

THE LEGISLATIVE DRAFTING PROCESS
AT THE NORTH CAROLINA GENERAL ASSEMBLY
OFFICE OF ADMINISTRATIVE COUNSEL'S
2019 CLE PROGRAM
September 24, 2019
Presentation by Gerry Cohen
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At new member orientations over the 31 years I was Bill Drafting Director at the North Carolina General Assembly, I jokingly told members and the media that bill drafting was legalized plagiarism. Not only was it fine to lift ideas and even verbatim language from introduced bills and enacted statutes from other state, there wasn't even a system to give credit.

North Carolina's bill drafting staff consists of attorneys and paralegals trained in the art and science of drafting legislation – attorneys I interviewed for staff openings would often ask “Is experience required for this job” – I would answer “Yes, but I don't know where you would have gotten it.” (Actually, North Carolina legislative staff has had staff who came from other state legislatures – the best known of whom is First Lady Kristin Cooper who worked for the Oklahoma legislature before coming to the North Carolina legislative staff.)

Law schools are few and far between that teach legislative drafting, or for that matter much of anything relating to the legislative process. It's mostly on the job training, passed down like an oral history. I started at the General Assembly in 1977, my first boss there had started at the School of Government working on legislation in 1953.

Legislators would arrive in our bill drafting office with an idea, or a list of ideas. I had two or three legislators a session who would arrive in my office with 50 requests at once, and 100 per session – while other members might have just three or four requests a year. While members were free to talk directly to the staff attorney responsible for that area, most wanted to meet with me to screen the requests, have some preliminary discussion, and then refer them to the staff attorney or paralegal to finish discussions prior to drafting. (I've included with today's materials a list of staff and a list of subject areas, each cross-referenced

Legislator's ideas come from many sources –1) The issue that made them run; 2) constituent requests; 3) local bill requests from cities and counties in their districts; 4) requests from lobbyists; 5) requests from national and local organizations; 6) articles in the press indicating problems; 7) judicial opinions pointing out problems with statutes

and sometimes even suggesting the General Assembly act; 8) bills from prior sessions; 9) requests from the executive branch; 10) bills from other states; 11) model and uniform acts from one of several national organizations; and 12) recommendations of an interim or standing commission. Each of those areas presented differing problems. Statutes provide confidentiality to conversations between the member and legislative staff as well as the preliminary drafts and correspondence – with some exemptions to confidentiality in the redistricting process.

In order for the drafting staff to talk to third parties about the drafts, be it lobbyists, constituents, or others, the legislator must authorize the conversations. Lobbyists and national organizations might send the legislator completed drafts. Most drafting request would require consultation with or review by third parties. The absolute worst bill drafts were brought in by lobbyists or by the members themselves, with the injunction that all stakeholders had approved every word, and not a word was to be changed – despite the parties themselves knowing little about bill drafting, often using drafts for statutes from other states with different administrative systems or competing statutes.

The Bill Drafting Division might receive 2,000 drafting requests in the long session, with some of the drafters handling 200 or more requests. The drafter upon receiving the request must do research, often substantial. A large number of the requests might be for a simple appropriation for an organization or purpose, which involves primarily determining if it is for a public purpose and if the correct name for the grantee is used. A surprising number of nonprofits don't even appear to know the correct legal name of the corporate legal entity, and staff must check the Secretary of State corporate database and sometimes obtain the corporation's articles of incorporation. Is it Y.W.C.A., YWCA, or Young Women's Christian Association, for example, as the grantee for an after school food bank. I remember one, that is if memory serves me correctly, where the name on the letterhead and text of the proposed grantee was YWCA of Winston-Salem, while the grantee's actual corporate name was Young Men's Christian Association of Winston-Salem & Forsyth County, and there wasn't even a recorded assumed name. On the other hand, the budget itself can be a 400 page bill, with a dozen drafting staff members working thousands of hours in total with Fiscal Research Staff and subcommittees. The Appropriations Committee is staffed by the Bill Drafting Division, while other standing committees are staffed by the Legislative Analysis Division – for several reasons – the bill filing deadlines are usually over by the time the budget bill is put together, and the bill drafting attorneys then have time to staff the Appropriations Committee, while at that phase of the legislative session, there is a high volume of bills moving through the other standing committees, taking up all the time of the Legislative Analysis Division staff attorneys.

Once the staff attorney has received the request from the legislator, the real work begins. I made it a practice when the request came in the form of a bill draft submitted by a lobbyist or organization, I would get permission from the legislator to ask the draft submitter to also include an explanation of what the bill was intended to do, and not

infrequently I would find that the submitted draft didn't do what the organization thought it was asking for, often because of misunderstanding of the law by the outside person who drafted a bill. In the area of local legislation, I was often asked to work with the city or county attorney in finalizing the draft for the local governing board to approve. A substantial amount of legislation is local in nature, applying to or within one or a small number of local governments.

The bill drafter has to not only check other statutes that may need to be amended or repealed in carrying out the request, but also potential conflict with federal regulations, federal statutes, and the North Carolina and United States Constitutions. (I can say that the final element of the Supremacy Clause, treaties, never was something I had to look at in researching a bill draft). After consulting with whatever primary and secondary sources, and with whatever individuals are permitted by the requester, the drafter sends a draft to the sponsor, usually accompanied by some sort of explanation in writing. It's not unusual for about 20 percent of drafts delivered to members to never be introduced as bills. That occurs for various reasons – the problem and/or solution turns out to be more complicated than the sponsor had realized – or other members or leadership suggest the draft not be filed. With the House of Representatives limiting members to filing 10 public bills, a member with 20 or 30 requests will need to pick and choose what to file. (Senators have no such filing limit). Drafters would often have the division director or other staff members review and critique their draft, but there was no mandatory internal review process. Legislators usually saw the committee process as the final review of the draft by Legislative Analysis Division staff attorneys, and it was often a useful reduction of staff time, as a majority of introduced bills never even came up in committee, much less become law.

Finally, the legislator may ask for revisions to the draft. This can happen one or multiple times as new information is obtained and the requester accepts the draft for filing.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL 966
Committee Substitute Favorable 4/30/19
Committee Substitute #2 Favorable 5/1/19
Fourth Edition Engrossed 5/3/19
Senate Appropriations/Base Budget Committee Substitute Adopted with unengrossed
amendments 5/29/19
Senate Finance Committee Favorable with unengrossed amendments 5/29/19
Senate Pensions and Retirement and Aging Committee Substitute Adopted 5/29/19
Sixth Edition Engrossed 5/31/19

Short Title: 2019 Appropriations Act. (Public)

Sponsors:

Referred to:

April 26, 2019

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE BASE BUDGET APPROPRIATIONS FOR CURRENT OPERATIONS
3 OF STATE AGENCIES, DEPARTMENTS, AND INSTITUTIONS.
4 The General Assembly of North Carolina enacts:
5

6 **PART I. TITLE AND INTRODUCTION**

7
8 **TITLE OF ACT**

9 **SECTION 1.1.** This act shall be known as the "Current Operations Appropriations
10 Act of 2019."
11

12 **INTRODUCTION**

13 **SECTION 1.2.** The appropriations made in this act are for maximum amounts
14 necessary to provide the services and accomplish the purposes described in the budget in
15 accordance with the State Budget Act. Savings shall be effected where the total amounts
16 appropriated are not required to perform these services and accomplish these purposes, and the
17 savings shall revert to the appropriate fund at the end of each fiscal year, except as otherwise
18 provided by law.
19

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

21
22 **GENERAL FUND APPROPRIATIONS**

23 **SECTION 2.1.(a)** Appropriations from the General Fund for the budgets of the State
24 departments, institutions, and agencies, and for other purposes as enumerated, are made for each
25 year of the 2019-2021 fiscal biennium, according to the following schedule:
26

27 Current Operations - General Fund	28 FY 2019-2020	29 FY 2020-2021
29 EDUCATION		



1 by the Director of the Budget and the budget enacted by the General Assembly, the budget
2 enacted by the General Assembly shall prevail.

3 **SECTION 42.2.(d)** Notwithstanding subsection (a) of this section, the following
4 portions of the Committee Report are for reference, and do not expand, limit, or define the text
5 of the Committee Report:

- 6 (1) Summary pages setting forth the enacted budget, the legislative changes, the
7 revised budget, and the related FTE information for a particular budget code
8 and containing no other substantive information.
- 9 (2) Summary pages setting forth the enacted budget, the legislative changes, the
10 revised budget, and the related FTE information for multiple fund codes
11 within a single budget code and containing no other substantive information.
12

13 **REPORT BY FISCAL RESEARCH DIVISION**

14 **SECTION 42.3.** The Fiscal Research Division shall issue a report on budget actions
15 taken by the 2019 Regular Session of the General Assembly. The report shall be in the form of a
16 revision of the Committee Report described in Section 42.2 of this act pursuant to G.S. 143C-5-5.
17 The Director of the Fiscal Research Division shall send a copy of the report issued pursuant to
18 this section to the Director of the Budget. The report shall be published on the General
19 Assembly's Internet Web site for public access.
20

21 **APPROPRIATIONS LIMITATIONS AND DIRECTIONS APPLY**

22 **SECTION 42.4.** Except where expressly repealed or amended by this act, the
23 provisions of S.L. 2019-9, S.L. 2019-15, and any other enactments affecting the State budget
24 during the 2019 Regular Session of the General Assembly, shall remain in effect.
25

26 **MOST TEXT APPLIES ONLY TO THE 2019-2021 FISCAL BIENNIUM**

27 **SECTION 42.5.** Except for statutory changes or other provisions that clearly indicate
28 an intention to have effects beyond the 2019-2021 fiscal biennium, the textual provisions of this
29 act apply only to funds appropriated for, and activities occurring during, the 2019-2021 fiscal
30 biennium.
31

32 **EFFECT OF HEADINGS**

33 **SECTION 42.6.** The headings to the Parts, subparts, and sections of this act are a
34 convenience to the reader and are for reference only. The headings do not expand, limit, or define
35 the text of this act, except for effective dates referring to a Part or subpart.
36

37 **SEVERABILITY CLAUSE**

38 **SECTION 42.7.** If any section or provision of this act is declared unconstitutional
39 or invalid by the courts, it does not affect the validity of this act as a whole or any part other than
40 the part so declared to be unconstitutional or invalid.
41

42 **EFFECTIVE DATE**

43 **SECTION 42.8.** Except as otherwise provided, this act becomes effective July 1,
44 2019.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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SENATE BILL 354
Education/Higher Education Committee Substitute Adopted 5/6/19
House Committee Substitute Favorable 6/25/19
House Committee Substitute #2 Favorable 7/8/19

Short Title: Sam's Law.

(Public)

Sponsors:

Referred to:

March 26, 2019

A BILL TO BE ENTITLED

AN ACT RELATING TO SEIZURE DISORDERS IN SCHOOLS.

The General Assembly of North Carolina enacts:

SECTION 1. This act shall be known as the "Seizure Safe Schools Act of 2019" or "Sam's Law" and may be cited by those names.

SECTION 2. Article 25A of Chapter 115C of the General Statutes is amended by adding a new section to read:

"§ 115C-375.7. Seizures.(a) Definitions. – For purposes of this section, the following definitions shall apply:(1) Parent. – A parent, legal guardian, or legal custodian of a student.(2) Public school unit. – Any of the following:a. A local school administrative unit.b. A charter school.c. A regional school.d. A school providing elementary or secondary instruction operated by one of the following:1. The State Board of Education, including schools operated under Article 7A and Article 9C of this Chapter.2. The University of North Carolina, including schools operated under Article 4, Article 29, and Article 29A of Chapter 116 of the General Statutes.(3) School. – A school within a public school unit.(4) Seizure action plan. – A written, individualized health plan between a school and the parent of a student in the school who is diagnosed with a seizure disorder. The plan acknowledges the health care needs of the student, prepares both parties to meet those needs, and applies over the course of a school year.

(b) Seizure Action Plan. – The parent of any student may petition a school for the development of a seizure action plan if the student is (i) diagnosed with a seizure disorder and (ii) enrolled in the school. The school shall keep each seizure action plan on file in the office of a school administrator or school nurse employed by the public school unit and make the plan available to any school personnel and, with the permission of the student's parent, any volunteer responsible for the supervision of the student. The parent and the school shall develop the seizure action plan in accordance with policies and procedures developed by the governing body of the public school unit. At a minimum, the plan shall include the following components:



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GENERAL ASSEMBLY OF NORTH CAROLINA
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H.B. 18
Feb 4, 2019
HOUSE PRINCIPAL CLERK

H

D

HOUSE BILL DRH10011-LU-20

Short Title: Allow Absentee Ballots/Fire District Election. (Public)

Sponsors: Representative Howard.

Referred to:

- 1 A BILL TO BE ENTITLED
- 2 AN ACT TO ALLOW VOTING BY ABSENTEE BALLOT IN FIRE DISTRICT ELECTIONS.
- 3 The General Assembly of North Carolina enacts:
- 4 **SECTION 1.** G.S. 163A-1295(c) is repealed.
- 5 **SECTION 2.** This act is effective when it becomes law and applies to fire district
- 6 elections held on or after that date.



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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

H.B. 24
Feb 5, 2019
HOUSE PRINCIPAL CLERK

H

D

HOUSE BILL DRH10012-TC-2

Short Title: Ensure Student Safety at School Voting Sites. (Public)

Sponsors: Representatives Lambeth and Zachary (Primary Sponsors).

Referred to:

- 1 A BILL TO BE ENTITLED
2 AN ACT TO ENSURE STUDENT SAFETY WHEN SCHOOLS ARE USED AS VOTING
3 SITES.
4 The General Assembly of North Carolina enacts:
5 **SECTION 1.** G.S. 115C-47 is amended by adding a new subdivision to read:
6 "(64) To Authorize Use of a School as a Voting Place with Safety Plans. – Upon
7 request from the local board of elections, a local board of education may, but
8 is not required to, consent to the use of a school as a voting place. If the local
9 board of education consents to the request, the local board of education shall
10 develop a safety plan that the local board of elections shall follow to ensure
11 the security of students at the school while the building is being used as a
12 voting place."
13 **SECTION 2.** G.S. 163A-1046(a) reads as rewritten:
14 "(a) At the voting place in each precinct established under the provisions of
15 G.S. 163A-1045, the county board of elections shall provide or procure by lease or otherwise a
16 suitable structure or part of a structure in which registration and voting may be conducted. To
17 this end, the county board of elections shall be entitled to demand and use any ~~school or other~~
18 State, county, or municipal ~~building~~ building other than a school titled to a local board of
19 education, or a part thereof, or any other building, or a part thereof, which is supported or
20 maintained, in whole or in part by or through tax revenues provided, however, that this section
21 shall not be construed to permit any board of elections to demand and use any tax exempt church
22 property for such purposes without the express consent of the individual church involved, for the
23 purpose of conducting registration and voting for any primary or election, and it may require that
24 the requisitioned premises, or a part thereof, be vacated for these purposes. The board of elections
25 may submit a request to a local board of education for the use of a school, but may not use the
26 property without the consent of the local board of education and compliance with the required
27 safety plan, as provided in G.S. 115C-47(64)."
28 **SECTION 3.** G.S. 163A-1303(b) reads as rewritten:
29 "(b) The State Board shall not approve, either in a Plan approved unanimously by a county
30 board of elections or in an alternative Plan proposed by a member or members of that board, a
31 one-stop site in a building that the county board of elections is not entitled under G.S. 163A-1046
32 to demand and use as an election-day voting place, unless the State Board finds that other equally
33 suitable sites were not available and that the use of the sites chosen will not unfairly advantage
34 or disadvantage geographic, demographic, or partisan interests of that county. In providing the
35 site or sites for one-stop absentee voting under G.S. 163A-1300, 163A-1302, this section, and
36 G.S. 163A-1304, the county board of elections shall make a request to the State, county, city,



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1 local school board, or other entity in control of the building that is supported or maintained, in
2 whole or in part, by or through tax revenues at least 90 days prior to the start of one-stop absentee
3 voting under these sections. The request shall clearly identify the building, or any specific portion
4 thereof, requested the dates and times for which that building or specific portion thereof is
5 requested and the requirement of an area for election related activity. If the State, local governing
6 board, or other entity in control of the building does not respond to the request within 20 days,
7 the building or specific portion thereof may be used for one-stop absentee voting as stated in the
8 request. If the State, local governing board, or other entity in control of the building or specific
9 portion thereof responds negatively to the request within 20 days, that entity and the county board
10 of elections shall, in good faith, work to identify a building or specific portion thereof in which
11 to conduct one-stop absentee voting under G.S. 163A-1300, 163A-1302, this section, and
12 G.S. 163A-1304. If the building is a school titled to a local board of education, the property may
13 not be used without the consent of the local board of education and compliance with the required
14 safety plan, as provided in G.S. 115C-47(64). If no building or specific portion thereof has been
15 agreed upon within 45 days from the date the county board of elections received a response to
16 the request, the matter shall be resolved by the State Board."

17 **SECTION 4.** This act becomes effective July 1, 2019, and applies to all elections
18 conducted on or after that date.