

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007**

**SESSION LAW 2008-118  
HOUSE BILL 2438**

AN ACT TO MAKE TECHNICAL, CLARIFYING, AND OTHER MODIFICATIONS  
TO THE STATE BUDGET.

The General Assembly of North Carolina enacts:

**PART I. TECHNICAL CHANGES**

**SECTION 1.1.** Section 2.1 of S.L. 2008-107 is amended by deleting the phrase "Pending Gang Prevention Legislation (HB 274)" and substituting the phrase "Pending Gang Prevention Legislation".

**SECTION 1.2.** S.L. 2008-107 is amended by adding a new section to read:  
**"STUDY OF LAPSED SALARY USE**

**SECTION 6.5.** Section 6.18(b) of S.L. 2007-323 reads as rewritten:

**'SECTION 6.18.(b)** The Office of State Budget and Management shall report its ~~findings~~ findings, including an estimate of the total amount of lapsed salaries by each State agency, to the Joint Legislative Commission on Governmental Operations by ~~April 30, 2008.~~ February 1, 2009."

**SECTION 1.3.(b)** Section 7.14(g) of S.L. 2008-107 is amended by deleting "subsection (b)" and substituting "subsection (c)".

**SECTION 1.3.(c)** Section 7.14(b) of S.L. 2008-107 reads as rewritten:

**"SECTION 7.14.(b)** Committee. – The Committee on Dropout Prevention, as created in Section 7.32 of S.L. 2007-323, is reestablished to determine which local school administrative units, schools, agencies, and nonprofits shall receive dropout prevention grants under this section, the amount of each grant, and eligible uses of the grant funding. When utilizing outside grant reviewers and raters, the Committee is encouraged to utilize individuals who represent public schools, universities, and community-based organizations.

The Committee shall continue to be located administratively in the Department of Public Instruction but shall exercise its powers and duties independently of the Department of Public Instruction. The Department of Public Instruction shall provide for the administrative costs of the Committee. The Department of Public Instruction shall ~~contract with an independent consultant to serve as staff to the Committee, to provide technical assistance to the grant recipients for the length of the grant, and to assist the Committee in evaluating the impact of the grants awarded.~~ grant.

The members of the Committee shall assure they are in compliance with laws and rules governing conflicts of interest. The Committee shall meet on the call of the cochairs provided that the Committee shall meet at least once every three months.

In the event of a vacancy on the Committee, the appointing authorities are encouraged to provide representation on the Committee from each of the eight educational districts as defined in G.S. 115C-65."

**SECTION 1.3.(d)** Subdivision (1) of Section 8.8 of S.L. 2008-107 is amended by deleting "; and" and substituting ".".

**SECTION 1.3.(e)** Section 8.9(b) of S.L. 2008-107 is amended by deleting "(Budget Code 16800, Fund 1603)" and substituting "(Budget Code 26800, Fund 2000)".

**SECTION 1.3.(f)** Section 9.7(c) of S.L. 2007-323, as amended by Section 9.2(d) of S.L. 2008-107, reads as rewritten:

**"SECTION 9.7.(c)** There is appropriated from the Escheat Fund to the State Education Assistance Authority the sum of ~~sixty million dollars (\$60,000,000)~~fifty million dollars (\$50,000,000) for the 2008-2009 fiscal year."

**SECTION 1.4.** Section 9.4 of S.L. 2008-107 reads as rewritten:

**"SECTION 9.4.(a)** The North Carolina Principal Fellows Commission in collaboration with the State Education Assistance Authority shall make available an optional six-month scholarship in the amount of twenty thousand dollars (\$20,000) to any person who was a recipient of a scholarship loan through the Principal Fellows Program and who: (i) was in Class 10 of the Principal Fellows Program for the 2003-2004 academic year, (ii) completed the Principal Fellows Program, and (iii) has either served as a school administrator for four years at a North Carolina public school or at a school operated by the United States as required by G.S. 116-74.43, or who has had the loan forgiven by the State Education Assistance Authority pursuant to G.S. 116-74.43. A person may be eligible for the optional six-month scholarship only after fulfilling all contractual obligations agreed to by the person upon receipt of the original scholarship loan awarded to the person under G.S. 116-74.42. Exclusive of any deferment for extenuating circumstances, a person remains eligible for the optional six-month scholarship for two years after the six-year period of time allowed the person to satisfy the original scholarship loan requirements under G.S. 116-74.43. Should a person present extenuating circumstances, the State Education Assistance Authority may extend the period of time for which a person remains eligible for the optional six-month scholarship for a reasonable time period.

**"SECTION 9.4.(b)** The Principal Fellows Commission shall develop the criteria for awarding the scholarship. In developing the criteria, the Commission shall require that the person agree to work at least another six months as a school administrator in a North Carolina public school or at a school operated by the United States after satisfying the four-year work requirement set out in G.S. 116-74.43. The Commission, in collaboration with the State Education Assistance Authority, shall develop a process for evaluating a scholarship recipient's work performance and for issuing a final approval and certification of the work performance. The Commission shall transfer to the State Education Assistance Authority the name of each recipient that it certifies as successfully completing the optional scholarship program. The State Education Assistance Authority shall pay the twenty thousand dollar (\$20,000) ~~stipend-scholarship~~ to the scholarship recipient within a reasonable time of receiving notification from the Commission that the recipient has successfully completed the optional scholarship program. The State Education Assistance Authority shall perform all of the administrative functions necessary to implement this act, including rule making.

**"SECTION 9.4.(c)** Effective June 30, 2008, the sum of one million dollars (\$1,000,000) shall revert from the Principal Fellows Trust Fund to the General Fund. The sum of one million seven hundred forty thousand dollars (\$1,740,000) in the Principal Fellows Trust Fund shall be held in reserve to pay each participant in the optional scholarship program the ~~stipend-scholarship~~ of twenty thousand dollars (\$20,000) upon successful completion of the optional scholarship program."

**SECTION 1.5.(a)** Section 10.15(x) of S.L. 2008-107 is amended by inserting between the words "accredited" and "for" the words "or demonstrate submission of an accepted application" and by adding after "September 30, 2009." the following sentence: "The Department shall provide information and recommendations to the 2009 General Assembly so that it may consider whether to authorize the Department to contract with an outside vendor for these functions beyond September 30, 2009."

**SECTION 1.5.(b)** Section 10.17(cc) of S.L. 2008-107 is amended by adding to the list of membership organizations the following:

"(9) Association of Local Health Directors."

**SECTION 1.6.(a)** Section 10.10(e) of S.L. 2008-107 is amended by deleting "\$1,500)." and substituting "\$1,500) per month."

**SECTION 1.6.(b)** The lead sentence of Section 10.13(k) of S.L. 2008-107 is amended by deleting "subsection (g)" and substituting "subsection (f)".

**SECTION 1.6.(c)** Section 10.13(n) of S.L. 2008-107 is amended by deleting "(k) of this section" and substituting "(j) of this section".

**SECTION 1.6.(d)** Section 10.14(c)(1) of S.L. 2008-107 reads as rewritten:

"(1) The number of children ~~that were enrolled in NC Health Choice in the first week of January 2009, based on the January Pull Night data; and for the month of January 2009, as determined by using December 2008 Pull-Night data.~~"

**SECTION 1.6.(e)** Section 10.15(b) of S.L. 2008-107 is amended by deleting "2007-2008 and 2008-2009 fiscal years," and substituting "2008-2009 fiscal year,".

**SECTION 1.6.(f)** Section 10.15(n) of S.L. 2008-107 reads as rewritten:

**"SECTION 10.15.(n)** 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 six million one hundred thirteen thousand nine hundred forty-seven dollars (\$6,113,947) shall be allocated for walk-in crisis and immediate psychiatric aftercare and shall be distributed to the LMEs according to need as determined by the Department to support 30 psychiatrists and related support staff. Of these funds, the sum of one million six hundred fifty thousand dollars (\$1,650,000) shall be used for telepsychiatry equipment to be owned by the ~~LMEs and shall be distributed across the State according to need as determined by the Department.~~LMEs."

**SECTION 1.7.** Notwithstanding any provision in S.L. 2008-107 to the contrary, the elimination of the budget for the closed dispute resolution center in the 1st District is a reduction of fifty-one thousand nine hundred seventy-seven dollars (\$51,977).

## **PART II. CLARIFYING CHANGES**

**SECTION 2.1.(a)** Section 5.2(a1) of S.L. 2008-107 reads as rewritten:

**"SECTION 5.2.(a1)** Notwithstanding G.S. 18C-164(f), if (i) the actual net lottery revenues for the 2007-2008 fiscal year exceed the amounts appropriated in the 2007-2008 fiscal year, (ii) the actual net lottery revenues for the 2008-2009 fiscal year exceed the amounts appropriated in the 2008-2009 fiscal year, or (iii) both, the excess net revenue is also transferred from the State Lottery Fund to support appropriations made in this act for the 2008-2009 fiscal year."

**SECTION 2.1.(b)** Section 5.2(d) of S.L. 2008-107 reads as rewritten:

**"SECTION 5.2.(d)** The excess lottery revenues for the 2007-2008 fiscal ~~year year,~~ the 2008-2009 fiscal year, or both, that are transferred from the State Lottery Fund pursuant to subsection (a1) of this section are appropriated from the Education Lottery Fund for the 2008-2009 fiscal year for the Public School Building Capital Fund."

**SECTION 2.1.(c)** Section 7.11 of S.L. 2008-107 reads as rewritten:

**"SECTION 7.11.(a)** ~~Monies allocated~~ If monies appropriated to the Public School Building Capital Fund pursuant to ~~Section 5.2(b)~~ Section 5.2 of this act total one hundred fifty-four million two hundred thousand dollars (\$154,200,000) or more, the monies shall be allocated as follows:

- (1) The sum of one hundred forty million dollars (\$140,000,000) shall be allocated pursuant to G.S. 115C-546.2(d);
- (2) The remainder shall be allocated on the basis of average daily membership to local school administrative units that did not qualify for funding for the 2008-2009 fiscal year pursuant to G.S. 115C-546.2(d)(2). The maximum allocation shall be the amount received by other units pursuant to G.S. 115C-546.2(d)(2) on the basis of per average daily membership.

**"SECTION 7.11.(b)** If monies appropriated to the Public School Building Capital Fund pursuant to Section 5.2 of this act total less than one hundred fifty-four million two hundred thousand dollars (\$154,200,000), the monies shall be allocated as follows:

- (1) The sum of two million five hundred thousand dollars (\$2,500,000) shall be allocated each quarter for the first and second quarters on the basis of average daily membership to local school administrative units that did not qualify for funding for the 2008-2009 fiscal year pursuant to G.S. 115C-546.2(d)(2). The remainder shall be allocated each quarter pursuant to G.S. 115C-546.2(d).
- (2) The sum of four million six hundred thousand dollars (\$4,600,000) shall be allocated each quarter for the third and fourth quarters on the basis of average daily membership to local school administrative units that did not qualify for funding for the 2008-2009 fiscal year pursuant to G.S. 115C-546.2(d)(2). The remainder shall be allocated each quarter pursuant to G.S. 115C-546.2(d)."

**SECTION 2.2.** Section 6.12(a) of S.L. 2008-107 reads as rewritten:

**"SECTION 6.12.(a)** Funds. – Of the funds appropriated to the Office of Information Technology Services (ITS) for the 2008-2009 fiscal year, in consultation with the Department of Cultural Resources and the Secretary of State, the sum of two hundred thousand dollars (\$200,000) shall be used to pilot a statewide electronic document management system that will include a digital signature capability. ITS shall identify a State agency for the pilot, which shall develop the following program requirements:

- (1) Creation of a uniform and consistent set of policies and procedures for managing and preserving electronic records through their life cycle in an efficient, effective, and economical manner.
- (2) Development, establishment, and promotion of statewide electronic records management training and certification programs.
- (3) Promotion of the use of public records in digital format.
- (4) Development of statewide procurement standards for the electronic records infrastructure.
- (5) Provision of guidance and assistance to all customers on issues relating to public records in digital formats including, but not limited to, e-mail, e-commerce, electronic signature encryption, filings, public Web pages, metadata, and system documentation."

**SECTION 2.3.** Section 6.16(b) of S.L. 2008-107 reads as rewritten:

**"SECTION 6.16.(b)** The State Controller shall serve as the Chairman of the BEACON Project Steering Committee. The other members of the committee shall be the State Chief Information Officer, the State Treasurer, the Attorney General, the Secretary of Correction, the Administrative Officer of the Courts, the State Budget Officer, the Secretary of Administration, and the Chief Financial Officer of the Department of Transportation."

**SECTION 2.4.** Notwithstanding any provision in S.L. 2008-107 to the contrary, funds appropriated in that act for the Medicaid appeals process shall be used to implement a new appeals process when Medicaid-funded services are terminated, reduced, or denied.

**SECTION 2.5.** G.S. 143B-480.2, as amended by Section 18.2(a) of S.L. 2008-107 reads as rewritten:

**"§ 143B-480.2. Victim assistance.**

(a) **Eligibility for Assistance.** – Sexual assault victims or victims of attempted sexual assault are eligible for assistance under this Program if the sexual assault or the attempted sexual assault is reported to a law enforcement officer within 72 hours of the occurrence of the assault or the attempted sexual assault and if a forensic medical examination is performed within 72 hours of the sexual assault or the attempted sexual assault. The Secretary may waive either 72-hour requirement for good cause. The term

"sexual assault" as used in this section refers to the following crimes: first-degree rape as defined in G.S. 14-27.2, second-degree rape as defined in G.S. 14-27.3, first-degree sexual offense as defined in G.S. 14-27.4, second-degree sexual offense as defined in G.S. 14-27.5, or statutory rape as defined in G.S. 14-27.7A.

(b) Eligible Expenses. – Assistance is limited to the following expenses incurred by the victim:

- (1) Immediate and short-term medical expenses.
- (2) Ambulance services from the place of the attack to a place where medical treatment is provided.
- (3) Mental health services provided by a professional licensed or certified by the State to provide such services.
- (4) A forensic medical examination. As used in this section, the term "forensic medical examination" means an examination provided to a sexual assault victim eligible for assistance under subsection (a) of this section by medical personnel who gather evidence of a sexual assault in a manner suitable for use in a court of law. The examination should include an examination of physical trauma, a patient interview, and a collection and evaluation of evidence.
- (5) Counseling treatment following the attack.

(c) Amount of Assistance. – The Program shall pay for the full out-of-pocket cost of the victim's forensic medical examination up to eight hundred dollars (\$800.00). Specifically, the Program shall pay amounts for services in accordance with the following schedule:

<b>Service:</b>	<b>Maximum Amount Paid by Program:</b>
Physician or SANE Nurse	\$350.00
Hospital/Facility Fee	\$250.00
Ambulance Fee	\$200.00
<b>Total:</b>	<b>\$800.00</b>

As used in this subsection, the term 'SANE Nurse' means a licensed registered nurse trained under G.S. 90-171.38(b) who obtains preliminary histories, conducts in-depth interviews, and conducts medical examinations of rape victims or victims of related sexual offenses. The Program shall pay for all other eligible expenses set out in subsection (b) of this section in an amount not to exceed the difference between the full out-of-pocket cost of the forensic medical examination and one thousand dollars (\$1,000). Assistance not to exceed fifty dollars (\$50.00) shall be provided to victims to replace clothing that was held for evidence tests.

(d) Payment Directly to Provider. – If the entity seeking payment for expenses authorized under this section is a hospital, ambulance service, or mental health professional providing counseling, the Program shall make payment directly to that entity upon the filing of proper forms. If the entity seeking payment for expenses authorized under this section is an attending physician or licensed registered nurse, the Program shall make payment to a hospital, which shall then pay the entity seeking payment. Attending physicians and licensed registered nurses shall not bill or otherwise seek payment directly from the Program, but shall instead seek payment from the hospital that accepted payment on the entity's behalf. No payment for the cost of the forensic medical examination shall be made under this subsection unless the recipient agrees in writing that receipt of that payment shall constitute payment in full for the amount owed for the cost of the examination and expenses related to the examination.

(e) Judicial Review. – Upon an adverse determination by the Secretary on a claim for ~~medical expenses~~ assistance under this Part, a victim is entitled to judicial review of that decision. The person seeking review shall file a petition in the Superior Court of Wake County.

(f) The Secretary shall adopt rules to encourage, whenever practical, the use of licensed registered nurses trained under G.S. 90-171.38(b) to conduct medical examinations and procedures."

**SECTION 2.6.** Section 19A.3(b) of S.L. 2008-107 reads as rewritten:

**"SECTION 19A.3.(b)** The Department of Cultural Resources shall report on the cARTwheels Program to the Joint Legislative Commission on Governmental Operations by ~~September 1, 2008.~~December 1, 2008. The report shall include the following:

- (1) A detailed summary of the competitive application process used to select the professional performing arts groups for the 2008-2009 fiscal year.
- (2) A list of professional performing arts groups that submitted applications for the 2008-2009 fiscal year.
- (3) The allocation of the funding appropriated in the 2008-2009 fiscal year to the professional performing arts groups selected.
- (4) The schedule of performances for the 2008-2009 fiscal year."

**SECTION 2.7.(a)** Notwithstanding any provision of S.L. 2008-107 to the contrary, the constitutional authority to issue general obligation bonds to complete construction of the Green Square Project is Article V, Section 3(1) of the North Carolina Constitution.

**SECTION 2.7.(b)** Section 27.3(e) of S.L. 2008-107 is amended by deleting the phrase "to the Energy Efficiency Reserve created in subsection (c) of this section." and substituting the phrase "for energy efficiency projects consistent with subsection (c) of this section."

**SECTION 2.7.(c)** Section 27.9(d) of S.L. 2008-107 is amended by inserting between the words "time" and "general" the phrase "in the fiscal year ending June 30, 2009".

**SECTION 2.7.(d)** Section 27.9(f) of S.L. 2008-107 is amended by deleting the phrase "any changes in projects" and substituting the phrase "the status of the project".

**SECTION 2.8.** Nonrecurring funds appropriated to the Department of Commerce for the 2008-2009 fiscal year for the North Carolina Minority Support Center, Inc., for the 2008-2009 fiscal year shall be used by the Center to expand economic development lending and financial literacy.

**SECTION 2.9.(a)** Section 29.8(g) of S.L. 2008-107 reads as rewritten:

**"SECTION 29.8.(g)** Subsections ~~(a)~~ ~~(b)~~ through (e) of this section become effective July 20, 2008, and apply to all costs assessed and collected on or after that date. Subsection (a) of this section becomes effective July 20, 2008, and applies to all costs assessed and 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. The remainder of this section becomes effective July 1, 2008."

**SECTION 2.9.(b)** G.S. 20-20.1(d) reads as rewritten:

"(d) Petition. – A person may apply for a limited driving privilege under this section by filing a petition. A petition filed under this section is separate from the action that resulted in the initial revocation and is a civil action. A petition must be filed in district court in the county of the person's residence as reflected by the Division's records or, if the Division's records are inaccurate, in the county of the person's actual residence. A person must attach to a petition a copy of the person's motor vehicle record. A petition must include a sworn statement that the person filing the petition is eligible for a limited driving privilege under this section.

A court, for good cause shown, may issue a limited driving privilege to an eligible person in accordance with this section. The costs required under G.S. 7A-305(a) and ~~(a3)~~ and G.S. 20-20.2 apply to a petition filed under this section. The clerk of court for the court that issues a limited driving privilege under this section must send a copy of the limited driving privilege to the Division."

**SECTION 2.9.(c)** G.S. 7A-305(a3) and (a4) are repealed.

### **PART III. OTHER MODIFICATIONS**

**SECTION 3.1.** Notwithstanding any provision in S.L. 2008-107 to the contrary, the nursing and allied health program that will be housed at the UNC Upper Coastal Plain Higher Education and Health Center for which planning funds are provided in S.L. 2008-107 shall be run by East Carolina University, Edgecombe Community College, and Nash Community College.

**SECTION 3.2.(a)** G.S. 58-50-175(19) reads as rewritten:

**"§ 58-50-175. Definitions.**

The following definitions apply to this Part:

...  
(19) ~~'Special Fund.'~~ – The North Carolina Health Insurance Risk Pool ~~Special fund.~~ Fund.  
"

...  
**SECTION 3.2.(b)** G.S. 58-50-225 reads as rewritten:

**"§ 58-50-225. North Carolina Health Insurance Risk Pool ~~Special Fund.~~**

(a) The North Carolina Health Insurance Risk Pool ~~Special Fund~~ is established as ~~an interest bearing, non-reverting account in the General Fund. The Special Fund~~ and consists of the following revenue:

- (1) Premiums, fees, charges, rebates, refunds, and any other receipts occurring or arising in connection with the Pool.
- (2) The revenue transferred to the Fund under G.S. 105-228.5B.
- (3) Gifts, grants, and other appropriations.
- (4) Any interest earned by the Fund.

(b) Disbursements from the ~~Special Fund~~ shall include the amounts required to pay the claims, benefits, and administrative costs as may be determined by the Executive Director and the Board. ~~Disbursement from the Special Fund may be made by warrant drawn on the State Treasurer by the Executive Director, or the Executive Director and the Board may by contract authorize the Administrator to draw the warrant."~~

**SECTION 3.2.(c)** G.S. 58-50-235 reads as rewritten:

**"§ 58-50-235. Audit.**

An audit of the Pool shall be conducted annually under the oversight of the State Auditor. The cost of the audit shall be reimbursed to the State Auditor from the ~~Special Fund.~~"

**SECTION 3.2.(d)** Effective until June 30, 2010, G.S. 105-228.5B reads as rewritten:

**"§ 105-228.5B. Proceeds credited to High Risk Pool.**

Within 75 days after the end of each fiscal year, the State Treasurer must transfer from the General Fund to the North Carolina Health Insurance Risk Pool ~~Special Fund~~ established in G.S. 58-50-225 an amount equal to the growth in net revenue from the tax applied to gross premiums under G.S. 105-228.5(d)(2). The growth in revenue from this tax is the difference between the amount of revenue collected during the preceding fiscal year on premiums taxed under that subdivision less \$475,545,413, which is the amount of revenue collected during fiscal year 2006-2007 on premiums taxed under that subdivision. The Treasurer must draw the amount required under this section from revenue collected on premiums taxed under that subdivision."

**SECTION 3.2.(e)** Effective June 30, 2010, G.S. 105-228.5B reads as rewritten:

**"§ 105-228.5B. ~~Proceeds credited to High Risk Pool.~~ Distribution of part of tax proceeds to High Risk Pool.**

Within 75 days after the end of each fiscal year, the State Treasurer must transfer from the General Fund to the North Carolina Health Insurance Risk Pool Fund established in G.S. 58-50-225 an amount equal to thirty percent (30%) of the growth in revenue from the tax applied to gross premiums under G.S. 105-228.5(d)(2). The growth in revenue from this tax is the difference between the amount of revenue collected during the preceding fiscal year on premiums taxed under that subdivision less \$475,545,413, which is the amount of revenue collected during fiscal year 2006-2007 on premiums taxed under that subdivision. The Treasurer must draw the amount required under this section from revenue collected on premiums taxed under that subdivision."

**SECTION 3.2.(f)** Section 2.1 of S.L. 2007-532 reads as rewritten:

**"SECTION 2.1.** In addition to the North Carolina Health Insurance Risk Pool ~~Special~~ Fund established under G.S. 58-50-225, as enacted in this act, there is established in the Department of Insurance two separate funds, as follows:

- (1) The Start-Up Reserve – State Funds. State funds appropriated to this Fund shall be used to support reasonable expenses for personnel to carry out the Board's responsibilities under the Pool, including contracting a third-party administrator. Funds shall be allocated by the Commissioner of Insurance for the reasonable expenses of the Board in conducting its duties under this Article that are incurred on or before July 1, 2009. At the end of the fiscal year, any unspent and unencumbered State funds and any interest or investment income earned on these funds shall not revert to the General Fund but shall be transferred to the North Carolina Health Insurance Risk Pool ~~Special~~ Fund.
- (2) The Start-Up Reserve – Federal Funds. Federal funds received in lump sum or as a draw-down grant for the purposes of this Article shall be deposited to this Reserve and shall be expended and accounted for in accordance with requirements of the federal grant."

**SECTION 3.2.(g)** Section 6 of S.L. 2007-532 reads as rewritten:

**"SECTION 6.** For the purposes of providing the funds necessary to carry out the powers and duties of the Pool, effective July 1, 2008, the Teachers' and State Employees' Comprehensive Major Medical Plan and any successor Plan shall pay an annual surcharge to the North Carolina Health Insurance Risk Pool ~~Special~~ Fund in the amount of one dollar and fifty cents (\$1.50) per member per year based on enrollment of active employee Plan members and their dependents covered under the Plan."

**SECTION 3.2.(h)** Subsection (e) of this section becomes effective June 30, 2010, and applies to the transfer at the end of fiscal year 2009-2010. The remainder of this section is effective when it becomes law.

**SECTION 3.3.** The Department of Public Instruction may use up to four hundred thirty thousand dollars (\$430,000) in funds appropriated for Learn and Earn Online for 14 planning grants for Learn and Earn sites in the 2008-2009 fiscal year.

**SECTION 3.4.** The Office of State Budget and Management may, after a request from the State Board of Education, provide from funds available in any agency in the budget up to one million dollars (\$1,000,000) for the 2008-2009 fiscal year to the Department of Public Instruction for efforts to inform eighth- and ninth-grade students about opportunities to gain access to college and to college coursework. These efforts should include, but not be limited to, strategies to ensure that parents, administrators, teachers, and students are fully informed about the Learn and Earn Online program, the Learn and Earn program, the UNC needs-based financial aid program, community college and UNC Online opportunities, and the EARN Grant.



The Department shall report no later than January 1, 2009, and June 30, 2009, to the Joint Legislative Education Oversight Committee on the use of any funds provided under this section.

**SECTION 3.5.** The Department of Crime Control and Public Safety shall use funds appropriated to the Department to keep and maintain the five North Carolina floodplain mapping positions that were not funded for fiscal year 2008-2009. The authority conferred by this section expires when the receipts of the Department received pursuant to G.S. 161-11.3 are sufficient to support these five positions.

**SECTION 3.6.(a)** Section 28.4(a) of S.L. 2007-323, as amended by Section 26.4(a) of S.L. 2008-107 reads as rewritten:

"**SECTION 28.4.(a)** The annual salaries, payable monthly, for specified judicial branch officials for the 2008-2009 fiscal year are:

<u>Judicial Branch Officials</u>	<u>Annual Salary</u>
Chief Justice, Supreme Court	\$140,932
Associate Justice, Supreme Court	137,249
Chief Judge, Court of Appeals	<del>133,817</del> 135,061
Judge, Court of Appeals	131,531
Judge, Senior Regular Resident Superior Court	127,957
Judge, Superior Court	124,382
Chief Judge, District Court	112,946
Judge, District Court	109,372
District Attorney	119,305
Administrative Officer of the Courts	126,738
Assistant Administrative Officer of the Courts	115,763
Public Defender	119,305
Director of Indigent Defense Services	123,022".

**SECTION 3.6.(b)** The Administrative Office of the Courts shall use available salary reserve funds in the amount of one thousand two hundred forty-four dollars (\$1,244), plus the cost of benefits, to increase the salary of the Chief Judge, Court of Appeals, as provided by subsection (a) of this section. This additional salary increase is to restore the differential in the salary between the Chief Judge and the other judges in the Court of Appeals to pre-1994 levels and to increase the current differential such that it is approximately equivalent to the differential in salary between the Chief Justice and the other justices of the Supreme Court.

**SECTION 3.8.** Section 1.1 of S.L. 2004-179, as amended by Section 30.3A of S.L. 2005-276 and Section 2.1 of S.L. 2006-146, authorized the State to issue or incur special indebtedness in order to provide funds to the State for Western Carolina University to be used, together with other available funds, to pay the cost of land acquisition, site preparation, engineering, architectural, and other consulting services and construction of a building for Western Carolina University and the Mountain Area Health Education Consortium for the North Carolina Center for Health and Aging to be operated as a consortium among Western Carolina University, the University of North Carolina at Asheville, and the Mountain Area Health Education Consortium.

Western Carolina University, the University of North Carolina at Asheville, and the Mountain Area Health Education Consortium may expend available funds, including appropriations, for the operation and maintenance of this facility.

**SECTION 3.10.(a)** G.S. 105-164.14(j) reads as rewritten:

"(j) Certain Industrial Facilities. – The owner of an eligible facility is allowed an annual refund of sales and use taxes as provided in this subsection.

(1) Refund. – The owner of an eligible facility is allowed an annual refund of sales and use taxes paid by it under this Article on qualified building materials, building supplies, fixtures, and equipment that become a part of the real property of the eligible facility. Liability incurred indirectly by the owner for sales and use taxes on these items is

considered tax paid by the owner. Building materials, building supplies, fixtures, and equipment are qualified if they are installed in the construction of the facility. Purchases for subsequent repair, renovation, or equipment replacement are not qualified.

A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the State's fiscal year. Refunds applied for after the due date are barred.

- (2) Eligibility. – A facility is eligible under this subsection if it meets all of the following conditions:
- a. It is primarily engaged in one of the industries listed in this subsection.
  - b. The Secretary of Commerce has certified that the owner of the facility will invest at least the required amount of private funds to construct the facility in this State. For the purpose of this subsection, costs of construction may include costs of acquiring and improving land for the facility and costs of equipment for the facility. If the facility is located in a development tier one area as defined in G.S. 143B-437.08 the required amount is fifty million dollars (\$50,000,000). For all other facilities, the required amount is one hundred million dollars (\$100,000,000). In the case of a computer manufacturing facility, the owner may invest these funds either directly or indirectly through a related entity or strategic partner as those terms are defined in G.S. 105-129.61. For the purpose of this subsection, the term "facility" has the same meaning as under G.S. 105-129.61.
  - c. If the facility is primarily engaged in financial services, securities operations, and related systems development, it satisfies all of the following conditions:
    1. It is owned and operated by the business for which the services are provided or by a related entity of that business as defined in G.S. 105-130.7A.
    2. No part of it is leased to a third-party tenant that is not a related entity of the business.
  - d. If the facility is primarily engaged in solar electricity generating materials manufacturing, the business satisfies a wage standard at the facility. The wage standard is equal to one hundred five percent (105%) of the lesser of the average weekly wage for all insured private employers in the State and the average weekly wage for all insured private employers in the county. A business satisfies the wage standard if it pays an average weekly wage that is at least equal to the amount required by this sub-subdivision. In making the wage calculation, the business must include any jobs that were filled for at least 1,600 hours during the calendar year.
- (3) Industries. – This subsection applies to the following industries:
- a. Air courier services. Air courier services has the same meaning as in G.S. 105-129.2.
  - b. Aircraft manufacturing. Aircraft manufacturing means the manufacturing or assembling of complete aircraft or of aircraft engines, blisks, fuselage sections, flight decks, flight deck systems or components, wings, fuselage fairings, fins, moving leading and trailing wing edges, wing boxes, nose sections, tailplanes, passenger doors, nacelles, thrust reversers, landing gear, braking systems, or any combination thereof.

- c. Bioprocessing. Bioprocessing means biomanufacturing or processing that includes the culture of cells to make commercial products, the purification of biomolecules from cells, or the use of these molecules in manufacturing.
- d. Computer manufacturing. Computer manufacturing means manufacturing or assembling electronic computers, such as personal computers, workstations, laptops, and computer servers. The term includes the assembly or integration of processors, coprocessors, memory, storage, and input/output devices into a user-programmable final product. The term includes manufacturing or assembling computer peripheral equipment, such as storage devices, printers, monitors, input/output devices, and terminals only if the manufacture or assembly of this peripheral equipment occurs at a facility or campus at which the taxpayer also manufactures or assembles electronic computers.
- e. Reserved for future codification purposes.
- f. Financial services, securities operations, and related systems development. Financial services, securities operations, and related systems development means one or both of the following functions:
  1. Performing analysis, operations, trading, or sales functions for investment banking, securities dealing and brokering, securities trading and underwriting, investment portfolio/mutual fund management, retirement services, or employee benefit administration.
  2. Developing information technology systems and applications, managing and enhancing operating applications and databases, or providing, operating, and maintaining telecommunications networks and distributed and mainframe computing resources for investment banking, securities dealing and brokering, securities trading and underwriting, investment portfolio/mutual fund management, retirement services, or employee benefit administration.
- g. Motor vehicle manufacturing. Motor vehicle manufacturing means any of the following:
  1. Manufacturing complete automobiles and light-duty motor vehicles.
  2. Manufacturing heavy-duty truck chassis and assembling complete heavy-duty trucks, buses, heavy-duty motor homes, and other special purpose heavy-duty motor vehicles for highway use.
  3. Manufacturing complete military armored vehicles, nonarmored military universal carriers, combat tanks, and specialized components for combat tanks.
- h. Reserved for future codification purposes.
- i. Reserved for future codification purposes.
- j. Pharmaceutical and medicine manufacturing and distribution of pharmaceuticals and medicines. Pharmaceutical and medicine manufacturing means any of the following:
  1. Manufacturing biological and medicinal products. For the purpose of this sub-subdivision, a biological product is a preparation that is synthesized from living organisms or their products and used medically as a diagnostic,

- preventive, or therapeutic agent. For the purpose of this sub-subdivision, bacteria, viruses, and their parts are considered living organisms.
2. Processing botanical drugs and herbs by grading, grinding, and milling.
  3. Isolating active medicinal principals from botanical drugs and herbs.
  4. Manufacturing pharmaceutical products intended for internal and external consumption in forms such as ampoules, tablets, capsules, vials, ointments, powders, solutions, and suspensions.
- k. Reserved for future codification purposes.
- l. Reserved for future codification purposes.
- m. Semiconductor manufacturing. Semiconductor manufacturing means development and production of semiconductor material, devices, or components.
- n. Solar electricity generating materials manufacturing. Solar energy generating materials manufacturing means the development and production of one or more of the following:
1. Photovoltaic materials or modules used in producing electricity.
  2. Polymers or polymer films primarily intended for incorporation into photovoltaic materials or modules used in producing electricity.
- (4) Forfeiture. – If the owner of an eligible facility does not make the required minimum investment within five years after the first refund under this subsection with respect to the facility, the facility loses its eligibility and the owner forfeits all refunds already received under this subsection. Upon forfeiture, the owner is liable for tax under this Article equal to the amount of all past taxes refunded under this subsection, plus interest at the rate established in G.S. 105-241.21, computed from the date each refund was issued. The tax and interest are due 30 days after the date of the forfeiture. A person that fails to pay the tax and interest is subject to the penalties provided in G.S. 105-236.
- (5) Sunset. This subsection is repealed for sales made on or after January 1, 2013."

**SECTION 3.10.(b)** This section becomes effective July 1, 2008, and applies to purchases made on or after that date.

**SECTION 3.11.** Section 10.15A(i) of S.L. 2008-107 is amended by rewriting the last underlined sentence in subdivision (6) to read:

"Sixty days after the tiered rates required under subsection (b) of this section have been implemented by the Department, thirty-five percent (35%) of community support services must be delivered by qualified professionals. Six months thereafter fifty percent (50%) of community support services must be delivered by qualified professionals."

**SECTION 3.12.(a)** Part 7 of Article 12 of Chapter 143B of the General Statutes is repealed.

**SECTION 3.12.(b)** G.S. 143B-515(20) is repealed.

**SECTION 3.12.(c)** G.S. 143B-516(f) reads as rewritten:

"(f) The Department shall develop a cost-benefit model for each State-funded program. Program commitment and recidivism rates shall be components of the model. ~~In developing the model, the Department shall consider the recommendations of the state Advisory Council on juvenile Justice and Delinquency Prevention.~~"

**SECTION 3.13.(a)** Subsection 10.15A(h1) of S.L. 2008-107 is rewritten to read:

"SECTION 10.15A.(h1)

- (1) General Rule. – Notwithstanding any provision of State law or rules to the contrary, this subsection shall govern the process used by a Medicaid applicant or recipient to appeal a determination made by the Department of Health and Human Services to deny, terminate, suspend, or reduce Medicaid covered services. For purposes of this subsection, the phrase "adverse determination" means a determination by the Department to deny, terminate, suspend, or reduce Medicaid covered services. For purposes of this subsection, all references to an applicant or recipient include the applicant or recipient's parent, guardian, or legal representative; however, notice need only be given to a parent, guardian, or legal representative who has requested in writing to receive the notice.
- (2) Notice. – Except as otherwise provided by federal law or regulation, at least 30 days before the effective date of an adverse determination, the Department shall notify the applicant or recipient, and the provider, if applicable, in writing of the determination and of the applicant's or recipient's right to appeal the determination. The notice shall be mailed on the date indicated on the notice as the date of the determination. The notice shall include:
  - a. An identification of the applicant or recipient whose services are being affected by the adverse determination, including full name and Medicaid identification number.
  - b. An explanation of what service is being denied, terminated, suspended, or reduced and the reason for the determination.
  - c. The specific regulation, statute, or medical policy that supports or requires the adverse determination.
  - d. The effective date of the adverse determination.
  - e. An explanation of the applicant's or recipient's right to appeal the Department's adverse determination in an evidentiary hearing before an administrative law judge.
  - f. An explanation of how the applicant or recipient can request a hearing and a statement that the applicant or recipient may represent himself or use legal counsel, a relative, or other spokesperson.
  - g. A statement that the applicant or recipient will continue to receive Medicaid services at the level provided on the day immediately preceding the Department's adverse determination or the amount requested by the applicant or recipient, whichever is less, if the applicant or recipient requests a hearing before the effective date of the adverse determination. The services shall continue until the hearing is completed and a final decision is rendered.
  - h. The name and telephone number of a contact person at the Department to respond in a timely fashion to the applicant's or recipient's questions.
  - i. The telephone number by which the applicant or recipient may contact a Legal Aid/Legal Services office.
  - j. The appeal request form described in subdivision (4) of this subsection that the applicant or recipient may use to request a hearing.
- (3) Appeals. – Except as provided by this subsection and subsection 10.15A(h2) of this act, a request for a hearing to appeal an adverse determination of the Department under this section is a contested case subject to the provisions of Article 3 of Chapter 150B of the General

Statutes. The applicant or recipient must request a hearing within 30 days of the mailing of the notice required by subdivision (2) of this subsection by sending an appeal request form to the Office of Administrative Hearings and the Department. The Department shall immediately forward a copy of the notice to the Office of Administrative Hearings electronically. The information contained in the notice is confidential unless the recipient appeals. The Office of Administrative Hearings may dispose of the records after one year. The Department may not influence, limit, or interfere with the applicant's or recipient's decision to request a hearing.

- (4) Appeal Request Form. – Along with the notice required by subdivision (2) of this subsection, the Department shall also provide the applicant or recipient with an appeal request form which shall be no more than one side of one page. The form shall include the following:
  - a. A statement that in order to request an appeal, the applicant or recipient must send the form by mail or fax to the address or fax number listed on the form within 30 days of mailing of the notice.
  - b. The applicant's or recipient's name, address, telephone number, and Medicaid identification number.
  - c. A preprinted statement that indicates that the applicant or recipient would like to appeal the specific adverse determination of which the applicant or recipient was notified in the notice.
  - d. A statement informing the applicant or recipient that he or she may choose to be represented by a lawyer, a relative, a friend, or other spokesperson.
  - e. A space for the applicant's or recipient's signature and date.
- (5) Final Decision. – After a hearing before an administrative law judge, the judge shall return the decision and record to the Department in accordance with subsection 10.15A(h2) of this act. The Department shall make a final decision in the case within 20 days of receipt of the decision and record from the administrative law judge and promptly notify the applicant or recipient of the final decision and of the right to judicial review of the decision pursuant to Article 4 of Chapter 150B of the General Statutes.

**SECTION 3.13.(b)** Section 10.15A of S.L. 2008-107 is amended by adding five new subsections to read:

**"SECTION 10.15A.(h2)**

- (1) Application. – This subsection applies only to contested Medicaid cases commenced by Medicaid applicants or recipients under subsection 10.15A(h1) of this act. Except as otherwise provided by subsection 10.15A(h1) and this subsection governing time lines and procedural steps, a contested Medicaid case commenced by a Medicaid applicant or recipient is subject to the provisions of Article 3 of Chapter 150B. To the extent any provision in this subsection or subsection 10.15A(h1) of this act conflicts with another provision in Article 3 of Chapter 150B, this subsection and subsection 10.15A(h1) controls.
- (2) Simple Procedures. – Notwithstanding any other provision of Article 3 of Chapter 150B of the General Statutes, the chief administrative law judge may limit and simplify the procedures that apply to a contested Medicaid case involving a Medicaid applicant or recipient in order to complete the case as quickly as possible. To the extent possible, the Hearings Division shall schedule and hear contested Medicaid cases

within 45 days of submission of a request for appeal. The simplified procedure may include requiring that all prehearing motions be considered and ruled on by the administrative law judge in the course of the hearing of the case on the merits. An administrative law judge assigned to a contested Medicaid case shall make reasonable efforts in a case involving a Medicaid applicant or recipient who is not represented by an attorney to assure a fair hearing and to maintain a complete record of the hearing. The administrative law judge may allow brief extensions of the time limits contained in this section for good cause and to ensure that the record is complete. Good cause includes delays resulting from untimely receipt of documentation needed to render a decision and other unavoidable and unforeseen circumstances.

- (3) Mediation. – Upon receipt of an appeal request form as provided by subdivision 10.15A(h1)(4) of this act or other clear request for a hearing by a Medicaid applicant or recipient, the chief administrative law judge shall immediately notify the Mediation Network of North Carolina which shall within five days contact the petitioner to offer mediation in an attempt to resolve the dispute. If mediation is accepted, the mediation must be completed within 25 days of submission of the request for appeal. If mediation is successful, the mediator shall inform the Hearings Division, which shall confirm with the agency that a settlement has been achieved, and the case shall be dismissed. If the petitioner rejects the offer of mediation or the mediation is unsuccessful, the mediator shall notify the Hearings Division that the case will proceed to hearing. Nothing in this subdivision shall restrict the right to a contested case hearing.
- (4) Burden of Proof. – The petitioner has the burden of proof to show entitlement to a requested benefit or the propriety of requested agency action when the agency has denied the benefit or refused to take the particular action. The agency has the burden of proof when the appeal is from an agency determination to impose a penalty or reduce, terminate, or suspend a benefit previously granted. The party with the burden of proof on any issue has the burden of going forward, and the administrative law judge shall not make any ruling on the preponderance of evidence until the close of all evidence.
- (5) Decision. – The administrative law judge assigned to a contested Medicaid case shall hear and decide the case without unnecessary delay. The Hearings Division shall send a copy of the audiotape or diskette of the hearing to the agency within five days of completion of the hearing. The judge shall prepare a written decision and send it to the parties. The decision must be sent together with the record to the agency within 20 days of the conclusion of the hearing.

**"SECTION 10.15A.(h3)** From funds available to the Department of Health and Human Services for the 2008-2009 fiscal year, the sum of two million dollars (\$2,000,000) shall be transferred by the Department of Health and Human Services to the Office of Administrative Hearings. These funds shall be allocated by the Office of Administrative Hearings for mediation services provided for Medicaid applicant and recipient appeals and to contract for other services necessary to conduct the appeals process.

**"SECTION 10.15A.(h4)** Effective October 1, 2008, the Department of Health and Human Services shall discontinue its current informal appeals process for Medicaid applicants and recipients appealing a determination made by the Department to deny, terminate, suspend, or reduce Medicaid covered services. All such informal appeals by Medicaid applicants or recipients under the current system which are pending on that

date and for which a hearing has not been held shall be discontinued and the applicant or recipient offered an opportunity to appeal to the Office of Administrative Hearings in accordance with the provisions of subsection 10.15A(h1) of this act. The Department shall make every effort to resolve or settle all of the backlogged cases prior to the effective date of this act.

**"SECTION 10.15A.(h5)** Nothing in this act shall prevent the Department of Health and Human Services from engaging in an informal review of the case with the applicant or recipient prior to issuing a notice of adverse determination as provided by subsection 10.15A(h1) of this act.

**"SECTION 10.15A.(h6)** The appeals process for Medicaid applicants and recipients established under this section shall expire July 1, 2010. The Department of Health and Human Services and the Office of Administrative Hearings shall each report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate 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 on March 1, 2009, October 1, 2009, and March 1, 2010, on the costs, effectiveness, and efficiency of the appeals process for Medicaid applicants and recipients and make recommendations regarding the continuation of the process."

#### **PART IV. EFFECTIVE DATE**

**SECTION 4.1.** This act becomes effective July 1, 2008.

In the General Assembly read three times and ratified this the 18<sup>th</sup> day of July, 2008.

s/ Marc Basnight  
President Pro Tempore of the Senate

s/ Joe Hackney  
Speaker of the House of Representatives

s/ Michael F. Easley  
Governor

Approved 5:31 p.m. this 28<sup>th</sup> day of July, 2008