

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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SENATE BILL DRS15100-MUZ-5

Short Title: GSC Assignments of Error.

(Public)

Sponsors: Senators Galey and Overcash (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO CONFORM THE GENERAL STATUTES TO THE NORTH CAROLINA
3 RULES OF APPELLATE PROCEDURE BY UPDATING OBSOLETE REFERENCES TO
4 "ASSIGNMENTS OF ERROR" AND "EXCEPTIONS" AND TO MAKE OTHER
5 TECHNICAL CHANGES, AS RECOMMENDED BY THE GENERAL STATUTES
6 COMMISSION.

7 The General Assembly of North Carolina enacts:

8 SECTION 1. G.S. 1-186 is repealed.

9 SECTION 2. G.S. 1-271 reads as rewritten:

10 "§ 1-271. **Who may appeal.**

11 Any party aggrieved may appeal or cross-appeal in the cases prescribed in this Chapter. A
12 The term "party aggrieved" includes a party ~~who cross-assigns error in challenging~~ the grant or
13 denial of a motion under the Rules of Civil Procedure ~~is a party aggrieved.~~ Procedure."

14 SECTION 3. G.S. 1-277 reads as rewritten:

15 "§ 1-277. **Appeal from superior or district court judge.**

16 (a) An appeal may be taken from every judicial order or determination of a judge of a
17 superior or district court, upon or involving a matter of law or legal inference, whether made in
18 or out of session, ~~which that~~ affects a substantial right claimed in any action or proceeding; or
19 ~~which that~~ in effect determines the ~~action-~~action and prevents a judgment from which an appeal
20 might be taken; or discontinues the ~~action-~~action or grants or refuses a new trial.

21 (b) Any interested party ~~shall have~~ has the right of immediate appeal from an adverse
22 ruling as to the jurisdiction of the court over the person or property of the ~~defendant~~ defendant,
23 or ~~such the~~ party may preserve ~~his exception~~ the party's objection for determination upon any
24 subsequent appeal in the cause."

25 SECTION 4. G.S. 1-286 reads as rewritten:

26 "§ 1-286. **Justification of sureties.**

27 ~~The~~ Any written undertaking on appeal under G.S. 1-285 must be accompanied by ~~the~~ an
28 affidavit of one of the sureties that ~~he~~ the surety is worth double the amount specified ~~therein~~ in
29 the undertaking. The respondent may ~~except~~ object to the sufficiency of the sureties within ~~ten~~
30 10 days after the notice of appeal; and unless ~~they or other sureties justify~~ a surety justifies within
31 ~~the ten 10~~ days thereafter, after the objection, the appeal shall be regarded as if no undertaking
32 had been given. The justification must be upon a notice of not less than five days."

33 SECTION 5. G.S. 1A-1, Rule 46, reads as rewritten:

34 "**Rule 46. Objections and exceptions.** Objections.

35 (a) Rulings on admissibility of evidence. – Formal exceptions are unnecessary. An
36 objection is deemed in the following circumstances:



- 1 (1) When there is objection to the admission of evidence on the ground that the
 2 witness is for a specified reason incompetent or not qualified or disqualified,
 3 it ~~shall be~~ is deemed that a like objection has been made to any subsequent
 4 admission of evidence from the witness in question. Similarly, when there is
 5 objection to the admission of evidence involving a specified line of
 6 questioning, it ~~shall be~~ is deemed that a like objection has been taken to any
 7 subsequent admission of evidence involving the same line of questioning.
- 8 (2) If there is proper objection to the admission of evidence and the objection is
 9 overruled, the ruling of the court ~~shall be~~ is deemed ~~excepted~~ objected to by
 10 the party making the objection. If an objection to the admission of evidence is
 11 sustained or if the court for any reason excludes evidence offered by a party,
 12 the ruling of the court ~~shall be~~ is deemed ~~excepted~~ objected to by the party
 13 offering the evidence.
- 14 (3) No objections are necessary with respect to questions propounded to a witness
 15 by the court or a juror but it ~~shall be~~ is deemed that each ~~such~~ question has
 16 been properly objected to by all parties to the action and that the objection has
 17 been ~~overruled and that an exception has been taken to the ruling of the court~~
 18 by all parties to the action overruled.

19 (b) Pretrial rulings, interlocutory orders, trial rulings, and other orders not directed to the
 20 admissibility of evidence. – With respect to a pretrial ruling, ruling, an interlocutory order,
 21 order, a trial ruling, and other orders ruling, or another order of the court not directed to the
 22 admissibility of evidence, formal objections and exceptions are unnecessary. In order to preserve
 23 an ~~exception~~ objection to ~~any such the~~ ruling or order or to the court's failure to make ~~any such~~
 24 the ruling or order, it ~~shall be~~ is sufficient if a party, at the time the ruling or order is made or
 25 sought, makes known to the court the party's objection to the action of the court or makes known
 26 the action that the party desires the court to take and the party's grounds for its position. If a party
 27 has no opportunity to object ~~or except~~ to a ruling or order at the time it is made, the absence of
 28 an objection ~~or exception~~ does not thereafter prejudice that party.

29 (c) Repealed by Session Laws 2001-379, s. 6."

30 **SECTION 6.** G.S. 15-173 reads as rewritten:

31 "**§ 15-173. Demurrer to the evidence. Motion to dismiss based on the evidence.**

32 When on the trial of any criminal action in the superior or district court, the State has
 33 introduced its evidence and rested its case, the defendant may move to dismiss the ~~action, or for~~
 34 ~~judgment as in case of nonsuit.~~ action. If the motion is allowed, judgment shall be entered
 35 accordingly; and ~~such the~~ judgment ~~shall have~~ has the force and effect of a verdict of "not guilty"
 36 as to ~~such the~~ defendant. If the motion is refused and the defendant does not choose to introduce
 37 evidence, the case shall be submitted to the jury as in other cases, and the defendant may on
 38 appeal urge as ground for ~~reversal, reversal~~ the trial court's denial of ~~his the~~ motion without the
 39 necessity of the defendant's having ~~taken exception objected to such the~~ denial.

40 If the defendant introduces evidence, ~~he the~~ defendant thereby waives any motion ~~for~~
 41 ~~dismissal or judgment as in case of nonsuit which he may have to~~ dismiss that the defendant
 42 made prior to the introduction of ~~his the~~ defendant's evidence and cannot urge ~~such the~~ prior
 43 motion as ground for appeal. The defendant, however, may make ~~such the~~ motion at the
 44 conclusion of all the evidence in the case, irrespective of whether or not ~~he the~~ defendant made
 45 a motion ~~for dismissal or judgment as in case of nonsuit theretofore. to dismiss beforehand.~~ If
 46 the motion is allowed, or ~~shall be~~ is sustained on appeal, it ~~shall~~ has in all cases ~~have~~ the force
 47 and effect of a verdict of "not guilty." If the motion is refused, the defendant may on appeal, after
 48 the jury has rendered its verdict, urge as ground for reversal the trial court's denial of ~~his the~~
 49 motion made at the close of all the evidence without the necessity of the defendant's having ~~taken~~
 50 ~~exception objected to such the~~ denial."

51 **SECTION 7.** G.S. 15A-1446 reads as rewritten:

1 **"§ 15A-1446. Requisites for preserving the right to appellate review.**

2 (a) Except as provided in subsection ~~(d)~~, (d) of this section, error ~~may~~ shall not be
3 asserted upon appellate review unless the error has been brought to the attention of the trial court
4 by appropriate and timely objection or motion. No particular form is required in order to preserve
5 the right to assert the alleged error upon appeal if the motion or objection clearly presented the
6 alleged error to the trial court. Formal exceptions are ~~not required~~, unnecessary, but when
7 evidence is excluded a record must be made in the manner provided in G.S. 1A-1, Rule 43(c), in
8 order to assert upon appeal error in the exclusion of that evidence.

9 (b) Failure to make an appropriate and timely motion or objection constitutes a waiver of
10 the right to assert the alleged error upon appeal, but the appellate court may review ~~such~~ any
11 errors affecting substantial rights in the interest of justice if it determines it appropriate to do so.

12 (c) The making of post-trial motions is not a prerequisite to the assertion of error on
13 appeal.

14 (d) Errors based upon any of the following ~~grounds, which are asserted to have occurred,~~
15 grounds may be the subject of appellate review even though no ~~objection, exception~~ objection or
16 motion has been made in the trial ~~division~~ division:

17 ...

18 (3) The criminal pleading charged acts ~~which~~, that, at the time they were
19 committed, did not constitute a violation of criminal law.

20 ...

21 (15) The defendant was not present at any proceeding at which ~~his~~ the defendant's
22 presence was required.

23"

24 **SECTION 8.** G.S. 15A-2000 reads as rewritten:

25 **"§ 15A-2000. Sentence of death or life imprisonment for capital felonies; further**
26 **proceedings to determine sentence.**

27 (a) Separate Proceedings on Issue of Penalty. –

28 (1) Except as provided in G.S. 15A-2004, upon conviction or adjudication of guilt
29 of a defendant of a capital felony in which the State has given notice of its
30 intent to seek the death penalty, the court shall conduct a separate sentencing
31 proceeding to determine whether the defendant should be sentenced to death
32 or life imprisonment. A capital felony is one ~~which~~ that may be punishable by
33 death.

34 ...

35 (3) In the proceeding there ~~shall not be any~~ is no requirement to resubmit evidence
36 presented during the guilt determination phase of the case, unless a new jury
37 is impaneled, but all ~~such~~ this evidence is competent for the jury's
38 consideration in passing on punishment. Evidence may be presented as to any
39 matter that the court deems relevant to ~~sentence~~, sentence and may include
40 matters relating to any of the aggravating or mitigating circumstances
41 enumerated in subsections (e) and (f) of this section. Any evidence ~~which~~ that
42 the court deems to have probative value may be received.

43 (4) The State and the defendant or ~~his~~ the defendant's counsel shall be permitted
44 to present argument for or against sentence of death. The defendant or
45 defendant's counsel ~~shall have~~ has the right to the last argument.

46 (b) Sentence Recommendation by the Jury. – Instructions determined by the trial judge
47 to be warranted by the evidence shall be given by the court in its charge to the jury prior to its
48 deliberation in determining sentence. The court shall give appropriate instructions in those cases
49 in which evidence of the defendant's intellectual disability requires the consideration by the jury
50 of the provisions of G.S. 15A-2005. In all cases in which the death penalty may be authorized,
51 the judge shall include in the judge's instructions to the jury that it must consider any aggravating

1 circumstance or circumstances or mitigating circumstance or circumstances from the lists
 2 provided in subsections (e) and (f) of this section ~~which may be that~~ are supported by the
 3 ~~evidence, evidence~~ and shall furnish to the jury a written list of issues relating to ~~such the~~
 4 aggravating or mitigating circumstance or circumstances.

5 After hearing the evidence, argument of counsel, and instructions of the court, the jury shall
 6 deliberate and render a sentence recommendation to the court, based upon all of the following
 7 matters:

- 8 (1) Whether any sufficient aggravating circumstance or circumstances as
 9 enumerated in subsection (e) of this section ~~exist~~ exists.
- 10 (2) Whether any sufficient mitigating circumstance or circumstances as
 11 enumerated in subsection (f) of this section, ~~which that~~ outweigh the
 12 aggravating circumstance or circumstances found, ~~exist~~ exists.
- 13 (3) Based on these considerations, whether the defendant should be sentenced to
 14 death or to imprisonment in the State's prison for life.

15 The sentence recommendation must be agreed upon by a unanimous vote of the 12 jurors.
 16 Upon delivery of the sentence recommendation by the foreman of the jury, the jury shall be
 17 individually polled to establish whether each juror concurs and agrees to the sentence
 18 recommendation returned.

19 If the jury cannot, within a reasonable time, unanimously agree to its sentence
 20 recommendation, the judge shall impose a sentence of life imprisonment. The judge shall in no
 21 instance impose the death penalty when the jury cannot agree unanimously to its sentence
 22 recommendation.

23 (c) Findings in Support of Sentence of Death. – When the jury recommends a sentence
 24 of death, the foreman of the jury shall sign a writing on behalf of the jury that shows all of the
 25 following:

- 26 (1) The statutory aggravating circumstance or circumstances ~~which that~~ the jury
 27 finds beyond a reasonable doubt.

28 ...

29 (d) Review of Judgment and Sentence. –

- 30 (1) The judgment of conviction and sentence of death ~~shall be~~ is subject to
 31 automatic review by the Supreme Court of North Carolina pursuant to
 32 procedures established by the Rules of Appellate Procedure. In its review, the
 33 Supreme Court shall consider the punishment imposed as well as any ~~errors~~
 34 ~~assigned arguments raised~~ on appeal.
- 35 (2) The sentence of death shall be overturned and a sentence of life imprisonment
 36 imposed in lieu thereof by the Supreme Court upon a finding that the record
 37 does not support the jury's findings of any aggravating circumstance or
 38 circumstances upon which the sentencing court based its sentence of death, or
 39 upon a finding that the sentence of death was imposed under the influence of
 40 passion, prejudice, or any other arbitrary factor, or upon a finding that the
 41 sentence of death is excessive or disproportionate to the penalty imposed in
 42 similar cases, considering both the crime and the defendant. The Supreme
 43 Court may suspend consideration of death penalty cases until ~~such time as the~~
 44 ~~court determines~~ it is prepared to make the comparisons required under this
 45 section.

46 ...

47 (e) Aggravating Circumstances. – Aggravating circumstances ~~which that~~ may be
 48 considered are limited to the following:

49 ...

- 50 (8) The capital felony was committed against a law-enforcement officer,
 51 employee of the Department of Adult Correction, an employee of the Division

1 of Juvenile Justice of the Department of Public Safety, jailer, fireman, judge
2 or justice, former judge or justice, prosecutor or former prosecutor, juror or
3 former juror, or witness or former witness against the defendant, while
4 engaged in the performance of ~~his~~ official duties or because of the exercise of
5 ~~his~~ official duty.

6 (9) The capital felony was especially heinous, atrocious, or cruel.

7 (10) The defendant knowingly created a great risk of death to more than one person
8 by means of a weapon or device ~~which that~~ would normally be hazardous to
9 the lives of more than one person.

10 (11) The murder for which the defendant stands convicted was part of a course of
11 conduct in which the defendant engaged and ~~which that~~ included the
12 commission by the defendant of other crimes of violence against another
13 person or persons.

14 (f) Mitigating Circumstances. – Mitigating circumstances ~~which that~~ may be considered
15 include, but are not limited to, the following:

16 ...

17 (9) Any other circumstance arising from the evidence ~~which that~~ the jury deems
18 to have mitigating value."

19 **SECTION 9.** G.S. 62-90 reads as rewritten:

20 **"§ 62-90. Right of appeal; filing of exceptions.appeal.**

21 (a) Any party to a proceeding before the Commission may appeal from any final order or
22 decision of the Commission within 30 days after the entry of ~~such the~~ final order or decision, or
23 within ~~such an~~ additional time ~~thereafter as may be~~ fixed by the Commission, not to exceed 30
24 additional days, and by order made within 30 days, if the party aggrieved by ~~such the~~ decision or
25 order ~~shall file files~~ with the Commission a notice of appeal and exceptions which shall set that
26 sets forth specifically the ground or grounds on which the aggrieved party considers said
27 decisions the decision or order to be unlawful, unjust, unreasonable or unwarranted, and
28 including unreasonable, or unwarranted and that includes the errors alleged to have been
29 committed by the Commission.

30 All other parties may give a notice of cross appeal and set out exceptions which shall set
31 cross-appeal that sets forth specifically the grounds on which the said party considers said the
32 decision or order to be unlawful, unjust, unreasonable or unwarranted, and including
33 unreasonable, or unwarranted and that includes the errors alleged to have been committed by the
34 Commission. Such The notice of cross appeal and exceptions cross-appeal shall be filed with the
35 Commission within 20 days after the first notice of appeal and exceptions has been filed, or
36 within such an additional time thereafter as may be fixed by the Commission, not to exceed 20
37 additional days by order made within 20 days of the first filed notice of ~~appeal and~~
38 ~~exceptions appeal.~~

39 (b) Any party may appeal from all or any portion of any final order or decision of the
40 Commission in the manner ~~herein provided, provided in this section.~~ Copy of the notice of appeal
41 shall be mailed by the appealing ~~party party,~~ at the time of filing with the Commission, to each
42 party to the proceeding to the addresses as they appear in the files of the Commission in the
43 proceeding. The failure of any party, other than the Commission, to be served with or to receive
44 a copy of the notice of appeal ~~shall does~~ not affect the validity or regularity of the appeal.

45 (c) The Commission may on motion of any party to the proceeding or on its own motion
46 set the ~~exceptions objections~~ to the final order upon which ~~such the~~ appeal is based for further
47 hearing before the Commission.

48 (d) The appeal ~~shall lie lies~~ to the appellate division of the General Court of Justice as
49 provided in G.S. 7A-29. The procedure for the appeal ~~shall be as is~~ provided by the rules of
50 appellate procedure.

51 (e), (f) Repealed by Session Laws 1975, c. 391, s. 12.

1 (g) Repealed by Session Laws 1983, c. 526, s. 5."

2 SECTION 10. G.S. 62-94 reads as rewritten:

3 "**§ 62-94. Record on appeal; extent of review.**

4 (a) On appeal the court shall review the record and the ~~exceptions and assignments of~~
5 ~~error issues raised~~ in accordance with the rules of appellate procedure, and any alleged
6 irregularities in procedures before the Commission, not shown in the record, shall be considered
7 under the rules of appellate procedure.

8 (b) So far as necessary to the decision and where presented, the court shall decide all
9 relevant questions of law, interpret constitutional and statutory provisions, and determine the
10 meaning and applicability of the terms of any Commission action. The court may affirm or
11 reverse the decision of the Commission, declare the ~~same decision~~ null and void, or remand the
12 case for further proceedings; or it may reverse or modify the decision if the substantial rights of
13 the appellants have been prejudiced because the Commission's findings, inferences, ~~conclusions~~
14 ~~conclusions,~~ or decisions ~~are:~~ are any of the following:

15 (1) In violation of constitutional ~~provisions,~~ or provisions.

16 (2) In excess of statutory authority or jurisdiction of the ~~Commission,~~
17 ~~or Commission.~~

18 (3) Made upon unlawful ~~proceedings,~~ or proceedings.

19 (4) Affected by other errors of ~~law,~~ or law.

20 (5) Unsupported by competent, ~~material-material,~~ and substantial evidence in
21 view of the entire record as ~~submitted,~~ or submitted.

22 (6) Arbitrary or capricious.

23 (c) In making ~~the foregoing these~~ determinations, the court shall review the whole record
24 or ~~such the portions thereof as may be~~ of it that are cited by any party-party, and due account
25 shall be taken of the rule of prejudicial error. The appellant shall not be permitted to rely upon
26 any grounds for relief on appeal ~~which that~~ were not set forth specifically in ~~his the~~ the appellant's
27 notice of appeal filed with the Commission.

28 (d) The court shall also compel action of the Commission unlawfully withheld or
29 unlawfully or unreasonably delayed.

30 (e) Upon any appeal, the rates fixed or any rule, ~~regulation,~~ finding, determination, or
31 order made by the Commission under ~~the provisions of this Chapter shall be~~ is prima facie just
32 and reasonable."

33 SECTION 11. G.S. 105-345 reads as rewritten:

34 "**§ 105-345. Right of appeal; filing of exceptions; appeal.**

35 (a) No party to a proceeding before the Property Tax Commission may appeal from any
36 final order or decision of the Commission unless within 30 days after the entry of ~~such the~~ final
37 order or decision the party aggrieved by ~~such the~~ decision or order ~~shall file~~ files with the
38 Commission a notice of appeal ~~and exceptions which shall set that sets forth~~ specifically the
39 ground or grounds on which the aggrieved party considers ~~said the~~ decision or order to be
40 unlawful, unjust, ~~unreasonable or unwarranted,~~ and ~~including unreasonable, or unwarranted and~~
41 ~~that includes the~~ errors alleged to have been committed by the Commission.

42 (b) Any party may appeal from all or any portion of any final order or decision of the
43 Commission in the manner ~~herein provided.~~ provided in this section. Copy of the notice of appeal
44 shall be mailed by the appealing ~~party-party,~~ at the time of filing with the Commission, to each
45 party to the proceeding to the addresses as they appear in the files of the Commission in the
46 proceeding. The failure of any party, other than the Commission, to be served with or to receive
47 a copy of the notice of appeal ~~shall does~~ not affect the validity or regularity of the appeal.

48 (c) The Commission may on motion of any party to the proceeding or on its own motion
49 set the ~~exceptions objections~~ to the final order upon which ~~such the~~ appeal is based for further
50 hearing before the Commission.

1 (d) The appeal ~~shall lie~~ lies to the Court of Appeals as provided in G.S. 7A-29. The
2 procedure for the appeal ~~shall be as is~~ provided by the rules of appellate procedure.

3 (e) The Court of Appeals shall hear and determine all matters arising on ~~such the~~ appeal,
4 as in this Article provided, and may in the exercise of its discretion assign the hearing of ~~said the~~
5 appeal to any panel of the Court of Appeals."

6 **SECTION 12.** G.S. 105-345.2 reads as rewritten:

7 "**§ 105-345.2. Record on appeal; extent of review.**

8 (a) On appeal the court shall review the record and the ~~exceptions and assignments of~~
9 ~~error issues raised~~ in accordance with the rules of appellate procedure, and any alleged
10 irregularities in procedures before the Property Tax Commission, not shown in the record, shall
11 be considered under the rules of appellate procedure.

12 (b) So far as necessary to the decision and where presented, the court shall decide all
13 relevant questions of law, interpret constitutional and statutory provisions, and determine the
14 meaning and applicability of the terms of any Commission action. The court may affirm or
15 reverse the decision of the Commission, declare the ~~same decision~~ null and void, or remand the
16 case for further proceedings; or it may reverse or modify the decision if the substantial rights of
17 the appellants have been prejudiced because the Commission's findings, inferences, ~~conclusions~~
18 ~~conclusions,~~ or decisions ~~are:~~ are any of the following:

19 (1) In violation of constitutional ~~provisions;~~ or provisions.

20 (2) In excess of statutory authority or jurisdiction of the ~~Commission;~~
21 ~~or Commission.~~

22 (3) Made upon unlawful ~~proceedings;~~ or proceedings.

23 (4) Affected by other errors of ~~law;~~ or law.

24 (5) Unsupported by competent, ~~material~~ material, and substantial evidence in
25 view of the entire record as ~~submitted;~~ or submitted.

26 (6) Arbitrary or capricious.

27 (c) In making ~~the foregoing these~~ determinations, the court shall review the whole record
28 or ~~such the~~ portions ~~thereof as may be~~ of it that are cited by any ~~party~~ party, and due account
29 shall be taken of the rule of prejudicial error. The appellant shall not be permitted to rely upon
30 any grounds for relief on appeal ~~which that~~ were not set forth specifically in ~~his the~~ the appellant's
31 notice of appeal filed with the Commission."

32 **SECTION 13.** This act is effective when it becomes law.