



# SENATE BILL 124: Assumed Bus. Name/IC Contempt/Parks.

2016-2017 General Assembly

<b>Committee:</b>	House Judiciary II	<b>Date:</b>	June 20, 2016
<b>Introduced by:</b>	Sen. Hartsell	<b>Prepared by:</b>	Brad Krehely
<b>Analysis of:</b>	PCS to Third Edition S124-CSRNxr-50		Committee Co-Counsel

**SUMMARY:** *The Proposed Committee Substitute (PCS) for Senate Bill 124 contains three unrelated provisions as follows:*

- *Would modernize the law governing the use of assumed business names and make conforming changes, as recommended by the General Statutes Commission.*
- *Would clarify how the Industrial Commission refers matters of indirect criminal contempt to the district court.*
- *Would remove several small tracts from the State Nature and Historic Preserve and from the State Parks System to resolve deed overlaps, to allow for minor road relocations and utility easements, and to improve park management. This provision will require that the bill be approved by a three-fifths vote of the members of each house of the General Assembly.*

*The PCS adds in Parts III and IV dealing with Industrial Commission contempt and changes involving tracts of the State Nature and Historic Preserve and the State Parks System. It also makes some modifications to the provisions dealing with assumed business names, as explained in the staff memorandum prepared by the General Statutes Commission.*

## Parts I and II. Assumed Business Name Act and Related Changes

**Parts I and II** address the Assumed Business Name Act and related conforming and technical amendments to other sections of the General Statutes. These provisions are explained in the memorandum prepared by the General Statutes Commission. They become effective July 1, 2017, do not affect a right accrued before July 1, 2017, and only become effective if funds are appropriated to implement them.

## Part III. Clarify Industrial Commission Referral of Indirect Contempt

**CURRENT LAW:** Under current law, the Industrial Commission has the same power as a judicial officer to punish for criminal contempt for: (1) willful behavior committed during the sitting of the commissioner or deputy commissioner and directly tending to interrupt the proceedings; (2) willful disobedience of a lawful order of the Commission or a member or deputy of the Commission; or (3) for willful refusal to be sworn or affirmed as a witness, or, when so sworn or affirmed, willful refusal to

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answer any legal and proper question when refusal is not legally justified. The Commission, a member, or deputy commissioner may issue an order of arrest and take the person into custody to assure the person's presence for summary proceedings or notice of plenary proceedings.

If the commissioner or deputy commissioner does not proceed summarily (i.e. impose measures to restore order and when measures are imposed at the same time of the contempt), the proceedings are before a district court judge in the district where the order was issued and directed the charged person to appear. A person found in criminal contempt may appeal in the manner provided for appeals in criminal actions to the superior court of the district in which the order of contempt was issued, and the appeal is by hearing de novo before a superior court judge.

**Section 10** would provide that to initiate plenary proceedings, the Commission must issue and file with the clerk of court an order to appear and show cause. This is an order directing the person to appear before the judge and show cause why the person should not be held in contempt of court. Section 10 would also provide that, if appropriate, the Commission must enter an order for arrest if it believes that the person ordered to appear will not appear in response to the order.

**EFFECTIVE DATE:** This section would become effective October 1, 2016, and would apply to proceedings for indirect criminal contempt filed on or after that date.

## **Part IV. DELETIONS FROM STATE NATURE AND HISTORIC PRESERVE/STATE PARKS**

**CURRENT LAW:** Section 5 of Article XIV of the Constitution of North Carolina provides for addition of properties to and removal of properties from the State Nature and Historic Preserve by a law enacted by a three-fifths vote of the members of each house of the General Assembly. The Preserve is intended to insure that lands and waters acquired and preserved for public park, recreation, conservation, and historic preservation purposes continue to be used for these purposes. Upon inclusion in the Preserve, these lands may not be used for other purposes except as authorized by a law enacted by a vote of three-fifths of the members of each house. G.S. 143-260.10 lists the current components of the Preserve.

G.S. 143B-135.54 provides conditions and procedures for additions to, and deletions from, the State Parks System that must be authorized by the General Assembly. The State Parks Act requires a majority vote of the General Assembly to remove a park or any part from the State Parks System. Most of the land within the State Parks System is included in the State Nature and Historic Preserve.

**BILL ANALYSIS:** Section 11 would delete several small tracts from the State Nature and Historic Preserve and/ or delete these small tracts from the State Parks System. The proposed deletions will resolve deed overlaps, allow for minor road relocations and utility easements, and improve park management. Specifically, the PCS would:

- Delete a 4.2 acre parcel from **Gorges State Park** from the Preserve and the State Parks System to facilitate an exchange of land with an adjacent property owner.
- Delete a .6 acre parcel from **Jockey's Ridge State Park** from the Preserve to allow a buried power transmission cable that crosses Jockey's Ridge and provides a power source between Nags Head and Roanoke Island to remain permanently.
- Delete a .08 acre parcel from **Mitchell's Mill State Natural Area** from the Preserve and the State Parks System to provide the Department of Transportation a right-of-way needed for a bridge replacement project over Cedar Fork Creek in eastern Wake County.

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- Delete a 2.63 acre parcel from **Hanging Rock State Park** to correct several issues revealed by a boundary survey.

**EFFECTIVE DATE:** This section would become effective when the act becomes law.

Trina Griffin, Attorney with the Legislative Analysis Division, contributed substantially to this summary.