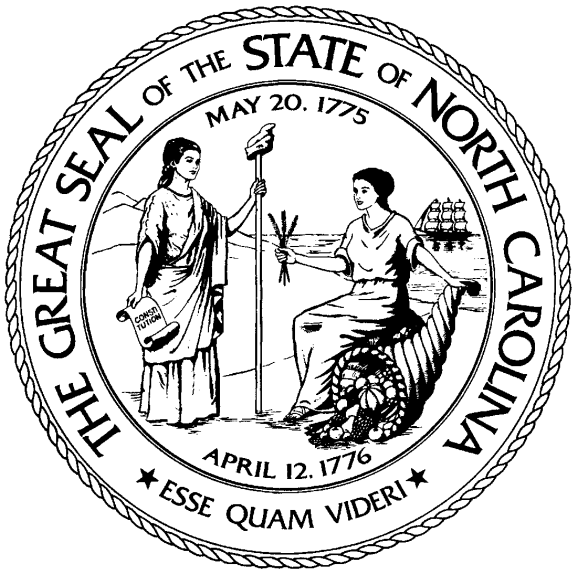
# EMERGING ISSUES, HOT TOPICS

# AND

# TRENDS IN LEGISLATIVE ISSUES




# 1999

**RESEARCH DIVISION**
**N.C. GENERAL ASSEMBLY**
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# 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 that might be presented during the upcoming biennium. In this publication, we will present the major issues that likely to be introduced during the 1999 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 "ISD"—Information Systems Division. If you wish to investigate any of these matters in greater detail, please contact the indicated individuals.

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## I. BUDGET OUTLOOK – 1999 SESSION

(David Crotts, Lynn Muchmore, FRD --. 733-2578)

A. General Fund Expenditures

*1. Court Decisions*.

Budget discussions in the 1999 Session will be conducted under the shadow of two major court decisions. Under *Bailey v. North Carolina*, decided in 1998, the State was required to pay $799 million to retirees who were unconstitutionally charged state income tax on benefits received between 1989 and 1997. Four hundred million was appropriated in the 1998 Session. The remaining $399 million will be due in July 1999. More recently, the North Carolina Supreme Court ruled for plaintiffs in *Smith v. State*, imposing an obligation to return to taxpayers between $350 million and $450 million in unconstitutionally collected intangibles tax proceeds. Since this case was remanded to Superior Court for final settlement, the timing and exact amount of this obligation is yet to be determined. Taken together, the *Bailey* and *Smith* cases could absorb as much as $850 million from the General Fund.

*2. Continuation Budget Growth.*

A second significant demand on the General Fund will be the cost of continuing programs at their current service level. This reflects such factors as the increase in school and university enrollments, the career growth allowance for state employees, and simple inflation. A reasonable percentage would be 2%, which equates to additional spending of $240 million.

*3. Expansion.*

A major expansion item will reflect the commitment by the Governor and past legislatures to achieve national average teachers' salaries by the year 2000-2001. Two payments have been paid on an amount originally calculated to exceed $1.0 billion. The 1999 Session will face a third installment likely to fall in the $250-275 million range. State employees, University faculty, community college faculty, and other non-faculty employees represent an additional salary consideration. Each 1% increase for these employees will cost roughly $50 million.

Beyond court-ordered repayments and salary costs, several other high profile expansion items will undoubtedly be placed on the table. Reserves in the state employee health plan are no longer adequate to meet expected outlays, so that an increase in premiums paid by the State will be necessary

in Fiscal Year 1999-2000. This additional expense will be at least $130 million. Additional debt service brought on by an accumulation of bond financing approved in recent years will total $80 million. Planned expansion of the Smart Start program will require another $80 million. Juvenile Justice initiatives embraced by the 1998 Session involved second year projected costs of some $20 million.

While a politically realistic evaluation of spending will have to await arrival of the Governor's proposals, a plausible list of new demands facing legislators legislators easily approaches $1.5 billion, with roughly half of that amount taken up by the *Bailey* and *Smith* settlements.

B. General Fund Availability

*1. Beginning Balance.*

Funds available to meet these demands divide into a beginning balance, or uncommitted money remaining in the General Fund at the end of the current fiscal year (FY 1998-99), and General Fund income received from tax and nontax sources in the next fiscal year (FY 1999-2000). A reasonable working estimate of the beginning balance would be $100 million, although this number could be larger if the Governor pressures state agencies to spend less than was appropriated in the current year (FY 1998-1999).

*2. FY 1999-2000 Income.*

A final estimate of General Fund tax revenues for FY 1999-2000 awaits consensus between analysts in the Governor's Office of State Budget and Management (OSBM) and the General Assembly's Fiscal Research Division. This estimate may reflect a moderation in economic growth caused by an uncertain international situation. It will also take into account the upcoming elimination of the sales tax on food, as well as recent reductions in income and inheritance taxes. However, it is unlikely to anticipate any dramatic economic downturn. A plausible growth rate for purposes of this discussion would be six percent.

C. Potential General Fund Shortfall

*1. Magnitude.*

A six per cent growth in tax revenues, coupled with relatively flat nontax revenues and a conservative estimate of the General Fund beginning balance ($100 million) would put total General Fund resources available for new spending at a figure near $1.0 billion dollars. How to reconcile

the difference between this billion dollar availability estimate and the $1.5 billion needed to meet new demands will be the question that preoccupies appropriations and finance committee members in the upcoming session.

*2. Options.*

Generally, three options may be considered. One may involve reductions in the continuation budget, achieved either through efficiency measures or program elimination. A second may be use of the so-called "Rainy Day Fund", a restricted account within the General Fund that will have a balance on July 1, 1999 of $560 million. A third will be to increase expected revenue through some combination of new taxes and fees, improved yield from existing taxes, and new or modified non-tax sources.

D. Highway Fund

(Evan Rodewald – 733-4910)

In 1999, the General Assembly will face pressure to increase funding for Highway Fund programs at a time when Highway Fund revenues are increasing relatively slowly. The largest budget item under discussion will be increases in maintenance funding. After adjusting for inflation, spending on maintenance has remained relatively constant since FY 1987-88. Over the same period of time, however, the number of lane miles in the state highway system has increased by about 15%, and the amount of vehicle travel on the state highway system has increased by about 40%. In a recent study of maintenance needs, the North Carolina Department of Transportation estimated that it will need an additional $250 million annually for maintenance.

Examples of other Highway Fund budget items that will be discussed during the 1999 Session include public transportation, salary increases for Highway Fund employees, and programs for the Highway Patrol. These budget items cannot be funded by the increases projected in Highway Fund revenues. The most current projections suggest that Highway Fund revenues will increase only 3.9%, about $45 million, from FY 1998-99 to FY1999-2000.

Spending on maintenance for 1998-99 after adjusting for inflation, has remained constant.

## II. BUSINESS AND COMMERCE

(Walker Reagan – 733-2578)

A. Garnishment of Wages for Payments of Debts

At the urging of the Retail Merchants Association and others, it is expected that legislation will be reintroduced to allow for the garnishment of wages under certain circumstances as a means of collecting outstanding judgments.

Senate Bill 740, introduced in the 1997 Session, was converted to a study bill by the Senate Commerce Committee. The issue was referred to the LRC's Committee on Consumer Protection but the study committee did not make any recommendation on the issue.

Many other states, including Virginia, allow for garnishment of wages as a means of collecting judgments, and pressures are being applied by out-of-state creditors for this remedy to be made available in North Carolina.

B. Uniform Transfers on Death Act

The General Statutes Commission is expected to recommend again this session that NC adopt the Uniform Transfer on Death Security Registration Act. In 1997, on the recommendation of the General Statutes Commission, Senate Bill 163 was introduced. The bill was given a favorable report by the Senate Commerce Committee and rereferred to the Senate Finance Committee where it was never acted on.

The uniform act, adopted in at least 35 other states, would provide an alternative to joint ownership with right of survivorship for securities, which includes mutual funds. This would allow probate and probate fees on these assets to be avoided at the time of death, and would simplify the process of changing names on securities after death.

Many of the retirees lobbying groups, including the AARP, have been urging legislators for at least 3 years to consider this legislation. In addition to the retirees, it is expected that the security dealers association and the N.C. Bar Association will support this bill.

C. Uniform Prudent Investor Act

The General Statutes Commission is expected to recommend that the General Assembly consider adopting the Uniform Prudent Investor Act. This act would remove certain common law restrictions currently imposed on trustees and other fiduciaries, and would allow for prudent investor principles to be applied to a whole portfolio investment analysis instead of individual investments. The act would also allow the prudent investor to delegate investment responsibility to qualified professional money managers. At least 23 other states have already adopted this act.

D. Uniform Unclaimed Property Act

The General Statutes Commission is expected to recommend that the General Assembly consider adopting the Uniform Unclaimed Property Act that would constitute a rewrite of the state's current escheat laws. This act, adopted by at least 36 other states, would make NC's law uniform with most other states which will simplify processing by companies and businesses that operate in several states and who are required to turn over abandoned and unclaimed property to the states.

E. Repeal of UCC Article 6 (Bulk Sales Transfer Act)

The General Statutes Commission is expected to recommend that the General Assembly again consider the repeal of Article 6 of the Uniform Commercial Code known as the

Bulk Sales Transfer Act. This provision has been repealed in at least 35 other states and its repeal would make NC's law more consistent with the laws of these other states.

In 1997, House Bill 114 and Senate Bill 90 were introduced to repeal Article 6. House Bill 114 passed the House but remained in the Senate Commerce Committee at the end of the 1998 Session.

The NC Bar Association is also expected to endorse the repeal of this law.

F. Revision of UCC Article 9 (Secured Transaction Act)

The National Conference of Commissioners on Uniform State Laws and the American Law Institute have approved a revision to Uniform Commercial Code's Article 9, known as the Secured Transactions Act. It has been requested that all jurisdictions adopt the revision to be effective on July 1, 2001 to reduce confusion in interstate commerce. The General Statutes Commission is now considering this matter.

## III. CHILDREN AND JUVENILES

(Jo McCants 73-2578)

A. Permanent Placement and Child Protection

(Jo McCants 73-2578)

In light of the passage of House Bill 1720 (Adoption and Safe Families Act), the issue of providing better protection for children will continue to be of utmost importance to the General Assembly. The Adoption and Safe Families Act requires states to: 1) place children in safe homes within a timely manner; 2) expedite reunification of children when reunification is in the child's best interest; 3) place children permanently with relatives when appropriate; 4) terminate parental rights of parents who do not provide for their children; and 5) facilitate the timely adoption of children for whom reunification is inappropriate. There will be a need for continued training and services to help counties develop ways to remove barriers that prevent the permanent placement of children and fulfill all the other requirements of the Act.

B. Lose Control, Lose Your License

(Walker Reagan 733-2578)

The Lieutenant Governor and others concerned about violence in schools are expected to renew their efforts to use the threat of taking away the drivers license of a person under age 18 as a deterrent to prevent violence and illegal activity by minors at school.

In 1998, an amendment to Senate Bill 1260, the Juvenile Justice Reform Act, was adopted in the Senate at the urging of the Lieutenant Governor which would have amended the Driving Eligibility Certification process to include a certification that the applicant had not been suspended from school for certain offenses. In addition to certifying that the applicant was making progress towards graduation as required by current law, under the amendment the school principal would also have to certify that the student had not been suspended from school for more than ten consecutive days as a result of possession or sale of alcohol or illegal drugs at school, possession or use of a

firearm at school, or a physical assault on and serious injury to another person at school. If the student were already a permittee or licensee when the suspension occurred, the principal would be required to notify the Department of Motor Vehicles, and the privilege to drive would be revoked for one year. The student could get the privilege to drive back after six months if the student demonstrated exemplary behavior or successfully completed a drug or alcohol treatment program, if appropriate.

While this amendment was part of Senate Bill 1260 as it passed the Senate, this amendment was deleted by the House and was not included in the conference committee version of the bill that became law, with the agreement of the Lieutenant Governor that the issue would be considered again during the 1999 General Assembly.

## IV. CORRECTIONS

(Susan Hayes 733-2578)

Outlook for Corrections

From 1985 through the 1995 Session, the General Assembly established the policies and funding levels needed to deal with the explosion in prison population and the lack of prison bed space. Due to a massive prison construction program, rewriting of sentencing laws, funding of two private prisons, and increased funding and emphasis on community corrections, the State stabilized the prison system. In recent years, these initiatives have allowed the General Assembly to close older minimum security prison units, eliminated the need to house inmates out of state and reduced the number of state inmates either backlogged in county jails or housed in county jails by contract. During 1999, with the opening of the final two prisons funded for construction and operation by the General Assembly -- Avery/ Mitchell and Albemarle -- it is anticipated that prison bed capacity will exceed the projected population for the first time in recent history.

This situation creates a new range of policy choices for the General Assembly – closing more older, inefficient prisons; increasing criminal penalties for certain offenses and thus using up some of the potential excess bed capacity; and, allowing certain prisons to operate at lower population levels that may offer more security and safety. At the same time, the General Assembly will need to determine whether to build new close custody, single cell prisons. The changes in sentencing laws have resulted in a different prison population mix – serious, violent offenders make up a larger portion of the population and are staying for longer periods of time. However, much of the projected excess bed space is dormitory space for minimum and medium custody. The General Assembly has funded the planning and design only of 3 close custody prisons – the changes in prison population and anticipated growth in the population beginning in 2003 requires that decisions be made in 1999 and 2000 on whether to fund a new prison construction program.

## V. COURTS

(Tim Hovis, Jo McCants - 733-2578)

A. Bail Bonds:

During the 1995 Session, various changes were made to the law concerning bail bonds. Several of these changes were controversial, particularly in the area of forfeiture of bail bonds, as explained below.

Pursuant to G.S. 15A-544, if a defendant fails to appear in court, a court issues an order of forfeiture which is served on the surety. The surety has 60 days following the date of service to ask the court to strike the order. If the order is not stricken within the 60 day period the, court enters a judgment of forfeiture against the surety. Prior to 1995 and under the current law, the court has the discretion to set aside an order of forfeiture if the court is satisfied that the defendant's failure to appear was without fault. However, in 1995, this provision was amended to **require** the court to set aside the order if the defendant was incarcerated elsewhere in the State at the time of the defendant's failure to appear.

Because the defendant's incarceration could be on an entirely separate and unrelated offense to the defendant's original failure to appear, attempts have been made to reverse the 1995 changes and again give the court discretion in these circumstances. For example, on the same day a defendant fails to appear in court, he or she may be incarcerated in another county of the State on a separate charge. The defendant may then be released from jail and disappear. Yet, if the surety can show that the defendant was incarcerated on the date he or she failed to appear, the order of forfeiture must be stricken. For this reason, the Education Law Section of the North Carolina Bar Association, specifically asked that the current law be changed.

During the 1997 Session, House Bill 1023 would have required that, even if the defendant were incarcerated on the date of his or her failure to appear, the defendant must be served with an order for arrest for the failure to appear before the court is required to strike the order of forfeiture. However, this provision was removed prior to the bill becoming law.

B. Appointment of Appellate Court Judges and Justices

During the 1995 Session, Senate Bill 971 provided for a constitutional amendment to allow the gubernatorial nomination of Supreme Court justices and judges of the Court of Appeals. Under the proposed legislation, the Governor's nominations would be subject to a three-fifths confirmation vote by both houses of the General Assembly. After an initial abbreviated term, the justices and judges would be approved by the State's voters in a nonpartisan retention election for a full eight year term.

Because the bill initiated an amendment to the State Constitution, the bill required a three-fifths vote by both houses of the General Assembly before the amendment could be

submitted to the voters of the State. In 1995, Senate Bill 971 received the required three-fifths vote in the Senate, but failed in the House.

During the 1997 Session, House Bill 1391 and Senate Bill 1258 were introduced which contained essentially the same provisions as those discussed above. The bills, which were recommended by the North Carolina Courts Commission and supported by the North Carolina Bar Association and the North Carolina Citizens for Business and Industry, failed to pass either house.

Proponents of the measure argue that the appointment of appellate justices and judges would avoid the problems associated with partisan statewide elections and create a more impartial appellate system. Opponents, however, believe that the voters of the State should participate directly in the process. It is anticipated that legislation addressing the appointment of appellate judges will be introduced during the 1999 General Assembly.

C. Court Reform.

In 1996, the Commission for the Future of the Courts in North Carolina (Commission) presented its report and recommendations for improving our courts. Many of the recommendations of the Commission would require amendments to the state's constitution, for example,

1) developing circuit courts to replace our current district and superior court structure;
2) appointing judges, clerks and magistrates;
and 3) modifying the right to trial by jury.

The Commission also recommended several changes that do not require constitutional amendments. These recommendations include:

1) developing a family court;
2) placing the function of prosecution with the executive branch of government; and
3) improving technology used in the court system.

Several bills were introduced during the 1997-98 Legislative Session to implement many of the recommendations of the Commission; however, the bills did not pass. Two of the Commissions recommendations were given some consideration in the Juvenile Justice Reform bill and the Budget bill that passed during the session. The Juvenile Justice Bill included a provision that requires the Administrative Office of the Courts (AOC) to establish pilot programs to implement a family court within district court districts chosen by AOC. Each pilot program must follow the guidelines set forth in the Commission's report. The 1998 Budget bill included a study that requires the Chief Justice of the Supreme Court to convene a task force to make recommendations for (1) the reorganization and expansion of the Superior Court Division into no fewer than eight but no more than twelve judicial divisions in a manner that does not divide any existing judicial districts; and (2) the establishment of pilot programs in up to three of the new

judicial divisions for the implementation and operation of "circuit courts" as proposed by the Commission.

## VI. CRIMES

(Walker Reagan – 733-2578)

### A. Strengthen Laws Against Under Age Drinking

Several groups, including the Governor's Institute on Alcohol and Substance Abuse and the NC Initiative to Reduce Underage Drinking (a coalition of stores, restaurants, PTA's, churches, chambers of commerce, youth groups, law enforcement agencies, and public health advocates) are expected to recommend legislation to strengthen the laws to prevent and discourage underage drinking. Included in possible recommendations are expected to be keg registration, closing the loophole on punishment for 19- and 20-year olds who purchase and possess beer and unfortified wine, and making it more difficult for teens to purchase alcohol.

In 1998, three bills which would have provided for keg registration and increase punishment for 19- and 20-year olds who purchase or possess alcoholic beverages, were introduced at the recommendation of the Child Fatality Task Force, Senate Bills 1324 and 1353, and House Bill 1409, but none of these bills were acted on by the committees to which they were referred.

### B. Ban Open Containers of Alcohol in Vehicles

The Governor's DWI Task Force, chaired by the Lieutenant Governor, may recommend what action the State should take related to banning open containers of alcohol in motor vehicles. Under new federal rules, states that do not ban open containers of alcohol in motor vehicles are subject to loss of some federal highway funds. North Carolina potentially could lose $5 million in federal funds in 2000 and as much as $10 million by 2002, if NC's law does not comply with the federal requirements.

NC's current law allows passengers to consume alcohol in a motor vehicle, so long as the driver has no alcohol in his or her body. If the driver has any alcohol in the body, the driver will be charged with an open container violation, even if the level of alcohol in the body does not rise to the level to constitute impaired driving.

Some people believe that NC's current law is strong enough and argue that it accomplishes the results required by federal law, encourages an alcohol-free designated driver, and no change in the law should be required to comply with federal law.

### C. Clarify Firearms on School Property Law

The NC Bar Association is expected to recommend that the law prohibiting carrying a firearm on school property, except by authorized law enforcement and military personnel, be clarified to include a prohibition on school employees carrying a firearm

on school property. The Bar is also expected to recommend other clarifications to improve interpretation and application of this law.

D. Domestic Violence Task Force Initiatives

In the past few years the issue of domestic violence has continued to receive more attention. The General Assembly has made several changes to both civil and criminal laws regarding domestic violence, including expanding the availability of domestic violence protective orders and increasing the court's ability to attach additional prohibitions to a protective order.

The Domestic Violence Task Force, of the Governor's Crime Commission has been meeting since the adjournment of the 1998 session and is expected to propose many recommendations for dealing with the issue of domestic violence. Some of the proposals include: providing for enforcement of out of state protective orders, the placement of North Carolina protective orders into the National Crime Information Center, and the creation of a permanent Commission on Domestic Violence. In addition, the Task Force is making many recommendations regarding community services, funding, and public awareness.

Student Drivers Licenses – See **CHILDREN AND JUVENILES:** Lose Control, Lose License

## VII. ECONOMIC DEVELOPMENT

(Walker Reagan – 733-2578)

Industrial Recruitment (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 (with an additional special appropriation in 1998 of $2 million for a specialized large recycling facility). 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 may recommend increased funding for this Fund and that the Governor will include money for this Fund in his budget.

**Continuation of the William S. Lee Act** -- See **TAXATION**: A. Extend Sunset of William S. Lee Act Incentives, and further expand the incentives.

## VIII. EDUCATION, PRIMARY AND SECONDARY

(Kory Goldsmith, Robin Johnson, Shirley Iorio, and Sara Kamprath – 733-2578; Sarah Fuerst – 733-6660; Jim Johnson– 733-4190)

A. Salary Increases

The promise of the Governor to achieve a $25,000 starting salary or the national average in teacher salaries by the year 2000 will continue to be the subject of considerable debate. An average 8% increase in teacher pay by the 1998 session represented the second installment in reaching that goal and demonstrates a serious commitment by the legislature to improve teachers' salaries. However, the fiscal reality of an estimated cost of between $1 and $1.5 billion to fully fund the national average goal raises serious questions as to the capacity of the State to fund such an initiative. The fact that North Carolina is not changing its position relative to the other southeastern states reinforces these questions. The anticipated increase in insurance premiums under the State Health Insurance Plan will further complicate this issue.

Aside from the issue of General Fund availability, the Assembly adjourned last session with many unanswered questions surrounding school administrators' compensation. Included in the debate were the extent to which administrator salaries should exceed teacher salaries and the extent to which administrator pay should be linked to the teacher salary schedule. There was also discussion about whether school safety bonuses were indeed being distributed based upon merit. Especially in the face of significant teacher salary increases, the debate over how to pay and reward school administrators promises to be a topic of significant continuing debate.

In addition to supporting salary increases for teachers and school administrators, the NCAE and the NC School Boards Association will encourage the legislature to raise salaries of other school personnel, including teacher assistants, central office personnel, and substitutes.

B. School Funding.

As in most years, there will be a variety of funding requests this Session. Items likely to receive the most attention include raising teacher salaries, meeting the student enrollment growth, ABC's rewards, school technology, special education, limited English proficient students, and alternative schools.

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 $186 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 through at least 2005. One of the significant impacts of this rapidly growing student population is on local governments' abilities to finance school facilities. Even with the passage of a $1.8 billion school facilities initiative in 1996, which has an estimated total cost to the State of $3.1 billion over a 15-18 year period, there continue

to be significant school facilities needs. Consequently, it is expected that State lawmakers will be asked for assistance with the financing for school facilities.

There also will be increased attention on targeting funds to low-performing schools and to schools with high populations of children who are eligible for free or reduced lunch, children with disabilities, or children with limited proficiency in the English language. These funds could be used for instructional materials, textbooks, increased instructional time, incentives to retain and recruit high quality professionals to these schools, enhanced staff development, or reduced class size.

It is also possible there may be sufficient pressure for the General Assembly to consider a more in-depth examination of the State's current system of school finance, which includes a combination of State funding for instructional needs and salaries and local funding for capital expenditures. The State currently focuses on funding salaries and fringe benefit costs, supplemental funds for low-wealth and small-school systems, ABC's awards, and a variety of targeted funds, such as those that are designed to meet the needs of exceptional students. The Public School Forum recently published the results of its study of the State's method of funding for public schools and proposes a funding formula based on the free and reduced lunch population. Notwithstanding the anticipated lack of available revenue this Session, this proposal comes with a hefty price tag – approximately $1 billion. If the General Assembly decides to undertake this challenge, it will need to weigh carefully any decision to alter the current funding mechanism as it could negatively affect the State's position as defendant in ongoing school finance litigation.

It is important to realize the fiscal burden that these needs will make on the State General Fund. Spending priorities for the 1999-2000 biennium must be established within the constraints of a limited expansion budget. It is likely that lawmakers will consider linking certain initiatives, such as financing school facilities to a dedicated source of revenue, such as a local government one-cent sales tax or a lottery. Both of these sources have been debated in the past and continue to be controversial for many legislators.

*C.* ABC's Plan/High Student Achievement.

The ABC's Plan 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." North Carolina is now one of the states to which others across the country are looking as they develop their own school accountability and reward programs. State lawmakers will continue to give high priority to supporting and rewarding high student achievement and learning.

A key component to this plan is the accountability program that focuses on the academic performance of individual schools in the basics of reading, mathematics, and writing. Rather than comparing different students from one year to the next, this plan holds

schools accountable for the educational growth of the same groups of students over time. At least a year's worth of growth for a year's worth of school is expected. The essence of the plan is that there are rewards when schools show academic success and penalties when they do not. The plan began to apply to K-8 schools beginning with the 1996-97 school year. It applied to high schools during the 1997-98 year.

A critical element of the ABC's plan is the rewards program for schools that meet or exceed their goals in student achievement. Each year since the plan was enacted, the General Assembly has appropriated significant funds for these rewards. During the 1997-98 school year, 1382 elementary and middle schools either met or exceeded their goals, and 276 high schools either met or exceeded their goals. Most recently, the sum of $98 million was allocated to be used at the end of the current school year for the purpose of rewarding schools for results in student achievement. North Carolina has one of the largest reward programs in the country. And in spite of the questions surrounding the availability of funds this Session, the State Board, the Governor, and legislators will continue to give top priority to continuing this program.

Several issues have emerged with the implementation of the plan. The first is whether students themselves should be held accountable for their academic achievement. To address this question, the State Board has been discussing whether to adopt a plan that would require individual student performance benchmarks by the year 2003. Many local boards already have adopted similar non-promotion policies to address this issue. Legislators may find themselves faced with the need to address the question of limiting social promotion. On the other hand, there also are questions as to whether the State's curriculum standards are high enough. The State Board is currently revising the standard course of study in all areas to raise the curriculum standards and express those standards in a manner that is clear and understandable to teachers and parents. However, given that the majority of schools met or exceeded their expected achievement goals last year, the question persists as to whether our academic expectations are where they should be. The third developing issue concerns the needs of students who arrive at the schoolhouse door unprepared for kindergarten work. A number of advocates would like State lawmakers to provide additional funding for mandatory preschool programs or preschool programs that are targeted to at-risk children.

D. Quality Professionals

In 1997, the General Assembly passed the Excellent Schools Act. In addition to setting the goal of raising teacher salaries, the act included significant provisions to increase standards for teachers. The State Board of Education has been implementing numerous changes regarding teacher certification, including more extended and rigorous requirements for obtaining continuing certification and certification renewal. It remains to be seen whether these changes can be successfully linked to the goal of raising student academic performance.

There also continue to be concerns over whether the State's schools of education are adequately preparing future teachers. The Excellent Schools Act requires that all schools

of education submit annual performance reports to the State Board of Education. The first of those reports are due the 1998-99 academic year. The reports will include indicators of the quality of students entering schools of education, percentage of students obtaining State certification, employment attrition, and graduate and employer satisfaction. It is hoped this information will provide quantitative and qualitative data that will inform future debate.

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. It has also received a State Board report on teacher and administrator supply and demand projections. That report estimates there will be a shortfall of approximately 2000 teachers and 500 school administrators. However, this is not just an issue of pure numbers. The lack of qualified professionals varies according to subject matter area and geographic area. Although the General Assembly has implemented a number of initiatives to attempt to strengthen the quality of the teaching workforce, it will continue to face the conflicting dilemma of how to raise standards while the demand exceeds the supply.

E. Safe Schools

As in past sessions, school safety and discipline will continue to be a high priority. Many tools and resources have been provided to local school units by the legislature over the course of the past eight years in an effort to improve safety and discipline in North Carolina schools. The legislature has made it easier for local boards to suspend or expel violent students. However, there are concerns about having these students "on the streets" and without an education. The Governor is expected to request funds for alternative placements for violent students who have been suspended for at least 10 days or have been expelled.

Last session, as part of the juvenile justice legislation, a proposal was debated that would have prohibited certain students from obtaining or keeping a drivers permit or license. These students included those who were expelled, suspended for at least 10 consecutive days, or assigned to an alternative educational setting for the possession or sale of alcohol or a controlled substance at school, the possession or use of a gun on school property, or the physical assault on and serious injury to school personnel at school. This proposal is expected to be reintroduced and to generate continued debate in 1999.

F. Charter Schools/School Choice

In 1996, the legislature enacted charter schools legislation that has provided the State with a school choice initiative that seems to have general acceptance among lawmakers, public school advocates, and the public. There currently are 64 charter schools, with a statewide cap of 100. Since its enactment, there have been attempts to remove this cap, but such a change is highly unlikely this Session. Also, the General Assembly has made several modifications to the original law. Recently there have been concerns about the racial make-up of many of the schools, the academic achievement of the students, the qualifications of the school personnel, and the impact on a school system in the first year

of a charter school's operation. Another issue that may arise involves certain categories of funds that charter schools receive. Unlike traditional public schools, charter schools are not required to expend these funds for the purposes for which they are allocated. These funds include those for employer contributions for employee benefits and for vocational education.

It is extremely unlikely that lawmakers will give serious consideration this Session to any other school choice proposals, such as tuition tax credits or vouchers for private schools.

Student Drivers Licenses – See **CHILDREN AND JUVENILES**: B. Lose Control, Lose License.

## IX. EDUCATION, COMMUNITY COLLEGES AND UNIVERSITIES

(Kory Goldsmith, Robin Johnson, Shirley Iorio, and Sara Kamprath – 733-2578; Sarah Fuerst and Emily Johnson – 733-6660; Jim Newlin and Charlotte Todd – 733-4190)

### A. Increased Enrollment

A 1996 report by the Education Cabinet estimated that enrollment in Higher Education in North Carolina could increase by as much as 228,000 students by the year 2005. Although there are always questions as to the accuracy of long range projections, there is consensus that significant growth will occur in the next decade and that growth will put increasing demands on the State's ability to provide affordable and quality higher education. Many of the issues discussed below will be magnified as increased enrollment will effect capital and equipment needs, the ability to attract and retain qualified faculty, and the level of State support students can anticipate.

### B. Faculty Salaries

North Carolina Community College faculty salaries lag far below the regional and national average. The State Board of Community Colleges has made the recruitment, retention, and replacement of competent faculty and staff a primary goal. To do this, the Board is recommending a decrease in the budgeted faculty/student ratios for both Curriculum and Continuing Education classes. It will also recommend increased funding for the Administrative and Instructional Support Allotment. Faced with similar pressures to remain competitive in the academic market, the UNC Board of Governors is recommending a 1% increase in order to reward excellent teaching as well as tuition remissions to attract graduate students. This is in addition to the 6% faculty salary increase requested for each year of the 1999-2001 biennium.

### C. Community College Equipment Funding

In order to provide employers and employees with the knowledge and skills necessitated by technology, community colleges must integrate state-of-the-art instructional equipment in their programs. The State Board has proposed using a replacement cycle

funding mechanism for equipment with limited useful life as well as funds for the acquisition of new equipment that was not previously available.

D. UNC Capital Improvement Needs

The UNC Board of Governors is conducting a comprehensive study of the capital needs of the University system. The report is due back to the General Assembly this spring. Besides an analysis of the equity and adequacy of prior capital funding, the report will look at capital financing alternatives, facilities management practices, space quality criteria, maintenance and repair issues, space planning standards, enrollment-driven space needs, and new models for higher education facilities. The final product will include a 10-year capital spending plan. Questions for legislators may include how to prioritize allocations, whether some portion of the projected increase in enrollment can be absorbed through better utilization of existing facilities, and how to fund any expansions.

The principal focus of UNC's capital request will be the completion of 22 projects already partially funded by the General Assembly. Their highest priority is finishing the University-wide information technology infrastructure project begun last year with a $34.9 million appropriation. This project, which will require an additional $46 million, will build a baseline network connecting all buildings on the 16 UNC campuses.

E. Tuition Scholarships

Several neighboring states, most notably Georgia, have established scholarship programs that provide resident high school graduates with merit-based tuition scholarships. The General Assembly, in Section 10.2 of S.L.1998-212, expressed its intent to provide up to two years of tuition waivers to deserving students who graduate from a North Carolina high school and are enrolled full-time in a North Carolina community college within six months of graduation. The provision is contingent upon the appropriation of funds for that specific purpose. In addition to identifying a dedicated source of funds for the scholarships, legislators will need to consider policy issues related to determining student merit, need, and continued eligibility to receive the waivers. In order to avoid spending State funds when other revenue is available, the General Assembly also will need to consider the impact of federal Pell Grants for needy students, as well as the federal higher education tax credits, if it designs any new scholarship program.

F. Tuition Levels

The North Carolina Constitution, Article IX, Section 9, provides that, to the extent practicable, the benefits of public higher education shall be extended to North Carolinians free of expense. As a result, in-state tuition has remained very affordable while the level of State support is substantial. In 1997, the General Assembly directed the UNC Board of Governors to study the issue of tuition levels, other charges, and the costs of graduate and professional education. The BOG has finished its study and made recommendations which include a different budget cycle for setting tuition and a process campuses and graduate schools may use to petition the BOG for different tuition levels. Given the various budget constraints, the issue of the appropriate tuition levels will

continue to be a topic of debate. When considering these recommendations, the General Assembly will have to determine if it is willing to share the responsibility of setting tuition levels with the UNC Board of Governors. Regardless of how tuition is determined in the future, the various budget constraints will make the issue of appropriate tuition levels a topic of continued debate.

G. University Support of Public Schools

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 continue to receive considerable attention in the coming session. Board of Governors initiatives include extending school-based experiences for undergraduates training to be teachers and improved co-ordination of professional development programs offered in the University system. Streamlining and improving access to lateral entry and English as Second Language certification programs will also receive debate and attention.

## X. ELECTIONS

(Bill Gilkeson -- 733-2578)

A. Campaign Finance Reform.

Campaign finance reform, a major topic in the 1997 General Assembly, is bound to face the 1999 General Assembly as well. Several pieces of litigation moving through the courts may force the legislature's hand:

*1. Limits to Lobbyist Related Fund Raising..*

In *N.C. Right to Life v. Bartlett* , the U.S. District Court invalidated the State's ban on corporate expenditures, the limits on lobbyist-related fundraising during legislative sessions, and the definition of "political committee" (a definition central to the enforcement of the campaign finance laws) as being overbroad violations of the First Amendment. The U.S. 4th Circuit Court of Appeals stayed Judge Boyle's order pending the State's appeal. The decision in that appeal is expected close to the time the 1999 General Assembly convenes. It may present the General Assembly with a decision on whether to rewrite the campaign finance laws or to let them die.

In *Winborne v. Easley*, a State Superior Court ruled that the limit on lobbyist-related fundraising during legislative sessions was constitutional except that it extended not just to contributions to legislators but also to legislators' political committees. Manning said legislators should be allowed to establish independently run political committees. Those committees, he said, should be able to receive lobbyist-related contributions even while the legislator is in session, as long as the legislator is not involved in the transaction. A similar procedure is available for judges under the Code of Judicial Conduct. The General

Assembly may have to decide whether to rewrite the lobbyist-fundraising in session statute, either because of the Winborne case or the Right to Life case.

*2. Farmers for Fairness, Inc. v. Bartlett.*

In this case, a hog-producers association is challenging the order by the State Board of Elections that it must register as a political committee and report its finances. FFF contended that negative ads it ran against certain legislative candidates were "issue ads" protected by the First Amendment from the usual regulations on candidate ads. The State Board argues that the ads, combined with polling questions FFF sponsored, amount to activity that State law regulates within the limits of the First Amendment. A decision in 1999 could give momentum to efforts concerning what many view as the loophole of "issue advocacy." The ads in question are those in which the evident intent is to support or defeat a candidate, but words exhorting a person to vote for or against that candidate are not used. Instead, the final line is something like "Call Rep. Doe and tell him you disagree with his deceptive record on . . . " Such ads have become increasingly common at the national level, because they can get across the same message as traditional "Vote for" or "Vote Against" ads, but the money going into them can be unlimited and even unreported. Many courts have held that the First Amendment protects them from the campaign finance laws. (It was one of the major issues in N.C. Right to Life.) Efforts have been made in Congress and Raleigh to craft a constitutional plug for the loophole.

*3. The Role of Parties in Fundraising.*

The current statute allows party executive committees to receive and give contributions without limit, as long as the money does not come from corporations or unions. One proposal that has passed the Senate several times is to limit parties to the same $4,000 limit as other contributors. But the House has never agreed. The Democratic caucus in the House (which will be in power in 1999) has supported another approach. It proposed making it unlawful to circumvent the State's ban on corporate contributions by indirectly routing corporate money through the "soft money" accounts of the national parties back to the State and county party committees. In the wake of investigations into hog-related fundraising, the State Board of Elections has ordered that only the State organizations of the parties may receive contributions from the national parties' soft money accounts (no local party committees may). The State Board further said the State parties may use that money only for restricted "party building activities." This whole area is likely to receive attention of some sort. The major campaign reform bills in Congress proposed shutting down "soft money" altogether.

*4. Public Financing.*

A three-year-old drive to provide comprehensive public financing for campaigns for Council of State and General Assembly may have new interest in 1999. The states of Massachusetts and Arizona both approved voter initiatives in 1998 for public financing plans similar to the one Sen. Wib Gulley has proposed in North Carolina.

*5. Negative Campaigning.*

There may be further interest in a couple of approaches that were presented in 1997. One is "Stand by Your Ad," a proposal to require sponsors to make personal appearances in their media ads, owning up to responsibility for their content. The other is a Code of Campaign Standards, which would be administered by an evenly bipartisan board with the authority to declare an ad to be out of compliance with the standards. Any stronger penalty would probably run afoul of the First Amendment.

B. Election Administration.

*1. Statewide Computerized Voter Registration.*

This project has been in the State Budget for most of this decade. But hitches, political and technical, have kept pushing completion dates forward. The current budget sets a deadline of July 1, 1999 for all counties to be on the system. But problems with a now-terminated contractor mean that the goal is now to have the system ready for use in the 2000 elections.

*2. Rulemaking.*

The State Board of Elections is not exempt from the rulemaking provisions of the Administrative Procedure Act. They require submission of rules to the Administrative Rules Review Commission for approval, plus delay of the effective date of proposed rules until more the next General Assembly has an opportunity to change them by law. Some observers of the State Board say it has consistently circumvented or even ignored the rulemaking requirements. Election officials argue that election administration has an urgency that makes long waiting for review impractical. The future may hold proposals for total or partial exemption.

*3. Municipal Boards of Elections.*

Traditionally, hands-on election administration in North Carolina is very decentralized. In addition to the 100 county boards of elections, there are still scores of municipal boards of elections. A bill in 1994 removed the municipal boards from the business of voter registration, but they still conduct the mayor and town council elections in their localities. The State board of Elections, which must supervised them, has long favored their abolition.

*4. Absentee Voting.*

The idea of removing the excuse requirement from the option of absentee voting was one of the most controversial election issues of the 1997 General Assembly. The Senate passed a bill allowing voters to vote early by absentee ballot simply because they preferred to do so. Current law extends absentee voting only to the voter who has a physical or religious impediment from going to the polls on election day or who expects to be out of the county all day on election day. The Republican leadership of the House strongly resisted the bill. In the 1998 election, however, the State Republican Party sent out mailers to favorable voters with absentee request forms, urging the voters to send in the forms, but not mentioning the need for an excuse. The issue will doubtless be revisited.

*5. Citizenship and Registration.*

Most new voter registrations occur at the drivers license office. Federal law insists that voter registration be made an easy part of a drivers license application. Noncitizens qualify to get a drivers license, but not to register to vote. Fearing that a conveyor-belt mentality could result in noncitizens registering to vote (intentionally or not), the General Assembly in 1998 required that drivers license examiners ask everyone applying to register to vote if they are citizens. If they do not say yes, they must be warned that noncitizens registering to vote are committing a felony. The provision is now being reviewed for preclearance under the Voting Rights Act. If it is not precleared, or perhaps even if it is, the issue of what to do about recent arrivals in the electoral system will present itself to the General Assembly soon. Official use of Spanish and other languages may be part of the decision.

*6. Presidential Primary and Electoral College.*

The Year 2000 will be a presidential election year. North Carolina's presidential primary is set for May, on the same date as the primary for other state offices. Every four years the State must decide if it wants to leave its primary at that relatively late date or join the race to be among the first in the nation. Like almost all states, North Carolina has a winner-take all system for its 14 electoral votes. It could, however, join Maine in choosing presidential electors separately by congressional district, so that not all 14 electors would necessarily go to the same candidate. Such an idea had some proponents here in 1989.

*7. Ballot Access.*

The approach of the presidential year may spike interest in changing the system by which unaffiliated candidates and new parties can get on the ballot. In the past two years there have been proposals to make ballot access easier and also to make it harder.

## XI. ENVIRONMENT

A. Animal Waste Management

(George Givens, Jeff Hudson, Rick Zechini 733-2578)

Pursuant to legislation enacted in 1996, the State is moving from a system where animal waste management systems were "deemed permitted" to a permitting scheme under which most of these systems operate under a general permit. This program requires an annual operations review by the Division of Soil and Water Conservation, an annual inspection by the Division of Water Quality, and an approved animal waste management plan for each permitted operation. In addition, the Swine Farm Siting Act regulates the siting of swine operations and includes mandatory setbacks for swine farms.

In 1997, the General Assembly ratified the Clean Water/Environmentally Sound Policy Act (S.L. 1997-458). S.L. 1997-458 established a two year statewide moratorium on the construction or expansion of swine farms and lagoons and animal waste management systems for swine farms. In addition, the Act authorized counties to adopt zoning regulations for large swine farms and imposed additional setback requirements for swine operations.

During the 1998 Session of the 1997 General Assembly, the General Assembly enacted S.L. 1998-188, which extends the moratoria on the construction or expansion of swine farms to September 1, 1999. S.L. 1998-188 also amends two exemptions to the statewide moratorium that allow the Environmental Management Commission to issue a permit for the construction or expansion of an animal waste management system that represents either a candidate for research or a proven technological improvement. In addition, S.L. 1998-188 requires a swine grower to register with the Department of Environment and Natural Resources (DENR ) any swine operation integrator with which the grower has a contractual relationship to raise swine. DENR must notify an integrator of all notices of deficiencies and violations of laws and rules governing the animal waste management system at any swine farm for which the integrator has been registered with DENR.

The United States Environmental Protection Agency has recently joined a lawsuit, *American Canoe Assn. v. Murphy Farms, Inc*., brought by various citizen's groups that challenges the State's general permit system as inadequate. If this lawsuit is successful, animal waste management systems would have to be individually permitted under the National Pollutant Discharge Elimination System, as is currently the case for municipal and industrial dischargers.

Under legislation enacted in 1997, a pilot program was established under which the Division of Soil and Water Conservation would conduct both the annual operations reviews and the annual inspections in two counties with high concentrations of swine farms. This pilot program expired October 31, 1998. The 1999 General Assembly may be asked to consider extending the time limit of this pilot program and expanding it beyond the two original counties.

B. Water Quality

(George Givens, Jeff Hudson, Rick Zechini 733-2578)

*1. Neuse Buffer Rule*

The Environmental Management Commission (EMC) adopted a rule in 1997 that requires the maintenance of 50-foot vegetated buffers along all rivers and streams in the Neuse River Basin. While environmentalists were disappointed that an initial proposal to require the planting of new buffers was dropped, many in the regulated community complained that the rule was inflexible and contained ambiguities, particularly in regards to buffer requirements along intermittent streams. In the 1998 Short Session, the General Assembly enacted S.L. 1998-221 to address these concerns. S.L. 1998-221 directs the EMC to revise the Neuse buffer rule in order to:

- Clearly define what constitutes an intermittent stream and along what parts of an intermittent stream buffers must be retained.
- Provide for the establishment of a program to allow compensatory mitigation measures when the maintenance of a buffer along an intermittent stream is not practicable.
- Provide for the delegation of enforcement of the Neuse River buffer rule to units of local government.

SL 1998-221 directs the EMC to make these revisions and other clarifying changes with the assistance of a stakeholder group that includes representatives from the regulated community, regulatory agencies, professional associations, local governments, and environmental advocacy organizations. This stakeholder group has begun meeting, and its progress will be reported to the Environmental Review Commission in January of 1999.

*2. Underground Storage Tanks*

The General Assembly has passed a series of bills designed to prevent soil and water contamination from leaking petroleum underground storage tanks (LUSTs); establish liability for the releases from LUSTs; and assist responsible parties with their cleanup obligations through the establishment of two cleanup funds (a Commercial Fund and a Noncommercial Fund). The Commercial Fund is funded by a portion of the motor fuels and kerosene inspection tax, a portion of the excise taxes on kerosene and motor fuel sales, annual payment of Commercial tank operating fees, and interest on the account. The Noncommercial Fund is funded by a portion of the motor fuels and kerosene inspection tax, a portion of the excise taxes on kerosene and motor fuel sales, and interest on the account.

S.L. 1995-377 directed the Environmental Management Commission (EMC) to adopt rules establishing a risk-based approach to assessing, prioritizing, and cleaning up releases from LUSTs. The primary purpose of the risk-based

approach was to protect the solvency of the Commercial and Noncommercial Funds and to ensure that the limited resources of the funds would be spent on sites presenting the greatest risk to human health and the environment. Thus, if a risk assessment revealed that a site posed a degree of risk "no greater than the acceptable level of any risk established by the Commission" under the risk-assessment rules, further cleanup costs incurred would not be covered under either fund. The application of risk assessment to LUST cleanups is, in a sense, a pilot program for the development and application of risk assessment principles and methodology to other programs including the cleanup of abandoned industrial sites (brownfields) and, potentially, to various regulatory programs governing ongoing pollutant emissions and discharges.

A continuing concern is the solvency of the Commercial Fund, the fund established to pay for certain cleanup costs associated with commercial LUST releases. Federal law and United States Environmental Protection Agency (USEPA) regulations require owners and operators of "commercial" (large, but not necessarily "in commerce") underground storage tanks to maintain financial responsibility for leaks from tanks of at least $1,000,000 per tank. The USEPA has allowed tank owners and operators to rely on the State's Commercial Fund to meet the financial responsibility requirement. Due to concerns over the solvency of the Commercial Fund, the USEPA may withdraw its approval of owner/operator reliance on the Commercial Fund to meet their financial responsibility requirements.

Another aspect of LUST regulation involves the so-called "1998 standards". This matter is not likely to involve State legislative action, but may be of concern to many citizens. The USEPA has adopted regulations designed to prevent leaks from tanks installed after 22 December 1998. Owners and operators of tanks installed prior to 22 December 1998 were given ten years, or until 22 December 1998, to meet these standards. The State has made extensive efforts to notify tank owners and operators of these requirements and has provided some incentives for early compliance. A significant percentage of tank owners and operators, however, have failed to take advantage of the ten-year upgrade period. The State has no authority to extend the deadline or modify the standards, but is responsible for enforcing compliance with the standards. While the State cannot waive the deadline, the State will delay enforcement action to give additional time for tank owners and operators who are making a good faith effort to comply with the requirements.

C. Coastal Issues

(Jeff Hudson, George Givens, Hannah Holm – 733-2578)

*1. Coastal Recreational Fishing License*

In 1994 the General Assembly enacted a moratorium on the sale of most commercial fishing licenses in North Carolina based on concerns about the status of fisheries in the State. At the same time, the General Assembly established the Moratorium Steering Committee to study the State's coastal fisheries management process and to recommend changes to improve the system. The Moratorium Steering Committee recommended the establishment of a new system of commercial fishing licenses as well as a coastal recreational fishing license. The recommendations by the Moratorium Steering Committee related to commercial fishing were enacted in the Fisheries Reform Act of 1997. A coastal recreational fishing license was not included in the Fisheries Reform Act of 1997, but the Act did direct the Joint Legislative Commission on Seafood and Aquaculture to study issues relating to licensing coastal recreational fishing. The Joint Legislative Commission on Seafood and Aquaculture and its Advisory Committee studied these issues during the 1997-98 interim and continue this study in the 1998-99 interim in anticipation of a possible legislative proposal related to the licensing of coastal recreational fishing for the 1999 Session of the 1999 General Assembly.

*2. Coastal Resources Commission*

The Coastal Area Management Act (CAMA) of 1974 created the North Carolina Coastal Resources Commission (CRC) and authorized it to designate areas of environmental concern, adopt rules for coastal development in those areas, and certify that local land-use plans in coastal counties adequately provide for the protection of water quality. The CRC is currently considering two major regulatory changes: revising the way it reviews local land-use plans and expanding the areas over which it has rulemaking authority.

Until recently, the CRC had been criticized by environmental advocacy organizations for being too lenient in its reviews of local government land-use plans. Recently, however, the CRC has become more stringent in its reviews. While environmentalists have applauded the CRC's new orientation, many local governments have complained that the rules for preparing the plans were effectively changed without warning or guidance. As a result of this controversy, the CRC recently decided to enact a two-year moratorium on reviewing new plan updates in order to overhaul its review process and develop new guidelines for local governments preparing the plans.

The CRC is also considering a proposal that would extend the areas of environmental concern over which the CRC has rulemaking and permitting authority farther landward and farther upstream in the coastal counties. Although Division of Coastal Management officials say the proposal is only a draft and will be revised in response to public comment in hearings to be held

in the spring of 1999, a number of coastal communities have already organized a coalition to fight the proposal.

Although neither of these changes will necessarily lead to any legislative initiatives, both are likely to involve rulemaking by the CRC. Under the Administrative Procedure Act, the General Assembly has the authority to disapprove rules adopted by executive branch agencies.

*3. Oregon Inlet*

Oregon inlet is the only opening in the barrier islands of North Carolina between Cape Henry, Virginia and Cape Hatteras, North Carolina. The United States Corps of Engineers has developed a plan to stabilize Oregon Inlet via a jetty system that is designed to maintain a stable navigational channel through the inlet. The land on both sides of the inlet is federally owned, and the federal government has denied the permits necessary to build the jetty system.

Section 32.22 of S.L. 1997-443 (1997 Budget Bill) directed the Legislative Research Commission to study the stabilization of this inlet and report its recommendations to the 1998 Session of the 1997 General Assembly. As part of its recommendations, the Oregon Inlet Stabilization Committee concluded that study of the stabilization issue should be continued under an independent commission. This recommendation was enacted into legislation by Section 15.5A of S.L. 1998-212 (1998 Budget Bill), which created the Oregon Inlet Stabilization Study Commission. This new study commission was given a similar charge and has the same membership as the original Legislative Research Commission Oregon Inlet Stabilization Committee.

S.L. 1998-212 (1998 Budget Bill) contains another provision relevant to the stabilization of Oregon Inlet. Section 15.5 of this bill expands the purposes of the North Carolina Seafood Industrial Park Authority to include improvement of Oregon Inlet consistent with the jetty system recommended by the United States Army Corps of Engineers. Section 15.5 also expands the Authority's power of eminent domain to acquire property to construct the jetty system and to exercise the expedited eminent domain procedures used by the North Carolina Board of Transportation. This expanded authority contemplates the possible exercise of eminent domain by the Authority against the federal government in order to obtain the land necessary to build the jetty system.

D. Civil Penalties

(George Givens, Jeff Hudson – 733-2578)

The General Assembly may be asked to consider increasing civil penalties for violation of State laws and regulations that govern water quality, air quality, mining, and sedimentation control. In the case of violations of State laws and regulations governing water quality, the United States Environmental Protection Agency has expressed some concern that the State's civil penalties are too low and should be increased significantly.

These concerns may also apply to State civil penalties for violations of laws and regulations governing air quality. Since the mining and sedimentation control programs are solely based on State law, the federal government does not speak to the adequacy of civil penalties imposed under these programs. Some have suggested, however, that given the seriousness of sedimentation pollution in North Carolina and the low level of the civil penalties for violations of mining and sedimentation control laws and regulations ($500 per day per violation) that these civil penalties should be increased.

E. Low-Level Radioactive Waste

(George Givens, Hannah Holm -- 733-2578)

In 1980, Congress enacted the Low-Level Radioactive Waste Policy Act, which encouraged states to enter into interstate compacts to share the burden of low-level radioactive waste disposal. North Carolina joined the Southeast Interstate Low-Level Radioactive Waste Compact (Southeast Compact) by act of the General Assembly in 1983, and Congress consented to the compact early in 1986. Later in 1986, the Southeast Compact Commission (Commission) chose North Carolina to host the Southeast Compact's second low-level radioactive waste disposal facility. The first was the facility operated since 1971 by Chem-Nuclear Systems, Inc., in Barnwell County, South Carolina.

In 1987 the General Assembly created the North Carolina Low-Level Radioactive Waste Management Authority (Authority). The Authority was charged with the task of siting, designing, constructing, operating, and closing a disposal facility for the use of waste generators in the eight states that made up the Southeast Compact at that time. Initial plans called for the North Carolina facility to open by 1 January 1993, but the site selection and licensing processes have been more difficult and protracted than anticipated. The Authority did not select its proposed site in the southwestern corner of Wake County until December of 1993, and the Division of Radiation Protection (DRP) of the Department of Environment and Natural Resources has still not made a decision on the Authority's licensing application.

All aspects of the project have been subject to intense scrutiny and criticism by local governments, environmental advocacy groups, and individual citizens. Early legal challenges to the project reached the North Carolina Supreme Court in 1993. At that time, the Supreme Court held that litigation seeking to stop the project was premature until DRP and the Authority made a final decision on the license application and site selection.

Over $110 million has been expended on this project to date. Approximately $30 million has been appropriated by the General Assembly. The remainder has been provided by the Southeast Compact Commission from surcharges placed on waste disposal at the Barnwell facility. The Commission lost its funding source when South Carolina withdrew from the Compact in 1995, citing frustration over North Carolina's lack of progress in developing a new facility. The Commission continued to provide funds from its reserves until December 1997, but then terminated funding because North Carolina failed to provide assurances related to the progress of the project that the Commission requested. As a result, the Authority was forced in 1998 to terminate work required to reach a licensing decision under the Licensing Work Plan developed by the Authority and DRP in 1996. The project is currently "in limbo".

When South Carolina withdrew from the Compact in 1995, the Barnwell facility began once again to accept waste from states outside, as well as inside, the Southeast Compact. North Carolina is currently the only state that is not allowed to dispose of low-level radioactive waste at the Barnwell facility. The continued availability of the Barnwell facility for other states has reduced the pressure on North Carolina to develop the proposed Wake County facility. According to press accounts, the newly elected governor of South Carolina is considering various options including seeking to rejoin the compact and close the Barnwell facility, which may increase pressure on North Carolina to develop the Wake County site. South Carolina's reentry into the Southeast Compact could also reopen the Compact's access to funding, and the Compact could in turn renew funding for the work necessary to license the Wake County site. Whether any legislative response to these issues may be required is an open question.

## XII. ESTATE ADMINISTRATION

(Walker Reagan – 733-2578)

A. Amend the Anti-Lapse Estate Administration Statute

The NC Bar Association is recommending that NC's anti-lapse statute be amended to make the law more consistent with most other states. The anti-lapse statute governs how the determination is made for the distribution of an estate when the maker of a will fails to make alternative provisions when a beneficiary predeceases the maker. Current law is based on whether the substitute beneficiary would receive inheritance if the maker had died without a will. The test being proposed by the Bar Association is whether the substitute beneficiary is related to the maker through the maker's grandparents.

B. Modify the Rights of Decedent's Spouse

The NC Bar Association is expected to recommend that the bill to modify the rights of a decedent's spouse be reintroduced in 1999. The bill would modify the surviving spouse's right to dissent from the will and take an intestate share of the decedent's property by replacing current law with an "elective share" statute. Such a law would address the failure of the dissent statute and the Intestate Succession Act to provide a surviving spouse with rights in the decedent's non-probate property and to correct an anomaly in how the dissent statute determines how much property a spouse may take.

In 1997, House Bill 908, which would have made these changes, passed the House and in 1998 was reported favorably by the Senate Judiciary Committee in two different versions before being rereferred to the Senate Rules Committee where it remained at the end of the session.

## XIII. ETHICS

(Walker Reagan – 733-2578)

Ethics legislation governing both the conduct of legislators and government employees has been introduced in most recent sessions and will probably be offered again this session.

In the spring of 1998, Governor Hunt revised his Executive Order creating the State Ethics Board and code of ethics governing certain appointees to boards and commissions, and certain state employees, in response to the problems that arose with certain members of the Board of Transportation. At that time, the Governor suggested that the provisions of the Executive Order be permanently codified in statute. Some limitations of the Executive Order process include the fact that the order only applies to appointees of the Governor, not legislative appointees, and the financial disclosure statements filed during consideration of appointments are public before the Governor decides whether to appoint, thereby having a chilling effect on persons who might otherwise be willing to offer themselves for public service. No legislation was introduced during the 1998 Session, but the Governor may recommend legislation during the 1999 Session, or it may be introduced by legislators who otherwise believe this step is needed.

In 1997, House Bills 735 and 964 were introduced to create a Legislative Code of Ethics. House Bill 964 was reported favorably by the House Ethics Committee and was rereferred to the House Judiciary I Committee after debate on the House floor. This bill would have provided for 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 bill would also have included clearer definitions of unethical conduct in areas other than financial, including sexual harassment and sexual misconduct. Similar legislation might be reintroduced again in 1999.

## XIV. FAMILY LAW

(Jo McCants 733-2578)

A. Alienation of Affection and Criminal Conversation

The North Carolina Bar Association may request legislation that would abolish the common law torts of alienation of affection and criminal conversation. It is the opinion of the bar association that these common law doctrines operate unfairly as to third parties. For example, under current law, if a couple separates, the spouse who is seeking support may date during the period of separation without affecting that spouse's ability to seek alimony or post-separation support. However, the other person in the dating relationship is still potentially liable for criminal conversation.

Currently, thirty-five (35) states and the District of Columbia have abolished the cause of action for alienation of affection and criminal conversation; and five (5) states have judicially abolished these actions. North Carolina is one of a few states that continue to recognize these common law doctrines. Proponents of these actions argue that a spouse

should have the right to protect his or her marital interest from others. Opponents of these causes of action argue; for example, that the actions are incompatible with the modern conception of the married couple and invade the privacy interest of a married couple.

B. Family Law Arbitration Act

The North Carolina Bar Association may request legislation that would enact a Family Law Arbitration Act. The proposed Act permits all issues incident to a marriage or breakup of a marriage, except the divorce itself, to be submitted to binding arbitration, if a husband and wife agree to arbitrate. Special protection is provided for custody and support issues. Currently, case law does not allow binding arbitration by agreement in child custody and support cases. The Act does not change the substantive law of North Carolina with respect to family law issues; it merely offers another method of resolving disputes arising under the law.

## XV. GENERAL ASSEMBLY

A. Lobbying

Walker Reagan (733-2578)

Efforts to modify laws governing lobbying are likely to be considered again by the General Assembly during the 1999 General Assembly. While lobbying legislation is regularly introduced in most sessions, the focus this session may be in three primary areas.

The first issue is whether gifts by lobbyists to legislators and legislative staff should be prohibited or limited. In 1998, Senate Bill 1595 – Lobbyist Gift Restriction, was introduced but was never considered in the Senate Judiciary Committee. This bill would have either have prohibited or limited the value of gifts that legislators or members of their immediate family could legally accept and lobbyist could legally give. Somewhat related to this issue, is the question of whether members of the executive branch should also be prohibited or restricted from legally receiving gifts from lobbyists.

The second issue is whether lobbyists should continue to be restricted from making campaign contributions to candidates for the General Assembly and Council of State (incumbents and challengers) while the General Assembly is meeting in regular session. The constitutionality of the current law to this effect that was enacted in 1997 is currently being challenged in at least two lawsuits and all or portions of the law have been ruled unconstitutional by the trial judges who heard the cases. The cases are currently on appeal in both State and federal court. Depending on the outcome of the cases, this law may need to be revised.

The third issue involves the filing of lobbying reports by lobbyist and their principals. Current law requires lobbying reports to be filed within 60 days of the end of each

annual regular legislative session. Concern has been raised that reporting should be done on a more frequent basis and closer in time to the legislative action on which lobbying was being conducted. Bills have also been introduced in the past to strengthen the penalties for reports filed late or not at all. Concern has also arisen over new electronic forms of lobbying that may not be covered by current law. Legislation may be introduced dealing with some or all of these issues.

B. 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 in 1996 and 1997 studied whether North Carolina should have session length limits. 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. The Florida House majority leader spoke also. The Committee recomeended a constitutional amendment to the 1977 Session, introduced as Senate Bill 905. That bill passed the Senate, but never reached the House floor for action. In view of the length of the 1998 Session, further attempts to limit the legislative session seem likely.

C. 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 offices 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. During the1977 Session no bills were vetoed, but two did become law when the Governor failed to sign them. 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.

**Ethics Reform** – See **ETHICS**

**Redistricting –** See **ELECTIONS: REDISTRICTING**

## XVI. HUMAN RESOURCES

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

A. Health Information Privacy

(Linda Attarian – 733-2578)

In today's managed care environment confidential health and medical data is collected, analyzed, distributed and accessed in unprecedented quantities. Health care providers, clinical researchers, insurers and employers are able to obtain and use confidential health information for many different purposes. Because of the demand for health care data, there is a growing uneasiness about the erosion of medical privacy and the vulnerability of the security of computerized health records. Consumers and legislators agree that it is necessary to keep patient health care information confidential and free from unauthorized access, regardless of whether the records are kept on paper, preserved on microfilm, or stored in computer-retrievable form. However, there is considerable debate about how to protect an individual's privacy while, at the same time, allowing justified research access to personal health data. Although ease of access to this information is beneficial for researchers, it is potentially intrusive to individual patients whose medical records may be accessible without their consent or knowledge. (LA)

The General Assembly considered a comprehensive bill (H 1495/S1288) last session. The legislation was initiated by the North Carolina Healthcare Information and Communications Alliance (NCHICA). In general, the bill would have established safeguards for maintaining the confidentiality, security and integrity of health care information. It would have put in place a patient's right to examine or copy and amend his or her medical records as well as requirements for confidentiality and authorization by patients for disclosure of their health care information and exceptions to the

requirement of authorization. SB 1288 was referred to the Senate Judiciary Committee where it was assigned to a subcommittee. The subcommittee studied the bill but no action was taken by the subcommittee prior to adjournment. HB 1496 was referred to the House Insurance Committee where a proposed committee substitute received a favorable report. The 2nd version on the bill was referred to the House Judiciary II Committee, where it was considered, but no action was taken.

B. Tobacco Settlement

(Barbara Riley, Linda Attarian 733-2578)

On December 21, 1998, the North Carolina Attorney General filed the consent decree for North Carolina adopting the master tobacco settlement agreement (Settlement Agreement) signed November 23, 1998 between the 5 largest tobacco product manufacturing companies (Brown & Williamson, Ligett, Lorillard, Phillip Morris, and RJR) and the Attorneys General and other representatives of 46 states, the District of Columbia, Puerto Rico, the Virgin Islands, the Northern Mariana Islands, and Guam. The settling states and territories will receive $206 billion over the next 25 years. North Carolina's share of that money will be $4.569 billion. Specific amounts North Carolina is scheduled to receive through 2003 are as follows:

| | |
|---|---|
| 1998 | $ 55,974,840.09 |
| 1999 | $0.00 |
| 2000 | $149,540,283.73 |
| 2001 | $161,479,483.90 |
| 2002 | $193,889,727.95 |
| 2003 | $195,724,684.52 |

Note, however, that funds will be held in escrow and not available to the State until June 30, 2000.

The terms of the consent decree require that half of the money (approximately $2.5 billion over the 25 year period) that North Carolina will receive go to a foundation to be established to assist communities in the State that are tobacco dependent. The foundation is to be made up of 15 members, five appointed by the President Pro Tempore of the Senate, 5 by the Speaker of the House of Representatives, and 5 by the Governor. The remainder of the monies to be received will be placed in a Settlement Reserve Fund established by the General Assembly last summer. (SL98-0191, House Bill 1248). The General Assembly will then allocate the monies in the Settlement Reserve Fund as it deems appropriate. The terms of the consent decree, however, must be approved by the General Assembly by March 15, 1999 otherwise the entire amount that North Carolina is to receive under the Settlement Agreement will be placed in the Settlement Reserve Fund.

Other issues relating to the Settlement Agreement that must be addressed by the General Assembly include the adoption of model legislation included in the Settlement Agreement. This model legislation is designed to "level the playing field" between those

tobacco product-manufacturing companies that participated in the settlement and those that did not. If the state does not adopt the model legislation, the annual amount of the settlement payment will be subject to a Non Participating Manufacturers Adjustment. This adjustment would result in substantial reductions in the amounts received by the State. At the federal level, an amendment to the medicaid statutes will be needed to prevent the U.S. Department of Health and Human Services from claiming the settlement funds as part of its share (the federal Medicaid matching %) of third party payments collected by the states on behalf of medicaid recipients.

In addition to the financial recovery, the Settlement Agreement contains the following general provisions:

(1) establishing public health initiatives, including various initiatives to reduce teen smoking and youth access to tobacco products;
(2) disbanding existing tobacco trade associations and provides for the regulation of any new trade organizations;
(3) restricting industry lobbying;
(4) opening industry records and research; and
(5) creating a national foundation to reduce teen smoking and substance abuse (payments to the foundation will total $250 million over the next 10 years) and a $1.45 billion public education fund to counter youth tobacco use and educate consumers about tobacco related diseases.

The existing Settlement Agreement and Consent Decree do not address the individual farmer. Negotiations for a separate settlement agreement with farmers, however, are ongoing.

C. Health Plan Liability

(Linda Attarian – 733-2578)

When a health plan denies payment for a procedure on grounds that it's not medically necessary or when it refuses a physician-ordered referral to a specialist, has it crossed the line from making an insurance judgment to practicing medicine? And if the patient suffers harm as a result of the decision, is the plan liable for medical malpractice? Traditionally, health insurers in North Carolina have been protected by a state law banning "the corporate practice of medicine," which means the patient's only recourse is to sue under a "vicarious liability" theory. Allowing consumers the right to sue their health plans by extending the scope of malpractice liability beyond individual practitioners to insurance carriers and plans is likely to be a hotly debated topic this upcoming Session.

D. Certificate of Need Law

(John Young – 733-2578)

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?

## XVII. INSURANCE

(Linda Attarian and Linwood Jones – 733-2578)

A. Mental Health Parity

"Mental health parity" is a term used to describe a proposal to require insurers to offer the same level of benefits for mental illness as they offer for physical disorders and diseases. The term sometimes is also used to include parity for chemical dependency benefits.

In 1996, President Clinton signed a *limited* parity amendment into law as part of an appropriations bill. The law, known as the Mental Health Parity Act of 1996, prohibits group health plans (with more than 50 employees) that offer mental health benefits from imposing more restrictive annual or lifetime limits on spending for mental illness than on coverage of physical illnesses. For example, a health plan that has a lifetime cap on benefits of $1 million cannot have a separate $50,000 lifetime cap on mental health benefits; the plan can either have one cap that applies to all benefits or equal caps for physical and mental health benefits. This law generally is viewed as providing *limited* rather than full parity because it does not require an insurer to provide mental health benefits, and it does not prevent an insurer's use of different deductibles or coinsurance for mental benefits. The law also does not apply to chemical dependency treatment. Moreover, a health plan that experiences increased costs of at least 1 percent as a result of the law can apply for an exemption. The law applies to self-insured plans, and a comparable state law, enacted by the state legislature in 1997 in accordance with the federal law, applies to fully-insured plans.

The proposal for *full* mental parity has been introduced several times before in the legislature. Earlier bills focused on mental parity for biologically-based brain diseases. During the 1997 General Session, mental health parity legislation (SB 400) was introduced and passed the Senate with several amendments, including amendments to exempt employers with fewer than 5 employees and employers whose health insurance costs increase 2% or more as a result of complying with the law. The Health Subcommittee of the House Insurance Committee considered the bill in the 1998 session but took no action.

B. Managed Care/ External Grievance Procedures

It is estimated that by the year 2,000 one out of every two Americans will receive their healthcare coverage through a managed care plan. But what happens when that health plan denies coverage? In the majority of cases, the individual must fend for themselves. They must go through the plan's internal grievance procedure, and if that fails they must try to hire an attorney. Sometimes that will not be possible because the individual will not be able to afford the attorney's fees.

Increasingly, state policy makers are looking at this scenario and finding it wanting. Spurred, by federal proposals such as the "Patient Bill of Rights" and action by the National Association of Insurance Commissioners, 25 states have recently modified their managed care grievance procedures. Frequently, these modifications called for the creation of an "external" second level of review. This additional level of review allows individuals who were not satisfied a plan's initial grievance determination to file an administrative appeal with an independent third party –usually the insurance commissioner.

The North Carolina Department of Insurance is currently considering such a proposal. The plan under consideration would create a second level of external review.

C. Coastal Property Insurance

For the past 5 years, residents of the beach and coastal areas of North Carolina have faced more difficulty in obtaining homeowners insurance coverage. In the wake of Hurricane Andrew in Florida (1992), insurers began reevaluating their insured exposure on the U.S. coastline. As a result, many companies have curtailed their writings in the beach and coastal areas. Homeowners who are unable to buy a homeowners' insurance policy from a company are generally forced to obtain more expensive coverage through joint underwriting associations known as the FAIR Plan and the Beach Plan.

Because coverage obtained through the FAIR and Beach Plans is significantly more expensive, the legislature enacted legislation in 1997 to encourage insurance companies to write more homeowners insurance policies. The 1997 legislation (HB 452) has so far seen only modest success, although insurance industry officials believe it will show more success in the coming year. A legislative study panel recently recommended that the Department of Insurance form an ad hoc task force with insurance companies, agents, realtors, homebuilders, and others to consider other means of improving the availability of homeowners' insurance in coastal North Carolina and to report findings and recommendations to the General Assembly this coming year. The panel has also recommended restoring the Commissioner of Insurance's former authority to order insurance companies to collectively provide insurance coverage not readily available in the marketplace through a joint underwriting mechanism.

D. The Public Duty Doctrine and the Tort Claims Act

(Walker Reagan – 733-2578)

In 1998 in a series of cases, including a case arising out of the Hamlet chicken plant fire, the NC Supreme Court has held that the State is not liable under the Tort Claims Act for injuries suffered by a person as a result of the negligent act or omission of the State by its employee or agent, when the employee or agent is carrying out a public duty. A public duty is simply defined as a function that only the government can reasonably perform or be responsible for, that is done for the good of the general public, and is not a specific duty or promise to a specific individual. The US Supreme Court has recently refused to hear an appeal from the decision of the NC Supreme Court in the Hamlet fire case thereby letting the NC Supreme Court decision stand. As a result of these cases, concern has arisen as to whether the General Assembly's intent under the Tort Claims Act is being interpreted too narrowly, resulting in people injured in part due to the negligence of the State not being compensated. It is expected that legislative efforts will be made to clarify and better define when the legislature intends for the State to be liable for injuries under the Tort Claims Act.

E. Uninsured Motorist Coverage and Sovereign Immunity
(Linwood Jones, 733-2578)

The North Carolina Court of Appeals recently ruled that a driver injured by the negligence of a public officer while on duty can recover under his own uninsured motorist coverage even though the officer and the agency for which he works are immune from liability because of sovereign immunity. In *Williams v. Holsclaw (128 NC App. 205)(1998),* a Raleigh police officer injured the plaintiff in a car accident while on duty. Because of sovereign immunity, neither the City of Raleigh nor the officer were liable for damages. The plaintiff then turned to his own insurance company to recover damages under his uninsured motorist (UM) coverage. The insurance company denied the claim on the grounds that a person can recover under UM coverage only when the other party was liable but uninsured. The insurance company successfully argued to the trial court that because of sovereign immunity, there was no liability in this case, and without liability, there is no right to recovery under UM coverage. The Court of Appeals reversed this part of the trial court's ruling, finding that the insurance company should not be able to take advantage of the sovereign immunity of an agency or public official to deny a UM claim. The Supreme Court has agreed to hear the insurance company's appeal soon

## XVIII. LABOR

(Bill Gilkeson 733-2578)

A. Occupational Safety and Health Act (OSHA).

The Commissioner of Labor has raised the issue of whether there should be specific OSHA rules governing repetitive motion, lifting, and awkward positions in the workplace. Those things come under the general heading of ergonomics. The Department of Labor says those things cause a substantial amount of injury to North Carolina workers in the form of carpal tunnel syndrome and strains and sprains of the

back. One result is large sums paid out in workers compensation. The Department of Labor says it enforces ergonomic violations under the "general duty" clause of OSHA, but feels it would be helpful to give employers more specific standards. Apparently California is the only State that has adopted specific ergonomics rules. At public hearings held on the idea last summer, opposition surfaced from the N.C. Citizens for Business and Industry. Although now in the administrative law arena, the issue could easily find its way before the General Assembly.

B. Wage and Hour.
Child Labor. Whether to loosen up the rules limiting teen employment in ABC licensees was a time-consuming issue in the 1997 General Assembly, and the issue may resurface. Also, changes in federal law concerning teenage driving may spawn proposals to make North Carolina's laws the same. (In the wage and hour area, a common issue is whether State law, which governs smaller businesses, should be the same as federal law, which governs larger businesses.)

C. Job Training.
A persistent issue is the governance of the State's job-training efforts. It has been urged that duplication could be reduced by reorganization. But the dictates of the State Constitution and federal laws, as well as politics, make change difficult. The issue seems unlikely to go away.

## XIX. 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 1999 Session.

## XX. PRIVACY / GENETICS

(Ebher "Ed" Rossi—733-2578)

In 1998, privacy issues surfaced on both the federal and state levels. On the federal level, three measures were introduced. Two sought to create national IDs. Another sought to have banks profile their customers' spending habits, inquire into their sources of income, and report on transactions that are deemed "suspicious" because they did not fit established customer profiles. On the local level, a medical information privacy bill was introduced in the General Assembly. That measure would have permitted the disclosure of certain medical information without patient authorization.

A. National IDs

To some, the idea of a national ID is an anathema-- a throwback to a totalitarian state. To others it is means by which personal information can be more efficiently gathered and distributed. In 1998, there were two measures calling for the implementation of national IDs. Both of these measures were postponed, but will likely resurface in 1999, as their implementation is required under current federal law.

One such measure was the result of Congress' attempt to limit illegal immigration. The 1996 Illegal Immigration Reform and Immigration Responsibility Act authorized the U.S. Department Transportation ("DOT") to establish a national ID system through the implementation of federal standards for state issued driver's licenses. Under the plan proposed by the DOT, state issued drivers licenses would have to include social security numbers and imbedded biometric data, such as fingerprints or retinal scans. This would presumably make it easier to gather information on illegal aliens by making it easier for computers to cross-reference databases.

The other measure was the result of the congressional passage of the Health Insurance Portability Act ("HIPAA"). That act mandates the use of universal health identifiers. These identification numbers would be birth-to-tomb identifiers that would be assigned every individual. They would presumably make it easier for government to collect health information and would undoubtedly also assist our $40 billion medical information industry to more efficiently collect, analyze, and distribute medical information.

B. Health Information /Genetics

The shift to managed care has brought about a profound change in the way personal medical information is stored and utilized. Medical records that were once physically stored in doctor's offices are now little electronic blips that travel along cyber space -- part of a $40 billion dollar medical information industry. These records which were once only privy to doctors and their staffs, are now available to a host of others. They travel a vast electronic highway that serves commerce, government, and research. Along the way, thousands of eyes have access to this data.

This free flow of medical information has many benefits: a national network that detects and tracks diseases and drug side-effects, billing systems that make it easier to detect health care fraud, and more efficient and accurate medical research. However, this

system is not without its drawbacks, chief of which -- that not everybody who has access to these records is bound by the same ethical duty to maintain confidentiality that is imposed on doctors. Thus, when patients confide in their doctors they can no longer be assured that the information they provide will remain confidential. This problem is particularly acute in the area of mental health. Therapists are increasingly reporting that they are torn between their ethical duty of confidentiality and the demands that are placed on them by a managed care system that in some cases demands access to a therapist's office for the sole purpose of perusing their files.

This increased access to information has brought along with it an increased opportunity for abuse. To understand the full ramifications of this potential, one has only to consider what happened to Florida Governor Lawton Chiles and New York Representative Nydia Velazquez. They are just two of the more prominent politicians whose psychiatric records were leaked without permission during election campaigns. But political operatives are not only ones with an appetite for medical records. Marketers are also increasingly interested in medical records. For example, Glaxo Welcome("Glaxo") and CVS Pharmacies ("CVS") were recently named in a lawsuit alleging that confidential medical information was used to market a smoking cessation product. However, Glaxo and CVS are not alone in their efforts, other drug giants such as Merck & Co. have in recent years purchased pharmaceutical benefits management companies and used patient and prescription lists to market their products.

Another potential for the abuse of medical information lies in the misuse of that information by employers. One survey of fortune 500 employers found that 1/3 of the employers responding admitted using medical records to make employment related decisions. While some employer uses of medical information may be warranted, such as when employees who are exposed to radiation are tested for adverse effects, other uses are more specious. For example, a commercial lab that contracts with the Department of Energy was recently found to have tested its employees without their knowledge or consent for syphilis and sickle cell anemia.

C. Genetics

Closely intertwined with any discussion of medical information, is the topic of genetics and genetic discrimination. Fueled by the work on the human genome project and commercial research, the study of human genetic characteristics is allowing scientist to more accurately predict the future onset of certain diseases. When genetic tests are run, the test results are contained in medical records. Thus, problems posed by the free flow of medical information also apply to genetic information.

One of the main quandaries posed by this new ability to predict disease is who should have access to this information. If an individual has a genetic predisposition to disease should insurers and employers have access to this information? Should individuals be forced to undergo genetic screening as a precondition to employment or insurance? There are valid arguments on either side:

Insurers contend that if they are denied access to genetic information, costs will not be equitably apportioned. People with a higher risk of disease will not be charged higher premiums. Thus, the increased risks and costs that they generate will be unfairly underwritten others who have a lower risk of disease. Moreover, insurers argue that if people are allowed to conceal their genetic predisposition to disease, "adverse selection" will kick in -- that is to say that persons with the largest potential to develop illness will be the predominant purchasers of insurance thereby guaranteeing huge losses for insurers.

The other side of the coin is the fact that genetic tests are not always accurate predictors of illness. Environmental factors may also play a role in the development of certain diseases. In addition, there is the possibility of misinterpretation of the tests. This is what happened when the test sickle cell anemia became readily available. At that time, persons who were carriers, but stood no chance of contracting the disease, sometimes found themselves without insurance or employment because employers and insurers were ignorant to the full implications of the test results. Moreover, there is the notion that if left unchecked, insurers' profit motives will lead to exclusion of all but the healthiest individuals.

D. Current Legal Protections

Federal and state laws offer limited protections for personal medical information. Under North Carolina common law, a physician can be sued for malpractice if they disclose medical information without authorization. That common law rule, however, is modified by the North Carolina Insurance Information Privacy Protection Act which grants immunity to persons that furnish personal or privileged information to insurance companies, HMOs, insurance agents, and insurance support organizations. Thus, North Carolina doctors may legally disclose medical information to insurers, insurance agents, and possibly even credit bureaus without patient authorization, even though their ethical duties would prohibit this. This act's provision may also make it legal to sell certain medical information to marketers.

Genetic information enjoys some limited protection under both federal and state law. Under federal law, HIPAA prohibits health insurers from considering genetic information. In addition, under Equal Employment Opportunity Commission ("EEOC") guidelines if an employer discriminates on the basis of genetic information, aggrieved employees can file a claim premised on the Americans with Disabilities Act ("ADA"). However, that notwithstanding, the extent to which employees are protected against genetic discrimination by the ADA is unclear. Federal appeals courts are divided on the issue.

Under North Carolina statutory law, health insurers and employers cannot use genetic information when making coverage or employment decisions. However, genetic information may legally be used for other types of insurance.

## XXI. PUBLIC UTILITIES

(Steve Rose and Esther Mannheimer 733-2578)

Electric Restructuring.

The 1997 General Assembly established the Study Commission on the Future of Electric Service in North Carolina. A growing number of states are studying the restructuring of the generation portion of their electric industries, and handful of states have already passed restructuring legislation.

The 23 member Study Commission is examining the potential impact of retail electric competition. In an effort to thoroughly study the issue of electricity restructuring, the Commission has contracted with the Research Triangle Institute to complete the following reports: a summary of the public hearings conducted by the Research Commission in 1998; a comparison of electric rates between North Carolina, neighboring states, the region, and the United States; the state and local tax considerations in electric industry restructuring; an analysis of options for resolving stranded cost issues; an analysis of economic benefits and detriments from electric industry restructuring; the reliability considerations in electric industry restructuring; a summary of the written public comments solicited in 1998; and the cost impacts of government tax and financing policies. Many of the states currently study electric industry restructuring have also chosen to examine most of the above research topics.

The Study Commission has also held eight public hearings in various locations around North Carolina, and called for and received written comments. The Study Commission made an interim report to the 1997 General Assembly (1998 Regular Session) and will make a final report to the 1999 General Assembly, most likely to the 2000 Regular Session.

## XXII. REDISTRICTING

(Bill Gilkeson 733-2578)

A. Legislative Redistricting

The lawsuit by Jack Daly challenging several State House and State Senate districts as racial gerrymanders will move toward trial in 1999. Should Mr. Daly win as to some of the districts, the General Assembly would be presented with the duty to redraw those districts. It does not necessarily favor the plaintiff, a Republican activist, that the General Assembly doing the redrawing would suddenly have Democratic majorities in both houses. The State Constitution says that, once drawn, legislative districts cannot be changed before the next Census. But, of course, a federal court order would override that provision and require redrawing. Given the green light to redraw in 1999, the General Assembly might try to go beyond the challenged districts and draw entire plans more favorable to Democrats in the 2000 election. Whichever party wins control in the 2000 election will be in position to do redistricting in 2001 to last the rest of the decade.

B. Congressional Redistricting

Although the federal courts found the 1998 redistricting plan adequate for use in the 1998 elections, there are still some outstanding issues in congressional redistricting. The State is appealing the lower court order invalidating the 1997-drawn 12th District. And Robinson Everett is moving toward trial in his challenge of the 1st district drawn in 1997. It is possible that the 1999 General Assembly will be back in the congressional redistricting business.

C. Alternative Election Methods

North Carolina has advocates for using other devices to provide for minority representation other than the drawing of minority districts. They prefer multi-seat districts using preference voting, limited voting, and cumulative voting. The legislative may be urged to try these at the local level before doing so statewide.

D. Independent Redistricting Commission

The 1998 election brought defeat to the legislature's most vocal advocate of taking redistricting out of the legislature's hands altogether. But other proponents of an Independent Redistricting Commission may take up the fight. Several states went to such a method in the 1970s and 1980s at the urging of Common Cause.

## XIII. REAL PROPERTY

(Walker Reagan – 733-2578)

Abolish Seal Requirement

The NC Bar Association is expected to recommend that a bill be introduced that would eliminate the requirement that a deed or other instrument of conveyance be sealed in order to constitute a valid conveyance. The bill would also eliminate the requirement that a corporate secretary attest to the signature of a corporate officer in order for a corporate conveyance to be valid.

Current NC law requires that the word "SEAL" appear after the signature of a person conveying an interest in real property in order for the conveyance to be valid. The law also requires that a corporate secretary attest to the signature and authority of a corporate executive officer to sign on the corporation's behalf.

According to the Bar Association, this requirement has long been a trap for attorneys, both in and outside of NC, and is the consistent subject of curative statutes adopted by the General Assembly to correct conveyances that fail to comply with these statutes.

## XXIV. STATE EMPLOYEES

(Theresa Matula and Karen Cochrane Brown) – 733-2578)

A. Salaries and Benefits.

(Theresa Matula – 733-2578)

State employee salaries and benefits constitute a significant portion of the State Budget and some amendments to §126-7 involving the Comprehensive Compensation System may be offered in the upcoming session. The 1998 Appropriations Bill, SL 1998-212, included a provision allowing employees whose file contained two unresolved disciplinary actions to receive the COLA adjustment. This amendment has been somewhat controversial and may be amended in the upcoming session.

The 1998 Session of the General Assembly funded all three components (career growth recognition award, cost-of-living adjustment (COLA), and performance bonus) of the Comprehensive Compensation System. The System is performance based and employees having higher performance ratings receive larger pay increases. In 1998, of the roughly 89,527 employees subject to the State Personnel Act, 72 percent received a 3 percent increase and a 1 percent one-time-bonus; 17 percent received a 3 percent increase; less than 1 percent received the 1 percent COLA; and the remaining SPA employees received no pay increase due to unsatisfactory evaluations, insufficient time in the performance cycle, or incomplete evaluations.

The State Employees Association of North Carolina (SEANC) plans to seek funding of the Comprehensive Compensation Package with a 2% career growth; tie the COLA to the current consumer price index (CPI); and maintain the performance bonus funding at 1%. The 2% career growth should be included in the continuation budget and the COLA and performance bonus in the expansion budget. SEANC may also seek the establishment of legislative committee/subcommittee on state employee salaries.

As health care costs continue to increase, the health care benefit provided to State employees will continue to receive increased scrutiny. Health care issues may include continuation of a fully-paid individual health care benefit for all State Employees, and removal of the cap on the lifetime maximum State Health Plan benefit. Issues related to health care, and dependent care, include removal of the 12/31/99 sunset provision allowing the NC-FLEX Program to use FICA savings to pay for administration.

B. Administration

(Theresa Matula – 733-2578)

Topics regarding State personnel administration in the upcoming Session may include: revising the grievance procedure, priority consideration for internal candidates, and support for a change in the administrative case procedure. It is expected that amendments to the State Personnel Grievance Procedure will once again be sought as they have in previous Sessions. SEANC may seek to require priority consideration for internal candidates from within the department to fill a vacancy before considering outside candidates. The upcoming session may also see some support for a change in the administrative case procedure allowing OAH to have final decision authority on cases. Currently, OAH recommends a decision to the State Personnel Commission who has

final decision authority. It is significant to note that the 1998 Session of the General Assembly passed legislation changing the composition of the State Personnel Commission in §126-2.

C. Privatization

(Theresa Matula – 733-2578)

Privatization and downsizing of state government may continue to be an issue, though perhaps not as prevalent as in past sessions. The North Carolina Competition Act of 1998, § 143C, created The North Carolina Government Competition Commission within the Department of Commerce. The purpose of the Commission is to be the catalyst for the use of competition to improve the delivery of State government services, to make State government more effective and more efficient, and to reduce the costs of government to taxpayers.

D. Retirement

(Karen Cochrane-Brown 733-2578)

The State Employees Association of North Carolina (SEANC) proposes an increase in the retirement accrual rate to 2.0; full restoration of the employer's contribution to the Retirement System at 9.35%; and restoration of monies diverted by the Governor to balance the 1991 budget. Additionally, SEANC proposes to reduce the penalty for early retirement from 5% per year to 3.5% per year for each year less than 30 years of service; and an extension of the salary death benefit from 180 days to one full year after retirement.

Traditionally, SEANC and the other employee and retiree representative organizations, present their legislative agendas to the Board of Trustees of the Retirement System at the Board's January meeting. The Board will then determine its legislative program and in most sessions the employee and retiree groups support the Board's recommendations.

## XXV. TECHNOLOGY INFORMATION

(Tony Goldman, Dennis McCarty (ISD) – 733-6834; and Lynn Muchmore (FRD) 733-4910)

A. Year 2000 (Y2K) Issue

This is the last year before the change of the millennium. The results of the state's effort to wrestle the two-digit "year 2000 bug" will be recognized as fiscal year 1999-2000 matures.

The "year 2000 bug" was created over the last 30 years by cost conscientious technologists attempting to save expensive disk and memory space by storing only the last two digits of the year (e.g., "46") instead of four digits (e.g., 1946). The "year 2000 bug" affects all industries, private and public. The Gartner Group, a leading authority in Information Technology, projects that the total cost of Year 2000 remediation will be between $300 billion and $600 billion.

Presently, the Year 2000 Project Office within the Department of Commerce estimates it will cost over $125,000,000 to address the "year 2000 bug." This estimate covers application system remediation and does not include remediation costs for non-IT assets. Additionally, this estimate excludes remediation costs for the Judicial and Legislative Branches as well as those for county/local governments and school systems.

Three issues may emerge during the upcoming session. First, legislators are likely to review the effectiveness of funds spent to date. Second, legislators may question whether sufficient attention has been given to "embedded chips", or microprocessors incorporated in machines like elevators and medical equipment. Finally, legislators may raise the issue of contingency planning, not only as it applies to breakdowns in state agency operations but in the much larger sense of preparing for possible disruptions in electrical power, municipal operations, or critical business services throughout North Carolina. The role of the State in the event that the dire predictions now being made by some experts prove correct is a significant practical and political question.

B. Information Highway

Migration to the new, lower cost technologies for telecommunications is underway within State Telecommunications Services in the Department of Commerce. This technology is the international telecommunications standard for delivering audio and video services to participating sites. It replaces the more expensive technology used in the original deployment of the Information Highway.

As required by the 1998-1999 State Budget Bill (Senate Bill 1366, Section 15.8), on December 1, 1998, the Department of Commerce submitted a *"Migration Plan for Converting North Carolina Information Highway Sites"* to the members of the House and Senate Appropriations Subcommittees on Natural and Economic Resources and the Joint Legislative Commission on Government Operations.

## XXVI. TAXATION

(Cindy Avrette – 733-2578)

A. Extend Sunset of William S. Lee Act Incentives, and further expand the incentives. Each year since 1996, the General Assembly has enacted and expanded tax incentives to lure new and expanding businesses of certain sizes and types in various locations. Businesses not covered by existing incentives continually seek expansion of the incentives. In addition, the incentives are automatically repealed effective January 1, 2002. The purpose of the sunset was to allow the General Assembly to learn how effective and necessary the incentives are and how much they cost before deciding whether to continue them. The Department of Commerce is expected to report to the General Assembly on the incentives, request that the sunset be extended or removed, and request additional expansions of the incentives. These proposals would result in a revenue loss for the General Fund.

B. Repeal or Revise Gift Tax to Conform to Repeal of Inheritance Tax.

The State's inheritance tax was repealed effective 1999. The State's gift tax complements the former inheritance tax. No other state that has repealed its inheritance tax retains a gift tax. Repealing the gift tax could result in a General Fund revenue loss of $10 to $20 million.

C. Find New Revenues to Pay for Desired Programs

The General Assembly has enacted over $1.6 billion in tax reductions over the last four years. The Governor and some legislators may wish to expand appropriations for salaries and other programs. The funds may not be available under the current revenue structure.

D. Local Option Sales Tax for Schools and other Local Government Revenue Options

Local governments need funds for school buildings and other pressing needs but are unwilling or unable to raise property taxes to finance these needs. For the past several years, local governments have sought a menu of various revenue options to give them a means, other than the property tax, to raise money.

E. Repeal Local Sales Tax on Food

The State repealed its 4¢ sales tax on food effective May 1, 1999. Food is still subject to 2¢ local sales tax. There may be an effort to repeal this tax. Local governments will want to be reimbursed for the resulting revenue loss.

F. Single Sales Factor for Corporate Income Apportionment

Business groups are seeking an adjustment in the corporate income tax apportionment formula that applies to interstate corporations. The proposed adjustment would result in a revenue loss. The adjustment would favor interstate companies located in North Carolina over interstate companies located elsewhere and over North Carolina companies that do business only in North Carolina.

G. Add More Tax Research Positions

The General Assembly needs detailed fiscal estimates to evaluate complex tax issues before the General Assembly, such as targeted tax incentives, various tax credits, and repeal or reform of the gift tax. The Department of Revenue's Tax Research staff has been unable to provide sufficient data for some needed revenue estimates in the past due to a lack of staff. Expanding the Tax Research staff will allow the General Assembly to have the information it needs in making important tax decisions. This proposal is expected to be recommended by the Revenue Laws Study Committee.

H. Property Tax Homestead Exemption Relief.

During the 1997-98 biennium, there was heated debate over competing proposals to provide property tax relief to elderly, low- and middle-income homeowners. The Senate passed a bill that would have amended the Constitution to authorize counties to provide such relief on a local option basis. The House passed a bill that would expand existing

relief and reimburse local governments for the resulting revenue loss. The two houses were unable to agree on either proposal.

I. Use Value for Farmland

The current method of determining the present use value of agricultural land is the expected net income per acre based on corn and soybeans. Although these crops represented the agricultural land values across the State in the early 1970s, they no longer do so today. In fact, corn and soybeans are not grown in 25% of the counties today. The result is that the present use values of agricultural land are not truly representative of their use value. Because of this, less than 50% of the counties use the use values published in the Use-Value Manual prepared by the Use Value Advisory Board and the Department of Revenue. After more than two years of research and study, the Use-Value Advisory Board, in conjunction with the Farm Bureau, the Association of County Commissioners, and the Department, recommends that cash rents be used to determine the use value for agricultural land and horticulture land. The working group presented this recommendation to the Revenue Laws Study Committee on December 10, 1998. The Committee plans to continue its review of this recommendation at its January meeting and possibly include it in its legislative recommendations to the 1999 General Assembly.

## XXVII. TRANSPORTATION

(Giles Perry – 733-2578)

A. Transportation Improvement Plan/Funding

In November 1998, the Transportation Secretary unveiled a new draft of the seven year transportation improvement program. The stated goal was to make the TIP a reliable blueprint for actual construction, not a wish list for projects. Due to several factors, including increases in land and construction costs, unmet revenue forecasts, and over-commitment on the number of projects, many projects are delayed in the draft TIP. These factors, coupled with rapid growth, have put tremendous strain on the State's Transportation system. The Secretary suggested that he may, in consultation with the Governor, make suggestions to the General Assembly for addressing the need for additional funds for transportation improvements.

B. Maintenance

On December 2, 1998, the Department of Transportation submitted its biennial report on the condition of the State highway system. The report indicates that the annual cost of routine maintenance of the State highway system in average condition is $433 million, and the annual cost of resurfacing the State's highways on a 12 year primary/ 15 year secondary cycle is $200 million. In addition, the State has a $225 million maintenance backlog, and a $70 million resurfacing backlog. The Department estimates that about $700 million a year is needed to fund maintenance and resurfacing, and to eliminate the backlog over a ten-year period. The 1998-1999 budget includes $450 million for maintenance and resurfacing, $250 million less than the Department says is needed.

C. Public Transportation

Due to growth and increased congestion, public transportation is now seen as part of the solution to transportation needs in the urban areas of the State.

*1. Local Initiatives*

In November 1998, voters in Mecklenburg County voted to increase local sales taxes by ½ percent to begin construction of a comprehensive rail, bus and transit way system. The Triangle Transit Authority has begun planning work on a rail system to connect Raleigh, Durham, the Research Triangle Park, and Chapel Hill. The authority plans to use a combination of federal, state and local vehicle rental vehicle tax funds to fund phase one of this project.

*2. State Initiatives*

$ 13.4 million in State funds were appropriated for public transportation and rail in the 1998-1999 budget. These funds will be used to help fund capital and operating costs of local bus/transit systems, and for operation of Amtrak service in the Piedmont. The Department will probably ask for additional State transit funding to further Governor Hunt's Transit 2001 goals, including high speed train service from Raleigh to Charlotte.

## XXVIII. WELFARE REFORM

(Jo McCants, Gann Watson, John Young, Linda Attarian – 733-2578)

A. State Plan

The General Assembly approved the plan entitled "North Carolina*'s* Temporary Assistance for Needy Families State Plan FY 1998-2000" (TANF or State Plan), prepared by the Department of Health and Human Services and presented to the General Assembly on May 15, 1998 ,as amended by the Temporary Assistance for Needy Families Welfare-to-Work Formula Grant Plan. The State Plan was developed as North Carolina's response to the federal legislation passed in 1996 entitled "The Personal Responsibility and Work Opportunities Reconciliation Act of 1996." This initiative replaced Aid to Families with Dependent Children (AFDC). Once the State Plan is certified, North Carolina's public assistance program will include standard program counties and electing counties. A standard program county is a county that participates in the Standard Work First Program developed by DHHS. An electing county is a county that elects to develop and is approved to administer a local Work First Program. The General Assembly has approved 21 electing counties.

Since the electing counties' Work First Programs may vary from county to county, any necessary changes to the State Plan may not become apparent until after the electing counties have had an opportunity to fully implement their local programs to determine the effectiveness of each the program. Therefore, it may become necessary during the 2000 or 2001 session to address issues arising from the implementation of the State Plan such as sanctions, time limits, or residence requirements.

B. Durational Residency.

During the last few months, federal and state courts have continued to invalidate state policies that provide lower or no public assistance to persons who have lived within the state for less than a specified period of time. The United States Supreme Court has granted California's petition for a writ of certiorari in *Roe v. Anderson*, 134 F.3d 1400 (9th Cir. 1998), that held California's policy of paying lower CalWorks benefits to persons who have been in the state less than a year unconstitutional. Three amicus briefs were filed along with California's petition. In one of the amicus briefs Attorney Generals for 16 states, including North Carolina, urged the Supreme Court to hear the California case in view of the alleged difficulties the courts below are encountering. The Washington Legal Foundation also filed an amicus brief on behalf of some California legislators defending their actions. The third amicus brief was filed by the Pacific Legal Foundation.

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