for a license must be accompanied by an application fee of ~~two hundred dollars (\$200.00)~~ five hundred dollars (\$500.00).

...."

**SECTION 21.9.(b)** G.S. 58-64-30 reads as rewritten:

**"§ 58-64-30. Annual disclosure statement revision.**

(a) Within 150 days following the end of each fiscal year, the provider shall file with the Commissioner a revised disclosure statement setting forth current information required pursuant to G.S. 58-64-20. The provider shall also make this revised disclosure statement available to all the residents of the facility. This revised disclosure statement shall include a narrative describing any material differences between (i) the forecasted statements of revenues and expenses and cash flows or other forecasted financial data filed pursuant to G.S. 58-64-20 as a part of the disclosure statement recorded most immediately subsequent to the start of the provider's most recently completed fiscal year and (ii) the actual results of operations during that fiscal year, together with the revised forecasted statements of revenues and expenses and cash flows or other forecasted financial data being filed as a part of the revised disclosure statement. A provider may also revise its disclosure statement and have the revised disclosure statement recorded at any other time if, in the opinion of the provider, revision is necessary to prevent an otherwise current disclosure statement from containing a material misstatement of fact or omitting a material fact required to be stated therein. Only the most recently recorded disclosure statement, with respect to a facility, and in any event, only a disclosure statement dated within one year plus 150 days prior to the date of delivery, shall be considered current for purposes of this Article or delivered pursuant to G.S. 58-64-20.

(b) The annual disclosure statement required to be filed with the Commissioner under this section shall be accompanied by an annual filing fee of ~~one hundred dollars (\$100.00)~~ one thousand dollars (\$1,000)."

**SECTION 21.9.(c)** This section becomes effective August 15, 2009.

**HEALTH MAINTENANCE ORGANIZATION FEE INCREASES**

**SECTION 21.10.(a)** G.S. 58-67-160 reads as rewritten:

**"§ 58-67-160. Fees.**

Every health maintenance organization subject to this Article shall pay to the Commissioner a fee of ~~two hundred fifty dollars (\$250.00)~~ five hundred dollars (\$500.00) for filing an application for a license and an annual license continuation fee of ~~one thousand five hundred dollars (\$1,500)~~ two thousand dollars (\$2,000) for each license. The license shall continue in full force and effect, subject to timely payment of the annual license continuation fee in accordance with G.S. 58-6-7 and subject to any other applicable provisions of the insurance laws of this State."

**SECTION 21.10.(b)** This section becomes effective August 15, 2009.

**INSURANCE COMPANY APPLICATION AND LICENSING FEE INCREASES**

**SECTION 21.11.(a)** G.S. 58-6-5(1) reads as rewritten:

"(1) For filing and examining an insurance company application for admission, a nonrefundable fee of ~~two hundred fifty dollars (\$250.00)~~ one thousand dollars (\$1,000), to be submitted with the filing; for each certification or confirmation of an insurance company deposit held by the Commissioner pursuant to this Chapter, twenty-five dollars (\$25.00)."

**SECTION 21.11.(b)** G.S. 58-6-7(a) reads as rewritten:

"(a) In order to do business in this State, an insurance company shall apply for and obtain a license from the Commissioner. The license shall be perpetual and shall continue in full force and effect, subject to timely payment of the annual license continuation fee in accordance with this Chapter and subject to any other applicable provision of the insurance laws of this State. The insurance company shall pay a fee for each year the license is in effect, as follows:

- For each domestic farmer's mutual assessment fire insurance company .....\$ 25.00
- For each fraternal order .....500.00
- For each of all other insurance companies, except
- mutual burial associations taxed under G.S. 105-121.1 .....~~1,500.00~~ 2,500.00



The fees levied in this subsection are in addition to those specified in G.S. 58-6-5."

**SECTION 21.11.(c)** This section becomes effective August 15, 2009.

### **LIABILITY RISK RETENTION AND PURCHASING GROUP FEE INCREASES**

**SECTION 21.12.(a)** G.S. 58-22-70 reads as rewritten:

**"§ 58-22-70. Registration and renewal fees.**

Every risk retention group and purchasing group that registers with the Commissioner under this Article shall pay the following fees:

Risk retention group registration	<del>\$250.00</del>	<u>\$500.00</u>
Purchasing group registration	<del>50.00</del>	<u>500.00</u>
Risk retention group renewal	<del>1,000.00</del>	<u>1,500.00</u>
Purchasing group renewal	<del>50.00</del>	<u>100.00</u>

Registration fees shall not be prorated and must be submitted with the application for registration. Renewal fees shall not be prorated and shall be paid on or before January 1 of each year."

**SECTION 21.12.(b)** This section becomes effective August 15, 2009.

### **MEDICAL SERVICE CORPORATION FEE INCREASES**

**SECTION 21.13.(a)** G.S. 58-65-1 reads as rewritten:

**"§ 58-65-1. Regulation and definitions; application of other laws; profit and foreign corporations prohibited.**

(a) Any corporation organized under the general corporation laws of the State of North Carolina for the purpose of maintaining and operating a nonprofit hospital or medical or dental service plan whereby hospital care or medical or dental service may be provided in whole or in part by the corporation or by hospitals, physicians, or dentists participating in the plan, or plans, shall be governed by this Article and Article 66 of this Chapter and shall be exempt from all other provisions of the insurance laws of this State, unless otherwise provided.

The term "hospital service plan" as used in this Article includes the contracting for certain fees for, or furnishing of, hospital care, laboratory facilities, X-ray facilities, drugs, appliances, anesthesia, nursing care, operating and obstetrical equipment, accommodations or any other services authorized or permitted to be furnished by a hospital under the laws of the State of North Carolina and approved by the North Carolina Hospital Association or the American Medical Association.

The term "medical service plan" as used in this Article includes the contracting for the payment of fees toward, or furnishing of, medical, obstetrical, surgical or any other professional services authorized or permitted to be furnished by a duly licensed physician or other provider listed in G.S. 58-50-30. The term "medical services plan" also includes the contracting for the payment of fees toward, or furnishing of, professional medical services authorized or permitted to be furnished by a duly licensed provider of health services licensed under Chapter 90 of the General Statutes.

The term "dental service plan" as used in this Article includes contracting for the payment of fees toward, or furnishing of dental or any other professional services authorized or permitted to be furnished by a duly licensed dentist.

The term "hospital service corporation" as used in this Article is intended to mean any nonprofit corporation operating a hospital or medical or dental service plan, as defined in this section. Any corporation organized and subject to the provisions of this Article, the certificate of incorporation of which authorizes the operation of either a hospital or medical or dental service plan, or any or all of them, may, with the approval of the Commissioner, issue subscribers' contracts or certificates approved by the Commissioner of Insurance, for the payment of either hospital or medical or dental fees, or the furnishing of such services, or any or all of them, and may enter into contracts with hospitals for physicians or dentists, or any or all of them, for the furnishing of fees or services respectively under a hospital or medical or dental service plan, or any or all of them.

The term "preferred provider" as used in this Article with respect to contracts, organizations, policies or otherwise means a health care service provider who has agreed to accept, from a corporation organized for the purposes authorized by this Article or other applicable law, special reimbursement terms in exchange for providing services to beneficiaries of a plan administered pursuant to this Article. Except to the extent prohibited either by G.S. 58-65-140 or by rules adopted by the Commissioner not inconsistent with this Article, the

contractual terms and conditions for special reimbursement shall be those which the corporation and preferred provider find to be mutually agreeable.

The term "full service corporation" as used in this Article means any corporation organized under the provisions of this Article that offers a medical service plan or a hospital service plan.

The term "single service corporation" as used in this Article means any corporation organized under the provisions of this Article that offers only a dental service plan.

...."

**SECTION 21.13.(b)** G.S. 58-65-55 reads as rewritten:

**"§ 58-65-55. Issuance and continuation of license.**

(a) Every corporation subject to this Article shall pay to the Commissioner a fee of two hundred fifty dollars (\$250.00) for filing an application for a license. Fee payment shall be contemporaneous with the filing. Before issuing or continuing any such license or certificate the Commissioner may make such an examination or investigation as the Commissioner deems expedient. The Commissioner shall issue a license upon the payment of a fee of one thousand five hundred dollars (\$1,500) for a single service corporation or two thousand five hundred dollars (\$2,500) for a full service corporation and upon being satisfied on the following points:

- (1) The applicant is established as a bona fide nonprofit hospital service corporation as defined by this Article and Article 66 of this Chapter.
- (2) The rates charged and benefits to be provided are fair and reasonable.
- (3) The amounts provided as working capital of the corporation are repayable only out of earned income in excess of amounts paid and payable for operating expenses and hospital and medical and/or dental expenses and such reserve as the Department deems adequate, as provided hereinafter.
- (4) That the amount of money actually available for working capital be sufficient to carry all acquisition costs and operating expenses for a reasonable period of time from the date of the issuance of the certificate.

(b) The license shall continue in full force and effect, subject to payment of an annual license continuation fee of ~~one thousand five hundred dollars (\$1,500)~~ one thousand five hundred dollars (\$1,500) for a single service corporation or two thousand five hundred dollars (\$2,500), subject to all other provisions of subsection (a) of this section and subject to any other applicable provisions of the insurance laws of this State."

**SECTION 21.13.(c)** This section becomes effective August 15, 2009.

## **SURPLUS INSURANCE LINES APPLICATION AND LICENSE FEE INCREASES**

**SECTION 21.14.(a)** G.S. 58-21-20(c) reads as rewritten:

"(c) Every surplus lines insurer that applies for eligibility under this section shall pay a nonrefundable fee of ~~two hundred fifty dollars (\$250.00)~~ five hundred dollars (\$500.00). In order to renew eligibility, such insurer shall pay a nonrefundable renewal fee of ~~five hundred dollars (\$500.00)~~ one thousand dollars (\$1,000) on or before January 1 of each year thereafter. Such fees shall not be prorated."

**SECTION 21.14.(b)** This section becomes effective August 15, 2009.

## **ACCREDITED REINSURANCE LICENSE FEE INCREASE**

**SECTION 21.15.(a)** G.S. 58-7-21(b) reads as rewritten:

"(b) Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a reduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of subdivisions (1), (2), (3), (4), or (5) of this subsection. Credit shall be allowed under subdivision (1), (2), or (3) of this subsection only with regard to cessions of those kinds or classes of business in which the assuming insurer is licensed or otherwise permitted to write or assume in its state of domicile or, in the case of a United States branch of an alien assuming insurer, in the state through which it is entered and licensed to transact insurance or reinsurance. Credit shall be allowed under subdivision (3) or (4) of this subsection only if the applicable requirements of subdivision (6) of this section have been satisfied.

- (1) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is licensed to transact insurance or reinsurance in this State.
- (2) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is accredited as a reinsurer in this State. An accredited reinsurer is one that:

- a. Files with the Commissioner evidence of its submission to this State's jurisdiction;
- b. Submits to this State's authority to examine its books and records;
- c. Is licensed to transact insurance or reinsurance in at least one state, or in the case of a United States branch of an alien assuming insurer is entered through and licensed to transact insurance or reinsurance in at least one state;
- d. Files annually with the Commissioner a copy of its annual statement filed with the insurance regulator of its state of domicile, a copy of its most recent audited financial statement, and a fee of ~~five hundred dollars (\$500.00);~~ seven hundred fifty dollars (\$750.00) and either
  - 1. Maintains a policyholders' surplus in an amount that is not less than twenty million dollars (\$20,000,000) and whose accreditation has not been denied by the Commissioner within 90 days after its submission; or
  - 2. Maintains a policyholders' surplus in an amount less than twenty million dollars (\$20,000,000) and whose accreditation has been approved by the Commissioner.

Credit shall not be allowed a domestic ceding insurer if the assuming insurer's accreditation has been revoked by the Commissioner after notice and opportunity for a hearing.

...."  
**SECTION 21.15.(b)** This section becomes effective August 15, 2009.

**THIRD-PARTY INSURANCE ADMINISTRATOR LICENSE FEE INCREASE**

**SECTION 21.16.(a)** G.S. 58-56-51 reads as rewritten:

**"§ 58-56-51. License required.**

(a) No person shall act as, offer to act as, or hold himself or herself out as a TPA in this State without a valid TPA license issued by the Commissioner. Licenses shall be renewed annually. Failure to submit a complete renewal application shall result in the expiration of the license of the TPA as a matter of law; provided, however, the Commissioner may grant the TPA an extension of time for good cause.

(b) Each application for the issuance or renewal of a license shall be made upon a form prescribed by the Commissioner and shall be accompanied by a nonrefundable filing fee of ~~one hundred dollars (\$100.00)~~ three hundred dollars (\$300.00) and evidence of maintenance of a fidelity bond, errors and omissions liability insurance, or other security, of a type and in an amount to be determined by rules of the Commissioner. Applications for issuance of licenses shall include or be accompanied by the following information and documents:

- (1) All organizational documents of the TPA, including any articles of incorporation, articles of association, partnership agreement, trade name certificate, or trust agreement, any other applicable documents, and all amendments to these documents.

...  
 The information required by subdivisions (1) through (7) of this subsection, including any trade secrets, shall be kept confidential; provided that the Commissioner may use that information in any judicial or administrative proceeding instituted against the TPA. Applications for renewals of licenses shall include or be accompanied by any changes in the information required by subdivisions (1) through (7) of this subsection.

...."  
**SECTION 21.16.(b)** This section becomes effective August 15, 2009.

**VIATICAL SETTLEMENT PROVIDER AND BROKER LICENSE FEE INCREASES**

**SECTION 21.17.(a)** G.S. 58-58-210 reads as rewritten:

**"§ 58-58-210. License requirements.**

...  
 (b) Application for a provider or broker license shall be made to the Commissioner by the applicant on a form prescribed by the Commissioner, and these applications shall be accompanied by a fee of ~~one hundred dollars (\$100.00);~~ five hundred dollars (\$500.00).

(c) Licenses may be renewed from year to year on the anniversary date upon payment of the annual renewal fee of ~~one hundred dollars (\$100.00)~~ five hundred dollars (\$500.00). Failure to pay the fees by the renewal date results in expiration of the license.

...."

**SECTION 21.17.(b)** This section becomes effective August 15, 2009.

## **PART XXIA. OFFICE OF ADMINISTRATIVE HEARINGS**

### **FEES FOR FILING CONTESTED CASE HEARINGS BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS**

**SECTION 21A.1.(a)** G.S. 150B-23(a) reads as rewritten:

"(a) A contested case shall be commenced by paying a fee in an amount established in G.S. 150B-23.2 and by filing a petition with the Office of Administrative Hearings and, except as provided in Article 3A of this Chapter, shall be conducted by that Office. The party who files the petition shall serve a copy of the petition on all other parties and, if the dispute concerns a license, the person who holds the license. A party who files a petition shall file a certificate of service together with the petition. A petition shall be signed by a party or a representative of the party and, if filed by a party other than an agency, shall state facts tending to establish that the agency named as the respondent has deprived the petitioner of property, has ordered the petitioner to pay a fine or civil penalty, or has otherwise substantially prejudiced the petitioner's rights and that the agency:

- (1) Exceeded its authority or jurisdiction;
- (2) Acted erroneously;
- (3) Failed to use proper procedure;
- (4) Acted arbitrarily or capriciously; or
- (5) Failed to act as required by law or rule.

The parties in a contested case shall be given an opportunity for a hearing without undue delay. Any person aggrieved may commence a contested case hereunder.

A local government employee, applicant for employment, or former employee to whom Chapter 126 of the General Statutes applies may commence a contested case under this Article in the same manner as any other petitioner. The case shall be conducted in the same manner as other contested cases under this Article, except that the State Personnel Commission shall enter final decisions only in cases in which it is found that the employee, applicant, or former employee has been subjected to discrimination prohibited by Article 6 of Chapter 126 of the General Statutes or in any case where a binding decision is required by applicable federal standards. In these cases, the State Personnel Commission's decision shall be binding on the local appointing authority. In all other cases, the final decision shall be made by the applicable appointing authority."

**SECTION 21A.1.(b)** Chapter 150B of the General Statutes is amended by adding a new section to read:

#### **"§ 150B-23.2. Fee for filing a contested case hearing.**

(a) Filing Fee. – In every contested case commenced in the Office of Administrative Hearings by a person aggrieved, the petitioner shall pay a filing fee, and the administrative law judge shall have the authority to assess that filing fee against the losing party, in the amount of one hundred twenty-five dollars (\$125.00), unless the Office of Administrative Hearings establishes a lesser filing fee by rule.

(b) Time of Collection. – All fees that are required to be assessed, collected, and remitted under subsection (a) of this section shall be collected by the Office of Administrative Hearings at the time of commencement of the contested case (except in suits in forma pauperis).

(c) Forms of Payment. – The Office of Administrative Hearings may by rule provide for the acceptable forms for payment and transmission of the filing fee.

(d) Waiver or Refund. – The Office of Administrative Hearings shall by rule provide for the fee to be waived in a contested case in which the petition is filed in forma pauperis and supported by such proofs as are required in G.S. 1-110 and in a contested case involving a mandated federal cause of action. The Office of Administrative Hearings shall by rule provide for the fee to be refunded in a contested case in which the losing party is the State."

**SECTION 21A.1.(c)** This section becomes effective October 1, 2009, and applies to contested cases filed on or after that date.

## **REDUCE COMPENSATION FOR RULES REVIEW COMMISSION MEMBERS**

**SECTION 21A.2.** G.S 143B-30.1(d) reads as rewritten:

"(d) Members of the Commission who are not officers or employees of the State shall receive compensation of ~~two hundred dollars (\$200.00)~~ one hundred fifty dollars (\$150.00) for each day or part of a day of service plus reimbursement for travel and subsistence expenses at the rates specified in G.S. 138-5. Members of the Commission who are officers or employees of the State shall receive reimbursement for travel and subsistence at the rate set out in G.S. 138-6."

## **PART XXII. OFFICE OF STATE BUDGET AND MANAGEMENT**

### **STUDY OSBM, OSC, AND TREASURER CONSOLIDATION**

**SECTION 22.1.** The Program Evaluation Division, after reviewing the constitutional duties of the Governor in preparing and executing the budget and the constitutional status of the duties of the office of State Treasurer, shall study the feasibility of consolidating the Office of State Controller, the Office of State Budget and Management, and some of the functions of the State Treasurer, or reallocating functions of those State agencies, all with the goal of achieving economies or improving management.

The Program Evaluation Division, no later than April 1, 2010, shall report to the full chairs of the Senate and House Appropriations Committees and to the Fiscal Research Division its findings and recommendations from the study required by the previous paragraph.

### **FUNDS FOR NC SYMPHONY**

**SECTION 22.2.(a)** Of the funds appropriated in this act to the Office of State Budget and Management-Special Appropriations, the sum of one million five hundred thousand dollars (\$1,500,000) in nonrecurring funds for the 2009-2010 fiscal year shall be allocated to the North Carolina Symphony in accordance with this section.

**SECTION 22.2.(b)** It is the intent of the General Assembly that the NC Symphony achieve its goal of raising the sum of eight million dollars (\$8,000,000) in non-State funding to support the operations of the Symphony. To that end, upon demonstrating to the Office of State Budget and Management that the NC Symphony has reached fund-raising targets in the amounts set forth in this subsection, the NC Symphony shall receive allocations from the Office of State Budget and Management as follows:

- (1) Upon raising the initial sum of four million dollars (\$4,000,000) in non-State funding, the NC Symphony shall receive the sum of five hundred thousand dollars (\$500,000).
- (2) Upon raising an additional sum of two million dollars (\$2,000,000) in non-State funding for a total amount of six million dollars (\$6,000,000) in non-State funds, the NC Symphony shall receive the sum of five hundred thousand dollars (\$500,000).
- (3) Upon raising an additional sum of two million dollars (\$2,000,000) in non-State funding for a total sum of eight million dollars (\$8,000,000) in non-State funds, the NC Symphony shall receive the final sum of five hundred thousand dollars (\$500,000) for the 2009-2010 fiscal year.

**SECTION 22.2.(c)** Funds allocated pursuant to this section are in addition to any other funds allocated to the NC Symphony in this act.

## **PART XXIII. OFFICE OF THE STATE CONTROLLER**

### **OVERPAYMENTS AUDIT**

**SECTION 23.1.(a)** During the 2009-2011 biennium, receipts generated by the collection of inadvertent overpayments by State agencies to vendors as a result of pricing errors, neglected rebates and discounts, miscalculated freight charges, unclaimed refunds, erroneously paid excise taxes, and related errors as required by G.S. 147-86.22(c) are to be deposited in the Special Reserve Account 24172.

**SECTION 23.1.(b)** For each year of the 2009-2011 biennium, five hundred thousand dollars (\$500,000) of the funds transferred from the Special Reserve Account 24172

shall be used by the Office of the State Controller for data processing, debt collection, or e-commerce costs.

**SECTION 23.1.(c)** All funds available in the Special Reserve Account 24172 on July 1 of each year of the 2009-2011 biennium are transferred to the General Fund on that date.

**SECTION 23.1.(d)** Any unobligated funds in the Special Reserve Account 24172 that are realized above the allowance in subsection (b) of this section are subject to appropriation by the General Assembly.

**SECTION 23.1.(e)** The State Controller shall report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the revenue deposited into the Special Reserve Account 24172 and the disbursement of that revenue.

#### **BEACON STAFF TO SUPPORT STATEWIDE ENTERPRISE TRAINING PROGRAM**

**SECTION 23.2.(a)** For the 2009-2011 fiscal biennium, the Office of the State Controller shall use three hundred sixty-four thousand four hundred thirty-eight dollars (\$364,438) of existing BEACON funds to continue the following six full-time, time-limited training positions that are effective July 1, 2009, and that support the statewide enterprise training program established by Section 20.1 of S.L. 2008-107:

- (1) Two Staff Development Specialists II (\$112,525).
- (2) One BEACON University Trainer (\$70,928).
- (3) One Technical Support Technician (\$64,708).
- (4) One Administrative Support Specialist (\$45,347).
- (5) One Business and Technology Application Technician (\$70,928).

**SECTION 23.2.(b)** Each agency that utilizes BEACON for payroll or personnel purposes shall participate in the BEACON training program offered by the Office of State Controller.

#### **PART XXIV. DEPARTMENT OF THE SECRETARY OF STATE**

##### **INCREASE REGISTRATION FEE RENEWAL FOR SECURITIES SALESMEN**

**SECTION 24.1.(a)** G.S. 78A-37(b) reads as rewritten:

"(b) Every applicant for initial or renewal registration shall pay a filing fee of three hundred dollars (\$300.00) in the case of a dealer and ~~seventy-five dollars (\$75.00)~~ one hundred twenty-five dollars (\$125.00) in the case of a salesman. The Administrator may by rule reduce the registration fee proportionately when the registration will be in effect for less than a full year."

**SECTION 24.1.(b)** This section becomes effective August 15, 2009.

##### **CREATE SPECIAL FUND FOR AUCTION RATE SECURITIES INVESTIGATIONS COSTS**

**SECTION 24.2.(a)** There is established the Auction Rate Securities Investigation Special Fund, which is a special fund created with the unexpended funds from the existing Auction Rate Securities (ARS) fund from fiscal year 2008-2009 for reimbursement of the costs of investigations arising from the Department of the Secretary of State's administration of Chapters 78A, 78C, and 78D of the General Statutes. The Auction Rate Securities Investigation Special Fund shall be used to continue the Department's active participation in the North American Securities Administrators Association (NASAA) ARS Task Force investigation into the marketing of Auction Rate Securities by the regulated community to investors as well as the remedies for harm arising from such marketing. Reimbursements paid by investment banks and firms to the Department as part of the Department's involvement in the NASAA ARS Task Force shall be deposited into the Auction Rate Securities Investigation Special Fund.

**SECTION 24.2.(b)** The maximum balance of the Auction Rate Securities Investigation Special Fund shall be limited to three million two hundred thousand dollars (\$3,200,000). If deposits from investment banks and firms paid as reimbursements for investigation costs cause the fund to exceed three million two hundred thousand dollars (\$3,200,000), then the amount exceeding three million two hundred thousand dollars (\$3,200,000) shall immediately be transferred to the General Fund.

**SECTION 24.2.(c)** In the event that the Department of the Secretary of State receives other monies as reimbursement for the costs of investigations into activities which are

not a part of the NASAA ARS Task Force, these monies shall also be deposited into the Auction Rate Securities Special Fund and shall remain available to the Department for the administration of Chapters 78A, 78C, and 78D of the General Statutes, subject to the limitations on the Auction Rate Securities Investigation Special Fund's maximum balance in subsection (b) of this section.

## **PART XXV. DEPARTMENT OF TRANSPORTATION**

### **CASH FLOW HIGHWAY FUNDS AND HIGHWAY TRUST FUND APPROPRIATIONS**

**SECTION 25.1.(a)** The General Assembly authorizes and certifies anticipated revenues of the Highway Fund as follows:

For Fiscal Year 2011-2012	\$ 1,762.0 million
For Fiscal Year 2012-2013	\$ 1,861.8 million
For Fiscal Year 2013-2014	\$ 1,966.2 million
For Fiscal Year 2014-2015	\$ 2,026.0 million

**SECTION 25.1.(b)** The General Assembly authorizes and certifies anticipated revenues of the Highway Trust Fund as follows:

For Fiscal Year 2011-2012	\$ 972.1 million
For Fiscal Year 2012-2013	\$ 1,036.0 million
For Fiscal Year 2013-2014	\$ 1,104.0 million
For Fiscal Year 2014-2015	\$ 1,158.8 million

### **MODIFY GLOBAL TRANSPARK DEBT AND REQUIRE GLOBAL TRANSPARK TO REPORT ON ANTICIPATED REPAYMENT SCHEDULE**

**SECTION 25.2.(a)** G.S. 147-69.2(b)(11), as amended by Section 7 of S.L. 2005-144, Section 2 of S.L. 2005-201, Section 28.17 of S.L. 2005-276, and Section 27.7 of S.L. 2007-323 reads as rewritten:

"(b) It shall be the duty of the State Treasurer to invest the cash of the funds enumerated in subsection (a) of this section in excess of the amount required to meet the current needs and demands on such funds, selecting from among the following:

- ...
- (11) With respect to assets of the Escheat Fund, obligations of the North Carolina Global TransPark Authority authorized by G.S. 63A-4(a)(22), not to exceed twenty-five million dollars (\$25,000,000), that have a final maturity not later than October 1, ~~2009-2011~~. The obligations shall bear interest at the rate set by the State Treasurer. No commitment to purchase obligations may be made pursuant to this subdivision after September 1, 1993, and no obligations may be purchased after September 1, 1994. In the event of a loss to the Escheat Fund by reason of an investment made pursuant to this subdivision, it is the intention of the General Assembly to hold the Escheat Fund harmless from the loss by appropriating to the Escheat Fund funds equivalent to the loss.

If any part of the property owned by the North Carolina Global TransPark Authority now or in the future is divested, proceeds of the divestment shall be used to fulfill any unmet obligations on an investment made pursuant to this subdivision."

**SECTION 25.2.(b)** The Global TransPark Authority shall report on or before May 15, 2010, to the House and Senate Appropriations Subcommittees on Transportation on its strategic, business, and financial plans. The report shall include the Authority's proposed schedule to achieve financial self-sufficiency and proposed schedule to repay to the Escheat Fund the investment authorized under G.S. 147-69.2(b)(11) and any accumulated interest, both of which totaled thirty-five million six hundred twenty-six thousand one hundred thirty-eight dollars and seventy cents (\$35,626,138.70) as of April 30, 2009.

### **SMALL CONSTRUCTION AND CONTINGENCY FUNDS**

**SECTION 25.3.** Of the funds appropriated in this act to the Department of Transportation:

- (1) Seven million dollars (\$7,000,000) shall be allocated in each fiscal year for small construction projects recommended by the member of the Board of Transportation representing the Division in which the project is to be constructed in consultation with the Division Engineer and approved by the Secretary of the Department of Transportation. These funds shall be allocated equally in each fiscal year of the biennium among the 14 Highway Divisions for small construction projects.
- (2) Twelve million dollars (\$12,000,000) in fiscal year 2009-2010 and twelve million dollars (\$12,000,000) in fiscal year 2010-2011 shall be used statewide for rural or small urban highway improvements and related transportation enhancements to public roads and public facilities, industrial access roads, and spot safety projects, including pedestrian walkways that enhance highway safety. Projects funded pursuant to this subdivision shall be approved by the Secretary of Transportation.

None of these funds used for rural secondary road construction are subject to the county allocation formulas in G.S. 136-44.5(b) and (c).

These funds are not subject to G.S. 136-44.7.

The Department of Transportation shall report to the members of the General Assembly on projects funded pursuant to this section in each member's district prior to construction. The Department shall make a quarterly comprehensive report on the use of these funds to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division.

#### **USE PORTION OF SECONDARY ROAD IMPROVEMENT FUNDS FOR HIGHWAY MAINTENANCE IN FISCAL YEARS 2009-2010 AND 2010-2011**

**SECTION 25.4.(a)** Notwithstanding the provisions of G.S. 136-44.2A regarding the annual allocation of funds from the Highway Fund to the Department of Transportation for secondary road improvement programs, fifty million four hundred ninety-seven thousand six hundred seventy-one dollars (\$50,497,671) of the funds required to be allocated for the secondary road improvement programs, established pursuant to G.S. 136-44.7 and G.S. 136-44.8, for fiscal year 2009-2010, shall remain in the Highway Fund for highway maintenance.

**SECTION 25.4.(b)** Notwithstanding the provisions of G.S. 136-44.2A regarding the annual allocation of funds from the Highway Fund to the Department of Transportation for secondary road improvement programs, thirty-one million five hundred ninety-three thousand three hundred fifty-nine dollars (\$31,593,359) of the funds required to be allocated for the secondary road improvement programs, established pursuant to G.S. 136-44.7 and G.S. 136-44.8, for fiscal year 2010-2011, shall remain in the Highway Fund for highway maintenance.

#### **ALLOW THE DEPARTMENT OF TRANSPORTATION TO REQUIRE FACILITIES CONSTRUCTED WITHIN RIGHTS-OF-WAY TO BE CONSTRUCTED FROM PERMEABLE PAVEMENT**

**SECTION 25.6.(a)** G.S. 136-18 is amended by adding a new subdivision to read:

"(41) The Department shall, prior to the beginning of construction, determine whether all sidewalks and other facilities primarily intended for the use of pedestrians and bicycles that are to be constructed within the right-of-way of a public street or highway that is a part of the State highway system or an urban highway system must be constructed of permeable pavement. "Permeable pavement" means paving material that absorbs water or allows water to infiltrate through the paving material. Permeable pavement materials include porous concrete, permeable interlocking concrete pavers, concrete grid pavers, porous asphalt, and any other material with similar characteristics. Compacted gravel shall not be considered permeable pavement."

**SECTION 25.6.(b)** This section becomes effective October 1, 2009, and applies to facilities constructed on or after that date.



**FLEXIBLE USE OF FUNDS FOR RURAL PUBLIC TRANSPORTATION FOR FISCAL YEARS 2009-2010 AND 2010-2011**

**SECTION 25.7.** In order to ensure maximum receipts of funding and to facilitate the use of funds available to the Department under the American Recovery and Reinvestment Act of 2009, P.L. 111-5, the Department of Transportation, Public Transportation Division, shall have the flexibility to transfer funding from the consolidated capital program of its rural funding programs for vehicles, technology, and facilities to the operating programs, based on the Department's ability to leverage all additional federal funds to meet the capital needs of rural transportation systems. This section applies only to fiscal years 2009-2010 and 2010-2011.

**DEPARTMENT OF TRANSPORTATION MAY TAKE REQUIRED ADMINISTRATIVE REDUCTION FROM ADDITIONAL ADMINISTRATIVE BUDGETS**

**SECTION 25.8.** The Department of Transportation may take the twelve million dollar (\$12,000,000) reduction to the central administration budget, as required by S.L. 2008-107, from the central administration, Highway Division administration, and Division of Motor Vehicles administration budgets.

**STUDY THE FEASIBILITY OF ASSESSING A FEE FOR PROVIDING TRAFFIC CONTROL BY THE STATE HIGHWAY PATROL OR THE DEPARTMENT OF TRANSPORTATION AT SPECIAL EVENTS**

**SECTION 25.9.(a)** The Joint Legislative Transportation Oversight Committee shall study the feasibility of assessing a fee for services provided by the State Highway Patrol or the Department of Transportation for certain special events. In conducting this study, the Committee shall determine the costs associated with providing traffic control devices and personnel to provide traffic control and direction at special functions and events. The Committee shall also develop criteria to determine events, if any, for which a fee will be assessed and criteria to determine the amount of the fee, if any, that should be assessed.

**SECTION 25.9.(b)** The Joint Legislative Transportation Oversight Committee shall make a report to the 2010 Regular Session of the 2009 General Assembly not later than April 1, 2010 detailing the information required by this Section and shall provide any recommended changes in current legislation or proposed new legislation if required.

**PART XXVI. SALARIES AND BENEFITS**

**PUBLIC EMPLOYEE SALARIES**

**SECTION 26.1A.(a)** The salaries of those officers and employees, whose salaries for the 2008-2009 fiscal year were set or increased in Sections 26.1, 26.2, 26.3, 26.4, 26.5, 26.6, 26.7, 26.8, 26.9, 26.10, 26.11, 26.11A, 26.12, 26.12D, 26.13, 26.14, 26.18, and 26.19 of Session Law 2008-107, and in effect on June 30, 2009, or the last date in pay status during the 2008-2009 fiscal year if earlier, shall remain in effect and shall not increase for the 2009-2010 and 2010-2011 fiscal years, except:

- (1) As provided for by Section 29.20A of S.L. 2005-276.
- (2) For Community College faculty as otherwise provided in Section 8.1 of this act.
- (3) For University of North Carolina faculty as otherwise provided by the Faculty Recruiting and Retention Fund or the Distinguished Professors Endowment Fund.
- (4) Salaries may be increased for reallocations or promotions, in-range adjustments for job change, career progression adjustments for demonstrated competencies, or any other adjustment related to an increase in job duties or responsibilities, none of which are subject to the salary freeze otherwise provided by this subsection. All other salary increases are prohibited.

**SECTION 26.1A.(b)** The automatic salary step increases for assistant and deputy clerks of superior court and magistrates are suspended for the 2009-2010 and 2010-2011 fiscal years.

**SECTION 26.1A.(c)** The salary increase provisions of G.S. 20-187.3 are suspended for the 2009-2010 and 2010-2011 fiscal years.

**SECTION 26.1A.(d)** For the 2009-2010 and 2010-2011 fiscal years, the salaries of members and officers of the General Assembly shall remain the amounts set under G.S. 120-3 in 1994 by the 1993 General Assembly.

#### **LIMIT BANKING COMMISSION EMPLOYEE BONUSES**

**SECTION 26.14A.** Notwithstanding G.S. 53-96.1, employees of the Office of the Commissioner of Banks shall not be awarded compensation bonuses during the 2009-2011 fiscal biennium.

#### **REDUCTIONS IN FORCE NECESSITATED BY THE EXTREME FISCAL CRISIS**

**SECTION 26.14B.** Findings. – The General Assembly finds that:

- (1) The extreme fiscal crisis affecting North Carolina's economy, the national economy, and global economic markets has substantially reduced the State's revenue projections for the 2009-2011 fiscal biennium.
- (2) Economies in State expenditures and maximized efficiencies in State operations must be effected immediately and systematically in order to meet the compelling State interest of enacting a balanced budget in accordance with the State Constitution and to protect the interests of the people of North Carolina.
- (3) Given the broad scope and depth of the budget reduction and efficiency measures required by this act, the elimination through reductions in force of positions, both filled and vacant, including contract positions, is necessary to preserve the public health, safety, and welfare and to continue the effective administration of important governmental functions in the interest of the people of North Carolina.

#### **REDUCTION IN FORCE/EXTEND STATE EMPLOYEE PRIORITY RIGHTS**

**SECTION 26.14D.** For the 2009-2011 fiscal biennium, the priority consideration afforded to State employees pursuant to G.S. 126-7.1(c1) shall remain in effect for an additional 12-month period.

#### **BENEFITS PROTECTION FOR FURLOUGHED STATE GOVERNMENT EMPLOYEES AND PUBLIC SCHOOL PERSONNEL**

**SECTION 26.14E.(a)** The following definitions apply in this section:

- (1) Furlough. – A temporary period of leave from employment without pay that (i) is ordered or authorized by the Governor, the Chief Justice, the Legislative Services Commission, the Board of Governors of The University of North Carolina, the Board of the North Carolina Community College System, or a local school board and (ii) is not in connection with a demotion or any other disciplinary action.
- (2) Public agency. – A State agency, department, or institution in the executive, legislative, or judicial branches of State government; The University of North Carolina; the North Carolina Community College System; and a local school administrative unit.
- (3) Public employee. – An employee employed by a public agency.

**SECTION 26.14E.(b)** Notwithstanding any law to the contrary, if necessary economies in public agency expenditures must be effected by a furlough of public employees, then a public employee on a furlough who is:

- (1) A member of any of the State-supported retirement plans administered by the Retirement Systems Division of the Department of State Treasurer, or an Optional Retirement Program (ORP) administered under G.S. 135-5.1 or G.S. 135-5.4, shall be considered in active service during any period of furlough and shall be entitled to all of the same benefits to which the employee was entitled on the workday immediately preceding the furlough. The member shall suffer no diminution of retirement average final compensation based on being on furlough, and the retirement average final compensation shall be calculated based on the undiminished compensation. During a furlough period, the employer shall pay both employee and employer contributions to the Retirement Systems Division or ORP on

behalf of the furloughed employee as though the employee were in active service.

- (2) A member of the State Health Plan for Teachers and State Employees shall be considered eligible for coverage under the Plan on the same basis as on the workday immediately preceding the furlough. The public employer shall pay contributions on behalf of the furloughed public employee as though the employee were in active service.

**SECTION 26.14E.(c)** This section holds harmless employees who are subject to furloughs to accomplish economies required by this act as to their retirement and other benefits that normally accrue as a result of employment. This section does not apply to a furlough within a public agency that is designed:

- (1) To solely and selectively provide benefits to a public employee or a subset of public employees, or to extend or enhance benefits beyond those that normally accrue to a public employee as a result of employment.
- (2) To allow the public agency to settle any claim against the public agency or to gain additional economies not specifically required by this act.

**SECTION 26.14E.(d)** This section shall not be construed as authorizing furloughs.

**SECTION 26.14E.(e)** Whenever the Governor, the Chief Justice, the Legislative Services Commission, the Board of Governors of The University of North Carolina, the Board of the North Carolina Community College System, or a local school board authorizes a furlough of public agency employees, the respective authorizing officer or entity shall report to the State Treasurer, the Director of the Retirement Systems Division, and the Executive Administrator of the State Health Plan the following:

- (1) The specifics of the authorized furlough including the applicable reduction in salary and the date the reduction in salary will occur. Examples of other furlough specifics include one-day furlough per month for the next three months, five furlough days during the remainder of the fiscal year, etc.
- (2) The positions affected, i.e. all full-time, part-time, temporary and contractual positions, all nonessential personnel, all nonteaching positions, etc.
- (3) The individual employees affected, including the applicable reduction in salary and whether the employee is subject to or exempt from the Fair Labor Standards Act.
- (4) Certification that the furlough is not in connection with a demotion or any other disciplinary action.
- (5) Certification that the furlough is to accomplish economies specifically required by this act, including the specific budget provision or reduction the furlough is intended to address.
- (6) Certification that the furlough is not related to the settlement of any claim against a public agency.

**SECTION 26.14E.(f)** This section is effective when it becomes law.

## TEACHER SALARY SCHEDULES

**SECTION 26.15.(a)** The following monthly salary schedules shall apply for the 2009-2010 fiscal year to certified personnel of the public schools who are classified as teachers. The schedule contains 33 steps with each step corresponding to one year of teaching experience. Public school employees paid according to this salary schedule and receiving NBPTS certification or obtaining a masters degree shall not be prohibited from receiving the appropriate increase in salary. Provided, however, teachers employed during the 2008-2009 school year who did not work the required number of months to acquire an additional year of experience shall not receive a decrease in salary as otherwise would be required by the salary schedule below.

2009-2010 Monthly Salary Schedule		
"A" Teachers		
Years of Experience	"A" Teachers	NBPTS Certification
0	\$3,043	N/A
1	\$3,043	N/A
2	\$3,085	N/A
3	\$3,129	\$3,504

4	\$3,264	\$3,656
5	\$3,404	\$3,812
6	\$3,538	\$3,963
7	\$3,667	\$4,107
8	\$3,771	\$4,224
9	\$3,819	\$4,277
10	\$3,868	\$4,332
11	\$3,918	\$4,388
12	\$3,967	\$4,443
13	\$4,018	\$4,500
14	\$4,069	\$4,557
15	\$4,122	\$4,617
16	\$4,176	\$4,677
17	\$4,231	\$4,739
18	\$4,286	\$4,800
19	\$4,345	\$4,866
20	\$4,403	\$4,931
21	\$4,461	\$4,996
22	\$4,523	\$5,066
23	\$4,584	\$5,134
24	\$4,650	\$5,208
25	\$4,714	\$5,280
26	\$4,779	\$5,352
27	\$4,845	\$5,426
28	\$4,913	\$5,503
29	\$4,984	\$5,582
30	\$5,055	\$5,662
31	\$5,153	\$5,771
32+	\$5,255	\$5,886

2009-2010 Monthly Salary Schedule

Years of Experience	"M" Teachers	NBPTS Certification
0	\$3,347	N/A
1	\$3,347	N/A
2	\$3,394	N/A
3	\$3,442	\$3,855
4	\$3,590	\$4,021
5	\$3,744	\$4,193
6	\$3,892	\$4,359
7	\$4,034	\$4,518
8	\$4,148	\$4,646
9	\$4,201	\$4,705
10	\$4,255	\$4,766
11	\$4,310	\$4,827
12	\$4,364	\$4,888
13	\$4,420	\$4,950
14	\$4,476	\$5,013
15	\$4,534	\$5,078
16	\$4,594	\$5,145
17	\$4,654	\$5,212
18	\$4,715	\$5,281
19	\$4,780	\$5,354
20	\$4,843	\$5,424
21	\$4,907	\$5,496
22	\$4,975	\$5,572
23	\$5,042	\$5,647
24	\$5,115	\$5,729
25	\$5,185	\$5,807

26	\$5,257	\$5,888
27	\$5,330	\$5,970
28	\$5,404	\$6,052
29	\$5,482	\$6,140
30	\$5,561	\$6,228
31	\$5,668	\$6,348
32+	\$5,781	\$6,475

**SECTION 26.15.(b)** Annual longevity payments for teachers shall be at the rate of one and one-half percent (1.5%) of base salary for 10 to 14 years of State service, two and twenty-five hundredths percent (2.25%) of base salary for 15 to 19 years of State service, three and twenty-five hundredths percent (3.25%) of base salary for 20 to 24 years of State service, and four and one-half percent (4.5%) of base salary for 25 or more years of State service. The longevity payment shall be paid in a lump sum once a year.

**SECTION 26.15.(c)** Certified public schoolteachers with certification based on academic preparation at the six-year degree level shall receive a salary supplement of one hundred twenty-six dollars (\$126.00) per month in addition to the compensation provided for certified personnel of the public schools who are classified as "M" teachers. Certified public schoolteachers with certification based on academic preparation at the doctoral degree level shall receive a salary supplement of two hundred fifty-three dollars (\$253.00) per month in addition to the compensation provided for certified personnel of the public schools who are classified as "M" teachers.

**SECTION 26.15.(d)** The first step of the salary schedule for school psychologists shall be equivalent to Step 5, corresponding to five years of experience, on the salary schedule established in this section for certified personnel of the public schools who are classified as "M" teachers. Certified psychologists shall be placed on the salary schedule at an appropriate step based on their years of experience. Certified psychologists shall receive longevity payments based on years of State service in the same manner as teachers.

Certified psychologists with certification based on academic preparation at the six-year degree level shall receive a salary supplement of one hundred twenty-six dollars (\$126.00) per month in addition to the compensation provided for certified psychologists. Certified psychologists with certification based on academic preparation at the doctoral degree level shall receive a salary supplement of two hundred fifty-three dollars (\$253.00) per month in addition to the compensation provided for certified psychologists.

**SECTION 26.15.(e)** Speech pathologists who are certified as speech pathologists at the master's degree level and audiologists who are certified as audiologists at the master's degree level and who are employed in the public schools as speech and language specialists and audiologists shall be paid on the school psychologist salary schedule.

Speech pathologists and audiologists with certification based on academic preparation at the six-year degree level shall receive a salary supplement of one hundred twenty-six dollars (\$126.00) per month in addition to the compensation provided for speech pathologists and audiologists. Speech pathologists and audiologists with certification based on academic preparation at the doctoral degree level shall receive a salary supplement of two hundred fifty-three dollars (\$253.00) per month in addition to the compensation provided for speech pathologists and audiologists.

**SECTION 26.15.(f)** Certified school nurses who are employed in the public schools as nurses shall be paid on the "M" salary schedule.

**SECTION 26.15.(g)** As used in this section, the term "teacher" shall also include instructional support personnel.

## SCHOOL BASED ADMINISTRATOR SALARY SCHEDULE

**SECTION 26.16.(a)** The base salary schedule for school-based administrators shall apply only to principals and assistant principals. The base salary schedule for the 2009-2010 fiscal year, commencing July 1, 2009, is as follows:

### 2009-2010 Principal and Assistant Principal Salary Schedules Classification

Years of Exp	Assistant Principal	Prin I (0-10)	Prin II (11-21)	Prin III (22-32)	Prin IV (33-43)
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0-4	\$3,781	-	-	-	-
5	\$3,931	-	-	-	-
6	\$4,074	-	-	-	-
7	\$4,189	-	-	-	-
8	\$4,243	\$4,243	-	-	-
9	\$4,298	\$4,298	-	-	-
10	\$4,353	\$4,353	\$4,408	-	-
11	\$4,408	\$4,408	\$4,464	-	-
12	\$4,464	\$4,464	\$4,521	\$4,579	-
13	\$4,521	\$4,521	\$4,579	\$4,640	\$4,701
14	\$4,579	\$4,579	\$4,640	\$4,701	\$4,762
15	\$4,640	\$4,640	\$4,701	\$4,762	\$4,828
16	\$4,701	\$4,701	\$4,762	\$4,828	\$4,891
17	\$4,762	\$4,762	\$4,828	\$4,891	\$4,956
18	\$4,828	\$4,828	\$4,891	\$4,956	\$5,025
19	\$4,891	\$4,891	\$4,956	\$5,025	\$5,092
20	\$4,956	\$4,956	\$5,025	\$5,092	\$5,166
21	\$5,025	\$5,025	\$5,092	\$5,166	\$5,237
22	\$5,092	\$5,092	\$5,166	\$5,237	\$5,310
23	\$5,166	\$5,166	\$5,237	\$5,310	\$5,383
24	\$5,237	\$5,237	\$5,310	\$5,383	\$5,458
25	\$5,310	\$5,310	\$5,383	\$5,458	\$5,537
26	\$5,383	\$5,383	\$5,458	\$5,537	\$5,617
27	\$5,458	\$5,458	\$5,537	\$5,617	\$5,725
28	\$5,537	\$5,537	\$5,617	\$5,725	\$5,839
29	\$5,617	\$5,617	\$5,725	\$5,839	\$5,956
30	\$5,725	\$5,725	\$5,839	\$5,956	\$6,075
31	\$5,839	\$5,839	\$5,956	\$6,075	\$6,197
32	-	\$5,956	\$6,075	\$6,197	\$6,321
33	-	-	\$6,197	\$6,321	\$6,447
34	-	-	\$6,321	\$6,447	\$6,576
35	-	-	-	\$6,576	\$6,708
36	-	-	-	\$6,708	\$6,842
37	-	-	-	-	\$6,979

2009-2010 Principal and Assistant Principal Salary Schedules  
Classification

Years of Exp	Prin V (44-54)	Prin VI (55-65)	Prin VII (66-100)	Prin VIII (101+)
0-14	\$4,828	-	-	-
15	\$4,891	-	-	-
16	\$4,956	\$5,025	-	-
17	\$5,025	\$5,092	\$5,237	-
18	\$5,092	\$5,166	\$5,310	\$5,383
19	\$5,166	\$5,237	\$5,383	\$5,458
20	\$5,237	\$5,310	\$5,458	\$5,537
21	\$5,310	\$5,383	\$5,537	\$5,617
22	\$5,383	\$5,458	\$5,617	\$5,725
23	\$5,458	\$5,537	\$5,725	\$5,839
24	\$5,537	\$5,617	\$5,839	\$5,956
25	\$5,617	\$5,725	\$5,956	\$6,075
26	\$5,725	\$5,839	\$6,075	\$6,197
27	\$5,839	\$5,956	\$6,197	\$6,321
28	\$5,956	\$6,075	\$6,321	\$6,447
29	\$6,075	\$6,197	\$6,447	\$6,576
30	\$6,197	\$6,321	\$6,576	\$6,708
31	\$6,321	\$6,447	\$6,708	\$6,842
32	\$6,447	\$6,576	\$6,842	\$6,979
33	\$6,576	\$6,708	\$6,979	\$7,119

34	\$6,708	\$6,842	\$7,119	\$7,261
35	\$6,842	\$6,979	\$7,261	\$7,406
36	\$6,979	\$7,119	\$7,406	\$7,554
37	\$7,119	\$7,261	\$7,554	\$7,705
38	\$7,261	\$7,406	\$7,705	\$7,859
39	-	\$7,554	\$7,859	\$8,016
40	-	\$7,705	\$8,016	\$8,176
41	-	-	\$8,176	\$8,340

**SECTION 26.16.(b)** The appropriate classification for placement of principals and assistant principals on the salary schedule, except for principals in alternative schools and in cooperative innovative high schools, shall be determined in accordance with the following schedule:

Classification	Number of Teachers Supervised
Assistant Principal	
Principal I	Fewer than 11 Teachers
Principal II	11-21 Teachers
Principal III	22-32 Teachers
Principal IV	33-43 Teachers
Principal V	44-54 Teachers
Principal VI	55-65 Teachers
Principal VII	66-100 Teachers
Principal VIII	More than 100 Teachers

The number of teachers supervised includes teachers and assistant principals paid from State funds only; it does not include teachers or assistant principals paid from non-State funds or the principal or teacher assistants.

The beginning classification for principals in alternative schools and in cooperative innovative high school programs shall be the Principal III level. Principals in alternative schools who supervise 33 or more teachers shall be classified according to the number of teachers supervised.

**SECTION 26.16.(c)** A principal shall be placed on the step on the salary schedule that reflects total number of years of experience as a certificated employee of the public schools and an additional step for every three years of experience as a principal. Provided, however, a principal who acquires an additional step during the 2009-2010 or 2010-2011 fiscal years shall not receive a corresponding increase in salary during the 2009-2011 fiscal biennium. A principal or assistant principal shall also continue to receive any additional State-funded percentage increases earned for the 1997-1998, 1998-1999, and 1999-2000 school years for improvement in student performance or maintaining a safe and orderly school.

**SECTION 26.16.(d)** Principals and assistant principals with certification based on academic preparation at the six-year degree level shall be paid a salary supplement of one hundred twenty-six dollars (\$126.00) per month and at the doctoral degree level shall be paid a salary supplement of two hundred fifty-three dollars (\$253.00) per month.

**SECTION 26.16.(e)** Longevity pay for principals and assistant principals shall be as provided for State employees under the State Personnel Act.

**SECTION 26.16.(f)** If a principal is reassigned to a higher job classification because the principal is transferred to a school within a local school administrative unit with a larger number of State-allotted teachers, the principal shall be placed on the salary schedule as if the principal had served the principal's entire career as a principal at the higher job classification.

If a principal is reassigned to a lower job classification because the principal is transferred to a school within a local school administrative unit with a smaller number of State-allotted teachers, the principal shall be placed on the salary schedule as if the principal had served the principal's entire career as a principal at the lower job classification.

This subsection applies to all transfers on or after the effective date of this section, except transfers in school systems that have been created, or will be created, by merging two or

more school systems. Transfers in these merged systems are exempt from the provisions of this subsection for one calendar year following the date of the merger.

**SECTION 26.16.(g)** Participants in an approved full-time master's in school administration program shall receive up to a 10-month stipend at the beginning salary of an assistant principal during the internship period of the master's program. For the 2006-2007 fiscal year and subsequent fiscal years, the stipend shall not exceed the difference between the beginning salary of an assistant principal plus the cost of tuition, fees, and books and any fellowship funds received by the intern as a full-time student, including awards of the Principal Fellows Program. The Principal Fellows Program or the school of education where the intern participates in a full-time master's in school administration program shall supply the Department of Public Instruction with certification of eligible full-time interns.

**SECTION 26.16.(h)** During the 2009-2010 fiscal year, the placement on the salary schedule of an administrator with a one-year provisional assistant principal's certificate shall be at the entry-level salary for an assistant principal or the appropriate step on the teacher salary schedule, whichever is higher.

### **ALL COUNTIES TO COMPLY WITH THE "SEND-IN" PAYROLL ARRANGEMENT PROVISIONS FOR THE PAYMENT OF THE LOCAL SALARIES OF NORTH CAROLINA COOPERATIVE EXTENSION PERSONNEL**

**SECTION 26.16A.(a)** Effective January 1, 2011, notwithstanding any prior agreement, memorandum of understanding, or individual election of North Carolina Cooperative Extension personnel, all counties employing North Carolina Cooperative Extension personnel in conjunction with the North Carolina Cooperative Extension Service at North Carolina State University (NCSU) or the North Carolina Cooperative Extension Program at North Carolina Agricultural and Technical State University (North Carolina A & T) shall comply with the "send-in" payroll arrangement provisions established by NCSU and North Carolina A & T.

**SECTION 26.16A.(b)** Effective January 1, 2011, in order to comply with subsection (a) of this section, all affected counties:

- (1) Shall adhere to the "send-in" payroll arrangement provisions relative to the local portion of salaries paid to all current and future North Carolina Cooperative Extension personnel.
- (2) Shall not furlough, or reduce the local portion of salaries paid to, North Carolina Cooperative Extension personnel.

### **SALARY-RELATED CONTRIBUTIONS/EMPLOYER**

**SECTION 26.20.(a)** Section 6(b) of S.L. 2009-16 reads as rewritten:

**"SECTION 6.(b)** Effective July 1, 2009, the State's employer contribution rates budgeted for retirement and related benefits as percentage of covered salaries for the 2009-2010 fiscal year are: (i) ~~eight and fifty-four hundredths percent (8.54%)~~ eight and seventy-five hundredths percent (8.75%) – Teachers and State Employees; (ii) ~~thirteen and fifty-four hundredths percent (13.54%)~~ thirteen and seventy-five hundredths percent (13.75%) – State Law Enforcement Officers; (iii) eleven and eighty-six hundredths percent (11.86%) – University Employees' Optional Retirement System; (iv) eleven and eighty-six hundredths percent (11.86%) – Community College Optional Retirement Program; (v) ~~seventeen and seventy-one hundredths percent (17.71%)~~ nineteen and sixty-one hundredths percent (19.61%) – Consolidated Judicial Retirement System; and (vi) four and fifty hundredths percent (4.50%) – Legislative Retirement System. Each of the foregoing contribution rates includes four and fifty hundredths percent (4.50%) for hospital and medical benefits. The rate for Teachers and State Employees, State Law Enforcement Officers, Community College Optional Retirement Program, and for the University Employees' Optional Retirement Program includes fifty-two hundredths percent (0.52%) for the Disability Income Plan. The rates for Teachers and State Employees and State Law Enforcement Officers include sixteen-hundredths percent (0.16%) for the Death Benefits Plan. The rate for State Law Enforcement Officers includes five percent (5%) for Supplemental Retirement Income."

**SECTION 26.20.(b)** Section 6(c) of S.L. 2009-16 reads as rewritten:

**"SECTION 6.(c)** Effective July 1, 2010, the State's employer contribution rates budgeted for retirement and related benefits as percentage of covered salaries for the 2010-2011 fiscal year are: (i) ~~eight and ninety-four hundredths percent (8.94%)~~ ten and fifty-one hundredths



percent (10.51%) – Teachers and State Employees; (ii) ~~thirteen and ninety-four hundredths percent (13.94%)~~ fifteen and fifty-one hundredths percent (15.51%) – State Law Enforcement Officers; (iii) twelve and twenty-six hundredths percent (12.26%) – University Employees' Optional Retirement System; (iv) twelve and twenty-six hundredths percent (12.26%) – Community College Optional Retirement Program; (v) ~~eighteen and eleven hundredths percent (18.11%)~~ twenty and one hundredths percent (20.01%) – Consolidated Judicial Retirement System; and (vi) four and ninety hundredths percent (4.90%) – Legislative Retirement System. Each of the foregoing contribution rates includes four and ninety hundredths percent (4.90%) for hospital and medical benefits. The rate for Teachers and State Employees, State Law Enforcement Officers, Community College Optional Retirement Program, and for the University Employees' Optional Retirement Program includes fifty-two hundredths percent (0.52%) for the Disability Income Plan. The rates for Teachers and State Employees and State Law Enforcement Officers include sixteen-hundredths percent (0.16%) for the Death Benefits Plan. The rate for State Law Enforcement Officers includes five percent (5%) for Supplemental Retirement Income."

#### **NATIONAL GUARD PENSION FUND**

**SECTION 26.21.** G.S. 127A-40(f) reads as rewritten:

"(f) The Secretary of Crime Control and Public Safety shall determine the eligibility of guard members for the benefits herein provided and shall certify those eligible to the State Treasurer. In addition, the Department of Crime Control and Public Safety shall, on and after July 1, 1983, provide the Department of State Treasurer with an annual census population, by age and the number of years of creditable service, for all former members of the National Guard in receipt of a pension as well as for all active members of the National Guard who are not in receipt of a pension and who have seven and more years of creditable service. The Department of Crime Control and Public Safety shall also provide the State Treasurer a census population of all former members of the National Guard who are not in receipt of a pension and who have 15 and more years of creditable service. The Department of State Treasurer shall make pension payments to those persons certified from the North Carolina National Guard Pension Fund, which shall include general fund appropriations made to ~~and transferred from the Department of Crime Control and Public Safety.~~ the Department of State Treasurer. The Department of State Treasurer shall have performed an annual actuarial valuation of the fund and shall have the financial responsibility for maintaining the fund on a generally accepted actuarial basis. The Department of Crime Control and Public Safety shall provide the Department of State Treasurer with whatever assistance is required by the State Treasurer in carrying out his financial responsibilities."

#### **EXTEND PHASED RETIREMENT PROGRAM EXEMPTION**

**SECTION 26.22.** Section 29.28(f) of S.L. 2005-276, as amended by Section 22.21 of S.L. 2006-66, reads as rewritten:

"**SECTION 29.28.(f)** Subsections (a) and (b) of this section become effective August 1, 2005. Subsection (e) of this section becomes effective November 1, 2005, but does not apply to participants in The University of North Carolina Phased Retirement Program until the earlier of ~~June 30, 2010,~~ August 31, 2013, or 12 months after the issuance of final phased retirement regulations by the Internal Revenue Service. The remainder of this section becomes effective June 30, 2005."

#### **PART XXVII. CAPITAL APPROPRIATIONS**

##### **GENERAL FUND CAPITAL APPROPRIATIONS/INTRODUCTION**

**SECTION 27.1.** The appropriations made by the 2009 General Assembly for capital improvements are for constructing, repairing, or renovating State buildings, utilities, and other capital facilities, for acquiring sites for them where necessary, and for acquiring buildings and land for State government purposes.

##### **CAPITAL APPROPRIATIONS/GENERAL FUND**

**SECTION 27.2.** There is appropriated from the General Fund for the 2009-2010 fiscal year the following amounts for capital improvements:

**Capital Improvements – General Fund****2009-2010**

Department of Environment and Natural Resources  
 Water Resources Development Projects \$ 4,875,000

**TOTAL CAPITAL IMPROVEMENTS – GENERAL FUND \$ 4,875,000**

**WATER RESOURCES DEVELOPMENT PROJECTS/REQUIRED TO DRAW DOWN  
 \$57,700,000 FEDERAL FUNDS**

**SECTION 27.3.(a)** The Department of Environment and Natural Resources shall allocate the funds appropriated in this act for water resources development projects in accordance with the schedule that follows. These funds will provide a State match for an estimated fifty-seven million seven hundred thousand dollars (\$57,700,000) in federal funds.

**Name of Project 2009-2010**

(1) Wilmington Harbor Deepening	–
(2) B. Everett Jordan Lake Water Supply Storage	–
(3) Carolina Beach Renourishment	\$ 605,769
(4) Carolina Beach South (Kure Beach) Renourishment	336,538
(5) Wrightsville Beach Renourishment	844,308
(6) Ocean Isle Beach Renourishment	673,077
(7) Beaufort Harbor Maintenance	50,000
(8) Princeville Flood Control	–
(9) Currituck Sound Environmental Restoration	–
(10) West Onslow Beach (Topsail Beach, Pender County)	–
(11) Aquatic Plant Control (State, L. Gaston & Roanoke Rapids L.)	–
(12) Planning Assistance to Communities	75,000
(13) Concord Stream Restoration (Cabarrus County) (Sec. 206)	262,500
(14) Wilson Bay Restoration (Sec. 206), Onslow County	250,000
(15) AIWW Dredging	–
(16) Belhaven Harbor Feasibility	–
(17) Dredging Contingency Fund	–
(18) John H. Kerr Dam and Reservoir (Sec. 216)	–
(19) Morehead City Harbor Maintenance	–
(20) Neuse River Basin Restoration	–
(21) Wilmington Harbor Maintenance	–
(22) Water Resources Development Projects Reserve	1,777,808

**TOTALS \$ 4,875,000**

**SECTION 27.3.(b)** Where the actual costs are different from the estimated costs under subsection (a) of this section, the Department may adjust the allocations among projects as needed. If any projects funded under subsection (a) of this section are delayed, and the budgeted State funds cannot be used during the 2009-2010 fiscal year, or if the projects funded under subsection (a) of this section are accomplished at a lower cost, the Department may use the resulting fund availability to fund any of the following:

- (1) U.S. Army Corps of Engineers project feasibility studies.
- (2) U.S. Army Corps of Engineers projects whose schedules have advanced and require State-matching funds in fiscal year 2009-2010.
- (3) State-local water resources development projects.

Funds subject to this subsection that are not expended or encumbered for the purposes set forth in subdivisions (1) through (3) of this subsection shall revert to the General Fund at the end of the 2010-2011 fiscal year.

**SECTION 27.3.(c)** The Department shall make semiannual reports on the use of these funds to the Joint Legislative Commission on Governmental Operations, the Fiscal Research Division, and the Office of State Budget and Management. Each report shall include all of the following:

- (1) All projects listed in this section.

- (2) The estimated cost of each project.
- (3) The date that work on each project began or is expected to begin.
- (4) The date that work on each project was completed or is expected to be completed.
- (5) The actual cost of each project.

The semiannual reports also shall show those projects advanced in schedule, those projects delayed in schedule, and an estimate of the amount of funds expected to revert to the General Fund.

**SECTION 27.3.(d)** Of the American Recovery and Reinvestment Act of 2009 funds appropriated to the Department of Environment and Natural Resources, an amount necessary to complete any water resources development projects approved by the U.S. Army Corps of Engineers may be allocated by the Department for that purpose, and such projects are hereby authorized.

**SECTION 27.3.(e)** There is established in the Department of Environment and Natural Resources the Water Resources Development Projects Reserve. The Department may allocate funds in the reserve for the following purposes:

- (1) To provide the State portion of matching funds for water resources development projects pursuant to subsection (d) of this section.
- (2) To provide funds to cover any shortfall between the funds appropriated for specific water resources development projects in this or prior fiscal bienniums and the actual projected cost of those projects, as revised by the appropriate federal agency.

Funds allocated to the Reserve in this act that are not expended or encumbered at the end of the 2010-2011 fiscal year shall revert to the General Fund.

**SECTION 27.3.(f)** Notwithstanding any provision of law to the contrary, funds appropriated for a water resources development project shall be used to provide no more than fifty percent (50%) of the nonfederal portion of funds for the project. This subsection applies to funds appropriated in this act and to funds appropriated prior to the 2009-2011 fiscal biennium that are unencumbered and proposed for reallocation to provide the nonfederal portion of funds for water resources development projects. The limitation on fund usage contained in this subsection applies only to projects in which a local government or local governments participate.

**NON-GENERAL FUND CAPITAL IMPROVEMENT AUTHORIZATIONS**

**SECTION 27.4.(a)** The General Assembly authorizes the following capital projects to be funded with receipts or from other non-General Fund sources available to the appropriate department:

<b>Name of Project</b>	<b>Amount of Non-General Fund Funding Authorized for FY 2009-2010</b>
Department of Crime Control and Public Safety	
Additions and Renovations to Armories	\$ 9,303,442
Camp Butner Cantonment – Phase 1 Design	1,367,000
Family Assistance Centers	2,000,000
Gastonia Armory Renovation and Expansion	1,100,000
Tactical Unmanned Aerial Systems Facility	6,746,000
Department of Cultural Resources	
Aycock Birthplace Picnic Shelter	86,100
Maritime Museum – Floating Dock	130,000
Museum of History Chronology Exhibit – Phase 2B (1900-1960)	1,200,000
Department of Environment and Natural Resources	
Zoo – Elephant Exhibit New Restrooms	300,000
Wildlife Resources Commission	
Armstrong Hatchery Lower Raceway Replacement	1,725,000
Centennial Campus Education Center Exhibit Completion	180,000

Chinquapin Equipment Storage Pole Shed	60,000
Chowan Bridge Fishing Pier and Edenton Boating Access	450,000
Emerald Isle New Boating Access Area	600,000
Falls Lake Office Building	550,000
Hampstead Land Acquisition	10,000,000
Land Acquisitions – State Gamelands	59,135,000
Lewelyn Branch New Boating Access Area	150,000
Manns Harbor Bridge Marina Acquisition	5,750,000
Marion Depot Drainage Repairs	200,000
McKinney Lake Hatchery Kettles Replacement	1,700,000
Minor Boating Access Area Renovations – Various Locations	150,000
New Coldwater Fish Hatchery Construction	7,900,000
Ocean Isle Boating Access Area Renovations	150,000
Outer Banks Education Center Teaching Facility Repairs	245,000
Pechmann Fishing Education Center Pond Restoration	160,000
Pechmann Fishing Education Center Storage Building	220,000
Pisgah Education Center Gift Shop Renovation and Expansion	200,000
Pisgah Education Center Outdoor Exhibit Renovation	450,000
Pisgah Education Center Repairs	155,000
Pisgah Hatchery Water System Renovation	100,000
Rhodes Pond Dam Repairs	500,000
Sneads Ferry Land Acquisition	6,500,000
Sunset Harbor Land Acquisition	925,000
Swan Quarter Land Acquisition	1,700,000
Sykes Depot Pond, Office, Storage Construction	350,000
Table Rock Hatchery Office and Workshop Replacement	345,000

**TOTAL AMOUNT OF NON-GENERAL FUND CAPITAL  
PROJECTS AUTHORIZED**

**\$122,782,542**

**SECTION 27.4.(b)** From funds deposited with the State Treasurer in a capital improvement account to the credit of the Department of Agriculture and Consumer Services pursuant to G.S. 146-30, the sum of thirty thousand dollars (\$30,000) for the 2009-2010 fiscal year shall be transferred to the Department of Agriculture and Consumer Services to be used, notwithstanding G.S. 146-30, by the Department for its plant conservation program under Article 19B of Chapter 106 of the General Statutes for costs incidental to the acquisition of land, such as land appraisals, land surveys, title searches, environmental studies, and for the management of the plant conservation program preserves owned by the Department.

**REPAIRS AND RENOVATIONS RESERVE ALLOCATION**

**SECTION 27.5.(a)** Of the funds in the Reserve for Repairs and Renovations for the 2009-2010 fiscal year, fifty percent (50%) shall be allocated to the Board of Governors of The University of North Carolina for repairs and renovations pursuant to G.S. 143C-4-3, in accordance with guidelines developed in The University of North Carolina Funding Allocation Model for Reserve for Repairs and Renovations, as approved by the Board of Governors of The University of North Carolina, and fifty percent (50%) shall be allocated to the Office of State Budget and Management for repairs and renovations pursuant to G.S. 143C-4-3.

Notwithstanding G.S. 143C-4-3, the Board of Governors may allocate funds for the repair and renovation of facilities not supported from the General Fund if the Board determines that sufficient funds are not available from other sources and that conditions warrant General Fund assistance. Any such finding shall be included in the Board's submission to the Joint Legislative Commission on Governmental Operations on the proposed allocation of funds.

Prior to allocating funds for the repair and renovation of facilities, the Board of Governors and the Office of State Budget and Management first shall consider allocating funds to restore cash balances transferred to the State Controller pursuant to Section 27.11 of this act. Any restoration of a cash balance for a capital improvement project at a constituent institution of The University of North Carolina or overseen by the Board of Governors shall be from the funds allocated to the Board of Governors under this subsection. Any other restoration shall be from the funds allocated to the Office of State Budget and Management under this subsection.

The Board of Governors and the Office of State Budget and Management shall consult with the Joint Legislative Commission on Governmental Operations prior to the allocation or reallocation of these funds.

**SECTION 27.5.(b)** In addition to any other funds in the Reserve for Repairs and Renovations for the 2009-2010 fiscal year, the following funds are transferred to that Reserve:

- (1) Fifty million dollars (\$50,000,000) of proceeds of bonds and notes issued pursuant to Section 27.9(f)(3) of S.L. 2008-107, as enacted by Section 1(b) of S.L. 2009-209, for repairs and renovations.
- (2) Twelve million dollars (\$12,000,000) of the American Recovery and Reinvestment Act of 2009 (ARRA), P.L. 111-5, funds appropriated for the State Energy Program in this act.

**SECTION 27.5.(c)** Notwithstanding G.S. 143C-4-3(b), funds allocated in subdivision (b)(2) of this section shall be used for repairs and renovations to State and university facilities that will make those facilities more energy efficient. Eligible projects under this subsection include:

- (1) Replacement of incandescent light bulbs with compact fluorescent light bulbs, installation of exit signs that employ light-emitting diode (LED) technology, the installation of occupancy sensors or optical sensors, and other lighting efficiency improvements.
- (2) For windows that need replacement, installation of more energy-efficient windows.
- (3) Insulation improvements when practicable.
- (4) Renovation, replacement, and upgrading of heating, ventilation, and air-conditioning (HVAC) systems.
- (5) Energy infrastructure renovation projects.
- (6) Any other retrofit or replacement projects that make State or university facilities more energy efficient for which the incremental cost of the project will be equal to or less than the energy savings that result over a period of three years after completion.

**SECTION 27.5.(d)** Funds allocated in subdivision (b)(2) of this section shall be used consistently with any applicable limitations contained in the American Recovery and Reinvestment Act of 2009, P.L. 111-5, and regulations adopted pursuant to that act.

**SECTION 27.5.(e)** Of the funds allocated to the Board of Governors of The University of North Carolina in subsection (a) of this section, a portion shall be used by the Board of Governors for the installation of fire sprinklers in university residence halls. This portion shall be in addition to funds otherwise appropriated in this act for the same purpose. Such funds shall be allocated among the university's constituent institutions by the President of The University of North Carolina, who shall consider the following factors when allocating those funds:

- (1) The safety and well-being of the residents of campus housing programs.
- (2) The current level of housing rents charged to students and how that compares to an institution's public peers and other UNC institutions.
- (3) The level of previous authorizations to constituent institutions for the construction or renovation of residence halls funded from the General Fund, or from bonds or certificates of participation supported by the General Fund, since 1996.
- (4) The financial status of each constituent institution's housing system, including debt capacity, debt coverage ratios, credit rankings, required reserves, the planned use of cash balances for other housing system improvements, and the constituent institution's ability to pay for the installation of fire sprinklers in all residence halls.
- (5) The total cost of each proposed project, including the cost of installing fire sprinklers and the cost of other construction, such as asbestos removal and additional water supply needs.

The Board of Governors shall submit progress reports to the Joint Legislative Commission on Governmental Operations. Reports shall include the status of completed, current, and planned projects. Reports also shall include information on the financial status of each constituent institution's housing system, the constituent institution's ability to pay for fire

protection in residence halls, and the timing of installation of fire sprinklers. Reports shall be submitted on January 1 and July 1 until all residence halls have fire sprinklers.

**SECTION 27.5.(f)** Of the funds allocated to the Board of Governors of The University of North Carolina in subsection (a) of this section, a portion shall be used by the Board of Governors for campus public safety improvements allowable under G.S. 143C-4-3(b).

## **PROCEDURES FOR DISBURSEMENT OF CAPITAL FUNDS**

**SECTION 27.6.** The appropriations made by the 2009 General Assembly for capital improvements shall be disbursed for the purposes provided by this act. Expenditure of funds shall not be made by any State department, institution, or agency until an allotment has been approved by the Governor as Director of the Budget. The allotment shall be approved only after full compliance with the State Budget Act, Chapter 143C of the General Statutes. Prior to the award of construction contracts for projects to be financed in whole or in part with self-liquidating appropriations, the Director of the Budget shall approve the elements of the method of financing of those projects including the source of funds, interest rate, and liquidation period. Provided, however, that if the Director of the Budget approves the method of financing a project, the Director shall report that action to the Joint Legislative Commission on Governmental Operations at its next meeting.

Where direct capital improvement appropriations include the purpose of furnishing fixed and movable equipment for any project, those funds for equipment shall not be subject to transfer into construction accounts except as authorized by the Director of the Budget. The expenditure of funds for fixed and movable equipment and furnishings shall be reviewed and approved by the Director of the Budget prior to commitment of funds.

Capital improvement projects authorized by the 2009 General Assembly shall be completed, including fixed and movable equipment and furnishings, within the limits of the amounts of the direct or self-liquidating appropriations provided, except as otherwise provided in this act. Capital improvement projects authorized by the 2009 General Assembly for the design phase only shall be designed within the scope of the project as defined by the approved cost estimate filed with the Director of the Budget, including costs associated with site preparation, demolition, and movable and fixed equipment.

## **CENTER FOR DESIGN AND WINSTON-SALEM STATE AMENDMENTS**

**SECTION 27.7.(a)** Section 1.1 of S.L. 2004-179, as amended by Section 30.3A of S.L. 2005-276, Section 2.1 of S.L. 2006-146, and Section 27.8 of S.L. 2008-107, is amended by deleting the language:

"11,500,000	10,000,000	Land acquisition, site preparation, engineering, architectural, and other consulting services, and construction of a Center for Design Innovation in the Piedmont Triad Research Park to be operated jointly by Winston-Salem State University and the North Carolina School of the Arts."
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and substituting the language:

"11,500,000	10,000,000	Land acquisition, site preparation, engineering, architectural, and other consulting services, acquisition of an existing building, construction, or renovation of a Center for Design Innovation to be operated jointly by Winston-Salem State University and the North Carolina School of the Arts."
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**SECTION 27.7.(b)** Section 27.8(a)(8) of S.L. 2008-107, as amended by Section 2(a) of S.L. 2009-209, reads as rewritten:

"(8) In the maximum aggregate principal amount of eleven million five hundred forty-three thousand eight hundred twenty-eight dollars (\$11,543,828) to finance the capital facility costs of ~~completing constructing, purchasing, or renovating an existing building for~~ a film school production facility ~~at the of the University of North Carolina School of the Arts.~~ No special indebtedness may be issued or incurred under this subdivision prior to July 1, 2009. No more than a maximum aggregate amount of two million dollars (\$2,000,000) of special indebtedness may be issued or incurred under this subdivision

prior to July 1, 2010. No more than a maximum aggregate amount of seven million nine hundred thousand dollars (\$7,900,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2011."

**SECTION 27.7.(c)** Notwithstanding the Joint Conference Committee Report dated July 17, 2004, for S.L. 2004-124, the two million dollars (\$2,000,000) appropriated for Winston-Salem State University shall be used to provide funds to acquire land and renovate space for Winston-Salem State University.

**DEBT SERVICE FOR GREEN SQUARE COMPLEX PARKING CONSTRUCTION**

**SECTION 27.8.** Notwithstanding Item 61, Page M-11, of the Joint Conference Committee Report on the Continuation, Expansion and Capital Budgets for S.L. 2008-107, the General Fund shall service the debt for the Green Square Complex parking deck during the 2009-2011 fiscal biennium.

**TRANSFER OF UNENCUMBERED CASH BALANCES IN VARIOUS CAPITAL FUNDS**

**SECTION 27.11.(a)** Notwithstanding any other provision of law to the contrary, effective July 1, 2009, unencumbered cash balances remaining in Capital Funds shall be transferred to the State Controller to be deposited in the General Fund according to the schedule that follows. These funds shall be used to support General Fund appropriations for the 2009-2010 fiscal year.

<b>Project/Fund</b>	<b>Amount Transferred</b>
Department of Administration	
Museum of History Security Improvements & Door Repairs (Budget Code 40701-4J20)	\$545,800
UNC-TV Server Room – HVAC Upgrades	79,000
Energy Savings Reserve (Budget Code 40701-4J32)	4,000,000
Five New Youth Development Centers Planning (Budget Code 40701-4J28)	947,000
Garner Road Building #2 – Mechanical Room Renovations (Budget Code 40702)	1,112,900
Department of Commerce	
Portswide Improvements (Budget Code 40710-4N04)	70,116
Department of Corrections	
Mechanical Systems Repairs & Renovations (Budget Code 40613-4K06)	268,100
Perimeter Security Fence Modifications (Budget Code 40513-4H02)	1,762,584
Capital Planning Reserve (Budget Code 40713-4L02)	2,972,656
Department of Environment and Natural Resources	
Modular Office (Budget Code 40716-4H4N)	5,990
Turnbull Creek ESF Renovation (Budget Code 40716-4H3F)	3,510
Wake Co Headquarters Storage Building (Budget Code 40716-4H3H)	8,153
Jordan Lake Training Center (Budget Code 40716-4H3G)	123,639
Mt. Training Facility & Linville Nursery Restroom Upgrades (Improvements to Meet ADA Act)(Budget Code 40616)	218,691
HVAC Repairs (Budget Code 40716)	177,496
Aviary HVAC Renovation (Budget Code 40716-4H32)	17,660
NC Zoological Park Storage Building (Budget Code 40616-4G30)	402,575
NC Zoological Park Horticulture Storage Facility (Budget Code 40716-4H30)	382,271
Department of Health and Human Services	
Medical Care Unit HVAC Upgrades (Budget Code 44344-4E02)	593,775
HVAC Upgrades for Vocational Enterprises Bldg (Budget Code 40759-4F01)	25,000

HVAC Upgrades for Vocational Enterprises Bldg (Budget Code 40659-4E01)	1,198,685
Edgerton Building Upgrades (Budget Code 40641-4I02)	619,871
Harvey Building Upgrades (Budget Code 40641-4I01)	593,775

Department of Juvenile Justice and Delinquency Prevention

Det & New Hanover Septic System (Budget Code 40647-4K04)	150,000
Butner New Roof & Asbestos (Budget Code 40647-4K12)	300,000
Samarkand Bldg Demolition (Budget Code 40647-4K13)	200,000
CA Dillon Maintenance Building (Budget Code 40747-4L01)	375,000
Buncombe Det Cnt Boiler & Repairs (Budget Code 40647-4K10)	67,477
Cumberland Det. Renovat (Budget Code 40447-4I01)	5,881
SV/DOC Campus Transfer (Budget Code 40647-4K02)	9,741
Security Camera Fixtures (Budget Code 40547-4J03)	254,088
Multipurpose Homes Renovations (Budget Code 40647-4K06)	2,746
Security Cameras YDC (Budget Code 40547-4J02)	2,297,511
Security Cameras Detentn (Budget Code 40547-4J01)	55,268
Samarkand HVAC Nordan (Budget Code 40647-4K03)	71,842
Dillon Asbestos & New Roof (Budget Code 40647-4K07)	500,000

Office of State Budget and Management

OSBM R&R Reserve (Budget Codes 49702, 49802, 49902, 40002, 40102, 40202, 40302, 40402, 40502, 40602, 40702)	1,471,717
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**TOTALS** **\$21,890,518**

**SECTION 27.11.(b)** The Board of Governors of The University of North Carolina shall identify previously authorized capital improvement projects for which unencumbered cash balances remain and shall transfer from these cash balances the following sums to the State Controller to be deposited in the General Fund. These funds shall be used to support General Fund appropriations for the 2009-2010 fiscal year:

- (1) One million one hundred fifty-five thousand two hundred eighty-nine dollars (\$1,155,289) from funds allocated to capital projects related to energy or energy efficiency.
- (2) One million three hundred twenty-six thousand eight hundred ninety-four dollars (\$1,326,894) from funds allocated to capital projects of any type.

**AMEND COPS AUTHORIZATION LANGUAGE/ALLOW POLICE OPERATIONS CENTER AT SCHOOL OF THE ARTS**

**SECTION 27.12.** Subdivision (7) of Section 27.8(a) of S.L. 2008-107, as amended by Section 2(a) of S.L. 2009-209, reads as rewritten:

- "(7) In the maximum aggregate principal amount of ten million two hundred thirty-seven thousand one hundred sixteen dollars (\$10,237,116) to finance the capital facility costs of ~~completing-completing, separately or together,~~ a central storage facility and a police operations center at the University of North Carolina School of the Arts."

**AMEND COPS AUTHORIZATION LANGUAGE/APPALACHIAN STATE UNIVERSITY PROPERTY ACQUISITION**

**SECTION 27.12A.** Subdivision (1) of Section 29.13(a) of S.L. 2007-323 reads as rewritten:

- "(1) In the maximum aggregate principal amount of thirty-four million dollars (\$34,000,000) to finance the capital facility costs of completing a new educational building at Appalachian State ~~University~~ University and acquiring adjacent real property related to the project. No more than a maximum aggregate amount of three million dollars (\$3,000,000) of special indebtedness may be issued or incurred under this subdivision prior to July 1, 2008."



## **REPORT ON STATUS OF CERTAIN UNC REPAIRS & RENOVATIONS PROJECTS**

**SECTION 27.13.(a)** The University of North Carolina Board of Governors shall prepare a report containing information on the status of each project subject to G.S. 116-31.11 which was or is to be paid for in whole or in part with funds allocated to the Board from the Reserve for Repairs and Renovations and shall submit the report to the Chairs of the Senate Appropriations Committee/Base Budget, the Chairs of the House of Representatives Committee on Appropriations, and the Fiscal Research Division no later than March 1, 2010. Specifically, the report shall include information about each project for which funds from the Reserve for Repairs and Renovations were allocated at anytime after July 1, 2006, regardless of whether or not such funds were actually used for the project.

**SECTION 27.13.(b)** The report required by this section shall contain the following information about each project:

- (1) A brief description of the project.
- (2) The estimated cost of the project.
- (3) The sources of funds, and the amounts from each source, budgeted for the project.
- (4) Expenditures and encumbrances for the project.
- (5) The month and year in which funds were allocated to the project.
- (6) The project schedule. If the project is complete, the date of completion.
- (7) If the project is cancelled, an explanation of the reason for cancellation and of how funds were reallocated.

## **ALLOW JOINT CONSTRUCTION OF NANOSCIENCE BUILDING AND RESEARCH BUILDING ON THE JOINT MILLENNIAL CAMPUS OF NORTH CAROLINA AGRICULTURAL AND TECHNICAL STATE UNIVERSITY AND THE UNIVERSITY OF NORTH CAROLINA AT GREENSBORO**

**SECTION 27.14.** Notwithstanding any other provision of law, the Nanoscience Building initially authorized in Section 29.13(a)(12) of S.L. 2007-323 and the research building on the joint Millennial Campus of North Carolina Agricultural and Technical State University and the University of North Carolina at Greensboro originally authorized in Section 1.1 of S.L. 2004-179 may be constructed at a single facility. Nothing in this section shall be construed to alter the scope of the respective projects, as initially authorized or subsequently amended.

## **MEDIUM SECURITY ADDITION AT MAURY CORRECTIONAL INSTITUTION**

**SECTION 27.15.** The Department of Correction shall take appropriate measures, including maximizing the use of the Inmate Construction Program, to reduce the costs related to construction of correctional projects authorized in S.L. 2008-107, 2007-323, and 2003-284. The Department of Correction, with the approval of the Office of State Budget and Management, may use the funds from any savings generated, together with available funds, to finance the capital facility costs of completing a 504-bed medium-security addition at Maury Correctional Institution in an amount not to exceed sixteen million dollars (\$16,000,000). No additional special indebtedness may be issued or incurred to finance the construction of the medium-security addition at Maury.

## **PART XXVIA. TAX CHANGES**

### **CORPORATE AND INDIVIDUAL INCOME TAX SURTAX**

**SECTION 27A.1.(a)** Part 1 of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

**"§ 105-130.3B. Income tax surtax.**

(a) Surtax. – An income tax surtax is imposed on a taxpayer equal to three percent (3%) of the tax payable by the taxpayer under G.S. 105-130.3 for the taxable year. This tax is in addition to the tax imposed by G.S. 105-130.3 and is due at the time prescribed in G.S. 105-130.17 for filing a corporate income tax return.

(b) Sunset. – This section expires for taxable years beginning on or after January 1, 2011."

**SECTION 27A.1.(b)** Part 2 of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

**"§ 105-134.2A. Income tax surtax.**

(a) Surtax. – An income tax surtax is imposed on a taxpayer equal to a percentage of the tax payable by the taxpayer under G.S. 105-134.2 for the taxable year. This tax is in addition to the tax imposed by G.S. 105-134.2 and is due at the time prescribed in G.S. 105-155 for filing an individual income tax return. The surtax is imposed at the following percentage rates and applies to the tax payable on the taxpayer's North Carolina taxable income:

<u>Filing Status</u>	<u>Over</u>	<u>Up To</u>	<u>Percentage</u>
<u>Married, filing jointly or surviving spouse</u>	\$ 0	\$100,000	0%
	\$100,000	\$250,000	2%
	\$250,000	NA	3%
<u>Head of household</u>	\$ 0	\$ 80,000	0%
	\$ 80,000	\$200,000	2%
	\$200,000	NA	3%
<u>Single</u>	\$ 0	\$ 60,000	0%
	\$ 60,000	\$150,000	2%
	\$150,000	NA	3%
<u>Married, filing separately</u>	\$ 0	\$ 50,000	0%
	\$ 50,000	\$125,000	2%
	\$125,000	NA	3%

(b) Sunset. – This section expires for taxable years beginning on or after January 1, 2011."

**SECTION 27A.1.(c)** This section is effective for taxable years beginning on or after January 1, 2009. Notwithstanding the provisions of G.S. 105-163.15 and G.S. 105-163.41, no addition to tax may be made under those statutes for a taxable year beginning on or after January 1, 2009, and before January 1, 2011, with respect to any underpayment of income tax to the extent the underpayment was created or increased by this section.

#### **INCREASE SALES AND USE TAX BY ONE PERCENT**

**SECTION 27A.2.(a)** Notwithstanding G.S. 105-164.4(a), the general rate of tax for sales made on or after September 1, 2009, and before October 1, 2009, is five and one-half percent (5.5%).

**SECTION 27A.2.(b)** The introductory language of G.S. 105-164.4(a) reads as rewritten:

"(a) A privilege tax is imposed on a retailer at the following percentage rates of the retailer's net taxable sales or gross receipts, as appropriate. The general rate of tax is ~~four and three-quarters percent (4.75%)~~; five and three-quarters percent (5.75%)."

**SECTION 27A.2.(c)** G.S. 105-164.44F(a) reads as rewritten:

"(a) Amount. – The Secretary must distribute part of the taxes imposed by G.S. 105-164.4(a)(4c) on telecommunications service and ancillary service. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The amount the Secretary must distribute is the following percentages of the net proceeds of the taxes collected during the quarter:

- (1) ~~Eighteen and seventy one hundredths percent (18.70%)~~ Sixteen and thirty-six hundredths percent (16.36%) minus two million six hundred twenty thousand nine hundred forty-eight dollars (\$2,620,948), must be distributed to cities in accordance with this section. The deduction is one-fourth of the annual amount by which the distribution to cities of the gross receipts franchise tax on telephone companies, imposed by former G.S. 105-20, was required to be reduced beginning in fiscal year 1995-96 as a result of the "freeze deduction."
- (2) ~~Seven and seven tenths percent (7.7%)~~ Six and seventy-four hundredths percent (6.74%) must be distributed to counties and cities as provided in G.S. 105-164.44I."

**SECTION 27A.2.(d)** G.S. 105-164.44I(a) reads as rewritten:

"(a) Distribution. – The Secretary must distribute to the counties and cities part of the taxes imposed by G.S. 105-164.4(a)(4c) on telecommunications service and G.S. 105-164.4(a)(6) on video programming service. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The amount the Secretary must distribute

is the sum of the revenue listed in this subsection. The Secretary must distribute two million dollars (\$2,000,000) of this amount in accordance with subsection (b) of this section and the remainder in accordance with subsections (c) and (d) of this section. The revenue to be distributed under this section consists of the following:

- (1) The amount specified in G.S. 105-164.44F(a)(2).
- (2) ~~Twenty three and six tenths percent (23.6%)~~ Twenty and sixty-five hundredths percent (20.65%) of the net proceeds of the taxes collected during the quarter on video programming, other than on direct-to-home satellite service.
- (3) ~~Thirty seven and one tenths percent (37.1%)~~ Thirty-two and forty-six hundredths percent (32.46%) of the net proceeds of the taxes collected during the quarter on direct-to-home satellite service."

**SECTION 27A.2.(e)** This section does not apply to construction materials purchased to fulfill a lump-sum or unit-price contract entered into or awarded before the effective date of the increase or entered into or awarded pursuant to a bid made before the effective date of the increase when the construction materials would otherwise be subject to the increased rate of tax provided in this section.

**SECTION 27A.2.(f)** Subsections (a) and (e) of this section are effective when they become law. The remainder of this section becomes effective October 1, 2009. Subsection (b) applies to sales made on or after October 1, 2009, and subsections (c) and (d) apply to distributions for months beginning on or after October 1, 2009. Subsections (b) through (d) of this section expire July 1, 2011. This section does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this section before the effective date of its amendment or repeal; nor does it affect the right to any refund or credit of a tax that accrued under the amended or repealed statute before the effective date of its amendment or repeal.

#### **NEXUS CLARIFICATION AND CLICK THROUGHs, USE TAX LINE ON INCOME TAX RETURN, DIGITAL PRODUCTS, MAGAZINES DELIVERED BY MAIL**

**SECTION 27A.3.(a)** G.S. 105-164.8 reads as rewritten:

**"§ 105-164.8. Retailer's obligation to collect tax; ~~mail-order-remote sales subject to tax.~~**

(a) ~~Obligation. – Every retailer engaged in business in this State as defined in this Article shall collect said tax~~ A retailer is required to collect the tax imposed by this Article notwithstanding any of the following:

- (1) ~~That the purchaser's order or the contract of sale is delivered, mailed~~ mailed, or otherwise transmitted by the purchaser to the retailer at a point outside this State as a result of solicitation by the retailer through the medium of a catalogue or other written ~~advertisement; or~~ advertisement.
- (2) ~~That the purchaser's order or the contract of sale is made or closed by acceptance or approval outside this State, or before said any tangible personal property or digital property that is part of the order or contract enters this State; or~~ State.
- (3) ~~That the purchaser's order or the contract of sale provides that said the property shall be or is in fact procured or manufactured at a point outside this State and shipped directly to the purchaser from the point of origin; or~~ origin.
- (4) ~~That said the property is mailed to the purchaser in this State or a point outside this State or delivered to a carrier outside this State f.o.b. or otherwise and directed to the purchaser in this State regardless of whether the cost of transportation is paid by the retailer or by the purchaser; or~~ purchaser.
- (5) ~~That said the property is delivered directly to the purchaser at a point outside this State; or~~ State.
- (6) Any combination in whole or in part of any two or more of the foregoing statements of fact, if it is intended that the ~~tangible personal property~~ use-use, or consumption in this State.

(b) ~~Mail Order Remote Sales.~~ – A retailer who makes a ~~mail order remote~~ sale is engaged in business in this State and is subject to the tax levied under this Article if at least one of the following conditions is met:

- (1) The retailer is a corporation engaged in business under the laws of this State or a person domiciled in, a resident of, or a citizen of, this State.
- (2) The retailer maintains retail establishments or offices in this State, whether the ~~mail order remote~~ sales thus subject to taxation by this State result from or are related in any other way to the activities of ~~such the~~ establishments or offices.
- (3) ~~The retailer has representatives in this State who solicit business or transact business on behalf of the retailer, solicits or transacts business in this State by employees, independent contractors, agents, or other representatives, whether the mail order remote sales thus subject to taxation by this State result from or are related in any other way to such the solicitation or transaction of business. A retailer is presumed to be soliciting or transacting business by an independent contractor, agent, or other representative if the retailer enters into an agreement with a resident of this State under which the resident, for a commission or other consideration, directly or indirectly refers potential customers, whether by a link on an Internet Web site or otherwise, to the retailer. This presumption applies only if the cumulative gross receipts from sales by the retailer to purchasers in this State who are referred to the retailer by all residents with this type of agreement with the retailer is in excess of ten thousand dollars (\$10,000) during the preceding four quarterly periods. This presumption may be rebutted by proof that the resident with whom the retailer has an agreement did not engage in any solicitation in the State on behalf of the seller that would satisfy the nexus requirement of the United States Constitution during the four quarterly periods in question.~~
- (4) Repealed by Session Laws 1991, c. 45, s. 16.
- (5) The retailer, by purposefully or systematically exploiting the market provided by this State by any media-assisted, media-facilitated, or media-solicited means, including direct mail advertising, distribution of catalogs, computer-assisted shopping, television, radio or other electronic media, telephone solicitation, magazine or newspaper advertisements, or other media, creates nexus with this State. A nonresident retailer who purchases advertising to be delivered by television, by radio, in print, on the Internet, or by any other medium is not considered to be engaged in business in this State based solely on the purchase of the advertising.
- (6) Through compact or reciprocity with another jurisdiction of the United States, that jurisdiction uses its taxing power and its jurisdiction over the retailer in support of this State's taxing power.
- (7) The retailer consents, expressly or by implication, to the imposition of the tax imposed by this Article. For purposes of this subdivision, evidence that a retailer engaged in the activity described in subdivision (5) ~~shall be~~ is prima facie evidence that the retailer consents to the imposition of the tax imposed by this Article.
- (8) The retailer is a holder of a wine shipper permit issued by the ABC Commission pursuant to G.S. 18B-1001.1.

(c) Local Tax. – A retailer who is required to collect the tax imposed by this Article must collect a local use tax on a transaction if a local sales tax does not apply to the transaction. The sourcing principles in G.S. 105-164.4B determine whether a local sales tax or a local use tax applies to a transaction. A "local sales tax" is a tax imposed under Chapter 1096 of the 1967 Session Laws or by Subchapter VIII of this Chapter, and a local use tax is a use tax imposed under that act or Subchapter."

**SECTION 27A.3.(b)** Sections 10 and 11 of S.L. 2000-120 are repealed.

**SECTION 27A.3.(c)** Section 18 of S.L. 2000-120, as amended by Section 44.1 of S.L. 2003-284 and Section 33.24 of S.L. 2005-276, reads as rewritten:

"**Section 18.** Section 7 of this act becomes effective January 1, 2001. ~~Sections 10 and 11 of this act become effective for taxable years beginning on or after January 1, 2010.~~ The remainder of this act is effective when it becomes law."

**SECTION 27A.3.(d)** G.S. 105-164.3(5d) and (17a) are repealed.

**SECTION 27A.3.(e)** G.S. 105-164.4(a) is amended by adding a new subdivision to

read:

"(6b) The general rate applies to the digital property that is listed in this subdivision, is delivered or accessed electronically, is not considered tangible personal property, and would be taxable under this Article if sold in a tangible medium. The tax applies regardless of whether the purchaser of the item has a right to use it permanently or to use it without making continued payments. The tax does not apply to a service that is taxed under another subdivision of this subsection or to an information service. The following property is subject to tax under this subdivision:

a. An audio work.

b. An audiovisual work.

c. A book, a magazine, a newspaper, a newsletter, a report, or another publication.

d. A photograph or a greeting card."

**SECTION 27A.3.(f)** G.S. 105-164.13 reads as rewritten:

"§ 105-164.13. **Retail sales and use tax.**

The sale at retail and the use, storage, or consumption in this State of the following tangible personal property and services are specifically exempted from the tax imposed by this Article:

...  
(5b) Sales to a telephone company regularly engaged in providing ~~telephone~~ telecommunications service to subscribers on a commercial basis of central office equipment, switchboard equipment, private branch exchange equipment, terminal equipment other than public pay telephone terminal equipment, and parts and accessories attached to the equipment.

...  
(28) Sales of newspapers by newspaper street vendors, by newspaper carriers making door-to-door deliveries, and by means of vending ~~machines and sales of magazines by magazine vendors making door-to-door sales.~~ machines.

...  
(43a) Computer software ~~delivered electronically or delivered by load and leave.~~ that meets any of the following descriptions:

a. It is designed to run on an enterprise server operating system.

b. It is sold to a person who operates a datacenter and is used within the datacenter.

c. It is sold to a person who provides cable service, telecommunications service, or video programming and is used to provide ancillary service, cable service, Internet access service, telecommunications service, or video programming.

(43b) Computer software or digital property that becomes a component part of other computer software or digital property that is offered for sale or of a service that is offered for sale.

...."

**SECTION 27A.3.(g)** G.S. 105-164.3 reads as rewritten:

"§ 105-164.3. **Definitions.**

The following definitions apply in this Article:

...  
(1e) Audio work. – A series of musical, spoken, or other sounds, including a ringtone.

(1g) Audiovisual work. – A series of related images and any sounds accompanying the images that impart an impression of motion when shown in succession.

(1b)(1i) Bundled transaction. – A retail sale of two or more distinct and identifiable products, at least one of which is taxable and one of which is exempt, for one nonitemized price. Products are not sold for one nonitemized price if an invoice or another sales document made available to the purchaser separately

identifies the price of each product. A bundled transaction does not include the retail sale of any of the following:

- a. A product and any packaging item that accompanies the product and is exempt under G.S. 105-164.13(23).
- b. A sale of two or more products whose combined price varies, or is negotiable, depending on the products the purchaser selects.
- c. A sale of a product accompanied by a transfer of another product with no additional consideration.
- d. A product and the delivery or installation of the product.
- e. A product and any service necessary to complete the sale.

~~(1d)~~(1k) Business. – ~~Includes any~~ An activity engaged in by any person or caused to be engaged in by him a person engages in or causes another to engage in with the object of gain, profit, benefit-benefit, or advantage, either direct or indirect. The term "business" shall not be construed in this Article to does not include an occasional and isolated sales or transactions sale or transaction by a person who does not hold himself out as claim to be engaged in business.

~~(1f)~~(1m) Cable service. – The one-way transmission to subscribers of video programming or other programming service and any subscriber interaction required to select or use the service.

...  
(5) Consumer. – ~~Means and includes every~~ A person storing, using or otherwise consuming who stores, uses, or otherwise consumes in this State tangible personal property-property, digital property, or a service purchased or received from a retailer either within or without this State.

...  
~~(5e)~~(5b) Custom computer software. – Computer software that is not prewritten computer software. The term includes a user manual or other documentation that accompanies the sale of the software.

(5c) Datacenter. – A facility that provides infrastructure for hosting or data processing services and that has power and cooling systems that are created and maintained to be concurrently maintainable and to include redundant capacity components and multiple distribution paths serving the computer equipment at the facility. Although the facility must have multiple distribution paths serving the computer equipment, a single distribution path may serve the computer equipment at any one time. The following definitions apply in this subdivision:

- a. Concurrently maintainable. – Capable of having any capacity component or distribution element serviced or repaired on a planned basis without interrupting or impeding the performance of the computer equipment.
- b. Multiple distribution paths. – A series of distribution paths configured to ensure that failure on one distribution path does not interrupt or impede other distribution paths.
- c. Redundant capacity components. – Components beyond those required to support the computer equipment.

...  
(7a) Digital code. – A code that gives a purchaser of the code a right to receive an item by electronic delivery or electronic access. A digital code may be obtained by an electronic means or by a tangible means. A digital code does not include a gift certificate or a gift card.

~~(7a)~~(7c) Direct mail. – Printed material delivered or distributed by the United States Postal Service or other delivery service to a mass audience or to addresses on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items is not billed directly to the recipients. The term includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. The term does not include multiple items of printed material delivered to a single address.

- ...
- (8e) ~~Eligible Internet data center, datacenter.~~ – A ~~facility, datacenter~~ that satisfies each of the following conditions:
- a. The facility is used primarily or is to be used primarily by a business engaged in "Internet service providers and Web search portals" industry 51811, as defined by NAICS.
  - b. The facility is comprised of a structure or series of structures located or to be located on a single parcel of land or on contiguous parcels of land that are commonly owned or owned by affiliation with the operator of that facility.
  - c. The facility is located or to be located in a county that was designated, at the time of application for the written determination required under sub-subdivision d. of this subdivision, either an enterprise tier one, two, or three area or a development tier one or two area pursuant to G.S. 105-129.3 or G.S. 143B-437.08, regardless of any subsequent change in county enterprise or development tier status.
  - d. The Secretary of Commerce has made a written determination that at least two hundred fifty million dollars (\$250,000,000) in private funds has been or will be invested in real property or eligible business property, or a combination of both, at the facility within five years after the commencement of construction of the facility.

- ...
- (9) Engaged in business. – Any of the following:
- a. ~~Maintaining, occupying—occupying,~~ or using permanently or temporarily, directly or indirectly, or through a subsidiary or agent, by whatever name called, any office, place of distribution, sales or sample ~~room or place, room,~~ warehouse or storage place, or other place of ~~business, business for the selling or delivering of~~ tangible personal ~~property—property,~~ digital property, or a service for storage, ~~use—use,~~ or consumption in this State, or permanently or temporarily, directly or through a subsidiary, having any representative, agent, ~~salesman, canvasser—sales representative,~~ or solicitor operating in this State in ~~such—the selling or delivering, and the delivering.~~ The fact that any corporate retailer, ~~agent—agent,~~ or subsidiary engaged in business in this State may not be legally domesticated or qualified to do business in this State is immaterial. ~~It also means maintaining~~
  - b. Maintaining in this State, either permanently or temporarily, directly or through a subsidiary, tangible personal property or digital property for the purpose of lease or rental. ~~It also means making a mail order~~
  - c. Making a remote sale, as defined in this section, if one of the conditions listed in G.S. 105-164.8(b) is met. ~~It also means the direct shipment of~~
  - d. Shipping wine directly to a purchaser in this State ~~by a wine shipper permittee under as authorized by G.S. 18B-1001.1.~~

...

(12) Gross sales. – The sum total of the sales price of all retail sales of tangible personal ~~property and—property,~~ digital property, and services.

...

(14) In this (the) State. – Within the exterior limits of the State of North ~~Carolina and includes—Carolina,~~ including all territory within ~~such—these~~ limits owned by or ceded to the United States of America.

(14a) Information service. – A service that generates, acquires, stores, processes, or retrieves data and information and delivers it electronically to or allows electronic access by a consumer whose primary purpose for using the service is to obtain the processed data or information.

...

(18) ~~Mail order sale.~~ – A sale of tangible personal property, ~~ordered by mail, telephone, computer link, or other similar method, to a purchaser who is in~~

~~this State at the time the order is remitted, from a retailer who receives the order in another state and transports the property or causes it to be transported to a person in this State. It is presumed that a resident of this State who remits an order was in this State at the time the order was remitted.~~

...  
(24) Net taxable sales. — ~~Means and includes the~~ The gross retail sales of the business of the a retailer taxed under this Article after deducting exempt sales and nontaxable sales.

(25) Nonresident retail or wholesale merchant. — A person who does not have a place of business in this State, is registered for sales and use tax purposes in a taxing jurisdiction outside the State, and is engaged in the business of acquiring, by purchase, consignment, or otherwise, tangible personal property or digital property and selling the property outside the State, and is registered for sales and use tax purposes in a taxing jurisdiction outside the State. ~~State or in the business of providing a service.~~

...  
(26) Person. — ~~The same meaning as~~ Defined in G.S. 105-228.90.

...  
(32) Purchase. — ~~Acquired for a consideration whether~~ consideration, regardless of any of the following:

a. ~~The~~ Whether the acquisition was effected by a transfer of title or possession, or both, or a license to use or ~~consume;~~ consume.

b. ~~The~~ Whether the transfer was absolute or conditional regardless of the means by which it was ~~effected;~~ and effected.

c. ~~The~~ Whether the consideration is a price or rental in money or by way of exchange or barter.

~~It shall also include the procuring of a retailer to erect, install or apply tangible personal property for use in this State.~~

...  
(33c) Remote sale. — A sale of tangible personal property or digital property ordered by mail, by telephone, via the Internet, or by another similar method, to a purchaser who is in this State at the time the order is remitted, from a retailer who receives the order in another state and delivers the property or causes it to be delivered to a person in this State. It is presumed that a resident of this State who remits an order was in this State at the time the order was remitted.

...  
(35) Retailer. — ~~Means and includes every~~ A person engaged in the business of ~~making sales any of the following:~~

a. Making sales at retail, offering to make sales at retail, or soliciting sales at retail of tangible personal property at retail, property, digital property, or services either within or without this State, or peddling the same or soliciting or taking orders for sales, whether for immediate or future delivery, for storage, use, or consumption in this State and every manufacturer, producer or contractor engaged in business in this State and selling, delivering, erecting, installing or applying tangible personal property for use in this State notwithstanding that said property may be permanently affixed to a building or realty or other tangible personal property. "Retailer" also means a person who makes a mail order sale, as defined in this section, if one of the conditions listed in G.S. 105-164.8(b) is met. Provided, however, that when State. When in the opinion of the Secretary finds it is necessary for the efficient administration of this Article to regard any salesmen, sales representatives, solicitors, representatives, consignees, peddlers, ~~truckers or~~ truckers or canvassers as agents of the dealers, distributors, consignors, supervisors, ~~employers~~ employers, or persons under whom they operate or from whom they obtain the ~~tangible personal property~~



items sold by them regardless of whether they are making sales on their own behalf or on behalf of ~~such~~ these dealers, distributors, consignors, supervisors, ~~employers~~ employers, or persons, the Secretary may so regard them and may regard the dealers, distributors, consignors, supervisors, ~~employers~~ employers, or persons as "retailers" for the purpose of this Article.

- b. Delivering, erecting, installing, or applying tangible personal property for use in this State, regardless of whether the property is permanently affixed to real property or other tangible personal property.
- c. Making a remote sale, if one of the conditions listed in G.S. 105-164.8(b) is met.

...

(35c) Ringtone. – A digitized sound file that is downloaded onto a device and that may be used to alert the user of the device with respect to a communication.

...

(36) Sale or selling. – The transfer for consideration of title or possession of tangible personal property, conditional or otherwise, in any manner or by any means whatsoever, for a consideration paid or to be paid, property or digital property or the performance for consideration of a service. The transfer or performance may be conditional or in any manner or by any means. The

The term includes the fabrication following:

- a. Fabrication of tangible personal property for consumers by persons engaged in business who furnish either directly or indirectly the materials used in the fabrication work. ~~The term also includes the furnishing~~
- b. Furnishing or preparing for a consideration of any tangible personal property consumed on the premises of the person furnishing or preparing the property or consumed at the place at which the property is furnished or prepared. ~~The term also includes a~~
- c. A transaction in which the possession of the property is transferred but the seller retains title or security for the payment of the consideration.
- d. A lease or rental.
- e. Transfer of a digital code.

~~If a retailer engaged in the business of selling prepared food and drink for immediate or on-premises consumption also gives prepared food or drink to its patrons or employees free of charge, for the purposes of this Article the property given away is considered sold along with the property sold. If a retailer gives an item of inventory to a customer free of charge on the condition that the customer purchase similar or related property, the item given away is considered sold along with the item sold. In all other cases, property given away or used by any retailer or wholesale merchant is not considered sold, whether or not the retailer or wholesale merchant recovers its cost of the property from sales of other property.~~

(37) Sales price. – The total amount or consideration for which tangible personal ~~property~~ property, digital property, or services are sold, leased, or rented. The consideration may be in the form of cash, credit, property, or services. The sales price must be valued in money, regardless of whether it is received in money.

- a. The term includes all of the following:
  - 1. The retailer's cost of the property sold.
  - 2. The cost of materials used, labor or service costs, interest, losses, all costs of transportation to the retailer, all taxes imposed on the retailer, and any other expense of the retailer.
  - 3. Charges by the retailer for any services necessary to complete the sale.
  - 4. Delivery charges.

5. Installation charges.
6. Repealed by Session Laws 2007-244, s. 1, effective October 1, 2007.
7. Credit for trade-in.
8. Discounts that are reimbursable by a third party and can be determined at the time of sale through any of the following:
  - I. Presentation by the consumer of a coupon or other documentation.
  - II. Identification of the consumer as a member of a group eligible for a discount.
  - III. The invoice the retailer gives the consumer.
- b. The term does not include any of the following:
  1. Discounts that are not reimbursable by a third party, are allowed by the retailer, and are taken by a consumer on a sale.
  2. Interest, financing, and carrying charges from credit extended on the sale, if the amount is separately stated on the invoice, bill of sale, or a similar document given to the consumer.
  3. Any taxes imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the consumer.

...  
 (44) ~~Storage. – Means and includes any~~ The keeping or retention in this State for any purpose by the purchaser thereof, purpose, except sale in the regular course of business, of tangible personal property or digital property purchased from a retailer. The term does not include a purchaser's storage of tangible personal property or digital property in any of the following circumstances:

- a. When the purchaser acquires the property for the purchaser's use outside the State and subsequently takes it outside the State and uses it solely outside the State.
- b. When the purchaser acquires the property to process, fabricate, manufacture, or otherwise incorporate it into or attach it to other property for the purchaser's use outside the State and, after incorporating or attaching the purchased property, the purchaser subsequently takes the other property outside the State and uses it solely outside the State.

(45) ~~Storage and Use; Exclusion. — "Storage" and "use" do not include the keeping, retaining or exercising of any right or power over tangible personal property by the purchaser thereof for the original purpose of subsequently transporting it outside the State for use by said purchaser thereafter solely outside the State and which purpose is consummated, or for the purpose of being processed, fabricated or manufactured into, attached to or incorporated into, other tangible personal property to be transported outside the State and thereafter used by the purchaser thereof solely outside the State.~~

...  
 (48) Telecommunications service. – The electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term includes any transmission, conveyance, or routing in which a computer processing application is used to act on the form, code, or protocol of the content for purposes of the transmission, conveyance, or routing, regardless of whether it is referred to as voice-over Internet protocol or the Federal Communications Commission classifies it as enhanced or value added. The term does not include the following:

- a. ~~An information service. Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a customer whose primary purpose for using the service is to obtain the processed data or information.~~

- b. The sale, installation, maintenance, or repair of tangible personal property.
  - c. Directory advertising and other advertising.
  - d. Billing and collection services provided to a third party.
  - e. Internet access service.
  - f. Radio and television audio and video programming service, regardless of the medium of delivery, and the transmission, conveyance, or routing of the service by the programming service provider. The term includes cable service and audio and video programming service provided by a mobile telecommunications service provider.
  - g. Ancillary service.
  - h. A digital product delivered electronically, including software, music, a ring tone, video, and reading material. Digital property that is delivered or accessed electronically, including an audio work, an audiovisual work, or any other item subject to tax under G.S. 105-164.4(a)(6b).
- (49) Use. – The exercise of any right, power, or dominion whatsoever over tangible personal ~~property~~ property, digital property, or a service by the purchaser of the property or service. The term includes withdrawal from storage, distribution, installation, affixation to real or personal property, and exhaustion or consumption of the ~~tangible personal property~~ or service by the owner or purchaser. The term does not include the sale following:
- a. A sale of tangible personal property or a service in the regular course of business.
  - b. A purchaser's use of tangible personal property or digital property in any of the circumstances that would exclude the storage of the property from the definition of 'storage' in subdivision (44) of this section.
- ...
- (51) Wholesale merchant. – ~~Every~~ A person who engages engaged in the business of ~~buying any of the following:~~
- a. Making wholesale sales.
  - b. Buying or manufacturing any tangible personal ~~property~~ property, digital property, or a service and selling same it to a registered retailers, wholesalers and resident or nonresident retail or wholesale merchants merchant for resale. It shall also include persons making sales of tangible personal property which are defined herein as wholesale sales. For the purposes of this Article any person, firm, corporation, estate or trust engaged in the business of manufacturing,
  - c. Manufacturing, producing, ~~processing~~ processing, or blending any articles of commerce and maintaining a store or stores, warehouse or warehouses, store, warehouse, or any other place or places, that is separate and apart from the place of manufacture or production, production for the sale or distribution of its products (other than bakery products) to other manufacturers or producers, wholesale or retail merchants, for the purpose of resale shall be deemed a "wholesale merchant."the articles, other than bakery products, to another for the purpose of resale.
- (52) Wholesale sale. – A sale of tangible personal ~~property~~ property, digital property, or a service by a wholesale merchant to a manufacturer, or registered jobber or dealer, or registered wholesale or retail merchant, for the purpose of resale but does not include a sale to users or consumers not for resale. The term includes a sale of digital property for reproduction into digital or tangible personal property offered for sale. The term does not include a sale to a user or consumer not for resale or, in the case of digital property, not for reproduction and sale of the reproduced property."

**SECTION 27A.3.(h)** G.S. 105-164.6 reads as rewritten:

**"§ 105-164.6. Complementary use tax.**

(a) Tax. – An excise tax at the applicable rate set in G.S. 105-164.4 is imposed on the products listed below. The applicable rate is the rate and maximum tax, if any, that would apply to the sale of the product. A product is subject to tax under this section only if it is subject to tax under G.S. 105-164.4.

- (1) Tangible personal property or digital property purchased inside or outside this State for storage, use, or consumption in this State. This subdivision includes property that becomes part of a building or another structure.
- (2) Tangible personal property or digital property leased or rented inside or outside this State for storage, use, or consumption in this State.
- (3) Services sourced to this State.

(b) Liability. – The tax imposed by this section is payable by the person who purchases, leases, or rents tangible personal property or digital property or who purchases a service. If the property purchased becomes a part of a building or other structure in the State and the purchaser is a contractor or subcontractor, the contractor, the subcontractor, and the owner of the building are jointly and severally liable for the tax. The liability of a contractor, a subcontractor, or an owner who did not purchase the property is satisfied by receipt of an affidavit from the purchaser certifying that the tax has been paid.

(c) Credit. – A credit is allowed against the tax imposed by this section for the following:

- (1) The amount of sales or use tax paid on the item to this State. Payment of sales or use tax to this State on an item by a retailer extinguishes the liability of a purchaser for the tax imposed under this section.
- (2) The amount of sales or use tax paid on the item to another state. If the amount of tax paid to the other state is less than the amount of tax imposed by this section, the difference is payable to this State. The credit allowed by this subdivision does not apply to tax paid to a state that does not grant a similar credit for sales or use taxes paid in North Carolina.

(d), (e) Repealed by Session Laws 2005-276, s. 33.8, effective October 1, 2005.

(f) Registration. – Before a person may engage in business in this State selling or delivering tangible personal ~~property~~ property, digital property, or a service for storage, use, or consumption in this State, the person must obtain a certificate of registration from the Department. To obtain a certificate of registration, a person must register with the Department.

The holder of the certificate of registration must pay the tax levied under this Article. A certificate of registration is valid unless it is revoked for failure to comply with the provisions of this Article or becomes void. A certificate issued to a retailer becomes void if, for a period of 18 months, the retailer files no returns or files returns showing no sales.

(g) Repealed by Session Laws 1995, c. 7, s. 1."

**SECTION 27A.3.(i)** G.S. 105-164.6A(a) reads as rewritten:

"(a) Voluntary Collection Agreements. – The Secretary may enter into agreements with sellers pursuant to which the seller agrees to collect and remit on behalf of its customers State and local use taxes due on items of tangible personal ~~property~~ property, digital property, or services the seller sells. For the purpose of this section, a seller is a person who is engaged in the business of selling tangible personal ~~property~~ property, digital property, or services for use in this State and who does not have sufficient nexus with this State to be required to collect use tax on the sales."

**SECTION 27A.3.(j)** G.S. 105-164.7 reads as rewritten:

**"§ 105-164.7. Sales tax part of purchase price. Retailer to collect sales tax from purchaser as trustee for State.**

~~Every retailer subject to the tax levied in G.S. 105-164.4 shall at the time of selling or delivering or taking an order for the sale or delivery of taxable tangible personal property or a taxable service, or collecting the sales price, add to the sales price the amount of tax due. The tax constitutes a part of the purchase price, is a debt from the purchaser to the retailer until paid, and is recoverable at law in the same manner as other debts. The tax must be stated and charged separately from the sales price, shown separately on the retailer's sales records, and paid by the purchaser to the retailer as trustee for and on account of the State. The retailer is liable for the collection of the tax and for its payment to the Secretary. The retailer's failure to charge the tax to or to collect the tax from the purchaser does not affect this liability. It is the intent of this Article that the tax be added to the sales price of tangible personal property and services when sold at retail and be borne and passed on to the customer, instead of being borne by the retailer.~~

The sales tax imposed by this Article is intended to be passed on to the purchaser of a taxable item and borne by the purchaser instead of by the retailer. A retailer must collect the tax due on an item when the item is sold at retail. The tax is a debt from the purchaser to the retailer until paid and is recoverable at law by the retailer in the same manner as other debts. A retailer is considered to act as a trustee on behalf of the State when it collects tax from the purchaser of a taxable item."

**SECTION 27A.3.(k)** The introductory language to G.S. 105-164.13 reads as rewritten:

**"§ 105-164.13. Retail sales and use tax.**

The sale at retail and the use, storage, or consumption in this State of the following tangible personal ~~property~~ property, digital property, and services are specifically exempted from the tax imposed by this Article:"

**SECTION 27A.3.(l)** G.S. 105-164.15A reads as rewritten:

**"§ 105-164.15A. Effective date of ~~rate-tax~~ changes for on services and items taxed at combined general rate.**

(a) Services. – The effective date of a ~~rate-tax~~ change for a service taxable under this Article is administered as follows:

(1) ~~For a rate increase, the new rate service that is provided and billed on a monthly or other periodic basis:~~

a. A new tax or a tax rate increase applies to the first billing period that starts on or after the effective date. For a service billed after it is provided, the first billing period starts on the effective date. For a service billed before it is provided, the first billing period starts on the first day of the month after the effective date.

b. A tax repeal or a tax rate decrease applies to bills rendered on or after the effective date.

(2) ~~For a rate decrease, the new rate applies to bills rendered on or after the effective date. For a service that is not billed on a monthly or other periodic basis, a tax change applies to amounts received for services provided on or after the effective date, except amounts received for services provided under a lump-sum or unit-price contract entered into or awarded before the effective date or entered into or awarded pursuant to a bid made before the effective date.~~

(b) Combined Rate Items. – The effective date of a rate change for an item that is taxable under this Article at the combined general rate is the effective date of any of the following:

(1) The effective date of a change in the State general rate of tax set in G.S. 105-164.4.

(2) For an increase in the authorization for local sales and use taxes, the date on which local sales and use taxes authorized by Subchapter VIII of this Chapter for every county become effective in the first county or group of counties to levy the authorized taxes.

(3) For a repeal in the authorization for local sales and use taxes, the effective date of the repeal."

**SECTION 27A.3.(m)** G.S. 105-164.16 reads as rewritten:

**"§ 105-164.16. Returns and payment of taxes.**

(a) General. – Sales and use taxes are payable when a return is due. A return is due quarterly or monthly as specified in this section. A return must be filed with the Secretary on a form prescribed by the Secretary and in the manner required by the Secretary. A return must be signed by the taxpayer or the taxpayer's agent.

A sales tax return must state the taxpayer's gross sales for the reporting period, the amount and type of sales made in the period that are exempt from tax under G.S. 105-164.13 or are elsewhere excluded from tax, the amount of tax due, and any other information required by the Secretary. A use tax return must state the purchase price of tangible personal ~~property~~ property, digital property, or services that were purchased or received during the reporting period and are subject to tax under G.S. 105-164.6, the amount of tax due, and any other information required by the Secretary. Returns that do not contain the required information will not be accepted. When an unacceptable return is submitted, the Secretary will require a corrected return to be filed.

...

(d) Use Tax on Out-of-State Purchases. – Use tax payable by an individual who purchases tangible personal property, ~~excluding purchases of boats and property other than a boat or an aircraft, digital property, or a service~~ outside the State for a nonbusiness purpose is due on an annual basis. For an individual who is not required to file an individual income tax return under Part 2 of Article 4 of this Chapter, the annual reporting period ends on the last day of the calendar year and a use tax return is due by the following April 15. For an individual who is required to file an individual income tax return, the annual reporting period ends on the last day of the individual's income tax year, and the use tax must be paid on the income tax return as provided in G.S. 105-269.14.

(e) Simultaneous State and Local Changes. – When State and local sales and use tax rates change on the same date because one increases and the other decreases but the combined ~~general~~ rate does not change, sales and use taxes payable on ~~the gross receipts from the~~ following periodic payments are reportable in accordance with the changed State and local rates:

- (1) Lease or rental payments billed after the effective date of the changes.
- (2) Installment sale payments received after the effective date of the changes by a taxpayer who reports the installment sale on a cash basis."

**SECTION 27A.3.(n)** G.S. 105-164.22 reads as rewritten:

**"§ 105-164.22. Retailer must keep records. Record-keeping requirements, inspection authority, and effect of failure to keep records.**

~~Every retailer shall keep and preserve suitable records of the gross income, gross receipts and/or gross receipts of sales of such business and such other books or accounts as may be necessary to determine the amount of tax for which he is liable under the provisions of this Article. And it shall be the duty of every retailer to keep and preserve for a period of three years all invoices of goods, wares and merchandise purchased for resale and all such books, invoices and other records shall be open for examination at all reasonable hours during the day by the Secretary or his duly authorized agent. Retailers, wholesale merchants, and consumers must keep for a period of three years records that establish their tax liability under this Article. The Secretary or a person designated by the Secretary may inspect these records at any reasonable time during the day.~~

A retailer's records must include records of the retailer's gross income, gross sales, net taxable sales, and all items purchased for resale. Failure of a retailer to keep records that establish that a sale is exempt under this Article subjects the retailer to liability for tax on the sale.

A wholesale merchant's records must include a bill of sale for each customer that contains the name and address of the purchaser, the date of the purchase, the item purchased, and the price at which the wholesale merchant sold the item. Failure of a wholesale merchant to keep these records for the sale of an item subjects the wholesale merchant to liability for tax at the rate that applies to the retail sale of the item.

A consumer's records must include an invoice or other statement of the purchase price of an item the consumer purchased from outside the State. Failure of the consumer to keep these records subjects the consumer to liability for tax on the purchase price of the item, as determined by the Secretary."

**SECTION 27A.3.(o)** G.S. 105-164.23, 105-164.24, 105-164.25, and 105-164.31 are repealed.

**SECTION 27A.3.(p)** G.S. 105-164.26 reads as rewritten:

**"§ 105-164.26. Presumption that sales are taxable.**

For the purpose of the proper administration of this Article and to prevent evasion of the retail sales tax, ~~it shall be presumed that the following presumptions apply:~~

- (1) That all gross receipts of wholesale merchants and retailers are subject to the retail sales tax until the contrary is established by proper records as required in this Article. ~~It shall be prima facie presumed that~~
- (2) That tangible personal property sold by ~~any a~~ person for delivery in this State, however made, and by carrier or otherwise, State is sold for storage, use, or other consumption in this State, and a like presumption shall apply to State.

- (3) That tangible personal property delivered outside this State and brought to this State by the purchaser-purchaser is for storage, use, or consumption in this State.
- (4) That digital property sold for delivery or access in this State is sold for storage, use, or consumption in this State.
- (5) That a service purchased for receipt in this State is purchased for storage, use, or consumption in this State."

**SECTION 27A.3.(q)** G.S. 105-164.27A reads as rewritten:

**"§ 105-164.27A. Direct pay permit.**

(a) ~~Tangible Personal Property-General.~~ – A general direct pay permit for ~~tangible personal property~~ authorizes its holder to purchase any tangible personal ~~property-property,~~ digital property, or service without paying tax to the seller and authorizes the seller to not collect any tax on a sale to the permit holder. A person who purchases ~~tangible personal property-an item~~ under a direct pay permit issued under this subsection is liable for use tax due on the purchase. The tax is payable when the property is placed in ~~use-use~~ or the service is received. A direct pay permit issued under this subsection does not apply to taxes imposed under G.S. 105-164.4(a)(1f) or G.S. 105-164.4(a)(4a)-G.S. 105-164.4 on electricity.

~~A person who purchases direct mail may apply to the Secretary for a direct pay permit for the purchase of direct mail. The direct pay permit issued for direct mail does not apply to any purchase other than the purchase of direct mail.~~

A person who purchases ~~tangible personal property-an item~~ whose tax status cannot be determined at the time of the purchase because of one of the reasons listed below may apply to the Secretary for a ~~general direct pay permit for tangible personal property-permit:~~

- (1) The place of business where the ~~property-item~~ will be used is not known at the time of the purchase and a different tax consequence applies depending on where the ~~property item~~ is used.
- (2) The manner in which the ~~property-item~~ will be used is not known at the time of the purchase and one or more of the potential uses is taxable but others are not taxable.

(a1) Direct Mail. – A person who purchases direct mail may apply to the Secretary for a direct pay permit for the purchase of direct mail. A direct pay permit issued for direct mail does not apply to any purchase other than the purchase of direct mail.

...."

**SECTION 27A.3.(r)** G.S. 105-164.28 reads as rewritten:

**"§ 105-164.28. Certificate of resale.**

(a) Seller's Responsibility. – A seller who accepts a certificate of resale from a purchaser of ~~tangible personal property~~ has the burden of proving that the sale was not a retail sale unless all of the following conditions are met:

- (1) For a sale made in person, the certificate is signed by the purchaser and states the purchaser's name, address, registration number, and type of business.
- (2) For a sale made in person, the ~~tangible personal property-item~~ sold is the type of ~~property-item~~ typically sold by the type of business stated on the certificate.
- (3) For a sale made over the Internet or by other remote means, the seller obtains the purchaser's name, address, registration number, and type of business and maintains this information in a retrievable format in its records.

(b) Purchaser's Liability. – A purchaser who does not resell ~~property-an item~~ purchased under a certificate of resale is liable for any tax subsequently determined to be due on the sale."

**SECTION 27A.3.(s)** G.S. 105-164.28A(a) reads as rewritten:

"(a) Authorization. – The Secretary may require a person who purchases ~~tangible personal property-an item~~ that is exempt from tax or is subject to a preferential rate of tax depending on the status of the purchaser or the intended use of the ~~property-item~~ to obtain an exemption certificate from the Department to receive the exemption or preferential rate. An exemption certificate authorizes a retailer to sell ~~tangible personal property-an item~~ to the holder of the certificate and either collect tax at a preferential rate or not collect tax on the sale, as appropriate. A person who purchases ~~tangible personal property-an item~~ under an exemption certificate is liable for any tax due on the sale if the Department determines that the person is not eligible for the certificate or the ~~property-item~~ was not used as intended."

**SECTION 27A.3.(t)** G.S. 105-164.29(a) reads as rewritten:

"(a) Requirement and Application. – Before a person may engage in business as a retailer or a wholesale merchant, the person must obtain a certificate of registration. To obtain a certificate of registration, a person must register with the Department. A wholesale merchant or retailer who has more than one business is required to obtain only one certificate of registration to cover all operations of the business throughout the State. An application for registration must be signed as follows:

- (1) By the owner, if the owner is an individual.
- (2) By a manager, member, or partner, if the owner is an association, a partnership, or a limited liability company.
- (3) By an executive officer or some other person specifically authorized by the corporation to sign the application, if the owner is a corporation. If the application is signed by a person authorized to do so by the corporation, written evidence of the person's authority must be attached to the application."

**SECTION 27A.3.(u)** G.S. 105-164.32 reads as rewritten:

**"§ 105-164.32. Incorrect returns; estimate.**

~~In the event any~~ If a retailer, a wholesale merchant or a consumer fails to ~~make file~~ a return and to pay the tax as ~~provided by~~ due under this Article or ~~in case any retailer, wholesale merchant or consumer makes files a grossly incorrect return or a report that is false or fraudulent, fraudulent return, it shall be the duty of the Secretary or his authorized agent to make an~~ must estimate for the taxable period of wholesale and/or retail sales of such retailer or wholesale merchant or of the gross proceeds of rentals or leases of tangible personal property by the retailer and to estimate the purchase price of all articles of tangible personal property imported by the consumer for use, storage, or consumption in this State the tax due and to assess and collect the tax and interest, plus penalties, if such have accrued, upon the basis of such ~~the retailer, wholesale merchant, or consumer based on the estimate."~~

**SECTION 27A.3.(v)** G.S. 105-187.50 reads as rewritten:

**"§ 105-187.50. Definitions.**

The definitions in G.S 105-164.3 apply in this Article. In addition, the following definitions apply in this Article:

- (1) ~~Concurrently maintainable.~~ — ~~Capable of having any capacity component or distribution element serviced or repaired on a planned basis without interrupting or impeding the performance of the computer equipment.~~
- (2) Eligible datacenter. – A facility datacenter that provides infrastructure for hosting or data processing services and satisfies each of the following conditions:
  - a. ~~The facility's power and cooling systems are created and maintained to be concurrently maintainable and include redundant capacity components and multiple distribution paths serving the computer equipment at the facility. The facility must have multiple distribution paths serving the computer equipment; however, a single distribution path may serve the computer equipment at any one time.~~
  - b. The Secretary of Commerce has made a written determination of the following:
    1. For facilities that are located in a development tier one area at the time of application for the written determination, that at least one hundred fifty million dollars (\$150,000,000) in private funds has been or will be invested in improvements to real property or installed datacenter machinery and equipment, or a combination thereof, within five years of the date on which the first qualifying improvement is made, regardless of any subsequent change in county development tier status.
    2. For facilities that are not located in a development tier one area at the time of application for the written determination, that at least three hundred million dollars (\$300,000,000) in private funds has been or will be invested in improvements to real property or installed datacenter machinery and



equipment, or a combination thereof, within five years of the date on which the first qualifying improvement is made, regardless of any subsequent change in county development tier status.

- c. The facility satisfies the wage standard and health insurance requirements of G.S. 105-129.83.
- (3) ~~Multiple distribution paths.— A series of distribution paths configured to ensure that failure on one distribution path does not interrupt or impede other distribution paths.~~
- (4) ~~Redundant capacity components.— Components beyond those required to support the computer equipment."~~

**SECTION 27A.3.(w)** Subsections (d) through (f) of this section become effective January 1, 2010, and apply to sales made on or after that date. The remainder of this section is effective when it becomes law.

## ALCOHOL EXCISE TAX CHANGES

**SECTION 27A.4.(a)** G.S. 105-113.80 reads as rewritten:

**"§ 105-113.80. Excise taxes on beer, wine, and liquor.**

(a) Beer. — An excise tax of ~~fifty-three and one hundred seventy-seven one thousandths cents (53.177¢)~~ sixty-one and seventy-one hundredths cents (61.71¢) per gallon is levied on the sale of malt beverages.

(b) Wine. — An excise tax of ~~twenty-one cents (21¢)~~ twenty-six and thirty-four hundredths cents (26.34¢) per liter is levied on the sale of unfortified wine, and an excise tax of ~~twenty-four cents (24¢)~~ twenty-nine and thirty-four hundredths cents (29.34¢) per liter is levied on the sale of fortified wine.

(c) Liquor. — An excise tax of ~~twenty-five percent (25%)~~ thirty percent (30%) is levied on liquor sold in ABC stores. Pursuant to G.S. 18B-804(b), the price of liquor on which this tax is computed is the distiller's price plus (i) the State ABC warehouse freight and bailment charges, and (ii) a markup for local ABC boards."

**SECTION 27A.4.(b)** G.S. 105-113.82 reads as rewritten:

**"§ 105-113.82. Distribution of part of beer and wine taxes.**

(a) ~~Amount, Method.—~~ Amount. — The Secretary ~~shall~~ must distribute annually ~~the following percentages a percentage~~ of the net amount of excise taxes collected on the sale of malt beverages and wine during the preceding 12-month period ending March 31 to the counties or cities in which the retail sale of these beverages is authorized in the entire county or ~~city;~~ city. For purposes of this subsection, the term 'net amount' means gross collections less refunds and amounts credited to the Department of Commerce under G.S. 105-113.81A. The percentages to be distributed are as follows:

- (1) Of the tax on malt beverages levied under G.S. 105-113.80(a), ~~twenty-three and three-fourths percent (23¾%);~~ twenty and forty-seven hundredths percent (20.47%).
- (2) Of the tax on unfortified wine levied under G.S. 105-113.80(b), ~~sixty-two percent (62%); and~~ forty-nine and forty-four hundredths percent (49.44%).
- (3) Of the tax on fortified wine levied under G.S. 105-113.80(b), ~~twenty-two percent (22%);~~ eighteen percent (18%).

(a1) Method. — For purposes of this subsection, "net amount" means gross collections less refunds and amounts credited to the Department of Commerce under G.S. 105-113.81A. If malt beverages, unfortified wine, or fortified wine may be licensed to be sold at retail in both a county and a city located in the county, both the county and city shall receive a portion of the amount distributed, that portion to be determined on the basis of population. If one of these beverages may be licensed to be sold at retail in a city located in a county in which the sale of the beverage is otherwise prohibited, only the city shall receive receives a portion of the amount distributed, that portion to be determined on the basis of population. The amounts distributed under subdivisions (1), (2), and (3) shall distributable under subsection (a) of this section must be computed separately.

(b) Repealed by Session Laws 2000, c. 173, s. 3, effective August 2, 2000.

(c) Exception. — Notwithstanding ~~subsection (a),~~ subsections (a) and (a1) of this section, in a county in which ABC stores have been established by petition, the revenue shall be

distributed as though the entire county had approved the retail sale of a beverage whose retail sale is authorized in part of the county.

(d) Time. – The revenue shall be distributed to cities and counties within 60 days after March 31 of each year. The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution.

(e) Population Estimates. – To determine the population of a city or county for purposes of the distribution required by this section, the Secretary shall use the most recent annual estimate of population certified by the State Budget Officer.

(f) City Defined. – As used in this section, the term "city" means a city as defined in G.S. 153A-1(1) or an urban service district defined by the governing body of a consolidated city-county.

(g) Use of Funds. – Funds distributed to a county or city under this section may be used for any public purpose.

(h) Disqualification. – No municipality may receive any funds under this section if it was incorporated with an effective date of on or after January 1, 2000, and is disqualified from receiving funds under G.S. 136-41.2. No municipality may receive any funds under this section, incorporated with an effective date on or after January 1, 2000, unless a majority of the mileage of its streets is open to the public. The previous sentence becomes effective with respect to distribution of funds on or after July 1, 1999."

**SECTION 27A.4.(c)** Notwithstanding G.S. 105-113.82, the percentages of the net amount of excise taxes distributable to a county or city under G.S. 105-113.82 for the taxes collected during the 12-month period ending March 31, 2010, are as follows:

- (1) Of the tax on malt beverages levied under G.S. 105-113.80(a), seven and twenty-four hundredths percent (7.24%).
- (2) Of the tax on unfortified wine levied under G.S. 105-113.80(b), eighteen percent (18%).
- (3) Of the tax on fortified wine levied under G.S. 105-113.80(b), six and forty-nine hundredths percent (6.49%).

**SECTION 27A.4.(d)** This section becomes effective September 1, 2009. Subsections (a) and (b) of this section apply to malt beverages and wine first sold or otherwise disposed of on or after that date and to liquor sold on or after that date.

## **TOBACCO PRODUCTS EXCISE TAX CHANGES**

**SECTION 27A.5.(a)** G.S. 105-113.5 reads as rewritten:

### **"§ 105-113.5. Tax on cigarettes.**

A tax is levied on the sale or possession for sale in this State, by a distributor, of all cigarettes at the rate of ~~one and three-fourths cents (1.75¢)~~ two and one-fourth cents (2.25¢) per individual cigarette."

**SECTION 27A.5.(b)** G.S. 105-113.7 is recodified as G.S. 105-113.4D in Part 1 of Article 2A of Chapter 105 of the General Statutes and reads as rewritten:

### **"§ 105-113.4D. Tax with respect to inventory on effective date of tax increase.**

Every ~~distributor~~ person subject to the taxes levied in this Article who, on the effective date of a tax increase under this Article, has on hand any ~~cigarettes~~ cigarettes or tobacco products must file a complete inventory of the ~~cigarettes~~ cigarettes or tobacco products within 20 days after the effective date of the increase, and ~~shall~~ must pay an additional tax to the Secretary when filing the inventory. The amount of tax due is the amount due based on the difference between the former tax rate and the increased tax rate."

**SECTION 27A.5.(c)** G.S. 105-113.35 reads as rewritten:

### **"§ 105-113.35. Tax on tobacco products other than cigarettes; use of proceeds: cigarettes.**

(a) Tax. – An excise tax is levied on tobacco products other than cigarettes at the rate of ~~ten percent (10%)~~ twelve and eight-tenths percent (12.8%) of the cost price of the products. This tax does not apply to the following:

- (1) A tobacco product sold outside the State.
- (2) A tobacco product sold to the federal government.
- (3) A sample tobacco product distributed without charge.

...

(e) Use. ~~Of the funds collected pursuant to this section, the Secretary shall deposit an amount equal to three percent (3%) of the cost price of the products to the General Fund, and the Secretary shall remit the remainder of the funds to the University Cancer Research Fund established pursuant to G.S. 116-29.1."~~

**SECTION 27A.5.(d)** Part 3 of Article 2A of Chapter 105 of the General Statutes is amended by adding a new section to read:

**"§ 105-113.40A. Use of tax proceeds.**

The Secretary must credit the net proceeds of the tax collected under this Article as follows:

- (1) An amount equal to three percent (3%) of the cost price of the products to the General Fund.
- (2) The remainder to the University Cancer Research Fund established under G.S. 116-29.1."

**SECTION 27A.5.(e)** G.S. 116-29.1(b) reads as rewritten:

"(b) The General Assembly finds that it is imperative that the State provide a minimum of fifty million dollars (\$50,000,000) each calendar year to the University Cancer Research Fund; therefore, effective July 1 of each calendar year:

- (1) Notwithstanding G.S. 143C-9-3, of the funds credited to the Tobacco Trust Account, the sum of eight million dollars (\$8,000,000) is transferred from the Tobacco Trust Account to the University Cancer Research Fund and appropriated for this purpose.
- (2) The funds remitted to the University Cancer Research Fund by the Secretary of Revenue from the tax on tobacco products other than cigarettes pursuant to ~~G.S. 105-113.41~~ G.S. 105-113.40A is appropriated for this purpose.
- (3) An amount equal to the difference between (i) fifty million dollars (\$50,000,000) and (ii) the amounts appropriated pursuant to subdivisions (1) and (2) of this subsection is appropriated from the General Fund for this purpose."

**SECTION 27A.5.(f)** This section becomes effective September 1, 2009.

## IRC CONFORMITY

**SECTION 27A.6.(a)** G.S. 105-228.90(b)(1b) reads as rewritten:

"(b) Definitions. – The following definitions apply in this Article:

- ...
- (1b) Code. – The Internal Revenue Code as enacted as of ~~May 1, 2008~~, May 1, 2009, including any provisions enacted as of that date which become effective either before or after that ~~date~~, but not including the amendments made to section 63(c) of the Code by section 3012 of P.L. 110-289."

**SECTION 27A.6.(b)** G.S. 105-228.90(b)(1b), as amended by Section 1 of this act, reads as rewritten:

"(b) Definitions. – The following definitions apply in this Article:

- ...
- (1b) Code. – The Internal Revenue Code as enacted as of May 1, 2009, including any provisions enacted as of that date which become effective either before or after that ~~date~~, but not including the amendments made to Section 63(c) of the Code by section 3012 of P.L. 110-289."

**SECTION 27A.6.(c)** G.S. 105-130.5(a) reads as rewritten:

"(a) The following additions to federal taxable income shall be made in determining State net income:

- ...
- (6) ~~The~~ Any amount allowed as a net operating loss deduction allowed by under the Code; and Code.
- ...
- (15a) The applicable percentage of the amount allowed as a special accelerated depreciation deduction under section 168(k) or 168(n) of the Code for property placed in service after December 31, 2007, but before January 1, 2009-2010. The applicable percentage under this subdivision is eighty-five percent (85%).

In addition, a taxpayer who was allowed a special accelerated depreciation deduction in taxable year 2007 or 2008 for property placed in service during that period, year, and whose North Carolina taxable income for that year reflected that accelerated depreciation deduction must make the adjustments set out below add to federal taxable income in the taxpayer's 2008 taxable year an amount equal to the applicable percentage of the deduction amount allowed in the 2007 taxable year. These adjustments do not result in a difference in basis of the affected assets for State and federal income tax purposes. ~~The applicable percentage under this subdivision is eighty-five percent (85%).~~

a. A taxpayer must add to federal taxable income in the taxpayer's 2008 taxable year an amount equal to the applicable percentage of the accelerated depreciation deduction reflected in the taxpayer's 2007 North Carolina taxable income.

b. A taxpayer must add to federal taxable income in the taxpayer's 2009 taxable year an amount equal to the applicable percentage of the accelerated depreciation deduction reflected in the taxpayer's 2008 North Carolina taxable income.

...  
(21) The amount of income deferred under section 108(i)(1) of the Code from the discharge of indebtedness in connection with a reacquisition of an applicable debt instrument.

(22) The amount allowed as a deduction under section 163(e)(5)(F) of the Code for an original issue discount on an applicable high yield discount obligation."

**SECTION 27A.6.(d)** G.S. 105-130.5(b) reads as rewritten:

"(b) The following deductions from federal taxable income shall be made in determining State net income:

...  
(21a) ~~In each of the taxpayer's first five taxable years beginning on or after January 1, 2009, an~~ An amount equal to twenty percent (20%) of the amount added to federal taxable income in taxable year 2008 as accelerated depreciation under subdivision (a)(15a) of this section. For a taxpayer who made the addition for accelerated depreciation in the 2008 taxable year, the deduction allowed by this subdivision applies to the first five taxable years beginning on or after January 1, 2009. For a taxpayer who made the addition for accelerated depreciation in the 2009 taxable year, the deduction allowed by this subdivision applies to the first five taxable years beginning on or after January 1, 2010.

...  
(25) The amount added to federal taxable income as deferred income under section 108(i)(1) of the Code. This deduction applies to taxable years beginning on or after January 1, 2014."

**SECTION 27A.6.(e)** G.S. 105-134.6(b) reads as rewritten:

"(b) Deductions. – The following deductions from taxable income shall be made in calculating North Carolina taxable income, to the extent each item is included in taxable income:

...  
(17a) ~~In each of the taxpayer's first five taxable years beginning on or after January 1, 2009, an~~ An amount equal to twenty percent (20%) of the amount added to federal taxable income in taxable year 2008 as accelerated depreciation under subdivision (c)(8a) of this section. For a taxpayer who made the addition for accelerated depreciation in the 2008 taxable year, the deduction allowed by this subdivision applies to the first five taxable years beginning on or after January 1, 2009. For a taxpayer who made the addition for accelerated depreciation in the 2009 taxable year, the deduction allowed by this subdivision applies to the first five taxable years beginning on or after January 1, 2010.

...

(20) The amount added to federal taxable income as deferred income under section 108(i)(1) of the Code. This deduction applies to taxable years beginning on or after January 1, 2014."

**SECTION 27A.6.(f)** G.S. 105-134.6(c) reads as rewritten:

"(c) Additions. – The following additions to taxable income shall be made in calculating North Carolina taxable income, to the extent each item is not included in taxable income:

...  
(8a) The applicable percentage of the amount allowed as a special accelerated depreciation deduction under section 168(k) or 168(n) of the Code for property placed in service after December 31, 2007, but before January 1, ~~2009-2010~~. The applicable percentage under this subdivision is eighty-five percent (85%).

In addition, a taxpayer who was allowed a special accelerated depreciation deduction in taxable year 2007 or 2008 for property placed in service ~~for that period, during that year,~~ and whose North Carolina taxable income for that year reflected that accelerated depreciation deduction must make the adjustments set out below, add to federal taxable income in the taxpayer's 2008 taxable year an amount equal to the applicable percentage of the deduction amount allowed in the 2007 taxable year. These adjustments do not result in a difference in basis of the affected assets for State and federal income tax purposes. ~~The applicable percentage under this subdivision is eighty-five percent (85%).~~

a. A taxpayer must add to federal taxable income in the taxpayer's 2008 taxable year an amount equal to the applicable percentage of the accelerated depreciation deduction reflected in the taxpayer's 2007 North Carolina taxable income.

b. A taxpayer must add to federal taxable income in the taxpayer's 2009 taxable year an amount equal to the applicable percentage of the accelerated depreciation deduction reflected in the taxpayer's 2008 North Carolina taxable income.

...  
(11) The amount of the taxpayer's real property tax deduction under section 63(c)(1)(C) of the Code.

(12) The amount of the taxpayer's deduction for motor vehicle sales taxes under section 164(a)(6) or section 63(c)(1)(E) of the Code.

(13) The amount of income deferred under section 108(i)(1) of the Code from the discharge of indebtedness in connection with a reacquisition of an applicable debt instrument.

(14) The amount allowed as a deduction under section 163(e)(5)(F) of the Code for an original issue discount on an applicable high yield discount obligation."

**SECTION 27A.6.(g)** Notwithstanding subsection (a) of this section, any amendments to the Internal Revenue Code enacted after May 1, 2008, that increase North Carolina taxable income for the 2008 taxable year become effective for taxable years beginning on or after January 1, 2009.

**SECTION 27A.6.(h)** Subsection (a) of this section is effective for taxable years beginning on or after January 1, 2008. Subsections (b) through (f) are effective for taxable years beginning on or after January 1, 2009. Subsections (g), and (h) of this section are effective when they become law.

## **STUDY OF NORTH CAROLINA'S SALES AND INCOME TAX STRUCTURE**

**SECTION 27A.7.** The President Pro Tempore of the Senate and the Speaker of the House of Representatives authorize the Finance Committees of the Senate and the House and other designated members to meet during the interim to study and recommend legislation to reform North Carolina's sales and income tax structure in order to broaden the tax base and lower the State's tax rates.

## **PART XXVIII. MISCELLANEOUS PROVISIONS**

## **STATE BUDGET ACT APPLIES**

**SECTION 28.1.** The provisions of the State Budget Act, Chapter 143C of the General Statutes, are reenacted and shall remain in full force and effect and are incorporated in this act by reference.

## **COMMITTEE REPORT**

**SECTION 28.2.(a)** The Joint Conference Committee Report on the Continuation, Expansion, and Capital Budgets dated August 3, 2009, which was distributed in the Senate and the House of Representatives and used to explain this act, shall indicate action by the General Assembly on this act and shall therefore be used to construe this act, as provided in the State Budget Act, Chapter 143C of the General Statutes, and for these purposes shall be considered a part of this act and as such shall be printed as a part of the Session Laws.

**SECTION 28.2.(b)** The budget enacted by the General Assembly is for the maintenance of the various departments, institutions, and other spending agencies of the State for the 2009-2011 biennial budget as provided in G.S. 143C-3-5. This budget includes the appropriations of State funds as defined in G.S. 143C-1-1(d)(25).

The Director of the Budget submitted recommended adjustments to the budget to the General Assembly in March 2009 in the documents "The North Carolina State Budget, Recommended Operating Budget with Performance Management Information 2009-2011, Volumes 1 through 6," for the 2009-2011 fiscal biennium for the various departments, institutions, and other spending agencies of the State. The adjustments to these documents made by the General Assembly are set out in the Committee Report, the Supplemental Committee Report, and the Final Committee Report.

**SECTION 28.2.(c)** The budget enacted by the General Assembly shall also be interpreted in accordance with G.S. 143C-5-5, the special provisions in this act, and other appropriate legislation.

In the event that there is a conflict between the line-item budget certified by the Director of the Budget and the budget enacted by the General Assembly, the budget enacted by the General Assembly shall prevail.

## **MOST TEXT APPLIES ONLY TO THE 2009-2011 FISCAL BIENNIUM**

**SECTION 28.3.** Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium.

## **EFFECT OF HEADINGS**

**SECTION 28.4.** The headings to the parts and sections of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act, except for effective dates referring to a part.

## **SEVERABILITY CLAUSE**

**SECTION 28.5.** If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

## **ADJUSTMENT OF ALLOCATIONS TO GIVE EFFECT TO THIS ACT FROM JULY 1, 2009**

**SECTION 28.5A.** The appropriations and authorizations to allocate and spend funds set out in S.L. 2009-215, S.L. 2009-296, and S.L. 2009-399 expire when this act becomes law. At such time, this act becomes effective and governs appropriations and expenditures.

When this act becomes law, the Director of the Budget shall adjust allocations to give effect to this act from July 1, 2009.

## **EFFECTIVE DATE**

2009. **SECTION 28.6.** Except as otherwise provided, this act becomes effective July 1,  
2009. In the General Assembly read three times and ratified this the 5<sup>th</sup> day of August,

s/ Marc Basnight  
President Pro Tempore of the Senate

s/ Joe Hackney  
Speaker of the House of Representatives

s/ Beverly E. Perdue  
Governor

Approved 12:10 p.m. this 7<sup>th</sup> day of August, 2009