



JOINT STUDY COMMITTEE ON EMERGENCY PREPAREDNESS AND DISASTER MANAGEMENT RECOVERY

April 20, 2006

The Joint Study Committee on Emergency Preparedness and Disaster Management Recovery met on Thursday, April 20, 2006 at 10:00 a. m. in Room 643 of the Legislative Office Building. Members attending this meeting were: Co-Chairmen Cunningham and Nesbitt; Vice-Chairs Glazier, Haire, Malone, Snow, and Wainwright; Representatives Coleman, Goforth, Edward Jones, Kiser, and Rapp; Senators Bland, Brown, Hartsell, Lucas, and Presnell; and Public Members – Dr. Leah Devlin, Dr. Marty Zaluski, Mr. Randy Thompson, Mr. Duke Geraghty, Mr. Spencer Rogers, Mr. Bill Gentry, Major General William Ingram, Jr., and Director Doug Hoell.

Sergeant-at-Arms assisting: James Worth, Charles Williams, Dusty Rhodes (House); and Jon Fitchett, Stan Johnson, Richard Telfair (Senate).

Committee Staff: Barbara Riley (Research Division), Denise Thomas (Fiscal Research), and Emily Johnson (Legislative Drafting Division). Committee Assistants: Valerie S. Rustin and Vickie Spears.

Subcommittee Staff: Tim Hovis, Beth Braswell, Marilyn Chism, Ben Popkin, Shawn Parker, Sara Kamprath, Hal Pell, Gann Watson, Joy Hicks, Andrea Russo, Steve Rose, Kory Goldsmith, Brenda Carter, Giles Perry, Susan Iddings, Karlynn O'Shaughnessy, Bob Weiss. Subcommittee Assistants: Blinda Edwards, Bonnie McNeil, Martha Hoover, and Phyllis Cameron.

The Agenda and Visitor Registration Sheet are attached. (Attachments 1 and 2)

Co-Chairman Cunningham called the meeting to order and welcomed everyone on behalf of himself and Co-Chairman Nesbitt. He thanked the members, staff, and Sgt. of Arms for their presence and participation.

Co-Chairman Cunningham called for presentations in the agenda's order:

Role of Amateur Radio Operators in Emergency Response (Attachment 3)

- Mr. Hamilton Hicks (Former Mayor of Wilmington, NC)

Comments made to the Joint Study Committee on Emergency Preparedness and Disaster Management Recovery.

By: Hamilton Hicks, April 20, 2006.

When man made events such as 9-11, or nature's Hurricane Katrina strike, the need to communicate is difficult at best. In 2006, we will observe the 100th anniversary of transmitting human voice over the air. In 2003, Homeland Security rolled Amateur Radio into its planning. This underlines the importance and our need for radio voice communications.

Amateur Radio Operators (hams) are using more modes than ever before. As is sometimes said, "This is not your dad's radio". The word amateur is a misnomer, as it was originally intended to mean "not for pay". Equipment has shrunk in size dramatically to the point that some high frequency (short wave) radios are half the size of a loaf of bread and weigh about the same. What have not shrunk are the antenna requirements. One only has to see the many cell towers to quickly understand that the state of the art technology in the building underneath can only work with an outside antenna.

Hams live in neighborhoods and communities which often become isolated with an unknown status as a result of hurricanes. High frequency radio networks are the lifeblood of effective, large scale emergency communications, but if unobtrusive, wire antennas are not permitted; then we are wasting a valuable resource.

Latest figures show that we have almost 19,000 licensed Amateur Radio operators in North Carolina. The average ham has roughly \$3000 invested in equipment. If only 25 percent of the hams are active, then we still have a capital investment close to 14 million dollars. What a private sector resource!

The post storm communications period is extremely critical, and the use of the high frequency networks is basic to the mission. The Department of Defense uses Amateur Radio Operators volunteers to staff its Military Affiliate Radio Service, popularly known as MARS. DOD has publicly stated that it favors the issuance of state and local ordinances that permit the utilization of effective amateur antennas. Of equal importance is the high frequency networks operated by the American Red Cross and the Salvation Army, and staffed by Amateur Radio Operators, some of which operate from their homes. All of these networks were expeditiously set up and operating soon after the storm passed.

What is needed in North Carolina is legislative permissibility insuring that future Laws in CCR neighborhoods (Conditions, Covenants, Restrictions) will reasonably accommodate the installation of low profile, essentially invisible antennas so we can gain the useful information source so badly needed. We are looking for antenna “consistency”, where CCR deeded neighborhoods will be asked to make a “reasonable accommodation” to this federally licensed system. These will be less visible than the 19 inch satellite dishes you presently see, or the old TV antennas of the 50’s and 60’s. We’re not talking about towers and large top mounted antennas either. I for one would quickly agree that these are not attractive alternatives in modern urban and suburban neighborhoods, but in less urban areas they may be quite appropriate. Twenty-two (22) states have already enacted such laws. The latest is Mississippi which quickly saw the need after Hurricane Katrina. We’re asking for North Carolina to codify the Federal Communications Commission ruling known as PRB-1, a copy of which I will provide to the Committee [found @ <http://www.arrl.org/FandES/field/regulations/local/prb-1.htm>]. (Attachment 4) We’re not asking the Legislature to challenge existing CCRs, far from it, but to put a law into effect that will grant permissibility in new CCR type neighborhoods. With such a law, North Carolina Amateur Radio Operators will pledge to work cooperatively with existing CCR neighborhoods to foster a sense of understanding and sought after permissibility. Virginia and Maryland have such laws and could be used a models.

The U.S. Congress is presently working on HR 3876 known as the Amateur Radio Consistency Act, which will go a long way to solve our dilemma. However, as written, this bill would only be effective if states pass similar enabling laws-exactly the same as PRB-1.

So, I ask that we plan for this antenna resource need, and not make the same mistakes as Mississippi when Katrina so painfully revealed this need.

I thank you for your time, and I pledge the resources of the North Carolina Amateur Radio Operators to assist the staff with any needs.

If there are any questions, I’ll be happy to respond as your schedule permits.

(Attachment 4)

Memorandum Opinion and Order in PRB-1

Memorandum Opinion and Order in PRB-1

Before the
 Federal Communications Commission
 Washington, DC 20554

FCC 85-506
 36149

In the Matter of)
)
 Federal preemption of state and) PRB-1
 local regulations pertaining)
 to Amateur radio facilities.)

MEMORANDUM OPINION AND ORDER

Adopted: September 16, 1985

;Released: September 19,

1985

By the Commission: Commissioner Rivera not participating.

Background

1. On July 16, 1984, the American Radio Relay League, Inc (ARRL) filed a Request for Issuance of a Declaratory Ruling asking us to delineate the limitations of local zoning and other local and state regulatory authority over Federally-licensed radio facilities. Specifically, the ARRL wanted an explicit statement that would preempt all local ordinances which provably preclude or significantly inhibit effective reliable amateur radio communications. The ARRL acknowledges that local authorities can regulate amateur installations to insure the safety and health of persons in the community, but believes that those regulations cannot be so restrictive that they preclude effective amateur communications.

2. Interested parties were advised that they could file comments in the matter.\fn 1/ With extension, comments were due on or before December 26, 1984,\fn 2/ with reply comments due on or before January 25, 1985 \fn 3/ Over sixteen hundred comments were filed.

Local Ordinances

3. Conflicts between amateur operators regarding radio antennas and local authorities regarding restrictive ordinances are common. The amateur operator is governed by the regulations contained in Part 97 of our rules. Those rules do not limit the height of an amateur antenna but they require, for aviation safety reasons, that certain FAA notification and FCC approval procedures must be followed for antennas which exceed 200 feet in height above ground level or antennas which are to be erected near airports. Thus, under FCC rules some antenna support structures require obstruction marking and lighting. On the other hand, local municipalities or governing bodies frequently enact regulations limiting antennas and their support structures in height and location, e.g. to side or rear yards, for health, safety or aesthetic considerations. These limiting regulations can result in conflict because the effectiveness of the communications that emanate from an amateur radio station are directly dependent upon the location and the height of the antenna. Amateur operators maintain that they are precluded from operating in certain bands allocated for their use if the height of their antennas is limited by a local ordinance.

4. Examples of restrictive local ordinances were submitted by several amateur operators in this proceeding. Stanley J. Cichy, San Diego, California, noted that in San Diego amateur radio antennas come under a structures ruling which limits building heights to 30 feet. Thus, antennas there are also limited to 30 feet. Alexander Vrenios, Mundelein, Illinois wrote that an ordinance or the Village of Mundelein provides that an antenna must be a distance from the property line that is equal to one and one-half times its height. In his case, he is limited to an

antenna tower for his amateur station just over 53 feet in height.

5. John C. Chapman, an amateur living in Bloomington, Minnesota, commented that he was not able to obtain a building permit to install an amateur radio antenna exceeding 35 feet in height because the Bloomington city ordinance restricted "structures" heights to 35 feet. Mr. Chapman said that the ordinance, when written, undoubtedly applied to buildings but was now being applied to antennas in the absence of a specific ordinance regulating them. There were two options open to him if he wanted to engage in amateur communications. He could request a variance to the ordinance by way of hearing before the City Council, or he could obtain affidavits from his neighbors swearing that they had no objection to the proposed antenna installation. He got the building permit after obtaining the cooperation of his neighbors. His concern, however, is that he had to get permission from several people before he could effectively engage radio communications for which he had a valid FCC amateur license.

6. In addition to height restrictions, other limits are enacted by local jurisdictions--anti-climb devices on towers or fences around them; minimum distances from high voltage power lines; minimum distances of towers from property lines; and regulations pertaining to the structural soundness of the antenna installation. By and large, amateurs do not find these safety precautions objectionable. What they do object to are the sometimes prohibitive, non-refundable application filing fees to obtain a permit to erect an antenna installation and those provisions in ordinances which regulate antennas for purely aesthetic reasons. The amateurs contend, almost universally, that "beauty is in the eye of the beholder." They assert that an antenna installation is not more aesthetically displeasing than other objects that people keep on their property, e.g. motor homes, trailers, pick-up trucks, solar collectors and gardening equipment.

Restrictive Covenants

7. Amateur operators also oppose restrictions on their amateur operations which are contained in the deeds for their homes or in their apartment leases. Since these restrictive covenants are contractual agreements between private parties, they are not generally a matter of concern to the Commission. However, since some amateurs who commented in this proceeding provided us with examples of restrictive covenants, they are included for information Mr. Eugene O. Thomas of Hollister, California included in his comments an extract of the Declaration of Covenants and Restrictions for Ridgemark Estates, County of San Benito, State of California. It provides:

No antenna for transmission or reception of radio signals shall be erected outdoors for use by any dwelling unit except upon approval of the Directors. No radio or television signals or any other form of electromagnetic radiation shall be permitted to originate from any lot which may unreasonably interfere with the reception of television or radio signals upon any other lot.

Marshall Wilson, Jr. provided a copy of the restrictive covenant contained in deeds for the Bell Martin Addition #2, Irving, Texas. It is binding upon all of the owners or purchasers of the lots in the said addition, his or their heirs, executors, administrators or assigns. It reads:

No antenna or tower shall be erected upon any lot for the purposes of radio operations.

William J. Hamilton resides in an apartment building in Gladstone, Missouri. He cites a clause in his lease prohibiting the erection of an antenna. He states that he has been forced to give up operation amateur radio equipment except a hand-held 2 meter (144-148 MHz) radio transceiver. He maintains that he should not be penalized just because he lives in an apartment.

Other restrictive covenants are less global in scope than those cited above. For example, Robert Webb purchased a home in Houston, Texas. His deed restriction prohibited "transmitting or receiving antennas extending above the roof line."

8. Amateur operators generally oppose restrictive covenants for several reasons. They maintain that such restrictions limit the places that they can reside if they want to pursue their hobby of amateur radio. Some state that they impinge on First Amendment rights of speech. Others believe that a constitutional right is being abridged because, in their view, everyone has a right to access the airwaves regardless of where they live.

9. The contrary belief held by housing subdivision communities and condominium or homeowner's associations is that amateur radio installations constitute safety hazards, cause interference to other electronic equipment which may be operated in the home (television, radio, stereos) or are eyesores that detract from the aesthetic and tasteful appearance of the housing development or apartment complex. To counteract these negative consequences, the subdivisions and associations include in their deeds, leases or by-laws, restrictions and limitations on the location and height of antennas or, in some cases, prohibit them altogether. The restrictive covenants are contained in the contractual agreement entered into at the time of the sale or lease of the property. Purchasers or lessees are free to choose whether they wish to reside where such restrictions on amateur antennas are in effect or settle elsewhere.

Supporting Comments

10. The Department of Defense (DOD) supported the ARRL and emphasized in its comments that continued success of existing national security and emergency preparedness telecommunications plans involving amateur stations would be severely diminished if state and local ordinances were allowed to prohibit the construction and usage of effective amateur transmission facilities. DOD utilizes volunteers in the Military Affiliate Radio Service (MARS), \fn 4/ Civil Air Patrol (CAP) and the Radio Amateur Civil Emergency Service (RACES). It points out that these volunteer communicators are operating radio equipment installed in their homes and that undue restrictions on antennas by local authorities adversely affect their efforts. DOD states

that the responsiveness of these volunteer systems would be impaired if local ordinances interfere with the effectiveness of these important national telecommunication resources. DOD favors the issuance of a ruling that would set limits for local and state regulatory bodies when they are dealing with amateur stations.

11. Various chapters of the American Red Cross also came forward to support the ARRL's request for a preemptive ruling. The Red Cross works closely with amateur radio volunteers. It believes that without amateurs' dedicated support, disaster relief operations would significantly suffer and that its ability to serve disaster victims would be hampered. It feels that antenna height limitations that might be imposed by local bodies will negatively affect the service now rendered by the volunteers.

12. Cities and counties from various parts of the United States filed comments in support of the ARRL's request for a Federal preemption ruling. The comments from the Director of Civil Defense, Port Arthur, Texas are representative:

The Amateur Radio Service plays a vital role with our Civil Defense program here in Port Arthur and the design of these antennas and towers lends greatly to our ability to communicate during times of disaster. We do not believe there should be any restrictions on the antennas and towers except for reasonable safety precautions. Tropical storms, hurricanes and tornadoes are a way of life here on the Texas Gulf Coast and good communications are absolutely essential when preparing for a hurricane and even more so during recovery operations after the hurricane has past.

13. The Quarter Century Wireless Association took a strong stand in favor of the Issuance of a declaratory ruling. It believes that Federal preemption is necessary so that there will be uniformity for all Amateur Radio installations on private property throughout the United States.

14. In its comments, the ARRL argued that the Commission has the jurisdiction to preempt certain local land use regulations which frustrate or prohibit amateur radio communications. It said that the appropriate standard in preemption cases is not the extent of state and local interest in a given regulation, but rather the impact of the regulation on Federal goals. Its position is that Federal preemption is warranted whenever local government regulations relate adversely to the operational aspects of amateur communication. The ARRL maintains that localities routinely employ a variety of land use devices to preclude the installation of effective amateur antennas, including height restrictions, conditional use permits, building setbacks and dimensional limitations on antennas. It sees a declaratory ruling of Federal preemption as necessary to cause municipalities to accommodate amateur operator needs in land use planning efforts.

15. James C. O'Connell, an attorney who has represented several amateurs before local zoning authorities, said that requiring amateurs to seek variances or special use approval to erect reasonable antennas unduly restricts the operation of amateur stations. He suggested that the Commission preempt

zoning ordinances which impose antenna height limits of less than 65 feet. He said that this height would represent a reasonable accommodation of the communication needs of most amateurs and the legitimate concerns of local zoning authorities.

Opposing Comments

16. The City of La Mesa, California has a zoning regulation which controls amateur antennas. Its comments reflected an attempt to reach a balanced view.

This regulation has neither the intent, nor the effect, of precluding or inhibiting effective and reliable communications. Such antennas may be built as long as their construction does not unreasonably block views or constitute eyesores. The reasonable assumption is that there are always alternatives at a given site for different placement, and/or methods for aesthetic treatment. Thus, both public objectives of controlling land use for the public health, safety, and convenience, and providing an effective communications network, can be satisfied. A blanket to completely set aside local control, or a ruling which recognizes control only for the purpose of safety of antenna construction, would be contrary to...legitimate local control.

17. Comments from the County of San Diego state:

While we are aware of the benefits provided by amateur operators, we oppose the issuance of a preemption ruling which would elevate 'antenna effectiveness' to a position above all other considerations. We must, however, argue that the local government must have the ability to place reasonable limitations upon the placement and configuration of amateur radio transmitting and receiving antennas. Such ability is necessary to assure that the local decision-makers have the authority to protect the public health, safety and welfare of all citizens.

In conclusion, I would like to emphasize an important difference between your regulatory powers and that of local governments. Your Commission's approval of the preemptive requests would establish a "national policy." However, any regulation adopted by a local jurisdiction could be overturned by your Commission or a court if such regulation was determined to be unreasonable.

18. The City of Anderson, Indiana, summarized some of the problems that face local communities:

I am sympathetic to the concerns of these antenna owners and I understand that to gain the maximum reception from their devices, optimal location is necessary. However, the preservation of residential zoning districts as "liveable" neighborhoods is jeopardized by placing these antennas in front yards of homes. Major problems of public safety have been encountered, particularly vision blockage for auto and pedestrian access. In addition, all communities are faced with various building lot sizes. Many building lots are so small that established setback requirements (in order to preserve adequate air and light) are vulnerable to the unregulated placement of antennas.

...the exercise of preemptive authority by the FCC in granting this request would not be in the best interest of the general public.

19. The National Association of Counties (NACO), the American Planning Association (APA) and the National League of Cities (NCL) all opposed the issuance of an antenna preemption ruling. NACO emphasized that federal and state power must be viewed in harmony and warns that Federal intrusion into local concerns of health, safety and welfare could weaken the traditional police power exercised by the state and unduly interfere with the legitimate activities of the states. NLC believed that both Federal and local interests can be accommodated without preempting local authority to regulate the installation of amateur radio antennas. The APA said that the FCC should continue to leave the issue of regulating amateur antennas with the local government and with the state and Federal courts.

Discussion

20. When considering preemption, we must begin with two constitutional provisions. The tenth amendment provides that any powers which the constitution either does not delegate to the United States or does not prohibit the states from exercising are reserved to the states. These are the police powers of the states. The Supremacy Clause, however, provides that the constitution and the laws of the United States shall supersede any state law to the contrary. Article III, Section 2. Given these basic premises, state laws may be preempted in three ways: First, Congress may expressly preempt the state law. See *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977). Or, Congress may indicate its intent to completely occupy a given field so that any state law encompassed within that field would implicitly be preempted. Such intent to preempt could be found in a congressional regulatory scheme that was so pervasive that it would be reasonable to assume that Congress did not intend to permit the states to supplement it. See *Fidelity Federal Savings & Loan Ass'n v. de la Cuesta*, 458 U.S. 141, 153 (1982). Finally, preemption may be warranted when state law conflicts with federal law. Such conflicts may occur when "compliance with both Federal and state regulations is a physical impossibility," *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142, 143 (1963), or when state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941). Furthermore, federal regulations have the same preemptive effect as federal statutes, *Fidelity Federal Savings & Loan Association v. de la Cuesta*, supra.

21. The situation before us requires us to determine the extent to which state and local zoning regulations may conflict with federal policies concerning amateur radio operators.

22. Few matters coming before us present such a clear dichotomy of view point as does the instant issue. The cities, counties, local communities and housing associations see an obligation to all of their citizens and try to address their concerns. This is accomplished through regulations, ordinances or covenants oriented toward the health, safety and general

welfare of those they regulate. At the opposite pole are the individual amateur operators and their support groups who are troubled by local regulations which may inhibit the use of amateur stations or, in some instances, totally preclude amateur communications. Aligned with the operators are such entities as the Department of Defense, the American Red Cross and local civil defense and emergency organizations who have found in Amateur Radio a pool of skilled radio operators and a readily available backup network. In this situation, we believe it is appropriate to strike a balance between the federal interest in promoting amateur operations and the legitimate interests of local governments in regulating local zoning matters. The cornerstone on which we will predicate our decision is that a reasonable accommodation may be made between the two sides.

23. Preemption is primarily a function of the extent of the conflict between federal and state and local regulation. Thus, in considering whether our regulations or policies can tolerate a state regulation, we may consider such factors as the severity of the conflict and the reasons underlying the state's regulations. In this regard, we have previously recognized the legitimate and important state interests reflected in local zoning regulations. For example, in *Earth Satellite Communications, Inc.*, 95 FCC 2d 1223 (1983), we recognized that

...countervailing state interests inhere in the present situation...For example, we do not wish to preclude a state or locality from exercising jurisdiction over certain elements of an SMATV operation that properly may fall within its authority, such as zoning or public safety and health, provided the regulation in question is not undertaken as a pretext for the actual purpose of frustrating achievement of the preeminent federal objective and so long as the non-federal regulation is applied in a nondiscriminatory manner.

24. Similarly, we recognize here that there are certain general state and local interests which may, in their even-handed application, legitimately affect amateur radio facilities. Nonetheless, there is also a strong federal interest in promoting amateur communications. Evidence of this interest may be found in the comprehensive set of rules that the Commission has adopted to regulate the amateur service. \fn 5/ Those rules set forth procedures for the licensing of stations and operators, frequency allocations, technical standards which amateur radio equipment must meet and operating practices which amateur operators must follow. We recognize the amateur radio service as a voluntary, noncommercial communication service, particularly with respect to providing emergency communications. Moreover, the amateur radio service provides a reservoir of trained operators, technicians and electronic experts who can be called on in times of national or local emergencies. By its nature, the Amateur Radio Service also provides the opportunity for individual operators to further international goodwill. Upon weighing these interests, we believe a limited preemption policy is warranted. State and local regulations that operate to preclude amateur communications in their communities are in direct conflict with federal objectives and must be preempted.

25. Because amateur station communications are only as

effective as the antennas employed, antenna height restrictions directly affect the effectiveness of amateur communications. Some amateur antenna configurations require more substantial installations than others if they are to provide the amateur operator with the communications that he/she desires to engage in. For example, an antenna array for international amateur communications will differ from an antenna used to contact other amateur operators at shorter distances. We will not, however, specify any particular height limitation below which a local government may not regulate, nor will we suggest the precise language that must be contained in local ordinances, such as mechanisms for special exceptions, variances, or conditional use permits. Nevertheless, local regulations which involve placement, screening, or height of antennas based on health, safety, or aesthetic considerations must be crafted to accommodate reasonably amateur communications, and to represent the minimum practicable regulation to accomplish the local authority's legitimate purpose. \fn 6/

26. Obviously, we do not have the staff or financial resources to review all state and local laws that affect amateur operations. We are confident, however, that state and local governments will endeavor to legislate in a manner that affords appropriate recognition to the important federal interest at stake here and thereby avoid unnecessary conflicts with federal policy, as well as time-consuming and expensive litigation in this area. Amateur operators who believe that local or state governments have been overreaching and thereby have precluded accomplishment of their legitimate communications goals, may, in addition, use this document to bring our policies to the attention of local tribunals and forums.

27. Accordingly, the Request for Declaratory Ruling filed July 16, 1984, by the American Radio Relay League, Inc., IS GRANTED to the extent indicated herein and in all other respects, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION
William J. Tricarico
Secretary

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Co-Chairman Cunningham called for questions. None were asked.

Review of Subcommittee Draft Legislative Proposals for 2006 Short Session

○ Building Code Issues

Vice-Chair Haire

Vice-Chair Haire thanked the Co-chairmen, committee members and staff for the hard work in completing this report. The reports are attached.

(Attachment 5)

SUBCOMMITTEE ON BUILDING CODE ISSUES IN HURRICANE AND FLOOD PRONE AREAS

SUBCOMMITTEE MEMBERS

Rep. Phil Haire, Co-Chair
Rep. Bruce Goforth
Mr. Mike McGee

Sen. Julia Boseman, Co-Chair
Sen. Clark Jenkins
Mr. Duke Geraghty
Mr. Spencer Rogers

NUMBER OF MEETINGS

The Subcommittee has held three meetings, on March 7, 2006, a second meeting on March 27, 2006, and a third meeting on April 10, 2006.

PRESENTERS AND TOPICS

On March 7, 2006, the Subcommittee heard from the following presenters:

- Mr. Ryan Boyles, Associate State Climatologist, State Climate Office, discussed hurricane trends including factors affecting the number and intensity of hurricanes making landfall in the United States.
- Ms. Wanda Edwards, Deputy Commissioner of the Division Engineering and Codes, Department of Insurance compared the current State Building Code with the Code of the International Code Council. Ms. Edwards stressed the need to increase current standards for wind-borne debris protection on windows and doors and provided the Subcommittee with the following three options: (1) plywood coverings; (2) impact resistant window glazing; and (3) storm shutters. Ms. Edwards noted that under the current Code wind-borne debris protection is only required within 1500 feet of the ocean.
- Mr. Joe Stewart, Executive Director, Insurance Federation of North Carolina spoke and encouraged the adoption of increased wind-borne debris protection requirements under the Code as a way of mitigating the risk of damage.
- The Subcommittee also heard from Mr. Paul Wilms, Director of Government Affairs, North Carolina Home Builders Association. Mr. Wilms emphasized the need to balance the economic costs of increased wind-borne debris requirements under the Code with the added benefit or protection these requirements might provide. Mr.

Wilms noted that the current Code is sufficient, but that the Association supports continuing examination of the issue by the Building Code Council.

- Finally, Mr. Dan Tingen, Chairman of the Building Code Council indicated that North Carolina uses the International Code as a model, but has always modified the International Code to fit the needs of the State. Mr. Tingen pointed out that the Council is willing to examine a change to the 1500 foot wind-borne debris requirement.

On March 27, 2006, the Subcommittee heard a presentation from Mr. David Herlong, Flood Warning Program Manager, Division of Emergency Management, Department of Crime Control and Public Safety who presented updated information on floodplain mapping, possible areas of flooding in the State, and the State's flood warning system.

The Subcommittee then discussed possible legislation requiring increased wind-borne debris requirements under the Code.

On April 10, the Subcommittee considered findings and recommendations which are set out below.

FINDINGS

- The Subcommittee on Building Code Issues in Hurricane and Flood Prone Areas finds that continued study of wind-borne debris protection for windows and doors under the North Carolina Building Code is needed. Under the current Code, wind-borne debris protection is required only within 1500 feet of the ocean. The Subcommittee asks that the North Carolina Building Code Council study this issue and review reports from other states, including Florida and Texas, and report to the General Assembly on the need for increased wind-borne debris requirements.
- The Subcommittee on Building Code Issues in Hurricane and Flood Prone Areas finds that the North Carolina Building Code Council should examine changes to the Building Code based on recommendations of the Division of Emergency Management's and the Department of Environment and Natural Resources' ongoing study of Flood Insurance Rate Maps, streambed maps, and areas vulnerable to landslides, and report to the General Assembly on any recommended changes.
- The Subcommittee on Building Code Issues in Hurricane and Flood Prone Areas finds that continued study of incentives for those builders and buyers who choose more stringent requirements under a "voluntary code" is needed to encourage home builders and buyers to choose more hurricane and flood-resistant homes under such a code.

RECOMMENDATIONS

- The Subcommittee recommends legislation directing the North Carolina Building Code Council to study issues related to wind-borne debris requirements under the State Building Code and report to the General Assembly by December 15, 2006 on their findings and recommendations for changes to the Code. (See attached legislation)

- The Subcommittee recommends legislation directing the Division of Emergency Management of the Department of Crime Control and Public Safety to report to the North Carolina Building Code Council on their ongoing study of Flood Insurance Rate Maps and report to the Council within 90 days after the study is completed. The Subcommittee recommends legislation directing the Council to review the report and study issues related to the construction of buildings in areas in which flooding and landslides are potential problems and report its findings and recommendations to the General Assembly by February 1, 2007. (See attached legislation)
- The Subcommittee recommends the consideration of future legislation authorizing more stringent requirements in a “voluntary code” which if chosen by a builder or buyer may result in tax incentives and which may result in decreased premiums for those who choose the more stringent Code.

(Attachment 6)

A BILL TO BE ENTITLED

AN ACT TO MANDATE THAT THE NORTH CAROLINA BUILDING CODE COUNCIL STUDY CONSTRUCTION ISSUES RELATED TO WIND-BORNE DEBRIS, FLOODING, AND LANDSLIDES, AS RECOMMENDED BY THE JOINT STUDY COMMITTEE ON EMERGENCY PREPAREDNESS AND DISASTER MANAGEMENT RECOVERY.

The General Assembly of North Carolina enacts:

SECTION 1. The North Carolina Building Code Council shall study the issue of wind-borne debris and its impact on dwellings and other structures. In conducting the study, the Building Code Council shall review studies conducted by or in other states such as Florida and Texas that relate to wind-borne debris and problems associated therewith.

The North Carolina Building Code Council shall report to the General Assembly by December 15, 2006, on its findings and recommendations. The report shall include any proposed legislation or proposed amendments to the North Carolina State Building Code to address problems associated with wind-borne debris.

SECTION 2. The Division of Emergency Management of the Department of Crime Control and Public Safety shall report to the North Carolina Building Code Council on the Flood Insurance Rate Maps that are being updated pursuant to Section 6 of S.L. 2005-1. The Division shall report to the Council 90 days after the update is completed.

The North Carolina Building Code Council shall review the updated Flood Insurance Rate maps and study issues related to the construction of buildings in areas in which flooding and landslides are potential problems. Council shall report its findings and recommendations to the General Assembly on or before February 1, 2007.

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

Co-Chairman Cunningham called for questions, none were asked. He called for a motion on approval of the report with technical corrections: motion made and seconded, voted by saying “Aye”, and the motion carried.

○ **Public Health / Bioterrorism Issues**

Vice-Chair Glazier

Vice-Chair Glazier thanked the Co-chairmen, committee members and staff for the hard work in completing this report. The reports are attached.

(Attachment 7)

**SUBCOMMITTEE ON
PUBLIC HEALTH AND BIOTERRORISM
INTERIM REPORT TO THE FULL COMMITTEE
APRIL 20, 2006**

SUBCOMMITTEE MEMBERS

Rep. Rick Glazier, Co-Chair
Rep. Linda Coleman
Rep. Edward Jones
Mr. Jeff Frazier
Dr. Marty Zaluski

Sen. Vernon Malone, Co-Chair
Sen. Fletcher Hartsell
Dr. Leah Devlin
Mr. Bill Gentry

COMMITTEE PROCEEDINGS

The Joint Study Committee on Emergency Preparedness and Disaster Management Recovery, Subcommittee on Public Health and Bioterrorism, met on March 23, 2006 and heard presentations from the following:

- Dr. Leah Devlin, North Carolina Division of Public Health, presented an overview of the Public Health 2004 Task Force report.
- Dr. Steve Cline, North Carolina Division of Public Health, discussed the public health preparedness and training exercises conducted in the State.
- Dr. Jeff Engel, North Carolina Division of Public Health, reviewed the North Carolina Pandemic Influenza Response Plan.
- Dr. Marty Zaluski, Division of Emergency Programs, North Carolina Department of Agriculture and Consumer Services, discussed the economic impact of agroterrorism and the Avian Flu.
- Drexdal Pratt, North Carolina Office of Emergency Medical Services, reviewed hospital preparedness and medical surge capacity in the State.
- Dr. Lou Turner, Director, State Public Health Laboratory, discussed the need to replace the current State Public Health Laboratory and Office of the Chief Medical Examiner facilities.

- Dr. Leah Devlin, North Carolina Division of Public Health, reported on the need for more antiviral medications and annual flu vaccines.

The Joint Study Committee on Emergency Preparedness and Disaster Management Recovery, Subcommittee on Public Health and Bioterrorism, also met on April 13, 2006 to adopt the interim report.

RECOMMENDATIONS

RECOMMENDATION 1: PROVIDE LIABILITY PROTECTION AND WORKERS' COMPENSATION FOR STATE MEDICAL ASSISTANCE TEAM MEMBERS

The Subcommittee on Public Health/Bioterrorism Issues recommends that the Joint Study Committee on Emergency Preparedness and Disaster Management Recovery encourage the General Assembly to enact legislation to provide liability protection and workers' compensation for healthcare workers when responding to in-state incidents outside their hospital or normal jurisdiction as members of a State Medical Assistance Team.

RECOMMENDATION 2: APPROPRIATE FUNDS FOR VACCINES AND ANTIVIRAL MEDICATIONS

The Subcommittee on Public Health/Bioterrorism Issues recommends that the Joint Study Committee on Emergency Preparedness and Disaster Management Recovery encourage the General Assembly to enact legislation to appropriate funds from the General Fund to the Department of Health and Human Services to purchase essential vaccines for children, to assure flu vaccines for high risk populations and to purchase antiviral medications.

RECOMMENDATION 3: APPROPRIATE FUNDS FOR STATE LABORATORY OF PUBLIC HEALTH AND OFFICE OF CHIEF MEDICAL EXAMINER

The Subcommittee on Public Health/Bioterrorism Issues recommends that the Joint Study Committee on Emergency Preparedness and Disaster Management Recovery encourage the General Assembly to enact legislation to appropriate funds from the General Fund to the Department of Health and Human Services to design and build a new co-located State Laboratory of Public Health and Office of the Chief Medical Examiner.

RECOMMENDATION 4: APPROPRIATE FUNDS FOR REGIONAL ADVISORY COMMITTEES

The Subcommittee on Public Health/Bioterrorism Issues recommends that the Joint Study Committee on Emergency Preparedness and Disaster Management Recovery encourage the General Assembly to enact legislation to appropriate funds from the General Fund to the Office of Emergency Management Services to fund the continued operations of the eight existing Regional Advisory Committees operating across the State.

RECOMMENDATION 5: APPROPRIATE FUNDS FOR DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES STAFFING AND FACILITY NEEDS

The Subcommittee on Public Health/Bioterrorism Issues recommends that the Joint Study Committee on Emergency Preparedness and Disaster Management Recovery encourage the General Assembly to enact legislation to appropriate funds from the General Fund to the Department of Agriculture and Consumer Services' Veterinary Division and Food and Drug Protection Division for staffing and facility improvements and to the Emergency Programs Division for its Multi-Hazard Threat Database.

RECOMMENDATION 6: ESTABLISH DISASTER RESPONSE HEALTH CARE PERSONNEL REGISTRY

The Subcommittee on Public Health/Bioterrorism Issues recommends that the Joint Study Committee on Emergency Preparedness and Disaster Management Recovery encourage the General Assembly to require health care personnel licensing boards overseeing health care workers with disaster response skills to participate in the establishment of an emergency system for advanced registry of health care professionals.

PROPOSED LEGISLATION

GENERAL ASSEMBLY OF NORTH CAROLINA

Short Title: Liability Protection for State Med Asst Teams. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE LIABILITY PROTECTION AND WORKERS' COMPENSATION FOR HEALTH CARE WORKERS WHEN RESPONDING TO IN-STATE INCIDENTS OUTSIDE THEIR HOSPITAL OR NORMAL JURISDICTION AS MEMBERS OF A STATE MEDICAL ASSISTANCE TEAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 166A-14 reads as rewritten:

"§ 166A-14. Immunity and exemption.

(a) All functions hereunder and all other activities relating to emergency management are hereby declared to be governmental functions. Neither the State nor any political subdivision thereof, nor, except in cases of willful misconduct, gross negligence or bad faith, any emergency management worker complying with or reasonably attempting to comply with this Article or any order, rule or regulation promulgated pursuant to the provisions of this Article or pursuant to any ordinance relating to any emergency management measures enacted by any political subdivision of the State, shall be liable for the death of or injury to persons, or for damage to property as a result of any such activity.

(b) The rights of any person to receive benefits to which ~~he~~ the person would otherwise be entitled under this Article or under the Workers' Compensation Law or under any pension law, nor the right of any such person to receive any benefits or

compensation under any act of Congress shall not be affected by performance of emergency management functions.

(c) Any requirement for a license to practice any professional, mechanical or other skill shall not apply to any authorized emergency management worker who shall, in the course of performing ~~his~~the worker's duties as such, practice such professional, mechanical or other skill during a state of disaster.

(d) As used in this section, the term "emergency management worker" shall include any full or part-time paid, volunteer or auxiliary employee of this State or other states, territories, possessions or the District of Columbia, of the federal government or any neighboring country or of any political subdivision thereof or of any agency or organization performing emergency management services at any place in this State, subject to the order or control of or pursuant to a request of the State government or any political subdivision thereof. The term "emergency management worker" under this section shall also include a-any health care worker performing health care services as a member of a hospital-based or county-based State Medical Assistance Team and any person performing emergency health care services under G.S. 90-12.2.

(e) Any emergency management worker, as defined in this section, performing emergency management services at any place in this State pursuant to agreements, compacts or arrangements for mutual aid and assistance to which the State or a political subdivision thereof is a party, shall possess the same powers, duties, immunities and privileges ~~he~~the person would ordinarily possess if performing ~~his~~their duties in the State, or political subdivision thereof in which normally employed or rendering services."

SECTION 2. This act is effective when it becomes law.

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

Short Title: Funds for Purchase of Vaccines and Antivirals.

(Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO APPROPRIATE FUNDS TO THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO PURCHASE ESSENTIAL VACCINES FOR CHILDREN, TO ASSURE FLU VACCINES FOR HIGH RISK POPULATIONS, AND TO PURCHASE ANTIVIRAL MEDICATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. There is appropriated from the General Fund to the Department of Health and Humans Services, Division of Public Health, the sum of thirty-two million two hundred sixty-two thousand five hundred sixty-two dollars (\$32,262,562) for the 2006-2007 fiscal year, to be allocated as follows:

- (1) \$15,600,000 to be used for the purchase of essential vaccines for children.
- (2) \$662,562 to be used to assure flu vaccine for high risk populations.
- (3) \$16,000,000 to be used to purchase antiviral medications.

SECTION 2. This act becomes effective July 1, 2006.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

Short Title: Funds for State Lab. of Public Health/OCME. (Public)

Sponsors: Representative.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO APPROPRIATE FUNDS TO THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO BUILD A NEW CO-LOCATED STATE LABORATORY OF PUBLIC HEALTH AND OFFICE OF THE CHIEF MEDICAL EXAMINER.

The General Assembly of North Carolina enacts:

SECTION 1. There is appropriated from the General Fund to the Department of Health and Human Services the sum of eighty-nine million dollars (\$89,000,000) for the 2006-2007 fiscal year, to be used to design and construct a new co-located State Laboratory of Public Health and Office of the Chief Medical Examiner to replace current facilities.

SECTION 2. This act becomes effective July 1, 2006.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

Short Title: Fund Regional Advisory Committees. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO APPROPRIATE FUNDS TO THE OFFICE OF EMERGENCY MEDICAL SERVICES FOR THE CONTINUED OPERATION OF STATEWIDE REGIONAL ADVISORY COMMITTEES.

The General Assembly of North Carolina enacts:

SECTION 1. There is appropriated from the General Fund to the Office of Emergency Medical Services the sum of one million dollars (\$1,000,000) for the 2006-2007 fiscal year for the continued operations of the eight existing Regional Advisory Committees (RACs), to be allocated in the amount of \$125,000 to each of the eight lead RAC hospitals.

SECTION 2. This act becomes effective July 1, 2006.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

Short Title: Funds for NC Dept. of Agr. and Cons. Services.

(Public)

Sponsors: Representative.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO APPROPRIATE FUNDS TO THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES TO PROVIDE FOR STAFFING AND FACILITY IMPROVEMENTS TO THE VETERINARY DIAGNOSTIC LABORATORY SYSTEM, TO FUND STAFF AND FACILITIES FOR THE FOOD AND DRUG PROTECTION DIVISION, AND TO FUND THE EMERGENCY PROGRAMS DIVISION MULTI-HAZARD THREAT DATABASE.

The General Assembly of North Carolina enacts:

SECTION 1. There is appropriated from the General Fund to the Department of Agriculture and Consumer Services the sum of four million five hundred eighty-nine thousand five hundred fifty dollars (\$4,589,550) for the 2006-2007 fiscal year, to be allocated as follows:

- (1) \$1,647,172 to be used by the Veterinary Division for Veterinary Diagnostic Laboratory System staffing needs and facility improvements.
- (2) \$1,980,378 to be used by the Food and Drug Protection Division for staffing needs and facility improvements.
- (3) \$962,000 to be used by the Emergency Programs Division to fund the Multi-Hazard Threat Database.

SECTION 2. This act becomes effective July 1, 2006.

(Attachment 8)

SUBCOMMITTEE ON PUBLIC HEALTH/BIOTERRORISM ISSUES
ADDITIONAL SUBCOMMITTEE RECOMMENDATION

RECOMMENDATION 7: ENHANCE PROTECTION OF STATE FOOD SUPPLY

The Subcommittee on Public Health/Bioterrorism Issues recommends that the Joint Study Committee on Emergency Preparedness and Disaster Management Recovery encourage the General Assembly to enact legislation to enhance the embargo authority of the Secretary of Environment and Natural Resources and local health directors and to direct the Department of Agriculture and Consumer Services, the Department of Environment and Natural Resources and the Department of Health and Human Services to jointly develop a plan to protect the State food supply from intentional contamination.

A BILL TO BE ENTITLED

AN ACT TO ENHANCE THE EMBARGO AUTHORITY OF THE SECRETARY OF ENVIRONMENT AND NATURAL RESOURCES AND LOCAL HEALTH DIRECTORS AND TO DIRECT THE DEVELOPMENT OF A STATE PLAN TO PROTECT THE FOOD SUPPLY FROM INTENTIONAL CONTAMINATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-21 reads as rewritten:

"§ 130A-21. Embargo.

(a) In addition to the authority of the Commissioner of Agriculture pursuant to G.S. 106-25, The the Secretary of Environment and Natural Resources and or a local health director has authority to exercise embargo authority concerning food or drink pursuant to G.S. 106-125(a), (b) and (c) when ~~delegated the authority by the Commissioner of Agriculture,~~ the food or drink is in an establishment that is subject to regulation by the Department of Environment and Natural Resources pursuant to this Chapter or that is the subject of an investigation pursuant to G.S. 130A-144; however, no such action shall be taken in any establishment or part of an establishment that is under inspection or otherwise regulated by the Department of Agriculture and Consumer Services or the Unites States Department of Agriculture other than the part of the establishment that is subject to regulation by the Department of Environment and Natural Resources pursuant to this Chapter. Any action under this section shall only be taken by, or after consultation with, Department of Environment and Natural Resources regional environmental health specialists, or their superiors, in programs regulating food and drink pursuant to this Chapter. Authority under this statute shall not be delegated to individual environmental health specialists in local health departments otherwise authorized and carrying out laws and rules pursuant to G.S. 130A-4. When such action is taken, the Department of Environment and Natural Resources or the local health director shall immediately notify the Department of Agriculture and Consumer Services. For the purposes of this subsection, all duties and procedures in G.S.106-125 shall be carried out by the Secretary of the Department of Environment and Natural Resources or the local health director and shall not be required to be carried out by the Department of Agriculture and Consumer Services. It shall be unlawful for any person to remove or dispose of the food or drink by sale or otherwise without the permission of a Department of Environment and Natural Resources Regional Environmental Health Specialist or a duly authorized agent of the Department of Agriculture and Consumer Services, or by the court in accordance with the provisions of G.S. 106-125.

(b) If the Secretary of Environment and Natural Resources or a local health director has probable cause to believe that any milk designated as Grade "A" milk is misbranded or does not satisfy the milk sanitation rules adopted pursuant to G.S. 130A-275, the Secretary of Environment and Natural Resources or a local health director may detain or embargo the milk by affixing a tag to it and warning all persons not to remove or dispose of the milk until permission for removal or disposal is given by the official by whom the milk was detained or embargoed or by the court. It shall be unlawful for any person to remove or dispose of the detained or embargoed milk without that permission.

The official by whom the milk was detained or embargoed shall petition a judge of the district or superior court in whose jurisdiction the milk is detained or embargoed for

an order for condemnation of the article. If the court finds that the milk is misbranded or that it does not satisfy the milk sanitation rules adopted pursuant to G.S. 130A-275, either the milk shall be destroyed under the supervision of the petitioner or the petitioner shall ensure that the milk will not be used for human consumption as Grade "A" milk. All court costs and fees, storage, expenses of carrying out the court's order and other expense shall be taxed against the claimant of the milk. If, the milk, by proper labelling or processing, can be properly branded and will satisfy the milk sanitation rules adopted pursuant to G.S. 130A-275, the court, after the payment of all costs, fees, and expenses and after the claimant posts an adequate bond, may order that the milk be delivered to the claimant for proper labelling and processing under the supervision of the petitioner. The bond shall be returned to the claimant after the petitioner represents to the court either that the milk is no longer mislabelled or in violation of the milk sanitation rules adopted pursuant to G.S. 130A-275, or that the milk will not be used for human consumption, and that in either case the expenses of supervision have been paid.

(c) If the Secretary of Environment and Natural Resources or a local health director has probable cause to believe that any scallops, shellfish or crustacea is adulterated or misbranded, the Secretary of Environment and Natural Resources or a local health director may detain or embargo the article by affixing a tag to it and warning all persons not to remove or dispose of the article until permission for removal or disposal is given by the official by whom it was detained or embargoed or by the court. It shall be unlawful for any person to remove or dispose of the detained or embargoed article without that permission.

The official by whom the scallops, shellfish or crustacea was detained or embargoed shall petition a judge of the district or superior court in whose jurisdiction the article is detained or embargoed for an order for condemnation of the article. If the court finds that the article is adulterated or misbranded, that article shall be destroyed under the supervision of the petitioner. All court costs and fees, storage and other expense shall be taxed against the claimant of the article. If, the article, by proper labelling can be properly branded, the court, after the payment of all costs, fees, expenses, and an adequate bond, may order that the article be delivered to the claimant for proper labelling under the supervision of the petitioner. The bond shall be returned to the claimant after the petitioner represents to the court that the article is no longer mislabelled and that the expenses of supervision have been paid.

(d) Nothing in this section is intended to limit the embargo authority of the Department of Agriculture and Consumer Services. The Department of Environment and Natural Resources and the Department of Agriculture and Consumer Services are authorized to enter agreements respecting the duties and responsibilities of each agency in the exercise of their embargo authority.

(e) For the purpose of this section, a food or drink is adulterated if the food or drink is deemed adulterated under G.S. 106-129; and food or drink is misbranded if it is deemed misbranded under G.S. 106-130."

SECTION 2. Article 22 of Chapter 130A of the General Statutes is amended by adding a new section 130A-481 to read:

§ 130A-481. Food Defense.

The Department of Agriculture and Consumer Services, Department of Environment and Natural Resources, and Department of Health and Human Services

shall jointly develop a plan to protect the food supply from intentional contamination. The plan shall address protection of the food supply from production to consumption, including but not limited to the protection of plants, crops, and livestock."

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

Co-Chairman Cunningham explained that Staff will look at each report to address any overlapping recommendations and fiscal request.

Co-Chairman Cunningham called for questions and recognized each:

Sen. Lucas [*"What was your total figure of funds requested?"*]

Vice-Chairman Glazier [*"\$18.5m recurring & \$108m non-recurring."*]

Vice-Chairman Haire [*"On your first recommendation on buying the flu vaccines and the antiviral medications; what is the shelf life of these items?"*]

Vice-Chairman Glazier [*"May I defer to Dr. Devlin (a committee member)?"*]

Dr. Devlin [*"The shelf life for Tama flu (the bulk of the purchase) is three (3) years by the manufacture's note on the label. However; we would be involved in some work with the Federal Government to do shelf life extension thru sampling and monitoring in the environment we would try to extend that. We may also do some product rotation through the annual flu season needs as well, we'd try to make that last as long as possible."*]

Vice-Chairman Haire [*"What is the shelf life on the antiviral medications?"*]

Dr. Devlin [*"That is the antiviral medication; the flu vaccine itself is only made every year and constituted for the current bug circulating that year. Therefore there is not a shelf life issue for vaccine."*]

Co-Chairman Nesbitt [*"The \$15.6m for the purchase of vaccines, what is that for?"*]

Vice-Chairman Glazier [*"That is for the three (3) vaccines: (1) flu vaccine doses required to inoculate children up to 5 years of age; (2) the Prevenar; a pneumococcal vaccine, which deals with spinal and brain inflammation; and (3) for the additional doses on the diphtheria and pertussis vaccine. "*]

Co-Chairman Nesbitt [*"Are those emergency issues or normal vaccines issues?"*]

Vice-Chairman Glazier [*"A mixture of the two, Dr. Devlin could expound."*]

Dr. Devlin [*"The \$15.6m is to add those three vaccines to the childhood immunization program. That is a part of our universal vaccine program in North Carolina for routine childhood immunizations. It is also part of our overall preventive work, the most cost effective and important prevention efforts we have for children. A part of that is the annual flu vaccine where the National Advisory Committee has recommended that we add children from age 2-5 to the recommended flu vaccination list. Part of building our defense in North Carolina is that we participate fully in vaccination programs. Regarding pandemic flu, in particular to the annual vaccination program, children are the reservoir for most of these diseases including influenza."*]

Co-Chairman Nesbitt [*"I understand the antiviral is directed at a pandemic, not to be used unless there was a pandemic...is this correct?"*]

Dr. Devlin [*"At this amount... yes."*]

Co-Chairman Nesbitt [*“I understand that part of it, does it have anything to do with a large scale emergency situation or is it more about general health and welfare? This will need explanation to the Budget Chairs.”*]

Co-Chairman Cunningham [*“Many of these types of questions will be answered in the next report.”*]

Rep. Kiser [*“When the local Health Department administers a vaccine, there is a charge made from Medicare, medical insurance, or out of pocket. Are any of the amounts returned to the State of North Carolina if we purchase these?”*]

Dr. Devlin [*“If we purchased vaccine at the state level, and provide it for the Health Departments (which is only done for children); they are not allowed to sell the vaccine that we provided for free off the federal contract.”*]

Rep. Kiser [*“I talking about regular vaccines, like the flu vaccines. If we purchase the flu vaccines, will we recoup any of that it purchased with State money?”*]

Dr. Devlin [*“If we provide the vaccine purchased by the State, via the Federal contract, and make it available at the local level; they are not allowed to charge for that. Therefore, there is no recoupment from that source. The vaccines that the Health Departments order privately on their own, they do charge a fee for that. That does not come back to the State either.”*]

Rep. Kiser [*“Can the local health department purchase these through the federal program and then recoup monies?”*]

Dr. Devlin [*“No, only the State can purchase off the Federal contract.”*]

Co-Chairman Cunningham [*“Dr. Devlin, could you remind us of your report where there was a change from age five to unlimited?”*]

Dr. Devlin [*“In the first meeting of this committee, I was asked to present on the Public Health Task Force 2004 report that included the strengthening of the public health infrastructure. One of the major aspects called for in that report is vaccines for children. That is one part of the broader agenda that was picked up by this subcommittee and supported in this recommendation. Within this \$15.6m, there is a portion of funding for flu vaccine expansion for children up to age six. That piece plus the \$662.5k are for both flu and annual flu season. One of the most important things that we can do to prepare for pandemic flu in North Carolina, is to have the strongest annual flu vaccination participation by the public. We need to be able to develop the infrastructure for as many people to be vaccinated annually as possible, so that when we hit the year that is “THE” year (when we need to immunized 9 million people ASAP, if we can get vaccine) that we need to be able to build capacity and that cultural norm of getting vaccinated every year. That’s why I think you see that is this report.”*]

Co-Chairman Nesbitt [*“To briefly follow-up, how much of the \$15.6m is the flu part? Will the fact that persons who have previously had the flu protect them in someway in a pandemic; or are we doing it to create a culture and a delivery system to be able to vaccinate them for that particular strain? Does it help to have had a flu shot if a pandemic is coming?”*]

Dr. Devlin [*“A pandemic flu bug would be a virus that we have never had exposure to before. That’s why it would be so devastating in the population. We would not have any of that residual immunity from a previous flu virus; it changes a little from year to year so the vaccine changes from year to year. This would be something from which we would probably have no immunity from our previous exposure to vaccine or other viruses. The amount of the \$15.6m that would be for flu is around \$4.9m.”*]

Rep. Coleman [*“Re: Recommendation #3; Are there any diseases out there that we currently do not test for in our State Lab because of its inadequacy?”*]

Dr. Devlin [*“Clearly, the inadequacy of the lab facility is our biggest gap in preparedness. We make do with what we have by: piling boxes in the halls, having big tanks of dangerous chemicals in the hallways or in the way of working staff. There are a number of safety issues for staff in the lab. There are security issues regarding the site’s location, we are not able to secure the perimeter. In terms of getting the work done, we shoe-horn it in and get the work done on a daily basis. If we get into something of significant size (pandemic flu or an act of bioterrorism) we will be overwhelmed very rapidly because of the quality and the limitations of the facility.”*]

Vice-Chairman Glazier [*“To follow-up that answer, we also have that same issue within the veterinary and agriculture lab, there we had very defined statistics on our ability to test. We could be testing 200k test per year, which is not enough annually, but in trying to do an avian protection we should be doubling or tripling those preventive test but have no capacity to do that. Is that correct Dr. Zaluski?”*]

Dr. Zaluski [*“That is correct, in addition to the food & drug lab who are responsible for testing the majority of the food in North Carolina for safety. Approximately \$1.2m worth of equipment is completely outdated beyond its service life, no longer being serviced by the manufacturer. So we have two issues with the laboratories; both the veterinarian division lab that would and does test for avian flu as well as the food and drug lab need significant infusion to stay functional.”*]

Rep. Coleman [*“To follow-up: Does the cost of the lab include any new equipment, particularly as Dr. Zaluski mentioned regarding testing?”*]

Dr. Zaluski [*“Yes, the veterinarian divisional lab includes new equipment indirectly. This request includes \$250k for expansion of the Rollins Animal Health Diagnostic Lab, to be able to accept \$290k worth of USDA equipment money. So indirectly, there will be an increase in equipment and increase in capacity that is designed for avian influenza specifically. I believe that the Food & Drug lab also includes equipment in that item. For the benefits of the committee, we have in the audience today the Director of the Division of Food & Drug Protection.”*]

Co-Chairman Cunningham [*“How much of this if any is federal money for the vaccines and equipment?”*]

Dr. Devlin [*“The vaccine program in North Carolina is already supported by the approximately \$11m in State appropriations; the overall vaccine program, all the childhood vaccines. There are probably about \$45m in federal funds. For the flu vaccines, the \$4.9m in state participation would also be supported by another \$4.5m in federal resources. For the flu vaccine, the new part that is part of the \$15.6m, the state participation for the flu would be \$4.9m; there would also be another \$4.8m in federal support that would come with that.*]

”Regarding the lab, there is no federal resource available for capital expenses. We have tried a number of ways to ferret that out; we’ve talked with our Congressional Delegation as well. There does not seem to be any way that we can have capital participation for the Feds. With one exception, we did use \$250k of the Federal Preparedness funding to do the feasibility study for the lab and medical examiner office.”]

Co-Chairman Nesbitt [*“I would ask the subcommittees that anywhere we are leveraging or would pull down federal monies, we need to know that. We could use a list of that. Did I understand you correctly that the spending to this money draws down money, or is that other money going to be there regardless of whether we spend money?”]*

Dr. Devlin [*“It will take that much federal money and that much state money to cover the eligible children, so that particular situation is not leverage.”]*

Co-Chairman Nesbitt [*“So, if we did not spend that \$4.5m; you’d still get the \$4.5m in federal money?”]*

Dr. Devlin [*“I believe so.”]*

Vice-Chairman Glazier [*“To answer your question more fully; on the antiviral there is a leverage because there we don’t get the match to purchase the additional doses without the State buying. So on the antiviral, there is absolutely a 25% that comes in, but only if we purchase those doses.”]*

Co-Chairman Nesbitt [*“The detail of all of this makes a difference in what we do here. The second thing I would ask is on the building itself; it calls for this money for the design and construction of this facility, which indicates to me that you do not have plans drawn at this point?”]*

Dr. Devlin [*“We have a feasibility study that has been done; which covers how the space would flow and the amount of required space, but no architectural plans have been drawn.”]*

Co-Chairman Nesbitt [*“Then we may need to know how much money we would need in the next year. If we want to move forward on the lab; because you’ll be lucky to get your design work done, find your site and figure out what you are doing in the next year. That will substantially reduce what we have to come up with. The General Assembly needs to know, it is an \$89m commitment once they make it. But it is a whole lot easier to get started sometimes than it would be to get the whole amount.”]*

Vice-Chairman Haire [*“Could you clarify whether the proposed legislation requires both the Secretary of Environment and Natural Resources and a local health director?”]*

Vice-Chairman Glazier [*“Either of those named parties could have that authority to embargo.”]*

Sen. Brown [*“I believe you said there was \$18m in recurring expenses, how are they broken out?”]*

Vice-Chairman Glazier [*“The childhood vaccinations would be \$15.6m; the \$662k on the flu for senior citizens; the SMAT of regional advisory committees is \$1m; the vet lab staffing is \$147k; Food and Drug staffing is 180k; and the multi-hazard database is 962k. All of the rest we listed as non-recurring, including the \$16m in antivirals; because our hope is that there would be a one time (three or four year) purchase and we’ll deal with that again if we have to at that point. The \$89m lab and the facility’s issues on food & drugs and the lab are non-recurring.”*]

Sen. Brown [*“To follow-up on the antiviral, I think a three year shelf life is what I understand. So every three years, is that going to be a recurring expense?”*]

Vice-Chairman Glazier [*“I think it may well be. A lot depends on first on what the federal priorities are in stockpiling, and a lot depends on what the course of human events are in those three years as to whether we still have the necessity to do that. One would anticipate that it might be; but I could certainly see circumstances where we may not, particularly if the federal government is able to stockpile and we’re able to get them a different way.”*]

Co-Chairman Cunningham called for further questions, none were asked. He called for a motion on approval of the report with technical corrections: motion made and seconded, voted by saying “Aye”, and the motion carried.

Vice-Chair Snow thanked the Co-chairmen, committee members and staff for the hard work in completing this report. The reports are attached.

(Attachment 10)

April 20, 2006

Report from the Subcommittee on Disaster Preparedness Issues to the Joint Study Committee on Emergency Preparedness and Disaster Management Recovery

Mission: #3) Hurricane preparedness, evacuation and response, and #6) Floods and natural disaster preparation and response

Chairmen:	Sen. John Snow	Rep. William Wainwright
Members:	Sen. Jeanne Lucas	Rep. Joe Kiser
	Sen. Tom Apodaca	Rep. Michael Wray
	Maj. Gen. William Ingram	Rep. Ray Rapp
	Mr. Doug Hoell	Rep. Mary McAllister
	Mr. Randy Thompson	Rep. Alice Graham Underhill
		Mr. Thomas McCarthy

Staff: Denise Thomas (Fiscal Research Division), Barbara Riley (Research Division), Emily Johnson (Legislative Drafting Division), and Blinda Edwards (Subcommittee Assistant)

Meetings: The Subcommittee met on April 13, 2006 to review draft legislation. After some discussion, the Subcommittee decided to forward two legislative proposals to the Full Committee to be included in the report for the 2006 Short Session.

Recommended Legislative Proposals for the 2006 Short Session

- **Recommendation:** *Establish a designated disaster response and recovery fund and appropriate funds for this purpose in the 2006 Short Session.* Currently, there is no source of readily available funds to enable the Governor and county officials to prepare for or respond in the immediate aftermath of a hurricane or other natural disaster. In the days leading up to the anticipated hurricanes, state and local governments incur costs related to activating the National Guard, contracting to purchase water, ice, food, generators, portable toilets, transportation services, and other emergency supplies, etc. The Governor is forced to divert existing funds from the budgets of state agencies and county officials must often make expenditure decisions related to FEMA or other federal funds without knowing if the state will assume the cost of the required federal match.

Historical data for the past 11 years indicated that, on average, North Carolina state and local government agencies spent about \$25 million each year on disaster

preparation, response, and recovery efforts. This includes amounts required to match federal funds provided for this purpose and monies spent on state-declared emergencies for which no federal funds are available. The Subcommittee recommends the establishment of a special revenue fund from which the Governor may draw funds, without prior approval of the legislature, to prepare for and respond to emergencies and natural disasters. The Governor would also disburse monies from the fund to county and local governments for this purpose. The sum of twenty million dollars would be appropriated to the fund for the 2006-2007 fiscal year. In each subsequent fiscal year, the beginning balance of the fund must equal twenty million dollars. If the balance of the fund at the end of a fiscal year does not equal twenty million dollars, then an amount equal to the difference between the balance of the fund and twenty million dollars must be appropriated to the fund for the next fiscal year. The attached legislative proposal establishes and appropriates \$20 million to a designated "emergency response fund."

- ***Recommendation: In the 2006 Short Session, appropriate \$8.24 million NR (\$440,000 for planning & design/\$7,800,000 for construction) to the Department of Crime Control and Public Safety for a new Emergency Operations Center (EOC).*** The NC Emergency Operations Center (EOC) is spread out among three separate locations, has insufficient space to accommodate state, FEMA, and other staff during disasters, has insufficient parking, and has mold and other health hazards. The state has the opportunity to build a new EOC that would be co-located with a new \$35 million, federally-funded headquarters building for the NC National Guard (NCNG). It would be more cost-efficient for the state to share construction costs and co-locate with the NCNG facility than to build a stand-alone EOC using all state funds. NCNG plans to begin construction of the new headquarters in 2007. The following motion was approved at the March 28, 2006 meeting of the Joint Committee:

"The Committee requests the Co-chairs to inform the Governor of their wish to proceed with the planning and design for the EOC space in the NCNG building as early as possible."

Following that meeting, Sen. Nesbitt and Rep. Cunningham sent a letter (attached) to Gov. Easley requesting that he immediately identify \$440,000 in available funds to be used to begin planning and designing a new EOC prior to June 30, 2006.

Furthermore, the letter stated that while the Chairs cannot make a commitment that the General Assembly will appropriate the \$7.8 million needed for construction, the Committee has voted to include the funding proposal in its report for the 2006 legislative session. The attached legislative proposal appropriates \$7.8 million for fiscal year 2006-07 for the construction of a new EOC.

(Attachment 11)

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE STATE EMERGENCY RESPONSE FUND AND TO APPROPRIATE FUNDS TO THE STATE EMERGENCY RESPONSE FUND.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 166A is amended by adding a new section to read:

"§ 166A-6.02. State Emergency Response Fund.

(a) Fund established.--The State Emergency Response Fund is established as a special revenue fund in the Office of State Budget and Management. The money in this Fund shall not revert to the General Fund and shall remain in this Fund to be used as provided by this section.

(b) Fund balance. --The balance of the Fund at the beginning of each fiscal year shall be at least twenty million dollars (\$20,000,000). If the balance of the Fund at the end of a fiscal year is less than twenty million dollars (\$20,000,000), then there is appropriated to the Fund from the General Fund on July 1 an amount that is equal to the difference between twenty million dollars (\$20,000,000) and the balance of the Fund on June 30."

(c) Purpose and Spending Priority of Funds.—The Governor may spend money from the Fund for the purposes set forth in this section without further authorization of the General Assembly. Money from the Fund may be used to cover the start-up costs of State Emergency Response Team operations in anticipation of or in response to a Type I, Type II, or Type III disaster as defined by G.S. 166A-6. If money remains available after covering the start-up costs then that money may be used to help provide the State matching funds required for disaster assistance for a Type I, Type II, or Type III disaster. All other types of disaster assistance authorized by G.S. 166A-6 shall continue to be financed by the funds made available under that section."

SECTION 2. G.S. 166A-4 is amended by adding the following subdivision:

"(5a) Fund.—The State Emergency Response Fund established in G.S. 166A-6.02."

SECTION 3. There is appropriated from the General Fund to the State Emergency Response Fund established in G.S. 166A-6.02 the sum of twenty million dollars (\$20,000,000) for the 2006-2007 fiscal year.

SECTION 4. This act becomes effective July 1, 2006.

(Attachment 12)

STATE OF NORTH CAROLINA
NORTH CAROLINA GENERAL ASSEMBLY
STATE LEGISLATIVE BUILDING
RALEIGH, NORTH CAROLINA 27601



April 3, 2006

The Honorable Michael F. Easley
Governor of North Carolina
20301 Mail Service Center
Raleigh, North Carolina 27699-0301

Dear Governor Easley:

The Joint Study Committee on Emergency Preparedness and Disaster Management Recovery received the following assessment and recommendation from its Subcommittee on Disaster Preparedness (at the March 28, 2006 meeting):

- Assessment - The NC Emergency Operations Center (EOC) is spread out among three separate locations; has insufficient space to accommodate State, FEMA, and other staff during disasters; has insufficient parking; and has mold and other health hazards. The State has the opportunity to build a new EOC that would be co-located with a new, federally-funded (\$35 million) headquarters building for the NC National Guard (NCNG). It would be more cost-efficient for the State to share construction costs and co-locate with the NCNG facility, than to build a stand-alone EOC using all state funds. NCNG plans to begin construction of the new headquarters in 2008.
- Recommendation - "In the 2006 Short Session, appropriate \$8.24 million NR (\$440,000 for planning & design/\$7,800,000 for construction) to the Department of Crime Control and Public Safety for a new EOC."

It is our understanding that the State needs to immediately begin the necessary planning and design work for the new EOC in order to take advantage of the opportunity afforded by the NCNG project. This will require the use of current year funds in order to initiate the project prior to June 30, 2006. Because the NC General Assembly will not convene until May 9, 2006, the Joint Study Committee asks that you request the Office of State Budget and Management to identify existing funds which can be used for the design portion of this project.

At this time, we cannot make a commitment that the General Assembly will appropriate the \$7.8 million in construction funds for the new EOC during the 2006 Session. However, the Committee has voted to support this action and include a funding proposal in its report to the General Assembly in the upcoming weeks. Given the time constraints, we ask that these funds be identified in time to consult with the Joint Commission on Governmental Operations at the April 19, 2006 meeting.

Thank you for your attention to this matter. The Committee looks forward to your response in the near future.

Sincerely,

Sincerely,



Senator Martin Nesbitt, Co-Chair



Representative Pete Cunningham, Co-Chair

Cc: David McKoy, State Budget Officer
President Pro Tem Marc Basnight
Speaker James B. Black
Representative Wainwright
Senator Snow
Representative McComas
Representative Glazier
Representative Haire
Representative Kiser
Senator Boseman
Senator Malone
Senator Dorsett
Secretary Beatty
Major General Ingram
Representative Clary
Representative Crawford
Representative Earle
Representative Nye
Representative Owens
Representative Sherrill
Senator Dalton
Senator Garrou
Senator Hagan
Lynn Muchmore, Fiscal Research Director

(Attachment 13)

A BILL TO BE ENTITLED

AN ACT TO APPROPRIATE FUNDS TO THE DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY TO CONSTRUCT A NEW EMERGENCY OPERATIONS CENTER AS A PORTION OF THE NEW READINESS CENTER FOR THE NORTH CAROLINA NATIONAL GUARD.

The General Assembly of North Carolina enacts:

SECTION 1. There is appropriated from the General Fund to the Department of Crime Control and Public Safety the sum of seven million eight hundred thousand dollars (\$7,800,000) for the 2006-2007 fiscal year to provide the State funds required to match federal funds for the construction cost of a new Readiness Center for the North Carolina National Guard that will also house a new Emergency Operations Center for the State of North Carolina.

SECTION 2. This act becomes effective July 1, 2006.

Co-Chairman Cunningham called for questions and recognized each:

Rep. Rapp [*“I want a little clarification on the Governor’s office in the finding of this \$400k for the planning (of the EOC). Would it help if this full committee were to pass the same resolution? Would that broaden the commitment or is it helpful in any way?”*]

Vice-Chairman Wainwright [*“At the last full committee meeting, the members requested that the Committee Chairs write a letter to the Governor requesting funding for the planning of the EOC. That letter has been sent. At our last subcommittee meeting, our understanding from Mr. Hoell was that the Budget Director and the Secretary of Crime Control and Public Safety were meeting on this particular issue; trying to identify a possible source for these funds(\$440k for planning and design).”*]

Rep. Rapp [*“Has there been any news update?”*]

Co-Chairman Nesbitt [*“No news yet, but what I think we should do is instruct Staff to keep it included in our recommendation until the money is available. The committee voted for us to send the letter and basically obligate this committee to make the recommendation to do this. We can not appropriate money presently, but we can this summer. It would be appropriate to leave it in our recommendation; if the Governor’s office finds the money...it is done, and if not then we are in a position to try to get the money in the short session.”*]

Co-Chairman Cunningham called for further questions, none were asked. He called for a motion on approval of the report with technical corrections: motion made and seconded, voted by saying “Aye”, and the motion carried.

o **Energy Issues**

Steve Rose- Subcommittee Staff

Mr. Rose presented the report on behalf of the subcommittee Co-Chairs. The report is attached.

(Attachment 14)

**Energy Security Issues Subcommittee
Recommendations to the
Joint Study Committee on Emergency Preparedness and Disaster**

Co-chairs: Sen. Katie G. Dorsett
Rep. Daniel Francis McComas

Members: Sen. C.W. Pete Bland Rep. Thomas Roger West
Sen. Keith Presnell Rep. Grier Martin
Sen. Harry Brown Rep. Louis M. Pate

Meeting: The Energy Security Issues Subcommittee met on March 21, 2006. Larry Shirley, the Director of the State Energy Office, discussed energy security strategies. Robert Gruber, Executive Director of the Public Staff, North Carolina Utilities Commission, explained the state's electric utility infrastructure and emergency planning. John Dorman, Director of Geospatial and Technology Management, Department of Crime Control and Public Safety, reviewed his organization's capabilities.

Findings:

- (1) 90% of the petroleum used for fuel in North Carolina reaches this state via two pipelines that originate in the Gulf coast region.
- (2) In the summer and fall of 2005, Hurricanes Katrina and Rita caused severe damage to Gulf coast refineries and to the pipelines that supply fuel to North Carolina. North Carolina experienced major disruptions in its petroleum supplies that almost reached emergency proportions.
- (3) As a result of the disruptions, the Governor curtailed all "non-essential" travel by State agencies. In addition, units of local government were in danger of not having sufficient fuel to supply their "first responder" services.
- (4) The State contract for fuel is awarded to independent distributors whose supplies were the first to be curtailed during the fuel disruptions this summer. Units of local government purchase their fuel through the State's contract.
- (5) Neither the State nor units of local government had firm contracts with fuel distributors that ensured that their fuel needs would receive priority during the supply disruptions.

- (6) The North Carolina Energy Emergency Plan is produced by the State Energy Office as part of the North Carolina Emergency Operations Plan. It is designed to do all of the following:
- a. Determine North Carolina's essential energy facilities.
 - b. Assess potential threats and possible consequences of energy disruptions.
 - c. Identify response measures and options.
 - d. Coordinate local, State and federal issues.
- (7) The North Carolina Energy Emergency Plan was last revised in 2003.

Key issue: There needs to be better coordination and planning within and between State agencies and units of local government to ensure that governmental fuel requirements are properly prioritized during an energy crisis and to ensure that critical governmental functions can be carried-out during an energy crisis.

Recommendations (in priority order):

- (1) The State Energy Office shall use its authority under Chapter 113B and as the lead technical agency responsible for responding to and recovering from fuel shortages under the North Carolina Emergency Operations Plan to update the North Carolina Energy Emergency Plan by November 1, 2006. In order to accomplish this task all appropriate State agencies and units of local government shall:
- a. Review and revise existing energy emergency plans or develop energy emergency plans if none exist.
 - b. Clarify the roles and responsibilities between the agencies and units of local government in the event of a petroleum shortage.
- (2) The State Energy Office, in conjunction with the Office of State Purchase and Contract, shall review the current State contract for fuel and determine whether it adequately minimizes the risk that the State and units of local government will experience supply curtailments during a fuel shortage.

The State Energy Office shall report its findings and recommendations to the Joint Study Committee on Emergency Preparedness and Disaster no later than November 1, 2006. All recommendations shall include a cost estimate of the recommended undertaking.

Need for Legislative action.

The subcommittee believes that the State agencies and the units of local government have the authority to undertake the actions specified in Recommendations 1 and 2 without legislative action by the General Assembly.

Cost of recommended undertakings.

The cost of updating the North Carolina Energy Emergency Plan is estimated to be \$40,000.

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE NORTH CAROLINA ENERGY EMERGENCY PLAN, TO IMPROVE PLANNING AND COORDINATION FOR AN ENERGY EMERGENCY OR ENERGY CRISIS AMONG ALL LEVELS OF GOVERNMENT, AND TO APPROPRIATE FUNDS, AS RECOMMENDED BY THE JOINT STUDY COMMITTEE ON EMERGENCY PREPAREDNESS AND DISASTER MANAGEMENT RECOVERY.

The General Assembly of North Carolina enacts:

SECTION 1. The General Assembly makes the following findings:

(1) Ninety percent (90%) of the petroleum used for fuel in North Carolina reaches this State via two pipelines that originate in the Gulf coast region.

(2) In the summer and fall of 2005, Hurricanes Katrina and Rita caused severe damage to Gulf coast refineries and to the pipelines that supply fuel to North Carolina. North Carolina experienced major disruptions in its petroleum supplies that almost reached emergency proportions.

(3) As a result of the disruptions, the Governor curtailed all non-essential travel by State agencies. In addition, units of local government were in danger of not having sufficient fuel to supply their first responder and other vital services.

(4) The State and units of local government purchase their fuel through the State's competitive bidding procedure under Article 3 of Chapter 143 of the General Statutes, which requires the contract to be awarded to the lowest bidder. The contracts for fuel purchases by the State and by units of local government are awarded to independent fuel distributors whose supplies were the first to be curtailed during the fuel disruptions this summer. Consequently, neither the State nor units of local government had contracts with fuel distributors that ensured that their most vital fuel needs would receive priority during this summer's supply disruptions.

(5) The North Carolina Energy Emergency Plan is produced by the State Energy Office as part of the North Carolina Emergency Operations Plan. The North Carolina Emergency Operations Plan was developed by the Department of Crime Control and Public Safety under G.S. 166A-5. Under the North Carolina Emergency Operations Plan, the State Energy Office of the Department of Administration is the lead technical agency responsible for responding to and recovering from fuel shortages in the State.

(6) The North Carolina Energy Emergency Plan is designed to do all of the following:

- a. Determine North Carolina's essential energy facilities.
- b. Assess potential threats and possible consequences of energy disruptions.
- c. Identify response measures and options.
- d. Coordinate local, State, and federal governments and their agencies.

(7) The North Carolina Energy Emergency Plan was last revised in 2003. The North Carolina Energy Emergency Plan does not adequately address the type of emergency the State experienced last summer, a natural disaster, or a serious terrorist attack on infrastructure.

(8) Better coordination and planning is needed within and among State agencies, federal agencies, and units of local government to ensure that public fuel supply requirements are properly prioritized during an energy emergency or energy crisis and to ensure that critical and emergency governmental functions can be maintained during an energy emergency or energy crisis.

SECTION 2. The State Energy Office shall update the North Carolina Energy Emergency Plan consistent with the findings under Section 1 of this act. In order to accomplish this task, the State Energy Office shall conduct a study of the State's ability to adequately respond to an energy emergency or energy crisis of a high magnitude. As part of this study, the State Energy Office shall:

(1) Review and recommend the revision of existing energy emergency plans of appropriate State agencies and units of local government or recommend to a particular unit of government that it should develop an energy emergency plan, if it currently has none.

(2) Clarify the roles and responsibilities among State, federal agencies, and units of local government in the event of an emergency petroleum shortage.

SECTION 3. The State Energy Office shall report its findings, recommendations, and its draft updated North Carolina Energy Emergency Plan to the Joint Study Committee on Emergency Preparedness and Disaster Management Recovery no later than November 1, 2006. All recommendations to the Committee shall include a cost estimate of the recommended undertaking.

SECTION 4. The State Energy Office, in conjunction with the Office of State Purchase and Contract, shall review the current contracts for fuel for State purchases and purchases by units of local government and determine whether they adequately minimize the risk that the State and units of local government would experience supply curtailments for their highest fuel needs during an emergency fuel shortage.

SECTION 5. There is appropriated from The General Fund to the State Energy Office of the Department of Administration the sum of forty-thousand dollars (\$40,000) for the 2006-2007 fiscal year for its costs to implement this act.

SECTION 6. This act becomes effective July 1, 2006.

Co-Chairman Cunningham called for questions and recognized each:

Vice-Chairman Wainwright [*“Does the State of North Carolina have a reserve tank somewhere that they keep a supply on hand, just in case there is a disruption (in fuel supply)? This would allow our emergency agencies to continue operation; for example the Highway Patrol and others.”*]

Steve Rose [*“My understanding is that the Department of Transportation maintains some reserves. The problem is: (1) whether those reserves are sufficient and (2) whether there is coordination to make sure those reserves go where they are needed in an emergency. I think the study involved in this bill will answer that question and recommend required improvements; which could involve increasing storage capacity to various ways of coordination among the agencies.”*]

Co-Chairman Cunningham called for further questions, none were asked. He called for a motion on approval of the report with technical corrections: motion made and seconded, voted by saying “Aye”, and the motion carried.

Co-Chairman Cunningham indicated that this completes the first part of the committee’s report. He recognized Co-Chairman Nesbitt for remarks.

Co-Chairman Nesbitt [*“I think the subcommittees and staff have done a remarkable job. We may have found a model for success with a large committee, and we have gotten a lot of work done...excellent work.*

Staff handed me a note indicating the total of \$155m; after hearing the reports, I think the immediate need will be substantially less than that. I think that what has been recommended is certainly within the realm of possibility and reasonable.

On the question (of energy reserves) raised by Vice-Chairman Wainwright, I’m not comfortable that we know the answers. On the hurricane issues, we’d like to have a complete program in place. That is what we’ll do in the long term. We had only two months to identify the pressing needs to be presented to the General Assembly. We will pull together a report; get the needed support; and the Committee Co-chairs will lead the effort in securing funding.

We are likely to continue to hear other related subjects, such as the one heard today on amateur radio operators. That’s what we’ll do this fall. We will approach these issues on a grander scale and on long-term basis, after the summer session of the General Assembly.

These issues are real; the weather is becoming more violent and the flu pandemic is a real possibility. The people of North Carolina expect us to figure out how to keep them safe before and after these things happen. You did an excellent job...thank you.”]

Vice-Chairman Wainwright [*“If I could follow-up on a question raised by Senator Lucas regarding the per capita spending per person in North Carolina for disaster preparation. Is it possible that at the conclusion of the Short Session and appropriations made, could we have another look at what the per capita spending will be per person for disaster preparedness? We were on the low end of the spectrum.”]*

Co-Chairman Cunningham indicated that this information could likely be made available, hopefully before the fall. He reiterated the expectations of North Carolina citizens to have a working plan in place in the event of a disaster.

Co-Chairman Nesbitt outlined further plans: to pull together a report and have a brief meeting for approval. With permission of the Speaker of the House and Senate President Pro Tem, the committee could meet during session to approve a report if necessary.

Vice-Chairman Haire suggested the possibility of sending the final report to all members in advance for review. Co-Chairman Nesbitt endorsed the suggestion, offering a brief final meeting to put the seal on it by committee vote.

The next meeting will be on Wednesday, May 10, 2006 at 3:30 pm.

The meeting adjourned at 1:30 p.m.
Respectfully submitted,

Valerie S. Rustin
Committee Assistant

Vickie Spears
Committee Assistant

Representative W. Pete Cunningham
Co-Chair

Senator Martin Nesbitt, Jr.
Co-Chair