

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007**

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**SENATE BILL 1130  
Judiciary I (Civil) Committee Substitute Adopted 5/22/07  
House Committee Substitute Favorable 7/27/07  
House Committee Substitute #2 Favorable 7/31/07  
House Committee Substitute #3 Favorable 8/1/07**

Short Title: Open Discovery/AOC Changes.

(Public)

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Sponsors:

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Referred to:

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March 22, 2007

A BILL TO BE ENTITLED

1 AN ACT CLARIFYING THAT DEFENDANTS MUST HAVE ACCESS TO THE  
2 COMPLETE FILES OF ALL LAW ENFORCEMENT, TO MAKE CHANGES TO  
3 THE STATE BUDGET ACT AS IT APPLIES TO THE JUDICIAL BRANCH, TO  
4 ADD A NEW DUTY TO THE DIRECTOR'S POWERS AND DUTIES, TO  
5 MODIFY OR REPEAL CERTAIN STATUTES RELATED TO DRUG  
6 TREATMENT COURTS, TO MAKE CLARIFYING CHANGES FOR  
7 CONTINUING TRAINING FOR MAGISTRATES, TO ESTABLISH A PILOT  
8 PROGRAM ALLOWING JURORS TO WAIVE PAYMENT OF PER DIEM FEES  
9 AND DESIGNATE FEES FOR OTHER SERVICES, TO PROHIBIT  
10 MAGISTRATES FROM THE PRIVATE PRACTICE OF LAW, AND TO MAKE  
11 TECHNICAL CHANGES TO THE REVENUE PORTIONS OF THE CURRENT  
12 OPERATIONS AND CAPITAL IMPROVEMENTS APPROPRIATIONS ACT OF  
13 2007.  
14

15 The General Assembly of North Carolina enacts:

16 **SECTION 1.** G.S. 15A-903(a)(1) reads as rewritten:

17 "(1) Make available to the defendant the complete files of all law  
18 enforcement and prosecutorial agencies involved in the investigation  
19 of the crimes committed or the prosecution of the defendant. The term  
20 "file" includes the defendant's statements, the codefendants'  
21 statements, witness statements, investigating officers' notes, results of  
22 tests and examinations, or any other matter or evidence obtained  
23 during the investigation of the offenses alleged to have been  
24 committed by the defendant. The term "prosecutorial agency" includes  
25 any public or private entity that obtains information on behalf of a law  
26 enforcement agency or prosecutor in connection with the investigation

1 of the crimes committed or the prosecution of the defendant. Oral  
2 statements shall be in written or recorded form. The defendant shall  
3 have the right to inspect and copy or photograph any materials  
4 contained therein and, under appropriate safeguards, to inspect,  
5 examine, and test any physical evidence or sample contained therein."

6 **SECTION 2.** G.S. 143C-1-1(b) reads as rewritten:

7 "(b) The provisions of this Chapter shall apply to every State ~~agency~~agency,  
8 unless specifically exempted herein, and to every non-State entity that receives or  
9 expends any State funds. No State agency or non-State entity shall expend any State  
10 funds except in accordance with an act of appropriation and the requirements of this  
11 Chapter. The provisions of Chapter 120 of the General Statutes shall continue to apply  
12 to the General Assembly and to control its expenditures and in the event of a conflict  
13 with this Chapter, the provisions of Chapter 120 of the General Statutes shall control.  
14 Nothing in this Chapter abrogates or diminishes the inherent power of the legislative,  
15 executive, or judicial branch."

16 **SECTION 3.** G.S. 143C-3-2 reads as rewritten:

17 **"§ 143C-3-2. Budget estimate for the judicial branch.**

18 The Administrative Officer of the Courts shall give the Director an estimate of the  
19 financial needs of the judicial branch for the upcoming fiscal period in accordance with  
20 the schedule prescribed by the Director. The estimates for the judiciary shall be  
21 approved and certified by the Chief Justice. The estimates shall be itemized in  
22 accordance with the accounting classifications adopted by the Controller. The Director  
23 shall include these estimates for the judicial branch in the budget the Director submits to  
24 the General Assembly. The Director may recommend changes to these estimates in the  
25 budget ~~submitted~~the Director submits to the General Assembly."

26 **SECTION 4.** G.S. 143C-3-5(a) reads as rewritten:

27 "(a) Budget Proposals. – The Governor shall present budget ~~recommendations~~  
28 recommendations, consistent with G.S. 143C-3-1, 143C-3-2, and 143C-3-3 to each  
29 regular session of the General Assembly at a mutually agreeable time to be fixed by  
30 joint resolution."

31 **SECTION 5.** G.S. 143C-4-6(b) reads as rewritten:

32 "(b) Increase in Size Limitation. – To the extent that any percent increase in  
33 appropriations for a fiscal year for (i) Medicaid, (ii) operation of prisons, or (iii)  
34 operation of the courts or ~~(iii)~~(iv) the costs of providing health insurance for teachers  
35 and State employees, exceeds the percent increase in State personal income growth for  
36 the same period, the limitation on the size of the General Fund operating budget  
37 provided in subsection (a) of this section for that fiscal year shall be increased by the  
38 dollar amount represented by the excess percentage. For all subsequent fiscal years, the  
39 percent limitation contained in subsection (a) shall then be increased to reflect that  
40 dollar adjustment."

41 **SECTION 6.** G.S. 143C-6-2(b) reads as rewritten:

42 "(b) Revenue Collections. – The Director, with the assistance of the Secretary of  
43 Revenue and other officials collecting or receiving appropriated State revenue, shall  
44 continuously survey the revenue collections. If the Director finds that revenues to any

1 fund, when added to the beginning unreserved fund balance in that fund, will be  
2 insufficient to support appropriations from that fund, the Director shall immediately  
3 notify the General Assembly that a deficit is anticipated. The Director shall consult with  
4 the Chief Justice to identify expenditure reductions and other lawful measures the Chief  
5 Justice and Judicial Branch can implement to reduce expenditures. The Director shall  
6 report in a timely manner to the General Assembly a plan containing the expenditure  
7 reductions and other lawful measures as the Director is implementing in order to avert  
8 the deficit."

9 **SECTION 7.** G.S.143C-6-4 is amended by adding a new subsection to read:

10 "(i) Transfers in Programs, Objects, and Line Items in the Judicial Branch  
11 Budget. – The Chief Justice of the Supreme Court may approve transfers and  
12 expenditures for more than was authorized in the enacted budget for programs, objects,  
13 or line items in the budget of the judicial branch; however, nonpersonal services funds  
14 or lapsed salary funds may not be used to create new positions or to fund salary  
15 increases. Program transfers shall not be used to avoid year-end reversions or to inflate  
16 increases in the continuation budget. Transfers approved by the Chief Justice in  
17 accordance with this section must be reported quarterly, beginning October 31, to the  
18 Joint Legislative Commission on Governmental Operations."

19 **SECTION 8.** G.S. 143C-6-6(c) reads as rewritten:

20 "(c) This section does not apply to The University of North ~~Carolina~~.Carolina or  
21 the judicial branch."

22 **SECTION 9.** G.S. 143C-7-1(a) reads as rewritten:

23 "(a) Report to Director. – A State ~~agency~~agency, other than the judicial branch,  
24 that submits to the federal government or to any other party an application for funds that  
25 will be subject to this Chapter shall first provide to the Director a copy of the  
26 application along with any related information the Director may require. The judicial  
27 branch shall provide the Director with a copy of the application and any related  
28 information after making the application."

29 **SECTION 10.** G.S. 143C-10-3(a) reads as rewritten:

30 "(a) State ~~Officer~~Officers or Employee.Employees of the Executive Branch. –  
31 The Governor may suspend from the performance of his or her duties any State officer  
32 or ~~employee~~,employee of the executive branch except an officer elected by the people,  
33 who persists, after notice and warning, in failing or refusing to comply with the  
34 provisions of this Chapter or any lawful administrative directive issued pursuant to this  
35 Chapter. Before acting to suspend, the Governor shall give the accused notice and an  
36 opportunity to be heard in his or her own defense. The Governor shall report the facts  
37 leading to suspension to the Attorney General who may initiate appropriate criminal or  
38 civil proceedings. The Governor may apply to the General Court of Justice for a  
39 restraining order and injunction if a suspended officer or employee persists in  
40 performing official acts."

41 **SECTION 11.** G.S. 7A-343 reads as rewritten:

42 "§ 7A-343. **Duties of Director.**

43 The Director is the Administrative Officer of the Courts, and ~~his~~the Director's duties  
44 include all of the following:

- 1 (1) Collect and compile statistical data and other information on the  
2 judicial and financial operation of the courts and on the operation of  
3 other offices directly related to and serving the ~~courts;~~courts.
- 4 (2) Determine the state of the dockets and evaluate the practices and  
5 procedures of the courts, and make recommendations concerning the  
6 number of judges, district attorneys, and magistrates required for the  
7 efficient administration of ~~justice;~~ justice.
- 8 (3) Prescribe uniform administrative and business methods, systems,  
9 forms and records to be used in the offices of the clerks of superior  
10 ~~court;~~court.
- 11 (4) Prepare and submit budget estimates of State appropriations necessary  
12 for the maintenance and operation of the Judicial Department, and  
13 authorize expenditures from funds appropriated for these  
14 ~~purposes;~~purposes.
- 15 (5) Investigate, make recommendations concerning, and assist in the  
16 securing of adequate physical accommodations for the General Court  
17 of ~~Justice;~~Justice.
- 18 (6) Procure, distribute, exchange, transfer, and assign such equipment,  
19 books, forms and supplies as are to be acquired with State funds for  
20 the General Court of ~~Justice;~~Justice.
- 21 (7) Make recommendations for the improvement of the operations of the  
22 Judicial ~~Department;~~Department.
- 23 (8) Prepare and submit an annual report on the work of the Judicial  
24 Department to the Chief Justice, and transmit a copy to each member  
25 of the General ~~Assembly;~~Assembly.
- 26 (9) Assist the Chief Justice in performing his duties relating to the transfer  
27 of district court judges for temporary or specialized ~~duty;~~duty.
- 28 (9a) Establish and operate systems and services that provide for electronic  
29 filing in the court system and further provide electronic transaction  
30 processing and access to court information systems pursuant to  
31 ~~G.S. 7A-343.2; and~~G.S. 7A-343.2.
- 32 (9b) Enter into contracts with one or more private vendors to provide for  
33 the payment of fines, fees, and costs due to the court by credit, charge,  
34 or debit cards; such contracts may provide for the assessment of a  
35 convenience or transaction fee by the vendor to cover the costs of  
36 providing this ~~service;~~service.
- 37 (9c) Prescribe policies and procedures for the appointment and payment of  
38 foreign language interpreters in those cases specified in  
39 G.S. 7A-314(f). These policies and procedures shall be applied  
40 uniformly throughout the General Court of Justice. After consultation  
41 with the Joint Legislative Commission on Governmental Operations,  
42 the Director may also convert contractual foreign language interpreter  
43 positions to permanent State positions when the Director determines  
44 that it is more cost-effective to do ~~so;~~so.

1           (9d) Analyze the use of contractual positions in the Judicial Department  
2           and, after consultation with the Joint Legislative Commission on  
3           Governmental Operations, convert contractual positions to permanent  
4           State positions when the Director determines it is in the best interests  
5           of the Judicial Department to do so.

6           (10) Perform such additional duties and exercise such additional powers as  
7           may be prescribed by statute or assigned by the Chief Justice."

8           **SECTION 12.** G.S. 7A-794 reads as rewritten:

9           "**§ 7A-794. Fund administration.**

10          The Drug Treatment Court Program Fund is created in the Administrative Office of  
11          the Courts and is administered by the Director of the Administrative Office of the  
12          Courts in consultation with the State Drug Treatment Court Advisory Committee. ~~The~~  
13          ~~Director of the Administrative Office of the Courts shall award grants from this Fund~~  
14          ~~and implement local drug treatment court programs. Grants shall be awarded based~~  
15          ~~upon the general guidelines set forth by the Director of the Administrative Office of the~~  
16          ~~Courts and the State Drug Treatment Court Advisory Committee."~~

17          **SECTION 13.** G.S. 7A-798 is repealed.

18          **SECTION 14.** G.S. 7A-801 reads as rewritten:

19          "**§ 7A-801. ~~Plan for evaluation.~~ Monitoring and annual report.**

20          The Administrative Office of the Courts shall ~~develop a statewide model and~~  
21          ~~conduct ongoing evaluations of~~ monitor all State-recognized and funded local drug  
22          ~~treatment court programs. A report of these evaluations shall be submitted~~ courts,  
23          ~~prepare an annual report on the implementation, operation, and effectiveness of the~~  
24          ~~statewide drug treatment court program, and submit the report to the General Assembly~~  
25          ~~by March 1 of each year. Each local drug treatment court program shall submit~~  
26          ~~evaluation reports to the Administrative Office of the Courts as requested."~~

27          **SECTION 15.** G.S. 7A-177(b) reads as rewritten:

28          "**(b)** ~~Training~~ In addition to the basic training course required in subsection (a) of  
29          ~~this section, continuing education courses shall be provided at such times and locations~~  
30          ~~as necessary to assure that they are conveniently available to all magistrates without~~  
31          ~~extensive travel to other parts of the State. Courses shall be provided in Asheville for~~  
32          ~~the magistrates from the western region of the State."~~

33          **SECTION 16.** G.S. 7A-312 reads as rewritten:

34          "**§ 7A-312. Uniform fees for jurors; meals.**

35          (a) A juror in the General Court of Justice including a petit juror, or a coroner's  
36          juror, but excluding a grand juror, shall receive twelve dollars (\$12.00) for the first day  
37          of service and twenty dollars (\$20.00) per day afterwards, except that if any person  
38          serves as a juror for more than five days in any 24-month period, the juror shall receive  
39          forty dollars (\$40.00) per day for each day of service in excess of five days. A grand  
40          juror shall receive twenty dollars (\$20.00) per day. A juror required to remain overnight  
41          at the site of the trial shall be furnished adequate accommodations and subsistence. If  
42          required by the presiding judge to remain in a body during the trial of a case, meals shall  
43          be furnished the jurors during the period of sequestration. Jurors from out of the county

1 summoned to sit on a special venire shall receive mileage at the same rate as State  
2 employees.

3 (b) Notwithstanding subsection (a) of this section, the Administrative Office of  
4 the Courts may select a judicial district to operate a pilot program in which a juror may  
5 waive payment of the per diem fees provided for in that subsection. A juror waiving the  
6 fee may designate that the fee be used for any of the following services, if such services  
7 are provided in the district: (i) client treatment and service programs associated with a  
8 drug treatment or DWI treatment court program; (ii) courthouse self-help centers; (iii)  
9 courthouse child care centers; (iv) legal aid programs operated by a nonprofit  
10 corporation operating within the district; and (v) the Crime Victims Compensation  
11 Fund. If no such services are provided within the district, then waived fees are  
12 transferred to the Crime Victims Compensation Fund."

13 **SECTION 17.** G.S. 84-2 reads as rewritten:

14 **"§ 84-2. Persons disqualified.**

15 No justice, judge, magistrate, full-time district attorney, full-time assistant district  
16 attorney, public defender, assistant public defender, clerk, deputy or assistant clerk of  
17 the General Court of Justice, register of deeds, deputy or assistant register of deeds,  
18 sheriff or deputy sheriff shall engage in the private practice of law. Persons violating  
19 this provision shall be guilty of a Class 3 misdemeanor and only fined not less than two  
20 hundred dollars (\$200.00)."

21 **SECTION 18.** Section 24.3(c) of S.L. 2007-323 reads as rewritten:

22 **"SECTION 24.3.(c)** This section is effective for taxable years beginning on or after  
23 January 1, 2007. January 1, 2008."

24 **SECTION 19.(a)** G.S. 105-522(a)(2), as enacted by Section 31.16.4(c) of  
25 S.L. 2007-323, reads as rewritten:

26 "(2) Hold harmless amount. – The sum of the ~~following:~~following  
27 distributed to a municipality for the month:

- 28 a. Fifty percent (50%) of the amount of sales and use tax revenue  
29 distributed under Article 40 of this ~~Chapter to the municipality~~  
30 ~~for a month,~~ Chapter, other than revenue from the sale of food  
31 that is subject to local tax but is exempt from State tax under  
32 G.S. 105-164.13B.
- 33 b. Twenty-five percent (25%) of the amount of sales and use tax  
34 revenue distributed under Article 39 of this Chapter or under  
35 Chapter 1096 of the 1967 Session Laws, other than revenue  
36 from the sale of food that is subject to local tax but is exempt  
37 from State tax under G.S. 105-164.13B.
- 38 c. The amount determined ~~under sub-subdivision a. of this~~  
39 ~~subdivision subtracted from the amount determined under~~  
40 ~~sub-subdivision b. of this subdivision.~~ by subtracting  
41 twenty-five percent (25%) of the amount of sales and use tax  
42 revenue distributed under Article 39 of this Chapter or under  
43 Chapter 1096 of the 1967 Session Laws from fifty percent  
44 (50%) of the amount distributed under Article 40 of this

1 Chapter. This calculation determines the effect of distributing a  
2 one-quarter percent (.25%) tax on the basis of point of origin  
3 instead of on a per capita basis. ~~If the difference is negative, the~~  
4 ~~result increases the hold harmless amount."~~

5 **SECTION 19.(b)** G.S. 105-523(a)(2), as enacted by Section 31.16.4(d) of  
6 S.L. 2007-323, reads as rewritten:

7 "(2) Repealed sales tax amount. – The sum of the ~~following:~~following  
8 distributed to a county for the month:

9 a. Fifty percent (50%) of the amount of sales and use tax revenue  
10 distributed ~~to a county~~ under Article 40 of this Chapter, other  
11 than revenue from the sale of food that is subject to local tax but  
12 is exempt from State tax under G.S. 105-164.13B.

13 b. Twenty-five percent (25%) of the amount of sales and use tax  
14 revenue distributed under Article 39 of this Chapter or under  
15 Chapter 1096 of the 1967 Session Laws, other than revenue  
16 from the sale of food that is subject to local tax but is exempt  
17 from State tax under G.S. 105-164.13B.

18 c. ~~The amount determined under sub-subdivision a. of this~~  
19 ~~subdivision subtracted from the amount determined under~~  
20 ~~sub-subdivision b. of this subdivision. by subtracting~~  
21 twenty-five percent (25%) of the amount of sales and use tax  
22 revenue distributed under Article 39 of this Chapter or under  
23 Chapter 1096 of the 1967 Session Laws from fifty percent  
24 (50%) of the amount distributed under Article 40 of this  
25 Chapter. This calculation determines the effect of distributing a  
26 one-quarter percent (.25%) tax on the basis of point of origin  
27 instead of on a per capita basis. ~~If the difference is negative, the~~  
28 result increases the hold harmless amount."

29 **SECTION 19.(c)** This section becomes effective October 1, 2009, and  
30 applies to distributions for months beginning on or after that date.

31 **SECTION 20.** G.S. 105-538, as enacted by Section 31.17(b) of S.L.  
32 2007-323, reads as rewritten:

33 "**§ 105-538. Administration of taxes.**

34 Except as provided in this Article, the adoption, levy, collection, administration, and  
35 repeal of these additional taxes must be in accordance with Article 39 of this Chapter.  
36 G.S. 105-468.1 is an administrative provision that applies to this Article. A tax levied  
37 under this Article does not apply to the sales price of food that is exempt from tax  
38 pursuant to G.S. 105-164.13B. The Secretary shall not divide the amount allocated to a  
39 county between the county and the municipalities within the county. Notwithstanding  
40 the provisions of G.S. 105-467(c), during the 2008 calendar year a tax levied under this  
41 Article may become effective on the first day of any calendar quarter so long as the  
42 county gives the Secretary at least 60 days' advance notice of the new tax levy."

43 **SECTION 21.(a)** G.S. 105-164.14(n), as enacted by Section 31.20(b) of S.L.  
44 2007-323, reads as rewritten:

1       "(n) Analytical Services Supplies. – A taxpayer engaged in analytical services in  
2 this State is allowed a refund of ~~fifty percent (50%) of the eligible amount of sales and~~  
3 ~~use tax paid by it in this State on State.~~ The amount of the refund is the greater of the  
4 following:

- 5           (1) Fifty percent (50%) of the eligible amount sales and use tax paid by it  
6 on tangible personal property that is consumed or transformed in  
7 analytical service activities. The eligible amount of sales and use tax  
8 paid by the taxpayer in this State is the amount by which sales and use  
9 taxes paid by the taxpayer in this State in the fiscal year exceed the  
10 amount paid by the taxpayer in this State in the 2006-2007 State fiscal  
11 year.
- 12           (2) Fifty percent (50%) of the amount of sales and use tax paid by it in the  
13 fiscal year on medical reagents.

14       A request for a refund must be in writing and must include any information and  
15 documentation that the Secretary requires. A request for a refund is due within six  
16 months after the end of the State's fiscal year. Refunds applied for after the due date are  
17 barred."

18       **SECTION 21.(b)** This section becomes effective July 1, 2007, and applies  
19 to purchases made on or after that date.

20       **SECTION 22.** G.S. 105-129.95, as enacted by Section 31.23(a) of S.L.  
21 2007-323, reads as rewritten:

22       "**§ 105-129.95. Definitions.**

23       The following definitions apply in this Article:

- 24           (1) Costs of construction. – The costs of acquiring and improving land,  
25 constructing buildings and other structures, ~~and equipping the facility.~~  
26 ~~facility, and constructing and equipping rail tracks to the railroad~~  
27 ~~intermodal facility that are necessary to access and support facility~~  
28 ~~operations.~~ In the case of property owned or leased by the taxpayer,  
29 cost is determined pursuant to regulations adopted under section 1012  
30 of the Code.
- 31           (2) Eligible railroad intermodal facility. – A railroad intermodal facility  
32 whose costs of construction exceed thirty million dollars  
33 (\$30,000,000).
- 34           (3) Intermodal facility. – A facility where freight is transferred from one  
35 mode of transportation to another.
- 36           (4) Railroad intermodal facility. – An intermodal facility whose primary  
37 purpose is to transfer freight between a railroad and another mode of  
38 transportation."

39       **SECTION 23.(a)** Section 24.4 of S.L. 2007-323 is repealed.

40       **SECTION 23.(b)** Notwithstanding Page J2, Item 8, and Page J16, Item 49 of  
41 the Joint Conference Committee Report on the Continuation, Expansion, and Capital  
42 Budgets dated July 27, 2007, funds shall not be transferred from the Department of  
43 Revenue to the Department of Administration for the support of the positions of an  
44 Administrative Hearings Officer and an associated Administrative Assistant.



1           **SECTION 23.(c)** Notwithstanding Section 24.4 of S.L. 2007-323, as  
2 repealed by this act, the actions taken by the Administrative Hearings Officer at the  
3 Department of Revenue from the period beginning July 1, 2007, are given full force and  
4 effect as if Section 24.4 of S.L. 2007-323 had never been enacted. Notwithstanding any  
5 provision of G.S. 105-259 to the contrary, any officer, employee, or agent of the State  
6 that provided access to tax information to the Administrative Hearings Officer or  
7 Administrative Assistant transferred under Section 24.4 of S.L. 2007-323 is not guilty  
8 of any offense to the extent that the provision of the information would have been  
9 authorized by that statute if the transfer had not occurred.

10           **SECTION 24.** A retailer is not liable for an over-collection or  
11 under-collection of sales tax if the retailer has made a good faith effort to comply with  
12 the law and collect the proper amount of tax and has, due to the change in the rate of tax  
13 imposed under G.S. 105-164.4(a) by Section 31.2 of S.L. 2007-323, over-collected or  
14 under-collected the amount of sales tax that is due. This subsection applies only to the  
15 period beginning August 1, 2007, and ending September 1, 2007.

16           **SECTION 25.** Sections 1 through 17 of this act become effective October 1,  
17 2007. Section 23 of this act becomes effective July 1, 2007. Except as otherwise  
18 provided, the remainder of this act is effective when it becomes law.