

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
17 CVS 6465

STATE OF NORTH CAROLINA,

Upon the relation of,

ROY A. COOPER, III, individually and in  
his official capacity as GOVERNOR OF  
THE STATE OF NORTH CAROLINA,

Plaintiff,

v.

PHILIP E. BERGER, in his official capacity  
as PRESIDENT PRO TEMPORE OF THE  
NORTH CAROLINA SENATE; TIMOTHY  
K. MOORE, in his official capacity as  
SPEAKER OF THE NORTH CAROLINA  
HOUSE OF REPRESENTATIVES;  
CHARLTON L. ALLEN, in his official  
capacity as CHAIR OF THE NORTH  
CAROLINA INDUSTRIAL  
COMMISSION; and YOLANDA K. STITH,  
in her official capacity as VICE-CHAIR OF  
THE NORTH CAROLINA INDUSTRIAL  
COMMISSION,

Defendants.

**AMENDED COMPLAINT**

FILED  
2017 MAR -8 A 11:20  
WAKE COUNTY, N.C.  
BY [Signature]

Plaintiff Roy A. Cooper, III, individually and in his official capacity as Governor of the State of North Carolina, pursuant to North Carolina Rule of Civil Procedure Rule 15(a), seeking (a) a declaratory judgment under N.C. Gen. Stat. §§ 1-253, *et seq.*, and North Carolina Rule of Civil Procedure 57; (b) a preliminary injunction and permanent injunction under North Carolina Rule of Civil Procedure 65; and (c) relief in the nature of *quo warranto* under N.C. Gen. Stat. §§ 1-514, *et seq.*, hereby alleges and says:

## INTRODUCTION

1. As the Supreme Court of North Carolina reaffirmed in 2016:

Our founders believed that separating the legislative, executive, and judicial powers of state government was necessary for the preservation of liberty. The Constitution of North Carolina therefore vests each of these powers in a different branch of government and declares that “[t]he legislative, executive, and supreme judicial powers of the State government shall be forever separate and distinct from each other.”

*State ex rel. McCrory v. Berger*, 368 N.C. 633, 635, 781 S.E.2d 248, 250 (2016) (quoting N.C. CONST. art. I, § 6).

2. The Supreme Court has also held that “[t]he election of a particular candidate signifies public support for that candidate’s platform, policies, and ideology.” *Young v. Bailey*, 368 N.C. 665, 671, 781 S.E.2d 277, 281 (2016).

3. Disregarding both of these constitutional principles, just weeks after the voters chose Governor Cooper and his “platform, policies, and ideology” to govern North Carolina for the next four years, the leadership of the North Carolina General Assembly moved to curtail, in significant ways, the executive powers that passed to the Governor on January 1, 2017, and to exercise much of that power on their own.

4. In a special session from December 14 to December 16, 2016, the General Assembly passed two bills—Session Law 2016-125 and Session Law 2016-126—that, among other things: (a) radically changed the structure and composition of the executive agencies responsible for administering our State’s election and ethics laws; (b) embedded political loyalists from the previous administration within managerial and policymaking positions in the Cooper administration; (c) required Senate confirmation of principal department heads; and (d) restructured the leadership and membership of the North Carolina Industrial Commission.

5. The Governor challenged the first three provisions in a lawsuit filed on December 30, 2016 (*Cooper v. Berger and Moore*, Wake County Case No. 16-CVS-15636), which is now on appeal, and he challenges the Industrial Commission amendments in this lawsuit because they infringe on the Governor's executive powers in violation of separation of powers, impermissibly grant exclusive privileges, and violate equal protection. N.C. CONST. art. I, §§ 6, 19, 32; *id.* art. II, § 1; *id.* art. III, §§ 1, 5(4).

6. The General Assembly's appetite for reducing the authority exercised by the Governor and interfering with the constitutional duties of the executive did not diminish with the Governor's swearing in on January 1, 2017. During its regular session, which began on January 11, the General Assembly introduced numerous bills aimed at diminishing the Governor's and the courts' constitutional authority and taking that authority for itself.

7. On April 25, 2017, the General Assembly enacted Session Law 2017-6, which repeals the acts enjoined in *Cooper v. Berger and Moore*, including the portions of Session Law 2016-125 relating to the State Board of Elections, and enacts new provisions that again destroy the State Board of Elections and State Ethics Commission and replaces them with an unconstitutionally structured and staffed new Bipartisan State Board of Elections and Ethics Enforcement. The General Assembly did not repeal the provisions of Session Law 2016-125 at issue in this lawsuit that strip from Governor Cooper the authority to appoint, remove, and supervise the leadership of the Industrial Commission.

8. On April 26, 2017, the Governor filed a separate challenge to the part of Session Law 2017-6 establishing the new Bipartisan State Board of Elections and Ethics Enforcement (Wake County Case No. 17-CVS-5084). That lawsuit is now on appeal.

9. On April 26, the General Assembly also enacted Session Law 2017-7, which, among other things, shrinks the Court of Appeals from 15 to 12 judges by purporting to cut short three terms of office. As detailed below, the General Assembly's attempt to limit the authority of the judiciary directly violates the plain text of the North Carolina Constitution. N.C. CONST. art. IV, §§ 16, 19.

10. Finally, on June 28, 2017, the General Assembly passed Session Law 2017-57, the State's budget bill. While many of the provisions of Session Law 2017-57 relate to the State budget, many others are simply the latest attempt by the General Assembly to limit the Governor's constitutional duty and authority to ensure faithful execution of the laws. These provisions in Session Law 2017-57 and the others detailed below infringe on the Governor's executive powers in violation of separation of powers. N.C. CONST. art. I, § 6; *id.* art. III, §§ 1, 5(3), 5(4).

11. What the General Assembly has *not* attempted to do is to respond appropriately to the Supreme Court's ruling in *McCrory v. Berger*, which held that the General Assembly had unconstitutionally encroached on the province of the Governor by establishing three commissions with executive authority and then limiting the Governor's ability to control those commissions.

12. As a result of this failure, and in light of the constitutional principles enunciated in *McCrory v. Berger*, the Governor also brings this challenge to address a number of core executive boards, commissions, and agencies that are unconstitutionally structured because they allow the General Assembly to take from the Governor too much control over the execution of the laws. *McCrory*, 368 N.C. at 647, 781 S.E.2d at 257. The executive bodies whose statutory structures are challenged in this lawsuit include the Clean Water Management Trust Fund, the Child Care Commission, the State Building Commission, the North Carolina Parks and Recreation Authority, the Rural Infrastructure Authority, and the Private Protective Services Board.

13. The statutes challenged in this lawsuit prevent the Governor from performing his core function under the North Carolina Constitution to “take care that the laws be faithfully executed.” N.C. CONST. art. III, § 5(4). They also fail to respect fundamental principles of representative government and the basic guarantees of the North Carolina Constitution, thus requiring the Governor to again secure his constitutional rights and protect the constitutional powers allocated to the executive and judicial branches of state government by the people.

### **PARTIES AND JURISDICTION**

14. The State of North Carolina is a sovereign state with its capital in Wake County, North Carolina.

15. On November 8, 2016, the voters of the State of North Carolina chose Plaintiff Governor Roy A. Cooper III (“Governor Cooper”) to be their governor for a four-year term that commenced on January 1, 2017. Governor Cooper is a resident of Wake County, North Carolina.

16. Defendant Philip E. Berger is the President Pro Tempore of the North Carolina Senate and, upon information and belief, is a resident of Rockingham County, North Carolina.

17. Defendant Timothy K. Moore is the Speaker of the North Carolina House of Representatives and, upon information and belief, is a resident of Cleveland County, North Carolina.

18. Defendant Charlton L. Allen is the chair of the North Carolina Industrial Commission (“Industrial Commission” or “NCIC”), and, upon information and belief, is a resident of Iredell County, North Carolina.

19. Allen became a Commissioner of the NCIC on or about July 1, 2014. He was first designated as chair of the NCIC by Governor McCrory on or about February 1, 2016, and his designation was renewed by Governor McCrory on or about December 30, 2016.

20. Defendant Yolanda K. Stith is the vice-chair of the NCIC, and, upon information and belief, is a resident of Durham County, North Carolina.

21. As further detailed below, Stith became a Commissioner of the NCIC on or about December 21, 2016, and she was designated as vice-chair of the NCIC by Governor McCrory on or about December 30, 2016.

22. Defendants lack sovereign immunity for the claims alleged herein, all of which arise under the exclusive rights and privileges enjoyed by—and duties assigned to—the Governor of the State of North Carolina by the North Carolina Constitution.

23. Pursuant to N.C. Gen. Stat. §§ 1-253, *et seq.*, and § 7A-245(a), as well as North Carolina Rules of Civil Procedure 57 and 65, the Governor seeks judgment declaring unconstitutional and enjoining the effectiveness of the following statutes and Session Laws (collectively, the “Challenged Statutes”):

- a. Section 1 of Session Law 2017-7, a copy of which is attached as **Exhibit A**, which purports to reduce the number of seats on the Court of Appeals from 15 to 12 by cutting short three eight-year terms;
- b. Part V of Session Law 2016-125, relevant excerpts of which are attached as **Exhibit B**, which substantially changes how the chair and vice-chair of the Industrial Commission are selected and grants the current vice-chair of the Industrial Commission the exclusive privilege of a nearly nine-year term;
- c. N.C. Gen. Stat. § 143B-135.240, which establishes as an executive agency the Clean Water Management Trust Fund and then gives control of that agency to the General Assembly;
- d. N.C. Gen. Stat. § 143B-168.4, which establishes as an executive agency the Child Care Commission and then gives control of that commission to the General Assembly;
- e. N.C. Gen. Stat. § 143-135.25, which establishes as an executive agency the State Building Commission and then gives control of that commission to the General Assembly;

- f. N.C. Gen. Stat. § 143B-135.202, which establishes as an executive agency the North Carolina Parks and Recreation Authority and then gives control of that authority to the General Assembly;
- g. N.C. Gen. Stat. § 143B-472.128, which establishes as an executive agency the Rural Infrastructure Authority and then gives control of that authority to the General Assembly;
- h. N.C. Gen. Stat. § 74C-4, which establishes as an executive agency the Private Protective Services Board and then gives control of that board to the General Assembly; and
- i. Sections 6.6.(b), 13.2.(b), and portions of Sections 11A.14.(a), 11L.1, and 15.1.(a) and (d) of Session Law 2017-57, relevant excerpts of which are attached as **Exhibit C**, which, among other things, mandate that the Governor include nearly a billion dollars in his proposed budget and seek to appropriate hundreds of millions of dollars in federal settlement funds and federal block grant funds;

24. As further alleged below, a present and real controversy exists between the parties as to the constitutionality of the Challenged Statutes.

25. Having received satisfactory security to indemnify the State against all costs and expenses which may accrue in consequence of this action, under N.C. Gen. Stat. §§ 1-515 and 516, the Attorney General has granted the Governor leave to bring this action in the name of the State to remove persons unlawfully holding and exercising state-wide public offices.

26. This Court has jurisdiction over the parties and subject matter of this lawsuit, and venue is proper.

### **THE CHALLENGED STATUTES**

#### **I. SESSION LAW 2017-7**

27. Under the leadership and direction of the General Assembly, House Bill 239 passed the General Assembly on April 11, 2017. On April 21, 2017, the Governor vetoed the bill. Despite that veto, House Bill 239 was enacted by the General Assembly on April 26, 2017, becoming Session Law 2017-7.

28. As detailed below, Section 1 of Session Law 2017-7 violates the plain text of the North Carolina Constitution because it shortens the terms of three North Carolina Court of Appeals seats to fewer than eight years.

29. The Governor has standing to challenge Section 1 of Session Law 2017-7 because, among other things, it purports to eliminate a power granted to him by the North Carolina Constitution—the power to make vacancy appointments to the Court of Appeals to complete eight-year terms on that court. N.C. CONST. art. IV, §§ 16, 19.

30. The stated purpose of Section 1 of Session Law 2017-7 was to reduce the size of the Court of Appeals from 15 to 12 judges because, legislators claimed, the workload of the Court has been reduced, but that is an obvious pretext without any factual basis.

31. Upon information and belief, the true purpose was to prevent the Governor from having the ability to fill three vacancy appointments in the next three years for seats in which incumbent judges will reach the statutorily mandated retirement age.

32. Section 1 of Session Law 2017-7 makes the following amendment to N.C. Gen. Stat. § 7A-16:

On or after January 1, 2017, whenever the seat of an incumbent judge becomes vacant prior to the expiration of the judge's term due to the death, resignation, retirement, impeachment, or removal pursuant to G.S. 7A-374.2(8) of the incumbent judge, that seat is abolished until the total number of Court of Appeals seats is decreased to 12.

Session Law 2017-7, § 1.

33. At the time House Bill 239 was first introduced, three judges were slated to reach retirement age prior to the end of their term: (a) the Honorable J. Douglas McCullough (term ends 2018; retirement in May 2017); (b) the Honorable Ann Marie Calabria (if re-elected in 2018, term ends 2026; retirement on or about October 31, 2019); and (c) the Honorable Robert N. Hunter, Jr.



(term ends 2024; retirement on or about March 30, 2019). However, before Session Law 2017-7 was enacted, Judge McCullough announced his retirement early, and the Governor appointed the Honorable John S. Arrowood to fill the vacancy.

34. Article IV, Section 16 of the North Carolina Constitution mandates, in relevant part, that: “Justices of the Supreme Court, Judges of the Court of Appeals, and regular Judges of the Superior Court shall be elected by the qualified voters and shall hold office for terms of eight years and until their successors are elected and qualified.” (Emphasis added).

35. On multiple occasions, the North Carolina Supreme Court has interpreted this provision and confirmed that judicial terms may not be shortened from the constitutionally required eight-year term, even if the incumbent retires or resigns.

36. “A term of office is one thing. An office holder is something else. The incumbent may go out, nobody come in, and the term goes on. If a successor is appointed or elected, he fills the unexpired portion of the term.” *State ex rel. Martin v. Preston*, 325 N.C. 438, 452-53, 385 S.E.2d 473, 481 (1989) (quoting *Murray v. Payne*, 137 Kan. 685, 689, 21 P.2d 333, 335 (1933)).

37. “[Article IV, Section 16] simply provides for judges to be elected and sets their terms at eight years.” *Brannon v. N.C. State Bd. of Elections*, 331 N.C. 335, 340, 416 S.E.2d 390, 393 (1992) (emphasis added).

38. These holdings establish under our Constitution that once the voters elect a person to a term of office provided for in the Constitution, that term of office runs until complete, regardless of who fills it or whether it is filled at all.

39. Accordingly, by purporting to shorten three Court of Appeals terms from their constitutionally mandated eight years, Section 1 of Session Law 2017-7 directly violates Article IV, Sections 16 and 19 of the North Carolina Constitution and is therefore invalid.

## **II. PART V OF SESSION LAW 2016-125**

40. Under the leadership and direction of the General Assembly, Senate Bill 4 was introduced late on December 14, 2016, passed both chambers of the General Assembly, and was signed by Governor McCrory on December 16, becoming Session Law 2016-125.

41. Session Law 2016-125 amended N.C. Gen. Stat. § 97-77 in two primary ways.

42. First, it amended N.C. Gen. Stat. § 97-77(a1) to allow Governor McCrory, after confirmation by the General Assembly, to grant an unprecedented, one-time-only, nine-year vacancy appointment to Stith, the wife of Governor McCrory's chief of staff, to serve as a NCIC commissioner. As detailed below, by statutory design that exclusive privilege was granted to Stith, and only to Stith, and therefore it violates the Exclusive Privileges and Equal Protection Clauses of the North Carolina Constitution.

43. Second, Part V of Session Law 2016-125 amended N.C. Gen. Stat. § 97-77(b) to allow Governor McCrory, not Governor Cooper, to appoint the chair and vice-chair of the NCIC for all but one day of Governor Cooper's first term in office. As detailed below, that amendment violates the Separation of Powers and Faithful Execution Clauses of the North Carolina Constitution.

**A. N.C. GEN. STAT. § 97-77(a1), AS AMENDED BY PART V, VIOLATES THE EXCLUSIVE PRIVILEGES AND EQUAL PROTECTION CLAUSES OF THE NORTH CAROLINA CONSTITUTION.**

44. The "Exclusive Privileges Clause" of the North Carolina Constitution provides: "No person or set of persons is entitled to exclusive or separate emoluments or privileges from the community but in consideration of public services." N.C. CONST. art. I, § 32.

45. The Equal Protection Clause of the North Carolina Constitution provides, in relevant part: “No person shall be denied the equal protection of the laws.” N.C. CONST. art. I, § 19.

46. These two constitutional provisions each expressly prohibit the General Assembly from conferring exclusive benefits or privileges upon a single person or class of people, where doing so has no rational basis or does not advance the general welfare.

47. This principle is further enshrined in Article I, Section 2 of the North Carolina Constitution, which provides: “All political power is vested in and derived from the people; all government of right originates from the people, is founded upon their will only, and is instituted solely for the good of the whole.” N.C. CONST. art. I, § 2. Among other things, this provision articulates the fundamental right of the people to ensure that governmental power is exercised “for the good of the whole” and consistent with the will of the people. A legislative act that is not “solely for the good of the whole” or that defies the will of the people exceeds the legislature’s constitutional authority and cannot stand.

48. The amendments to N.C. Gen. Stat. § 97-77(a1) in Part V of Session Law 2016-125 (collectively, the “NCIC Privilege”) changed, for one day only, the statute governing the appointment of members of the NCIC. The effect of the amendment was to grant Defendant Stith a special, one-time-only appointment to a nearly nine-year term on the Industrial Commission that pays more than \$125,000 per year.

49. Before the enactment of the NCIC Privilege, the Governor had the authority to fill vacancies on the Industrial Commission only for “the remainder of the unexpired term.” A regular Industrial Commission term is six years.

50. With the NCIC Privilege, Defendants amended Section 97-77(a1) to allow Governor McCrory to fill a vacancy for “a term of six years plus the remainder of the unexpired term.” 2016 N.C. SESS. LAWS 125, § 24.(a).

51. However, this amendment to Section 97-77(a1) was designed to disappear upon its first and only use—namely “upon the filling of a vacancy pursuant to [Section 24.(a).]” As a result, the moment Governor McCrory filled the vacancy on the Industrial Commission for the remainder of an unexpired term plus a term of six years, the vacancy provision of Section 97-77(a1) reverted to its previous form. See 2016 N.C. SESS. LAWS 125, §§ 24.(b) and (c).

52. That is exactly what transpired. On December 16, 2016, the day Session Law 2016-125 was signed into law, Governor McCrory appointed Stith, the spouse of his chief of staff, to fill an already-existing vacancy on the NCIC. The vacant seat on the NCIC had a term scheduled to end on April 30, 2019. See N.C. House Joint Resolution 978 (April 27, 2016). Stith’s appointment was approved by Defendants on the same day. See N.C. House Joint Resolution 24 (December 16, 2016).

53. Accordingly, as soon as the vacancy on the Industrial Commission was filled—for a nine-year term running through April 30, 2025—the language of Section 97-77(a1) reverted to its original form. As with the appointments prior to this one, any future vacancies on the NCIC will be filled by an appointment only for the remainder of the unexpired term.

54. Thus, the net result of the NCIC Privilege is that Section 97-77(a1) was left unchanged, but Stith—and, by statutory design, only Stith—received the exclusive privilege of a nine-year term on the Industrial Commission valued at more than \$1 million.

55. Moreover, the NCIC Privilege harms Governor Cooper by denying him the ability to appoint the commissioner of his choice when the term of the seat occupied by Stith ends on April 30, 2019, a right he would have had but for the NCIC Privilege.

56. There is no explanation or indication in the language of Part V of Session Law 2016-125 of why the General Assembly believed Stith was entitled to a unique nine-year term on the Industrial Commission or how doing so would advance our State's general welfare.

**B. N.C. GEN. STAT. § 97-77(b), AS AMENDED BY PART V, VIOLATES THE SEPARATION OF POWERS AND FAITHFUL EXECUTION CLAUSES OF THE NORTH CAROLINA CONSTITUTION.**

**(1) Separation of powers is a constitutional “cornerstone.”**

57. Our Supreme Court recently reaffirmed that “[o]ur founders believed that separating the legislative, executive, and judicial powers of state government was necessary for the preservation of liberty” and thus guaranteed in the North Carolina Constitution that the three branches “shall be forever separate and distinct from each other.” *McCrary*, 368 N.C. at 635, 781 S.E.2d at 250 (quoting N.C. CONST. art. I, § 6).

58. “There should be no doubt that the principle of separation of powers is a cornerstone of our state and federal governments.” *State ex rel. Wallace v. Bone*, 304 N.C. 591, 601, 286 S.E.2d 79, 84 (1982).

59. Indeed, our founders embedded separation of powers in our state Constitution. *See, e.g.*, N.C. CONST. art. I, § 6 (“The legislative, executive, and supreme judicial powers of the State government shall be forever separate and distinct from each other.”); art. III, § 1 (“The executive power of the State shall be vested in the Governor.”); art. III, § 5(4) (“The Governor shall take care that the laws be faithfully executed.”); art. II, § 1 (“The legislative power of the State shall be vested in the General Assembly, which shall consist of a Senate and a House of Representatives.”);

art. IV, § 1 (“The judicial power of the State shall . . . be vested in a Court for the Trial of Impeachments and in a General Court of Justice.”).

60. These core principles guided our Supreme Court in *McCrory v. Berger*, when it held that the General Assembly had unconstitutionally encroached on the province of the Governor by establishing three commissions (including the Coal Ash Commission), according them executive authority, and then limiting the Governor’s ability to control those commissions.

61. “The clearest violation of the separation of powers clause occurs when one branch exercises power that the constitution vests exclusively in another branch.” 368 N.C. at 645, 781 S.E.2d at 256. The constitutional guarantee of separation of powers also “requires that, as the three branches of government carry out their duties, one branch will not prevent another branch from performing its core functions.” *See id.* at 636, 781 S.E.2d at 250.

62. The *McCrory* Court made clear that the Governor’s ability to control executive branch officers, boards, and commissions—and, concomitantly, the exercise of final executive authority by those executive entities—depends on the Governor’s ability to appoint such officials, “to supervise their day-to-day activities, and to remove them from office.” *McCrory*, 368 N.C. at 646, 781 S.E.2d at 256.

63. As the Court held in *McCrory*:

When the General Assembly appoints executive officers that the Governor has little power to remove, it can appoint them essentially without the Governor’s influence. That leaves the Governor with little control over the views and priorities of the officers that the General Assembly appoints. When those officers form a majority on a commission that has the final say on how to execute the laws, the General Assembly, not the Governor, can exert most of the control over the executive policy that is implemented in any area of the law that the commission regulates. As a result, the Governor cannot take care that the laws are faithfully executed in that area. The separation of powers clause plainly and clearly does not allow the General

Assembly to take this much control over the execution of the laws from the Governor and lodge it with itself.

*McCrory*, 368 N.C. at 647, 781 S.E.2d at 257 (emphasis added).

64. As detailed herein, Part V of Session Law 2016-125 violates the Supreme Court's command in *McCrory* because, among other things, it allows the legislature to strip from the current Governor the authority to appoint, remove, and supervise the leadership of a core executive agency.

**(2) The executive nature of the Industrial Commission.**

65. As the North Carolina Supreme Court recently affirmed, the Industrial Commission is primarily executive in nature. *See In re Redmond*, 797 S.E.2d 275, 2017 N.C. LEXIS 132, at \*5-6 (N.C. March 17, 2017) (holding that the NCIC "primarily is an administrative agency of the state") (citing *Hogan v. Cone Mills Corp.*, 315 N.C. 127, 137, 337 S.E.2d 477, 483 (1985)).

66. The NCIC is charged with administering (i.e., executing), among other things, the following North Carolina General Statutes:

- a. The North Carolina Workers' Compensation Act (Chapter 97 of the General Statutes);
- b. The Tort Claims Act (Article 31 of Chapter 143 of the General Statutes);
- c. The Law-Enforcement Officers', Firemen's, Rescue Squad Workers' and Civil Air Patrol Members' Death Benefits Act (Article 12A of Chapter 143 of the General Statutes);
- d. The Childhood Vaccine-Related Injury Compensation Program (Article 17 of Chapter 130A of the General Statutes);
- e. Compensation to Persons Erroneously Convicted of Felonies (Article 8 of Chapter 148 of the General Statutes);
- f. The Eugenics Asexualization and Sterilization Compensation Program (Article 9, Part 30 of Chapter 143B of the General Statutes).

67. The Industrial Commission, as part of administering Chapter 97, promulgates rules and regulations pursuant to N.C. Gen. Stat. § 97-80(a) and makes policy determinations relating to the State's workers' compensation program. For example, the Industrial Commission:

- g. Works with businesses operating in North Carolina to ensure compliance with the Workers' Compensation Act's requirement to maintain adequate insurance and enforce the rules and regulations of the NCIC;
- h. Conducts criminal investigations into cases of suspected workers' compensation fraud and violations related to workers' compensation claims involving employees, employers, insurers, health care providers, attorneys, and vocational rehabilitation providers;
- i. Shares information and otherwise collaborates with other state agencies, including the Departments of Revenue, Labor, and Insurance, and the Division of Employment Security, to identify businesses that improperly classify their employees as independent contractors;
- j. Sets the Commission's legislative agenda and advocates for legislative changes regarding issues affecting North Carolina's workforce and businesses;
- k. Proposes agency rules for approval under the North Carolina Administrative Procedure Act;
- l. Establishes by rule the maximum reimbursement rates paid by North Carolina employers for services to injured employees by hospitals, physicians and other medical providers while ensuring that providers are reimbursed reasonable fees and medical costs are adequately contained;
- m. Performs a multitude of important administrative functions, including but not limited to: establishing a Medical Fee Schedule, reviewing and adjusting medical bills, responding to medical bill inquiries, providing claim servicing (through the processing of injury reports and other forms and by providing insurance coverage information), providing courses and training on safety issues and working with safety committees of North Carolina employers, and providing training for rehabilitation professionals;
- n. Develops a proposed budget for the NCIC, including recommendations with respect to operating expenses and revenue sources;
- o. Represents the State of North Carolina in regional and national organizations and forums addressing policies and administrative practices in state workers'



compensation systems, and with federal agencies impacting on North Carolina workers' compensation law; and

- p. Communicates Industrial Commission policy to groups with diverse interests in the workers' compensation system, including employee, employer, and insurer representatives, hospital and physician groups, attorney organizations, and rehabilitation and safety professionals.

68. In short, the Industrial Commission is responsible for the day-to-day administration of laws and policies that impact millions of workers and businesses across this State.

**(3) The chair is the CEO of the NCIC.**

69. The chair of the NCIC is designated by statute as the "chief executive officer of the Industrial Commission," and is given substantial statutory authority to direct the activities of the commission.

70. Under N.C. Gen. Stat. § 97-77(b), the chair of the NCIC "shall have such authority as is necessary to direct and oversee the Commission." Among the chair's duties is the power to "hire or fire personnel and transfer personnel within the Industrial Commission." N.C. Gen. Stat. § 97-77(b).

71. The chair also has the sole authority to appoint deputy commissioners to six-year terms of service and to designate the chief deputy commissioner. Deputy commissioners act as hearing officers, and in many ways serve as the "public face" of the Industrial Commission.

72. The sole authority granted to the chair to appoint deputy commissioners for six-year terms means that the chair has the power to substantially impact the implementation and interpretation of the laws covering, among other things, workers' compensation and tort claims against the State.

**(4) Part V of Session Law 2016-125 strips from the popularly elected Governor the power of appointment and the ability to remove.**

73. Prior to the enactment of Part V of Session Law 2016-125, N.C. Gen. Stat. § 97-77(b) gave the sitting Governor the right to appoint the chair and vice-chair of the NCIC at any time, and the chair and vice-chair served in those leadership positions at the pleasure of the Governor. *See* N.C. Gen. Stat. § 97-77(b) (2016) (“One member, to be designated by the Governor, shall act as chairman. . . The Governor may designate one vice-chairman from the remaining commissioners.”).

74. As amended by Part V of Session Law 2016-125, however, N.C. Gen. Stat. § 97-77(b) now reads:

On December 30, 2016, and every four years thereafter, one member shall be designated by the Governor to act as chairman for a term of four years. . . On December 30, 2016, and every four years thereafter, one member shall be designated by the Governor to act as vice-chairman for a term of four years.

75. On or about December 30, 2016, Governor McCrory designated Allen to be chair and Stith to be vice-chair of the NCIC for four-year terms. As a result of Part V of Session Law 2016-125, unless enjoined, Allen and Stith will serve as chair and vice-chair of the NCIC for all but one day of Governor Cooper’s first term in office.

76. NCIC commissioners may only be removed by the Governor for “misfeasance, malfeasance, or nonfeasance” (i.e., for “cause”), and there is no provision in the statutes for the Governor to remove the chair or vice-chair before the end of his or her term, unless that person is removed from the NCIC altogether.

77. Accordingly, unless there is “cause,” the Governor has no ability to remove the chair or vice-chair of the NCIC under Session Law 2016-125.

78. Because the Governor did not appoint the chair and vice-chair who will serve for his entire first term, and because his ability to remove them is “sharply constrain[ed],” the Governor has no control over the “views and priorities” of the individuals leading one of the most important executive agencies in our State. *See McCrory*, 368 N.C. at 646-47, 781 S.E.2d at 257.

79. Upon information and belief, Defendants’ intent in enacting Part V, just weeks after Governor Cooper was elected and days before he took office, was to ensure that the leadership of the Industrial Commission did not share the policy views and priorities of the elected Governor, thus thwarting the will of the majority of the electorate.

80. For example, before being appointed to the NCIC and confirmed by General Assembly, Allen was chairman of the Iredell County Republican Party and had, upon information and belief, publicly stated his opposition to the minimum wage, a policy of great importance to workers and to the Governor.

81. Early in his term as chair of the Industrial Commission, Allen appointed and hired a series of individuals whose primary qualifications appear to be Republican Party activism or service to former Governor McCrory. For example, Allen appointed William Peaslee as chief deputy commissioner of the NCIC. Prior to that appointment, Peaslee worked as special legal counsel and chief of staff for the North Carolina Republican Party. Allen hired Charles K. Duckett as the new Administrator/Chief Operating Officer; Duckett previously served as Governor McCrory’s Director of Appointments. Allen appointed Kevin V. Howell as deputy commissioner; Howell previously served as Governor McCrory’s General Counsel at the Department of Natural and Cultural Resources.

82. In short, by enacting Part V of Session Law 2016-125 on the eve of Governor Cooper taking office, the General Assembly took for itself the power of deciding who would lead

the executive agency charged with executing, among other things, our State's workers' compensation and tort claims statutes, and thereby ensured that the NCIC would act in accordance with Defendants' views and priorities, rather than the Governor's. These actions directly conflict with the electorate's selection of Governor Cooper and the policies he pledged to pursue. *See Young v.*, 368 N.C. at 671, 781 S.E.2d at 281 ("The election of a particular candidate signifies public support for that candidate's platform, policies, and ideology.").

83. Because the Governor has been left with no control over the policy views and priorities of the leadership of the NCIC, he cannot fulfill his constitutional duty to ensure that the laws are faithfully executed.

### **III. CONFORMING THE GENERAL STATUTES TO THE CONSTITUTIONAL PRINCIPLES SET FORTH IN *MCCRORY V. BERGER***

84. In addition to the recent Session Laws challenged by the Governor here and in previous lawsuits, this complaint seeks to bring certain General Statutes into compliance with the Supreme Court's command in *McCrory v. Berger*.

85. In particular, as detailed above, the *McCrory* Court held that the constitutional guarantee of separation of powers "requires that, as the three branches of government carry out their duties, one branch will not prevent another branch from performing its core functions." *See* 368 N.C. at 636, 781 S.E.2d at 250.

86. The Court made clear that the Governor's ability to control executive branch agencies, boards, and commissions depends on the Governor's ability to appoint the officials who lead the agencies, boards, and commissions, "to supervise their day-to-day activities, and to remove them from office." *Id.* at 646, 781 S.E.2d at 256.

87. Accordingly, under *McCrory*, when the statutory structure of an executive branch agency, boards, or commission allows the legislature to take too much control from the Governor,

and therefore prevents him from carrying out his core duty of ensuring the faithful execution of the laws, the statute cannot stand.

88. In light of the Supreme Court's clear command in *McCrory*, a number of preexisting, historically enacted statutes established executive branch agencies, boards, and commissions that violate the separation of powers because the enabling statutes give the General Assembly the authority to appoint a majority of the board or commission members and prevent the Governor from exercising adequate control.

89. As a result, these statutes prevent the Governor from performing his core function under the North Carolina Constitution to "take care that the laws be faithfully executed." N.C. CONST. art. III, § 5(4).

**A. THE STRUCTURE OF THE CLEAN WATER MANAGEMENT TRUST FUND VIOLATES SEPARATION OF POWERS.**

90. Under N.C. Gen. Stat. § 143B-135.234, the "Clean Water Management Trust Fund is established as a special revenue fund to be administered by the Department of Environmental Quality." The Fund receives approximately \$12 million per year from, primarily, annual appropriations, and those are intended to "finance projects to clean up or prevent surface water pollution and for land preservation."

91. Housed within a principal executive department, the Clean Water Management Trust Fund is primarily an executive agency with authority under Section 143B-135.234(c), among other things:

- a. "To acquire land for riparian buffers for the purposes of providing environmental protection for surface waters and urban drinking water supplies and establishing a network of riparian greenways for environmental, educational, and recreational uses";

- b. “To acquire conservation easements or other interests in real property for the purpose of protecting and conserving surface waters and enhancing drinking water supplies, including the development of water supply reservoirs”;
- c. “To coordinate with other public programs involved with lands adjoining water bodies to gain the most public benefit while protecting and improving water quality”;
- d. “To restore previously degraded lands to reestablish their ability to protect water quality”;
- e. “To facilitate planning that targets reductions in surface water pollution”;
- f. “To finance innovative efforts, including pilot projects, to improve stormwater management, to reduce pollutants entering the State’s waterways, to improve water quality, and to research alternative solutions to the State’s water quality problems”;
- g. “To acquire land that represents the ecological diversity of North Carolina, including natural features such as riverine, montane, coastal, and geologic systems and other natural areas to ensure their preservation and conservation for recreational, scientific, educational, cultural, and aesthetic purposes”; and
- h. “To acquire land that contributes to the development of a balanced State program of historic properties.”

92. Under Section 143B-135.240(b), the Fund’s board of trustees consists of nine members, three of whom are appointed by the Governor, three of whom are appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, and three of whom are appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives. N.C. Gen. Stat. § 143B-135.240(b).

93. Section 143B-135.240 is silent as to removal authority, meaning that the default provision of N.C. Gen. Stat. § 143B-16 applies. Under that provision, the Governor’s authority to remove members is sharply constrained because they may only be removed by the Governor for “misfeasance, malfeasance, and nonfeasance.”

94. Because the Governor has no ability to appoint a majority of the Clean Water Management Trust Fund board members, and because he can only remove them for cause, Section

143B-135.240 allows the General Assembly to take too much control over the execution of the laws from the Governor. *See McCrory*, 368 N.C. at 647, 781 S.E.2d at 257.

95. As a result, Section 143B-135.240 prevents the Governor from performing his core function under the North Carolina Constitution to “take care that the laws be faithfully executed.” N.C. CONST. art. III, § 5(4).

**B. THE STRUCTURE OF THE CHILD CARE COMMISSION VIOLATES SEPARATION OF POWERS.**

96. Under N.C. Gen. Stat. § 143B-168.3(a), the Child Care Commission is established in the “Department of Health and Human Services with the power and duty to adopt rules to be followed in the licensing and operation of child care facilities.”

97. Housed within a principal executive department, the Child Care Commission is primarily an executive agency with authority under N.C. Gen. Stat. § 110-88 to, among other things, set statewide standards for the licensing and operation of child care facilities. This includes the power:

- a. “To develop policies and procedures for the issuance of a license to any child care facility”;
- b. “To require inspections by and satisfactory written reports from representatives of local or State health agencies, fire and building inspection agencies, and from representatives of the Department prior to the issuance of an initial license to any child care center”;
- c. “To require annually, inspections by and satisfactory written reports from representatives of local or State health agencies and fire inspection agencies after a license is issued”;
- d. “To adopt rules for administrative action against a child care facility”;
- e. “To develop and adopt voluntary enhanced program standards which reflect higher quality child care than the mandatory standards established by this Article”;
- f. “To adopt rules for child care facilities that provide care for medically fragile children.”

98. Under Section 143B-168.4(a), the Child Care Commission consists of 17 members, seven of whom are appointed by the Governor and 10 of whom are appointed by the General Assembly. The chair of the Child Care Commission is elected by the board, a majority of whom are appointed by the General Assembly. N.C. Gen. Stat. § 143B-168.4.

99. Section 143B-168.4 is silent as to removal authority, meaning that the default provision of N.C. Gen. Stat. § 143B-13(d) applies. Under that provision, the Governor's authority to remove members is sharply constrained because they may only be removed by the Governor for "misfeasance, malfeasance, and nonfeasance."

100. Because the Governor has no ability to appoint a majority of the Child Care Commission members, and because he can only remove them for cause, Section 143B-168.4 allows the General Assembly to take too much control over the execution of the laws from the Governor. *See McCrory*, 368 N.C. at 647, 781 S.E.2d at 257.

101. As a result, Section 143B-168.4 prevents the Governor from performing his core function under the North Carolina Constitution to "take care that the laws be faithfully executed." N.C. CONST. art. III, § 5(4).

**C. THE STRUCTURE OF THE STATE BUILDING COMMISSION VIOLATES SEPARATION OF POWERS.**

102. Under N.C. Gen. Stat. § 143-135.25(a), the "State Building Commission is created within the Department of Administration to develop procedures to direct and guide the State's capital facilities development and management program . . . ."

103. Housed within a principal executive department, the State Building Commission is primarily an executive agency with broad authority. Among its duties under N.C. Gen. Stat. § 143-135.26 are:



- a. “To adopt rules establishing standard procedures and criteria to assure that the designer selected for each State capital improvement project, the consultant selected for planning and studies of an architectural and engineering nature associated with a capital improvement project or a future capital improvement project and a construction manager at risk selected for each capital improvement project has the qualifications and experience necessary for that capital improvement project or the proposed planning or study project”;
- b. “To adopt rules for coordinating the plan review, approval, and permit process for State capital improvement and community college buildings”;
- c. “To adopt rules for establishing a post-occupancy evaluation, annual inspection and preventive maintenance program for all State buildings”;
- d. “To develop procedures for evaluating the work performed by designers and contractors on State capital improvement projects and those community college buildings”;
- e. “To authorize a State agency, a local governmental unit, or any other entity subject to the provisions of G.S. 143-129 to use a method of contracting not authorized under G.S. 143-128”; and
- f. “To adopt rules governing the use of open-end design agreements for State capital improvement projects and community college buildings . . . .”

104. Under Section 143-135.25(c), the State Building Commission consists of nine members, three of whom are appointed by the Governor, three of whom are appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, and three of whom are appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives. In short, the Governor only appoints three of the nine members, and the General Assembly appoints the rest. N.C. Gen. Stat. § 143-135.25(c).

105. Section 143-135.25 is silent as to removal authority, meaning that the default provision of N.C. Gen. Stat. § 143B-13(d) applies. Under that provision, the Governor’s authority to remove commission members is sharply constrained because they may only be removed by the Governor for “misfeasance, malfeasance, and nonfeasance.”

106. Because the Governor has no ability to appoint a majority of the State Building Commission members, and because he can only remove them for cause, Section 143-135.25 allows the General Assembly to take too much control over the execution of the laws from the Governor. *McCrory*, 368 N.C. at 647, 781 S.E.2d at 257.

107. As a result, Section 143-135.25 prevents the Governor from performing his core function under the North Carolina Constitution to “take care that the laws be faithfully executed.” N.C. CONST. art. III, § 5(4).

**D. THE STRUCTURE OF THE NORTH CAROLINA PARKS AND RECREATION AUTHORITY VIOLATES SEPARATION OF POWERS.**

108. Under N.C. Gen. Stat. § 143B-135.200, the North Carolina Parks and Recreation Authority is created within the Department of Natural and Cultural Resources with responsibility for administering more than \$14 million per year in revenue, most of which comes from state budget appropriations.

109. Housed within a principal executive department, the North Carolina Parks and Recreation Authority is primarily an executive agency with authority under Section 143B-135.200, among other things:

- a. “To allocate funds for land acquisition from the Parks and Recreation Trust Fund”;
- b. “To allocate funds for repairs, renovations, improvements, construction, and other capital projects from the Parks and Recreation Trust Fund”; and
- c. “To develop effective public and private support for the programs and operations of the parks and recreation areas.”

110. Under Section 143B-135.202(a), the North Carolina Parks and Recreation Authority consists of nine members, three of whom are appointed by the Governor, three of whom are appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, and three of whom are appointed by the General Assembly upon the

recommendation of the Speaker of the House of Representatives. N.C. Gen. Stat. § 143B-135.202(a)

111. Under Section 143B-135.202(e), the Governor may only remove the three members he appointed, and they can only be removed for “misfeasance, malfeasance, or nonfeasance.”

112. Because the Governor has no ability to appoint or remove, and therefore supervise, a majority of the Authority members, Section 143B-135.202 allows the General Assembly to take too much control over the execution of the laws from the Governor. *McCrory*, 368 N.C. at 647, 781 S.E.2d at 257.

113. As a result, Section 143B-135.202 prevents the Governor from performing his core function under the North Carolina Constitution to “take care that the laws be faithfully executed.” N.C. CONST. art. III, § 5(4).

**E. THE STRUCTURE OF THE RURAL INFRASTRUCTURE AUTHORITY VIOLATES SEPARATION OF POWERS.**

114. Under N.C. Gen. Stat. § 143B-472.128, the Rural Infrastructure Authority is created within the Department of Commerce with responsibility for administering tens of millions of dollars of grants every year to direct State money to important projects aimed at advancing infrastructure in rural areas.

115. Housed within a principal executive department, the Rural Infrastructure Authority is primarily an executive agency with authority under Section 143B-472.128(j):

- a. “To receive and review applications from local government units for [Rural Economic Development] grants or loans”;
- b. “To award [Rural Economic Development] grants or loans”;
- c. “To formulate policies and priorities for [Rural Economic Development] grant and loan making”;

- d. “To determine ways in which the Rural Economic Development Division can aid local government units in meeting the costs for preliminary project planning”; and
- e. “To determine ways in which the Rural Economic Development Division can effectively disseminate information to local government units about the availability of grants or loans.”

116. Under Section § 143B-472.128(b), the Rural Infrastructure Authority consists of 16 members, five of whom are appointed by the Governor, five of whom are appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, and five of whom are appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives. N.C. Gen. Stat. § 143B-472.128(b).

117. Under Section 143B-472.128(i), the Governor may only remove members pursuant to N.C. Gen. Stat. § 143B-13. Under that provision, the Governor’s authority to remove authority members is sharply constrained because they may only be removed for “misfeasance, malfeasance, and nonfeasance.”

118. Because the Governor has no ability to appoint a majority of the Rural Infrastructure Authority members, and because he can only remove them for cause, Section 143B-472.128 allows the General Assembly to take too much control over the execution of the laws from the Governor. *McCrory*, 368 N.C. at 647, 781 S.E.2d at 257.

119. As a result, Section 143B-472.128 prevents the Governor from performing his core function under the North Carolina Constitution to “take care that the laws be faithfully executed.” N.C. CONST. art. III, § 5(4).

**F. THE STRUCTURE OF THE PRIVATE PROTECTIVE SERVICES BOARD VIOLATES SEPARATION OF POWERS.**

120. Under N.C. Gen. Stat. § 74C-4, the Private Protective Services Board is “established in the Department of Public Safety to administer the licensing and set educational and

training requirements for persons, firms, associations, and corporations engaged in a private protective services profession within this State.”

121. Housed within a principal executive department, the Private Protective Services Board is primarily an executive agency with a broad mandate to oversee the private security industry in North Carolina. Among its duties under N.C. Gen. Stat. § 74C-5 are to:

- a. “Adopt rules necessary to carry out and administer the provisions of this Chapter”;
- b. “Determine minimum qualifications, establish and require written or oral examinations, and establish minimum education, experience, and training standards for applicants and licensees under this Chapter”;
- c. “Conduct investigations regarding alleged violations and to make evaluations as may be necessary to determine if licensees and trainees under this Chapter are complying with the provisions of this Chapter”;
- d. “Approve individual applicants to be licensed or registered according to this Chapter”;
- e. “Deny, suspend, or revoke any license or trainee permit issued or to be issued under this Chapter”;
- f. “Adopt rules governing detection of deception schools”; and
- g. “Approve training schools, instructors, and course materials for any person, firm, association, or corporation wishing to provide training described in this Chapter.”

122. Under Section 74C-4(b), the Board consists of 14 members, including the Secretary of Public Safety and “three persons appointed by the Governor, five persons appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, and five persons appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives.” N.C. Gen. Stat. § 74C-4(b).

123. In short, of the 14 members of the Board, the Governor appoints just four (i.e., the Secretary of Public Safety plus three direct appointments).

124. With respect to removal authority, under Section 74C-4(d), “[a] Board member may be removed at the pleasure of the authority making the original appointment or by the Board for misconduct, incompetence, or neglect of duty.”

125. Accordingly, the Governor has no authority to remove 10 of the 14 members of the Board, even for cause.

126. Because the Governor has no ability to appoint, remove, and therefore supervise a majority of the Private Protective Services Board members, Chapter 74C-4 allows the General Assembly to take too much control over the execution of the laws from the Governor. *McCrory*, 368 N.C. at 647, 781 S.E.2d at 257.

127. As a result, Chapter 74C-4 prevents the Governor from performing his core function under the North Carolina Constitution to “take care that the laws be faithfully executed.” N.C. CONST. art. III, § 5(4).

#### **IV. SESSION LAW 2017-57**

128. Senate Bill 257 passed the General Assembly on June 22, 2017. On June 27, 2017, the Governor vetoed the bill. Despite that veto, Senate Bill 257 was enacted by the General Assembly on June 28, 2017, becoming Session Law 2017-57.

129. The North Carolina Constitution expressly allocates to the Governor three distinct duties relating to the state budget. Under Article III, Section 5(3), (a) “[T]he Governor shall prepare and recommend to the General Assembly a comprehensive budget of the anticipated revenue and proposed expenditures of the State for the ensuing fiscal period”; (b) after the General Assembly enacts a budget, it “shall be administered by the Governor”; and (c) “To insure that the State does not incur a deficit for any fiscal period, the Governor shall continually survey the collection of the revenue and shall effect the necessary economies in State expenditures.”

130. In short, as set forth in our Constitution, the enactment of the state budget is a three-step process: (a) the Governor prepares and recommends a budget; (b) the General Assembly enacts a budget (that may or may not reflect the budget proposed by the Governor); and (c) the Governor administers the budget.

131. Accordingly, when the legislature attempts to take for itself some role in either preparing the budget or administering the budget, it is “exercise[ing] powers that are reserved for another branch of state government” in violation of separation of powers. *McCrory*, 368 N.C. at 639, 610 S.E.2d at 446.

132. Session Law 2017-57 violates these core principles in several respects.

**A. SECTION 6.6.(B) OF SESSION LAW 2017-57 IS UNCONSTITUTIONAL.**

133. Section 6.6.(b) of Session Law 2017-57 rewrites N.C. Gen. Stat. § 115C-562.8(b) to appropriate from the State’s General Fund to the Opportunity Scholarship Grant Fund Reserve a total of nearly \$900 million over the next ten years to fund private school vouchers.

134. More specifically, for each of the next ten years (and then for “each fiscal year thereafter”), Section 6.6.(b) mandates that the base budget developed by the Governor “include the appropriated amount specified in this subsection for that fiscal year.” The amount specified for vouchers increases from nearly \$45 million in 2017-2018 to \$144,840,000 for every year from 2027 forward.

135. But for the unconstitutional interference by the General Assembly, the Governor would not include nearly a billion dollars in vouchers in his proposed budget during his term.

136. In short, through Section 6.6.(b), the General Assembly goes beyond simply enacting a budget, as it is allowed to do under our Constitution. Instead, it purports to dictate to

the Governor—the director of the State budget—what he must include in the proposed budget he prepares under Article III, Section 5(3) of the North Carolina Constitution.

137. By dictating what the Governor must include in his proposed budget, the General Assembly is exercising core executive power in violation of separation of powers. *See* N.C. CONST. art. I, § 6; *id.* art. III, §§ 1, 5(3), 5(4); *McCrory*, 368 N.C. at 645, 781 S.E.2d at 256 (“The clearest violation of the separation of powers clause occurs when one branch exercises power that the constitution vests exclusively in another branch.”).

**B. THE GENERAL ASSEMBLY’S ATTEMPT TO APPROPRIATE FEDERAL BLOCK GRANT FUNDS IS UNCONSTITUTIONAL.**

138. In Session Law 2017-57, the General Assembly seeks to appropriate or otherwise direct millions of dollars in fiscal year 2017-18 funds from federal block grants in a fashion and for purposes contrary to the plans and preferences of the Governor and the executive agencies he directs.

139. The appropriations of federal funds in Session Law 2017-57 include:

- a. Section 11A.14.(a)—appropriating more than \$6 million in funding from the Social Services Block Grant and the Substance Abuse Prevention and Treatment Block Grant to “nonprofit organizations”;
- b. Section 11L.1—appropriating more than \$900 million in fiscal year 2017-18 funding from eleven different federal block grant programs; and
- c. Section 15.1.(a) and (d)—appropriating \$43,500,000 in Community Development Block Grant funds.

140. The General Assembly’s enacted budget made substantial changes to the Governor’s proposed budget with respect to the following specific federal block grants, among others (collectively, the “Block Grant Appropriations”):

- a. Substance Abuse Prevention and Treatment Block Grant (Session Law 2017-57, Sections 11A.14.(a); 11L.1.(a), (y), and (z) (the “Substance Abuse Prevention and Treatment Block Grant Appropriations”));



- b. Maternal and Child Health Block Grant (Session Law 2017-57, Sections 11L.1.(a), (aa) through (ee) (the “Maternal and Child Health Block Grant Appropriations”)); and
- c. Community Development Block Grant (Session Law 2017-57, Section 15.1.(a) and (d) (the “Community Development Block Grant Appropriations”)).

141. With respect to the Substance Abuse Prevention and Treatment Block Grant Appropriations, which total more than \$45 million in fiscal year 2017-18, the General Assembly redirected approximately \$2.2 million from programs chosen by the Governor and the North Carolina Department of Health and Human Services to receive block grant funds and appropriated those funds instead to programs selected by the General Assembly.

142. With respect to Maternal and Child Health Block Grant Appropriations, which total more than \$18 million in fiscal year 2017-18, the General Assembly redirected nearly \$2.3 million from programs chosen by the Governor and the North Carolina Department of Health and Human Services to receive block grant funds and appropriated those funds instead to programs selected by the General Assembly.

143. With respect to Community Development Block Grant Appropriations, which total more than \$43 million in fiscal year 2017-18, the General Assembly redirected approximately \$13 million from programs chosen by the Governor and the North Carolina Department of Commerce to receive block grant funds and appropriated those funds instead to programs selected by the General Assembly.

144. Federal block grant money disbursed to the State for a specific purpose is, in effect, held by the State in trust or in a custodial capacity and not as part of the State treasury. Federal block grant funds are, or are akin to, “agency funds,” as defined in N.C. Gen. Stat. § 143C-1-3(8),

in that they are held “in a purely custodial capacity” to be disbursed pursuant to the federal guidelines attached to the grant.

145. The General Assembly has no authority to appropriate these federal funds because they were provided to the State pursuant to federal law and congressional policy. Once accepted by the state, federal funds are held under trust from the moment of deposit.

146. It is the Governor’s duty to execute the law—in this case federal law—by ensuring the disbursement of federal block grant funds in accordance with the requirements of the federal programs. State legislation requiring that federal funds, including those received in trust by officers and agencies of the executive branch, be paid into the State treasury and be expended only on appropriation by the legislative branch, would result in the General Assembly’s interfering with the right and obligation of the executive branch to decide the extent and manner of expending funds in performing its constitutional duty faithfully to execute and administer the laws.

147. The Block Grant Appropriations therefore violate separation of powers because they prevent the Governor from performing his core function under the North Carolina Constitution to “take care that the laws be faithfully executed.” N.C. CONST. art. III, § 5(4).

148. To the extent the Block Grant Appropriations are part of the State budget, they also violate Article III, Section 5(3) of the North Carolina Constitution because they encroach on the Governor’s duty to administer the budget.

149. While Chapter 143C of the General Statutes recognizes the unique relationship between the Governor and the General Assembly with respect to federal block grants, the statutes confirm that federal block grant funds should not be treated like other funds in the State treasury.

150. To the extent certain provisions of Chapter 143C of the General Statutes are interpreted to allow the General Assembly to encroach upon core executive power by appropriating federal block grant funds, any such interpretation is contrary to our Constitution.

151. More specifically, the following statutes are inconsistent with Article III, Sections 5(3) and 5(4) of the North Carolina Constitution to the extent the statutes are interpreted to require the legislature to appropriate federal block grant funds:

- a. N.C. Gen. Stat. § 143C-1-1(d)(25) (defining “state funds” to include “federal funds deposited in the State treasury except moneys deposited in a trust fund or agency fund”);
- b. N.C. Gen. Stat. § 143C-3-5(d) (“Except where provided otherwise by federal law, funds received from the federal government become State funds when deposited in the State treasury and shall be classified and accounted for in the Governor's budget recommendations no differently than funds from other sources.”); and
- c. N.C. Gen. Stat. § 143C-7-2 (“The Director of the Budget shall submit the Block Grant plans to the General Assembly as part of the Recommended State Budget submitted pursuant to G.S. 143C-3-5.”).

**C. SECTION 13.2.(B) OF SESSION LAW 2017-57 AND N.C. GEN. STAT. § 114-2.4A ARE UNCONSTITUTIONAL.**

152. The federal government, among other parties, initiated litigation challenging various aspects of Volkswagen’s marketing and business practices with respect to its so-called “clean diesel” vehicles. *See In re: Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Liability Litigation*, Case No. 3:15-md-2672 (N.D. Cal.).

153. As part of the settlement of that litigation, Volkswagen has agreed to establish a \$2.7 billion Environmental Mitigation Trust Fund that is required by federal court order to fund state-level projects to reduce nitrous oxide emissions from certain Volkswagen and Audi vehicles. Under the terms of the Environmental Mitigation Trust Agreement, North Carolina is entitled to an initial allocation of more than \$87 million for that specified purpose.

154. Under the terms of the settlement, the Governor has the authority to select the State agency that will be the “Beneficiary” of the mitigation funds, and then the executive branch, including the designated agency, will develop a “Beneficiary Mitigation Plan” detailing how the settlement proceeds are to be administered.

155. In Section 13.2.(b) of Session Law 2017-57, the General Assembly seeks to intercede and dictate how the State will administer the Volkswagen settlement proceeds. Section 13.2.(b) says:

As set forth in G.S. 114-2.4A(f), no funds may be expended under the Plan until the lead agency has submitted the Plan to the Joint Legislative Commission on Governmental Operations, the chairs of the House Appropriations Committee, the chairs of the Senate Appropriations/Base Budget Committee, and the Fiscal Research Division and the General Assembly has appropriated the funds. The lead agency designated by the Governor shall revise and resubmit the Plan to the trustee following the procedures set forth in the trust agreement to be consistent with the appropriation.

156. In short, Section 13.2.(b) purports to require the Governor to seek approval and a specific appropriation before the State can administer the Beneficiary Mitigation Plan required under the court-approved settlement agreement.

157. Similarly, N.C. Gen. Stat. § 114-2.4A, which was first enacted in 2014, purports to require that any “[f]unds received by the State or a State agency from a settlement or other final order or judgment of the court . . . shall remain unexpended until the funds are appropriated by the General Assembly.” *See id.* § 114-2.4A(b)(1). *See also id.* § 114-2.4A(d) (“The Attorney General may provide a nonbinding written recommendation to the chairs of the Senate and House Appropriations Committees for their consideration as to what purpose the funds subject to the prohibition in subsection (b) of this section should be appropriated for.”).

158. Finally, the statutory provision cited in the budget, N.C. Gen. Stat. § 114-2.4A(f), reads as follows:

If the terms of a federal grant, another provision of State or federal law, or the State Constitution require a specific disposition of funds received from a settlement or other final order or judgment of the court, nothing in this section shall be construed to supersede, or authorize a deviation from, that specific disposition. Furthermore, nothing in this subsection shall be construed to abrogate the requirement that funds drawn from the State treasury be in consequence of appropriations made by law.

159. As with Section 114-2.4A(b), this subsection purports to mandate that any funds received as part of a judicial settlement must be appropriated by the General Assembly before they can be disbursed.

160. Section 13.2.(b) of Session Law 2017-57 and N.C. Gen. Stat. § 114-2.4A, to the extent it purports to require that the General Assembly appropriate funds from a judicial settlement received by the executive branch, are unconstitutional.

161. The funds received as part of the Volkswagen settlement are required by the federal court and the trustee of the Environmental Mitigation Trust to be used for a specified purpose—to fund projects aimed at nitrous oxide emissions from certain Volkswagen and Audi vehicles. Accordingly, as with the federal block grant funds, the Volkswagen settlement funds are custodial in nature, and it is the Governor’s duty to administer those funds in accordance with the mandates of the federal court and the trustee.

162. By purporting to require the approval of the General Assembly, and a subsequent appropriation, Section 13.2.(b) of Session Law 2017-57 and N.C. Gen. Stat. § 114-2.4A impermissibly allow the General Assembly to prevent the Governor from performing his core function under the North Carolina Constitution to “take care that the laws be faithfully executed.” N.C. CONST. art. III, § 5(4).

163. To the extent the Volkswagen settlement funds are part of the State budget, the General Assembly's attempt to administer them also violates Article III, Section 5(3) of the North Carolina Constitution because they encroach on the Governor's duty to administer the budget.

**COUNT 1: DECLARATORY JUDGMENT**

**SECTION 1 OF SESSION LAW 2017-7 (REDUCING THE SIZE OF THE COURT OF APPEALS)  
VIOLATES ARTICLE IV, SECTIONS 16 AND 19 OF THE NORTH CAROLINA CONSTITUTION.**

164. The Governor restates and incorporates by reference the preceding paragraphs of this Complaint, as if fully set forth herein.

165. A present and real controversy exists between the parties as to the constitutionality of Section 1 of Session Law 2017-7.

166. Section 1 of Session Law 2017-7 violates Article IV, Sections 16 and 19 of the North Carolina Constitution because it purports to shorten three terms on the North Carolina Court of Appeals to fewer than eight years.

167. Accordingly, Section 1 of Session Law 2017-7 is void and of no effect.

168. Pursuant to N.C. Gen. Stat. §§ 1-253–1-267 and North Carolina Rule of Civil Procedure 57, the Governor entitled to a judgment declaring that Section 1 of Session Law 2017-7 is unconstitutional, and is therefore void and of no effect.

**COUNT 2: DECLARATORY JUDGMENT**

**PART V OF SESSION LAW 2016-125 (THE NCIC PRIVILEGE) VIOLATES THE EXCLUSIVE  
PRIVILEGES CLAUSE OF THE NORTH CAROLINA CONSTITUTION**

169. The Governor restates and incorporates by reference the preceding paragraphs of this Complaint, as if fully set forth herein.

170. A present and real controversy exists between the parties as to the constitutionality of Part V of Session Law 2016-125.

171. The NCIC Privilege (i.e., the amendments to N.C. Gen. Stat. § 97-77(a1) in Part V of Session Law 2016-125) provided Defendant Stith—and no one else—with the exclusive privilege of a nine-year vacancy appointment to the Industrial Commission.

172. The unique benefit given to Stith, extending her term from nearly three years to nearly nine years, does nothing to promote the general welfare of our State. Instead, by its very terms, the General Assembly intended the fleeting amendment to benefit only a single individual with close ties to Governor McCrory.

173. There was no reasonable basis for the General Assembly to conclude that the granting of this exclusive, one-time-only individual benefit served the public interest.

174. On the contrary, the fleeting nature of the NCIC Privilege demonstrates that the General Assembly itself recognizes that the change in law was not in the public interest. If changing the Industrial Commission's vacancy appointment statute to provide for longer terms was in the public interest, the amended statute would not have immediately reverted to its original form upon its first and only use by Governor McCrory.

175. Because the NCIC Privilege was given for a private purpose—to reward a political ally—and because it did nothing to promote the general welfare of our State or to serve the public interest, it violates the Exclusive Privileges Clause of the North Carolina Constitution. *See* N.C. CONST. art. I, § 32.

176. Pursuant to N.C. Gen. Stat. §§ 1-253, *et seq.*, and North Carolina Rules of Civil Procedure 57 and 65, the Governor is entitled to a judgment and permanent injunction declaring that (a) the amendments to N.C. Gen. Stat. § 97-77(a1) in Part V of Session Law 2016-125 are unconstitutional and are therefore void and of no effect; and (b) Defendant Stith's term on the

Industrial Commission is limited to the unexpired term she was appointed to fill, ending no later than April 30, 2019.

**COUNT 3: DECLARATORY JUDGMENT**  
**PART V OF SESSION LAW 2016-125 (THE NCIC PRIVILEGE) VIOLATES THE EQUAL  
PROTECTION CLAUSE OF THE NORTH CAROLINA CONSTITUTION**

177. The Governor restates and incorporates by reference the preceding paragraphs of this Complaint, as if fully set forth herein.

178. A present and real controversy exists between the parties as to the constitutionality of Part V of Session Law 2016-125.

179. The NCIC Privilege (i.e., the amendments to N.C. Gen. Stat. § 97-77(a1) in Part V of Session Law 2016-125) provided Defendant Stith—and no one else—with the exclusive privilege of a nine-year vacancy appointment to the Industrial Commission.

180. The General Assembly's creation of a single-member classification—for Stith only—is arbitrary and irrational. The arbitrary and irrational classification scheme bears no rational relationship to any conceivable legitimate governmental interest.

181. Accordingly, the NCIC Privilege violates the Equal Protection Clause of the North Carolina Constitution. *See* N.C. CONST. art. I, § 19.

182. Pursuant to N.C. Gen. Stat. §§ 1-253, *et seq.*, and North Carolina Rules of Civil Procedure 57 and 65, the Governor is entitled to a judgment and permanent injunction declaring that (a) the amendments to N.C. Gen. Stat. § 97-77(a1) in Part V of Session Law 2016-125 are unconstitutional and are therefore void and of no effect; and (b) Defendant Stith's term on the Industrial Commission is limited to the unexpired term she was appointed to fill, ending no later than April 30, 2019.



**COUNT 4: DECLARATORY JUDGMENT (AS-APPLIED CHALLENGE)**  
**PART V OF SESSION LAW 2016-125 (CHANGING THE APPOINTMENT OF THE NCIC CHAIR AND VICE CHAIR), AS APPLIED, VIOLATES THE SEPARATION OF POWERS AND FAITHFUL EXECUTION CLAUSES OF THE NORTH CAROLINA CONSTITUTION**

183. The Governor restates and incorporates by reference the preceding paragraphs of this Complaint, as if fully set forth herein.

184. A present and real controversy exists between the parties as to the constitutionality of Part V of Session Law 2016-125.

185. The amendments to N.C. Gen. Stat. § 97-77(b) in Part V of Session Law 2016-125 unconstitutionally prevent the Governor from performing his core executive function of ensuring that the laws are faithfully executed. *McCrory*, 368 N.C. at 635, 781 S.E.2d at 250 (“[T]he separation of powers clause requires that, as the three branches of government carry out their duties, one branch will not prevent another branch from performing its core functions.”).

186. Accordingly, as applied, Part V of Session Law 2016-125 violates the Separation of Powers Clause (Article I, Section 6) and the Faithful Execution Clause (Article III, Section 5(4)) of the North Carolina Constitution.

187. Pursuant to N.C. Gen. Stat. §§ 1-253, *et seq.*, and North Carolina Rules of Civil Procedure 57 and 65, the Governor is entitled to a judgment and permanent injunction declaring that the amendments to N.C. Gen. Stat. § 97-77(b) in Part V of Session Law 2016-125 are unconstitutional and are therefore void and of no effect.

**COUNT 5: DECLARATORY JUDGMENT (FACIAL CHALLENGE)**  
**PART V OF SESSION LAW 2016-125 (CHANGING THE APPOINTMENT OF THE NCIC CHAIR AND VICE CHAIR) FACIALLY VIOLATES THE SEPARATION OF POWERS AND FAITHFUL EXECUTION CLAUSES OF THE NORTH CAROLINA CONSTITUTION**

188. The Governor restates and incorporates by reference the preceding paragraphs of this Complaint, as if fully set forth herein.

189. A present and real controversy exists between the parties as to the constitutionality of Part V of Session Law 2016-125.

190. The amendments to N.C. Gen. Stat. § 97-77(b) in Part V of Session Law 2016-125 unconstitutionally prevent the Governor from performing his core executive function of ensuring that the laws are faithfully executed. *McCrory*, 368 N.C. at 635, 781 S.E.2d at 250 (“[T]he separation of powers clause requires that, as the three branches of government carry out their duties, one branch will not prevent another branch from performing its core functions.”).

191. Accordingly, Part V of Session Law 2016-125 facially violates the Separation of Powers Clause (Article I, Section 6) and the Faithful Execution Clause (Article III, Section 5(4)) of the North Carolina Constitution.

192. Pursuant to N.C. Gen. Stat. §§ 1-253, *et seq.*, and North Carolina Rules of Civil Procedure 57 and 65, the Governor is entitled to a judgment and permanent injunction declaring that the amendments to N.C. Gen. Stat. § 97-77(b) in Part V of Session Law 2016-125 are unconstitutional and are therefore void and of no effect.

**COUNT 6: RELIEF IN THE NATURE OF *QUO WARRANTO***

193. The Governor restates and incorporates by reference the preceding paragraphs of this Complaint, as if fully set forth herein.

194. Defendant Allen has been unconstitutionally designated as chair of the Industrial Commission.

195. Defendant Stith has been unconstitutionally designated as vice-chair of the Industrial Commission.

196. Pursuant to N.C. Gen. Stat. §§ 1-514, *et seq.*, the Governor asks this Court to remove Defendants Allen and Stith as chair and vice-chair, respectively, of the Industrial Commission.

**COUNT 7: DECLARATORY JUDGMENT**

**N.C. GEN. STAT. § 143B-135.240 (CLEAN WATER MANAGEMENT TRUST FUND) VIOLATES THE  
SEPARATION OF POWERS AND FAITHFUL EXECUTION CLAUSES  
OF THE NORTH CAROLINA CONSTITUTION**

197. The Governor restates and incorporates by reference the preceding paragraphs of this Complaint, as if fully set forth herein.

198. A present and real controversy exists between the parties as to the constitutionality of N.C. Gen. Stat. § 143B-135.240, which creates the appointment structure for the Clean Water Management Trust Fund Board of Trustees.

199. N.C. Gen. Stat. § 143B-135.240 unconstitutionally prevents the Governor from performing his core executive function of ensuring that the laws are faithfully executed. *McCrory*, 368 N.C. at 635, 781 S.E.2d at 250 (“[T]he separation of powers clause requires that, as the three branches of government carry out their duties, one branch will not prevent another branch from performing its core functions.”).

200. Accordingly, N.C. Gen. Stat. § 143B-135.240 violates the Separation of Powers Clause (Article I, Section 6) and the Faithful Execution Clause (Article III, Section 5(4)) of the North Carolina Constitution.

201. Pursuant to N.C. Gen. Stat. §§ 1-253, *et seq.*, and North Carolina Rules of Civil Procedure 57 and 65, the Governor is entitled to a judgment and permanent injunction declaring that N.C. Gen. Stat. § 143B-135.240 is unconstitutional and therefore void and of no effect.

**COUNT 8: DECLARATORY JUDGMENT**

**N.C. GEN. STAT. § 143B-168.4 (CHILD CARE COMMISSION) VIOLATES THE SEPARATION OF POWERS AND FAITHFUL EXECUTION CLAUSES OF THE NORTH CAROLINA CONSTITUTION**

202. The Governor restates and incorporates by reference the preceding paragraphs of this Complaint, as if fully set forth herein.

203. A present and real controversy exists between the parties as to the constitutionality of N.C. Gen. Stat. § 143B-168.4, which creates the appointment structure for the Child Card Commission.

204. N.C. Gen. Stat. § 143B-168.4 unconstitutionally prevents the Governor from performing his core executive function of ensuring that the laws are faithfully executed. *McCrory*, 368 N.C. at 635, 781 S.E.2d at 250 (“[T]he separation of powers clause requires that, as the three branches of government carry out their duties, one branch will not prevent another branch from performing its core functions.”).

205. Accordingly, N.C. Gen. Stat. § 143B-168.4 violates the Separation of Powers Clause (Article I, Section 6) and the Faithful Execution Clause (Article III, Section 5(4)) of the North Carolina Constitution.

206. Pursuant to N.C. Gen. Stat. §§ 1-253, *et seq.*, and North Carolina Rules of Civil Procedure 57 and 65, the Governor is entitled to a judgment and permanent injunction declaring that N.C. Gen. Stat. § 143B-168.4 is unconstitutional and therefore void and of no effect.

**COUNT 9: DECLARATORY JUDGMENT**

**N.C. GEN. STAT. § 143-135.25 (STATE BUILDING COMMISSION) VIOLATES THE SEPARATION OF POWERS AND FAITHFUL EXECUTION CLAUSES OF THE NORTH CAROLINA CONSTITUTION**

207. The Governor restates and incorporates by reference the preceding paragraphs of this Complaint, as if fully set forth herein.

208. A present and real controversy exists between the parties as to the constitutionality of N.C. Gen. Stat. § 143-135.25, which creates the appointment structure for the State Building Commission.

209. N.C. Gen. Stat. § 143-135.25 unconstitutionally prevents the Governor from performing his core executive function of ensuring that the laws are faithfully executed. *McCrory*, 368 N.C. at 635, 781 S.E.2d at 250 (“[T]he separation of powers clause requires that, as the three branches of government carry out their duties, one branch will not prevent another branch from performing its core functions.”).

210. Accordingly, N.C. Gen. Stat. § 143-135.25 violates the Separation of Powers Clause (Article I, Section 6) and the Faithful Execution Clause (Article III, Section 5(4)) of the North Carolina Constitution.

211. Pursuant to N.C. Gen. Stat. §§ 1-253, *et seq.*, and North Carolina Rules of Civil Procedure 57 and 65, the Governor is entitled to a judgment and permanent injunction declaring that N.C. Gen. Stat. § 143-135.25 is unconstitutional and therefore void and of no effect.

**COUNT 10: DECLARATORY JUDGMENT**

**N.C. GEN. STAT. § 143B-135.202 (N.C. PARKS AND RECREATION AUTHORITY) VIOLATES THE  
SEPARATION OF POWERS AND FAITHFUL EXECUTION CLAUSES  
OF THE NORTH CAROLINA CONSTITUTION**

212. The Governor restates and incorporates by reference the preceding paragraphs of this Complaint, as if fully set forth herein.

213. A present and real controversy exists between the parties as to the constitutionality of N.C. Gen. Stat. § 143B-135.202, which creates the appointment structure for the North Carolina Parks and Recreation Authority.

214. N.C. Gen. Stat. § 143B-135.202 unconstitutionally prevents the Governor from performing his core executive function of ensuring that the laws are faithfully executed. *McCrory*,

368 N.C. at 635, 781 S.E.2d at 250 (“[T]he separation of powers clause requires that, as the three branches of government carry out their duties, one branch will not prevent another branch from performing its core functions.”).

215. Accordingly, N.C. Gen. Stat. § 143B-135.202 violates the Separation of Powers Clause (Article I, Section 6) and the Faithful Execution Clause (Article III, Section 5(4)) of the North Carolina Constitution.

216. Pursuant to N.C. Gen. Stat. §§ 1-253, *et seq.*, and North Carolina Rules of Civil Procedure 57 and 65, the Governor is entitled to a judgment and permanent injunction declaring that N.C. Gen. Stat. § 143B-135.202 is unconstitutional and therefore void and of no effect.

**COUNT 11: DECLARATORY JUDGMENT**

**N.C. GEN. STAT. § 143B-472.128 (RURAL INFRASTRUCTURE AUTHORITY) VIOLATES THE  
SEPARATION OF POWERS AND FAITHFUL EXECUTION CLAUSES  
OF THE NORTH CAROLINA CONSTITUTION**

217. The Governor restates and incorporates by reference the preceding paragraphs of this Complaint, as if fully set forth herein.

218. A present and real controversy exists between the parties as to the constitutionality of N.C. Gen. Stat. § 143B-472.128, which creates the appointment structure for the Rural Infrastructure Authority.

219. N.C. Gen. Stat. § 143B-472.128 unconstitutionally prevents the Governor from performing his core executive function of ensuring that the laws are faithfully executed. *McCrory*, 368 N.C. at 635, 781 S.E.2d at 250 (“[T]he separation of powers clause requires that, as the three branches of government carry out their duties, one branch will not prevent another branch from performing its core functions.”).

220. Accordingly, N.C. Gen. Stat. § 143B-472.128 violates the Separation of Powers Clause (Article I, Section 6) and the Faithful Execution Clause (Article III, Section 5(4)) of the North Carolina Constitution.

221. Pursuant to N.C. Gen. Stat. §§ 1-253, *et seq.*, and North Carolina Rules of Civil Procedure 57 and 65, the Governor is entitled to a judgment and permanent injunction declaring that N.C. Gen. Stat. § 143B-472.128 is unconstitutional and therefore void and of no effect.

**COUNT 12: DECLARATORY JUDGMENT**  
**N.C. GEN. STAT. § 74C-4 (PRIVATE PROTECTIVE SERVICES BOARD) VIOLATES THE  
SEPARATION OF POWERS AND FAITHFUL EXECUTION CLAUSES  
OF THE NORTH CAROLINA CONSTITUTION**

222. The Governor restates and incorporates by reference the preceding paragraphs of this Complaint, as if fully set forth herein.

223. A present and real controversy exists between the parties as to the constitutionality of N.C. Gen. Stat. § 74C-4, which creates the appointment structure for the Private Protective Services Board.

224. N.C. Gen. Stat. § 74C-4 unconstitutionally prevents the Governor from performing his core executive function of ensuring that the laws are faithfully executed. *McCrory*, 368 N.C. at 635, 781 S.E.2d at 250 (“[T]he separation of powers clause requires that, as the three branches of government carry out their duties, one branch will not prevent another branch from performing its core functions.”).

225. Accordingly, N.C. Gen. Stat. § 74C-4 violates the Separation of Powers Clause (Article I, Section 6) and the Faithful Execution Clause (Article III, Section 5(4)) of the North Carolina Constitution.

226. Pursuant to N.C. Gen. Stat. §§ 1-253, *et seq.*, and North Carolina Rules of Civil Procedure 57 and 65, the Governor is entitled to a judgment and permanent injunction declaring that N.C. Gen. Stat. § 74C-4 is unconstitutional and therefore void and of no effect.

**COUNT 13: DECLARATORY JUDGMENT**

**SECTION 6.6.(B) OF SESSION LAW 2017-57 (VOUCHER MANDATE) VIOLATES THE SEPARATION OF POWERS AND FAITHFUL EXECUTION CLAUSES OF THE NORTH CAROLINA CONSTITUTION**

227. The Governor restates and incorporates by reference the preceding paragraphs of this Complaint, as if fully set forth herein.

228. A present and real controversy exists between the parties as to the constitutionality of Section 6.6.(b) of Session Law 2017-57, in which the General Assembly mandates that the base budget developed by the Governor “include the appropriated amount specified in this subsection for that fiscal year.” The amount mandated by the General Assembly for private school vouchers exceeds \$1 billion and continues in perpetuity.

229. Section 6.6.(b) of Session Law 2017-57 is unconstitutional because, by mandating what the Governor must include in his proposed budget, the General Assembly is exercising core executive power in violation of separation of powers. *See* N.C. CONST. art. III, § 5(3); *McCrory*, 368 N.C. at 645, 781 S.E.2d at 256 (“The clearest violation of the separation of powers clause occurs when one branch exercises power that the constitution vests exclusively in another branch.”).

230. Pursuant to N.C. Gen. Stat. §§ 1-253, *et seq.*, and North Carolina Rules of Civil Procedure 57 and 65, the Governor is entitled to a judgment and permanent injunction declaring that Section 6.6.(b) of Session Law 2017-57 is unconstitutional and therefore void and of no effect.



**COUNT 14: DECLARATORY JUDGMENT**

**THE BLOCK GRANT APPROPRIATIONS VIOLATE THE SEPARATION OF POWERS AND FAITHFUL  
EXECUTION CLAUSES OF THE NORTH CAROLINA CONSTITUTION**

231. The Governor restates and incorporates by reference the preceding paragraphs of this Complaint, as if fully set forth herein.

232. A present and real controversy exists between the parties as to the constitutionality of the Block Grant Appropriations, in which the General Assembly seeks to intercede in the Governor's administration of federal block grant funds. The specific Block Grant Appropriations challenged in this action are:

- a. Substance Abuse Prevention and Treatment Block Grant (Session Law 2017-57, Sections 11A.14.(a); 11L.1.(a), (y), and (z) (the "Substance Abuse Prevention and Treatment Block Grant Appropriations"));
- b. Maternal and Child Health Block Grant (Session Law 2017-57, Sections 11L.1.(a), (aa) through (ee) (the "Maternal and Child Health Block Grant Appropriations")); and
- c. Community Development Block Grant (Session Law 2017-57, Section 15.1.(a) and (d) (the "Community Development Block Grant Appropriations")).

233. As detailed above, federal block grant money disbursed to the State for a specific purpose is, in effect, held by the State in trust or in a custodial capacity and not as part of the State treasury. It is the Governor's constitutional duty to execute the law by ensuring the disbursement of federal block grant funds in accordance with the requirements of the federal programs.

234. The Block Grant Appropriations are unconstitutional because they prevent the Governor from performing his core function under the North Carolina Constitution to "take care that the laws be faithfully executed." N.C. Const. art. III, § 5(4).

235. To the extent the Block Grant Appropriations are part of the State budget, they also violate Article III, Section 5(3) of the North Carolina Constitution because they encroach on the Governor's duty to administer the budget.

236. Pursuant to N.C. Gen. Stat. §§ 1-253, *et seq.*, and North Carolina Rules of Civil Procedure 57 and 65, the Governor is entitled to a judgment and permanent injunction declaring that the Block Grant Appropriations are unconstitutional and therefore void and of no effect.

**COUNT 15: DECLARATORY JUDGMENT**

**SECTION 13.2.(B) OF SESSION LAW 2017-57 (VW SETTLEMENT FUNDS) AND N.C. GEN. STAT. § 114-2.4A VIOLATE THE SEPARATION OF POWERS AND FAITHFUL EXECUTION CLAUSES OF THE NORTH CAROLINA CONSTITUTION**

237. The Governor restates and incorporates by reference the preceding paragraphs of this Complaint, as if fully set forth herein.

238. A present and real controversy exists between the parties as to the constitutionality of Section 13.2.(b) of Session Law 2017-57 and N.C. Gen. Stat. § 114-2.4A, in which the General Assembly seeks to intercede and dictate how the State will administer nearly \$90 million in Volkswagen settlement proceeds.

239. Section 13.2.(b) of Session Law 2017-57 and N.C. Gen. Stat. § 114-2.4A, to the extent it purports to require that the General Assembly appropriate funds from a judicial settlement received by the executive branch, are unconstitutional because they impermissibly allow the General Assembly to prevent the Governor from performing his core function under the North Carolina Constitution to “take care that the laws be faithfully executed.” N.C. CONST. art. III, § 5(4).

240. These provisions also violate Article III, Section 5(3) of the North Carolina Constitution because they encroach on the Governor’s duty to administer the budget.

241. Pursuant to N.C. Gen. Stat. §§ 1-253, *et seq.*, and North Carolina Rules of Civil Procedure 57 and 65, the Governor is entitled to a judgment and permanent injunction declaring that Section 13.2.(b) of Session Law 2017-57 and N.C. Gen. Stat. § 114-2.4A are unconstitutional and therefore void and of no effect.

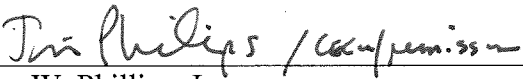
### **PRAYER FOR JUDGMENT**

WHEREFORE, Plaintiff Governor Cooper prays as follows:

1. That the Court issue a preliminary injunction pursuant to North Carolina Rule of Civil Procedure 65 enjoining the effectiveness of Section 1 of Session Law 2017-7 and Part V of Session Law 2016-125 during the pendency of this litigation;
2. That the Court enter a declaratory judgment and injunction, pursuant to N.C. Gen. Stat. § 1-253, *et seq.*, and North Carolina Rules of Civil Procedure 57 and 65, declaring that:
  - a. Section 1 of Session Law 2017-7 is unconstitutional and therefore is void and of no effect;
  - b. Part V of Session Law 2016-125 is unconstitutional and therefore is void and of no effect;
  - c. N.C. Gen. Stat. § 143B-135.240 is unconstitutional and therefore is void and of no effect;
  - d. N.C. Gen. Stat. § 143B-168.4 is unconstitutional and therefore is void and of no effect;
  - e. N.C. Gen. Stat. § 143-135.25, is unconstitutional and therefore is void and of no effect;
  - f. N.C. Gen. Stat. § 143B-135.202 is unconstitutional and therefore is void and of no effect;
  - g. N.C. Gen. Stat. § 143B-472.128 is unconstitutional and therefore is void and of no effect;
  - h. N.C. Gen. Stat. § 74C-4 is unconstitutional and therefore is void and of no effect;
  - i. Section 6.6.(b) of Session Law 2017-57 128 is unconstitutional and therefore is void and of no effect;
  - j. The Substance Abuse Prevention and Treatment Block Grant Appropriations are unconstitutional and therefore are void and of no effect;
  - k. The Maternal and Child Health Block Grant Appropriations are unconstitutional and therefore are void and of no effect;

- l. The Community Development Block Grant Appropriations are unconstitutional and therefore are void and of no effect;
  - m. Section 13.2(b) of Session Law 2017-57 is unconstitutional and therefore is void and of no effect; and
  - n. N.C. Gen. Stat. § 114-2.4A does not require that the General Assembly appropriate funds from a judicial settlement received by the executive branch.
3. That the Court enter an order removing Defendants Allen and Stith as chair and vice-chair, respectively, of the Industrial Commission;
  4. That the Court award to Plaintiff his costs and expenses, pursuant to applicable statutory and common law, including N.C. Gen. Stat. §§ 6-20, and 1-263; and
  5. That the Court grant such other and further relief as the Court deems just and proper.

Respectfully submitted this the 8th day of August, 2017.



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**CERTIFICATE OF SERVICE**

I hereby certify that on this day a copy of the foregoing document was served on the following parties via e-mail and first-class United States Mail:

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This the 8th day of August, 2017.

BROOKS, PIERCE, McLENDON,  
HUMPHREY & LEONARD, L.L.P.

By:   
Eric M. David

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

SESSION LAW 2017-7  
HOUSE BILL 239

AN ACT TO REDUCE THE NUMBER OF JUDGES ON THE COURT OF APPEALS TO TWELVE; TO PROVIDE AN APPEAL OF RIGHT FOR TRIAL COURT DECISIONS REGARDING CLASS ACTION CERTIFICATION AND TERMINATION OF PARENTAL RIGHTS; AND TO PROVIDE FOR DISCRETIONARY REVIEW BY THE SUPREME COURT IN CASES WHERE THE SUBJECT MATTER INVOLVES THE JURISDICTION AND INTEGRITY OF THE COURT SYSTEM.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 7A-16, as amended by Section 22(a) of S.L. 2016-125, reads as rewritten:

**"§ 7A-16. Creation and organization.**

The Court of Appeals is created effective January 1, 1967. It shall consist initially of six judges, elected by the qualified voters of the State for terms of eight years. The Chief Justice of the Supreme Court shall designate one of the judges as Chief Judge, to serve in such capacity at the pleasure of the Chief Justice. Before entering upon the duties of his office, a judge of the Court of Appeals shall take the oath of office prescribed for a judge of the General Court of Justice.

The Governor on or after July 1, 1967, shall make temporary appointments to the six initial judgeships. The appointees shall serve until January 1, 1969. Their successors shall be elected at the general election for members of the General Assembly in November, 1968, and shall take office on January 1, 1969, to serve for the remainder of the unexpired term which began on January 1, 1967.

Upon the appointment of at least five judges, and the designation of a Chief Judge, the court is authorized to convene, organize, and promulgate, subject to the approval of the Supreme Court, such supplementary rules as it deems necessary and appropriate for the discharge of the judicial business lawfully assigned to it.

Effective January 1, 1969, the number of judges is increased to nine, and the Governor, on or after March 1, 1969, shall make temporary appointments to the additional judgeships thus created. The appointees shall serve until January 1, 1971. Their successors shall be elected at the general election for members of the General Assembly in November, 1970, and shall take office on January 1, 1971, to serve for the remainder of the unexpired term which began on January 1, 1969.

Effective January 1, 1977, the number of judges is increased to 12; and the Governor, on or after July 1, 1977, shall make temporary appointments to the additional judgeships thus created. The appointees shall serve until January 1, 1979. Their successors shall be elected at the general election for members of the General Assembly in November, 1978, and shall take office on January 1, 1979, to serve the remainder of the unexpired term which began on January 1, 1977.

On or after December 15, 2000, the Governor shall appoint three additional judges to increase the number of judges to 15.



On or after January 1, 2017, whenever the seat of an incumbent judge becomes vacant prior to the expiration of the judge's term due to the death, resignation, retirement, impeachment, or removal pursuant to G.S. 7A-374.2(8) of the incumbent judge, that seat is abolished until the total number of Court of Appeals seats is decreased to 12.

The Court of Appeals shall sit in panels of three judges each and may also sit en banc to hear or rehear any cause upon a vote of the majority of the judges of the court. The Chief Judge insofar as practicable shall assign the members to panels in such fashion that each member sits a substantially equal number of times with each other member, shall preside when a member of a panel, and shall designate the presiding judge of the other panel or panels.

Except as may be provided in G.S. 7A-32, three judges shall constitute a quorum for the transaction of the business of the court when sitting in panels of three judges, and a majority of the then sitting judges on the Court of Appeals shall constitute a quorum for the transaction of the business of the court when sitting en banc.

In the event the Chief Judge is unable, on account of absence or temporary incapacity, to perform the duties placed upon him as Chief Judge, the Chief Justice shall appoint an acting Chief Judge from the other judges of the Court, to temporarily discharge the duties of Chief Judge."

**SECTION 2.** G.S. 7A-27, as amended by Section 22(b) of S.L. 2016-125, reads as rewritten:

**"§ 7A-27. Appeals of right from the courts of the trial divisions.**

(a) Appeal lies of right directly to the Supreme Court in any of the following cases:

- (1) All cases in which the defendant is convicted of murder in the first degree and the judgment of the superior court includes a sentence of death.
- (2) From any final judgment in a case designated as a mandatory complex business case pursuant to G.S. 7A-45.4 or designated as a discretionary complex business case pursuant to Rule 2.1 of the General Rules of Practice for the Superior and District Courts.
- (3) From any interlocutory order of a Business Court Judge that does any of the following:
  - a. Affects a substantial right.
  - b. In effect determines the action and prevents a judgment from which an appeal might be taken.
  - c. Discontinues the action.
  - d. Grants or refuses a new trial.
- (4) Any trial court's decision regarding class action certification under G.S. 1A-1, Rule 23.
- (5) Any order that terminates parental rights or denies a petition or motion to terminate parental rights.

(b) Except as provided in subsection (a) of this section, appeal lies of right directly to the Court of Appeals in any of the following cases:

- (1) From any final judgment of a superior court, other than one based on a plea of guilty or nolo contendere, including any final judgment entered upon review of a decision of an administrative agency, except for a final judgment entered upon review of a court martial under G.S. 127A-62.
- (2) From any final judgment of a district court in a civil action.
- (3) From any interlocutory order or judgment of a superior court or district court in a civil action or proceeding that does any of the following:
  - a. Affects a substantial right.
  - b. In effect determines the action and prevents a judgment from which an appeal might be taken.
  - c. Discontinues the action.



- d. Grants or refuses a new trial.
  - e. Determines a claim prosecuted under G.S. 50-19.1.
  - f. Grants temporary injunctive relief restraining the State or a political subdivision of the State from enforcing the operation or execution of an act of the General Assembly. This sub-subdivision only applies where the State or a political subdivision of the State is a party in the civil action.
- (4) From any other order or judgment of the superior court from which an appeal is authorized by statute.
- (c) through (e) Repealed by Session Laws 2013-411, s. 1, effective August 23, 2013."
- SECTION 3.** G.S. 7A-31, as amended by Section 22(d) of S.L. 2016-125, reads as

rewritten:

**"§ 7A-31. Discretionary review by the Supreme Court.**

...

(b) In causes subject to certification under subsection (a) of this section, certification may be made by the Supreme Court before determination of the cause by the Court of Appeals when in the opinion of the Supreme Court: Court any of the following apply:

- (1) The subject matter of the appeal has significant public ~~interest, or interest.~~
- (2) The cause involves legal principles of major significance to the jurisprudence of the ~~State, or State.~~
- (3) Delay in final adjudication is likely to result from failure to certify and thereby cause substantial ~~harm, or harm.~~
- (4) The work load of the courts of the appellate division is such that the expeditious administration of justice requires certification.
- (5) The subject matter of the appeal is important in overseeing the jurisdiction and integrity of the court system.

(c) In causes subject to certification under subsection (a) of this section, certification may be made by the Supreme Court after determination of the cause by the Court of Appeals when in the opinion of the Supreme Court: Court any of the following apply:

- (1) The subject matter of the appeal has significant public ~~interest, or interest.~~
- (2) The cause involves legal principles of major significance to the jurisprudence of the ~~State, or State.~~
- (3) The decision of the Court of Appeals appears likely to be in conflict with a decision of the Supreme Court.

Interlocutory determinations by the Court of Appeals, including orders remanding the cause for a new trial or for other proceedings, shall be certified for review by the Supreme Court only upon a determination by the Supreme Court that failure to certify would cause a delay in final adjudication which would probably result in substantial harm.

...."

**SECTION 4.** G.S. 7B-1001(a) reads as rewritten:

**"§ 7B-1001. Right to appeal.**

(a) In a juvenile matter under this Subchapter, appeal of a final order of the court in a juvenile matter shall be made directly to the Court of ~~Appeals~~ Appeals unless otherwise specified. Only the following juvenile matters may be appealed:

...

- (5) An order entered under G.S. 7B-906.2(b) with rights to appeal properly preserved, as follows:
  - a. The Court of Appeals shall review the order eliminating reunification as a permanent plan ~~together with an appeal of the termination of parental rights order~~ if all of the following apply:

1. A motion or petition to terminate the parent's rights is heard and granted.
  2. The order terminating parental rights is appealed in a proper and timely manner.
  3. The order eliminating reunification as a permanent plan is identified as an issue in the record on appeal of the termination of parental rights.
- b. A party who is a parent shall have the right to appeal the order if no termination of parental rights petition or motion is filed within 180 days of the order.
  - c. A party who is a custodian or guardian shall have the right to immediately appeal the order.
- (6) Any order that terminates parental rights or denies a petition or motion to terminate parental ~~rights~~ rights shall be made directly to the Supreme Court."

**SECTION 5.** G.S. 7A-27(a)(5), as enacted by Section 2 of this act, and Section 4 of this act become effective January 1, 2019, and apply to appeals filed on or after that date. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11<sup>th</sup> day of April, 2017.

s/ Philip E. Berger  
President Pro Tempore of the Senate

s/ Tim Moore  
Speaker of the House of Representatives

VETO Roy Cooper  
Governor

Became law notwithstanding the objections of the Governor at 9:37 p.m. this 26<sup>th</sup> day of April, 2017.

s/ Sarah Lang  
Senate Principal Clerk

**GENERAL ASSEMBLY OF NORTH CAROLINA  
FOURTH EXTRA SESSION 2016**

**SESSION LAW 2016-125  
SENATE BILL 4**

AN ACT TO CONSOLIDATE THE FUNCTIONS OF ELECTIONS, CAMPAIGN FINANCE, LOBBYING, AND ETHICS UNDER ONE STATE AGENCY BY CREATING THE NORTH CAROLINA BIPARTISAN STATE BOARD OF ELECTIONS AND ETHICS ENFORCEMENT; TO CLARIFY THE GENERAL ASSEMBLY'S AUTHORITY TO CORRECT DEFECTS IDENTIFIED BY A COURT IN APPORTIONMENT OR DISTRICTING PLANS; TO RESTORE PARTISAN ELECTIONS FOR THE NORTH CAROLINA SUPREME COURT AND COURT OF APPEALS; TO MODIFY APPELLATE REVIEW OF CERTAIN CASES; AND TO MODIFY THE TERM FOR INDUSTRIAL COMMISSIONERS.

The General Assembly of North Carolina enacts:

**PART I. CREATION OF BIPARTISAN STATE BOARD OF ELECTIONS AND ETHICS ENFORCEMENT**

**SECTION 1.** Recodification; Technical and Conforming Changes. – The Revisor of Statutes shall recodify Chapter 138A of the General Statutes, Chapter 120C of the General Statutes, as well as Chapter 163 of the General Statutes, as amended by this act, into a new Chapter 138B of the General Statutes to be entitled "Elections and Ethics Enforcement Act," as enacted by Section 2 of this act. The Revisor may also recodify into the new Chapter 138B of the General Statutes other existing statutory laws relating to elections and ethics enforcement that are located elsewhere in the General Statutes as the Revisor deems appropriate. The new Chapter 138B of the General Statutes shall have the following structure:

**SUBCHAPTER I. GENERAL PROVISIONS**

Article 1. Bipartisan State Board of Elections and Ethics Enforcement.

**SUBCHAPTER II. ETHICS AND LOBBYING**

Article 5. General Provisions.

Article 6. Public Disclosure of Economic Interests.

Article 7. Ethical Standards for Covered Persons.

Article 8. Lobbying.

Part 1. Registration

Part 2. Prohibitions and Restrictions

Part 3. Reporting

Part 4. Liaison Personnel

Part 5. Exemptions

Part 6. Miscellaneous

Article 9. Violation Consequences.

**SUBCHAPTER III. ELECTION AND ELECTION LAWS**

Article 15. Time of Primaries and Elections.

Part 1. Time of Primaries and Elections

Part 2. Time of Elections to Fill Vacancies

Article 16. Election Officers.

Part 1. State Board Powers and Duties



**SECTION 22.(f)** G.S. 120-2.5 is repealed.

**SECTION 23.(a)** G.S. 1A-1, Rule 42(b)(4) of the Rules of Civil Procedure, reads as rewritten:

**"Rule 42. Consolidation; separate trials.**

...

(b) Separate trials. –

...

(4) Pursuant to G.S. 1-267.1, any facial challenge to the validity of an act of the General Assembly, other than a challenge to plans apportioning or redistricting State legislative or congressional districts, shall be heard by a three-judge panel in the Superior Court of Wake County if a claimant raises such a challenge in the claimant's complaint or amended complaint in any court in this State, or if such a challenge is raised by the defendant in the defendant's answer, responsive pleading, or within 30 days of filing the defendant's answer or responsive pleading. In that event, the court shall, on its own motion, transfer that portion of the action challenging the validity of the act of the General Assembly to the Superior Court of Wake County for resolution by a three-judge panel if, after all other matters in the action have been resolved, a determination as to the facial validity of an act of the General Assembly must be made in order to completely resolve any matters in the case. The court in which the action originated shall maintain jurisdiction over all matters other than the challenge to the act's facial ~~validity and validity~~. For a motion filed under Rule 11 or Rule 12(b)(1) through (7), the original court shall rule on the motion, however, it may decline to rule on a motion that is based solely upon Rule 12(b)(6). If the original court declines to rule on a Rule 12(b)(6) motion, the motion shall be decided by the three-judge panel. The original court shall stay all matters that are contingent upon the outcome of the challenge to the act's facial validity pending a ruling on that challenge and until all appeal rights are exhausted. Once the three-judge panel has ruled and all appeal rights have been exhausted, the matter shall be transferred or remanded to the three-judge panel or the trial court in which the action originated for resolution of any outstanding matters, as appropriate."

**SECTION 23.(b)** This section becomes effective February 1, 2017, and applies to motions filed on or after that date.

## **PART V. MODIFY THE TERM FOR INDUSTRIAL COMMISSIONERS**

**SECTION 24.(a)** G.S. 97-77 reads as rewritten:

**"§ 97-77. North Carolina Industrial Commission created; members appointed by Governor; terms of office; chairman.**

(a) There is hereby created a commission to be known as the North Carolina Industrial Commission, consisting of six commissioners who shall devote their entire time to the duties of the Commission. The Governor shall appoint the members of the Commission for terms of six years. Three commissioners shall be persons who, on account of their previous vocations, employment or affiliations, can be classed as representatives of employers. Three commissioners shall be persons who, on account of their previous vocations, employment or affiliations, can be classed as representatives of employees. No person may serve more than two terms on the Commission, including any term served prior to the effective date of this section. In calculating the number of terms served, a partial term that is less than three years in length shall not be included.

(a1) Appointments of commissioners are subject to confirmation by the General Assembly by joint resolution. The names of commissioners to be appointed by the Governor shall be submitted by the Governor to the General Assembly for confirmation by the General Assembly on or before March 1 of the year of expiration of the term. If the Governor fails to timely submit nominations, the General Assembly shall appoint to fill the succeeding term upon the joint recommendation of the President Pro Tempore of the Senate and the Speaker of the House of Representatives in accordance with G.S. 120-121 not inconsistent with this section.

In case of death, incapacity, resignation, or any other vacancy in the office of any commissioner prior to the expiration of the term of office, a nomination to fill the vacancy ~~for the remainder of the unexpired term~~ shall be submitted by the Governor within four weeks after the vacancy arises to the General Assembly for confirmation by the General Assembly. Appointments to fill a vacancy shall have a term of six years plus the remainder of the unexpired term. If the Governor fails to timely nominate a person to fill the vacancy, the General Assembly shall appoint a person to fill the remainder of the unexpired term upon the joint recommendation of the President Pro Tempore of the Senate and the Speaker of the House of Representatives in accordance with G.S. 120-121 not inconsistent with this section. If a vacancy arises or exists pursuant to this subsection when the General Assembly is not in session, and the appointment is deemed urgent by the Governor, the commissioner may be appointed and serve on an interim basis pending confirmation by the General Assembly. For the purpose of this subsection, the General Assembly is not in session only (i) prior to convening of the Regular Session, (ii) during any adjournment of the Regular Session for more than 10 days, and (iii) after sine die adjournment of the Regular Session.

No person while in office as a commissioner may be nominated or appointed on an interim basis to fill the remainder of an unexpired term, or to a full term that commences prior to the expiration of the term that the commissioner is serving.

(b) ~~One member, to be designated by the Governor, shall act as chairman. On December 30, 2016, and every four years thereafter, one member shall be designated by the Governor to act as chairman for a term of four years. In case of death, incapacity, resignation, or any other vacancy of the chairman, the Governor shall designate a new chairman from the remaining commissioners for the remainder of the four-year term. No member who has served less than one year on the Commission may be designated to act as chairman.~~

The chairman shall be the chief judicial officer and the chief executive officer of the Industrial Commission; such authority shall be exercised pursuant to the provisions of Chapter 126 of the General Statutes and the rules and policies of the State Human Resources Commission. Notwithstanding the provisions of this Chapter, the chairman shall have such authority as is necessary to direct and oversee the Commission. The chairman may delegate any duties and responsibilities as may be necessary to ensure the proper management of the Industrial Commission. Notwithstanding the provisions of this Chapter, Chapter 143A, and Chapter 143B of the General Statutes, the chairman may hire or fire personnel and transfer personnel within the Industrial Commission.

~~The Governor may designate one vice chairman from the remaining commissioners. On December 30, 2016, and every four years thereafter, one member shall be designated by the Governor to act as vice-chairman for a term of four years. In case of death, incapacity, resignation, or any other vacancy of the vice-chairman, the Governor shall designate a new vice-chairman from the remaining commissioners for the remainder of the four-year term. The vice-chairman shall assume the powers of the chairman upon request of the chairman or when the chairman is absent for 24 hours or more. The authority delegated to the vice-chairman shall be relinquished immediately upon the return of the chairman or at the request of the chairman."~~

**SECTION 24.(b)** G.S. 97-77(a1), as amended by subsection (a) of this section, reads as rewritten:

"(a1) Appointments of commissioners are subject to confirmation by the General Assembly by joint resolution. The names of commissioners to be appointed by the Governor shall be submitted by the Governor to the General Assembly for confirmation by the General Assembly on or before March 1 of the year of expiration of the term. If the Governor fails to timely submit nominations, the General Assembly shall appoint to fill the succeeding term upon the joint recommendation of the President Pro Tempore of the Senate and the Speaker of the House of Representatives in accordance with G.S. 120-121 not inconsistent with this section.

In case of death, incapacity, resignation, or any other vacancy in the office of any commissioner prior to the expiration of the term of office, a nomination to fill the vacancy for the remainder of the unexpired term shall be submitted by the Governor within four weeks after the vacancy arises to the General Assembly for confirmation by the General Assembly. ~~Appointments to fill a vacancy shall have a term of six years plus the remainder of the unexpired term.~~ If the Governor fails to timely nominate a person to fill the vacancy, the General Assembly shall appoint a person to fill the remainder of the unexpired term upon the joint recommendation of the President Pro Tempore of the Senate and the Speaker of the House of Representatives in accordance with G.S. 120-121 not inconsistent with this section. If a vacancy arises or exists pursuant to this subsection when the General Assembly is not in session, and the appointment is deemed urgent by the Governor, the commissioner may be appointed and serve on an interim basis pending confirmation by the General Assembly. For the purpose of this subsection, the General Assembly is not in session only (i) prior to convening of the Regular Session, (ii) during any adjournment of the Regular Session for more than 10 days, and (iii) after sine die adjournment of the Regular Session.

No person while in office as a commissioner may be nominated or appointed on an interim basis to fill the remainder of an unexpired term, or to a full term that commences prior to the expiration of the term that the commissioner is serving."

**SECTION 24.(c)** Subsection (a) of this section is effective when it becomes law and applies to the first appointment made to fill a vacancy existing as of that date. Subsection (b) of this section becomes effective on the earlier of December 31, 2016, or upon the filling of a vacancy pursuant to subsection (a) of this section.

## **PART VI. EFFECTIVE DATE**

**SECTION 25.** If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end, the provisions of this act are severable.

**SECTION 26.** Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16<sup>th</sup> day of December, 2016.

s/ Daniel J. Forest  
President of the Senate

s/ Tim Moore  
Speaker of the House of Representatives

s/ Pat McCrory  
Governor

Approved 1:19 p.m. this 16<sup>th</sup> day of December, 2016

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017**

**SESSION LAW 2017-57  
SENATE BILL 257**

AN ACT TO MAKE BASE BUDGET APPROPRIATIONS FOR CURRENT OPERATIONS  
OF STATE DEPARTMENTS, INSTITUTIONS, AND AGENCIES, AND FOR OTHER  
PURPOSES.

The General Assembly of North Carolina enacts:

**PART I. TITLE OF ACT AND INTRODUCTION**

**TITLE OF ACT**

**SECTION 1.1.** This act shall be known as the "Current Operations Appropriations Act of 2017."

**INTRODUCTION**

**SECTION 1.2.** The appropriations made in this act are for maximum amounts necessary to provide the services and accomplish the purposes described in the budget in accordance with the State Budget Act. Savings shall be effected where the total amounts appropriated are not required to perform these services and accomplish these purposes, and the savings shall revert to the appropriate fund at the end of each fiscal year, except as otherwise provided by law.

**PART II. CURRENT OPERATIONS AND EXPANSION GENERAL FUND**

**CURRENT OPERATIONS AND EXPANSION/GENERAL FUND**

**SECTION 2.1.** Appropriations from the General Fund of the State for the maintenance of the State departments, institutions, and agencies, and for other purposes as enumerated, are made for the fiscal biennium ending June 30, 2019, according to the following schedule:

<b>Current Operations – General Fund</b>	<b>FY 2017-2018</b>	<b>FY 2018-2019</b>
<b>EDUCATION</b>		
Community Colleges System Office	\$ 1,121,815,001	\$ 1,141,757,845
Department of Public Instruction	9,046,403,622	9,425,109,426
Appalachian State University	134,672,993	134,672,993
East Carolina University		
Academic Affairs	214,598,809	214,598,809
Health Affairs	74,373,798	75,014,745
Elizabeth City State University	31,964,712	31,154,712
Fayetteville State University	52,116,162	52,116,162





## **PART V. OTHER APPROPRIATIONS**

### **CASH BALANCES AND OTHER APPROPRIATIONS**

**SECTION 5.1.(a)** Cash balances, federal funds, departmental receipts, grants, and gifts from the General Fund, revenue funds, enterprise funds, and internal service funds are appropriated for the 2017-2019 fiscal biennium as follows:

- (1) For all budget codes listed in the Governor's Recommended Budget for the 2017-2019 fiscal biennium, dated March 2017, and in the Budget Support Document, fund balances and receipts are appropriated up to the amounts specified, as adjusted by the General Assembly, for the 2017-2018 fiscal year and the 2018-2019 fiscal year. Funds may be expended only for the programs, purposes, objects, and line items or as otherwise authorized by the General Assembly. Expansion budget funds listed in those documents are appropriated only as otherwise provided in this act.
- (2) Notwithstanding the provisions of subdivision (1) of this subsection:
  - a. Any receipts that are required to be used to pay debt service requirements for various outstanding bond issues and certificates of participation are appropriated up to the actual amounts received for the 2017-2018 fiscal year and the 2018-2019 fiscal year and shall be used only to pay debt service requirements.
  - b. Other funds, cash balances, and receipts of funds that meet the definition issued by the Governmental Accounting Standards Board of a trust or agency fund are appropriated for and in the amounts required to meet the legal requirements of the trust agreement for the 2017-2018 fiscal year and the 2018-2019 fiscal year.

**SECTION 5.1.(b)** Receipts collected in a fiscal year in excess of the amounts appropriated by this section shall remain unexpended and unencumbered until appropriated by the General Assembly, unless the expenditure of overrealized receipts in the fiscal year in which the receipts were collected is authorized by the State Budget Act. Overrealized receipts are appropriated in the amounts necessary to implement this subsection.

**SECTION 5.1.(c)** Notwithstanding subsections (a) and (b) of this section, there is appropriated from the Reserve for Reimbursements to Local Governments and Shared Tax Revenues for each fiscal year an amount equal to the amount of the distributions required by law to be made from that reserve for that fiscal year.

### **OTHER RECEIPTS FROM PENDING GRANT AWARDS**

**SECTION 5.2.(a)** Notwithstanding G.S. 143C-6-4, State agencies may, with approval of the Director of the Budget, spend funds received from grants awarded subsequent to the enactment of this act for grant awards that are for less than two million five hundred thousand dollars (\$2,500,000), do not require State matching funds, and will not be used for a capital project. State agencies shall report to the Joint Legislative Commission on Governmental Operations within 30 days of receipt of such funds.

State agencies may spend all other funds from grants awarded after the enactment of this act only with approval of the Director of the Budget and after consultation with the Joint Legislative Commission on Governmental Operations.

**SECTION 5.2.(b)** The Office of State Budget and Management shall work with the recipient State agencies to budget grant awards according to the annual program needs and within the parameters of the respective granting entities. Depending on the nature of the award, additional State personnel may be employed on a time-limited basis. Funds received from such grants are hereby appropriated and shall be incorporated into the authorized budget of the recipient State agency.

be the authorized budget for that agency with adjustments only for the following:

- a. Annualization of programs and positions.
- b. Reductions to adjust for items funded with nonrecurring funds during the prior fiscal biennium.
- c. Increases to adjust for nonrecurring reductions during the prior fiscal biennium.
- d. Adjustments for federal payroll tax changes.
- e. Rate increases in accordance with the terms of existing leases of real property.
- f. Adjustments to receipt projections, made in accordance with G.S. 143C-3-5(b)(2)c.
- g. Reconciliation of intragovernmental and intergovernmental transfers.
- h. Adjustments for statutory appropriations and other adjustments as directed by the General Assembly.

...  
(6) ~~Capital Improvements Appropriations Act. — An act of the General Assembly containing appropriations for one or more capital improvement projects.~~

...  
(9) Current Operations Appropriations Act. — An act of the General Assembly estimating revenue availability for and appropriating money for the current operations and capital improvement needs of State government during one or more budget years.

...  
(28) Statutory appropriation. — An appropriation enacted by the General Assembly in the General Statutes that authorizes the current and future withdrawal of funds from the State treasury during ~~fiscal years extending beyond the current fiscal biennium,~~ current and future fiscal years, without further act of the General Assembly.

...."

**SECTION 6.6.(b)** G.S. 115C-562.8(b) reads as rewritten:

"(b) The General Assembly finds that, due to the critical need in this State to provide opportunity for school choice for North Carolina students, it is imperative that the State provide an increase of funds of at least ten million dollars (\$10,000,000) each fiscal year for 10 years to the Opportunity Scholarship Grant Fund Reserve. Therefore, there is appropriated from the General Fund to the Reserve the following amounts for each fiscal year to be used for the purposes set forth in this section:

<b>Fiscal Year</b>	<b>Appropriation</b>
2017-2018	\$44,840,000
2018-2019	\$54,840,000
2019-2020	\$64,840,000
2020-2021	\$74,840,000
2021-2022	\$84,840,000
2022-2023	\$94,840,000
2023-2024	\$104,840,000
2024-2025	\$114,840,000
2025-2026	\$124,840,000
2026-2027	\$134,840,000

For the 2027-2028 fiscal year and each fiscal year thereafter, there is appropriated from the General Fund to the Reserve the sum of one hundred forty-four million eight hundred forty

thousand dollars (\$144,840,000) to be used for the purposes set forth in this section. When developing the base budget, as defined by G.S. 143C-1-1, for each fiscal year specified in this subsection, the Director of the Budget shall include the appropriated amount specified in this subsection for that fiscal year."

**SECTION 6.6.(c)** G.S. 143C-3-5 reads as rewritten:

**"§ 143C-3-5. Budget recommendations and budget message.**

...  
(b) Odd-Numbered Years. – In odd-numbered years the budget recommendations shall include the following components:

...  
(3) A Current Operations Appropriations Act that makes appropriations for each fiscal year of the upcoming biennium for the operating and capital expenses of all State agencies as contained in the Recommended State ~~Budget, together with a Capital Improvements Appropriations Act that authorizes any capital improvements projects.~~Budget.

...  
(c) Even-Numbered Years. – In even-numbered years, the Governor may recommend changes in the enacted budget for the second year of the biennium. These recommendations shall be presented as amendments to the enacted budget and shall be incorporated in a recommended Current Operations ~~Appropriation Act and a recommended Capital Improvements Appropriations Act as necessary.~~Appropriations Act. Any recommended changes shall clearly distinguish program reductions, program eliminations, program expansions, and new programs, and shall explain all proposed capital improvements in the context of the Six-Year Capital Improvements Plan and as required by G.S. 143C-8-6. The Governor shall provide sufficient supporting documentation and accounting detail, consistent with that required by G.S. 143C-3-5(b), corresponding to the recommended amendments to the enacted budget.

...."

**SECTION 6.6.(d)** G.S. 143C-5-1 reads as rewritten:

**"§ 143C-5-1. Rules for the introduction of the Governor's appropriations bills.**

The Current Operations Appropriations Act recommended by the Governor ~~and the Capital Improvements Appropriations Act recommended by the Governor~~ shall be introduced by the chairs of the committee on appropriations in each house of the General Assembly. This section shall be considered and treated as a rule of procedure in the Senate and House of Representatives unless provided otherwise by a rule of either branch of the General Assembly."

**SECTION 6.6.(e)** G.S. 143C-5-5 reads as rewritten:

**"§ 143C-5-5. Committee report used to construe intent of budget acts.**

A committee report incorporated by reference in the Current Operations Appropriations Act ~~or the Capital Improvements Appropriations Act~~ and distributed on the floor of the House of Representatives and of the Senate as part of the explanation of the act is to be construed with the appropriate act in interpreting its intent. If a report conflicts with the act, the act prevails. The Director of the Fiscal Research Division of the Legislative Services Commission shall send a copy of the reports to the Director."

**SECTION 6.6.(f)** G.S. 143C-6-1 reads as rewritten:

**"§ 143C-6-1. Budget enacted by the General Assembly; certified budgets of State agencies.**

(a) Governor to Administer the Budget as Enacted by the General Assembly. – In accordance with Section 5(3) of Article III of the North Carolina Constitution, the Governor shall administer the budget as enacted by the General Assembly. All appropriations of State funds now or hereafter made to the State agencies and non-State entities authorize expenditures only for the (i) purposes or programs and (ii) objects or line items enumerated in the

Oversight Committee on Health and Human Services, and the Fiscal Research Division regarding its progress in establishing any residency programs funded by State appropriations.

**SECTION 11A.13.(d)** Any funds not obligated or encumbered for the purposes specified in this section by June 30, 2018, shall revert to the General Fund.

**SECTION 11A.13.(e)** Section 12A.8 of S.L. 2016-94, as amended by Section 5.1 of S.L. 2016-123, is repealed.

## **COMPETITIVE GRANTS/NONPROFIT ORGANIZATIONS**

**SECTION 11A.14.(a)** Of the funds appropriated in this act to the Department of Health and Human Services, Division of Central Management and Support, the sum of ten million six hundred fifty-three thousand nine hundred eleven dollars (\$10,653,911) for each year of the 2017-2019 fiscal biennium, the sum of four million five hundred twenty-four thousand five hundred twenty-five dollars (\$4,524,525) for each year of the 2017-2019 fiscal biennium appropriated in Section 11L.1 of this act in Social Services Block Grant funds, and the sum of one million six hundred thousand dollars (\$1,600,000) for each year of 2017-2019 fiscal biennium in Section 11L.1 of this act in Substance Abuse Prevention and Treatment Block Grant funds shall be used to allocate funds for nonprofit organizations.

**SECTION 11A.14.(b)** The Department shall continue administering a competitive grants process for nonprofit funding. The Department shall administer a plan that, at a minimum, includes each of the following:

- (1) A request for application (RFA) process to allow nonprofits to apply for and receive State funds on a competitive basis. The Department shall require nonprofits to include in the application a plan to evaluate the effectiveness, including measurable impact or outcomes, of the activities, services, and programs for which the funds are being requested.
- (2) A requirement that nonprofits match a minimum of fifteen percent (15%) of the total amount of the grant award.
- (3) A requirement that the Secretary prioritize grant awards to those nonprofits that are able to leverage non-State funds in addition to the grant award.
- (4) A process that awards grants to nonprofits that have the capacity to provide services on a statewide basis and that support any of the following State health and wellness initiatives:
  - a. A program targeting advocacy, support, education, or residential services for persons diagnosed with autism.
  - b. A system of residential supports for those afflicted with substance abuse addiction.
  - c. A program of advocacy and supports for individuals with intellectual and developmental disabilities or severe and persistent mental illness, substance abusers, or the elderly.
  - d. Supports and services to children and adults with developmental disabilities or mental health diagnoses.
  - e. A food distribution system for needy individuals.
  - f. The provision and coordination of services for the homeless.
  - g. The provision of services for individuals aging out of foster care.
  - h. Programs promoting wellness, physical activity, and health education programming for North Carolinians.
  - i. The provision of services and screening for blindness.
  - j. A provision for the delivery of after-school services for apprenticeships or mentoring at-risk youth.
  - k. The provision of direct services for amyotrophic lateral sclerosis (ALS) and those diagnosed with the disease.

- c. Neurosurgery.
  - c. Obstetrics/Gynecology.
  - d. Primary Care.
  - e. Psychiatry.
  - f. Surgery.
  - g. Urology.
  - h. Any other specialty areas determined by the Department of Health and Human Services or The University of North Carolina to be experiencing a shortage.
- (4) The number of program graduates who practiced in North Carolina for at least five years after graduation.
  - (5) Any other information requested by the subcommittees.

**SECTION 11J.2.(d)** The subcommittees shall jointly develop a proposal for a statewide plan to support medical education programs and medical residency programs within North Carolina in a manner that maximizes the State's financial and other support of these programs and addresses the short-term and long-term health care needs of the State's residents. Each subcommittee shall submit a report to its respective oversight committee on or before March 15, 2018, at which time each subcommittee shall terminate.

**SECTION 11J.2.(e)** This section is effective when this act becomes law.

## **AUTHORIZATION FOR CHIROPRACTIC PRECEPTORSHIPS**

**SECTION 11J.3.(a)** Article 8 of Chapter 90 of the General Statutes is amended by adding a new section to read:

### **"§ 90-142.1. Supervised training programs authorized.**

(a) As used in this section, "preceptorship program" means a clinical program of an approved chiropractic college in which a student of chiropractic, under the supervision of a licensed chiropractor, observes the licensed chiropractor and may perform the duties of a certified chiropractic clinical assistant as specified in G.S. 90-143.4.

(b) Each student enrolled in a chiropractic college that meets the accreditation requirements of G.S. 90-143 may participate in a preceptorship program."

**SECTION 11J.3.(b)** G.S. 90-143.4(b) reads as rewritten:

"(b) Any person employed as a chiropractic clinical assistant shall obtain a certificate of competency from the State Board of Chiropractic Examiners (Board) within 180 days after the person begins employment. Certification shall not be required for employees whose duties are limited to administrative activities of a nonclinical nature. Except as otherwise provided in G.S. 90-142.1 and this section, it shall be unlawful for any person to practice as a chiropractic clinical assistant unless duly certified by the Board."

**SECTION 11J.3.(c)** The section is effective when this act becomes law.

## **SUBPART XI-K. DIVISIONS OF VOCATIONAL REHABILITATION, SERVICES FOR THE BLIND, AND SERVICES FOR THE DEAF AND HARD OF HEARING [RESERVED]**

## **SUBPART XI-L. DHHS BLOCK GRANTS**

### **DHHS BLOCK GRANTS**

**SECTION 11L.1.(a)** Except as otherwise provided, appropriations from federal block grant funds are made for each year of the fiscal biennium ending June 30, 2019, according to the following schedule:

**TEMPORARY ASSISTANCE FOR NEEDY**

**FY 2017-2018**

**FY 2018-2019**

## **FAMILIES (TANF) FUNDS**

### **Local Program Expenditures**

#### **Division of Social Services**

01. Work First Family Assistance	\$49,479,444	\$49,479,444
02. Work First County Block Grants	80,093,566	80,093,566
03. Work First Electing Counties	2,378,213	2,378,213
04. Adoption Services – Special Children Adoption Fund	2,026,877	2,026,877
05. Child Protective Services – Child Welfare Workers for Local DSS	9,412,391	9,412,391
06. Child Welfare Program Improvement Plan	775,176	775,176
07. Child Welfare Collaborative	400,000	400,000
08. Child Welfare Initiatives	1,400,000	1,400,000

#### **Division of Child Development and Early Education**

09. Subsidized Child Care Program	53,605,680	58,112,735
10. NC Pre-K Services	6,000,000	12,200,000
10A. Swap Child Care Subsidy	392,420	294,697

#### **Division of Public Health**

11. Teen Pregnancy Prevention Initiatives	2,950,000	2,950,000
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#### **DHHS Administration**

12. Division of Social Services	2,482,260	2,482,260
13. Office of the Secretary	34,042	34,042
14. Eligibility Systems – Operations and Maintenance	2,908,598	2,765,192
15. NC FAST Implementation	48,495	875,264

#### **Transfers to Other Block Grants**

#### **Division of Child Development and Early Education**

16. Transfer to the Child Care and Development Fund	71,773,001	71,773,001
<b>Division of Social Services</b>		
17. Transfer to Social Services Block Grant for Child Protective Services – Training	1,300,000	1,300,000
18. Transfer to Social Services Block Grant for Child Protective Services	5,040,000	5,040,000
19. Transfer to Social Services Block Grant for County Departments of Social Services for Children's Services	7,500,000	7,500,000
20. Transfer to Social Services Block Grant – Foster Care Services	1,385,152	1,385,152
<b>TOTAL TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) FUNDS</b>	<b>\$301,385,315</b>	<b>\$312,678,010</b>
<b>TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) EMERGENCY CONTINGENCY FUNDS</b>		
<b>Local Program Expenditures</b>		
<b>Division of Child Development and Early Education</b>		
01. Subsidized Child Care	\$28,600,000	\$28,600,000
02. Swap for Subsidized Child Care	3,304,255	0
<b>TOTAL TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) EMERGENCY CONTINGENCY FUNDS</b>	<b>\$31,904,255</b>	<b>\$28,600,000</b>
<b>SOCIAL SERVICES BLOCK GRANT</b>		
<b>Local Program Expenditures</b>		
<b>Divisions of Social Services and Aging and Adult Services</b>		
01. County Departments of Social Services (Transfer From TANF \$7,500,000)	\$32,971,498	\$33,003,632
02. EBCI Tribal Public Health and Human Services	244,740	244,740
03. Child Protective Services (Transfer From TANF)	5,040,000	5,040,000

04. State In-Home Services Fund	1,943,950	1,943,950
05. Adult Protective Services	1,245,363	1,245,363
06. State Adult Day Care Fund	1,994,084	1,994,084
07. Child Protective Services/CPS Investigative Services – Child Medical Evaluation Program	901,868	901,868
08. Special Children Adoption Incentive Fund	462,600	462,600
09. Child Protective Services – Child Welfare Training for Counties (Transfer From TANF)	1,300,000	1,300,000
10. Child Protective Services – Child Welfare Training for Counties	737,067	737,067
11. Home and Community Care Block Grant (HCCBG)	1,696,888	1,696,888
12. Child Advocacy Centers	582,000	582,000
13. Guardianship – Division of Social Services	815,362	815,362
14. Foster Care Services (Transfer From TANF)	1,385,152	1,385,152
<b>Division of Central Management and Support</b>		
15. DHHS Competitive Block Grants for Nonprofits	4,524,525	4,524,525
<b>Division of Mental Health, Developmental Disabilities, and Substance Abuse Services</b>		
16. Mental Health Services – Adult and Child/Developmental Disabilities Program/ Substance Abuse Services – Adult	4,181,729	4,149,595
<b>DHHS Program Expenditures</b>		
<b>Division of Services for the Blind</b>		
17. Independent Living Program	3,361,323	3,361,323
<b>Division of Health Service Regulation</b>		
18. Adult Care Licensure Program	381,087	381,087
19. Mental Health Licensure and		



Certification Program	190,284	190,284
<b>Division of Aging and Adult Services</b>		
20. Guardianship	3,825,443	3,825,443
<b>DHHS Administration</b>		
21. Division of Aging and Adult Services	577,745	577,745
22. Division of Social Services	634,680	634,680
23. Office of the Secretary/Controller's Office	127,731	127,731
24. Legislative Increases/Fringe Benefits	236,278	236,278
25. Division of Child Development and Early Education	13,878	13,878
26. Division of Mental Health, Developmental Disabilities, and Substance Abuse Services	27,446	27,446
27. Division of Health Service Regulation	118,946	118,946
<b>TOTAL SOCIAL SERVICES BLOCK GRANT</b>	<b>\$69,521,667</b>	<b>\$69,521,667</b>
<b>LOW-INCOME ENERGY ASSISTANCE BLOCK GRANT</b>		
<b>Local Program Expenditures</b>		
<b>Division of Social Services</b>		
01. Low-Income Energy Assistance Program (LIEAP)	\$36,402,610	\$35,419,272
02. Crisis Intervention Program (CIP)	36,402,610	35,419,272
<b>Local Administration</b>		
<b>Division of Social Services</b>		
03. County DSS Administration	5,978,512	5,817,014
<b>DHHS Administration</b>		
<b>Division of Central Management and Support</b>		
04. Division of Social Services	10,000	10,000
05. Office of the Secretary/DIRM	252,603	128,954

06. Office of the Secretary/Controller's Office	18,378	18,378
07. NC FAST Development	139,991	2,468,390
08. NC FAST Operations and Maintenance	2,135,701	2,539,033
<b>Transfers to Other State Agencies</b>		
<b>Department of Environmental Quality</b>		
09. Weatherization Program	10,716,043	10,426,573
10. Heating Air Repair and Replacement Program (HARRP)	5,701,752	5,547,732
11. Local Residential Energy Efficiency Service Providers – Weatherization	439,982	428,097
12. Local Residential Energy Efficiency Service Providers – HARRP	234,105	227,781
13. DENR – Weatherization Administration	439,982	428,097
14. DENR – HARRP Administration	234,105	227,781
<b>Department of Administration</b>		
15. N.C. Commission on Indian Affairs	87,736	87,736
<b>TOTAL LOW-INCOME ENERGY ASSISTANCE BLOCK GRANT</b>	<b>\$99,194,110</b>	<b>\$99,194,110</b>
<b>CHILD CARE AND DEVELOPMENT FUND BLOCK GRANT</b>		
<b>Local Program Expenditures</b>		
<b>Division of Child Development and Early Education</b>		
01. Child Care Services (Smart Start \$7,000,000)	\$152,923,849	\$152,416,794
02. Transfer from TANF Block Grant for Child Care Subsidies	71,773,001	71,773,001
03. Quality and Availability Initiatives (TEACH Program \$3,800,000)	45,761,678	45,761,678
<b>DHHS Administration</b>		
<b>Division of Child Development and Early Education</b>		

04. DCDEE Administrative Expenses	9,042,159	8,929,324
<b>Division of Social Services</b>		
05. Local Subsidized Child Care Services Support	16,436,361	16,436,361
06. Direct Deposit for Child Care Payments	505,100	505,100
<b>Division of Central Management and Support</b>		
07. NC FAST Development	24,237	427,865
08. NC FAST Operations and Maintenance	2,758,389	2,581,225
09. DHHS Central Administration – DIRM Technical Services	645,162	645,162
10. Central Regional Maintenance	287,854	287,854
11. DHHS Central Administration	7,346	7,346
<b>Division of Public Health</b>		
12. Child Care Health Consultation Contracts	62,205	62,205
<b>TOTAL CHILD CARE AND DEVELOPMENT FUND BLOCK GRANT</b>	<b>\$300,227,341</b>	<b>\$299,833,915</b>
<b>MENTAL HEALTH SERVICES BLOCK GRANT</b>		
<b>Local Program Expenditures</b>		
01. Mental Health Services – Child	\$3,619,833	\$3,619,833
02. Mental Health Services – Adult/Child	10,967,792	10,967,792
03. Crisis Solutions Initiative – Critical Time Intervention	750,000	750,000
04. Mental Health Services – First Psychotic Symptom Treatment	1,430,851	1,430,851
<b>DHHS Administration</b>		
<b>Division of Mental Health, Developmental Disabilities, and Substance Abuse Services</b>		
05. Administration	200,000	200,000
<b>TOTAL MENTAL HEALTH SERVICES BLOCK GRANT</b>	<b>\$16,968,476</b>	<b>\$16,968,476</b>

## **SUBSTANCE ABUSE PREVENTION AND TREATMENT BLOCK GRANT**

### **Local Program Expenditures**

#### **Division of Mental Health, Developmental Disabilities, and Substance Abuse Services**

01. Substance Abuse – HIV and IV Drug	\$3,919,723	\$3,919,723
02. Substance Abuse Prevention	8,998,382	8,998,382
03. Substance Abuse Services – Treatment for Children/Adults (Medication-Assisted Opioid Use Disorder Treatment Pilot Program \$500,000; First Step Farm of WNC, Inc. \$100,000)	27,722,717	27,621,286
04. Crisis Solutions Initiatives – Walk-In Crisis Centers	420,000	420,000
05. Crisis Solutions Initiatives – Collegiate Wellness/Addiction Recovery	1,085,000	1,085,000
06. Crisis Solutions Initiatives – Community Paramedic Mobile Crisis Management	60,000	60,000
07. Crisis Solutions Initiatives – Innovative Technologies	41,000	41,000

### **DHHS Program Expenditures**

#### **Division of Central Management and Support**

08. Competitive Block Grant	1,600,000	1,600,000
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### **DHHS Administration**

#### **Division of Mental Health, Developmental Disabilities, and Substance Abuse Services**

09. Administration	454,000	454,000
10. Controlled Substance Reporting System Enhancement	326,224	427,655

### **Division of Public Health**

11. HIV Testing for Individuals in Substance Abuse Treatment	965,949	965,949
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### **Transfers to Other State Agencies**

**Department of Military and Veterans Affairs**

12. Crisis Solutions Initiative – Veteran's Crisis	250,000	250,000
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**TOTAL SUBSTANCE ABUSE PREVENTION  
AND TREATMENT BLOCK GRANT**

<b>\$45,842,995</b>	<b>\$45,842,995</b>
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**MATERNAL AND CHILD HEALTH BLOCK GRANT****Local Program Expenditures****Division of Public Health**

01. Women and Children's Health Services (Safe Sleep Campaign \$45,000; Sickie Cell Centers \$100,000; Prevent Blindness \$575,000; March of Dimes \$350,000; Teen Pregnancy Prevention Initiatives \$650,000; 17P Project \$52,000; Nurse-Family Partnership \$550,000; Carolina Pregnancy Care Fellowship \$400,000; Perinatal & Neonatal Outreach Coordinator Contracts \$440,000)	\$11,802,435	\$11,802,435
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02. Oral Health	48,227	48,227
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03. Evidence-Based Programs in Counties With Highest Infant Mortality Rates	1,575,000	1,575,000
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03A. Every Week Counts	2,200,000	2,200,000
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**DHHS Program Expenditures**

04. Children's Health Services	1,427,323	1,427,323
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05. Women's Health – Maternal Health	169,864	169,864
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06. Women and Children's Health – Perinatal Strategic Plan Support Position	68,245	68,245
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07. State Center for Health Statistics	158,583	158,583
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08. Health Promotion – Injury and Violence Prevention	87,271	87,271
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**DHHS Administration**

09. Division of Public Health Administration	552,571	552,571
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**TOTAL MATERNAL AND CHILD  
HEALTH BLOCK GRANT**

<b>\$18,089,519</b>	<b>\$18,089,519</b>
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## **PREVENTIVE HEALTH SERVICES BLOCK GRANT**

### **Local Program Expenditures**

01. Physical Activity and Prevention	\$3,545,093	\$3,545,093
02. Injury and Violence Prevention (Services to Rape Victims – Set-Aside)	180,778	180,778

### **DHHS Program Expenditures**

#### **Division of Public Health**

03. HIV/STD Prevention and Community Planning	145,819	145,819
04. Oral Health Preventive Services	451,809	451,809
05. Laboratory Services – Testing, Training, and Consultation	21,012	21,012
06. Injury and Violence Prevention (Services to Rape Victims – Set-Aside)	192,315	192,315
07. State Laboratory Services – Testing, Training, and Consultation	199,634	199,634
08. Performance Improvement and Accountability	1,104,455	1,104,455
09. State Center for Health Statistics	107,291	107,291

### **DHHS Administration**

#### **Division of Public Health**

10. Division of Public Health	172,820	172,820
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### **TOTAL PREVENTIVE HEALTH SERVICES BLOCK GRANT**

<b>\$6,121,026</b>	<b>\$6,121,026</b>
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## **COMMUNITY SERVICES BLOCK GRANT**

01. Community Action Agencies	\$24,187,142	\$24,187,142
02. Limited Purpose Agencies	1,343,730	1,343,730
03. Office of Economic Opportunity	1,343,730	1,343,730

### **TOTAL COMMUNITY SERVICES**

**GENERAL PROVISIONS**

**SECTION 11L.1.(b)** Information to Be Included in Block Grant Plans. – The Department of Health and Human Services shall submit a separate plan for each Block Grant received and administered by the Department, and each plan shall include the following:

- (1) A delineation of the proposed allocations by program or activity, including State and federal match requirements.
- (2) A delineation of the proposed State and local administrative expenditures.
- (3) An identification of all new positions to be established through the Block Grant, including permanent, temporary, and time-limited positions.
- (4) A comparison of the proposed allocations by program or activity with two prior years' program and activity budgets and two prior years' actual program or activity expenditures.
- (5) A projection of current year expenditures by program or activity.
- (6) A projection of federal Block Grant funds available, including unspent federal funds from the current and prior fiscal years.

**SECTION 11L.1.(c)** Changes in Federal Fund Availability. – If the Congress of the United States increases the federal fund availability for any of the Block Grants or contingency funds and other grants related to existing Block Grants administered by the Department of Health and Human Services from the amounts appropriated in this section, the Department shall allocate the increase proportionally across the program and activity appropriations identified for that Block Grant in this section. In allocating an increase in federal fund availability, the Office of State Budget and Management shall not approve funding for new programs or activities not appropriated in this section.

If the Congress of the United States decreases the federal fund availability for any of the Block Grants or contingency funds and other grants related to existing Block Grants administered by the Department of Health and Human Services from the amounts appropriated in this section, the Department shall develop a plan to adjust the Block Grants based on reduced federal funding.

Notwithstanding the provisions of this subsection, for fiscal years 2017-2018 and 2018-2019, increases in the federal fund availability for the Temporary Assistance to Needy Families (TANF) Block Grant shall be used only for the North Carolina Child Care Subsidy program to pay for child care in four- or five-star rated facilities for four-year-old children and shall not be used to supplant State funds.

Prior to allocating the change in federal fund availability, the proposed allocation must be approved by the Office of State Budget and Management. If the Department adjusts the allocation of any Block Grant due to changes in federal fund availability, then a report shall be made to the Joint Legislative Oversight Committee on Health and Human Services and the Fiscal Research Division.

**SECTION 11L.1.(d)** Except as otherwise provided, appropriations from federal Block Grant funds are made for each year of the fiscal biennium ending June 30, 2019, according to the schedule enacted for State fiscal years 2017-2018 and 2018-2019 or until a new schedule is enacted by the General Assembly.

**SECTION 11L.1.(e)** All changes to the budgeted allocations to the Block Grants or contingency funds and other grants related to existing Block Grants administered by the Department of Health and Human Services that are not specifically addressed in this section shall be approved by the Office of State Budget and Management, and the Office of State Budget and Management shall consult with the Joint Legislative Oversight Committee on Health and Human Services for review prior to implementing the changes. The report shall include an itemized listing of affected programs, including associated changes in budgeted

allocations. All changes to the budgeted allocations to the Block Grants shall be reported immediately to the Joint Legislative Oversight Committee on Health and Human Services and the Fiscal Research Division. This subsection does not apply to Block Grant changes caused by legislative salary increases and benefit adjustments.

**SECTION 11L.1.(f)** Except as otherwise provided, the Department of Health and Human Services shall have flexibility to transfer funding between the Temporary Assistance for Needy Families (TANF) Block Grant and the TANF Emergency Contingency Funds Block Grant so long as the total allocation for the line items within those block grants remains the same.

## **TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) FUNDS**

**SECTION 11L.1.(g)** The sum of eighty million ninety-three thousand five hundred sixty-six dollars (\$80,093,566) for each year of the 2017-2019 fiscal biennium appropriated in this section in TANF funds to the Department of Health and Human Services, Division of Social Services, shall be used for Work First County Block Grants. The Division shall certify these funds in the appropriate State-level services based on prior year actual expenditures. The Division has the authority to realign the authorized budget for these funds among the State-level services based on current year actual expenditures. The Division shall also have the authority to realign appropriated funds from Work First Family Assistance for electing counties to the Work First County Block Grant for electing counties based on current year expenditures so long as the electing counties meet Maintenance of Effort requirements.

**SECTION 11L.1.(h)** The sum of nine million four hundred twelve thousand three hundred ninety-one dollars (\$9,412,391) appropriated in this section to the Department of Health and Human Services, Division of Social Services, in TANF funds for each fiscal year of the 2017-2019 fiscal biennium for child welfare improvements shall be allocated to the county departments of social services for hiring or contracting staff to investigate and provide services in Child Protective Services cases; to provide foster care and support services; to recruit, train, license, and support prospective foster and adoptive families; and to provide interstate and post-adoption services for eligible families.

Counties shall maintain their level of expenditures in local funds for Child Protective Services workers. Of the Block Grant funds appropriated for Child Protective Services workers, the total expenditures from State and local funds for fiscal years 2017-2018 and 2018-2019 shall not be less than the total expended from State and local funds for the 2012-2013 fiscal year.

**SECTION 11L.1.(i)** The sum of two million twenty-six thousand eight hundred seventy-seven dollars (\$2,026,877) appropriated in this section in TANF funds to the Department of Health and Human Services, Special Children Adoption Fund, for each fiscal year of the 2017-2019 fiscal biennium shall be used in accordance with G.S. 108A-50.2. The Division of Social Services, in consultation with the North Carolina Association of County Directors of Social Services and representatives of licensed private adoption agencies, shall develop guidelines for the awarding of funds to licensed public and private adoption agencies upon the adoption of children described in G.S. 108A-50 and in foster care. Payments received from the Special Children Adoption Fund by participating agencies shall be used exclusively to enhance the adoption services program. No local match shall be required as a condition for receipt of these funds.

**SECTION 11L.1.(j)** The sum of one million four hundred thousand dollars (\$1,400,000) appropriated in this section in TANF funds to the Department of Health and Human Services, Division of Social Services, for each fiscal year of the 2017-2019 fiscal biennium shall be used for child welfare initiatives to (i) enhance the skills of social workers to improve the outcomes for families and children involved in child welfare and (ii) enhance the provision of services to families in their homes in the least restrictive setting.



## **SOCIAL SERVICES BLOCK GRANT**

**SECTION 11L.1.(k)** The sum of thirty-two million nine hundred seventy-one thousand four hundred ninety-eight dollars (\$32,971,498) for the 2017-2018 fiscal year and the sum of thirty-three million three thousand six hundred thirty-two dollars (\$33,003,632) for the 2018-2019 fiscal year appropriated in this section in the Social Services Block Grant to the Department of Health and Human Services, Division of Social Services, shall be used for county block grants. The Division shall certify these funds in the appropriate State-level services based on prior year actual expenditures. The Division has the authority to realign the authorized budget for these funds, as well as State Social Services Block Grant funds, among the State-level services based on current year actual expenditures.

Of the funds appropriated in this subsection for each year of the 2017-2019 fiscal biennium for county block grants, three million dollars (\$3,000,000) shall be used to assist counties in the implementation of Project 4, Child Services, in North Carolina Families Accessing Services Through Technology (NC FAST). These funds shall be available in each fiscal year of the fiscal biennium for this purpose.

**SECTION 11L.1.(l)** The sum of one million three hundred thousand dollars (\$1,300,000) appropriated in this section in the Social Services Block Grant to the Department of Health and Human Services, Division of Social Services, for each fiscal year of the 2017-2019 fiscal biennium shall be used to support various child welfare training projects as follows:

- (1) Provide a regional training center in southeastern North Carolina.
- (2) Provide training for residential child caring facilities.
- (3) Provide for various other child welfare training initiatives.

**SECTION 11L.1.(m)** The Department of Health and Human Services is authorized, subject to the approval of the Office of State Budget and Management, to transfer Social Services Block Grant funding allocated for departmental administration between divisions that have received administrative allocations from the Social Services Block Grant.

**SECTION 11L.1.(n)** Social Services Block Grant funds appropriated for the Special Children Adoption Incentive Fund shall require a fifty percent (50%) local match.

**SECTION 11L.1.(o)** The sum of five million forty thousand dollars (\$5,040,000) appropriated in this section in the Social Services Block Grant for each fiscal year of the 2017-2019 fiscal biennium shall be allocated to the Department of Health and Human Services, Division of Social Services. The Division shall allocate these funds to local departments of social services to replace the loss of Child Protective Services State funds that are currently used by county governments to pay for Child Protective Services staff at the local level. These funds shall be used to maintain the number of Child Protective Services workers throughout the State. These Social Services Block Grant funds shall be used to pay for salaries and related expenses only and are exempt from 10A NCAC 71R .0201(3) requiring a local match of twenty-five percent (25%).

**SECTION 11L.1.(p)** The sum of four million five hundred twenty-four thousand five hundred twenty-five dollars (\$4,524,525) for each year of the 2017-2019 fiscal biennium appropriated in this section in the Social Services Block Grant to the Department of Health and Human Services (DHHS), Division of Central Management and Support, shall be used for DHHS competitive block grants pursuant to Section 11A.14 of this act. These funds are exempt from the provisions of 10A NCAC 71R .0201(3).

**SECTION 11L.1.(q)** The sum of five hundred eighty-two thousand dollars (\$582,000) appropriated in this section in the Social Services Block Grant for each fiscal year of the 2017-2019 fiscal biennium to the Department of Health and Human Services, Division of Social Services, shall be used to continue support for the Child Advocacy Centers, and the funds are exempt from the provisions of 10A NCAC 71R .0201(3).

**SECTION 11L.1.(r)** The sum of three million eight hundred twenty-five thousand four hundred forty-three dollars (\$3,825,443) for each fiscal year of the 2017-2019 fiscal biennium appropriated in this section in the Social Services Block Grant to the Department of Health and Human Services, Divisions of Social Services and Aging and Adult Services, shall be used for guardianship services pursuant to Chapter 35A of the General Statutes. The Department may expend funds appropriated in this section to support existing corporate guardianship contracts during the 2017-2018 and 2018-2019 fiscal years.

**SECTION 11L.1.(s)** The sum of seven hundred thirty-seven thousand sixty-seven dollars (\$737,067) appropriated in this section in the Social Services Block Grant for each fiscal year of the 2017-2019 fiscal biennium shall be allocated to the Department of Health and Human Services, Division of Social Services. These funds shall be used to assist with training needs for county child welfare training staff and shall not be used to supplant any other source of funding for staff. County departments of social services are exempt from 10A NCAC 71R .0201(3) requiring a local match of twenty-five percent (25%).

### **LOW-INCOME ENERGY ASSISTANCE BLOCK GRANT**

**SECTION 11L.1.(t)** Additional emergency contingency funds received may be allocated for Energy Assistance Payments or Crisis Intervention Payments without prior consultation with the Joint Legislative Oversight Committee on Health and Human Services. Additional funds received shall be reported to the Joint Legislative Oversight Committee on Health and Human Services and the Fiscal Research Division upon notification of the award. The Department of Health and Human Services shall not allocate funds for any activities, including increasing administration, other than assistance payments, without prior consultation with the Joint Legislative Oversight Committee on Health and Human Services.

**SECTION 11L.1.(u)** The sum of thirty-six million four hundred two thousand six hundred ten dollars (\$36,402,610) for the 2017-2018 fiscal year and the sum of thirty-five million four hundred nineteen thousand two hundred seventy-two dollars (\$35,419,272) for the 2018-2019 fiscal year appropriated in this section in the Low-Income Energy Assistance Block Grant to the Department of Health and Human Services, Division of Social Services, shall be used for Energy Assistance Payments for the households of (i) elderly persons age 60 and above with income up to one hundred thirty percent (130%) of the federal poverty level and (ii) disabled persons eligible for services funded through the Division of Aging and Adult Services.

County departments of social services shall submit to the Division of Social Services an outreach plan for targeting households with 60-year-old household members no later than August 1 of each year. The outreach plan shall comply with the following:

- (1) Ensure that eligible households are made aware of the available assistance, with particular attention paid to the elderly population age 60 and above and disabled persons receiving services through the Division of Aging and Adult Services.
- (2) Include efforts by the county department of social services to contact other State and local governmental entities and community-based organizations to (i) offer the opportunity to provide outreach and (ii) receive applications for energy assistance.
- (3) Be approved by the local board of social services or human services board prior to submission.

### **CHILD CARE AND DEVELOPMENT FUND BLOCK GRANT**

**SECTION 11L.1.(v)** Payment for subsidized child care services provided with federal TANF funds shall comply with all regulations and policies issued by the Division of Child Development and Early Education for the subsidized child care program.

**SECTION 11L.1.(w)** If funds appropriated through the Child Care and Development Fund Block Grant for any program cannot be obligated or spent in that program within the obligation or liquidation periods allowed by the federal grants, the Department may move funds to child care subsidies, unless otherwise prohibited by federal requirements of the grant, in order to use the federal funds fully.

#### **MENTAL HEALTH SERVICES BLOCK GRANT**

**SECTION 11L.1.(x)** The sum of one million four hundred thirty thousand eight hundred fifty-one dollars (\$1,430,851) appropriated in this section in the Mental Health Services Block Grant to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, for each fiscal year of the 2017-2019 fiscal biennium is allocated for Mental Health Services – First Psychotic Symptom Treatment. The Division shall report on (i) the specific evidence-based treatment and services provided, (ii) the number of persons treated, and (iii) the measured outcomes or impact on the participants served. The Division shall report to the House of Representatives Appropriations Committee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division no later than December 31 of each year.

#### **SUBSTANCE ABUSE PREVENTION AND TREATMENT BLOCK GRANT**

**SECTION 11L.1.(y)** The sum of two hundred fifty thousand dollars (\$250,000) appropriated in this section in the Substance Abuse Prevention and Treatment Block Grant to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, for each fiscal year of the 2017-2019 fiscal biennium shall be allocated to the Department of Military and Veterans Affairs, for the call-in center established to assist veterans in locating service benefits and crisis services. The call-in center shall be staffed by certified veteran peers within the Department of Military and Veterans Affairs and trained by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services.

**SECTION 11L.1.(z)** The sum of five hundred thousand dollars (\$500,000) allocated in this section in the Substance Abuse Prevention and Treatment Block Grant to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, for each fiscal year of the 2017-2019 fiscal biennium shall be used for a medication-assisted opioid use disorder treatment pilot program.

#### **MATERNAL AND CHILD HEALTH BLOCK GRANT**

**SECTION 11L.1.(aa)** If federal funds are received under the Maternal and Child Health Block Grant for abstinence education, pursuant to section 912 of Public Law 104-193 (42 U.S.C. § 710), for the 2017-2018 fiscal year or the 2018-2019 fiscal year, then those funds shall be transferred to the State Board of Education to be administered by the Department of Public Instruction. The Department of Public Instruction shall use the funds to establish an abstinence until marriage education program and shall delegate to one or more persons the responsibility of implementing the program and G.S. 115C-81(e1)(4) and (4a). The Department of Public Instruction shall carefully and strictly follow federal guidelines in implementing and administering the abstinence education grant funds.

**SECTION 11L.1.(bb)** The sum of one million five hundred seventy-five thousand dollars (\$1,575,000) appropriated in this section in the Maternal and Child Health Block Grant to the Department of Health and Human Services, Division of Public Health, for each fiscal year of the 2017-2019 fiscal biennium shall be used for evidence-based programs in counties with the highest infant mortality rates. The Division shall report on (i) the counties selected to receive the allocation, (ii) the specific evidence-based services provided, (iii) the number of women served, and (iv) any impact on the counties' infant mortality rate. The Division shall

report its findings to the House of Representatives Appropriations Committee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division no later than December 31 of each year.

**SECTION 11L.1.(cc)** No more than fifteen percent (15%) of the funds provided in this section in the Maternal and Child Health Block Grant to Carolina Pregnancy Care Fellowship shall be used for administrative purposes. The balance of those funds shall be used for direct services.

**SECTION 11L.1.(dd)** The sum of sixty-eight thousand two hundred forty-five dollars (\$68,245) allocated in this section in the Maternal and Child Health Block Grant to the Department of Health and Human Services, Division of Public Health, Women and Children's Health Section, for each fiscal year of the 2017-2019 fiscal biennium shall not be used to supplant existing State or federal funds. This allocation shall be used for a Public Health Program Consultant position assigned full-time to manage the North Carolina Perinatal Health Strategic Plan and provide staff support for the stakeholder work group.

**SECTION 11L.1.(ee)** The sum of one hundred thousand dollars (\$100,000) allocated in this section in the Maternal and Child Health Block Grant to the Department of Health and Human Services, Division of Public Health, for each year of the 2017-2019 fiscal biennium for community-based sickle cell centers shall not be used to supplant existing State or federal funds.

## **PART XII. DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES**

### **ELIMINATE PESTICIDE ADVISORY COMMITTEE**

**SECTION 12.1.(a)** Effective July 1, 2017, the Pesticide Advisory Committee is abolished, and all records, property, and unexpended balances of funds of the Committee are transferred to the Structural Pest Control and Pesticides Division of the Department of Agriculture and Consumer Services.

**SECTION 12.1.(b)** G.S. 143-439 and subdivision (6) of G.S. 143-460 are repealed.

### **SUPPLEMENTAL FUNDING FOR DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES**

**SECTION 12.2.** Of the nonrecurring funds appropriated to the Department of Agriculture and Consumer Services for the 2017-2018 fiscal year, the Department may use up to two hundred fifty thousand dollars (\$250,000) to offset costs potentially incurred by the Department in federal litigation to protect the rights of landowners and citizens of the State impacted by the Environmental Protection Agency's "Waters of the United States" rule. Notwithstanding any other provision of law to the contrary, the Department may use the funds described in this section to employ and supervise private counsel if it decides to participate in the federal litigation.

### **KEEP LINVILLE RIVER NURSERY OPEN**

**SECTION 12.4.** The North Carolina Forest Service shall continue operations at the Linville River Nursery in Avery County during the 2017-2018 fiscal year and shall not close the nursery without authorization from the General Assembly.

### **HEALTHY FOOD/SMALL RETAILER**

**SECTION 12.5.(a)** The funds appropriated by this act for the Healthy Food/Small Retailer program shall be used to continue a program to reimburse small food retailers for expenditures related to enhancing access to healthy foods in areas that qualify as food desert zones according to the Economic Research Service of the United States Department of Agriculture. For the purposes of this section, a small food retailer is defined as a business that

sum of three hundred thousand dollars (\$300,000) in nonrecurring funds for the 2017-2018 fiscal year is allocated for planning of Blake Farms satellite aquarium area in Scotts Hill, North Carolina, and the Division is authorized to expend funds for this purpose.

## **PART XV. DEPARTMENT OF COMMERCE**

### **NER BLOCK GRANTS FOR 2018 AND 2019 PROGRAM YEARS/USE OF DEOBLIGATED FUNDS**

**SECTION 15.1.(a)** Appropriations from federal block grant funds are made for the fiscal years ending June 30, 2018, and June 30, 2019, according to the following schedule:

#### **COMMUNITY DEVELOPMENT BLOCK GRANT**

01. State Administration	\$ 1,037,500
02. Neighborhood Revitalization	10,000,000
03. Economic Development	10,737,500
04. Infrastructure	21,725,000

#### **TOTAL COMMUNITY DEVELOPMENT**

**BLOCK GRANT – 2018 Program Year**

**\$ 43,500,000**

**2019 Program Year**

**\$ 43,500,000**

**SECTION 15.1.(b)** If federal funds are reduced below the amounts specified in this section after the effective date of this act, then every program in each of these federal block grants shall be reduced by the same percentage as the reduction in federal funds.

**SECTION 15.1.(c)** Any block grant funds appropriated by the Congress of the United States in addition to the funds specified in this section shall be expended as follows: each program category under the Community Development Block Grant shall be increased by the same percentage as the increase in federal funds.

**SECTION 15.1.(d)** Of the funds appropriated in this section for the Community Development Block Grant, the following shall be allocated in each category for each program year: up to one million thirty-seven thousand five hundred dollars (\$1,037,500) may be used for State Administration, up to ten million dollars (\$10,000,000) may be used for Neighborhood Revitalization, up to ten million seven hundred thirty-seven thousand five hundred dollars (\$10,737,500) may be used for Economic Development, and up to twenty-one million seven hundred twenty-five thousand dollars (\$21,725,000) may be used for infrastructure. If federal block grant funds are reduced or increased by the Congress of the United States after the effective date of this act, then these reductions or increases shall be allocated in accordance with subsection (b) or (c) of this section, as applicable.

**SECTION 15.1.(e)** The Department of Commerce shall consult with the Joint Legislative Commission on Governmental Operations prior to reallocating Community Development Block Grant Funds. Notwithstanding the provisions of this subsection, whenever the Director of the Budget finds that:

- (1) A reallocation is required because of an emergency that poses an imminent threat to public health or public safety, the Director of the Budget may authorize the reallocation without consulting the Commission. The Department of Commerce shall report to the Commission on the reallocation no later than 30 days after it was authorized and shall identify in the report

(f1) Alternate Delayed Sunset. – This section is repealed effective for renewable energy property utilizing renewable biomass resources placed in service on or after May 5, 2017.

(g) Delayed Sunset Conditions. – A taxpayer is eligible for the delayed sunset provided by this subsection subsection (f) or (f1) of this section if the taxpayer makes a timely application for the extension, pays the application fee, and meets both of the following conditions on or before January 1, 2016: (i) incurred at least the minimum percentage of costs of the project and (ii) completed at least the minimum percentage of the physical construction of the project. For a project with a total size of less than 65 megawatts of direct current capacity, the minimum percentage of incurred costs and partial construction is at least eighty percent (80%). For a project with a total size of 65 megawatts or more of direct current capacity, the minimum percentage of incurred costs and partial construction is at least fifty percent (50%).

An application and payment must be filed with the Secretary on or before October 1, 2015. The application must include the location of the project, an estimate of the total cost of the project, the total anticipated credit to be claimed, and the total size in megawatt capacity of each project proposed or under construction. The nonrefundable fee to be paid with the application is one thousand dollars (\$1,000) per megawatt of capacity, with a minimum fee of five thousand dollars (\$5,000).

A taxpayer must provide the documentation required under this subsection to the Department on or before March 1, 2016, to verify that the taxpayer meets the minimum percentage of incurred costs and partial construction required to be eligible for the sunset extension:

- (1) A written certification signed by the taxpayer that, prior to January 1, 2016, at least the minimum percentage of the physical construction of the project was completed and that at least the minimum percentage of the total cost of the project was incurred.
- (2) A notarized copy of a written report prepared by an independent engineer duly licensed in the State of North Carolina with expertise in the design and construction of installations of renewable energy property stating that at least the minimum percentage of the physical construction of the project was completed prior to January 1, 2016.
- (3) A notarized copy of a written report prepared by a certified public accountant duly licensed to practice in the State of North Carolina with expertise in accounting for and taxation of renewable energy property and that was prepared in accordance with AT Section 201 of the American Institute of Certified Public Accountants Standards for Agreed-Upon Procedures Engagements stating that the minimum percentage of the total cost of the project was paid or incurred as determined under Section 461 and other relevant sections of the Code prior to January 1, 2016."

## **PART XXXIX. MISCELLANEOUS PROVISIONS**

### **STATE BUDGET ACT APPLIES**

**SECTION 39.1.** The provisions of the State Budget Act, Chapter 143C of the General Statutes, are reenacted and shall remain in full force and effect and are incorporated in this act by reference.

### **COMMITTEE REPORT**

**SECTION 39.2.(a)** The Joint Conference Committee Report on the Base, Capital, and Expansion Budgets for Senate Bill 257, dated June 19, 2017, which was distributed in the Senate and the House of Representatives and used to explain this act, shall indicate action by the General Assembly on this act and shall, therefore, be used to construe this act, as provided

in the State Budget Act, Chapter 143C of the General Statutes, as appropriate, and for these purposes shall be considered a part of this act and, as such, shall be printed as a part of the Session Laws.

**SECTION 39.2.(b)** The budget enacted by the General Assembly is for the maintenance of the various departments, institutions, and other spending agencies of the State for the 2017-2019 biennial budget as provided in G.S. 143C-3-5. This budget includes the appropriations of State funds as defined in G.S. 143C-1-1(d)(25).

The Director of the Budget submitted a recommended base budget to the General Assembly in the Governor's Recommended Budget for the 2017-2019 fiscal biennium, dated March 2017, and in the Budget Support Document for the various departments, institutions, and other spending agencies of the State. The adjustments to the recommended base budget made by the General Assembly are set out in the Committee Report.

**SECTION 39.2.(c)** The budget enacted by the General Assembly shall also be interpreted in accordance with G.S. 143C-5-5, the special provisions in this act, and other appropriate legislation. In the event that there is a conflict between the line-item budget certified by the Director of the Budget and the budget enacted by the General Assembly, the budget enacted by the General Assembly shall prevail.

**SECTION 39.2.(d)** Notwithstanding subsection (a) of this section, the following portions of the Committee Report are for reference, and do not expand, limit, or define the text of the Committee Report:

- (1) Summary pages setting forth the enacted budget, the legislative changes, the revised budget, and the related FTE information for a particular budget code and containing no other substantive information.
- (2) Summary pages setting forth the enacted budget, the legislative changes, the revised budget, and the related FTE information for multiple fund codes within a single budget code and containing no other substantive information.

## **REPORT BY FISCAL RESEARCH DIVISION**

**SECTION 39.3.** The Fiscal Research Division shall issue a report on budget actions taken by the 2017 Regular Session of the General Assembly. The report shall be in the form of a revision of the Committee Report adopted for Senate Bill 257 pursuant to G.S. 143C-5-5. The Director of the Fiscal Research Division shall send a copy of the report issued pursuant to this section to the Director of the Budget. The report shall be published on the General Assembly's Internet Web site for public access.

## **MOST TEXT APPLIES ONLY TO THE 2017-2019 FISCAL BIENNIUM**

**SECTION 39.4.** Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2017-2019 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2017-2019 fiscal biennium.

## **EFFECT OF HEADINGS**

**SECTION 39.5.** The headings to the Parts, subparts, and sections of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act, except for effective dates referring to a Part or subpart.

## **SEVERABILITY CLAUSE**

**SECTION 39.6.** If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

**EFFECTIVE DATE**

**SECTION 39.7.** Except as otherwise provided, this act becomes effective July 1, 2017.

In the General Assembly read three times and ratified this the 22<sup>nd</sup> day of June, 2017.

s/ Philip E. Berger  
President Pro Tempore of the Senate

s/ Tim Moore  
Speaker of the House of Representatives

VETO Roy Cooper  
Governor

Became law notwithstanding the objections of the Governor at 10:38 a.m. this 28<sup>th</sup> day of June, 2017.

s/ James White  
House Principal Clerk