

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE DRS85026-LB-78 (2/7)

Short Title: Clarify Jurisdiction.

(Public)

Sponsors: Senator Clodfelter.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO CLARIFY JURISDICTION OF THE GENERAL COURT OF JUSTICE
WITH RESPECT TO CERTAIN CONSTITUTIONAL QUESTIONS.

Whereas, Section 1 of Article II of the North Carolina Constitution vests all legislative power of this State in the General Assembly, and the courts of this State have repeatedly confirmed that this power may not be delegated to nor may it be assumed by any other department, agency, or branch of government; and

Whereas, the doctrine of separation of powers among the coordinate branches of government in North Carolina is a fundamental part of the law of the land and is specifically recognized in Section 6 of Article I of the North Carolina Constitution; and

Whereas, consistent with these constitutional provisions the Supreme Court of this State has consistently ruled that the courts of North Carolina have no constitutional or inherent power to order or to perform acts which are legislative and are part of the legislative power of this State; and

Whereas, Section 1 of Article IV of the North Carolina Constitution vests the judicial power of this State in the General Court of Justice and protects such power from encroachment by providing that the General Assembly may not deprive the judicial power "... of any power or jurisdiction that rightfully pertains to it as a co-ordinate department of the government,..."; and

Whereas, certain recent actions by the General Court of Justice have created a need to clarify the jurisdiction of the General Court of Justice with respect to matters and questions involving the separation of powers mandated by the North Carolina Constitution; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"§ 7A-33.1. Remedies in certain cases.

1 In any case challenging the validity of any act of the General Assembly as being in
2 conflict with or in violation of any provision of the North Carolina Constitution, the
3 court may hear and decide such issue and may issue remedial orders as further herein
4 provided. The remedies in any such case may include declaratory relief, actual
5 compensatory damages where otherwise allowable pursuant to applicable law, and,
6 where appropriate, injunctions, writs of prohibition, or other similar orders or writs to
7 enjoin or restrain the execution or operation of any such act declared to be in violation
8 of the North Carolina Constitution. Such remedies may not, however, include any order
9 or writ, however denominated, which constitutes a legislative act or which would serve
10 as, function in place of, or would substitute for any legislative act or would constitute
11 the exercise of any legislative power vested in the General Assembly."

12 **SECTION 2.** Section 1 of this act, being declaratory of the existing
13 provisions of the North Carolina Constitution and remedial in nature, shall apply to
14 pending cases. Regardless of when issued, all statutes, orders, and decrees in conflict
15 with the provisions of this act are hereby declared void and of no effect.

16 **SECTION 3.** This act is effective when it becomes law.