

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015**

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SENATE BILL 821*

Short Title: GSC Technical Corrections 1. (Public)

Sponsors: Senator Hartsell (Primary Sponsor).

Referred to: Judiciary I

May 10, 2016

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CORRECTIONS TO THE GENERAL STATUTES, AS
RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-159.3(a1) reads as rewritten:

"(a1) A landowner who gives a person written consent to operate an all-terrain vehicle on ~~his~~
~~or her~~ the landowner's property owes the person the same duty of care that ~~he or she~~ the landowner
owes a trespasser."

SECTION 2. G.S. 14-208.6 reads as rewritten:

"§ 14-208.6. Definitions.

The following definitions apply in this Article:

...

(5) "Sexually violent offense" means a violation of former G.S. 14-27.6 (attempted rape or sexual offense), G.S. 14-27.21 (first-degree forcible rape), G.S. 14-27.22 (second-degree forcible rape), G.S. 14-27.23 (statutory rape of a child by an adult), G.S. 14-27.24 (first-degree statutory rape), G.S. 14-27.25(a) (statutory rape of a person who is 15 years of age or younger and where the defendant is at least six years older), G.S. 14-27.26 (first-degree forcible sexual offense), G.S. 14-27.27 (second-degree forcible sexual offense), G.S. 14-27.28 (statutory sexual offense with a child by an adult), G.S. 14-27.29 (first-degree statutory sexual offense), G.S. 14-27.30(a) (statutory sexual offense with a person who is 15 years of age or younger and where the defendant is at least six years older), G.S. 14-27.31 (sexual activity by a substitute parent or custodian), G.S. 14-27.32 (sexual activity with a student), G.S. 14-27.33 (sexual battery), G.S. 14-43.11 (human trafficking) if (i) the offense is committed against a minor who is less than 18 years of age or (ii) the offense is committed against any person with the intent that they be held in sexual servitude, G.S. 14-43.13 (subjecting or maintaining a person for sexual servitude), G.S. 14-178 (incest between near relatives), G.S. 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency), G.S. 14-190.9(a1) (felonious indecent exposure), G.S. 14-190.16 (first degree sexual exploitation of a minor), G.S. 14-190.17 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree sexual exploitation of a minor), G.S. 14-202.1 (taking indecent liberties with children), G.S. 14-202.3 (Solicitation of child by computer or certain other electronic devices to commit an unlawful sex act), G.S. 14-202.4(a) (taking indecent liberties with a student), G.S. 14-205.2(c) or



1 (d) (patronizing a prostitute who is a minor or a mentally disabled person),
2 G.S. 14-205.3(b) (promoting prostitution of a minor or a mentally disabled
3 person), G.S. 14-318.4(a1) (parent or caretaker commit or permit act of
4 prostitution with or by a juvenile), or G.S. 14-318.4(a2) (commission or
5 allowing of sexual act upon a juvenile by parent or guardian). The term also
6 includes the following: a solicitation or conspiracy to commit any of these
7 offenses; aiding and abetting any of these offenses.

8"

9 **SECTION 3.** The catch line of G.S. 20-171.24 reads as rewritten:

10 **"§ 20-171.24. Motorized all-terrain vehicle use by municipal and county employees of listed**
11 **municipalities and counties permitted on certain highways."**

12 **SECTION 4.** G.S. 28A-2-4 reads as rewritten:

13 **"§ 28A-2-4. Subject matter jurisdiction of the clerk of superior court in estate proceedings.**

14 (a) The clerks of superior court of this State, as ex officio judges of probate, shall have
15 original jurisdiction of estate proceedings. Except as provided in subdivision (4) of this subsection,
16 the jurisdiction of the clerk of superior court is exclusive. Estate proceedings include, but are not
17 limited to, the following:

- 18 (1) Probate of wills.
- 19 (2) Granting and revoking of letters testamentary and letters of administration, or
20 other proper letters of authority for the administration of estates.
- 21 (3) Determination of the elective share for a surviving spouse as provided in
22 G.S. 30-3.
- 23 (4) Proceedings to ascertain heirs or devisees, to approve settlement agreements
24 pursuant to G.S. 28A-2-10, to determine questions of construction of wills, to
25 determine priority among creditors, to determine whether a person is in
26 possession of property belonging to an estate, to order the recovery of property
27 of the estate in possession of third parties, and to determine the existence or
28 nonexistence of any immunity, power, privilege, duty, or right. Any party or the
29 clerk of superior court may file a notice of transfer of a proceeding pursuant to
30 this subdivision to the Superior Court Division of the General Court of Justice
31 as provided in G.S. 28A-2-6(h). In the absence of a transfer to superior court,
32 Article 26 of Chapter 1 of the General Statutes shall apply to ~~a trust~~ an estate
33 proceeding pending before the clerk of superior court to the extent consistent
34 with this Article.

35 (b) Nothing in this section shall affect the right of a person to file an action in the Superior
36 Court Division of the General Court of Justice for declaratory relief under Article 26 of Chapter 1
37 of the General Statutes. In the event that either the petitioner or the respondent in an estate
38 proceeding requests declaratory relief under Article 26 of Chapter 1 of the General Statutes, either
39 party may move for a transfer of the proceeding to the Superior Court Division of the General
40 Court of Justice as provided in Article 21 of Chapter 7A of the General Statutes. In the absence of
41 a removal to superior court, Article 26 of Chapter 1 of the General Statutes shall apply to an estate
42 proceeding to the extent consistent with this Article.

43 (c) Without otherwise limiting the jurisdiction of the Superior Court Division of the
44 General Court of Justice, the clerk of superior court shall not have jurisdiction under subsection (a)
45 or ~~(e)-(b)~~ of this section or G.S. 28A-2-5 of the following:

- 46 (1) Actions by or against creditors or debtors of an estate, except as provided in
47 Article 19 of this Chapter.
- 48 (2) Actions involving claims for monetary damages, including claims for breach of
49 fiduciary duty, fraud, and negligence.
- 50 (3) Caveats, except as provided under G.S. 31-36.
- 51 (4) Proceeding to determine proper county of venue as provided in G.S. 28A-3-2.

(5) Recovery of property transferred or conveyed by a decedent with intent to hinder, delay, or defraud creditors, pursuant to G.S. 28A-15-10(b)."

SECTION 5. G.S. 28A-2B-2 reads as rewritten:

"§ 28A-2B-2. Venue.

The venue for a petition under G.S. 28A-2B-1 is the county of this State in which the petitioner whose will or codicil is the subject of the petition ~~is domiciled~~resides."

SECTION 6. G.S. 28A-19-5(b) reads as rewritten:

"(b) With respect to a contingent or unliquidated claim rejected by a personal representative pursuant to G.S. 28A-19-16, the claimant may, within the three-month period prescribed by G.S. 28A-19-16, file a petition for an order of the clerk of superior court in accordance with subsection (a) of this section, provided that nothing in this section shall require the clerk of superior court to hear and determine the validity of, priority of, or amount of a contingent or unliquidated claim that has not yet become absolute."

SECTION 7. G.S. 31B-1(a) reads as rewritten:

"(a) A person who succeeds to a property interest as:

...

(8) ~~Appointee~~Appointee, permissible appointee, or taker in default under a power of appointment exercised by a testamentary instrument or a nontestamentary instrument;

...

may renounce at anytime, in whole or in part, the right of succession to any property or interest therein, including a future interest, by filing a written instrument under the provisions of this Chapter. A renunciation may be of a fractional share or any limited interest or estate. The renunciation shall be deemed to include the entire interest of the person whose property or interest is being renounced unless otherwise specifically limited. A person may renounce any interest in or power over property, including a power of appointment, even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to renounce. Notwithstanding the foregoing, there shall be no right of partial renunciation if the instrument creating the interest expressly so provides."

SECTION 8. The catch line of G.S. 108A-70.21 reads as rewritten:

"§ 108A-70.21. Program eligibility; benefits; enrollment fee and other cost-sharing; coverage from private plans; ~~purchase of extended coverage plans.~~"

SECTION 9. G.S. 120-4.16(b) reads as rewritten:

"(b) Purchase of Service Credits Through Rollover Contributions From Certain Other Plans. – Notwithstanding any other provision of this Article, and without regard to any limitations on contributions otherwise set forth in this Article, a member, who is eligible to restore or purchase membership or creditable service pursuant to the provisions of this Article, may purchase such service credits through rollover contributions to the Annuity Savings Fund from (i) an annuity contract described in Section 403(b) of the Internal Revenue Code, (ii) an eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state, (iii) an individual retirement account or annuity described in Section 408(a) or 408(b) of the Internal Revenue Code that is eligible to be rolled over and would otherwise be includible in gross income, or (iv) a qualified plan described in Section 401(a) or 403(a) of the Internal Revenue Code. Notwithstanding the foregoing, the Retirement System shall not accept any amount as a rollover contribution unless such amount is eligible to be rolled over to a qualified trust in accordance with applicable law and the member provides evidence satisfactory to the Retirement System that such amount qualifies for rollover treatment. Unless received by the Retirement System in the form of a direct rollover, the rollover contribution must be paid to the Retirement System on or before the 60th day after the date it was received by the member.

1 **(b1)** Purchase of Service Credits Through Plan-to-Plan Transfers. – Notwithstanding any
2 other provision of this Article, and without regard to any limitations on contributions otherwise set
3 forth in this Article, a member, who is eligible to restore or purchase membership or creditable
4 service pursuant to the provisions of this Article, may purchase such service credits through a
5 direct transfer to the Annuity Savings Fund of funds from (i) an annuity contract described in
6 Section 403(b) of the Internal Revenue Code or (ii) an eligible plan under Section 457(b) of the
7 Code which is maintained by a state, political subdivision of a state, or any agency or
8 instrumentality of a state or political subdivision of a state."

9 **SECTION 10.** G.S. 146-9(b)(4) reads as rewritten:

10 "(b) Notwithstanding subsection (a) of this section, or any other provision of law, prior to
11 expiration of a lease of mineral deposits in State lands, the Department of Administration or other
12 entity designated by the Department shall solicit competitive bids for lease of such mineral
13 deposits, which shall include a process for upset bids as described in this subsection. An upset bid
14 is an increased or raised bid whereby a person offers to lease such mineral rights for an amount
15 exceeding the highest bid received in response to the initial solicitation for competitive bids, or the
16 last upset bid, as applicable, by a minimum of five percent (5%). The process shall provide that the
17 Department or other designated entity that issued the solicitation for competitive bids shall issue a
18 notice of high bid to the person submitting the highest bid in response to the initial solicitation for
19 competitive bids, or the person submitting the last upset bid, as applicable, and any other bidders
20 that have submitted a bid in an amount seventy-five percent (75%) or more of the highest bid
21 received in response to the initial solicitation for competitive bids, or the last upset bid, as
22 applicable, of the highest bid received at that point within 10 days of the closure of the bidding
23 period, as provided in the solicitation for competitive bids, through notice delivered by any means
24 authorized under G.S. 1A-1, Rule 4. Thereafter, an upset bid may be made by delivering to the
25 Department or other designated entity, subject to all of the following requirements and conditions:

26 ...

27 (4) When an upset bid is made as provided in this subsection, the Department or
28 other designated entity shall notify ~~to~~ the highest prior bidder, and any other
29 bidders that have submitted a bid in an amount seventy-five percent (75%) or
30 more of the current high bid received in response to the initial solicitation for
31 competitive bids, or the last upset bid, as applicable."

32 **SECTION 11.** G.S. 153A-340(h) reads as rewritten:

33 "(h) As provided in this subsection, counties may adopt temporary moratoria on any ~~county~~
34 ~~development approval required by law.~~ county development approval required by law, except for
35 the purpose of developing and adopting new or amended plans or ordinances as to residential uses.
36 The duration of any moratorium shall be reasonable in light of the specific conditions that warrant
37 imposition of the moratorium and may not exceed the period of time necessary to correct, modify,
38 or resolve such conditions. Except in cases of imminent and substantial threat to public health or
39 safety, before adopting an ordinance imposing a development moratorium with a duration of 60
40 days or any shorter period, the board of commissioners shall hold a public hearing and shall
41 publish a notice of the hearing in a newspaper having general circulation in the area not less than
42 seven days before the date set for the hearing. A development moratorium with a duration of 61
43 days or longer, and any extension of a moratorium so that the total duration is 61 days or longer, is
44 subject to the notice and hearing requirements of G.S. 153A-323. Absent an imminent threat to
45 public health or safety, a development moratorium adopted pursuant to this section shall not apply
46 to any project for which a valid building permit issued pursuant to G.S. 153A-357 is outstanding,
47 to any project for which a conditional use permit application or special use permit application has
48 been accepted, to development set forth in a site-specific or phased development plan approved
49 pursuant to G.S. 153A-344.1, to development for which substantial expenditures have already
50 been made in good faith reliance on a prior valid administrative or quasi-judicial permit or
51 approval, or to preliminary or final subdivision plats that have been accepted for review by the

1 county prior to the call for public hearing to adopt the moratorium. Any preliminary subdivision
2 plat accepted for review by the county prior to the call for public hearing, if subsequently
3 approved, shall be allowed to proceed to final plat approval without being subject to the
4 moratorium.

5 Any ordinance establishing a development moratorium must expressly include at the time of
6 adoption each of the following:

- 7 (1) A clear statement of the problems or conditions necessitating the moratorium
8 and what courses of action, alternative to a moratorium, were considered by the
9 county and why those alternative courses of action were not deemed adequate.
- 10 (2) A clear statement of the development approvals subject to the moratorium and
11 how a moratorium on those approvals will address the problems or conditions
12 leading to imposition of the moratorium.
- 13 (3) An express date for termination of the moratorium and a statement setting forth
14 why that duration is reasonably necessary to address the problems or conditions
15 leading to imposition of the moratorium.
- 16 (4) A clear statement of the actions, and the schedule for those actions, proposed to
17 be taken by the county during the duration of the moratorium to address the
18 problems or conditions leading to imposition of the moratorium.

19 No moratorium may be subsequently renewed or extended for any additional period unless the
20 city shall have taken all reasonable and feasible steps proposed to be taken by the county in its
21 ordinance establishing the moratorium to address the problems or conditions leading to imposition
22 of the moratorium and unless new facts and conditions warrant an extension. Any ordinance
23 renewing or extending a development moratorium must expressly include, at the time of adoption,
24 the findings set forth in subdivisions (1) through (4) of this subsection, including what new facts
25 or conditions warrant the extension.

26 Any person aggrieved by the imposition of a moratorium on development approvals required
27 by law may apply to the appropriate division of the General Court of Justice for an order enjoining
28 the enforcement of the moratorium, and the court shall have jurisdiction to issue that order.
29 Actions brought pursuant to this section shall be set down for immediate hearing, and subsequent
30 proceedings in those actions shall be accorded priority by the trial and appellate courts. In any
31 such action, the county shall have the burden of showing compliance with the procedural
32 requirements of this subsection."

33 **SECTION 12.** G.S. 160A-332(a) reads as rewritten:

34 "(a) The suppliers of electric service inside the corporate limits of any city in which a
35 secondary supplier was furnishing electric service on the determination date ~~(as defined in G.S.~~
36 ~~160A-331(1))~~date, as defined in G.S. 160A-331(1b), shall have rights and be subject to restrictions
37 as follows:

38"

39 **SECTION 13.(a)** G.S. 160A-372(e) reads as rewritten:

40 "(e) The ordinance may provide that a developer may provide funds to the city whereby the
41 city may acquire recreational land or areas to serve the development or subdivision, including the
42 purchase of land that may be used to serve more than one subdivision or development within the
43 immediate area. All funds received by the city pursuant to this ~~paragraph [subsection]~~ subsection
44 shall be used only for the acquisition or development of recreation, park, or open space sites. Any
45 formula enacted to determine the amount of funds that are to be provided under this ~~paragraph~~
46 ~~[subsection]~~ subsection shall be based on the value of the development or subdivision for property
47 tax purposes. The ordinance may allow a combination or partial payment of funds and partial
48 dedication of land when the governing body of the city determines that this combination is in the
49 best interests of the citizens of the area to be served."

50 **SECTION 13.(b)** G.S. 160A-372(f) reads as rewritten:

1 (f) The ordinance may provide that in lieu of required street construction, a developer may
2 be required to provide funds that the city may use for the construction of roads to serve the
3 occupants, residents, or invitees of the subdivision or development and these funds may be used
4 for roads which serve more than one subdivision or development within the area. All funds
5 received by the city pursuant to this ~~paragraph [subsection]~~ subsection shall be used only for
6 development of roads, including design, land acquisition, and construction. However, a city may
7 undertake these activities in conjunction with the Department of Transportation under an
8 agreement between the city and the Department of Transportation. Any formula adopted to
9 determine the amount of funds the developer is to pay in lieu of required street construction shall
10 be based on the trips generated from the subdivision or development. The ordinance may require a
11 combination of partial payment of funds and partial dedication of constructed streets when the
12 governing body of the city determines that a combination is in the best interests of the citizens of
13 the area to be served."

14 **SECTION 14.(a)** Section 7.1 of S.L. 2014-107 reads as rewritten:

15 "**SECTION 7.1.** Section 5.1 of this act applies to all trusts created before, on, or after the
16 effective date of this act. Except as otherwise provided, this act is effective when it becomes law."

17 **SECTION 14.(b)** This section becomes retroactively effective August 6, 2014.

18 **SECTION 15.** Except as otherwise provided in this act, this act is effective when it
19 becomes law.