

Part 1: September 3, 2014

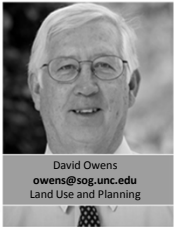
 Local Government Legislative Update



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Materials

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Each year, School of Government faculty and professional staff members produce summaries of legislation of interest to local and state government officials. These summaries appear in a variety of formats; for your convenience, these summaries have all been collected and can be found below according to subject matter. A number of bills affect several subject matters and may be found in more than one document. To further investigate bills referred to in these summaries, explore the North Carolina General Assembly Web site. To access summaries of legislation published from 1955-2008, please visit North Carolina Legislation.

Economic and Community Development

Blog post

- NC Local Governments, Meet Your New State Partner for Economic Development

Ethics and Lobbying

Blog post

- File or Get Fined: New Penalties for Violating MPO/RPO Ethics Disclosure Requirements

Local Government and Local Finance

Blog post

- File or Get Fined: New Penalties for Violating MPO/RPO Ethics Disclosure Requirements

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De-coding The Slides

- S 123 = Senate Bill 123
- H 456 = House Bill 456
- S.L. 2014-789; H 456 = House Bill 456 was enacted and became S.L. 2014-789
- G.S. 99-111 (S.L. 2014-789; H 456) = The changes in S.L. 2014-789 included either the addition of a new statute or an amendment to an existing statute (N.C. General Statute 99-111)




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JAILS & SEX OFFENDERS

County Jails

- Statewide Misdemeanant Confinement Program (SMCP) expanded (G.S. 15A-1352)

S.L. 2014-100; S 744

Effective October 1, 2014; January 1, 2015

Statewide Misdemeanant Confinement Program

- Created in 2011
- Shifted some misdemeanor inmates from state prison to the county jails

2011

Misdemeanors
90 days or less:
LOCAL JAIL



Misdemeanors
91-180 days
except DWI:
SMCP

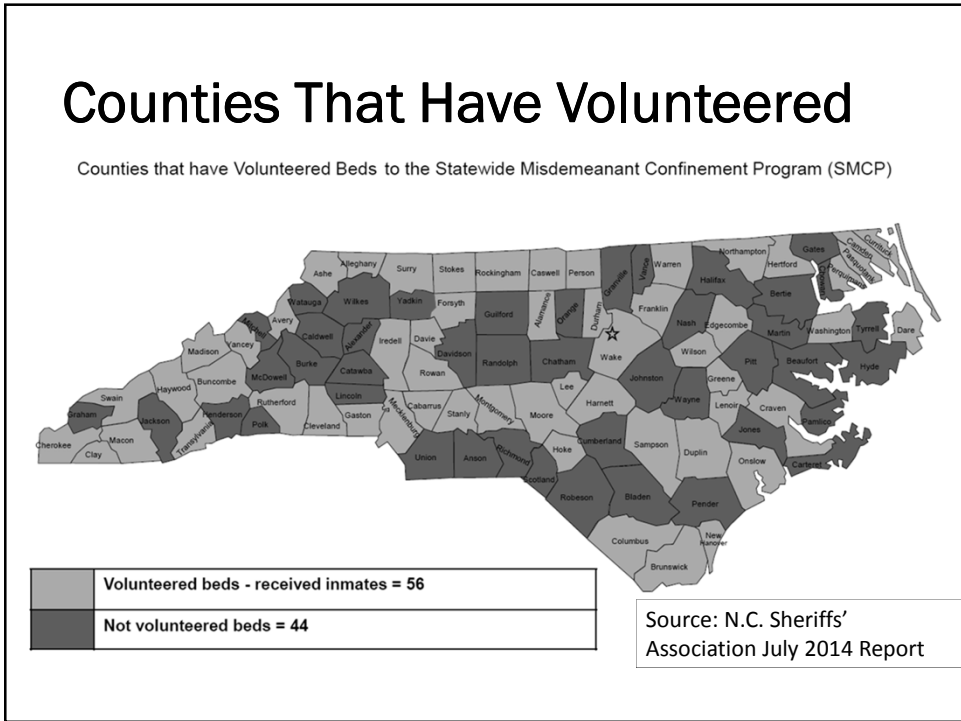
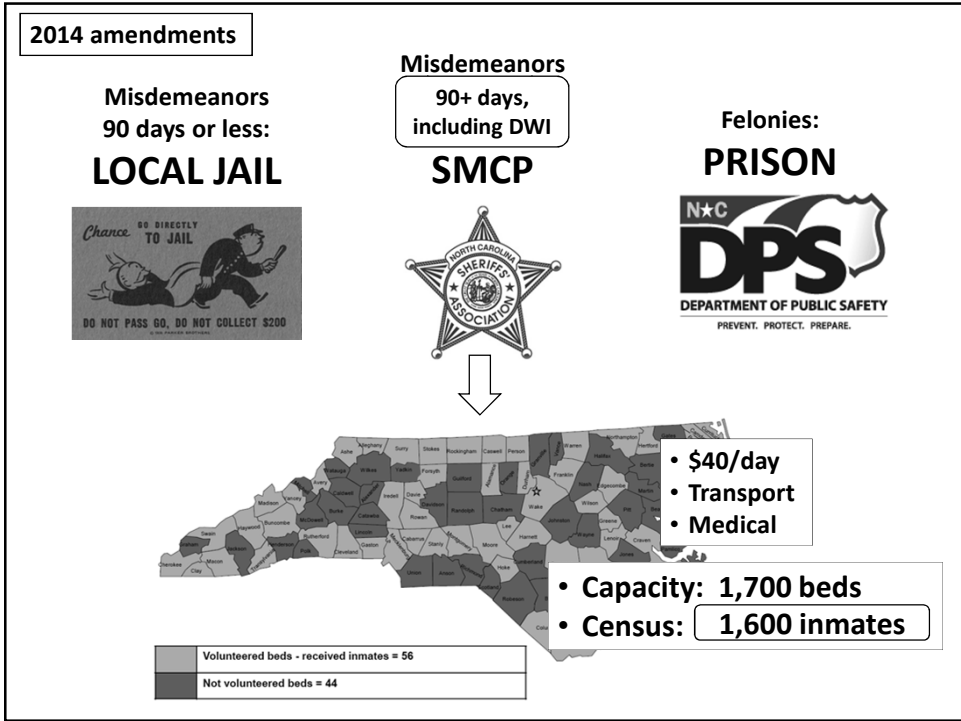


Felonies:
PRISON



- Capacity: 1,700 beds
- Census: 615 inmates

| |
|--|
| Volunteered beds - received inmates = 56 |
| Not volunteered beds = 44 |



SMCP Expansion: Issues

- DWI programming?
- Jails must follow state sentence credit and parole rules
- Future of SMCP fund?

S.L. 2014-100; S 744

Effective October 1, 2014; January 1, 2015

Dormitory Requirements

- Rule allowing 64 inmates per dorm expanded to apply to all counties (G.S. 153A-221)

S.L. 2014-22; S 463

Effective June 18, 2014

Sex Offender Registry

- Residency restriction expanded (G.S. 14-208.16)
- Offender cannot reside within 1,000 feet of:
 - School
 - Child care center
 - Boys & Girls Club





**BOYS & GIRLS CLUBS
OF AMERICA**

S.L. 2014-21; H 777
Effective June 19, 2014

Questions?



Evaluation: https://unc.az1.qualtrics.com/SE/?SID=SV_3ErjWAIk0yzRjQ9



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ENVIRONMENT & NATURAL RESOURCES

Overview

- Changes that reduce public environmental information
- Changes that allow more development or property use in environmentally sensitive areas
- Environmentally protective changes
- Environmental finance
- ~~Matters in limbo~~



Reduced Public Information

- Farm Act of 2014 (S.L. 2014-103; H 366)
 - making environmental complaints about farms confidential
 - restricting local authority to regulate fertilizer
- SEPA exemption for repair or replacement of certain coastal highways that sound like NC 12 on the Outer Banks (S.L. 2014-100; § 14.7; S 744)
- SEPA exemption for redevelopment or reoccupation of existing facilities if total footprint grows up to 50% (S.L. 2014-90; H 201)



Reduced Public Information

- “Capstone permitting”: no challenges to multi-permit projects until all permits in, RRB (S.L. 2014-__, § 48; S 734)
- Oil/gas disclosure on property transfer: RRB §__ clarifies it, continues to allow “no representation” on severance of mineral rights



Reduced Development Restrictions I

- Stormwater changes (S.L. 2014-90; H 201)
 - Revise definitions of “development” and “redevelopment” to take existing development out of the calculation of “built upon area”
 - Prohibit stormwater requirements for existing development “unless otherwise required by federal law”
 - This likely requires EMC rulemaking to sort out implementation questions
 - But there are some **direct implications for local stormwater programs**: can’t require “new or increased stormwater controls for (i) preexisting development or (ii) redevelopment activities that do not remove or decrease existing stormwater controls “
- RRB §§ 25, 45, 26 & 50 change coastal stormwater grandfathering; gravel perviousness; P.O. boxes; reform reporting



Reduced Development Restrictions II

- Rewrite of mitigation rules (S.L. 2014-95; S 883)
 - Disapproves a 2013 EMC rule on riparian buffer maintenance and directs new text
- Onsite wastewater (S.L. 2014-90; H 201)
 - Lets certain infiltration systems lower groundwater without considering that a discharge of wastewater
 - See also RRB §§ 28, 40(a), 47, 57



Reduced Development Restrictions II

- Reclaimed water as source water (S.L. 2014-113; S 163)
 - Allows treated wastewater to be mixed with source water and reused, under some conditions. Also encourages the use of gray water, and sends DENR back to the drawing table on rules for reclaimed and gray water
- See also RRB
 - § 54 – small coastal wetlands
 - § 37 – IBTs for certain reservoirs
 - § 43(a) – std. local well permitting
 - § 51 – date of change in definition of “discharge”



Reduced Local Control Over Environmental Concerns

- Tightened local engineering supervision requirements to require “direct” supervision (RRB §§ 11(b), 29)
- Restricted local control of open burning and combustion heaters (RRB § 24)



Reduced Development Restrictions: Fracking

- Green light for fracking without further legislative action (S.L. 2014-4; S 786)
 - Some tweaks in the evolving regulatory program being built by the Mining and Energy Commission (MEC)
 - Most crucial for local government: local “preemption”
 - Can’t directly and specifically add regulations for oil and gas operations locally, per se
 - Can’t prohibit them
 - Can’t add special setbacks
 - Can’t specifically target with process requirements
 - Can continue generally applicable existing local land use controls, e.g. treating oil and gas operations the same way other industrial uses are treated. May be challenged.
 - Sets up MEC as review body that can decide whether particular local ordinances are preempted, or not

Environmentally Protective Changes

- Removed 2013 temporary limitation on local environmental ordinances
- Source water protection planning (S.L. 2014-41; H 894 & S.L. 2014-115 §55.5; H 1133)
 - Every public water supplier treating surface supplies must make & implement a source water protection plan
- Statute of repose for injury from contaminated groundwater (S.L. 2014-17; S 574 & S.L. 2014-44; S 58)
 - Allows lawsuits by persons injured by contaminated groundwater to go forward despite injury occurring more than ten years from the last act by the polluter

Questions?



Evaluation: https://unc.az1.qualtrics.com/SE/?SID=SV_3ErjWAIk0yzRjQ9



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LAND USE AND PLANNING

Temporary Health Care Structures

Cities and counties must treat a “temporary health care structure” as a permitted accessory use for single-family detached homes

S.L. 2014-94; H 625



Temporary Health Care Structures

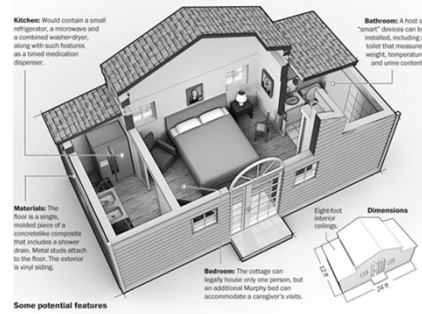
Applicability

- Limited to one occupant, who can be
 - the mentally or physically impaired person, or
 - a caregiver related to impaired person
- Located on property owned or occupied as the residence of the caregiver or a guardian of the impaired person

Temporary Health Care Structures

Requirements for structure

- Assembled off-site
- Meets building code for manufactured or modular housing
- No more than 300 sq. ft.
- Not on a permanent foundation



Temporary Health Care Structures

Regulatory limits

- No special or conditional use permit
- Only one per lot
- Comply with setbacks and floor area ratio for primary structure
- Can require annual permit, all utility connections
- No advertising signage
- Remove within 60 days of end of care-giving

Vested Rights

If regulation changes after application is submitted and before decision is made, must give applicant choice of complying with old or new regulation

Applies to all state and local development permits other than zoning permits

S.L. 2014-xxx, § 16; S 734

Environmental

Local regulations affecting construction and operation of fracking:

- 1) May not prohibit or have effect of prohibiting construction or operation
- 2) Generally applicable rules (setbacks, buffers, stormwater, etc.,) are presumed valid
- 3) If denied, operator may appeal to state Energy Commission to override

S.L. 2014-4; § 14; S 786

Environmental

Findings to override local regulation:

- 1) Local ordinance prohibits or has effect of prohibiting fracking operation
- 2) All required state and federal permits issued
- 3) Citizen and local government opportunity for participation in permitting process
- 4) No unreasonable health or environmental risk, reasonable measures taken to avoid or manage risks, and complied to maximum extent feasible with local regulation

Flood Hazard Zones

Farm uses in ETJ that are exempt from city jurisdiction are subject to county floodplain regulations – S.L. 2014-___, § 15; S 734

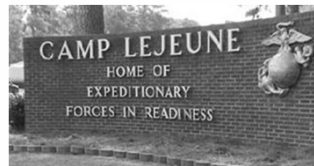
Mecklenburg and Wake Counties authorized to use stormwater management programs to acquire, demolish, or elevate flood prone structures – S.L. 2014-14; H. 573



Tall Buildings Near Major Military Bases

Shift review and endorsement of buildings over 200 feet tall within five miles of major military bases from Building Code Council to State Construction Office

S.L. 2014-79; S 614



Regulation of Fertilizer

Local government may not regulate use, sale, distribution, storage, transportation, disposal, formulation, labeling, registration, manufacture, or application of fertilizer

Does not prohibit exercise of planning and zoning authority, fire protection/inspection, or state/local rules to protect water quality

S.L. 2014-103, § 2; H 366

Notice to Owners re ROW TDRs

Affects ROW corridors identified in municipal transportation plan

If zoning or subdivision regulation requires dedication of ROW with transfer of density, must notify applicant and owner when review or negotiations begin

S.L. 2014-108; S 272

Building Code

Additions to pre-2012 commercial buildings to use 2011 energy efficiency/conservation code provisions

S.L 2014-90; H 201

NOTABLE LOCAL LAWS

Land Use and Planning

Jurisdiction

Eliminate for ETJ for Weaverville (and allow Buncombe Co. to zone areas of less than 640 acres) – S.L. 2014-26; H 531

Eliminate ETJ for Boone – S.L. 2014-33; S 865

Zoning Vacation Rentals

Allow Cornelius zoning to regulate vacation rentals and other transient occupancy

Regulations can include:

- Permitting
- Prohibit in specified residential zoning districts
- Limit number of cars/occupants, signage
- Preserve residential character
- Time limits

S.L. 2014-91; S 859

NOT ENACTED

Land Use and Planning

Not Enacted


- Limits on residential design standards
- Eliminate zoning protest petitions
- Annual notice for chronic violators of overgrown lot ordinances
- Limit inspections of work in progress
- Define willful misconduct by building inspectors

Questions?



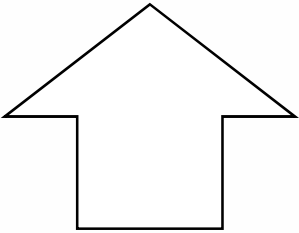
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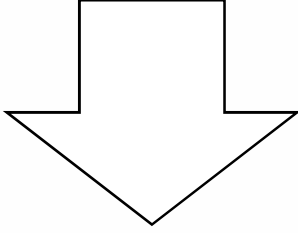
 Jill Moore
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PUBLIC HEALTH

Budget



- Chief Medical Examiner - \$1 million
- Vital Records - \$350,000



- Public health incubator contract
- Vector control program
- State Center for Health Statistics
- Purchase of medical care
- Physical activity and nutrition
- Chronic disease prevention
- Early intervention

Environmental Health

Carbon Monoxide Alarms – Lodging Establishments

- Alarm requirement limited to sleeping or dwelling rooms (was enclosed spaces)
- Picks up additional types of combustion appliances – not limited to fossil fuel-burning
- No longer part of local health department sanitation inspection, but local health director must be notified and may take permit actions if there is an imminent hazard or uncorrected violation
- S.L. 2014-___; § 22; S 734

Environmental Health

Well Water Testing Fees

- Increased from maximum of \$55 to maximum of \$74
- Updated fee schedule from State Laboratory of Public Health
- S.L. 2014-100; §12E.3; S 744

Low-Flow On-Site Wastewater Systems

- Exempted from daily flow rate standards if system designed by professional engineer and uses low-flow fixtures and technologies
- No liability for state or local health department if damages result from a system permitted under this provision
- S.L. 2014-___, § 53; S 734

Environmental Health

On-Site Wastewater Regulation Changes

- If an authorization to construct an OSWW system is more than 5 years old, the local health department must advise the owner or developer of any rule changes that have occurred and are expected to improve the system's performance. However, local health departments will no longer issue revised authorizations reflecting the rule changes unless the owner or developer requests a revised authorization in writing.
- S.L. 2014-___; § 40; S 734

E-Cigarettes

Vapor product: "any nonlighted, noncombustible product that employs a mechanical heating element, battery, or electronic circuit ... and that can be used to produce vapor from nicotine in a solution."



FDA-approved smoking cessation devices excluded (but no vapor product presently approved)

E-Cigarettes

Excise Tax

- 5 cents per millileter of nicotine solution
- Expected to produce \$5 million in revenue annually
- Eff. June 1, 2015
- S.L. 2014-3, § 3; H 1050

Correctional Facilities

- No possession or use on premises of state correctional facilities
- Misdemeanor to furnish vapor products to *state or local* inmates
- Exception: *Local jails* may give or sell vapor products to their own inmates
- S.L. 2014-3, § 15.2; H 1050
- S.L. 2014-115, § 23; H 1133

EpiPens in Schools

Federal Incentive: School Access to Emergency Epinephrine Act

- Preference for federal asthma treatment grants given to states that provide for epinephrine auto-injectors in schools
- P.L. 113-48

State Response: Emergency Epinephrine Auto-Injectors for Schools

- Basic requirements for each school:
 - Stock of auto-injectors
 - Personnel trained to administer
 - School action plan for use in an emergency and follow-up to include contacting emergency services
- Local health department to provide prescriptions, may also be involved in training
- S.L. 2014-100, § 8.23; S 744

Other Legislation of Interest to Local Public Health

Public Health Access to Confidential Fracking Information

Education Requirements for Certified Well Contractors

County Medical Examiner Appointments

Agency Review of Engineering Work

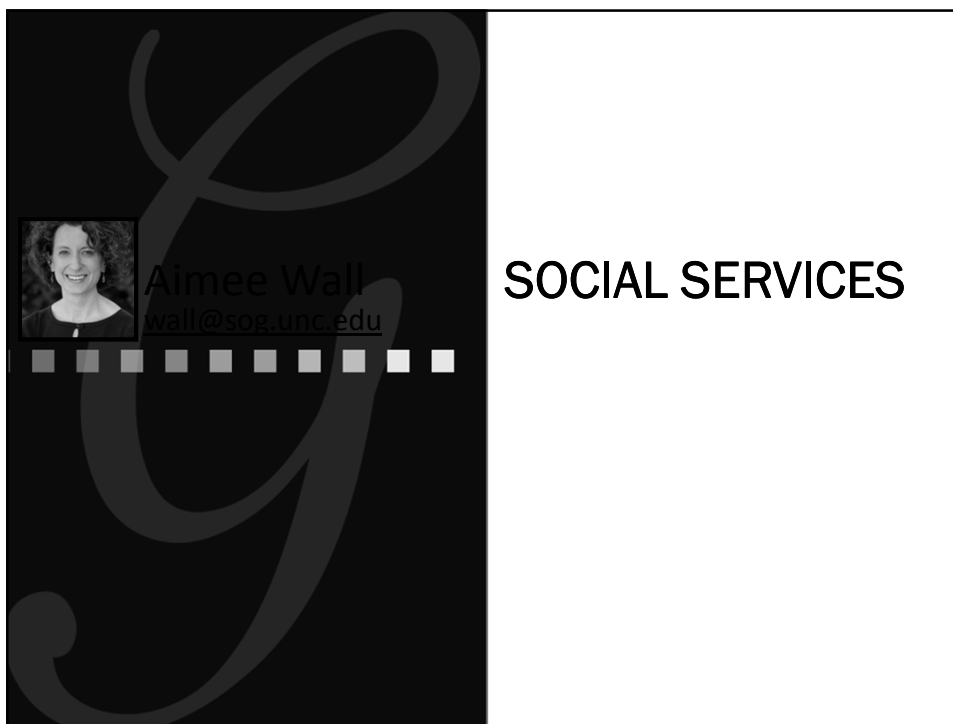
State Strategic Plan for Alzheimer's Disease

NC Health Information Exchange Funding and Studies

Questions?



Evaluation: https://unc.az1.qualtrics.com/SE/?SID=SV_3ErjWAIk0yzRjQ9



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SOCIAL SERVICES

Social Services

- Guardianship
- Adult Protective Services
- Public Assistance
- Confidentiality
- Child Welfare

Guardianship

- Increased oversight by clerk and DHHS via enhanced status reports
- Study re: conflicts of interest when DSS involved in child welfare case and appointed guardian of the adult/parent

S.L. 2014-100, §§ 12D.4, 12C.1(g); S 744

Adult Protective Services

- New authority for DSS to obtain subpoena for records from financial institutions
 - Financial institution may require DSS to pay a fee for records



S.L. 2014-115, § 44; H 1133

Public Assistance

- County of origin
 - Requires uniform statewide policies for determining county of residence for Medicaid as well as other public assistance programs
- Drug testing for Work First
 - Effective date delayed until March 1, 2015
 - Rules expected by October 31, 2014
 - Some funding included in budget



S.L. 2014-100; S 744

S.L. 2014-115, § 66; H 1133

Confidentiality

- Social services and public assistance records are subject to numerous confidentiality laws
 - New authority for the state DHHS to share confidential information about a person receiving assistance or services with schools or the state Department of Public Instruction in order to help with educational services for that person

S.L. 2014-100, § 8.39(a); S 744

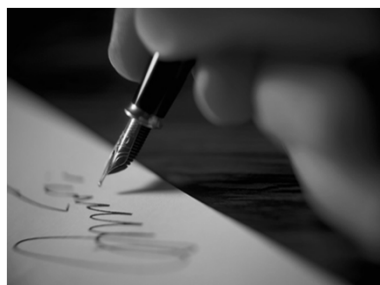




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CHILD WELFARE

DSS Directors



- G.S. 7B-800.1(5a): Proper verification of petition
- Effective 10/1/2014
- S.L. 2014-16; H 1103

IV-E



State Oversight

- 9 positions to Division of Social Services
 - Monitor, train, provide technical assistance
- Independent Statewide Evaluation
- S.L. 2014-100, § 12C.1; S 744



By 01/01/2016
to Joint Legislative Oversight Committee on HHS



Findings and Recommendations

- Caseload size, CPS worker turnover
- Adequacy of funding
- Performance/monitor/oversight of county DSS re: CPS
- Administrative structure of CPS system



Questions?



Evaluation: https://unc.az1.qualtrics.com/SE/?SID=SV_3ErjWAIk0yzRjQ9

Legislative Reporting Service What Do We Do?

- Summarize
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 - Committee substitutes
 - Conference reports

The screenshot shows the website interface for the Legislative Reporting Service. At the top, it says 'UNC SCHOOL of GOVERNMENT' and 'About the School | Courses'. Below that is the 'LEGISLATIVE REPORTING SERVICE' header. A 'News Alert' section on the left lists updates from August 19, 2014, including 'Register for SOG's 2014 Local Government Legislative Review Webinars, Sept. 3 & 9' with a link to the website. Below the news alert is the email 'anbriggs@yahoo.com' and links for 'My Preferences', 'Contact us', and 'Log out'. A 'LRS Biennium Search' section features a search input field and a 'Select a biennium:' dropdown menu. On the right, a large banner reads 'Legislative Reporting Service Daily Bulletin Online' with an image of the North Carolina State Capitol seal. Below the banner, text explains that the website provides immediate access to the daily business of the North Carolina General Assembly and replaces the traditional Daily Bulletin. It also includes a 'Benefits of Subscribing to LRS' section. At the bottom of the screenshot, a Windows taskbar is visible with icons for Internet Explorer, Word, and other applications.

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My Bills

Folder 1: Animals

5 bills tracked

| Bill # | Bill short title | Filing date | Last Action | L.A. date | View | Com. | F1 |
|--------|--|-------------|---|-------------|-------|------|----|
| H1131 | CLAY COUNTY OPOSSUM EXCLUSION/WILDLIFE LAWS. | May 20 2014 | Ch. SL 2014-7 (House Action) | Jun 12 2014 | Summ. | | X |
| H956 | REGULATE OWNERSHIP OF AGGRESSIVE DOG BREEDS. | Apr 16 2013 | Ref To Com On Rules, Calendar, and Operations of the House (House Action) | Apr 18 2013 | Summ. | | X |
| H930 | DOG BREEDING STDS./LAW ENFORCEMENT TOOLS. | Apr 11 2013 | Ref to Agriculture/Environment/Natural Resources. If fav, re-ref to Judiciary II. If fav, re-ref to Finance (Senate Action) | May 13 2013 | Summ. | | X |
| S626 | RECODIFY ANIMAL SHELTER LAW. | Apr 2 2013 | Ch. SL 2013-377 (Senate Action) | Jul 29 2013 | Summ. | 3 | X |
| H1379 | AMEND VETERINARY PRACTICE ACT/FEEES. | Mar 20 2013 | Ch. SL 2014-63 (House Action) | Jul 7 2014 | Summ. | 1 | X |

Legislative Reporting Service New Feature: Session Laws

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Session Laws

50 bills match selection

Year: 2014

| Seq. ^ | Bill # | Bill short title | Filing date | Sponsors | View |
|-----------|--------|--|-------------|-----------------------------------|-------|
| SL 2014-1 | S294 | ALLOW USE OF DOT STORMWATER BMPs (NEW). | Mar 13 2013 | Parmon. | Summ. |
| SL 2014-2 | H688 | AMEND CONTINUING ED REQ'S/CERT. WELL K'ORS. | Apr 9 2013 | Hardister, Mills, Tine, Jeter. | Summ. |
| SL 2014-5 | H230 | CLARIFY READ TO ACHIEVE/SCHOOL PERFORMANCE GRADES (NEW). | Mar 5 2013 | Malone, Martin, Brody, Samuelson. | Summ. |
| SL 2014-8 | H292 | MORATORIUM/LAWSUITS FOR SCH. FUNDS (NEW). | Mar 12 2013 | Brody, Fisher, Insko, Warren. | Summ. |
| SL 2014-9 | S355 | TECH CORRECTION/GASTON, NASH, UNION LOCAL ACT. | Mar 19 2013 | Rabon. | Summ. |

Legislative Reporting Service



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Evaluation

Please take a moment to complete our short evaluation. Your feedback is invaluable.

Evaluation:

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