



SENATE BILL 821: GSC Technical Corrections 1.

**This Bill Analysis
reflects the
contents of the bill
as it was presented
in committee.**

2016-2017 General Assembly

Committee:		Date:	July 1, 2016
Introduced by:	Sen. Hartsell	Prepared by:	Wendy Ray Committee Counsel
Analysis of:	PCS to Fourth Edition S821-CSSU-56		

SUMMARY: *The PCS for Senate Bill 821 makes technical changes recommended by the General Statutes Commission and various other changes to State law.*

Part I of the PCS for this bill (Sections 1-14.1) contains technical changes recommended by the General Statutes Commission. Part II of the PCS contains additional technical amendments and changes to State law.

BILL ANALYSIS:

PART I. General Statutes Commission Recommendations

Sections 1 through 14.1 contain corrections of a technical nature that are recommended by the General Statutes Commission. The text of the General Statutes Commission's explanatory memorandum has been added to the end of this summary.

PART II. Other Amendments

Section 15 would amend the statute governing special judges by specifying that the five-year term for the special superior court judge commencing March 1, 2011, shall expire the earlier of September 30, 2016, or upon retirement, resignation, removal from office, or death.

Section 16 (a-k) would make essentially the same amendment to various statutes that list the institutions in which funds are authorized to be deposited. The list covers monies subject to an interpleader action; occupational licensing and proprietary school provisions that authorize the assigning of a savings account or CD in lieu of a bond; funds of the North Carolina Real Estate Commission; and time share deposits that were not addressed in S.L. 2015-93. With three exceptions, the amendments change a list of specific types of institutions to the phrase used in S.L. 2015-93, "federally insured depository institution lawfully doing business in this State." The three exceptions are statutes that currently include trust companies, which are only federally insured under some circumstances. To avoid inadvertently excluding trust companies, and to update the terminology, the phrase "federally insured depository institution or trust institution authorized to do business in this State" was used in these three statutes.

Section 17 would correct an incorrect statutory citation.

Section 18(a-1) would amend the statutes already amended by Section 16, plus four other sections on tenant deposits and first-time condominium purchaser deposits, to include trust companies in the statutes that do not currently include them.

Section 19 would repeal two provisions that have been found to be unconstitutional by the NC Court of Appeals in *State v. Singletary* because they allow the sentence to be modified based on findings by a

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judge. The US Supreme Court has held that, other than prior record, factors affecting sentencing must be found by a jury.

Section 19.5 would add a provision to allow the Order of the Long Leaf Pine special registration plate to be on a full-color background rather than the standard "First in Flight" or "First in Freedom" background.

Section 20 would amend G.S. 28A-2B-2 to change the venue provision under the living probate statutes enacted last year from "domicile" to "residence," which is consistent with venue requirements for trusts and most other civil matters.

Section 21 would amend G.S. 31D-5-505, as recodified by Section 7.2(b) of this bill, to remove references to "limitation" of a power of appointment, which are apparently no longer needed.

Section 22 would amend G.S. 36C-5-505(c)(1)c. According to the NC Bar Association's Trusts and Estates Division, current law allows a spouse to establish a trust for the other spouse, and to set it up so that when the beneficiary spouse dies, the trust benefits the settlor spouse and his children. This kind of trust is not subject to claims by creditors of the settlor spouse. The change would allow the children of the beneficiary spouse (stepchildren of the grantor spouse) to also be beneficiaries if the grantor spouse chooses to include them when the trust is drafted.

Section 23 would amend two laws regarding purchase money mortgages or deeds of trust to apply when the secured party is a third party lender as well as when the secured party is the seller of the real property. This section would become effective when it becomes law and applies to purchase money mortgages and deeds of trust entered into on or after that date.

Section 24 would amend the statute governing tenancy by the entireties trusts in real property. It would specify how to give notice that the real property held in trust received immunity from the claims of separate creditors. It also provides that a person entering a transaction involving real property held in trust may request confirmation from the trustee on whether the requirements providing immunity from the claims of separate creditors are met at the time of the transaction. According to the NC Bar Association's Trusts and Estates Division, these provisions are designed to assist persons searching for title, so they will have notice that property held in trust has retained its character as tenancy by the entireties property.

Section 25 would amend the statute governing drug-related overdose treatment by correcting an internal citation referenced in G.S. 90-12.7(b1).

Section 26 – In 2014, the General Assembly enacted G.S. 90-113.22A, which separated the possession of marijuana paraphernalia from the possession of all other drug paraphernalia. This section would add the new separate offense to the statute authorizing the conditional discharge of a first offense of possession of drug paraphernalia so that a first offense of possession of marijuana paraphernalia will continue to be eligible for conditional discharge.

Section 27 would correct incorrect statutory citations.

Section 28 would make changes to the NC historic rehabilitation tax credit. This section clarifies that property will be considered placed in service in 2016, notwithstanding that it was placed in service in 2015, for purposes of the NC rehabilitation tax credit if it meets the conditions of G.S. 105-129.105(e), consistent with the intent of last year's legislation in S.L. 2015-264.

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Section 30 changes the date by which several State Board of Education reports are required to be submitted to the Joint Legislative Education Oversight Committee.

Section 31 would amend three sections in the new Article 7A of Chapter 115C of the General Statutes, dealing with achievement school districts and innovation zones.

Section 32 – S.L. 2016-11 created privacy protections for student information held by third-party online educational applications for K-12 students in public schools. This section would allow use of a student's information solely to identify nonprofit institutions of higher education or scholarship providers to the student if the provider secures the written consent of the parent or student who is at least 13 years of age.

Section 32.5 would make a conforming change to reflect that the Secretary of Administration, not the Attorney General, now reviews contracts under G.S. 114-8.3.

Section 33 would allow the Board of Governors to authorize the President to engage legal counsel for the University and its constituent institutions independent of the Attorney General and Governor's authorization.

Section 34 would provide that the employees in the specified positions that are currently exempt from classification and compensation rules established by the State Human Resources Commission would no longer be exempt from incentive pay programs established by the Commission.

Section 35 changes the current State Human Resources Commission requirement to adopt rules or policies to carry out the State's policy of hiring "among the most qualified persons", to instead require "from among the pool of qualified persons."

Section 36 would amend membership of the Board of Trustees of the North Carolina Museum of Art by extending the term of General Assembly appointees from two years to four years and by giving them a limit of three consecutive terms instead of two (other appointments are for terms of six years with a limit of two consecutive terms). This section also appoints two members to the Board.

Section 37 would eliminate the two consecutive term limit for the member of the Vocational Rehabilitation Council representing a parent training and information center.

Section 38 would adjust membership of Public Librarian Certification Commission to eliminate the chairman of the NC Association of Library Trustees, and substitute an individual named by the Governor upon nomination by the NC Library Association.

Section 39 would authorize cabinet agencies to use surplus furnishings from the Governor's mansion for decorative purposes in other State-owned facilities.

Section 40 corrects terminology by clarifying that the wage standard used by the Department of Commerce to provide funds to aid economically distressed counties is determined by where the "project" is located, not where the "datacenter" is located.

Section 41 would correct the name of a State department.

Section 42 would amend a statute in the Iran Divestment Act. Under current law, a State agency must require that a person contracting with the State or a political subdivision certify that he or she is not identified on the State Treasurer's list of persons engaging in investment activities in Iran. This section would provide that if a State agency and the same person enter into multiple contracts or multiple contract renewals within 180 days after a certification is made, then a new certification is not required.

Section 43 would amend a statute that requires counties to deposit cash when it reaches \$250 or at the end of each month, to eliminate the required monthly deposit and allow the cash to be locked in a secure

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location until it reaches \$250, at which point a deposit would be required with a properly licensed and recognized cash collection service.

Section 43.5 – Currently, G.S. 163-22(l) provides that a person seeking judicial review of any decision of the State Board of Elections rendered in the performance of its duties or in the exercise of its powers under Chapter 163 must file in the Superior Court of Wake County. This section would provide that any action challenging any decision of the State Board of Elections regarding the site plan for one-stop voting locations may not be challenged.

Section 44 would amend the fast-track replication process for high-quality charter schools by requiring the State Board of Education to ensure rules provide that decisions on whether to grant a charter be completed in less than 120 days from the application submission date but in no event later than October 15 of the year immediately preceding the year of the proposed school opening.

Section 45 would repeal Section 1 of 2015-52, which requires the Department of Health and Human Services to provide information to the Program Evaluation Division. PED in turn is required to report to the Joint Legislative Program Evaluation Oversight Committee and the Joint Legislative Oversight Committee on Health and Human Services on certain criteria to be used in determining whether provision of overnight respite services in an adult day care setting is a worthwhile service. Permanent provision for such services has, however, been provided through the enactment of G.S. 131D-6.1.

Section 46 would delay until October 1, 2016 the moped liability insurance requirement enacted last year in S.L. 2015-125; and make two related technical corrections to House Bill 959.

Section 47 would correct an incorrect statutory citation.

Section 48 restores language in Senate Bill 600 (Appraiser Compensation/Judge Perform Marriage) regarding appraiser compensation by appraisal management companies that was amended on the House floor.

Section 49 would correct the effective date of House Bill 289 (Money Transmitters Act), which has already passed.

Section 50 would correct the category of a Board of Agriculture appointee in the resolution giving the Senate's consent.

Section 51 would allow the Revisor of Statutes to print certain explanatory comments.

Section 52 would amend provisions in House Bill 630 (Drinking Water Protect'n/Coal Ash Cleanup Act) to: (1) clarify that Duke Energy Progress, LLC, and Duke Energy Carolinas, LLC, collectively, must build 3 beneficial use coal ash processing projects in total (not 3 from each entity); and (2) correct a reference to the location of the Weatherspoon Steam Station, from New Hanover County to Robeson County.

Section 52.5 would repeal a change to teacher licensing requirements that was added in the budget bill. The budget bill provision would have required that teachers receive a rating of at least proficient to maintain licensed status.

Section 53 would amend a budget provision to make teachers eligible to receive bonuses if they have more than 30 years of creditable experience and do not receive a recurring salary increase.

Section 53.5 earmarks \$150,000 for Big Brothers Big Sisters of the Triangle within the Social Services Block Grant.

Section 54 would (i) increase the percentage of the remaining balance in certain budget codes that The University of North Carolina may carry forward at the end of each fiscal year from two and one-half

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percent (2½%) to five percent (5%), (ii) require that amounts carried forward in excess of two and one-half percent (2½%) be used only for projects eligible to receive funds from the Repairs and Renovations Reserve or for advanced planning of capital improvement projects, and (iii) requires an annual report on expenditures of these funds.

Section 54.5 would allow LEA partners or other third parties, if necessary, to fund a program that was initially funded through federal Investing in Innovation Grants. The grant administrator has declared bankruptcy. No appropriation is required, community colleges would not earn budget FTEs, and the authorization would only be for the 2016-2017 school year.

PART III. Effective Date.

Section 55 would provide for the bill to be effective when it becomes law.

TEXT OF EXPLANATORY MEMORANDUM FROM GENERAL STATUTES COMMISSION:

General Comments

Part I of the committee substitute for this bill contains corrections of a technical nature to the General Statutes and session laws as recommended by the General Statutes Commission.

These amendments correct typographical, redlining, and other obvious drafting and stylistic errors, make conforming changes, make references to public officials gender neutral, update archaic phrasing, repeal duplicative and obsolete provisions, rephrase unclear provisions, recodify two statutes, and add a cross-reference.

Specific Comments (Revised)

Section 1 amends G.S. 1-117 primarily to update a citation. G.S. 2-42, referred to in G.S. 1-117, was revised and transferred to G.S. 7A-109 by Section 6 of Chapter 363 of the 1971 Session Laws. In addition, the reference to clerks of superior court is made gender neutral.

Section 1.1 amends G.S. 14-118.6(b1) to clarify the phrasing of the third sentence. S.L. 2015-87 added subsection (b1) to provide clerks of court with authority similar to the authority of registers of deeds to refuse to file what appear to be false liens or encumbrances against public officers or public employees or one of their immediate family members. If the clerk declines to file, the document may not be filed unless a judge approves filing. As drafted, however, the 2015 provision can be read to require the clerk to review the clerk's own actions, followed by a mandatory appeal to a judge, if the reader assumes that an "and" is missing between "by the clerk of superior court by any judge" The amendment in this section reverses the order of two phrases in this sentence and makes it clearer.

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Section 1.2 amends G.S. 14-159.3(a1) to correct an inadvertent error in the 2015 amendment to this section. Among other things, the 2015 amendment made references to "landowner" gender neutral by replacing references to "his" and "he" with references to "his or hers" and "he or she." "Landowner" can, however, include corporations and other entities. Rather than use "his, her, or its" and similar phrases, the amendment in this section repeats the word "landowner."

Section 2 amends G.S. 14-208.6 to make a conforming amendment in subdivision (5), the definition of "sexually violent offense."

S.L. 2015-181 recodified the sex offenses in former Article 7A of Chapter 14 of the General Statutes into a new Article 7B of that chapter and reorganized them to separate the rape offenses from the sexual assault offenses and also to separate out the offenses against children from the offenses against adults. In the process, former G.S. 14-27.2 (First degree rape) was separated into two new statutes, G.S. 14-27.21 (First degree forcible rape) and G.S. 14-27.24 (First degree statutory rape).

G.S. 14-208.6(5) included former G.S. 14-27.2 in its list of sexually violent offenses. As a result, S.L. 2015-181 should have amended G.S. 14-208.6(5) to include both new G.S. 14-27.21 and new G.S. 14-27.24 in this list as part of its conforming amendments. The 2015 session law did insert a reference to new G.S. 14-27.21, but it inadvertently failed to include new G.S. 14-27.24. The amendment in this section corrects that oversight.

Section 2.1 amends G.S. 20-45 in subsection (a) to eliminate an unnecessary word as legalese; in subsection (b) to make a reference to the Commissioner of Motor Vehicles gender neutral; and in subsection (c) to make a conforming amendment. The conforming amendment replaces a reference to former G.S. 20-309(e) with a reference to G.S. 20-311; S.L. 2006-213 repealed G.S. 20-309(e) and enacted new, more detailed provisions on revocation of licenses due to the cancellation of insurance. Those provisions are now contained in G.S. 20-311.

Section 3 amends the catchline of G.S. 20-171.24 to make a conforming amendment. Subsection (f) of G.S. 20-171.24, which formerly limited the application of that statute to certain listed municipalities and counties, was repealed by S.L. 2015-26. The statute therefore now applies statewide. The 2015 session law, however, failed to amend the catchline to reflect the change.

Section 3.1 amends G.S. 24-10.1 to delete a reference to repealed G.S. 24-1.2. That statute dealt with a special interest rate cap for installment sales. There was apparently no successor provision.

Section 4 amends G.S. 28A-2-4 to correct an obvious error in subdivision (a)(4) and one in subsection (c) and to add a cross-reference in subsection (c). G.S. 36C-2-203, the equivalent statute for trusts, was used as the model for this statute when it was enacted in 2011. Some of the changes to the text of G.S. 36C-2-203 that were needed to adapt the wording to estates rather than trusts and to allow for changes from the original text were not made. Specifically, in subdivision (a)(4), the reference in the last sentence

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to "a trust" proceeding should have been changed to "an estate" proceeding, and the citation in the introductory language of subsection (c) to "subsection ... (c) of this section" is an obvious error. Comparing the text of subsection (c) to the original model makes it apparent that the comparable reference in G.S. 28A-2-49(c) should be to subsection (b). In addition, this section adds a cross-reference to G.S. 28A-2-5.

Section 5, which amended G.S. 28A-2B-2, has been moved from this Part to Part II.

Section 6 amends G.S. 28A-19-5(b) to correct an obvious error by inserting a missing "not."

Section 7 amends G.S. 31B-1(a) to make a conforming amendment. G.S. 31B-1(a) lists possible persons that may renounce an interest in property. Subdivision (8) lists specifically only an "[a]ppointee" under a power of appointment with references to powers of appointment. However, G.S. 31D-4-401 expressly also allows permissible appointees and takers in default under a power of appointment to renounce, and G.S. 31B-2.1 describes how an instrument of renunciation by a permissible appointee or taker in default must be delivered.

Section 7.1 amends G.S. 36C-8-816.1 in subdivision (c)(9) to clarify the wording of a requirement and to correct an obvious drafting error.

G.S. 36C-8-816.1 is termed a "decanting" statute, that is, it allows a trustee to transfer the assets of one trust into another trust ("decant" from one to another), subject to certain restrictions. Subdivision (c)(9) requires that the terms of the second trust must not jeopardize any existing tax benefits. However, the current wording does not reflect the possibility that the existence of the decanting statute itself may be regarded as sufficient to disqualify the first trust from tax benefits for which it was designed to qualify. The amendment to this provision clarifies that, even assuming the possibility that the decanting statute itself may disqualify the first trust from certain tax benefits, the existence of the decanting statute is not a bar to the ability to decant. The amendment follows the wording of the equivalent provision in the Uniform Trust Decanting Act.

This section also changes references in subdivision (c)(9) to "Code" to "Internal Revenue Code." Chapter 36C defines "Internal Revenue Code" but does not define "Code"; for this reason, the full defined term should be included for precision.

Section 7.2 repeals two statutes in Chapter 39 of the General Statutes that were made duplicative or obsolete by the enactment last year of Chapter 31D of the General Statutes (Uniform Powers of Appointment Act) and recodifies two other statutes from that Chapter into Chapter 31D. Specifically, G.S. 39-33 provides a method of releasing a power of appointment that G.S. 39-34 makes non-exclusive. Essentially the same provision is now included in G.S. 31D-4-403, rendering the older statute duplicative and unnecessary. The repeal of G.S. 39-33 would in turn render G.S. 39-34 obsolete. Finally, subsections (b) and (c) of this section recodify G.S. 39-35 as G.S. 31D-5-505 and G.S. 39-36 as G.S. 31D-4-403.1. Subsection (b) of Section 54 authorizes the Revisor of Statutes to print drafters comments.

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Section 7.3 amends G.S. 42A-17(a) to make a conforming amendment. S.L. 2015-93 amended the primary statute on institutions in which a landlord in a vacation rental can deposit a tenant's security deposit and other advance payments to change the reference to a "bank or savings and loan association" to a "federally insured depository institution lawfully doing business in this State." G.S. 42A-17 effectively refers back to that provision by requiring the rental agreement to identify "the" institution where the security deposit is held. This section accordingly amends the wording in G.S. 42A-17(a) to conform to the new description in the primary provision.

Section 7.4 amends G.S. 97-25(f) to make two changes. First, the reference in the introductory language to filing "via electronic mail" is changed to "via electronic means"; the existing reference appears not to have literally meant e-mail only, since elsewhere in this same subsection (subdivision (2)) transcripts may be "submitted electronically." Second, the dangling language at the end of the introductory paragraph is corrected.

Section 8 makes a conforming amendment to the catchline of G.S. 108A-70.21. Former subsections (g) and (h) of that statute provided for the purchase of extended coverage in the North Carolina Health Insurance for Children Program. With their repeal in 2015, the reference in the catchline to "purchase of extended coverage" is no longer relevant.

Section 9 amends G.S. 120-4.16(b) by codifying the second paragraph as subsection (b1). Please note that this second paragraph has what appears to be intended as a subsection catchline.

Section 9.1 repeals G.S. 120-57, which sets out duties for the now-repealed Legislative Intern Program Council and is therefore obsolete.

Section 9.2 amends G.S. 136-41.2(c) to update a reference. G.S. 160-410.3 has been long since repealed. The comparable provisions are G.S. 159-8 and G.S. 159-13.

Section 9.3 amends G.S. 143-215.31(a1)(6) to correct a typographical error in the reference to a section of the Code of Federal Regulations. There is no 18 C.F.R. § 333.112; the correct reference is to 18 C.F.R. § 388.112.

Section 9.4 amends G.S. 143B-168.5 to update the reference to G.S. 110-105.2, which was repealed last year. The comparable, more detailed, provisions are in G.S. 110-105.3, 110-105.4, 110-105.5, and 110-105.6. In addition, this section inserts a specific reference to the Division within the Department of Health and Human Services where the special unit established in this statute is located.

Section 9.5 amends G.S. 143B-394.15(c) to remove a duplicate entry in the list of ex officio members of the Domestic Violence Commission. The duplication occurred in 2011 when the former Departments of Correction, Crime Control and Public Safety, and Juvenile Justice were combined to create the Department of Public Safety. The ex officio members of the Domestic Violence Commission included the Secretaries of Correction and of Crime Control and Public Safety. S.L. 2011-145, which created the Department of

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Public Safety, included conforming amendments to change the titles of the respective Secretaries to the new title (in Sections 19.1(g) and 19.1(i)). As a result, the Secretary of Public Safety appears twice in the list in G.S. 143B-394.15(c)(4). The amendment also (i) conforms the total number of Commission members in the introductory language of subsection (c) to reflect that the Secretary of Public Safety is only one person and (ii) conforms other titles in the list.

Section 9.6 amends G.S. 143B-931(b) to update references to G.S. 115C-238.56N to the current G.S. number, G.S. 115C-238.73.

Section 9.7 amends G.S. 143C-6-4(b)(2) to make a conforming change in the references to G.S. 166A-19.40, which was reorganized in last year's budget bill.

Section 10 amends G.S. 146-9(b)(4) to delete an extra word ("to").

Section 10.1 amends G.S. 147-12(a)(12) to update a citation. In 1989, the then-existing text of G.S. 143B-373 was designated as subsection (a) of that section and new subsections (b) through (d) were added. No conforming amendment was made to G.S. 147-12(a)(12).

Section 11 amends G.S. 153A-340(h) to remove "garbage language" caused by a redlining error in S.L. 2011-286 that caused the phrase "county development approval required by law" to be inserted twice.

Section 12 amends the introductory language of G.S. 160A-332(a) to update a citation. The definition formerly at subdivision (1) of G.S. 160A-331 was renumbered as (1b) in 1997. This section also changes the parentheses to commas.

Section 13 amends G.S. 160A-372(e) and (f) to change references to "paragraph" to "subsection," which is now the correct term after the previously undesignated paragraphs in subsection (c) were given their own subsection designation.

Section 14(a) amends Section 7.1 of S.L. 2014-107 to make it clear that the amendment by Section 5.1 of that act applies to all trusts, regardless of when created. The 2014 act clarified that the common-law rule against accumulations no longer applies to trusts in this State. **Section 14(b)** makes the provision retroactive to the effective date of S.L. 2014-107.

Section 14.1 amends the introductory language of Section 54.5(b) of S.L. 2015-264 to correct a typographical error in the citation. Section 54.5(b) stated that it was amending "Section 32.2(c)" of S.L. 2015-241, but there was no such section and the provision actually set out was Section 32.3(c).

The **final section** of the bill is the effective date section for the entire bill. It provides that, except as otherwise provided in the bill, the bill is effective when it becomes law. A retroactive effective date for Section 2 was added by the General Assembly, making the amendment in that section effective on the same date that S.L. 2015-181 was effective.