



General Statutes Commission

300 N. Salisbury Street, Suite 401
Raleigh, NC 27603-5925
Tel. 919-733-6660 Fax 919-715-5459

David C. Unwin
Revisor of Statutes

Caroline Sorensen
Assistant Revisor of Statutes

MEMORANDUM

To: Senate Rules and Operations of the Senate
From: General Statutes Commission
Re: HB 1018 (GSC Bar Ass'n Proposals/Landmark Designation)
Date: June 30, 2022

General Comments

This bill, recommended by the General Statutes Commission, contains various amendments requested either by a section of the North Carolina Bar Association ("NCBA") or the Department of Natural and Cultural Resources ("DNCR"). Part I primarily consists of various amendments affecting real property that are requested by the Real Property Section of the NCBA. Part II primarily consists of amendments requested by the Business Law Section of the NCBA that strengthen the personal liability protections for limited liability partnerships. Part III primarily consists of amendments requested by the Administrative Law Section of the NCBA that align the authority to transfer venue for judicial review of contested cases with other cases. Part IV primarily consists of a conforming change to account for special fiduciaries in guardianship proceedings requested by the Estate Planning & Fiduciary Law Section of the NCBA. Part V primarily consists of amendments requested by DNCR that clarify and improve the landmark designation procedure.

In each part, the General Statutes Commission added technical changes for greater clarity and consistency, such as replacing legalese with plain English, eliminating unnecessary language, and making language gender-neutral. There is no known opposition to any part of this bill.

Specific Comments

Part I contains various amendments affecting real property that are requested by the Real Property Section of the NCBA:

Section 1 amends G.S. 47-18.1 to correct the section catchline so that it accurately reflects the substance of the statute. It further corrects the section catchline and makes a corresponding change in subsections (a) and (b) to align certain language in this statute with the language in G.S. 55D-26, so that both statutes are consistent. G.S. 55D-26 requires business entities to record with the register of deeds certain certificates issued to them by the Secretary of State. This section makes additional technical changes to replace legalese with plain English and to remove unnecessary language.

Section 2(a) amends G.S. 47-119 to clarify that a memorandum may be used to register numerous types of instruments described in G.S. 47-18, in conformity with changes S.L. 2021-91 made to G.S. 47-18. Under current law, G.S. 47-119 applies only to a memorandum for an option to purchase real estate. This section also makes stylistic changes to clearly identify the required components of a memorandum, including which parties must sign the memorandum, and to remove the statutory form. It also makes technical changes to replace legalese with plain English,

to modernize the format of a list, to fix relative pronouns, and to replace the term "property" with "real estate" for consistency with the rest of the statute.

Section 2(b) amends G.S. 47-119.1 to clearly identify the required components for a memorandum for contract to purchase real estate, including which parties must sign the memorandum, and to remove the statutory form. It makes stylistic changes to accomplish this purpose and makes technical changes to replace legalese with plain English, to fix relative pronouns, and to replace the term "property" with "real estate" for consistency with the rest of the statute.

Section 2(c) amends G.S. 47-120 to conform to the changes made in the bill to G.S. 47-119 and G.S. 47-119.1. It also makes technical changes to replace legalese with plain English, to eliminate unnecessary language, to fix a relative pronoun, to make stylistic changes for clarity, and to update language to use the term "notary public."

Section 3(a) adds a new G.S. 41-6.5 to abolish the common-law rule against perpetuities. G.S. 41-22 currently provides that the Uniform Statutory Rule Against Perpetuities "supersedes" the common-law rule against perpetuities. When the Uniform Statutory Rule Against Perpetuities was enacted by Chapter 190 of the 1995 Session Laws, the intent was to not only supersede, but to abolish, the common-law rule. The Official Comment to G.S. 41-18 provides, in part: "Since the Common-law Rule Against Perpetuities is superseded by this Act (or a statutory version or variation thereof is repealed by this Act), a nonvested property interest, power of appointment, or other arrangement excluded from the Statutory Rule by this section is not subject to any rule against perpetuities, statutory or otherwise." The new G.S. 41-6.5 references the Uniform Statutory Rule Against Perpetuities and applies to a property interest or a power of appointment created on or after October 1, 1995, the effective date of the Uniform Statutory Rule Against Perpetuities.

Section 3(b) repeals G.S. 41-22, which provides that the Uniform Statutory Rule Against Perpetuities supersedes the common-law rule against perpetuities, as now unnecessary.

Section 3(c) provides that this section is effective when it becomes law and does not affect any rights adjudicated in a final court decision entered on or before that date.

Part II contains amendments requested by the Business Law Section of the NCBA that strengthen the personal liability protections for limited liability partnerships:

Section 4(a) amends G.S. 59-45(a1) to provide that a partner in a registered limited liability partnership is not individually liable, directly or indirectly, including by indemnification, contribution, assessment, or otherwise, for liabilities of the partnership incurred while it is a registered limited liability partnership. This language is modeled after the comparable Delaware statute (Section 15-306(c) of Title 6 of the Delaware Code) and is parallel to existing language in subsection (b) related to liability for professional services. The current language similarly provides that a partner in a registered limited liability partnership is not individually liable for these liabilities but does not specifically address indemnification, contribution, or assessment. This section also replaces legalese with plain English in other parts of the statute.

Section 4(b) amends G.S. 59-70 as follows:

- In subdivision (4), provides that partners shall contribute the amount necessary to satisfy any liabilities incurred when the partnership was not a registered limited liability partnership. This language is modeled after Section 806(c) of the Uniform Partnership Act and conforms to the change made by this bill to G.S. 59-45(a1). The current language does

not specifically address liabilities incurred by a registered limited liability partnership. This bill also fixes the format of a citation and makes stylistic changes.

- In subdivision (1), modernizes the format of a list.
- In subdivision (2), replaces legalese with plain English and modernizes the format of a list.
- In subdivision (5), replaces legalese with plain English.
- In subdivision (6), makes a stylistic change, eliminates unnecessary language, replaces legalese with plain English, fixes punctuation, fixes a relative pronoun, and makes language gender-neutral.
- In subdivisions (7), replaces legalese with plain English.
- In subdivision (8), replaces legalese with plain English and makes a stylistic change.
- In subdivision (9), makes language gender-neutral, fixes punctuation, replaces legalese with plain English, and modernizes the format of a list.

Part III, consisting of **Section 5(a)** and **(b)**, contains amendments requested by the Administrative Law Section of the NCBA to align the authority to transfer venue for judicial review of administrative contested cases with other types of cases. Under current law, as construed by the Court of Appeals in *Gummels v. North Carolina Dept. of Human Resources*, 97 N.C. App. 245, 388 S.E.2d 223, *disc. review denied*, 336 N.C. 596, 393 S.E.2d 877 (1990), a petition may be properly dismissed for lack of subject matter jurisdiction if not filed in the correct superior court under G.S. 150B-45. This section amends G.S. 150B-45 to provide that a superior court may order a change of venue but shall not dismiss the petition due to improper venue. In making this change, this section also reorganizes subsections (a) and (b) for greater clarity and corrects an outdated reference to a former State agency. This section is effective when it becomes law and applies to petitions filed on or after that date.

Part IV, consisting of **Section 6**, contains a conforming change requested by the Estate Planning & Fiduciary Law Section of the NCBA to account for special fiduciaries in guardianship proceedings. S.L. 2021-53 enacted G.S. 35A-1121 to allow for a special fiduciary to execute single protective arrangements or single transactions without the necessity of appointing a guardian. This section amends G.S. 35A-1107 to conform to that change by adding this type of relief to the reasons for a guardian ad litem attorney's representation to end. This section also makes a technical change to make language gender-neutral.

Part V, consisting of **Section 7**, contains amendments requested by DNCR that clarify and improve the landmark designation procedure and additional technical changes. This section amends G.S. 160D-946 as follows:

- In the introductory paragraph, replaces legalese with plain English and changes "no... may" to "no... shall" in accordance with this State's drafting conventions.
- In subdivision (1), makes a stylistic change for consistency with the lead-in language of the list, and, at the request of DNCR, changes "guidelines" to "standards," consistent with terminology used in the succeeding section of this Article.
- In subdivision (2), at the request of DNCR, changes wording to allow for the fact that the preservation commission is not always the entity making an investigation and report.
- In subdivision (3), updates a reference to accurately reflect the DNCR agency name, rewords the subdivision for greater clarity, and modifies terms to allow DNCR 30 days from receipt of the "complete" investigation and report to comment "concerning" a designation instead of on "the substance and effect" of a designation.
- In subdivision (4), makes a stylistic change for consistency with the lead-in language of the list and combines the language in subdivision (5) with this subdivision.

- In subdivision (6), makes a stylistic change for consistency with the lead-in language of the list, replaces legalese with plain English, and removes a redundant plural term.
- In subdivision (7), replaces legalese with plain English and makes a stylistic change for consistency with the lead-in language of the list.

Part VI, consisting of **Section 8**, provides that, except as otherwise provided, this act is effective when it becomes law.