

EMERGING ISSUES, HOT TOPICS, AND TRENDS IN LEGISLATIVE ISSUES

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We have in recent years briefed incoming legislators on emerging issues, hot topics, and trends in legislative issues which might be presented during the upcoming biennium. In this publication, we will present the major issues that are eligible for consideration and likely to be considered, or likely to be introduced during the 1997 General Assembly. I compiled this list by requesting the legislative staff to provide their ideas as to which, in their opinion, are likely to arise. I added my ideas to the mix and edited the document. What follows is the product of this process.

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After each main topic, there follows the names and telephone numbers of the staff people most familiar with the area discussed. The contributors identified are members of the Research Division unless otherwise indicated by "BDD"—Bill Drafting Division, "FRD"—Fiscal Research Division, or "IOG"—Institute of Government. If you wish to investigate any of these matters in greater detail, please contact the indicated individuals.

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I. ADMINISTRATIVE RULES

(Walker Reagan and Karen Cochrane-Brown – 733-2578)

A. Rules Review Commission - Powers and Constitutional Basis

In 1991 the Rules Review Committee was created and assigned the duty of reviewing administrative rules to determine whether they are within the statutory authority of the promulgating agency. However, the power was advisory only.

In 1995 the General Assembly granted the Rules Review Commission the authority to disapprove an administrative rule on the basis of lack of statutory authority, lack of necessity, or ambiguity. As a result of the Commission exercising its new authority, controversy has arisen as to the proper bounds of the Commission's authority and the basis upon which the Commission may legally disapprove a rule. Questions have also been raised by members of the Attorney General's staff as to whether the Rules Review Commission as presently created is constitutional based on separation of powers.

Because these questions have arisen as a result of the 1995 statutory changes, the General Assembly may be asked to clarify the Commission's authority and consider addressing the constitutional question. Business and industry in particular, and the regulated public in general, seem generally pleased with the way the Commission is exercising its authority, but parts of the Executive Branch and the environmental community would like to see the authority of the Commission reduced.

B. Periodic Review of Existing Rules

Concerns have been raised in the Joint Legislative Administrative Procedure Oversight Committee that the 1995 changes to the Administrative Procedures Act do not fully address the adverse effects of pre-existing unnecessary rules. In order to reduce the unnecessary regulatory burden imposed by these rules, concerns have been raised by the public and members of the APO Committee that additional statutory changes may be necessary to provide for a systematic review of existing rules to ensure that unnecessary and unduly burdensome rules are repealed. Legislation may be proposed to address this issue during the 1997 Session.

II. CHILDREN AND JUVENILES

A. Access To Health Services For Uninsured/Underinsured Children

(Linda Attarian, Sue Floyd, John Young 733-2578)

Nearly one million of North Carolina's citizens are without health insurance. An additional one million are underinsured. Approximately 200,000 of the uninsured (one in five) are children. Many of these children receive health care services through community hospital emergency departments, the most expensive health care setting. Often the health problem has reached a crisis stage at the time the child is first seen by a physician. There are over 100,000 children who suffer from chronic health conditions, such as blindness, deafness,

mental retardation. Often, the insurance coverage of these special needs children is limited.

The Health Care Planning Commission has recommended legislative proposals to the General Assembly that would assure access to high quality health care for all children living in North Carolina. Ninety percent of the children in North Carolina are healthy. To provide for the coverage of children with special needs, the Commission recommends that the General Assembly establish a risk insurance pool and establish a 12 member task force to develop implementation details for the high-risk plan.

B. Lead Paint Hazard Reduction

(Linda Attarian, Sue Floyd, John Young 733-2578)

As a result of recent federal regulatory action, NC must decide whether to establish and implement a state regulatory framework incorporating minimum program requirements for compliance and enforcement of federal standards for lead reduction as mandated under the 1992 Residential Lead-Based Paint Hazard Reduction Act, (also referred to as Title X of the Housing and Community Development Act). If the State chooses not to establish its own regulations, the federal law requires EPA to implement and enforce a federal program in North Carolina by August 31, 1998.

The General Assembly will likely see a legislative proposal specifically authorizing the State to set up an accreditation and certification program that incorporates established work practice standards for lead-based paint activities - inspection, risk assessment and abatement. In addition, federal dollars are available through HUD in grants to states to assist in funding the establishment of a state certification program. These funds will not be available after August 31, 1998.

C. Day Care Facilities Regulation

(Linda Attarian, Sue Floyd, John Young 733-2578)

In May of 1995 the North Carolina Day Care Commission (NCDCC) adopted a set of amendments to rules governing licensed day care programs. The changes put in place a set of playground safety requirements affecting large day care homes and day care centers. The new rules required day care providers to receive play ground safety training and if necessary, redesign and retro-fit existing playground equipment, including resurfacing of the outdoor play areas and tree removal. Providers encountered various difficulties in complying with the rules, and the NCDCC adjusted its approach for implementing the rules in early 1996. However, because of the difficulty encountered by providers, legislation may be proposed to the General Assembly repealing the outdoor playground safety rules as well as repealing the Day Care Commission's authority to adopt future rules pertaining to outdoor play area equipment and surfacing at day care facilities.

Graduated Drivers' Licenses – See TRANSPORTATION.

D. Grandparent Visitation Rights

(Lynn Marshbanks – 733-2578)

The LRC's Committee on Grandparent Visitation Rights recommends legislation that would allow more grandparents to go to court to seek visitation rights with their grandchildren. The North Carolina Supreme Court has held that the North Carolina statutes do not give standing to grandparents of grandchildren who are in intact families to sue for visitation. Various grandparent lobbying groups have been pushing for visitation rights with grandchildren, even where those grandchildren live in intact nuclear families. Many other states, in response to this lobbying effort, have adopted legislation allowing grandparents to sue for visitation. There has been very little organized opposition so far in North Carolina. The main opposition at this point has come from the North Carolina Family Policy Council, and there may be opposition from child advocacy organizations and from some attorneys' groups. There is bipartisan support for and against expanding the visitation rights of grandparents. There are important constitutional issues involved. The North Carolina Supreme Court has held, citing United States Supreme Court opinions, that parents have the fundamental right to care, custody, and control of their children. However, the Court has not addressed the specific issue of whether a law allowing a court to grant grandparent visitation with a child who lives in an intact family, where there is no showing that parents are unfit, violates the State or federal constitution.

Advocates for a more open visitation law argue that grandparents play a vital role in the lives of their grandchildren, that it is generally in the best interest of a child to develop a strong relationship with a grandparent, and that interference in the intact family would not be significant. Opponents argue that, absent abuse or neglect, the government should not interfere with the parental decision as to whom to let visit with their children. They also argue that allowing grandparents to sue for visitation would worsen, not improve, any family problems, that a parent should not be forced to testify against his or her own mother or father in order to defend a suit, and that allowing these suits would encourage litigation.

E. Juvenile Law Reform

(Susan Hayes – 733-2578)

There is likely to be legislation revising various laws regarding juveniles. The House Select Committee on Children and Youth will recommend to the Speaker of the House of Representatives that the Committee be continued and that legislation be introduced to appoint a permanent Commission to consider juvenile issues.

The Select Committee, if continued, will continue to look at several issues regarding juvenile laws. There are three specific issues that this Committee has expressed an intent to examine further. These are:

1. More court authority over the parents of juvenile delinquents

The goal, if more authority is granted, would be to get the parents more involved in the juvenile's probation requirements.

2. The ages of permission for various privileges

This would include such laws as the age for obtaining a driver's license and the age for dropping out of school. The issue of graduated driver's licenses will be discussed as a part of this area.

3. More funding for various juvenile programs

Funding for additional staff in the local juvenile court offices and more funding for preventative and therapeutic programs. The Committee will also look at funding streams and explore the possible public/private partnership options available in the juvenile treatment area.

F. Smart Start

(Robin Johnson - 733-2578 and Mary Ellen Sylvester (FRD) - 733-4910)

Smart Start is a comprehensive early childhood education and health initiative, which serves children birth to five years of age and their families. The primary goal of this public-private initiative is to ensure that every child in North Carolina enters kindergarten healthy and ready to succeed.

Since its inception in 1993, Smart Start has expanded from 12 demonstration projects to 47 local partnerships serving 55 counties, including many of the most populous counties in North Carolina. With Smart Start, local partnerships design innovative programs and services to meet the specific needs of the communities in which they operate. Within each community, this approach requires the collaboration of local service agencies, schools, businesses, religious leaders, parents, and others to succeed, and places the responsibility for positive change directly on the residents of the Smart Start-funded communities.

The NC Partnership for Children, Inc. has an increasingly important role in the management and effectiveness of the Smart Start program. This non-profit corporation is responsible for statewide strategic planning, technical assistance, oversight and evaluation of the local partnerships' operations, and fundraising.

To accomplish its mission, Smart Start funds programs which improve access to quality, affordable child care, health care, and other crucial family support services. At the local level, Smart Start initiatives may include 1) expanding the availability and quality of subsidized child care, 2) providing quality enhancement grants and technical assistance to child care centers, 3) providing educational opportunities for child care providers, 4) improving children's access to health screenings and immunizations, 5) increasing the number of public preschools and Head Start-related programs, 6) establishing child care resource and referral agencies, 7) providing inclusion programs for special needs children,

and 8) establishing family resource centers and opportunities for parent education.

In 1995, the General Assembly funded a comprehensive, independent performance audit of the Smart Start program, which was conducted by Coopers & Lybrand. The audit concluded that Smart Start "...is a credible program that delivers substantial good to children and families in the State of North Carolina." However, with this endorsement, the auditor recommended significant administrative and management changes. The General Assembly directed many of these changes in recent legislation, including strengthening the management role and capacity of the NC Partnership for Children, developing a plan for regionalizing the local partnerships, streamlining the process for approving and funding local plans, and developing a performance assessment system for local partnerships.

Although the Coopers & Lybrand study recommended increases in funding to the 1996 session, questions regarding the management and administration of the program remain with some legislators. The Frank Porter Graham Child Development Center at the University of North Carolina is conducting an extensive, longitudinal evaluation of the Smart Start program and its impact on children that receive services.

The total 1996-1997 Smart Start appropriation was over \$67 million, extending the current partnerships to 47 in 55 counties. The Governor has stated his intent to request that the legislature extend Smart Start to all 100 counties over the course of the next four years, requiring a significant expansion of resources over the course of the next biennium. The Department of Human Resources has submitted a Smart Start expansion budget request to the Governor for \$46.9 million for the 1997-1998 fiscal year and \$135 million for the 1998-1999 fiscal year to increase the total number of counties covered to 70.

III. CORRECTIONS

(Brenda Carter – 733-2578)

Since 1989, the State has built or authorized additional space for approximately 20,000 inmates at a cost of more than \$500 million. In conjunction with the aggressive prison construction program, the General Assembly reformed sentencing policy to provide that an offender will serve a longer sentence based on the severity of the offense and the individual's prior criminal record.

A. Surplus General Prison Population Beds

According to recent projections by the Sentencing Policy and Advisory Commission, State prisons will have about 2,000 empty beds beginning in 1998. By the year 2000, the Commission projects that the State could have a surplus of 5,500 prison beds. The Sentencing Commission project show a spike in the prison population during 1997 with the number of inmates expected to rise from

31,000 in December, 1996 to 35,000 by June 30, 1997. After the spike in 1997, the Commission predicted that the population will decline for 4-6 years before beginning to climb again.

B. Sentences Lengthening—Fiscal Impact Reviewed

As in the past, members of the General Assembly can be expected to propose changes in sentencing laws in order to send more people to prison for longer terms. The Sentencing Commission will be making recommendations on closing some perceived gaps in sentencing laws, including increased punishment for drug sales and voluntary manslaughter, and adjusting the way judges count prior offenses.

To ensure that prison capacity will keep pace with increased demand, every bill or resolution introduced in the General Assembly proposing any change in the law that will cause a net increase in the length of time for which persons are incarcerated or in the number of persons incarcerated - whether by increasing penalties for violating existing laws or by criminalizing behavior - is required to have a fiscal note prepared by the Fiscal Research Division. Each fiscal note is prepared in consultation with the Sentencing and Policy Advisory Commission, and must contain a five-year estimate of all costs of the proposed net increase in incarceration, including capital outlay costs if the legislation would require additional cell space.

C. Scarcity of Maximum Security Beds

Because of the projected surplus, some members of the General Assembly hope that the sentencing laws can be adjusted without appropriating any additional funds for prison construction. However, in spite of the projected surplus, maximum security cells are still a scarce resource for a growing class of State inmates. Because North Carolina's sentencing guidelines were designed to send increased numbers of violent and repeat offenders to prison for a longer period of time, the inmate population is increasingly comprised of the most violent and incorrigible offenders. Prison officials have indicated that violent and repeat offenders now comprise 51 percent of the prison population, and expect that if current trends continue, the percentage will rise to 60 percent in less than a decade.

IV. COURTS

A. Court Reform

(Jim Drennan, IOG – 966-4160, Lynn Marshbanks – 733-2578)

The Commission for the Future of Justice and the Courts in North Carolina, after two years of study and public hearings, has made its recommendations. The Commission was formed by the former Chief Justice to make recommendations on how to modernize and improve the existing court system. The Commission's recommendations are comprehensive and extensive. To implement many of them will require amendments to the Judicial Branch Article of the North

Carolina Constitution. The Commission's members and supporters plan to introduce the proposed amendments, and the implementing legislation, in the 1997 session.

Some of the proposals requiring constitutional amendment are:

1. Governance changes

including granting to the Chief Justice and the Supreme Court the authority to adopt and amend Rules of Evidence, Civil Procedure, and Criminal Procedure, subject to legislative veto. A new body, the State Judicial Council, would be created to assist the Chief Justice in governing the Judicial Branch.

2. Formation of a single trial court

known as the circuit court. Currently there are two levels of trial court: Superior Court and District Court.

3. Appointment of judges, clerks and magistrates

Judges would be appointed by the Governor for eight year terms, subject to voter approval at retention elections. Evaluations of judges by the State Judicial Council would be available to voters at retention elections. Clerks of court, one for each county, would be appointed by the chief circuit judge for four year terms from a list provided by a nominating panel of local officials and citizens. Magistrates would be appointed by the chief circuit judge, with the advice of a new body, the Circuit Judicial Council, for two year terms.

4. Modifying the right to trial by jury

by providing that jury trials are available only for serious misdemeanors, and then with six person juries. Infractions and less serious misdemeanors would not carry the right to a jury trial. Smaller civil actions would be heard by a six-person jury. Felonies would still be heard by juries of 12.

5. Increasing jurisdiction of magistrates

to allow magistrates to hear civil matters involving greater sums than current small claims actions, and for those who are attorneys, infractions.

6. Shifting of prosecution function to the executive branch

(Although it does not require a constitutional amendment to do so, the Commission recommends a similar shift for indigent defense programs.)

There are also changes that do not require constitutional amendments, such as the development of a family court in which all matters involving a family would be heard by a single judge with special training. Family court judges would be circuit judges assigned to family court for a period of at least three years.

Finally, the Commission strongly recommends that improvements be made in the technology used by the courts. Specific recommendations include integration of data systems, offender-based single identifiers, use of automation to reduce paper flow in all cases, and similar measures.

B. Restitution Orders In Criminal Cases Enforcement As Civil Judgments

(Tim Hovis – 733-2578)

The North Carolina Courts Commission recommended legislation to the 1995 General Assembly which would allow the enforcement of orders of restitution in criminal cases as civil judgments. This legislation was not ratified, however, and the Courts Commission is likely to recommend the legislation again to the 1997 General Assembly.

Restitution is compensation for the damage or loss suffered by a victim arising out of the offense committed by the defendant. A court may order restitution as a condition of probation. In addition, for those placed on active sentences, the court may recommend that restitution be a condition of the defendant's parole or post release supervision. However, once the defendant's probation, parole or post release supervision period is completed, the order of restitution may no longer be enforced. Legislation authorizing the docketing and enforcement of restitution orders as civil judgments would allow the victim to enforce the order for a period of ten years, the same as any civil judgment.

Victim's rights groups, including the Victims Assistance Network, are particularly interested in the ratification of this legislation. (See also **Victim's Rights, page 44**) The clerks of court are concerned, however, that the docketing and filing of these orders as civil judgments would greatly increase the workload of clerks of court.

V. ECONOMIC DEVELOPMENT

(Karen Cochrane-Brown and Walker Reagan – 733-2578)

A. Competitiveness Fund

In 1993 the General Assembly began appropriating funds to the Governor's Industrial Recruitment Fund, giving the Governor money to "close the deal" when recruiting new industries to North Carolina, and to retain existing industries in the State. The amount of the annual appropriation has gone from a high of \$7 million down to a current level of \$1 million. There has been controversy as to where this money has been spent, the effects of these incentives on existing businesses, and the apparent continuing spiraling escalation of recruiting incentives between states.

The Economic Development Board has been considering the need for this Fund and has received public comments encouraging the expansion of the Fund from its current level of funding. It is anticipated that the Board will recommend

increased funding for this Fund and that the Governor will include money for this fund in his budget.

B. Enterprise Zones

During the 1995 Session, legislation was introduced which would have created enterprise economic development zones within cities and counties that were not otherwise considered to be "distressed counties". As such, economic development within these "zones" would be eligible for the same tax benefits and other economic incentives that development in distressed counties benefits from. The concept is to use incentives that encourage economic development in economically distressed rural areas in economically distressed urban areas.

The use of enterprise zones to encourage urban economic development has been examined by the N.C. Economic Development Board and support for this type of legislation is expected to be included in the Board's economic development recommendations to the 1997 General Assembly.

Depending on how the zones are defined and the benefits structured, this legislation might reduce local property tax and sales tax revenues in the short run, although the concept is expected to eventually provide for increased tax revenues from the economic growth arising from the new development. Expanding the areas eligible for "distressed" benefits may increase the competition among distressed areas for businesses influenced by these incentives.

C. Job Training And Workforce Development

As part of the statutory mandate to the Economic Development Board to develop and recommend ways to implement a comprehensive, strategic economic development plan and policy for the State, the Board is expected to recommend to the General Assembly that the state job training and workforce development dollars be focused on improving customized training by making it more responsive to industry and regional needs and on skills needed in the information age. The Board is expected to encourage the continued development of accountability tools for workforce development programs and a restructuring of the workforce development system, making it more cost-effective, more understandable as a seamless system, more employer-driven, and more focused on job placement. The Board may also recommend exploring the use of the Information Highway to increase access to training.

D. State Ports Capital Funding

The role of the State Port in the State's economy has been recently studied by both the State Ports Study Commission and the Economic Development Board. As part of their recommendations, both groups are expected to recommend that a permanent source of funding for the ongoing capital needs of the ports be identified and implemented to meet the \$250 million capital development plan adopted by the State Ports Authority.

The development of a long term capital development plan has been encouraged by the General Assembly in the past. The North Carolina Citizens for Business and Industry is expected to adopt as one of the items on its legislative agenda for 1997 the permanent funding for the capital needs of the state ports. The State Ports Authority may ask the General Assembly for up to \$44 million to fund the first phase of the capital development plan.

VI. EDUCATION, PRIMARY AND SECONDARY

(Kory Goldsmith, Robin Johnson and Jim Watts 733-2578: Jim Johnson (FRD) - 733-4910)

It is likely that the priorities for K-12 education will remain similar to last session. The focus of the legislature will most likely be to support and fine tune the historic initiatives from the last session. These priorities include: a focus on results in student achievement in the core academic areas, building-level accountability for student learning, greater local control and flexibility for schools and support for safe schools initiatives.

Emerging issues include a variety of key questions related to the quality of teaching in our schools. Teacher pay, teacher attrition, teacher dismissal, and how to provide quality ongoing professional development for teachers and principals are all critical issues that will be considered by the 1997-1998 session. These emerging issues reflect an understanding by State policy makers that significant improvement in student learning will not occur unless there is a focus on improving the quality of teaching and leadership in schools.

At this stage, continued legislative support for K-12 reform efforts seems to rest upon the ability of public school advocates to show clear and direct relationships between initiatives and improved results in student learning. Initiatives that are focused and can show results are more likely to be given legislative attention and support.

A. Teacher Salary

The promise of the Governor to achieve the national average in teacher salary by the year 2000 will continue to be the subject of considerable debate this session as it did during the 1996 session. A 5.5% increase in teacher pay by the 1996 session exhibited a serious commitment by the legislature to improve teacher's salaries. However, the fiscal reality of an estimated cost of between \$1 and \$1.5 billion to fully fund the goal of the national average raises serious questions as to the capacity of the State to fund such an initiative. Further complicating the possibility of funding this initiative is the continuing legislative priority of reducing taxes.

Aside from the issue of General Fund availability, the Assembly adjourned last session with many unanswered questions surrounding teacher compensation. Included in the compensation debate were discussions over a variety of methods of paying teachers in order to improve the quality of teaching. Included among

the methods that are likely to be topics of continued debate are merit pay, incentives related to the ABC's (the School-Based Accountability Program), and pay for teacher knowledge and skills. The debate over how to pay and reward teachers promises to be one of the most hotly debated and confusing issues to be faced in the coming session.

B. Teacher Attrition And Quality Of Teaching

The Joint Legislative Education Oversight Committee has heard alarming testimony as to the scope and nature of the State's current crisis in teacher attrition. Part of the problem is lack of data. The last comprehensive teacher supply and demand study was conducted in 1985. Without accurate supply and demand information, the scope of the problem, including possible needs in science, math, and special education teachers, will not be clear. North Carolina is suffering from teacher attrition rates that are much higher than those experienced in other states. Despite considerable effort to identify the nature of the problem, effective State solutions remain unclear.

Surveys of teachers leaving the profession conducted at the legislature's request by the State Board reflect serious problems in the way that teachers are supported at the building and system level. Lack of support by school administrators, discipline problems with students, and salary were the problems cited most frequently by teachers. Although solutions appear necessary at the local level, State policies regarding quality recruitment, induction, and ongoing professional development of teachers will be topics for consideration in the coming session.

Another returning legislative issue critical to the improvement of the quality of the State teaching workforce is the debate over how to remove incompetent teachers and school personnel from schools. Although legislative efforts to modify the system were not successful last session, the teacher dismissal process is likely to be reviewed again in the coming session. The goal of a dismissal system that guarantees fairness to all involved, is less expensive and is more efficient, seems to be the priority of legislators interested in reforming the process. Although a recent survey of legislators indicated that a majority favored reforming the current system, the debate will be complicated and controversial.

C. ABC's

The ABC initiative was developed by the State Board of Education in response to a charge by the 1995 General Assembly to "examine the structure of the State Public school system to improve student performance, increase local control, and promote economy and efficiency." The legislature will continue to act in oversight to State Board and the ABC's initiative. Supporting improved focus and accountability for student learning in the "core academics" will continue to be of the highest priority to State policymakers.

A key element of the ABC's plan is the rewards program for schools showing exemplary improvement in student achievement. The sum of \$24.5 million was allocated by the 1996 session for the purpose of rewarding elementary schools for results in student achievement. After conducting a pilot project and refining the process the State Board of Education is implementing the rewards element of the ABC's plan in the State's elementary schools this year. The high school accountability process is currently being planned by the State Board and will be considered as part of the expansion budget. The State Board's 1997 expansion budget request includes \$49.7 million for both the elementary and high school rewards elements of the ABC's plan. The State Board emphasis on school-based rewards indicates that this program is the Board's top priority in the teacher compensation debate.

Returning local control to school units will continue to be an important theme of the legislature. The School Law Revision Subcommittee, convened by the legislature to simplify the K-12 statutes, is addressing a number of those issues. Topics examined by the Subcommittee include obsolete laws, school calendar, leasing of school facilities and student residency issues. The Subcommittee will continue to meet between the 1997 and 1998 sessions to pursue the goal of simplifying the statutes in order to achieve greater local control, flexibility, and accountability.

D. School Safety

As in the last three legislative sessions, school safety and discipline will continue to be a high priority. Many tools have been provided to local school units by the legislature over the course of the past six years in an effort to improve safety and discipline in North Carolina schools. However, the legislature is likely to continue to be concerned that local school officials, law enforcement, and the judicial system need to work more closely in order to effectively address school safety issues.

Issues remaining to be addressed include how information can best be shared regarding violent and seriously disruptive juveniles. The issue of how school officials can gain access to juvenile records of youths in the juvenile justice system remains to be resolved. A related information issue is the transfer of student discipline records between school units. Central to this debate is how to strike a balance between the conflicting priorities of confidentiality of juvenile records and the safety of local schools.

E. Funding Issues

The State Board of Education has recommended a variety of items in its expansion budget request. Items that are likely to receive the most serious consideration include: funds for the reduction of class size in grade three (this installment will complete a continuing commitment to reduce class-size in grades K-3); funds to reward schools for student achievement as part of the ABC's plan;

expansion budget for alternative schools and school safety initiatives; low wealth funding; additional resources for school technology; and funds for teacher raises.

The legislature will have to find room in the budget to continue to fund K-12 services at current levels for a rapidly expanding student population. The current estimate is between \$95-100 million to take care of an approximate 25,000 additional students in the first year of the biennium alone. The K-12 student population projections show continued rapid increases for some period of time.

As a result of the passage of the \$1.8 billion school facilities initiative the legislature must begin to fund the retirement of that debt within this biennium. The estimated total cost to the State for the payment of the principal and interest will be \$3.1 billion over a fifteen to eighteen year period. This continuing obligation will place further constraints on General Fund availability.

It is important to realize the fiscal burden that these needs will make on the State General Fund. Spending priorities for the 1997-1998 biennium must be established within the constraints of a limited expansion budget.

F. School Construction

The legislature will continue to provide oversight in the implementation of the \$1.8 billion school facilities bond initiative. Primary concerns of the legislature will be that both flexibility and fiscal accountability are carried out in a fashion that assures the proper relationship between the State and local governing boards.

G. School Choice

The successful passage of the Charter Schools bill in the 1996 session has provided the State a school choice initiative that was acceptable to the vast majority of legislators. There have been 65 charter school applications; 18 applications to the State Board and 47 to local school boards. The State Board is scheduled to decide on the applications on March 15, 1997. The Charter School legislation is likely to continue to be refined in the coming session. A continued debate regarding other school choice options such as tuition-tax credits and vouchers for K-12 private school costs is likely.

VII. EDUCATION, UNIVERSITY AND POST-SECONDARY

(Kory Goldsmith, Robin Johnson and Jim Watts 733-2578; Jim Newlin and Charlotte Todd (FRD) - 733-4910)

The 1997-1998 session of the General Assembly will likely see a continuation of Higher Education initiatives from the previous session debate. The most important issues include five major areas:

A. Enrollment Projections/ Meeting Demand

A report by the Education Cabinet estimates that enrollment in Higher Education in North Carolina could increase by as much as 228,000 students by the year 2005. This projection includes 33,000 additional UNC students, 9000 students in private colleges and universities and 186,000 students in the community colleges. The most significant growth during that period is scheduled to occur between 2000-2005. Although there are questions as to the accuracy of these projections, there is consensus that significant growth will occur in the next decade that will put increasing demands on the State's ability to provide affordable and quality higher education. Significant questions raised by the report regarding long-range planning, infrastructure priorities and alternative and efficient methods of delivery remain to be answered.

B. Access/Non-Traditional Students

Improving adult access to UNC degree programs will be another 1995-1996 General Assembly initiative that will continue into the coming session. A comprehensive survey conducted by the UNC Board of Governors at the request of the General Assembly showed considerable demand for degree programs among the adult population. Alternative methods of reaching this underserved population, including off-campus programs and distance learning, will be the topic of debate in the coming session. The UNC Board of Governors has included a \$19.3 million expansion budget request for educational technologies, some of which will be dedicated to distance learning technology to improve University access to non-traditional adult students in off-campus programs.

C. Articulation

Significant progress on improving articulation between Community Colleges and UNC was accomplished during the 1995-1996 session. As a result of legislative initiative, the Community College system is converting to a semester system and has successfully collaborated with the UNC system in developing a comprehensive articulation agreement that will assist in the transfer of Community College students to UNC constituent institutions. The legislature will continue to monitor the implementation of the articulation initiative and will probably consider companion issues that will assist this initiative.

D. Funding/Equity

Another continuing topic of debate will be the system of budget allocation in both the University and Community College systems. The UNC Board of Governors has completed a comprehensive study of their budget system and has included a \$21 million expansion budget request to address funding inequities in the current system. A major topic of debate will be whether the recommendations by the Board of Governors go far enough in reforming the current system.

The State Board of Community Colleges has also been directed by the General Assembly to study their budget allocation system, including aspects of equity. This report should be completed during the 1997 session and will be an important topic of debate.

E. UNC Support for K-12 Education

A major push by the State Board of Education and the UNC Board of Governors to improve teacher education and ongoing professional development for educators promises to receive considerable attention in the coming session. Recommendations from the Board of Governors include extending school-based experiences for undergraduates training to be teachers and improved coordination of professional development programs offered in the University system. A variety of other issues related to improving the skills of educators and aligning UNC programs with current State Board of Education initiatives will be debated.

VIII. ELECTIONS

(Bill Gilkeson 733-2578)

A. Campaign Finance Reform

This area has the attention of the public and the General Assembly. One reason is allegations of fundraising improprieties at the national level. Another is the steep increase in campaign spending at the state legislative level. The Attorney General has created the Better Campaigns Commission, headed by the four former governors, to look for solutions. Several campaign finance proposals have been put forth:

1. Public financing, direct and indirect

Recent proposals surfacing include one for full public financing of candidates who agreed to spending limits, and one to persuade candidates to accept spending limits using a different set of carrots, a tax credit for their contributors, among other things, but no public funding.

2. Closing the “soft money” exception and other loopholes to contribution limits

Currently, political parties are exempt and allegedly have become a pass-through for big money going into campaigns. Such funding has become known as “soft,” or unregulated, campaign money. Some proposals that have been presented to deal with these matters are:

- applying to political parties the same \$4,000/donor/election restriction on contributions that other political committees must adhere to;
- lowering the contribution limit for everyone and shortening the election year;
- tightening the language that now allows a candidate to receive an extra \$4,000 for the second primary election even if the candidate faces no second primary (LRC Committee on Election Laws Reform); and

- requiring each member's authorization before union or association dues are used for funding a PAC.

3. Improving disclosure

Some reformers feel that the best kind of regulatory system does not focus on limiting the flow of money, but focuses instead on prompt, full disclosure of where the money comes from and where it goes. Earlier efforts at increasing the number of reports and requiring more information on those reports have not met with success. Several members of the Better Campaigns Commission indicated interest in improving disclosure and enforcement of disclosure. The staff of the State Board of Elections has said that public information about campaign money would be greatly enhanced if campaign reports were uniformly filed electronically. Some states put campaign finance data on the Internet. This use of the Internet has been proposed for North Carolina.

B. Remedies For Negative Campaigning

Proposals addressing negative campaigning have come from people in both parties. In this area, the First Amendment severely limits the role any governmental entity can play. In 1995 a fund was proposed that would provide free television spots and access to debates for candidates who agreed to forego personal attacks on opponents. One proposal is a more detailed Campaign Standards Code, to be enforced by a bipartisan Commission with the power to issue public letters of reprimand.

C. Anti-Fraud Measures

The publicity about a 14-year-old Durham County boy's registration and vote has given new momentum to several long-standing proposals against fraud. The most common such proposal is to require voters to show identification to pollworkers before they vote. Another is to require voters to sign something at the polling place before they vote. Yet another is to upgrade the computerization of voter registration at a statewide level. Such computerization might enable election authorities to do a better job of two things:

- Prevent registration of the same person in multiple counties.
- Cross check voter registration records against other computer lists, such as DMV, death records, etc. for inconsistencies in essential information.

D. Absentee Ballot Reform/Early Voting

Long lines at the polls in some places have generated fresh interest in changing the absentee voting system. Currently, voters may vote absentee before election day, either by mail or in person at the board of elections office. But they may do either only if they certify, subject to felony prosecution if they lie, that they are sick or disabled or that they will be out of the county all day on election day. (In 1996, a religious holiday of one's faith falling on election day was adding to the justifications for voting absentee.) Previous proposals would have removed the "excuse" requirement for absentee voting entirely. Some of those proposals,

anticipating an increase in absentee voters, also simplified some of the paperwork that boards of elections say is needlessly burdensome.

IX. ENVIRONMENT

A. Coastal Issues

(Sherri Evans-Stanton and Jeff Hudson -- 733-2578)

1. Moratorium Steering Committee Recommendations

The 1994 General Assembly enacted legislation to create a two year moratorium on new vessel, crab, and shellfish licenses as well as non-vessel endorsements to sell fish. The moratorium was subsequently extended and is scheduled to expire on June 30, 1997. In conjunction with the creation of the moratorium, the 1994 General Assembly created the Moratorium Steering Committee, charged with undertaking a comprehensive study of the fisheries program. The Committee submitted its recommendations to the Joint Legislative Commission on Seafood and Aquaculture on November 1, 1996. The following summary highlights some of the major recommendations of the Moratorium Steering Committee.

a. Licensing

A three tiered licensing system described as follows: (1) a limited number of Standard Commercial Fishing Licenses entitling their holders to harvest and sell coastal fisheries resources, (2) a Commercial Gear Recreational License entitling its holder to use limited amounts of commercial gear to harvest coastal fishery resources, and (3) a Coastal Recreational Fishing License entitling its holder to use traditional recreational gear.

b. Gear and Habitat

Fishery Management Plans would be developed for all commercially and recreationally significant species or fisheries. Habitat Protection Plans would prohibit net functional loss in each critical fishery habitat.

c. Marine Fisheries Commission and Division of Marine Fisheries

The size of the Marine Fisheries Commission would be reduced from seventeen to nine members. The members would represent specific geographic areas and interests and would be bound by more stringent conflict of interest rules.

d. Law Enforcement

The criminal penalties for violation of fisheries laws would be increased, and a Violation Points System would be implemented.

2. Shellfish Working Group Recommendations (Jeff Hudson – 733-2578)

The Shellfish Working Group was established as a subcommittee of the Joint Legislative Commission on Seafood and Aquaculture, charged with studying various issues surrounding the shellfish leasing program and public shellfishing. The Working Group has recommended a Human Use Mapping Pilot Project for Core Sound and an expansion of the Shellfish Mapping Program in order to develop more accurate data for resource management and a reduction in user conflicts. The Working Group has also recommended placing a temporary limit on the growth of new shellfish leases throughout the State. Finally, this group has recommended a continuation of the study of issues surrounding public shellfishing and the shellfish leasing program.

B. Water Quality

(George F. Givens, Sherri Evans-Stanton, and Jeff Hudson – 733-2578)

1. Backup Power for Wastewater Systems and Siting in Flood Plains

In the aftermath of Hurricanes Fran and Bertha, a number of proposals were developed to protect water quality from the consequences of weather emergencies. One such proposal would require that, as a condition of permitting, new and expanding wastewater systems maintain an independent backup source of power on-site. This requirement would also be phased-in for existing wastewater systems. A second proposal would prohibit the siting of new or the expansion of existing wastewater treatment systems and animal waste management systems in flood plains.

2. Reduction of Nitrogen Loading in Surface Waters

High levels of nitrogen in some of the State's surface waters, particularly in the Neuse River, are believed to have contributed to a number of serious water quality problems resulting in events such as fish kills and algal blooms. In order to address this problem in the Neuse River Basin, the 1995 General Assembly enacted legislation in the 1996 Session that establishes a goal of reducing the average annual load of nitrogen delivered from point and nonpoint sources to the Neuse River Estuary by a minimum of 30% of the average load for the period 1991 through 1995 by the year 2001.

In addition to this goal, a proposal has been developed that would require all wastewater treatment systems statewide to employ advanced waste treatment measures in order to reduce the level of total nitrogen in treated water to a maximum annual average of 3mg/l. A number of recent reports have highlighted problems in the Cape Fear River similar to those of the Neuse River.

3. Water Quality Proposals Extension

Proposals to protect water quality in other river basins, such as that of the Cape Fear River, may be forthcoming. Legislation to protect and restore water quality in the Neuse River basin may be used as a model for the Cape Fear and other river basins.

4. Animal Waste Management Systems

In 1996, the General Assembly enacted legislation to implement the recommendations of the Blue Ribbon Study Commission on Agricultural Waste. This legislation establishes an animal waste management system permitting program designed to protect water quality. It is anticipated that the 1997 General Assembly will continue to monitor activities related to animal waste management systems in the State in order to protect health and water quality.

5. Water Supply Watershed Protection Act

(George Givens – 733-2578)

The 1989 General Assembly enacted the Water Supply Watershed Protection Act, which requires the Environmental Management Commission to adopt rules for the classification of water supply watersheds and establish minimum Statewide requirements for each such classification to protect water supplies. The Act also requires every local government that has jurisdiction over any portion of water supply watershed to adopt a local water supply watershed management and protection ordinance. The impact of these requirements on development, which falls mainly in the mountain and piedmont regions of the State, has resulted in continued legislative interest in this program. Two water supply watersheds have been exempted from the act by separate legislative enactments in 1993 and 1995. These exemptions and the Water Supply Watershed Protection Act itself have raised various constitutional issues. These issues include whether the act lacks sufficient guidance so that it constitutes an unconstitutional delegation of legislative power to the Environmental Management Commission and whether the exemptions are unconstitutional local acts respecting health, sanitation, or the abatement of nuisances. These issues are now before the North Carolina Supreme Court in the case Town of Spruce Pine v. Avery County which will probably be decided sometime during the first half of 1997. Depending upon the outcome of that case, there could be further legislative activity regarding the Water Supply Watershed Protection Act in 1997. In any event, controversy regarding the act underscores the importance of clarity in drafting, particularly in providing guidance to administrative agencies and rulemaking bodies.

C. Rehabilitation Of Abandoned Industrial Sites

(George F. Givens and Jeff Hudson – 733-2578)

In many urban areas of our State, older industrial sites are abandoned or underused due to fear of contamination and the liability that might arise under federal law as a consequence of contamination. There has been discussion of developing a "Brown Fields" initiative to address this fear. Such an initiative could allow a potential user or developer of an industrial site to work with officials in determining what liability might arise from a particular use or development of a site and how that liability might be limited.

D. Organization Of Environmental Entities – Environmental Cabinet

(Sherri Evans-Stanton, George F. Givens, and Jeff Hudson – 733-2578)

Due to concerns about the lack of coordination between different environmental entities within State government, there has been discussion about how to encourage greater communication among these entities and how to develop a more comprehensive approach to environmental protection. One proposal addressing this issue would create an Environmental Cabinet in the Office of the Governor consisting of the Governor, as Chair; the Secretary of Environment, Health, and Natural Resources; and the Chairs of the Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission. This body would recommend action to take a comprehensive view of protecting the environment.

X. FINANCIAL INSTITUTIONS

A. Credit Card Interest Cap Removal

(Karen Cochrane-Brown and Walker Reagan – 733-2578)

Legislation introduced during the 1995 Session would have, in part, raised the cap on interest rates financial institutions are permitted to charged on credit cards issued in North Carolina. North Carolina is one of a growing minority of states which caps credit card interest rates at 18%. Because of federal court interpretations that companies may charge the highest interest rates on credit cards allowed in the home state of the issuing company, most out-of-state credit card companies are allowed to charge higher interest rates on credit cards in North Carolina than North Carolina companies are allowed to charge. As a result, many major North Carolina credit card companies have moved their credit card operations out of North Carolina to take advantage of higher interest rates allowed in other states.

It is anticipated that banks and other financial institutions will ask the General Assembly to either increase or remove the cap on interest rates on credit cards issued in this State. It is expected that consumer groups and groups representing lower income people will continue to oppose the removal of the cap.

B. Transfer On Death Security Registration Act

(Walker Reagan – 733-2578)

The General Statutes Commission is expected to recommend that the General Assembly consider for adoption the Uniform Transfer on Death Security

Registration Act. Many of the retirees lobbying groups, including the AARP, have been urging legislators for at least a year to consider this legislation.

The uniform act, adopted in at least 25 other states, would provide an alternative to joint ownership with right of survivorship for securities, which includes mutual funds, avoid probate and probate fees on these assets at the time of death, and would simplify the process of changing names on securities after death.

In addition to the retirees, it is expected that this bill will be supported by the security dealers association and the N.C. Bar Association.

XI. GENERAL ASSEMBLY

A. Session Length Limitations

(Gerry Cohen (BDD) – 733-6660)

A majority of states limit the length of their legislative sessions, normally by restrictions within their constitution. Of the states with limits, 15 states restrict the session to a specified number of calendar days, 13 to a specified number of legislative days, three to a set adjournment date on the calendar, and one to a maximum number of legislative days within a maximum number of calendar days. In some of the states, the limits are simply on the maximum number of days that members can collect per diem, which is the limitation that North Carolina had until 1966. Limits vary from a minimum number of 45 calendar or 40 legislative days to a maximum in one state of 160 calendar days.

The Senate Select Committee on Session Length is studying whether North Carolina should have session length limits. At its meeting on January 2, the committee heard from the Virginia legislative staff director on how that state's limit of 60 calendar days for the long session and 46 calendar days for the short session works. Speakers from Florida and Texas have been invited to a future meeting.

The committee is studying the effect of limitations on the legislative process, and especially how much work members would do in the interim if the formal session was limited. A report to the 1997 session is planned.

B. Veto

(Gerry Cohen (BDD) –733-6660)

With approval of the 1995 Regular Session and the people in a November 1996 referendum, North Carolina this year becomes the last state to grant its governor a veto. Several types of legislation are not subject to the veto, and become law upon signature by the presiding officers of the two legislative chambers. These are: (1) joint resolutions; (2) State constitutional amendments; (3) ratification of federal constitutional amendments; (4) appointments to office; (5) Senate redistricting; (6) House redistricting; (7) Congressional redistricting; and (8)

Local bills applying to fewer than 15 counties. To be exempt under one of the eight categories, a bill must be limited to that subject.

Other legislation will be delivered by the Enrolling Office to the Governor's office, usually the next business day after it is ratified. The Governor normally has 10 calendar days to act on the bill, not including the day the bill is delivered. If the Governor does not act, the bill becomes law. If the bill is vetoed, it is returned to the house where the bill originated, and to become law must receive the vote of three-fifths of the members present and voting in both houses. If the 10 days has not run out when the long session adjourns, the Governor has until 30 days after adjournment to act. If the Governor vetoes a bill after adjournment, the session is reconvened to deal with those bills, unless a majority of the members of each house request the Governor not to reconvene the session.

Time will tell how much impact on the legislative process the gubernatorial veto has. In other states, threatened vetoes of legislation will often cause changes to be made in the bill to satisfy the Governor. North Carolina is one of a handful of states that does not require bills to contain only one subject. This may lead to pressure to lump more bills together if that will make it harder for the Governor to veto a bill, although the opposite could occur if members do not want material added to a bill if it could result in a veto of the entire measure.

C. Ethics Reform

(Walker Reagan – 733-2578)

The Joint Legislative Ethics Committee has begun consideration of changes to the Legislative Ethics Act, including the possible adoption of a legislative code of ethics. This revisiting of the current law appears to be the result of recent ethical scandals in other states, including South Carolina, and sexual harassment issues raised during the ethics inquiry arising in the 1995 General Assembly.

While there has been some previous discussions of the adoption of an ethics code for all governmental officials and employees, legislative, state, and local, the emphasis in 1997 would appear to be only on the legislative branch, with the possibly of expanding any code adopted to other governmental personnel during a later session.

The issues involved in this area include a clearer, more definitive definition of potential conflicts of interest, defining appropriate lobbying activities, and establishing specific acceptable levels of gifts, donations, and contributions to legislators and legislative staff. This would also include clearer definitions of unethical conduct in areas other than financial, including sexual harassment and sexual misconduct.

Redistricting – See ELECTIONS: REDISTRICTING

XII. HEALTH CARE ACCESS AND HEALTH REFORM

(Linda Attarian, Sue Floyd, John Young 733-2578)

Since the late 1980's in a transformation of unprecedented speed, fee for service health care reimbursement and indemnity insurance are being replaced by health insurance plans that feature provider risk sharing and active plan involvement in health care decisions (managed care). The 1997 General Assembly will be faced both with the results of prior congressional actions and evolving efforts in this State.

Children, Access to Health Services for Uninsured/Underinsured – See CHILDREN AND JUVENILES

A. Kennedy-Kassenbaum Conforming Changes

(Linwood Jones – 733-2578)

Congress passed the Health Insurance Portability and Accountability Act of 1996 last August. The legislation is more popularly known as the “Kennedy-Kassenbaum” bill. This new federal law provides what might best be described as “incremental” health care reform, not the more sweeping changes that were prominently discussed at the federal and state level several years ago. Nevertheless, the changes are significant. Congress continues to leave the regulation of insurers in the hands of the states. However, Kennedy-Kassenbaum requires each state to ensure that its laws conform to the requirements of the new federal law. Among other things, these requirements limit how long preexisting conditions can be used to limit coverage, give credit to individuals for satisfying preexisting condition waiting periods under one plan when they move to another plan, and require that all small employer group market plans be “guaranteed issue” plans. Over the past five years, North Carolina had already adopted many of the features such as portability and guaranteed-issue products in the small employer market, but changes will be needed to bring our State laws into compliance with the federal law. For example, North Carolina has already adopted portability protection for a person moving from one plan to another as long as there is no more than a 60-day gap in between. The federal law allows the gap to be 63 days. Both substantive and technical changes will be needed to our insurance laws to conform to the new federal requirements.

In addition, the Kennedy-Kassenbaum bill does something that the states were always preempted from doing: it regulates ERISA self-funded plans. Self-funded plans, which cover an estimated 50% or more of the lives in the group employer market, will have to abide by the same restrictions on preexisting conditions and portability that apply to insurers.

B. Managed Care Organizations And Integrated Delivery Networks, State Oversight Of

(Linda Attarian, Sue Floyd, John Young 733-2578)

The managed care industry has been moving rapidly into North Carolina. Even as managed care becomes the dominant form of health care delivery in this State, it is neither clearly defined nor static. Managed care organizations include traditional health maintenance organizations (HMOs) to preferred provider organizations (PPOs), utilization review firms to specialized managed care companies for behavioral health care. Each of these organizations are evolving in response to demands from the marketplace and trying to gain market clout. As these organizations work to reduce costs of care, concerns may arise regarding the quality of care. In addition there are concerns that managed care systems will fail to respond to the specific needs of the chronically ill and the severely disabled. Some hospitals and other health care facilities that are not a part of a managed care network may suffer financially.

In North Carolina, providers are beginning to form networks to compete for managed care contracts. These new organizations promise to offer more coordinated care across the continuum of health services and settings, but they also present a difficult set of questions for policy makers. How much financial risk can they assume? Should they be allowed to contract directly with purchasers on a risk-basis? How can their quality of care be assessed and assured? Should these entities be licensed as HMOs, unlicensed, or licensed as distinct entities with their own financial solvency requirements?

Specifically, the General Assembly will likely see legislative proposals dealing with (1) purchasing guidelines by the State Medicaid agency, State employee benefit plans, State prisons, etc., including who may directly contract with managed care organizations, including risk-bearing integrated delivery networks; (2) the licensing and regulation of certain types of risk-bearing integrated delivery networks; (3) utilization review, patient protection, quality assurance, access barriers, and public accountability in terms of community health outcomes and improvement in health status; (4) requirements for carriers to use in establishing and using provider panels; (5) changing workforce demands as a result of managed care, specifically increased financial support for training primary care providers; (6) encouraging the development of managed care networks in rural areas; and (7) malpractice lawsuits against managed care organizations for injuries that could have been prevented if needed treatments hadn't been denied.

XIII. HUMAN RESOURCES

(Linda Attarian, Sue Floyd, John Young 733-2578)

A. The Creation Of A Cabinet-Level Department Of Health

Currently, the DEHNR, DHR and numerous other departments and divisions in state government are responsible for separate, and sometimes competing pieces of health services, health regulation, patient care and health financing. To make the system more efficient, effective, and accountable, the Health Care Reform Commission recommends that the General Assembly consider the creation of a

Cabinet-level Department of Health. The new Department of Health would focus on integrating, coordinating, and aligning the numerous health services, regulatory functions, financing and policy making functions currently administered by the State. By consolidating planning and oversight responsibilities of the various agencies, North Carolina would be better able to achieve its goal of improved health status for its citizens. The Commission recommends that the process of transition to a single Department of Health occur incrementally. The first phase consists of embracing the concept. Once consensus is reached, a time-line would be developed for accomplishing the task as soon as possible.

Lead Paint Hazard Reduction—See CHILDREN AND JUVENILES

B. Long-Term Care

Like two trains on a collision course, the demographic reality of North Carolina's aging society and the reality of caring for the growing numbers of elderly citizens are poised to converge early in the next century. In North Carolina the population of persons aged 65 years and older is projected to grow 70% in the next 30 years; for those persons over 85 years of age, the growth is expected to be 115%. Traditionally, most long-term care has been provided informally by family or community caregivers but the pool of informal caregivers is shrinking as women increasingly enter and stay in the paid workforce.

As it now stands, the task of designing a system of long-term care that meets the need--without breaking the bank--will fall directly on the states. In recognition of these facts, the 1995 General Assembly passed Chapter 583 which authorizes the development of a state long-term care policy. Currently, in North Carolina, many consumers cannot receive the care they need without being institutionalized. Therefore the challenge for the 1997 General Assembly and government in the future is to expand the number and kinds of options available that are less expensive and more preferred by older adults and their families. Between 1990 and 1993 the ratio of North Carolina's public expenditures for home and community services decreased from 18.5% to 16%.

The 1997 General Assembly will address a number of bills whose effect would be to change the current system from a patchwork to some form of coordinated system. They are:

1. Approval of the Medicaid budget - Medicaid is the primary public financing program for long-term care, picking up about half the tab for institutional care and 20 percent of its home and community-based care bill.
2. An appropriations request for an additional \$5 million for in-home services for those persons on waiting lists in local communities needing services.
3. A tax credit on the premiums paid by the purchaser of long-term care insurance policies.

The final report of the North Carolina Health Planning Commission also contains the following recommendations which would affect the long-term care system in North Carolina if adopted by the General Assembly:

1. Expand Medicaid eligibility to older adults equal to or less than 100 percent of the federal poverty level;
2. Stimulate affordable housing with supportive services for older adults;
3. Establish demonstration pilots for integrating health and long-term care services; and
4. Stimulate all incentives possible to encourage working North Carolinians to purchase long-term care insurance.

C. Certificate Of Need Law

The pressure of rising health care costs and the national attention on health system reform has brought renewed scrutiny to a long-standing policy tool for controlling spending in the health care sector: Certificate of Need (CON). This refers to a regulatory review process that requires certain health care facilities to obtain prior authorization from the state before making major capital expenditures, purchasing some high technology equipment, and offering expanded services. The policy question that will likely surface in the General Assembly this Session include: Has CON effectively contained raising health care costs, and if so, to what degree? Has CON improved the efficiency with which services are provided? Is CON compatible with or counterproductive to simultaneous efforts to foster increased competitiveness among health care providers?

Day Care Facilities Regulation -- See CHILDREN AND JUVENILES

D. State Liability for Local DSS Worker's Negligence

(Karen Cochrane-Brown and Walker Reagan – 733-2578)

On July 31, 1996, the North Carolina Supreme Court, in Gammons v. DHR, ruled that a person injured by the negligent acts of a child protective services worker could recover damages from the State up to \$150,000 under the Torts Claims Act. This case is an extension of the Coleman v. Cooper case which had held that local county departments of social services enforcing the State's child abuse and neglect laws were acting as agents of the State, and that their social workers were also acting as agents of the State, so the State was liable for their negligent acts in carrying out a "state function."

No money is specifically budgeted to cover tort claims. The agency responsible for the negligent conduct is responsible for finding the money to pay these claims from existing funds, often from lapsed salary funds. Because child protective services workers are hired by county DSS's the State has no supervisory authority or ability to manage the State's risk.

This case has raised the issue of whether it was the legislature's intent that the State be liable for the negligent acts of local employees, or should the liability

rest with the local DSS (which has only service money) or the county (which also does not have any supervisory authority). Another issue is if the State is to be liable for the negligent acts of local employees carrying out State functions should the General Assembly appropriate funds specifically to cover these claims, instead of these claims being paid from existing funds. This case may also raise the issue of control of these governmental entities that are neither controlled by county commissioners nor the State, particularly if the county or State is being held liable for the entities' negligent acts.

Smart Start – See **CHILDREN AND JUVENILES**

Welfare Reform – See **WELFARE REFORM**

XIV. INSURANCE

(Linwood Jones – 733-2578)

Coastal Insurance

After Hurricane Andrew hit Florida in 1992, causing over \$16 billion in damages, insurers began reassessing their risks along the eastern seaboard and Gulf Coast states. Insurers are becoming more reluctant to write new property insurance coverage on the coast, and, in some cases, much further inland because of the threat of hurricane damage. Policyholders along North Carolina's coast were experiencing problems well before Bertha and Fran hit this past fall. During the 1996 short session, the legislature passed several measures to help address some of the problems, including a provision designed to encourage insurers to write more insurance voluntarily on the barrier islands. More voluntary writings means fewer policyholders are forced to go to the more expensive "Beach Plan" (a pool underwritten by property insurers collectively) for their insurance. Despite these legislative efforts, coastal insurance availability and affordability will continue to be a concern.

Health Insurance and Managed Care Issues -- See **HEALTH CARE ACCESS AND HEALTH REFORM** and **CHILDREN AND JUVENILES**

XV. LABOR

A. Minimum Wage

Congress in 1996 increased the Federal Minimum Wage. It went up from \$4.25 an hour to \$4.75, effective October 1, 1996, and will rise to \$5.15, effective September 1, 1997. An estimated 10% of the North Carolina workforce is not covered by the federal minimum wage, but by the State Minimum Wage. The State Minimum Wage is still \$4.25. Efforts to increase it were defeated by the 1995 General Assembly. Those efforts will probably be repeated.

B. Unemployment Insurance

1. Repeat Of The 1996 Zero Tax Rate For Positive-Rated Employers

In the First Extra Session of 1996, the General Assembly gave a one-year-only exemption from the unemployment tax for employers who had a positive rating on their unemployment insurance accounts. There may be interest in doing that again, particularly if North Carolina continues to have a surplus in its Trust Fund in Washington for unemployment benefits.

2. Changes In Eligibility For Benefits

Some have argued that, if a flush Unemployment Insurance Trust Fund justifies tax relief for employers, it also justifies added relief to the unemployed through benefits. The Employment Security Commission has recommended that the 1997 General Assembly remove several obstacles to eligibility:

- Flexible Base Period. Currently, a claimant's base period is defined as the first four of the last five completed calendar quarters immediately preceding the filing of a claim. The claimant must establish the required amount of earnings during those quarters to be eligible. ESC has recommended that the definition be made more flexible: If earnings fall short during the first four of the last five quarters, the claimant would be allowed to use as the base period the last four completed quarters.
- Elimination of the 1.5-Times Test. Currently, a claimant must have been paid wages in his or her base period totaling at least 6 times the average weekly insured wage for the State, and must have had wages during the entire base period that are at least 1.5 times the wages in the highest quarter of that base period. ESC recommended keeping the "6-Times Test" but eliminating the "1.5-Times Test."
- Spousal Relocation. Currently, a claimant is disqualified for unemployment benefits for five weeks if the claimant has quit a job to accompany a spouse to a new home that is too far for the claimant to continue to work. ESC recommended that the five-week disqualification be eliminated.
- Spousal Abuse. Currently, a person cannot receive unemployment benefits if the only reason the person left the job was to flee from abuse by a spouse. ESC recommends allowing benefits if a claimant quitting a job has been legally adjudged to be aggrieved because the claimant or a child in the claimant's custody is the victim of domestic violence.

3. Severance Pay

Currently, if a worker is laid off and given a lump sum in severance pay, the worker cannot receive unemployment benefits until the severance

pay, divided into monthly amounts equal to the worker's end wage, runs out. For years, employee advocates have argued that unemployment law should disregard severance pay. ESC voted not to recommend any change.

4. Immunity For Witnesses

The unemployment law statute contains immunity for anyone called as a witness in an unemployment hearing. Some have questioned whether the immunity is too broad.

XVI. LOCAL GOVERNMENT

A. Increase In Revenue Reimbursements To Local Governments

(Martha Harris (BDD) 733-6660, Giles Perry 733-2578)

The North Carolina Association of County Commissioners has announced its proposed goal of providing automatic growth in the amounts the General Assembly reimburses local governments for the repeal of the inventory tax and the intangibles tax and for increasing the property tax homestead exemption for low income elderly and disabled homeowners. The proposed increase in payments to local governments would be funded from the State's General Fund; therefore, it will have to compete for scarce dollars with proposals for new and expanded programs, teacher and State employee pay increases, and tax reductions.

State reimbursements are amounts distributed to local units to compensate them for revenue lost as a result of the removal by the General Assembly of property from the local sales and use tax base, the local property tax base, or the intangibles tax base. State reimbursements consist of reimbursements for the repeal of the property tax on inventories, the repeal of the intangibles tax, the repeal of the property tax on poultry and livestock, the "homestead exemption" from property tax, and the repeal of local sales and use taxes on food purchased with food stamps.

The North Carolina County Commissioners Association's goal is to "re-establish" growth in the reimbursements for inventory and intangibles taxes and to provide full reimbursement for the homestead exemption. The repeal of the inventory tax was phased in over several years. The reimbursement for manufacturer's inventory was calculated based on local governments' actual losses and did not provide growth; the reimbursement for retail and wholesale inventories was partially frozen. In 1991, all the inventory tax reimbursements were frozen.

The intangibles tax was also repealed in several stages. Before 1937, the intangibles tax was levied by local governments. It was converted in 1937 to a State-levied tax with 50% of the revenue to be shared with local governments. The local share was increased to 75% in 1941 and to 100% in 1957. In 1985, part of the tax was repealed and the General Assembly provided local governments reimbursements that were designed to grow. These reimbursements were frozen in 1991 at approximately \$33.5 million. When the General Assembly repealed the remainder of the intangibles tax in 1995, it provided an additional annual reimbursement of \$95 million to be paid from the General Fund. This reimbursement is not designed to grow.

Local governments have never received more than a partial reimbursement for the homestead exemption. Prior to 1987, local governments absorbed most of the cost of the homestead exemption. From 1987 to 1991, the State reimbursed counties and cities for 50% of their losses from the homestead exemption. In 1991, the General Assembly froze the amount of reimbursements made to local governments to the amount each city and county was entitled to receive in 1991. That amount is approximately \$7.9 million. No additional reimbursement was provided when the exemption amount was increased in 1993. When the exemption amount and the income limit were increased in 1995, local governments were provided a reimbursement for one-half of the resulting revenue loss for the first two years. The two-year sunset was added so that the question of reimbursements could be studied.

B. Annexation

(Giles Perry -- 733-2578)

Since 1959, North Carolina law has authorized cities to annex any area that met the statutory standards for size, adjacency, and development, and for which the annexing city was able to provide services such as fire, police, waste collection, street maintenance, and water and sewer lines. In recent years, due to rapid growth in the State, increased annexations by cities, and differing views concerning property taxes and the adequacy of city services, the annexation laws of the State have been a source of increased discussion and controversy. In 1995, the Legislative Research Commission Property Issues Committee was authorized to study annexation issues.

This Committee discussed a proposal to require a referendum in areas to be annexed. The Committee recommended to the 1996 legislative session, several changes to the annexation laws, including increased requirements for provision of paving, water, and sewer services, refund of property taxes if services were not provided, a stricter definition of what constitutes “developed” areas that may be annexed, increased notice requirements to persons affected by annexation, and expanded appeal rights for persons opposed to annexation. The Committee’s

recommendations were not enacted in the 1996 session. The Committee continued to meet in the fall of 1996 and endorsed similar changes to be introduced in the 1997 session.

In addition to the work of the study Committee, the League of Municipalities and the Association of County Commissioners formed an annexation working group in the fall of 1996, which is expected to present additional annexation related proposals in late January or early February, 1997.

XVII. LOTTERY

(Ken Levenbook (BDD) – 733-6660)

Legislation to create a State lottery has been introduced in every session of the General Assembly since 1983. Virginia's Lottery draws more than \$100 million from this state's economy with North Carolinians crossing the border to buy lottery tickets. Tennessee electors have approved a change to their constitution to allow for the establishment of a lottery. Georgia has a very successful lottery, providing highly popular H.O.P.E. scholarships to deserving high school students. The Georgia Lottery is drawing a substantial amount in sales from South Carolina which will probably have to consider a lottery, to stem the flow of money to its neighbor, in the near future.

Based on conservative fiscal estimates, the North Carolina State Lottery during its first full year of operation could produce about \$220 million for public purposes, after providing \$300 million in prizes to players and \$35 million in payments to retailers.

With the reduced growth estimates for the General Fund and increasing demands for funding needed existing and proposed programs, the Lottery is likely to come before the 1997 Session.

XVIII. PUBLIC UTILITIES

Electric Utility Restructuring

(Steve Rose – 733-2578)

Electric utility restructuring is a topic of intense discussion around the country. A variety of legislative proposals were introduced in the 104th Congress, although none passed. Some states have passed legislation promoting competitive retail sales of electricity. These include California and states in the northeastern United States. It is important to note that these states have remarkably high electric costs. In California, for example, a residential customer pays an average of 11.3 cents per kWh and an industrial customer pays an average of 7.09 cents per kWh. Compare this to North Carolina where the average residential cost is 8.17 cents per kWh and the average industrial cost is

4.93 cents per kWh. (Based on 1994 statistics.) There was speculation that the 105th Congress would most probably pass legislation providing for some deregulation of and competition in the electric utility industry. However, more recent information indicates that some members of Congress who were supporters of this legislation are now having second thoughts based upon problems raised by their particular constituents, and predictions for passage of federal legislation are much less optimistic. (See Congressional Quarterly, October 12, 1996 and November 23, 1996.) In April 1996, the Joint Legislative Utility Review Committee devoted a meeting to the subject of electric utility restructuring, for information purposes only. No legislative committee has recommended legislation on this subject to the 1997 General Assembly. Wholesale competition was authorized by Congress under the Energy Policy Act of 1992 and the Federal Energy Regulatory Commission's Orders 888 and 889.

XIX. REDISTRICTING

(Bill Gilkeson 733-2578)

A. Congressional Redistricting

The three-judge panel hearing the Shaw v. Hunt case told the General Assembly last August that it had until April 1, 1997 to come up with a congressional redistricting plan. That plan must not contain the current version of the 12th congressional district, invalidated as a “racial gerrymander by the U.S. Supreme Court, or anything similarly invalid. If the General Assembly does not draw a new plan by April 1, the 3-judge panel has said it will draw one itself.

B. State Legislative Redistricting

Although the State Constitution prohibits the General Assembly from redrawing State House or State Senate districts before the next Census, that prohibition would not apply if the a House or Senate plan were invalidated by the federal courts. A lawsuit has been filed challenging certain legislative districts on the same grounds cited in Shaw, racial gerrymandering. Only if such a lawsuit prevailed would the General Assembly be redrawing legislative districts before 2001. There is interest, however, in acting now to amend the State Constitution to require the General Assembly in 2001 and thereafter to make exclusive use of single-member legislative districts. Currently, eight Senate districts and 17 House districts elect more than one member. There is also interest in changing the election method within the multi-member districts from multi-seat races to election by numbered seats. Instead of the entire district voting in one race to fill two seats, the entire district would vote in two races to fill the two seats. Such a change could arguably be done in mid-decade without changing the Constitution, especially if done uniformly for all multi-member districts.

C. Independent Redistricting Commission

Common Cause has for a long-time advocated removing the redistricting function from the legislature and giving it to an independent redistricting commission. The LRC Election Law Reform Committee, recommends a

constitutional amendment creating such a redistricting commission be placed before the voters in 1998. The redistricting commission's first redistricting job would be due Oct. 1, 2001.

XX. STATE EMPLOYEES

(Sandra Timmons – 733-2578)

A. Salary Increases

(Karen Cochrane-Brown – 733-2578, Stanley Moore and Dwayne Pinkney (FRD) – 733-4910)

The State Employees Association has again indicated that one of its top priorities will be to seek full funding of the Comprehensive Compensation Package with Career Growth Recognition in the continuation budget and cost-of-living increases and performance bonus funding in the expansion budget. The Comprehensive Compensation Package is a plan by which employees' salaries are advanced through established pay ranges in recognition of the increased value of their experience to the State, for those who perform at a "good" level or above. The cost for funding this plan for all eligible employees would be approximately 17.3 million dollars for each one percent of salary increase. In addition, the plan calls for cost-of-living adjustments (COLA) to be made to the State salary plan to respond to inflationary factors. These increases would be granted to all employees except those who perform at an "unsatisfactory" level and would also cost approximately 17.3 million dollars for each percent of increase. If granted, these two elements would be added to the employee's base salary and would be recurring items in the budget.

The plan also seeks performance increases to be awarded as a lump sum bonus to reward those employees who demonstrate "very good or outstanding" performance and would cost 13 million dollars. The performance increase would be a nonrecurring budget item.

B. State Employee Grievance Procedure Revamp

(Sandra Timmons – 733-2578)

In response to concerns expressed by employees to two legislative committees, the LRC Personnel Issues Study Committee proposed legislation to the 1996 Regular Session of the General Assembly which streamlined the grievance process for State employees and applicants for State government. The bill would have restructured the current State employee grievance procedure into a two-track system consisting of an informal mediation procedure and the existing contested case hearings process. It contained a controversial provision restricting the agencies' right to initiate appeals for judicial review. The concept may reappear in 1997.

C. Voluntary Shared Leave Policy

(Sandra Timmons – 733-2578)

The State Personnel Commission established a policy which allows employees to voluntarily donate some of their vacation leave to assist fellow employees when a prolonged medical condition has caused the employee to go on a leave-without-pay status. Current guidelines require that non-family member donors may volunteer to contribute vacation leave only to employees within the same parent agency. The State Employees Association of North Carolina (SEANC) will be seeking a change in the policy to permit all employees to share vacation leave with any other employee, irrespective of the employing agency and non-family member status.

D. Supervisory Salary Distinction Policy

(Sandra Timmons – 733-2578)

SEANC will be pushing for a change in the statutes to establish a policy to ensure that any employee who is promoted to a supervisory position from within a work group would receive a higher salary than those subordinate employees, if the employee has equal or greater length of service and experience. Currently, subordinate employees may be paid more than their supervisors.

E. Restore Tax-Exempt Status For State Employee Retirement Benefits

(Sandra Timmons and Cindy Avrette – 733-2578)

Prior to 1989, North Carolina, like many other states, granted a 100% income tax exemption for State and local government retirees' pensions. In *Michigan v. Davis*, the U.S. Supreme Court held that the compensation for tax purposes of federal retirees must be treated the same as for State and local governmental employees. In response to *Davis*, the 1989 General Assembly provided a \$4000 exemption for retirement benefits to all governmental retirees.

In *Swanson v. Powers*, a 1994 class action suit by federal retirees, North Carolina Supreme Court ruled that, based on the *Davis* rationale, federal retirees were entitled to a refund for income taxes paid on their retirement benefits for the years 1985 through 1989, if they made a timely protest of the tax. Under the existing law, affected taxpayer must give a written notice (a "protest" within 30 days of filing the tax return) that they believe the tax is unlawful or unconstitutional. If they did not make the timely protest, they were procedurally barred from recovering the refunds they sought. The federal retirees who complied with the procedural protest requirement received a refund. Notwithstanding the *Swanson* holding, the 1996 Session of the General Assembly gave income tax credits and refunds for federal retirees who did not make a timely protest.

State and local government retirees filed two law suits. *Bailey v. State II* is a class action suit with the primary claim that the taxation of state and local retirement income, which benefit has already vested, is a breach of contract violating the federal constitutional prohibition against states impairing the obligation of contracts. The trial court has ruled in favor of the state employee-plaintiffs and the State is seeking an expedited appeal to the N.C. Supreme

Court. SEANC will likely push for restoration of the tax exempt status for State retirement benefits in the 1997 General Assembly

XXI. TECHNOLOGY INFORMATION

(Don Fulford – 733-6834)

A. Year 2000 Issue

Many of the computer systems in use today were developed in the seventies when the cost of memory and computer storage made them a resource to conserve when one was developing a computer application. Few believed at the time that these applications would be in use in the year 2000. To save memory, these legacy systems were developed using a practice where the year was represented and processed as a 2-digit field. For example, if you were computing one's length of State service and you subtracted the date of employment, "95" representing 1995, from "00" for the year 2000, one would get a negative number (-5). There are numerous kinds of problems resulting from the 2-digit date field. The year 2000 problem has been called the most extensive IT project ever undertaken. This problem is not unique to state government. The same programming techniques have been utilized to develop computer programs for all organizations, including commercial, federal, state, and local government. It is a problem that is truly international in scope.

The Office of State Controller (OSC) has estimated a cost of \$35 million to address this issue for all executive agencies excluding the Department of Transportation (DOT). Many believe that this could be a gross underestimation. The Year 2000 problem for the DOT has been estimated to be approximately \$15 million in addition, making a total estimate of \$50 million. The OSC has focused on the issue but it is doubtful that the individual agencies are giving the issue the attention required to resolve it in time. In some cases, critical state systems could begin to fail prior to the year 2000, as dates are often calculated in advance. Examples of this are renewal dates for drivers' licenses and motor boat registrations, and prison term release dates.

To help State government agencies address the issue, the OSC has developed and issued an RFP (Request for Proposals) for Year 2000 contracting support. This RFP is expected to be awarded during the first quarter of 1997. To fund the conversion effort, the State legislature directed during the 1996 short session that a surcharge of 15.6% be placed on all usage of the SIPS State Computer Center to fund the Year 2000 effort. It is projected that this fund, if continued at the same rate for fiscal years 1997/1998 and beyond will supply approximately \$30 million to address the issue over the next four years. Some action will have to be taken in the legislature to increase the funding level, or find alternative funding sources to meet the estimated \$50 million+ conversion cost. Individual agencies

that wish to use the OSC administered fund will have to apply to the OSC to cover agency proposed Year 2000 projects.

During this session of the legislature, agencies will likely submit budget requests for Year 2000 projects in addition to those funded out of the State Computer Center Fund. As the various State agencies become more aware of the problems associated with Year 2000, the estimates to correct the problem will likely increase. Beyond the budget and funding issue, the legislature needs to ensure that agencies are identifying Year 2000 related issues and have a plan to address the problems identified.

B. Information Technology Infrastructure Modernization

In a recent meeting of the Information Resource Management Council (IRMC), it was noted that the State is as much as ten years behind in technology in some agencies. To a large extent the State's business applications reflect the capability and applications design of the late 1970s. The State is not well positioned to take advantage of new technology. The State is constrained by

- a hardware infrastructure, which lacks modern desktop PCs, interconnecting Local Area Networks, a facilitating data network, and data and infrastructure standards, that is aging and not adequate to take advantage of newer technology;
- legacy applications that are based mostly on mainframe technology and whose data is not very shareable.

Various funding requests from both the OSC and other agencies that address the issue of modernizing the technology infrastructure can be expected during this session. The Executive Branch believes that to realize the promise of technology throughout State government investment in technology is required. The legislature can expect to see increased funding requests for desktop technology, imaging technology, software tools that facilitate data sharing, and the like.

C. Legislative Review Of Computer System Development

The Legislative Services Commission's Personnel Committee is considering adding the capability either in-house or by consultant to analyze requests and plans for the implementation of computer technology throughout State government.

XXII. TAXATION

(Cindy Avrette – 733-2578, Sabra Faires (FRD) -- 733-4910, Martha Harris (BDD) – 733-6660)

A. Uniform Tax On Piped Natural Gas

The LRC Revenue Laws Committee recommends a proposal to the 1997 General Assembly that combines the current taxes on piped natural gas into a single tax and applies the combined tax uniformly to all sales of piped natural gas. The current taxes on piped natural gas apply only to sales by a utility. The reason they apply only to sales by a utility is that they were enacted when only utilities could sell piped natural gas.

Federal and state regulation of the piped natural gas industry has changed. For some time, these regulations have allowed persons who are not utilities to sell piped natural gas. Several consequences result from the regulatory changes that allow persons who are not utilities to sell piped natural gas. One consequence is an erosion of the State tax base. A second consequence is that local revenues are reduced. Lastly, the tax structure violates the principle of fairness by applying only to sales by one type of seller. The Revenue Laws Committee proposal eliminates the distinction between sales by utilities and sales by others and applies a uniform tax to all piped natural gas consumed in this State.

B. Refund Intangibles Tax To All

In 1996, the United States Supreme Court declared the intangibles tax on stock unconstitutional. The General Assembly repealed the tax in 1995, but those taxpayers who paid the tax for 1990-94 and requested a refund are expected to receive refunds as soon as the North Carolina Supreme Court rules on the issue, which it has been considering for almost a year. Until 1996, a request for a refund of an unconstitutional tax had to be filed within 30 days after the tax was paid to be valid. (The 30-day period was extended to one year in 1996, but this change does not apply retroactively). Requesting a refund is also known as paying under protest. Those taxpayers who did not request a refund within the 30-day period will not receive a refund unless the General Assembly enacts legislation to repeal the intangibles tax on stock retroactively for one or all of the tax years from 1990 to 1994.

Many legislators have received correspondence from taxpayers who did not request refunds within 30 days. These taxpayers argue that the 30-day period is unreasonable and unfair and that the State should refund the unconstitutionally levied tax. In 1996, the General Assembly set a precedent for giving relief to taxpayers who failed to make timely requests for refunds of unconstitutional tax: it provided partial relief to federal retirees, through credits and partial refunds, for unconstitutional taxes they paid on their retirement benefits without filing a timely protest.

The General Assembly could choose to provide refunds for any or all of the tax years from 1990 until 1994, with or without interest. The cost of making the refunds would come from the General Fund. An argument can be made for choosing one or more years as follows; the estimated cost, without interest, is

set out next to each option. An estimate of the costs of intangibles tax refunds with interest can be obtained from the Fiscal Research Division.

Options:

1. Refund stock tax for 1994 tax year only. Rationale: least expense to the State; provides something for everyone. Cost: around \$44.2 million without interest.
2. Refund stock tax for 1993 and 1994. Rationale: these are the two years during which most people became aware of the possible unconstitutionality of the tax. Most who did pay under protest did so for these two years only. Cost: around \$65.2 million without interest.
3. Refund stock tax for 1992, 1993, and 1994. Rationale: Even if a taxpayer pays under protest, the taxpayer must then file suit within three years after the refund is denied in order to preserve the right to a refund. Furthermore, three years is the statute of limitations for filing an amended return under State and federal law in order to receive a refund of an overpayment. Cost: around \$153 million without interest.
4. Refund stock tax for 1991, 1992, 1993, and 1994. The North Carolina Association of Certified Public Accountants has adopted a resolution urging the General Assembly to provide refunds for these four years. Cost: around \$231 million without interest.
5. Refund stock tax for 1990, 1991, 1992, 1993, and 1994. Rationale: these are the tax years to which the lawsuit applies. At least one taxpayer, the Fulton Corporation, paid under protest for these tax years. Cost: around \$293 million without interest.

C. Withholding For Nonresidents

The LRC Revenue Laws Committee has endorsed legislation to require withholding from compensation paid to nonresident individuals and nonresident entities for personal services performed in North Carolina, effective January 1, 1998. The proposal was suggested by the Department of Revenue.

North Carolina taxes the income of its residents and also that income derived by nonresidents from businesses, trades, and occupations carried on in this State. Most other states that have an income tax, tax nonresidents' income in this way. Like North Carolina, these states generally give their residents a credit for income tax paid to other states on income derived from those states.

Many nonresidents who derive income from North Carolina do not pay the North Carolina tax due on this income. This problem is particularly troublesome with respect to single event performers such as athletes or entertainers who may be paid large amounts for their work in North Carolina. It is difficult, expensive, and inefficient for the Department of Revenue to trace and pursue these nonresidents who do not pay the tax they owe.

The Revenue Laws Committee's proposal would impose a withholding requirement on payments made to nonresidents for services performed in this state. This requirement is similar to the current law which requires employers to withhold taxes from wages paid their employees. The new requirement will not apply to wages, which are already covered under the current law; the new requirement applies to payments to independent contractors.

Examples of nonresidents targeted by the proposed withholding requirement are musicians, actors, and individual athletes. Because these individuals may be paid through a partnership, limited liability company, or corporation that does not have ties to this State, the withholding requirement will apply to payments to these entities as well. If the entity is registered in this State or maintains a permanent office in this State, payments to it are not subject to withholding. Payments it makes to nonresidents for their services will, however, be subject to withholding, under either the new requirement for contract payments or the current requirement for wages.

There is insufficient data to estimate how much revenue the General Fund would gain from the collection through withholding of taxes currently owed but not being paid by nonresidents, but it should be in the millions of dollars.

D. Additional Interstate Auditors For The Department Of Revenue

The Revenue Laws Committee has suggested that seven additional auditors be added to the interstate audit division of the Department of Revenue. North Carolina's interstate audit division has a smaller staff than that of most comparable states. The Department of Revenue reports that each auditor assesses approximately \$2 million a year, of which about 75% is collected, and that every dollar spend on interstate audits yields more than \$50.00 of additional revenue for the General Fund. After the new auditors are hired and trained, this proposal should increase General Fund revenues by more than \$10 million a year.

This proposal and the previous one requiring withholding from nonresidents reflect the Revenue Laws Committee's support of the policy that taxes should be administered so that taxpayers cannot easily avoid paying the taxes they owe. When some taxpayers do not pay their taxes, the difference must be made up by raising taxes on those who comply with the law.

In 1996, the Revenue Laws Committee proposed the hiring of fifteen auditors and two support personnel. Eight auditors, one tax technician, and one clerical position were added during the 1996 Session. In 1996, the General Assembly directed the State Budget Office's Management and Productivity Unit to work with the Department of Revenue to assess the Department's staff requirements and report to the House and Senate Appropriations Subcommittees on General Government by March 1, 1997.

**Restore Tax Exempt Status for State Employees Retirement Benefits – See
STATE EMPLOYEES**

XXIII. TRANSPORTATION

(Giles Perry – 733-2578)

A. Graduated Driver's Licenses

In response to high teenage driver accident, injury and death rates, safety research groups such as the Insurance Institute for Highway Safety and the N.C. Highway Research Center at UNC-CH are advocating "graduated driver's licenses." This term refers to a group of proposed licensing changes, such as increased instruction, a mandatory supervised driving period following licensure, night driving curfews, mandatory seat belt use for all passengers with a young driver, increased alcohol restrictions, and limits on teen passengers riding with a beginning driver.

Connecticut, Florida, Kentucky, Minnesota, and Virginia, as well as New Zealand and the Canadian provinces of Ontario and Nova Scotia, have enacted changes to driver's license procedures for young drivers. According to the Insurance Institute for Highway Safety, New Zealand's law (the oldest) has reduced teenage crashes and fatalities.

Several graduated driver's license's proposals were introduced in the 1995 General Assembly, but none were enacted into law.

B. Federal Driver's Privacy Protection Act

The 1994 federal Driver's Privacy Protection Act (18 U.S.C. §§2721 et seq.), effective September 1997, requires the N.C. Division of Motor Vehicles to close access to DMV records in most cases to prevent disclosure of "personal information" such as names, addresses, and phone numbers. This change in federal law was in response to a stalking and murder in California where information on the address of the victim was obtained from California's DMV for the perpetrator by a private detective. Current N.C. law provides that DMV records are open as public records, except for photos, medical information, and Social Security numbers.

The Joint Legislative Transportation Oversight Committee is discussing this issue. The Committee has expressed concern over the unknown cost in staff time of DMV employees who would be required to decide on which requests for information were authorized under the federal law. The Committee is also considering asking the Attorney General to consider joining a South Carolina lawsuit challenging the constitutionality of the federal Act.

C. Public Transportation

(Ken Levenbook (BDD) – 733-6660)

With the approval of the \$900 million bond issue for acceleration of road projects around urban areas and the continuation of the Intrastate System at a cost of more than \$200 million per year from the Highway Trust Fund, road construction continues apace.

The Transit 2001 Commission was created to study the public transportation needs of North Carolina. The preliminary report, as described by the news media, indicates that the Commission will call upon the General Assembly for an appropriation of about \$75 million per year for developing public transportation alternatives to highway travel.

These alternatives include a high speed rail system, proposed to link the major urban centers of the state with Washington, D.C. and the northeast corridor; a light rail system linking North Carolina cities and providing alternative means of travel within major metropolitan areas such as Charlotte-Mecklenburg, the Triad, and the Triangle; and improvements in public transportation, such as bus systems in urban areas with more routes and more frequent service.

An economical means to reach new jobs for those removed from welfare; an aging population dependent on public means of transportation when they can no longer drive safely; and increasing air pollution from light vehicles along with tougher E.P.A. clean air standards are cited as reasons supporting public transportation.

D. North Carolina Railroad

(Walker Reagan – 733-2578)

The General Assembly may be asked to take some action to resolve the problems existing with the ownership of the North Carolina Railroad. The North Carolina Railroad company owns a stretch of track that runs from Charlotte to Morehead City, following a route through the heart of the Piedmont crescent. The track has been leased to Norfolk-Southern Railroad for at least the last 100 years. The North Carolina Railroad is a private corporation in which the State of North Carolina owns 75% of the stock, with the remainder of the stock being privately held. A new long-term lease with Norfolk-Southern to replace the previous 99-year lease that has expired was originally approved by the State and the company, but the approval of the lease has been overturned by the court based on a challenge by some of the minority shareholders. Many of the minority shareholders are trying to get the State to buy out their interest, or agree to sell the railroad. Currently the value of the railroad is being determined and ways to pay for the minority shareholders' interest are being considered. The General Assembly may have to approve the purchase of the privately held stock and authorize the financing of or provide the money for the buyout.

XXIV. VICTIMS RIGHTS

(Brenda Carter – 733-2578)

A Victims' Rights Amendment to the State Constitution was initially proposed in 1991 and approved finally in last year's general election.

The Victims' Rights Amendment (Article I, Section 37, Constitution of North Carolina) includes the right to be informed of and be present at court hearings; to be heard at sentencing; to confer with prosecutors; to receive restitution (**SEE Courts: Restitution Orders Enforcement in Civil Cases, page #**); and to be notified about offender's conviction, sentence, parole or escape. Virtually every clause in the constitutional amendment is modified by the phrase "as prescribed by law." The effect is that the rights afforded victims by the new amendment will take shape as the General Assembly defines them and the courts interpret them. The 1997 General Assembly may see a need for changes to Article 45 of Chapter 15A of the General Statutes, current provisions regarding Fair Treatment for Victims and Witnesses.

XXV. WEAPONS -- CONCEALED HANDGUN PERMITS

(Walker Reagan – 733-2578)

The 1995 Concealed Handgun Permit law allows certain persons to lawfully carry a concealed handgun in certain places. The number of people who have obtained permits is about one-third the number of people that were expected to be permitted in the first year, and some people have complained that North Carolina's law is excessively restrictive. Some effort may be made to make the permitting process easier and less expensive.

Law enforcement personnel have also been complaining about having to take the handgun safety course required to qualify for a permit. They argue that because of the regular training in firearms safety and the law they are required to have for their law enforcement job they are already qualified for a permit. Some effort maybe made in this session to allow law enforcement training to be substituted for the training otherwise required.

Also some questions have arisen about the broad discretion given to the sheriff in the permitting process, and the inconsistencies in interpretation of the statutes by the various sheriffs across the State. Some effort maybe made this session to define the sheriff's authority in this area more specifically.

XXVI. WELFARE REFORM

(Carolyn Johnson, Linda Attarian, and John Young – 733-2578)

Welfare Reform

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 is comprehensive welfare reform legislation that ends the entitlement to cash assistance to all eligible needy parents and children; the Aid to Families With Dependent Children (AFDC) program is replaced by the Temporary Assistance to Needy Families (TANF) block grants. The legislation has significant impact

on Food Stamp, Supplemental Security Income (SSI) and immigrant benefits, child care and child support enforcement laws.

Key provisions of the legislation prohibit the use of TANF funds to provide cash assistance to adult recipients who receive assistance for more than five years or fail to participate in work activities after receiving assistance for 24 months, or to unmarried teen parents unless they reside at home or in approved adult supervised settings and participate in educational or training activities. Able-bodied food stamp recipients, age 18-50, without dependents will receive food stamps for only three months within a 36 month period, unless they meet new work requirements. Most legal immigrants are banned from receiving assistance for the first five years they reside in this country, until they become citizens. Further, states are required to enhance child support enforcement efforts by streamlining procedures and maintaining interstate registries.

For fiscal years 1997 - 2002, North Carolina is estimated to receive federal funding in the amount of \$302 million dollars annually for TANF. To receive the full grant, the State and counties must to continue to share expenditures in the amount of \$202 million dollars.

The Legislative Welfare Reform Study Commission (Commission) began a review of the federal legislation to determine its impact in North Carolina. The Commission found that it did not have ample opportunity to complete a thorough review of the legislation and make substantive recommendations to the 1997 General Assembly. The Commission further found that the Human Services Task Force, operating under the supervision of the Department of Human Resources, was in the process of developing short and long term plans for welfare reform in North Carolina.

The Task Force, composed of legislators, administrators, county officials, advocates, and public and non-profit agencies among others, has divided into fourteen work groups to thoroughly review the federal legislation prior to making long-term recommendations to the General Assembly. In the short-term, the Task Force recommended submitting a temporary state plan to the U. S. Department of Health and Human Services based upon the State's Work First Program for certification. This strategy provided for a minimal disruption in operations since federal waivers, received by the State to fully implement Work First, already authorized time-limited benefits and emphasis on welfare to work. It also enabled the State to begin implementing TANF earlier than July 1, 1997 and thereby obtain federal funds at the highest available level.

The Task Force is expected to complete its review in January and make recommendations to the General Assembly. Therefore, the Welfare Reform Study Commission recommends that the General Assembly appoint a Joint Select Committee on Welfare Reform for the biennium to receive the report from

the Task Force and review the recommendations to implement welfare reform in North Carolina.

Smart Start -- See **CHILDREN AND JUVENILES: Smart Start**

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