

FILED

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
WAKE COUNTY, C.S.C. 12 CVS \_\_\_\_\_

NORTH CAROLINA ASSOCIATION )  
OF EDUCATORS, INC., )

Plaintiff, )

v. )

THE STATE OF NORTH CAROLINA, )

Defendant. )

**VERIFIED COMPLAINT**

Plaintiff North Carolina Association of Educators, Inc. ("NCAE"), complaining of the Defendant, the State of North Carolina ("the State" or "Defendant"), alleges and states the following:

**INTRODUCTION**

1. This action is a state constitutional challenge to North Carolina Session Law 2012-1 ("the Legislation") and the actions taken by the North Carolina General Assembly in connection with its enactment.

2. The Legislation violates a number of procedural and substantive protections afforded by the North Carolina State Constitution. The Legislation is unconstitutional because the General Assembly failed to consider the Legislation when it was required to do so, then enacted the Legislation in an unconstitutional midnight session of the General Assembly. The Legislation is further unconstitutional because it constitutes retaliatory viewpoint discrimination against Plaintiff NCAE in violation of its rights to free expression and association.

3. Plaintiff NCAE seeks a declaration that the Legislation violates the North Carolina State Constitution, as well as a temporary restraining order, preliminary injunction, and permanent injunction enjoining implementation and enforcement of the Legislation.

### **PARTIES**

4. Plaintiff NCAE is a nonpartisan, nonprofit corporation organized and existing under the laws of the State of North Carolina with its principal place of business in Raleigh, North Carolina. NCAE has approximately 50,000 members comprised of active public school employees and retired members throughout the State of North Carolina. Membership in the NCAE is voluntary. The mission of NCAE is to promote and advance the teaching profession and education throughout the State of North Carolina.

5. Defendant State of North Carolina, through its General Assembly, passes local and general legislation, including the Legislation.

### **JURISDICTION AND VENUE**

6. This Court has subject matter jurisdiction over this action because the NCAE seeks declaratory, injunctive, and other relief pursuant to the North Carolina State Constitution, the North Carolina Declaratory Judgment Act, N.C. Gen. Stat. §§ 1-253 et seq., and N.C. Gen. Stat. § 7A-245.

7. Venue for this action lies in Wake County Superior Court pursuant to N.C. Gen. Stat. § 1-77 because the Legislation was enacted by the General Assembly in Wake County.

### **FACTUAL ALLEGATIONS**

#### **The Anti-NCAE Bill**

8. On April 19, 2011, Senator Ralph Hise introduced Senate Bill 727 (Exhibit A), entitled "An Act to Eliminate the Dues Checkoff Option for Active and Retired Public School

Employees” (“the Anti-NCAE Bill”). The Anti-NCAE Bill sought to amend N.C. Gen. Stat. §§ 143B-426.40A(g) and 135-18.8 to eliminate a voluntary, periodic payroll deduction for dues payable by a current or retired employee of a local board of education to a domiciled employee’s association that has at least 40,000 members, the majority of whom are public school teachers.

9. The NCAE is the only domiciled employees’ association in the State that has at least 40,000 members, a majority of whom are public school teachers. The Anti-NCAE Bill did not seek to affect the payroll deduction of dues for any other association of State or local government employees, such as the State Employees Association of North Carolina. Rather, the bill was targeted specifically at the NCAE.

10. On June 9, 2011, the General Assembly ratified the Anti-NCAE Bill and sent it to Governor Beverly Perdue. The Anti-NCAE Bill did not become law because Governor Perdue exercised her authority under Article II, Section 22 of the North Carolina State Constitution to veto the Anti-NCAE Bill. On June 18, 2011, Governor Perdue’s veto message was delivered to the Clerk of the North Carolina Senate.

11. That same day, the General Assembly adjourned the Legislative Session in which it ratified the Anti-NCAE Bill. Pursuant to Resolution 2011-9, the General Assembly scheduled itself to reconvene 26 days later on July 13, 2011.

12. Shortly after the General Assembly reconvened on July 13, 2011, the Senate voted 30 to 18 to override Governor Perdue’s veto of the Anti-NCAE Bill, thereby carrying the necessary three-fifths majority required by the North Carolina State Constitution for such an override. The Anti-NCAE Bill was then sent to the North Carolina House of Representatives for a vote on whether to override the veto and was calendared for consideration. The General Assembly subsequently adjourned on July 28, 2011, with the House having failed to act on the

override of the Governor's veto of the Anti-NCAE Bill. On several occasions thereafter the General Assembly reconvened. Each time, however, the General Assembly adjourned, with the House having failed to act on the Anti-NCAE Bill.

13. On November 7, 2011, the General Assembly ratified Resolution 2011-12 (Exhibit B), which set a schedule for convening and adjourning the General Assembly for the next six months. According to Resolution 2011-12, the General Assembly was to return for a November 27-29, 2011 Session, a February 16-18, 2012 Session, an April 23-25, 2012 Session, and then on May 16, 2012 for its customary Short Session. Resolution 2011-12 set forth the specific matters that could be considered in each of these Sessions, and authorized the General Assembly to consider in each of these Sessions an override to any bill vetoed by Governor Perdue.

#### **The Racial Justice Act Bill and the Governor's Reconvened Session**

14. On November 28, 2011, during its November 27-29, 2011 Session, the General Assembly ratified Senate Bill 9, entitled "An Act to Reform the Racial Justice Act of 2009 to be Consistent with the United States Supreme Court's Ruling in *McCleskey v. Kemp*." (the "Racial Justice Act Bill"). However, the Racial Justice Act Bill did not become law because Governor Perdue exercised her authority under Article II, Section 22 of the North Carolina State Constitution to veto that bill. On December 14, 2011, Governor Perdue delivered the veto message concerning the Racial Justice Act Bill to the Clerk of the North Carolina Senate (Exhibit C).

15. Under Resolution 2011-12, the next Session of the General Assembly was the February 16-18, 2012 Session. Because this Session was scheduled to begin more than 30 days after Governor Perdue's December 14, 2011 veto of the Racial Justice Act Bill, Governor Perdue

was required under Article II, Section 22(7) of the North Carolina State Constitution to reconvene the Session of the General Assembly in which the Racial Justice Act Bill was ratified for the purpose of considering an override of the veto to that bill.

16. In accordance with Article II, Section 22(7), Governor Perdue reconvened the Session in which the Racial Justice Act Bill was ratified, for the sole purpose of reconsidering that bill. Governor Perdue issued a Proclamation of Reconvened Session (Exhibit D) on December 20, 2011, which provided: “Pursuant to the authority vested in the Governor by Article III, Section 5(11) of the Constitution of North Carolina, and as required by Article II, Section 22(7), the General Assembly shall reconvene on Wednesday, January 4, 2012, at 2:00 p.m. [“the Reconvened Session”] to reconsider Senate Bill 9, ‘An Act to Reform the Racial Justice Act of 2009 to be Consistent With the United States Supreme Court’s Ruling in *McClesky v. Kemp*’, that was vetoed on December 14, 2011.”

17. Article II, Section 22(7) and Article III, Section 5(11) of the North Carolina State Constitution provide that the bill vetoed by the Governor is the only matter that may be considered by the General Assembly in a reconvened session to consider that bill. Article II, Section 22(7) provides that the Governor shall reconvene the session “for consideration of the bill.” Likewise, Article III, Section 5(11) states that “[a]t such reconvened session, the General Assembly may only consider such bills as were returned by the Governor to that reconvened session for reconsideration.”

18. As set forth in the Governor’s Proclamation, the only bill returned by the Governor for the Reconvened Session was the Racial Justice Act Bill.

19. On January 4, 2012, the General Assembly returned for the Reconvened Session pursuant to the Governor’s Proclamation. The Senate voted in the Reconvened Session to

override the Governor's veto of the Racial Justice Act Bill and sent the override measure to the House. The House did not consider the override measure for a vote.

20. Then, at approximately 11:00 p.m. that day, the General Assembly went well beyond reconsideration of the Racial Justice Act Bill, violating the limitations placed on it by the North Carolina State Constitution as to what matters could be considered in that Reconvened Session.

### **The General Assembly's Unconstitutional Midnight Session**

21. At approximately 11:00 p.m., going beyond reconsideration of the Racial Justice Act Bill, the General Assembly raised for consideration the matter of when it should next convene. To that end, two adjournment resolutions for the Reconvened Session were introduced on January 4, 2012: House Joint Resolution 940 ("HJR 940") and Senate Joint Resolution 794 ("SJR 794") (Exhibit E).

22. Both HJR 940 and SJR 794 set February 16, 2012 as the date for convening in an additional session. This date, however, was the date previously adopted by Resolution 2011-12. Thus, HJR 940 and SJR 794 were unnecessary because the date for the next Session was already set.

23. SJR 794 passed the Senate in the form in which it was introduced. Nearing midnight, SJR 794 was taken up on the floor of the House in the late hours of January 4, 2012.

24. At this time, Representative Tim Moore offered an amendment to SJR 794 ("the Moore Amendment") (Exhibit F). The proposed Moore Amendment provided that the General Assembly would not reconvene on February 16, 2012, as Resolution 2011-12 had previously provided. Instead, the Moore Amendment provided that the General Assembly would reconvene in a matter of minutes – nearly immediately – for a Session to begin at 12:45 a.m. on January 5,

2012 (“the Midnight Session”). The Moore Amendment purported to declare that in the Midnight Session, the General Assembly could consider a legislative override to any bill vetoed by Governor Perdue.

25. By a vote of 64 to 48, the Moore Amendment was adopted. Shortly after midnight, on January 5, 2012, the House passed amended SJR 794 (Exhibit G). The Senate concurred in the Moore Amendment, and SJR 794 was ratified, thereby scheduling the Midnight Session to begin minutes later.

26. At 12:01 a.m. on January 5, 2012, the General Assembly adjourned the Reconvened Session that had been called by Governor Perdue to consider the Racial Justice Act Bill.

#### **The Legislation is Enacted in the Unconstitutional Midnight Session**

27. At approximately 12:15 a.m., the House issued the first official calendar listing potential vetoed bills it could purportedly consider for a legislative override in the Midnight Session. The list included the Anti-NCAE Bill.

28. The House proceeded to unconstitutionally consider and vote on a legislative override to Governor Perdue’s veto of the Anti-NCAE Bill. At 1:12 a.m., the House voted to override Governor Perdue’s veto of the Anti-NCAE Bill by a vote of 69 to 45, narrowly providing the three-fifths majority needed to override a gubernatorial veto.

29. Because the Senate had previously voted to override Governor Perdue’s veto of the Anti-NCAE Bill in the July 13, 2011 Session, the unconstitutional vote by the House to legislatively override Governor Perdue’s veto enacted the Anti-NCAE Bill into law. The Anti-NCAE Bill thereafter was designated as North Carolina Session Law 2012-1 (“the Legislation”) (Exhibit H).

### **The Irreparable Harm to the NCAE if the Legislation is not Immediately Enjoined**

30. In the absence of a temporary restraining order and preliminary injunction, Plaintiff NCAE and its members will suffer irreparable harm from the violations of the North Carolina State Constitution stemming from the Legislation.

31. First, the violations of the North Carolina State Constitution described herein that Plaintiff NCAE will suffer in the absence of immediate injunctive relief are, as a matter of law, *per se* irreparable harm.

32. Second, in the absence of immediate injunctive relief, the Legislation's retaliatory viewpoint discrimination will violate Plaintiff NCAE's rights to free expression and association in violation of Article I, Section 14 of the North Carolina State Constitution. Thus, the irreparable harm that Plaintiff NCAE will suffer is inseparably linked to its claim under Article I, Section 14 of the North Carolina State Constitution. As a matter of law, the loss of Plaintiff NCAE's rights to free expression and association under Article I, Section 14, for even minimal periods of time, constitutes *per se* irreparable harm.

33. Third, and critically, in the absence of immediate injunctive relief, Plaintiff NCAE would suffer a crippling decimation of its funds through the Legislation's unconstitutional prohibition on payroll deductions for Plaintiff NCAE – funds that Plaintiff NCAE cannot recover in an action for money damages. Moreover, even if Plaintiff NCAE could somehow maintain a state constitutional action against the State for money damages, there would be no adequate remedy at law to undo the injury caused by the Legislation because it would be extremely difficult – if not impossible – to ascertain money damages. By denying to the NCAE the only efficient means of collecting dues from its members, the Legislation will gravely impair the NCAE's ability to represent the interests of its members before local, state, and federal

legislative and regulatory bodies, as well as the ability of the NCAE to exercise its voice on political matters. These injuries are the essence of damages that cannot be easily ascertained, and therefore constitute *per se* irreparable harm as a matter of law. Thus, if the Legislation is not immediately enjoined but is later invalidated in a ruling on the merits, the injury to the NCAE and its members would be not only enormous, but also unrecoverable.

34. In contrast, the State will not suffer any harm as a result of the issuance of a temporary restraining order or preliminary injunction. The State is not a beneficiary of the dues collected by Plaintiff. Furthermore, before the General Assembly enacted the Legislation, the status quo for years permitted NCAE members to make dues deductions.

35. The first payroll deduction to which the Legislation will apply, in the absence of immediate injunctive relief, will occur on Friday, January 13, 2012.

#### **COUNT 1 – DECLARATORY JUDGMENT**

#### **Article II, Section 22 and Article III, Section 5 of the North Carolina State Constitution Unconstitutional Legislative Override of Gubernatorial Veto**

36. The allegations contained in Paragraphs 1 through 35 of this Verified Complaint are restated and incorporated herein by reference.

37. Article II, Section 22(7) and Article III, Section 5(11) of the North Carolina State Constitution expressly prohibit the General Assembly in a reconvened session to consider any matter other than the vetoed bill that was returned by the Governor for the reconvened session.

38. Article II, Section 22(7), entitled “Time for action by Governor; reconvening of session,” governs the reconvening of a session to reconsider a vetoed bill. That provision states in pertinent part: “When the General Assembly has adjourned sine die or for more than 30 days jointly as provided under Section 20 of Article II of this Constitution, the Governor shall

reconvene that session as provided by Section 5(11) of Article III of this Constitution for reconsideration of the bill.”

39. Article III, Section 5(11) provides in pertinent part: “The Governor shall, when required by Section 22 of Article II of this Constitution, reconvene a session of the General Assembly. At such reconvened session, the General Assembly may only consider such bills as were returned by the Governor to that reconvened session for reconsideration.”

40. As expressly set forth in the Governor’s Proclamation, the only bill returned by the Governor for the Reconvened Session was the Racial Justice Act Bill. Therefore, pursuant to Article II, Section 22 and Article III, Section 5 of the North Carolina State Constitution, the General Assembly was not permitted to consider any matters in the Reconvened Session other than the Racial Justice Act Bill.

41. In violation of the North Carolina State Constitution, however, the General Assembly considered and enacted SJR 794, the Joint Resolution purporting to authorize the Midnight Session. In the Midnight Session, the North Carolina House of Representatives proceeded to vote for a legislative override of Governor Perdue’s veto of the Anti-NCAE Bill, thereby enacting the Legislation.

42. The North Carolina House of Representatives’ purported override of the Governor’s veto of the Anti-NCAE Bill in the Midnight Session violates Article II, Section 22 and Article III, Section 5 of the North Carolina State Constitution. Accordingly, the Legislation is unconstitutional, *ultra vires*, *void ab initio*, and of no effect.

**COUNT 2 – DECLARATORY JUDGMENT**  
**Article I, Section 14 of the North Carolina State Constitution**  
**Retaliatory Viewpoint Discrimination**

43. The allegations contained in Paragraphs 1 through 42 of this Verified Complaint are restated and incorporated herein by reference.

44. Article I, Section 14 of the North Carolina State Constitution provides in pertinent part: “Freedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never be restrained.” This provision prohibits governmental viewpoint discrimination, and requires that when the State regulates speech and association, it must do so evenhandedly and without suppressing or favoring certain speakers or viewpoints.

45. As an employee association, the NCAE is the archetype of an expressive association that exercises the right to freedom of speech and association under Article I, Section 14 of the North Carolina State Constitution. Contributing financial support to the NCAE in the form of dues is a form of such protected speech and association, serving to affiliate the NCAE’s members with the NCAE and enabling like-minded persons to pool their resources in furtherance of common goals. Members of the NCAE know and intend that their dues be used, in part, to engage in political and non-political activities on their behalf. The NCAE’s political activities are an important reason to join and remain a member of the NCAE.

46. The NCAE’s receipt of dues from its members and its expenditure of those dues on a broad range of social, political, and ideological causes and issues important to its members and the teaching and education community constitute expressive activity and association within the protection of Article I, Section 14 of the North Carolina State Constitution. Likewise, public employees’ payment of voluntary dues to support the expressive and associational activities of

the NCAE is an exercise of the rights of association and free expression protected by Article I, Section 14 of the North Carolina State Constitution.

47. A government employer's facilitation of the exercise of these rights of expression and association through administering its payroll systems to allow payroll deductions for employee association dues is subject to the prohibition on discrimination against particular speakers or viewpoints. Regulations on payroll deductions violates Article I, Section 14 if it is not evenhanded – that is, if it permits deductions for some employee associations, but not others with different viewpoints. Regulations such as these are subject to strict scrutiny, and the State bears the burden of demonstrating that the regulation serves a compelling state interest, is narrowly tailored, and is the least restrictive means for achieving the compelling state interest. Accordingly, the State has the burden of showing that the Legislation satisfies the rigors of strict scrutiny under Article I, Section 14 of the North Carolina State Constitution.

48. The Legislation violates Article I, Section 14 because it impermissibly creates a viewpoint and speaker-based distinction that enables speech and association by some and restricts it for others. It allows certain groups of employees to support their employee associations (e.g., the State Employees Association of North Carolina) financially through government-provided payroll deductions for membership dues, while denying that same benefit to teachers and other employees of local boards of education and their associations. There are no reasonable, viewpoint-neutral grounds for demoting teachers and other employees of local boards of education to this uniquely disfavored status.

49. The Legislation's discriminatory treatment of certain employees does not accomplish any viewpoint-neutral policy objectives, but rather was intended to – and does – effectively drive certain viewpoints from the marketplace. In 2011, Plaintiff NCAE was strident

in its public criticism of the legislative majority on a number of issues affecting its members and the education community, such as budget cuts for public education and reductions in public employee health care benefits. The circumstances surrounding the Legislation's enactment further confirm that it was intended as a facade for viewpoint-based discrimination, and was aimed at suppressing support for the ideas and causes associated with the disfavored class of speakers – i.e., the NCAE and the local boards of education employees who support the NCAE.

50. Indeed, members of the North Carolina General Assembly have admitted that the intended purpose of the Legislation was to silence the free expression and associational rights of the NCAE and its members. Following the Midnight Session, Speaker of the North Carolina House of Representatives Thom Tillis candidly explained on the morning of January 5, 2012 that NCAE's political views were "a factor" in the decision to override Governor Perdue's veto of the Anti-NCAE Bill. Speaker Tillis had also previously acknowledged in a June 2011 meeting that the Anti-NCAE Bill was designed to target the NCAE, referring to it as "the bill to disallow NCAE dues." In that meeting, Speaker Tillis further stated: "I wanted to tell you all . . . that in Rules today, we are going to hear the bill to disallow NCAE dues. And the reason we've decided to do that is the NCAE has gone into all five districts with mailers hammering these Democrats [who had supported the budget that the NCAE had campaigned against publicly as being harmful to public education]."

51. The above admissions of members of the General Assembly only further confirm that no legitimate viewpoint-neutral grounds exist for the Legislation's mandate that teachers and other school employees choosing to be members of the NCAE should occupy a uniquely disfavored status with respect to their ability to financially support the causes of their employee association.

52. The General Assembly's enactment of Session Law 2012 constitutes a violation of Article I, Section 14 of the North Carolina State Constitution.

**COUNT 3 – DECLARATORY JUDGMENT**

**Article II, Section 22 of the North Carolina State Constitution**

**Failure to Proceed to Reconsider the Vetoed NCAE Bill in the July 13, 2011 Session**

53. The allegations contained in Paragraphs 1 through 52 of this Verified Complaint are restated and incorporated herein by reference.

54. Article III, Section 5(11) provides that when the Governor vetoes a bill and the General Assembly is scheduled to reconvene in fewer than 30 days, the Governor need not reconvene the General Assembly for reconsideration of the vetoed bill. In turn, Article II, Section 22(1) of the North Carolina Constitution provides that when the General Assembly receives a veto message from the Governor returning a bill to the General Assembly, it must "proceed to reconsider" the vetoed bill. Together these constitutional provisions require that when the Governor vetoes a bill and does not reconvene the General Assembly because it is already scheduled to reconvene in 30 days, the General Assembly must "proceed to reconsider" the vetoed bill in that Session.

55. The General Assembly received Governor Perdue's veto of the Anti-NCAE Bill on June 18, 2011. Under Article III, Section 5(11), Governor Perdue did not reconvene the General Assembly because the General Assembly was already scheduled to reconvene 26 days later at its July 13, 2011 Session. Accordingly, the General Assembly was required to "proceed to reconsider" the vetoed NCAE Bill at the July 13, 2011 Session prior to adjournment.

56. The Senate "proceeded to reconsider" the vetoed NCAE Bill at its July 13, 2011 Session, but the House did not. The Anti-NCAE Bill was sent to the House in that Session for a vote on whether to override the veto and was calendared for consideration. However, the

General Assembly subsequently adjourned on July 28, 2011, with the House having failed to act on the override of the Governor's veto of the Anti-NCAE Bill.

57. On several occasions thereafter the General Assembly reconvened. Each time, however, the General Assembly adjourned, with the House having failed to act on the Anti-NCAE Bill.

58. Having failed to "proceed to reconsider" the vetoed NCAE Bill at its July 13, 2011 Session, the North Carolina House of Representatives purported to do so at the Midnight Session, after an intervening six months and multiple Sessions. These acts constitute violations of Article II, Section 22(1) of the North Carolina State Constitution. Accordingly, the Legislation is unconstitutional, *ultra vires*, *void ab initio*, and of no effect.

WHEREFORE, Plaintiff prays that this Court:

- (1) Treat this Verified Complaint as a Motion for Temporary Restraining Order and Preliminary Injunction;
- (2) Declare that the Legislation is unconstitutional under the North Carolina State Constitution;
- (3) Declare that SJR 794, the General Assembly's Midnight Session, and the purported acts taken in that Session are unconstitutional under the North Carolina State Constitution;
- (4) Enter a temporary restraining order and preliminary and permanent injunction enjoining implementation and enforcement of the Legislation;
- (5) Assess costs against the State of North Carolina pursuant to N.C. Gen. Stat. § 1-263;
- (6) Award reasonable attorneys' fees to Plaintiff; and

(7) Grant Plaintiff any and all other relief which this Court deems just and proper.

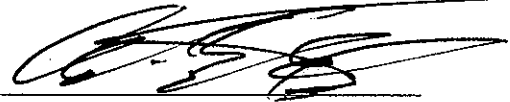
This the 9th day of January, 2012.

**POYNER SPRUILL LLP**



---

Robert F. Orr  
N.C. State Bar No. 6798  
301 Fayetteville Street, Suite 1900  
Raleigh, NC 27601  
Telephone: 919.783.6400  
Facsimile: 919.783.1075



---


Andrew H. Erteschik  
N.C. State Bar No. 35269  
301 Fayetteville Street, Suite 1900  
Raleigh, NC 27601  
Telephone: 919.783.6400  
Facsimile: 919.783.1075

**COUNSEL FOR PLAINTIFF**

**VERIFICATION**

J. Scott Anderson, in my capacity as Executive Director for Plaintiff North Carolina Association of Educators, Inc. ("NCAE"), being first duly sworn, deposes and says as follows:

That I have read the foregoing Complaint and Motion and know the contents thereof, and that the same are true to my own knowledge, except as to any matters and things therein stated upon information and belief, and that as to those I believe them to be true. Furthermore, I am authorized by Plaintiff NCAE to execute this verification.

  
\_\_\_\_\_  
J. Scott Anderson

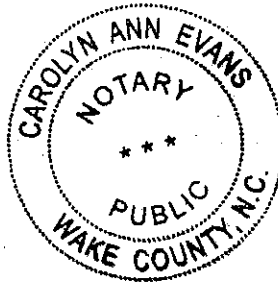
STATE OF NORTH CAROLINA  
COUNTY OF WAKE

I, Carolyn Ann Evans a Notary Public of the County and State aforesaid, certify that J. Scott Anderson personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this the 9<sup>th</sup> day of January, 2012.

Carolyn Ann Evans  
Notary Public

My Commission expires 6-7-14



GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

S

D

SENATE DRS55272-LE-68 (02/28)

Short Title: No Dues Checkoff for School Employees.

(Public)

Sponsors: Senator Hise.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE THE DUES CHECKOFF OPTION FOR ACTIVE AND  
RETIRED PUBLIC SCHOOL EMPLOYEES.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 143B-426.40A(g) reads as rewritten:

"(g) Payroll Deduction for Payments to Certain Employees' Associations Allowed. – An employee of the State or any of its political ~~subdivisions, subdivisions other than local boards of education,~~ institutions, departments, bureaus, agencies or commissions, or any of its ~~local boards of education or~~ community colleges, who is a member of a domiciled employees' association that has at least 2,000 members, 500 of whom are employees of the ~~State, State or a~~ political subdivision of the ~~State, or public school employees, State other than a local board of education,~~ may authorize, in writing, the periodic deduction each payroll period from the employee's salary or wages a designated lump sum to be paid to the employees' association. A political subdivision may also allow periodic deductions for a domiciled employees' association that does not otherwise meet the minimum membership requirements set forth in this paragraph.

~~An employee of any local board of education who is a member of a domiciled employees' association that has at least 40,000 members, the majority of whom are public school teachers, may authorize in writing the periodic deduction each payroll period from the employee's salary or wages a designated lump sum or sums to be paid for dues and voluntary contributions for the employees' association.~~

An authorization under this subsection shall remain in effect until revoked by the employee. A plan of payroll deductions pursuant to this subsection for employees of the State and other association members shall become void if the employees' association engages in collective bargaining with the State, any political subdivision of the State, or any local school administrative unit. This subsection does not apply to county or municipal governments or any local governmental unit, except for local boards of education."

**SECTION 2.** G.S. 135-18.8 reads as rewritten:

**"§ 135-18.8. Deduction for payments to certain employees' or retirees' associations allowed.**

Any beneficiary who is a member of a domiciled employees' or retirees' association that has at least 2,000 members, the majority of whom are active or retired employees of the ~~State or public school employees, State~~ may authorize, in writing, the periodic deduction from the beneficiary's retirement benefits a designated lump sum to be paid to the employees' or retirees' association. The authorization shall remain in effect until revoked by the beneficiary. A plan of



1 deductions pursuant to this section shall become void if the employees' or retirees' association  
2 engages in collective bargaining with the State, any political subdivision of the State, or any  
3 local school administrative unit."

4           **SECTION 3.** This act becomes effective July 1, 2011.

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011  
RATIFIED BILL**

**RESOLUTION 2011-12  
SENATE JOINT RESOLUTION 793**

A JOINT RESOLUTION FURTHER ADJOURNING THE 2011 REGULAR SESSION OF  
THE GENERAL ASSEMBLY TO DATES CERTAIN AND LIMITING THE MATTERS  
THAT MAY BE CONSIDERED UPON RECONVENING.

Be it resolved by the Senate, the House of Representatives concurring:

**SECTION 1.1.** When the Senate and the House of Representatives adjourn on Monday, November 7, 2011, they stand adjourned to reconvene on Sunday, November 27, 2011, at 8:00 p.m.

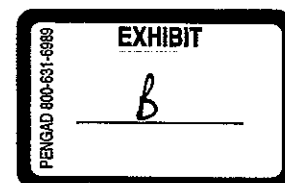
**SECTION 1.2.** During the regular session that reconvenes on Sunday, November 27, 2011, only the following matters may be considered:

- (1) Bills:
  - a. Revising the Senate districts and the apportionment of senators among those districts.
  - b. Revising the Representative districts and the apportionment of representatives among those districts.
  - c. Revising the districts for the election of members of the House of Representatives of the Congress of the United States and the apportionment of representatives among those districts.
  - d. Bills responding to actions related to the Voting Rights Act of 1965.
  - e. Bills responding to actions related to litigation concerning Congressional, State House, or State Senate districts.
- (2) Bills returned by the Governor with her objections under Section 22 of Article II of the North Carolina Constitution, but solely for the purpose of considering overriding of the veto upon reconsideration of the bill.
- (3) Any bills relating to election laws.
- (4) Bills to ratify and make statutory conforming changes pursuant to a Tribal Compact negotiated by the Governor.
- (5) Bills responding to natural disasters, including hurricanes.
- (6) Bills in which the General Assembly makes an appointment or appointments to public office and which contain no other matter.
- (7) Adoption of conference reports for bills which were in conference as of Wednesday, September 14, 2011.
- (8) Local bills pending in the House Rules Committee on July 28, 2011.
- (9) A bill to modify governance and management provisions for local management entities (LMEs).
- (10) Concurrence in any committee substitute or amendment.
- (11) A joint resolution further adjourning the 2011 Regular Session to a date certain.

**SECTION 2.1.** When the Senate and the House of Representatives adjourn on Tuesday, November 29, 2011, they stand adjourned to reconvene on Thursday, February 16, 2012, at 12:00 noon.

**SECTION 2.2.** During the regular session that reconvenes on Thursday, February 16, 2012, only the following matters may be considered:

- (1) Bills:
  - a. Revising the Senate districts and the apportionment of senators among those districts.



- b. Revising the Representative districts and the apportionment of representatives among those districts.
  - c. Revising the districts for the election of members of the House of Representatives of the Congress of the United States and the apportionment of representatives among those districts.
  - d. Bills responding to actions related to the Voting Rights Act of 1965.
  - e. Bills responding to actions related to litigation concerning Congressional, State House, or State Senate districts.
- (2) Bills returned by the Governor with her objections under Section 22 of Article II of the North Carolina Constitution, but solely for the purpose of considering overriding of the veto upon reconsideration of the bill.
  - (3) Any bills relating to election laws.
  - (4) A joint resolution further adjourning the 2011 Regular Session to a date certain.

**SECTION 3.1.** When the Senate and the House of Representatives adjourn on Saturday, February 18, 2012, they stand adjourned to reconvene on Monday, April 23, 2012, at 12:00 noon.

**SECTION 3.2.** During the regular session that reconvenes on Monday, April 23, 2012, only the following matters may be considered:

- (1) Bills:
  - a. Revising the Senate districts and the apportionment of senators among those districts.
  - b. Revising the Representative districts and the apportionment of representatives among those districts.
  - c. Revising the districts for the election of members of the House of Representatives of the Congress of the United States and the apportionment of representatives among those districts.
  - d. Bills responding to actions related to the Voting Rights Act of 1965.
  - e. Bills responding to actions related to litigation concerning Congressional, State House, or State Senate districts.
- (2) Bills returned by the Governor with her objections under Section 22 of Article II of the North Carolina Constitution, but solely for the purpose of considering overriding of the veto upon reconsideration of the bill.
- (3) Any bills relating to election laws.
- (4) A joint resolution further adjourning the 2011 Regular Session to a date certain.

**SECTION 4.1.** When the Senate and the House of Representatives adjourn on Wednesday, April 25, 2012, they stand adjourned to reconvene on Wednesday, May 16, 2012, at 12:00 noon.

**SECTION 4.2.** During the regular session that reconvenes on Wednesday, May 16, 2012, only the following matters may be considered:

- (1) Bills directly and primarily affecting the State budget, including the budget of an occupational licensing board, for fiscal year 2012-2013, provided that the bill must be submitted to the Bill Drafting Division of the Legislative Services Office no later than 4:00 P.M. Friday, May 18, 2012, and must be introduced in the House of Representatives or filed for introduction in the Senate no later than 4:00 P.M. Tuesday, May 29, 2012.
- (2) Bills amending the Constitution of North Carolina.
- (3) Bills and resolutions introduced in 2011 and having passed third reading in 2011 in the house in which introduced, received in the other house in accordance with Senate Rule 41 or House Rule 31.1(h) as appropriate, and not disposed of in the other house by tabling, unfavorable committee report, indefinite postponement, or failure to pass any reading, and which do not violate the rules of the receiving house.
- (4) Bills and resolutions implementing the recommendations of:
  - a. Study commissions, authorities, and statutory commissions authorized or directed to report to the 2012 Session;

- b. The General Statutes Commission, the Courts Commission, or any commission created under Chapter 120 of the General Statutes that is authorized or directed to report to the General Assembly;
- c. The House Ethics Committee;
- d. Select committees; or
- e. The Joint Legislative Ethics Committee or its Advisory Subcommittee.

A bill authorized by this subdivision must be submitted to the Bill Drafting Division of the Legislative Services Office no later than 4:00 P.M. Wednesday, May 16, 2012, and must be filed for introduction in the Senate or introduced in the House of Representatives no later than 4:00 P.M. Wednesday, May 23, 2012.

- (5) Any local bill that has been submitted to the Bill Drafting Division of the Legislative Services Office by 4:00 P.M. Wednesday, May 23, 2012, is introduced in the House of Representatives or filed for introduction in the Senate by 4:00 P.M. Wednesday, May 30, 2012, and is accompanied by a certificate signed by the principal sponsor stating that no public hearing will be required or asked for by a member on the bill, the bill is noncontroversial, and that the bill is approved for introduction by each member of the House of Representatives and Senate whose district includes the area to which the bill applies.
- (6) Selection, appointment, or confirmation of members of State boards and commissions as required by law, including the filling of vacancies of positions for which the appointees were elected by the General Assembly upon recommendation of the Speaker of the House of Representatives, President of the Senate, or President Pro Tempore of the Senate.
- (7) Any matter authorized by joint resolution passed by a two-thirds majority of the members of the House of Representatives present and voting and by a two-thirds majority of the members of the Senate present and voting. A bill or resolution filed in either house under the provisions of this subdivision shall have a copy of the ratified enabling resolution attached to the jacket before filing for introduction in the Senate or introduction in the House of Representatives.
- (8) A joint resolution authorizing the introduction of a bill pursuant to subdivision (7) of this section.
- (9) Any bills primarily affecting any State or local pension or retirement system, provided that the bill has been submitted to the Bill Drafting Division of the Legislative Services Office no later than 4:00 P.M. Wednesday, May 23, 2012, and is introduced in the House of Representatives or filed for introduction in the Senate no later than 4:00 P.M. Wednesday, May 30, 2012.
- (10) Joint resolutions, House resolutions, and Senate resolutions authorized for introduction under Senate Rule 40(b) or House Rule 31.
- (11) Bills:
  - a. Revising the Senate districts and the apportionment of senators among those districts.
  - b. Revising the Representative districts and the apportionment of representatives among those districts.
  - c. Revising the districts for the election of members of the House of Representatives of the Congress of the United States and the apportionment of representatives among those districts.
  - d. Bills responding to actions related to the Voting Rights Act of 1965.
  - e. Bills responding to actions related to litigation concerning Congressional, State House, or State Senate districts.
- (12) Bills returned by the Governor with her objections under Section 22 of Article II of the North Carolina Constitution, but solely for the purpose of considering overriding of the veto upon reconsideration of the bill.
- (13) Any bills relating to election laws.
- (14) Bills to disapprove rules under G.S. 150B-21.3.

(15) A joint resolution adjourning the 2011 Regular Session, sine die.

**SECTION 5.** The Speaker of the House of Representatives or the President Pro Tempore of the Senate may authorize appropriate committees or subcommittees of their respective houses to meet during the interims between sessions to:

- (1) Review matters related to the State budget for the 2011-2012 biennium,
- (2) Prepare reports, including revised budgets, or
- (3) Consider any other matters as the Speaker of the House of Representatives or the President Pro Tempore of the Senate deems appropriate. A conference committee may meet in the interim upon approval by the Speaker of the House of Representatives or the President Pro Tempore of the Senate.

**SECTION 6.** This resolution is effective upon ratification.

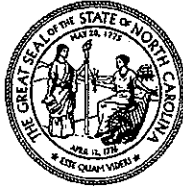
In the General Assembly read three times and ratified this the 7<sup>th</sup> day of November, 2011.

---

Walter H. Dalton  
President of the Senate

---

Thom Tillis  
Speaker of the House of Representatives



STATE OF NORTH CAROLINA  
OFFICE OF THE GOVERNOR  
20301 MAIL SERVICE CENTER • RALEIGH, NC 27699-0301

BEVERLY EAVES PERDUE  
GOVERNOR

December 14, 2011

**GOVERNOR'S OBJECTIONS AND VETO MESSAGE**

*Senate Bill 9, "An Act to Reform the Racial Justice Act of 2009 to be Consistent With the United States Supreme Court's Ruling in McCleskey v. Kemp."*

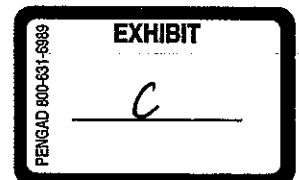
I am – and always will be – a strong supporter of the death penalty. I firmly believe that some crimes are so heinous that no other punishment is adequate. As long as I am Governor, I am committed to ensuring that the death penalty remains a viable punishment option in North Carolina in appropriate cases.

However, because the death penalty is the ultimate punishment, it is essential that it be carried out fairly and that the process not be infected with prejudice based on race, gender, poverty, or any other factor. I signed the Racial Justice Act into law two years ago because it ensured that racial prejudice would not taint the application of the death penalty.

By enacting Senate Bill 9, the new leadership of the General Assembly has abandoned the noble principles embodied in the Racial Justice Act. While some have tried to portray Senate Bill 9 as a mere "modification" of the Racial Justice Act, make no mistake – this is, for all practical purposes, an outright repeal.

I recognize that this is an issue that people feel strongly about. Over the past few weeks, I have had the privilege of meeting with people from the four corners of our State who shared their candid views about this issue with me. I have met both with family members of murder victims who support Senate Bill 9 and with family members who oppose it. I was greatly moved by their personal stories and came away with a profound admiration for their passion and dignity in the face of grief that most of us cannot imagine. I have also spoken to both prosecutors and defense attorneys – lawyers who meet the highest ideals of the legal profession. I conducted these meetings because I wanted to ensure that groups on both sides of the issue had the opportunity to express their views to me.

There has been a great deal of inaccurate information in the media over what the Racial Justice Act does. Let me be clear on what it does not do. First, it does not change the fact that the death penalty is legal in North Carolina.



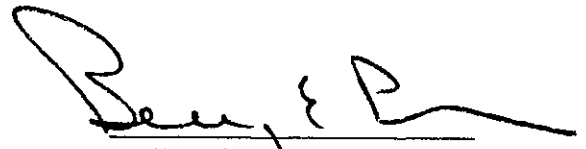
Second, the Racial Justice Act does not reopen the question of whether any person on death row is guilty or innocent. Instead, it only addresses sentencing; it provides that a convicted defendant is entitled to have his death sentence changed to a sentence of life in prison without the possibility of parole if a judge determines that race was a significant factor in the decision to seek or impose a sentence of death as set out in the Act.

Third, contrary to what some have suggested, the Racial Justice Act does not allow anyone to be released from prison or seek parole. Rather, by its plain language, the only thing the law would allow is for a death sentence to be converted to a sentence of life in prison without the possibility of parole – and that would only occur if a judge finds that racial discrimination played a significant role in the application of the death penalty. Both my own legal counsel and legal experts from across the State have assured me that even if an inmate succeeds on a claim under the Act, his sole remedy is life in prison without the possibility of parole. In addition, the executive director of North Carolina Prisoner Legal Services has publicly stated that her organization would decline to represent any prisoner seeking to argue an entitlement to parole after prevailing under the Racial Justice Act because that argument would be, in her words, “frivolous.”

Finally, I want to emphasize that no prisoner will have their death sentences changed to life in prison without the possibility of parole unless they prove to a judge, through competent evidence, that racial discrimination did, in fact, play a significant role in the application of the death penalty.

I am vetoing Senate Bill 9 for the same reason that I signed the Racial Justice Act two years ago: it is simply unacceptable for racial prejudice to play a role in the imposition of the death penalty in North Carolina.

Therefore, I veto this bill.



Beverly Eaves Perdue

*This bill, having been vetoed, is returned to the Clerk of the North Carolina Senate on this 14<sup>th</sup> day of December, 2011 at 9:00 a.m. for reconsideration by that body.*

RECEIVED FROM GOVERNOR

Date: December 14, 2011

Time: 12:10 p.m.

*Sarah Clapp*

# State of North Carolina



BEVERLY EAVES PERDUE  
GOVERNOR

## PROCLAMATION OF RECONVENED SESSION

Pursuant to the authority vested in the Governor by Article III, Section 5 (11) of the Constitution of North Carolina, and as required by Article II, Section 22 (7), the General Assembly shall reconvene on Wednesday, January 4, 2012, at 2:00 p.m. to reconsider Senate Bill 9, "*An Act to Reform the Racial Justice Act of 2009 to be Consistent With the United States Supreme Court's Ruling in McCleskey v. Kemp*", that was vetoed on December 14, 2011.

Done in Raleigh, North Carolina, on December 20, 2011.



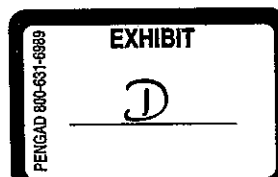
Beverly Eaves Perdue  
Governor

RECEIVED FROM GOVERNOR

Date: December 20, 2011

Time: 12:01 p.m.

*Sarah Clapp*



GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

S

1

SENATE JOINT RESOLUTION 794

---

Sponsors: Senator Apodaca.

---

Referred to: Calendar January 4, 2012.

---

January 4, 2012

- 1 A JOINT RESOLUTION ADJOURNING THE RECONVENED SESSION.  
2 Be it resolved by the Senate, the House of Representatives concurring:  
3       **SECTION 1.** When the House of Representatives and the Senate, constituting the  
4 Reconvened 2011 Session of the 2011 General Assembly, adjourn, they stand adjourned to  
5 reconvene as provided in Resolution 2011-12.  
6       **SECTION 2.** This resolution is effective upon ratification.





NORTH CAROLINA GENERAL ASSEMBLY  
AMENDMENT  
Senate Bill 794

AMENDMENT NO. 1  
(to be filled in by  
Principal Clerk)

S794-ALB-156 [v.2]

Page 1 of 1

Comm. Sub. [NO]  
Amends Title [NO]  
First Edition

Date 1/4 2012

*Rep. Moore*

- 1 Moves to amend the resolution on page 1, line 5, by deleting "Resolution 2011-12" and
- 2 substituting "Resolution 2011-12 as amended by this resolution"
- 3
- 4 Further moves to amend the resolution on page 1, line 5, by adding the following between lines
- 5 5 and 6:
- 6       **SECTION 1.1.** Section 2.1 of Resolution 2011-12 reads as rewritten:
- 7       "**SECTION 2.1.(a)** When the Senate and the House of Representatives adjourn on
- 8 Tuesday, November 29, 2011, they stand adjourned to reconvene the 2011 Regular Session on
- 9 Thursday, February 16, 2012, at 12:00 noon. January 5, 2012, at 12:45 a.m.
- 10       **SECTION 2.1.(b)** During the regular session that reconvenes on Thursday, January
- 11 5, 2012 at 12:45 a.m. only the following matters may be considered:
- 12       (1) Bills returned by the Governor with her objections under Section 22 of
- 13 Article II of the North Carolina Constitution, but solely for the purpose of
- 14 considering overriding of the veto upon reconsideration of the bill.
- 15       (2) A joint resolution further adjourning the 2011 Regular Session to a date
- 16 certain.
- 17       **SECTION 2.1.(c)** When the Senate and the House of Representatives adjourn the
- 18 2011 Regular Session on Thursday, January 5, 2012, they stand adjourned to reconvene on
- 19 Thursday, February 16, 2012, at 12:00 noon."
- 20

SIGNED \_\_\_\_\_

Amendment Sponsor

SIGNED \_\_\_\_\_

Committee Chair if Senate Committee Amendment

ADOPTED 64-48

FAILED \_\_\_\_\_

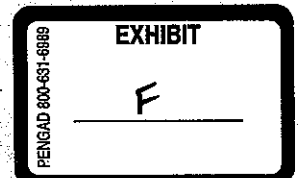
TABLED \_\_\_\_\_

JAN 04 2012

*Senise Wechs*



\* 5 7 9 4 - A L B - 1 5 6 - V - 2 \*



GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011  
RATIFIED BILL

RESOLUTION 2012-1  
SENATE JOINT RESOLUTION 794

A JOINT RESOLUTION ADJOURNING THE RECONVENED SESSION.

Be it resolved by the Senate, the House of Representatives concurring:

**SECTION 1.** When the House of Representatives and the Senate, constituting the Reconvened 2011 Session of the 2011 General Assembly, adjourn, they stand adjourned to reconvene as provided in Resolution 2011-12 as amended by this resolution.

**SECTION 1.1.** Section 2.1 of Resolution 2011-12 reads as rewritten:

**"SECTION 2.1.(a)** When the Senate and the House of Representatives adjourn on Tuesday, November 29, 2011, they stand adjourned to reconvene the 2011 Regular Session on Thursday, February 16, 2012, at 12:00 noon. January 5, 2012, at 12:45 a.m.

**"SECTION 2.1.(b)** During the regular session that reconvenes on Thursday, January 5, 2012, at 12:45 a.m., only the following matters may be considered:

- (1) Bills returned by the Governor with her objections under Section 22 of Article II of the North Carolina Constitution, but solely for the purpose of considering overriding of the veto upon reconsideration of the bill.
- (2) A joint resolution further adjourning the 2011 Regular Session to a date certain.

**"SECTION 2.1.(c)** When the Senate and the House of Representatives adjourn the 2011 Regular Session on Thursday, January 5, 2012, they stand adjourned to reconvene on Thursday, February 16, 2012, at 12:00 noon."

**SECTION 2.** This resolution is effective upon ratification.

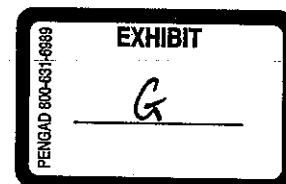
In the General Assembly read three times and ratified this the 5<sup>th</sup> day of January, 2012.

---

Harris D. Blake  
Deputy President Pro Tempore of the Senate

---

Thom Tillis  
Speaker of the House of Representatives



GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

SESSION LAW 2012-1  
SENATE BILL 727

AN ACT TO ELIMINATE THE DUES CHECKOFF OPTION FOR ACTIVE AND  
RETIRED PUBLIC SCHOOL EMPLOYEES.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 143B-426.40A(g) reads as rewritten:

"(g) Payroll Deduction for Payments to Certain Employees' Associations Allowed. – An employee of the State or any of its political subdivisions, ~~subdivisions other than local boards of education~~, institutions, departments, bureaus, agencies or commissions, or any of its ~~local boards of education or community colleges~~, who is a member of a domiciled employees' association that has at least 2,000 members, 500 of whom are employees of the State, ~~State or a political subdivision of the State, or public school employees, State other than a local board of education~~, may authorize, in writing, the periodic deduction each payroll period from the employee's salary or wages a designated lump sum to be paid to the employees' association. A political subdivision may also allow periodic deductions for a domiciled employees' association that does not otherwise meet the minimum membership requirements set forth in this paragraph.

~~An employee of any local board of education who is a member of a domiciled employees' association that has at least 40,000 members, the majority of whom are public school teachers, may authorize in writing the periodic deduction each payroll period from the employee's salary or wages a designated lump sum or sums to be paid for dues and voluntary contributions for the employees' association.~~

An authorization under this subsection shall remain in effect until revoked by the employee. A plan of payroll deductions pursuant to this subsection for employees of the State and other association members shall become void if the employees' association engages in collective bargaining with the State, any political subdivision of the State, or any local school administrative unit. This subsection does not apply to county or municipal governments or any local governmental unit, ~~except for local boards of education unit.~~"

**SECTION 2.** G.S. 135-18.8 reads as rewritten:

"§ 135-18.8. Deduction for payments to certain employees' or retirees' associations allowed.

Any beneficiary who is a member of a domiciled employees' or retirees' association that has at least 2,000 members, the majority of whom are active or retired employees of the State ~~or public school employees~~, State may authorize, in writing, the periodic deduction from the beneficiary's retirement benefits a designated lump sum to be paid to the employees' or retirees' association. The authorization shall remain in effect until revoked by the beneficiary. A plan of deductions pursuant to this section shall become void if the employees' or retirees' association engages in collective bargaining with the State, any political subdivision of the State, or any local school administrative unit."



**SECTION 3.** This act becomes effective July 1, 2011.  
In the General Assembly read three times and ratified this the 9<sup>th</sup> day of June, 2011.

s/ Walter H. Dalton  
President of the Senate

s/ Thom Tillis  
Speaker of the House of Representatives

VETO Beverly E. Perdue  
Governor

Became law notwithstanding the objections of the Governor, 1:12 a.m. this 5<sup>th</sup> day of January, 2012.

s/ Denise Weeks  
House Principal Clerk