EMERGING ISSUES, HOT TOPICS

AND

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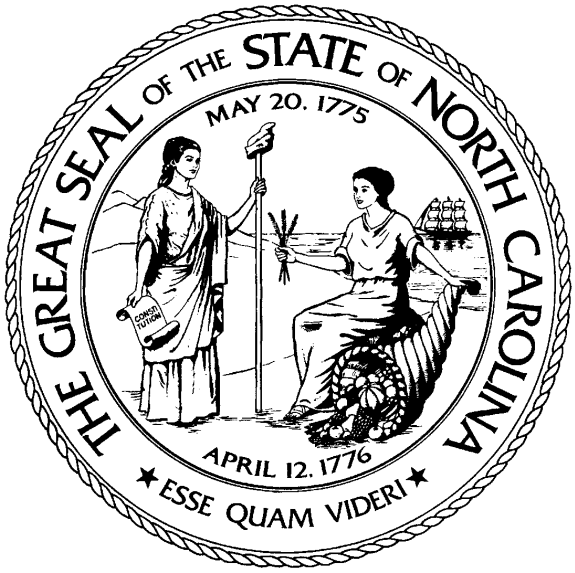

2001

RESEARCH DIVISION
N.C. GENERAL ASSEMBLY
JANUARY 2001

EMERGING ISSUES, HOT TOPICS, AND TRENDS IN LEGISLATIVE ISSUES

Terrence D. Sullivan, Director of Research
January 23, 2001

We have in recent years briefed incoming legislators on issues, hot topics, and trends in legislative issues that might emerge during the upcoming biennium. In this publication, we will present the major issues that are likely to be introduced during the 2001 General Assembly. I compiled this list by requesting the legislative staff to provide their ideas as to which issues, in their opinion, are likely to arise. I added my ideas to theirs. What follows is the product of this process.

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The names and telephone numbers of the staff people most familiar with the area discussed are listed after each main topic. 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 listed individuals.

TABLE OF CONTENTS

I. ALCOHOLIC BEVERAGES

(Brenda Carter (RD) – 733-2578)

North Carolina operates, in theory, under a local option system that allows the voters of each county and town decide what alcoholic beverages legally may be sold; the idea is that what the voters approve, the drinkers may buy. However, over the past decade or so the legislature has amended the general law to grant special permits in certain areas to allow establishments including sports clubs, private country clubs and resorts to serve liquor by the drink, without the necessity of voter referendums in those areas. Because of the State Constitution's prohibition against local acts affecting trade or commerce, many ABC bills sought to achieve the effect of a local bill by describing a special district with such specificity that a bill designated as "Public" only applied to one location. Because for the most part these measures were statewide bills with local application, a number of lawsuits challenging the constitutionality of such bills began working their way through the courts. Some parties now believe that legislative action is needed to make State ABC laws more uniform by permitting the issuance of all ABC permits statewide. The opposing viewpoint is that eliminating the necessity of local elections would take away local voters' rights to decide what is best for their communities. The future of these special ABC provisions is uncertain – it is likely that the legislature will be reluctant to pass new legislation in a manner that the courts have declared unconstitutional in the past, yet in areas where ABC elections have been unsuccessful the demand for ABC permits and the associated revenue can be expected to continue to grow. This is an issue that the legislature can expect to hear more about in the coming session.

II. BUDGET AND REVENUE OUTLOOK

(David Crotts, Mona Moon, Charles Perusse, Andy Willis, Lynn Muchmore (FRD) – 733-4910)

<u>Economic Outlook - National</u>

From November of 2000 until the present, national economic indicators have dropped dramatically. Examples include a rise in unemployment insurance claims, declining retail sales, and the purchasing manufacturers' survey. The steep decline, particularly in the manufacturing sector, was the reason the Federal Reserve acted quickly and aggressively in lowering interest rates in early January.

The economic slowdown can be attributed to three primary factors. The first of these are the interest rate hikes that began in June of 1999. From this time, short-term interest rates rose from 4.75% to 6.50%. Secondly, the high-tech stock collapse in the stock market has had an adverse effect on the economy. This collapse has caused layoffs, reduced capital spending, and impacted consumer confidence. Finally, higher energy prices have resulted in a reduction of consumer spending on durable goods. One final item, not related to the ones mentioned above, is that many foreign economies are already in a recession. This, in turn, has an effect on demand for U.S. products.

The recent action of the Federal Reserve to cut interest rates may be too late to prevent a "hard landing" that would involve flat growth or one negative quarter at the national level. However, it could set the stage for a rapid recovery in the late 2001

calendar year. Therefore, rate cuts may cushion State revenues in 2001-02. Additional economic stimulus may be provided by a federal tax cut. Future interest rate cuts may be balanced against tax cuts to ensure that the economy does not overheat.

Economic Outlook – State

So far, the State of North Carolina's economic slowdown has been concentrated in retail sales. Wage and salary growth was strong through November of 2000 due to tight labor markets. There are some preliminary indications that the unemployment claims rose in North Carolina during December of 2000.

For the last couple of years, the General Fund revenue forecast has contemplated a modest economic slowdown. However, the projections did not assume persistent high-energy costs or a tech stock crash. In addition, the 2000-01 economic forecast assumed a recovery from Hurricane Floyd. It now appears that the Floyd recovery will take a number of years.

The surge in stock prices in the mid-1990's has increased the importance of the financial market on the revenue forecast. While this revenue source is only 5% of total receipts, it can fluctuate up to 50% per year. This volatility is equivalent to about $350 million of income tax revenue.

The 2000-01 and 2001-02 General Fund revenue forecasts will be updated in early February, when holiday retail sales data is available, and in early May after final income tax payments are tabulated. For now, the tentative forecast projects a $330 million revenue shortfall for the current year. Of this amount, $271 million is recurring and will lower the 2001-02 fiscal year base. The $271 million recurring shortfall is composed of $122 million of income tax refunds carried over from 1999-2000 and $149 million of economy-based problems.

For the last two quarters, state sales tax collections have risen 4.2%, versus 6-10% prior to Hurricane Floyd. Interest rate hikes, higher energy prices, and strong vehicle sales have hurt these receipts, comprising 25% of total taxes. Corporate income tax receipts are also coming in behind schedule.

News reports indicate that at least six other Southeastern states are experiencing revenue shortfalls this year. This list includes South Carolina, Virginia, and Tennessee. The other region heavily impacted has been the Upper Midwest. The Midwest and Southeast problems may be due to the heavy impact of the slowdown in the manufacturing sector.

Budget Outlook

General Fund Budget for FY 2000-01

The General Fund Budget for fiscal year 2000-01 is approximately $14 billion. Of this amount, $13.8 billion comprises the operating budget. Education, including public education, community colleges, and the university system, make up $8.1 billion (58%). Health and Human Services comprises $3.0 billion (22%). Justice and Public Safety agencies comprise $1.5 billion (11%). All other State agencies, except for Transportation, make up $1.2 billion (9%).

Presently, there is a shortfall in the current fiscal year (2000-01). This shortfall is estimated in January to be close to $500 million. There are three major reasons and

contributing factors for this shortfall. The first of these are $122 million in income tax refunds carried over from the previous 1999-2000 fiscal year. Secondly, there is an estimated revenue shortfall of $149 million. This number could rise. Revised estimates will be available in early February. In addition to these two issues, it is estimated that $108 million in Medicaid payments or over expenditures will have to be addressed.

In order to address this current year shortfall, agencies and departments must limit expenditures for the remainder of the year to cover this projected shortfall. This shortfall will leave no credit balance (unexpended funds/over collections) to carry forward to next fiscal year. The credit balance is instrumental in funding the Savings Reserve Account, Repairs and Renovations Reserve, and any new capital projects.

General Fund Budget for Fiscal Year 2001-02

Continuation budget growth will leave little funding for new initiatives. Major items the General Assembly will have to address concerning the continuation budget for this year include Medicaid shortfall and growth; increases in public school enrollment; ABC Incentive payments, Smart Start annualization; and funding for the Clean Water Management Trust Fund. Other items that could have major impacts on the overall budget picture are University and Community College enrollment growth; State employee salary increases; the State Health Plan; capital improvements; and any other priorities given to new programs and initiatives.

II. BUSINESS AND COMMERCE

(Karen Cochrane-Brown, Walker Reagan (RD) – 733-2578)

Check Cashers Act

(Karen Cochrane-Brown (RD) – 733-2578)

In 1997, the General Assembly authorized the Commissioner of Banks to regulate the business of check cashing. The law also authorized businesses to cash personal checks that are postdated or delayed deposit, so long as the face amount does not exceed $300. The customer and the business must enter a written agreement, which states the fees charged both as a dollar amount and as an effective annual percentage rate, and the deposit may not be deferred for more than 31 days. The law is very clear that delayed deposit checks may not be extended or renewed, but the industry has developed a practice called “cash-out transactions” whereby the customer tenders cash to the check casher on or before the date the check was to be deposited. The customer then enters into another delayed deposit transaction, in some cases immediately following the cash-out transaction. In 1998, the Commissioner issued a declaratory ruling that although there is nothing in the law specifically prohibiting this practice, such transactions could raise the appearance of a renewal or extension and will be scrutinized carefully.

During the 1999 biennium, the LRC Consumer Protection Committee studied this issue and learned that the industry had experienced phenomenal growth since the law was enacted. The Committee also heard from a number of consumer groups that this practice, sometimes called payday lending, exploits poor and undereducated consumers. The Committee did not recommend any specific legislation, but noted that the original law directed the Commissioner of Banks to report to the 2001 General Assembly on the

provision allowing postdated or delayed deposit checks. The Committee recommended that no action be taken until the Commissioner makes his report. The Committee also recommended that the Attorney General be requested to review the report and make any recommendations for change. The provision relating to postdated or delayed deposit checks will expire on July 31, 2001.

Uniform Electronic Transactions Act – see **INFORMATION TECHNOLOGY**: Uniform Laws, that heading.

Uniform Electronic Transactions Act – see **INFORMATION TECHNOLOGY**: Uniform Laws, that heading.

Uniform Transfers on Death Act
(Walker Reagan (RD) – 733-2578)

The General Statutes Commission is expected to recommend again this session that North Carolina 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. This matter was considered again in the 1999 General Assembly, in SB 117 and HB 163 as recommended by the General Statutes Commission, and in HB 112. HB 112 passed the House, was reported favorably by Senate Commerce, and referred to the Senate Finance Committee where the bill was heard but was not voted on.

The uniform act, adopted in at least 44 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 retirees lobbying groups, including the AARP, have been urging legislators for at least 5 years to consider this legislation. It is expected that the security dealers association and the N.C. Bar Association will support this legislation.

CHILDREN AND JUVENILES - see **FAMILY LAW**.

CORRECTIONS – see **CRIMINAL LAW AND CORRECTIONS**.

III. COURTS

Indigent Defense Spending
(Elisa Wolper, Denise Thomas, Jim Mills, Kelly Little (FRD) – 733-4910)

The cost of providing defense for indigent criminal defendants through assigned counsel and public defenders has increased from $37.7 million in 1993-1994 to an estimated $67.5 million in 2001-2002. Legislation in the 2000 Session created a new Commission and Office of Indigent Defense Services to look at ways to better manage these expenses. For the first time, the budget process will have to look at covering the costs of indigent defense without the other resources of the Judicial Branch. The Commission will be developing proposals to both improve the quality of indigent

defense and better control the costs. Issues include investigating expanded use of contracted attorneys and the development of standards for the qualification and compensation of attorneys. The Commission may also make recommendations to the legislature about establishment of Public Defenders Offices. The Commission will be responsible for the Indigent Fund as of July 1, 2001.

Judicial Appointment and Merit Selection of Judges
(Frank Folger (RD) - 733-2578)

For several years the issue of changing the system for selecting and retaining appellate judges has been considered. For example, in 1996 the Commission for the Future of Justice and the Courts in North Carolina (the Medlin Commission) recommended a system in which all appellate judges, as well as all trial judges, would be appointed by the Governor from a list recommended by a nominating commission or panel. The North Carolina Bar Association has also historically supported a change in the way that judges obtain and maintain their offices. Currently, judge selection for State courts in North Carolina, at all levels excluding the Superior Court, is by partisan election by the people of North Carolina. The Bar Association has indicated it again favors legislation this year to provide for merit selection of all appellate level judges with a non-partisan retention election during which voters would vote "yes" or "no" on the question of whether the appellate judge should serve another term.

The argument for changing the current method is that campaigning by judges and partisan election of judges taints the impartial nature of the judiciary. Critics argue that fund raising efforts by judges, necessary to a partisan election, creates the appearance that judges can be influenced by those contributing to their campaigns. This appearance diminishes public confidence in the integrity and fairness of judicial decision-making. Opponents to partisan election of judges also assert that worthy candidates for the judiciary steer away from seeking judicial positions because they do not want to endure the political demands of an election.

Proponents of the merit selection/retention election method stress that this method resolves these ethical and practical problems. They also assert that it avoids the issue of lifetime judicial appointments and the criticism that accompanies that method.

Critics of gubernatorial appointment without limitation contrarily argue that such a method equally politicizes judicial selection as much as the current system.

Legislation introduced over the last several years has attempted to change the current system of selecting appellate judges. The legislation has contained several variations. Generally, the legislation has provided for one of the following methods of selection: 1) gubernatorial appointment; 2) gubernatorial appointment from a list of nominees recommended by a nominating commission; and 3) gubernatorial appointment with legislative confirmation. In each proposal, judges seeking to serve additional terms after appointment/nomination must receive approval of the State's voters in a non-partisan retention election. Each legislative proposal has failed to pass. In 1995, Senate Bill 971 provided gubernatorial nomination of appellate level judges, subject to a three-fifths confirmation vote of both houses of the General Assembly. In 1997, House Bill 1145, provided for gubernatorial appointment from a nominating commission's list. In 1998, House Bill 1391 and Senate Bill 1258 provided again for gubernatorial nomination subject to legislative confirmation. In 1999, House Bill 1033, a hybrid bill

maintained the current method of partisan election but provided for retention election for subsequent terms. Also in 1999, Senate Bill 12, as introduced, provided for gubernatorial appointment subject to legislative confirmation. It was amended to require the gubernatorial appointment from a nominating commission's list and to remove the legislative confirmation requirement. By the time it reached the House floor for its second reading, the bill provided for gubernatorial appointment and retention election for subsequent terms and included no legislative confirmation or nominating commission requirements. It too failed to pass.

At the December 2000 meeting of the North Carolina Courts Commission, the Commission was presented with a history of recent legislative attempts to change the current method of selecting judges. At January 2001 Courts Commission meeting, three draft proposals were discussed but not voted on. This issue is likely to re-emerge during the 2001 General Assembly.

Non-Partisan District Court Elections
(Brenda Carter (RD) - 733-2578)

If legislation providing for the general appointment of judges is not enacted, the N.C. Bar Association is expected to support legislation providing for the non-partisan election of district court judges. This legislation would be similar to legislation enacted in 1995 that made Superior Court judge elections non-partisan but district-wide.

Statewide Implementation of Settlement Procedures in District Family Financial Actions – see **FAMILY LAW**, that heading.

IV. CRIMINAL LAW AND CORRECTIONS

Death Penalty
(Brenda Carter (RD) - 733-2578)

Even though polls indicate that the public strongly supports the death penalty, questions are being raised about the fallibility and fairness of the process. According to an article in the May, 2000 issue of State Legislatures magazine, published by the National Conference of State Legislatures (NCSL), old issues are being raised anew about how and against whom, capital punishment is carried out. Anti-death penalty activists have long maintained that race and economic circumstances of defendants as well as victims are disturbingly and disparately related to death sentences. The American Bar Association in calling for a death penalty moratorium in 1997 cited as a major concern the increasing evidence of racial disparity in prosecution and sentencing decisions.

In North Carolina, the Legislative Research Commission's Capital Punishment—Mentally Retarded and Race Basis Committee began its deliberations with the review of two bills introduced in the 1999 Session - Senate Bill 334 (Prohibiting Death Sentence for Mentally Retarded Persons) and Senate Bill 991 (Prohibiting Death Sentence Obtained on Basis of Race). As the study progressed, the Committee received testimony in support of a moratorium on the death penalty. Proponents of the moratorium indicated that the action would allow time to address and correct problems associated with the administration of capital punishment as a penalty. The Committee received testimony

from representatives of the Criminal Division of the Attorney General's Office and the Office of the Appellate Defender as well as other trial attorneys and legal scholars. On the issue of mental retardation, the Committee heard from psychologists and various mental health professionals including representatives of the NC Psychological Association, the American Association on Mental Retardation and the Association for Retarded Citizens. In its report to the 2001 General Assembly, the Committee makes three recommendations.

- Provide That A Mentally Retarded Person Convicted Of First Degree Murder Shall Not Be Sentenced To Death. In 1999, Texas (which leads the states in numbers of executions and offenders on death row) became the 13th state to prohibit execution of the mentally incompetent. In the 2001 Session, the North Carolina General Assembly can expect proposed legislation that will prohibit the execution of mentally retarded persons, and that defines a mentally retarded person as one who has "significantly sub average intellectual functioning" (meaning an IQ of 70 or below), existing concurrently with impairment in adaptive functioning. The proposed bill requires that the condition have manifested before the person reached the age of 18.
- Provide For The Fair And Reliable Imposition Of Capital Sentences. In 1998, Kentucky lawmakers broke new ground in an act prohibiting the execution of a person when evidence establishes racial bias in prosecution or sentencing. The law also required the Kentucky Supreme Court and agencies to open records relating to the death penalty and its imposition. Recently, the federal Justice Department disclosed that a review is under way to determine whether there has been disparate treatment of racial minorities in handing down federal death sentences. In the 2001 Session, the North Carolina General Assembly can expect proposed legislation that prohibits the imposition of the death penalty when it was sought solely on the basis of the race of the defendant or the victim in a particular case. The proposed bill provides a pretrial procedure wherein a defendant may state with particularity how the evidence supports a claim that racial considerations played a significant part in the decision to seek a death sentence in his or her case, and the defendant has the burden of proving by clear and convincing evidence that race was the basis of the decision. The proposed bill also provides a post-trial procedure wherein a finding that race was an improper basis upon which a death sentence was obtained may be established if the court finds that race was a significant factor in decisions to exercise peremptory challenges during jury selection.
- Establish A Moratorium On Carrying Out The Death Penalty. On Sept. 21, 1999, an Illinois death row inmate was released after 17 years in prison; another man had confessed to the double murder for which the inmate had been convicted. Just the year before, the inmate had come within a couple of days of death by lethal injection, but received a stay of execution when attorneys raised questions about his mental capacity. Following this and 12 other Illinois cases (85 nationally) in which death row inmates have been exonerated, the state became the first to suspend the death penalty pending examination of its fallibility. Since that time the Illinois General Assembly

has earmarked $20 million for improving capital justice, and the state's indefinite moratorium was followed by appointment of a committee to study flaws in the system and make recommendations to remedy them.

The governor of Nebraska vetoed a move by the legislature to put a two-year moratorium on executions, following debate that centered on whether capital punishment is being applied fairly. After the veto, the legislature approved a study of homicide cases in the state. The report, due in time for the 2001 session, is to analyze homicide cases spanning more than 25 years, including mitigating and aggravating circumstances; race, sex and economic status of the defendant and the victim; charges filed; result of the judicial proceeding; and the sentence imposed.

In the 2001 Session, the North Carolina General Assembly can expect proposed legislation calling for a moratorium that would end upon action by the General Assembly addressing "the fair and impartial administration of the death penalty in accordance with due process, and limiting…the risk that innocent persons may be executed." The proposed bill requires that the General Assembly provide for a study to examine issues including the adequacy of counsel in capital cases, the process for judicial review of constitutional claims, disproportionate racial impact, discrimination in capital sentencing, the execution of mentally retarded persons, prosecutorial misconduct, and the presence of innocent persons on death row. The proposed study would be completed not later than February 1, 2003.

DNA Testing

(Susan Sitze (RD) - 733-2578)

As DNA testing becomes more scientifically accurate, many states are enacting laws to acknowledge the changes that advancements in the technology have created in the criminal justice system. The two types of laws regarding DNA testing that have been adopted by some states, and considered by several others, are (i) post-conviction DNA testing and (ii) required DNA sampling and DNA databases.

Post-conviction testing Post-conviction DNA testing refers to testing of DNA evidence after a person has already been convicted of a crime. This typically occurs where evidence was not submitted for DNA testing because the technology was not available at the time. Each state has its own set of procedural rules for filing appeals after conviction. These rules state the reasons a new trial may be granted and also usually require new evidence to be brought before the court within a certain time period after the conviction. Many of the newer laws regarding post-conviction DNA testing extend those time periods when the evidence was available, but not tested, and allow the judge more discretion in admitting DNA evidence that might otherwise be excluded.

DNA Database Some states require that certain offenders be required to submit a DNA sample. The information taken from that sample is then maintained in a DNA database. Some states, including Alabama, New Mexico, Virginia and Wyoming, require that anyone convicted of a felony submit a DNA sample. Other states, including New Jersey and Connecticut, only require convicted sex offenders to submit a sample. Louisiana restricts its requirement to sex offenders, but requires samples for anyone arrested for a sex offense, even if they are not convicted.

The benefits of this type of requirement are the ability to accurately identify offenders and increase the chances of correctly convicting the guilty, and to determine the innocence of those wrongly accused. However, the detriment is that such a database may be used inappropriately or to discriminate. In an attempt to prevent this, most states restrict the use of the information in the DNA database to law enforcement purposes and judicial proceedings. It has also been argued that the sample requirement is an invasive search and violates the constitutional rights of those required to submit their DNA. To date, no court has found a DNA sample requirement to be unconstitutional.

Storage and Sale of Firearms
(Al Andrews (RD) – 733-2578)

G.S. 14-315.1 currently regulates the storage of firearms in homes where minor children reside. Based on what the Child Fatality Task Force indicates are dangers to children visiting the homes of persons who keep guns but are not required to childproof them, the Task Force recommended changing the law to have the same requirements for storage of firearms in homes, without regard as to whether or not children reside in the home.

The bill to Increase the Enforcement of Gun Laws at Gun Shows, House Bill 1627 of the 1999 General Assembly Session, would have set the same restrictions on gun sales at guns shows that are currently required for sales at gun stores operated by a licensed federal firearms dealer. The Child Fatality Task Force also endorsed this bill. The introduction of similar measures is likely in 2001.

Sentencing and Corrections Policy
(Elisa Wolper, Denise Thomas, Jim Mills, Kelly Little (FRD) – 733-4910)

A primary goal of the Structured Sentencing Act, effective October 1994, was to ensure that correctional resources were linked to policy decisions. The most expensive resource -- prisons -- was to be used primarily for the most serious offenders, while many non-violent offenders would be sentenced to community corrections. The General Assembly also established a statutory requirement for a fiscal impact analysis (fiscal note) of any bill that could increase the incarceration rate. This allowed the General Assembly to make policy decisions with an understanding of the fiscal implications.

While prison construction and slowing of prison admissions allowed for prison closings in recent years, growth in North Carolina population, changes to the Sentencing Act and the impact of serious offenders serving longer sentences have combined to create the need for additional prison construction in future years. The 1999 General Assembly authorized the Department of Correction to develop proposals for construction of up to 3,000 additional prison beds by 2003. This proposal will be reviewed by the 2001 General Assembly.

Current prison population projections by the Sentencing and Policy Advisory Commission indicate that the prison population will continue to grow. The population projections will frame the policy debate in the corrections area.

Motor Vehicle Law
(Susan Sitze (RD) – 733-2578)

In the area of motor vehicle law, the Corrections and Crime Control Oversight Committee is proposing three bills for introduction in the 2001 Session:

1) A ban on the use of radar detectors in the State of North Carolina.
2) A ban on the use of cellular phones while driving, unless the phone is equipped with a "hands free" option and that option is being utilized.
3) Creation of pilot programs to install and examine the use of roadside "speed cameras" which would take the picture of a speeding vehicle. A speeding ticket, with civil penalties only, would then be generated and sent to the owner of the vehicle.

Firearms and Ammunitions Manufacturers Liability
(Al Andrews (RD) – 733-2578)

The Firearms Regulations Amendments bill, House Bill 938 introduced in the 1999 Session, was designed solely to preserve the State the right to sue gun or ammunition makers for damages stemming from the production, marketing, and distribution of firearms, thus preventing local governments from individually bringing suit. This bill would have also declared that the lawful design, marketing, manufacture, distribution, sale of transfer of firearms or ammunition to the public is not an unreasonably dangerous activity and does not constitute a nuisance by itself. The bill was supported by the National Rifle Association and opposed by the Child Fatality Task Force. This issue may again surface in the 2001 Session.

V. ECONOMIC DEVELOPMENT

Travel and Tourism
(Karen Cochrane-Brown (RD) – 733-2578)

During the 1999-2000 biennium, issues related to travel and tourism were studied. Although no specific proposal has emerged, it appears that the issue of state support for the tourism industry may likely be before the General Assembly this biennium.

The 1999 Studies Bill authorized the study of issues relating to the establishment of a travel and tourism capital incentive program. As a result, the LRC created the Capital Incentive Program for Tourism Committee. Although the Committee did not recommend any legislation, it considered three separate proposals for creating an incentive for tourism development. One of the proposals suggested a tax incentive program similar to the Bill Lee Act. The second proposal was modeled after the Kentucky Tourism Development Act, which allows developers to recover up to 25% of their costs from state sales tax refunds. The third proposal was a combination of the other two, including a graduated incentive based on the tier status of the county in which the project is located and a refund of state sales, payroll and other taxes. The tourism industry was heavily represented on the Committee, but they were unable reach a consensus on what should be done. The final report recommended that the industry continue to work with the legislative members to create a legislative proposal that combines the best aspects of each of the proposals.

S.L. 2000-138, the 2000 Studies Bill, authorized the LRC to study the State's travel and tourism industry and the economic benefits of that industry. The LRC did not create or make any appointments to this committee, so no study was undertaken. However, the LRC Committee on Coastal Beach Movement, Beach Renourishment, and Storm Mitigation, included in its final report a legislative proposal to study the tourism industry and its economic impact statewide, with specific emphasis on the effects and costs of erosion, air and water pollution, and other deteriorating, polluting, or detracting forces.

VI. EDUCATION: PRIMARY AND SECONDARY

(Kory Goldsmith, Robin Johnson, Shirley Iorio, and Sara Kamprath (RD) – 733-2578; Jim Newlin and Phillip Price (FRD) - 733-4910)

<u>High Student Achievement and School Accountability</u>

During the past 10 years, there has been a concerted effort on the part of State lawmakers and policymakers to raise the standards for students and educators, and to hold schools, educators, and students accountable for their performance. Given the anticipated budget shortage, it is expected that legislators will continue with this focus and, furthermore, will scrutinize education initiatives in order to assure that funds are being spent effectively to meet these goals of standards and accountability.

ABC's Program

The ABC's Plan, in place since 1996, is an accountability model for the public schools to improve student performance, emphasize the basics and high educational standards, and maximize local flexibility and control. 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 for educators when schools show academic success and penalties when they do not. Last year, $102 million was spent for the rewards.

Student Accountability Standards

State lawmakers will continue to give high priority to supporting and rewarding high student achievement for all students. However, a number of issues are percolating that could affect the ABC's program. The first issue is the impact of the State Board of Education's newly adopted Student Accountability Standards, designed to address the question of whether students have some responsibility for their academic achievement. These standards will be enforced at the end of this year for fifth graders. It is estimated that a large number of students will not be promoted at the end of this year or will need accelerated remediation and retesting. This outcome will need to be balanced against a desire to reduce the State's dropout rate, currently at 12% (average percent of teens aged 16-19 not enrolled in school and not high school graduates: 1995-97). Furthermore, research during the last thirty years has not shown retention to be effective. Rather, it shows that early identification of learning problems and effective, individualized learning opportunities are more successful than retention. State lawmakers are likely to examine funds currently spent on public education in order to identify available

resources that can be redirected for remediation and intervention designed to enable all students to meet or exceed performance expectations.

Closing the Achievement Gap

Another issue likely to be debated this year is the achievement gap between White and minority students. While overall levels of academic performance have risen in the past few years, the gap continues to exist. Last year, a pilot program to test a revised school accountability model for the ABC's was established. The first year's results will be available after this school year. In the participating pilot schools, additional bonuses will be awarded based on the success of various disaggregated groups of students. In addition, a legislative study committee that has been examining the achievement gap is expected to recommend that all schools should be held accountable and rewarded for a "closing the gap" component.

State Testing Program

There is growing concern that the State may overemphasize standardized tests. During the 1995-96 school year, the number of tests was reduced by about 50% because the ABC's shifted attention to the basics. However, since that time, the number of tests has again increased. Additionally, a federal change in special education law requires all exceptional students to participate, with appropriate modifications, in all the tests that are part of a state's accountability program. Until now, many of these students have been exempted from the tests used in the ABC's program. The only exception will be for students who do not have the ability to participate in the standard course of study and are eligible for alternative assessments. In January 2001, the Board of Education voted to delay implementation of the high school exit exam for one year until 2003. The Board also is looking at ways to change the role the writing tests play in calculating growth for the ABC's bonuses.

Readiness for Kindergarten/Early Childhood Education for At-Risk Four-Year Olds

Research shows that high quality early education has an impact on long-term achievement in language, literacy and math skills. Children who have spent time in a high quality program generally have fewer behavior problems and are retained less than other children in the early grades. Although all children benefit from high quality early education, at-risk children derive a greater benefit.

During the past eight years, the General Assembly and Governor Hunt ambitiously created and funded the Smart Start program, an initiative designed to improve the quality of early childhood programs. For fiscal year 2000-2001 alone, $270 million was appropriated for this purpose. Smart Start dollars are used to fund a wide range of projects that are determined by local collaborative partnerships involving both public and private groups.

This past fall, the Wake County Superior Court ruled in the Hoke County part of Hoke County Board of Education v. State of North Carolina, No. 95 CVS 1158 (N. C. Super. Ct. Oct. 12, 2000) popularly referred to as the "Leandro Case", that the State must implement early childhood education for at-risk students. While the State may appeal this or other parts of the case, the General Assembly certainly will discuss whether to fund a targeted preschool program. As part of this discussion, the following issues are likely to be among those considered: (a) current and future sources of funds for this program; (b) whether Smart Start funds can and should be redirected to help

fund early childhood education programs for at-risk four-year-olds; (c) a timeline for implementation; (d) an apportionment of responsibility for costs among State and local agencies; (e) the State agency that would have primary oversight; (f) the focus of these programs; (g) accountability for these programs; (h) the degree to which private providers will be involved; and (i) appropriate teacher qualifications.

Reduced Class Size

Many legislators and the public support class size reduction, particularly in the early elementary years. Currently, the State allocates one position for every 20 students (K-2nd), for every 22.23 students (3rd grade), for every 22 students (4^{th}-6^{th}), for every 21 students (7^{th}-8^{th}), for every 24.5 students (9^{th}), and for every 26.64 students (10^{th}-12^{th}). Class size maximums are generally three to four students above the allotment ratio. In total, the cost to reduce class size by one student in all grades by one would cost approximately $125 million. To reduce class size by one student in only kindergarten through second grade would cost approximately $38 million. And to reduce class size to 20 students in third grade would cost approximately $65 million.

In addition to the State cost, an initiative to reduce class size also has an added impact on local school systems' abilities to provide sufficient classrooms and teachers. One option, which probably will be discussed, is whether to target reduced class sizes in the early years for students who are identified as at risk of school failure.

Maintaining and Fostering Teacher Quality

Over the past several years, the General Assembly has implemented a number of measures to raise teacher salaries to the national average and to strengthen the quality of the teaching workforce. It will continue to face the conflicting dilemma of how to raise standards while the demand for teachers exceeds the supply of teachers.

Teacher Salaries

In fiscal year 2000-01, the General Assembly funded the fourth and final installment of the teacher salary schedules outlined in the Excellent Schools Act of 1997. One of the Governor's targets with these salary schedules was to bring North Carolina teachers' salaries to the national average. During the last four years, the General Assembly added over $1.4 billion to teacher salaries (annual cost of $1 billion). Since fiscal year 1996-97, North Carolina's teacher salary rank has moved from 43^{rd} in the nation (80.8% of the national average) to 23^{rd} in fiscal year 1999-2000 (94.2% of the national average). Final data related to reaching the national average teacher salary will not be available until late 2001 or early 2002.

The national average teacher salary is projected to increase 3% annually. The average cost to increase the annual experience increment of North Carolina's salary schedule is 1.85% (individual teacher salaries will increase between 1.43% and 5.88% based on the teachers years-of-experience). A 1% salary increase for personnel paid on the teachers' salary schedule is $31 million ($36 million with matching Benefits). To continue to raise teachers' salaries in order to attract and retain qualified professionals, the General Assembly will need to determine where to find the additional funds.

Performance-Based Licensure Program (PBL)

In exchange for raising teachers' salaries, the Excellent Schools Act of 1997 also increased the standards for obtaining certification and career status and linked significant salary increases to certain events. For example, beginning teachers are now

paid a minimum starting salary of $25,000 and the revised salary schedule includes a significant increase after the third year (when continuing certification is obtained) and the fourth year (when career status is obtained).

The Excellent Schools Act required the State Board of Education to develop more rigorous standards for continuing certification. The State Board developed PBL to meet this requirement. Continuing certification is earned after three years of teaching experience and successful completion of the PBL. To reward teachers who successfully complete this rigorous program, the largest increase on the teacher pay scale is after the third year to correspond with the conversion of an initial teaching license to a continuing teaching license.

All beginning teachers in North Carolina are assigned a mentor and they participate in PBL to convert their initial license to a continuing license. The program is designed to provide beginning teachers direction, support, and feedback during their first years in the classroom so that their experiences are positive. The PBL product, typically submitted during the second year of teaching, is a collection of evidence gathered over time in the normal course of teaching which validates the teacher's knowledge, skills, and ability to teach. Rather than focusing only on the data provided by classroom observations, the performance-based product includes multiple sources of data gathered and developed in the teaching-learning process The PBL allows up to three licensure reviews. Each time a performance-based product is submitted for licensure review, two trained assessors, who do not know the candidate and who work independently of each other, evaluate the product.

PBL was implemented for the first time in the 1999-2000 school year. Therefore, performance-based products will be submitted for the first time in June 2001, and a number of issues have arisen recently. One issue is whether the rigor of the performance-based product is a deterrent to the recruitment and retention of new teachers. There are experienced teachers who report that the process is much too time consuming for new teachers. In addition, some teachers argue that the PBL process is redundant because colleges and universities require education students to complete a portfolio. A third concern expressed by experienced teachers is that teachers who choose to pursue National Board Certification will repeat the performance-based licensure process. And finally, some new teachers feel that the requirement for the performance-based product is overwhelming with all of the other responsibilities and challenges they face as a beginning teacher.

Teacher Shortage

The estimated shortfall of teachers and administrators is of growing concern. This is not only an issue of pure numbers, but also there is an acute lack of qualified professionals in certain subject areas such as math, science and special education; in certain geographic areas; and in schools where the students are perceived as more difficult to teach. Other states are beginning to recruit teachers by, in addition to raising salaries, using incentives such as enhanced retirement benefits, tax credits that increase with years of service, signing bonuses, and housing grants to help with down payments or closing costs.

Charter Schools/School Choice

Charter Schools

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. Charter schools are public schools operated by private nonprofit corporations. The majority of laws and regulations governing traditional public schools do not bind charter schools, which operate under five-year charters granted by the State Board of Education. Currently, there is a statewide cap of 100 charter schools and there are 95 charter schools. Thus, it is likely that a discussion of raising the cap will occur this year. However, this discussion will raise the question of the accountability of charter schools for the academic progress of their students. Charter schools must participate in the ABC's program, and a number of them have qualified as "low-performing." In response to 1999 legislation, the State Board of Education must report by January 1, 2002, to the Joint Legislative Education Oversight Committee on the results of the Board's five-year evaluation of charter schools. The State Board is studying the impact of charter schools on the delivery of services by the public schools, student progress in charter schools and best practices coming out of the charter schools. The State Board must recommend whether to increase the number of charter schools, modify the program or terminate the program.

School Choice

In the last half of the 1990's, a number of policymakers and lawmakers advocated the use of tax credits and vouchers so that students could attend schools other than traditional public schools. Given the apparent success of North Carolina's charter schools and the defeat of several other states' choice initiatives in the past election, it appears as if vouchers and tax credits may not have necessary public support. However, it is possible that legislators may consider other ways to give parents choices in where their children are educated, particularly when the children are in low-performing schools.

VII. EDUCATION: COMMUNITY COLLEGES AND UNIVERSITIES

(Kory Goldsmith, Robin Johnson, Shirley Iorio, and Sara Kamprath (RD) - 733-2578)

Faculty Salaries

The Joint Legislative Education Oversight Committee has heard about the needs and inability of the UNC system and community colleges to attract and retain excellent faculty. North Carolina Community College faculty salaries rank near the bottom regionally and nationally based on average faculty salary. The UNC system also faces pressure to remain competitive in the academic market so the UNC Board of Governors is requesting a 6% increase in the salary base for each year of the 2001-02 biennium. The Board also is requesting an additional $28.5 million to bring faculty salaries to a competitive level.

Tuition Increases at UNC Constituent Institutions

The North Carolina Constitution 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. The issue of appropriate tuition levels will be a topic of debate especially because of budgetary constraints. In November 2000, the UNC Board of Governors approved a budget request for a 4% tuition increase. Individual campuses may also request tuition increases that the Board would consider in March.

Higher Education Facilities Construction

Given the anticipated increase in construction due to the recent passage of the Higher Education Bonds, there may be a need to streamline or provide alternative methods for bidding and construction. The Higher Education Bond Oversight Committee is charged with determining whether changes in the construction methods could enhance cost savings and promote on-time completion. The UNC system has already applied to the State Construction Commission to use an alternative construction management procedure.

VIII. ELECTIONS

(Bill Gilkeson (RD) 733-2578)

Election Laws

Election laws have recently received much attention in the media as a result of the presidential election. Even before the election, North Carolina was examining its election laws. The Election Laws Revision Commission is composed of members representing the General Assembly, the State Board of Elections, political parties, and local election agencies. Many of the issues studied by the Commission are likely to be discussed, including:

Lessons from the Florida Presidential Election and Contest

Should the State do something to upgrade voting equipment used in the counties? Each county purchases its own voting equipment, and while most use either direct-record electronic or optical-scan voting, a few use old lever machines and eight use Florida-style punch cards. The Revision Commission recommended giving more authority over the purchase and use of voting equipment in the counties. The leadership of the General Assembly is appointing a Select Committee on Voting Procedures to review the kind of voting equipment now being used and how voting procedures might be changed. Should the State clarify its procedures for recounts? Its procedures for handling election disputes generally? The Revision Commission has proposals for these issues as well.

Early voting

In 1999 North Carolina joined a few other states by allowing voters to go to a limited number of sites during the three weeks before the election and, without having to give any special reason, cast their votes early. Almost 400,000 voters took advantage of the innovation. Several issues remain from the hard-fought debate about early voting in the 1999 Session. Should it be allowed in primaries as well as general elections? Should there be more safeguards against fraud? Should more State funding be provided for adequate staff and equipment? At least one issue resulted from the experience of October 2000: Should the early voting period start later so that boards of elections have time to process last-minute registrations?

Second primaries

Since 1990 North Carolina has set at 40% of the voters the threshold by which a primary frontrunner can avoid a runoff. In that time, the number of second primaries beyond the local level has dwindled. Some years, every polling place in the State must be opened in early June for one runoff in a very low-profile down-ballot contest. The turnout plunges, sometimes as much as 90%, and comments about wasted tax money abound. On the other hand, sometimes the front-runner in that primary receives less than 30% in the first primary, and the second primary reverses the result. Is it time to abolish the second primary?

Municipal boards of election

About 50 City Councils appoint a municipal board of elections. The purpose of such a board is to conduct elections for the City Council. The State Board of Elections perceives an inherent conflict of interest in such arrangements. The State Board contends that the existence of 50 boards in addition to the 100 counties boards of elections make its duty of supervising all elections in the State too difficult to do, especially in odd-numbered years. Most municipal boards of election are in towns of less than 1,000 in total population. Is it time to abolish them?

Rule making authority

The State Board of Elections says it needs to act quickly during an election year, that the General Assembly has created it independent of other executive departments, and that the General Assembly pays close attention to its activities. All those things, the State Board argues, mean it should not have to submit its rules to the Rules Review Commission before they go into effect. Should the State Board of Elections be exempted from the APA?

Voter Fraud

The argument is often made that the State does not adequately guard against vote fraud such as double voting or voting in the name of deceased or absent registrants. One proposed solution is to require that every voter present an identification document at the polls. Another is to require voters to sign a document at the polls, with the possibility that their signature could be verified. Others point to the potential for intimidation of minority voters. Should something be done to ensure that voters identify themselves so there is no fraud?

Taxpayer Representation

People who own more than one home often argue that their interest in being free from taxation without representation should entitle them to vote for local tax-levying boards in all places where they own homes. Court decisions say that such a change in the law would violate the State Constitution. Perhaps, however, a change in the State Constitution would have a chance to pass muster under the U.S. Constitution's equal protection clause. Should voters be allowed to vote in local elections of the jurisdiction in which the voters' secondary residence is located?

Voter Records

Should voter registration records be private? Two large counties have recently made individual voter registration records searchable on the Internet. Those boards take the position that putting voter records on the web is a logical extension of the public records laws. Some voters, however, feel that they are forced to choose between their privacy and the right to vote.

Campaign Finance

Recently, the financing of campaigns has been debated heavily. Some municipalities are advocating placing limits on the amount spent campaigning for local office, and advocating the use of taxpayer dollars to finance the campaign. Additionally, several lawsuits have brought to light issues in existing State legislation. Topics that might be discussed include:

National Party Soft Money

For more than 20 years, national political parties have been allowed to raise money outside the limits of the Federal Election Campaign Act, as long as they don't use it to directly assist federal candidates. This is called "soft money," to distinguish it from the "hard money" that is subject to the federal limits. Increasingly, national party soft money has gone to State parties and found its way into campaigns for Governor and General Assembly. What role should national party "soft money" play in the electoral process? North Carolina law has its own version of "soft money." It exempts party executive committees from the $4,000 contribution limit in receiving contributions and giving them. Some argue that this makes a mockery of the contribution limits. Others say it gives parties the important role in the political system that they were beginning to lose. Should political parties be exempted from fund-raising limits?

Public Campaign Finance

A handful of States has gone to a comprehensive system of public financing of campaigns. The public money goes to candidates who raise a threshold amount on their own and who pledge to limit their spending. The movement that supports comprehensive public funding says it is the one thing that will give average people the ability to overcome the increasing power of great wealth in the political system. Others point to presidential elections, where something similar already exists, as evidence that public financing is no panacea. Should North Carolina adopt public financing of campaigns?

Disclosure of Information

Candidates and political committees must make comprehensive reports of their contributions and expenditures, but they must do so only quarterly, and most campaigns are not required to file electronically. Can or should the disclosure laws relating to the reporting requirements be strengthened?

Enforcement

Most campaign finance violations are punishable as Class 2 misdemeanors. That is a very mild penalty. Very few cases ever reach conviction. Should (or how should) the enforcement of campaign regulation be changed -- stiffer criminal penalties or possibly civil penalties?

Redistricting – see that heading.

IX. ENVIRONMENT

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

Air Quality and the Motor Vehicle Inspection and Maintenance Program

During the past two sessions the General Assembly has enacted legislation designed to better protect the air quality of the State. In 1999 the General Assembly enacted the Ambient Air Quality Improvement Act of 1999 (S.L. 1999-328; SB 953), which addressed several air quality issues. Effective January 1, 2004, this legislation requires that gasoline manufactured or sold in the State have a concentration of sulfur less than or equal to 30 parts per million. A person may manufacture or sell gasoline with a concentration of sulfur of up to 80 parts per million if the average concentration of sulfur in the gasoline manufactured or sold by the person in a one-year period is less than 30 parts per million.

S.L. 1999-328 also made significant changes to the motor vehicle inspection and maintenance program (I/M). The I/M program consists of a safety inspection in all 100 counties and an emissions inspection in specific counties. The safety inspection consists of an inspection to determine if the motor vehicle has the required equipment and if the equipment is in a safe operating condition. Motor vehicle emissions inspections are required in nine "emissions counties" (Cabarrus, Durham, Forsyth, Gaston, Guilford, Mecklenburg, Orange, Union, and Wake). The emissions inspection consists of a visual inspection of the motor vehicle's exhaust system and emissions control devices and an analysis of the exhaust emissions while the vehicle idles (the "tailpipe" or "idle" test).

S.L. 1999-328 provides that the I/M program will be enhanced by replacing the "tailpipe" test with a test that simulates acceleration while measuring emissions (ASM test). It also provides that the I/M program will be expanded beyond the nine emissions counties according to the schedule set out in the following table.

I/M PROGRAM EXPANSION SCHEDULE (Expansion Counties)	
July 1, 2003	Catawba, Cumberland, Davidson, Iredell, Johnston, Rowan
January 1, 2004	Alamance, Chatham, Franklin, Lee, Lincoln, Moore, Randolph, Stanley
July 1, 2004	Buncombe, Cleveland, Granville, Harnett, Rockingham
January 1, 2005	Edgecombe, Lenoir, Nash, Pitt, Robeson, Wayne, Wilson
July 1, 2005	Burke, Caldwell, Haywood, Henderson, Rutherford, Stokes, Surry, Wilkes
January 1, 2006	Brunswick, Carteret, Craven, New Hanover, Onslow

After July 1, 2006, the Environmental Management Commission (EMC) may require emissions testing in additional counties. S.L. 1999-328 also broadens the class of vehicles subject to emissions inspections by removing an exemption for vehicles not powered by gasoline or designed to be powered by gasoline. However, the EMC may not require emissions testing of diesel-powered vehicles prior to July 1, 2001.

It is important to note that S.L. 1999-328 provides that the I/M program will use the new ASM test and be expanded beyond the nine emissions counties only if the General Assembly has increased the fee for a motor vehicle emissions inspection prior to January 1, 2001. This legislation required the Department of Environment and Natural Resources (DENR) to consult with the Division of Motor Vehicles (DMV) and the affected parties to determine a reasonable fee for motor vehicle emissions

inspections under the enhanced I/M program. DENR was directed to report its findings and recommendations to the Environmental Review Commission (ERC). The ERC, in turn, was directed to recommend legislation to increase the fee for a motor vehicle emissions inspection to the 2000 Regular Session of the 1999 General Assembly.

The Secretary of DENR reported the results of DENR's study of the I/M fee issue and presented a proposal to the ERC. The DENR proposal would have required that motor vehicle emissions be analyzed using the on-board diagnostic (OBD) systems of 1996 and later models rather than the ASM test. In the nine emissions counties, the "tailpipe" test would continue to be required for 1975 through 1995 model motor vehicles, while the OBD test would be required for 1996 and later model motor vehicles. In the expansion counties, the OBD test would be the only test required and would only apply to 1996 and later model motor vehicles. Under the DENR proposal, the fee for a combined safety and emissions inspection would increase from $19.40 to $23.75 on July 1, 2000 and to $25.90 on July 1, 2002. The ERC recommended the DENR proposal to the 2000 Session of the 1999 General Assembly and the proposal was introduced as House Bill 1638. While House Bill 1638 was significantly amended during the legislative process and the provisions that would have increased the safety and emissions inspection fees were not included, DENR's proposal to shift from the ASM test to the OBD test was retained and House Bill 1638 was ultimately enacted as S.L. 2000-134.

S.L. 2000-134 provides that effective July 1, 2002, emissions inspections in the nine emissions counties will consist of a visual inspection of the motor vehicle's emissions control devices and, if the motor vehicle is a 1975 through 1995 model, a "tailpipe" test or, if the motor vehicle is a 1996 or later model, an OBD test. Effective July 1, 2003, emissions inspections in the expansion counties will consist of a visual inspection of the motor vehicle's emissions control devices and an OBD test for 1996 or later model motor vehicles. The emissions inspection requirement for expansion counties will only apply to those counties as they are phased into the I/M program according to the above table. Emissions inspections in the nine emissions counties will remain the same. Effective July 1, 2006, emissions inspections in the nine emissions counties and all of the expansion counties will consist of a visual inspection of the motor vehicle's emission control devices and an OBD test for 1996 or later model motor vehicles. The "tailpipe" test will no longer be required in any county.

Although S.L. 2000-134 does not provide for an increased fee for a motor vehicle safety or emissions inspection, it does direct the ERC to study issues related to the costs associated with the safety inspection and I/M program to determine a reasonable fee for inspections under the enhanced I/M program. The ERC is directed to recommend legislation to increase the inspection fees to the 2001 General Assembly. This act also repeals the provision of S.L. 1999-328 that would have repealed the enhanced and expanded I/M program established by S.L. 1999-328 if the General Assembly did not increase the fee for a motor vehicle emissions inspection prior to January 1, 2001.

Smart Growth – see that heading.

Water Quality

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

Animal Waste Management

North Carolina has an animal waste management system permitting program that is designed to protect the State's groundwater, surface water, and air. This program requires an annual inspection and an annual operations review of animal waste management systems 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 such operations.

In 1997 the General Assembly ratified the Clean Water/Environmentally Sound Policy Act (S.L. 1997-458), which established a two year statewide moratorium on the construction or expansion of swine farms and lagoons and animal waste management systems for swine farms. This Act also established a moratorium on the construction or expansion of swine farms or lagoons in any county in the State that has a population of less than 75,000, has more than one hundred fifty million dollars ($150,000,000) of expenditures on travel and tourism, and is not in the coastal area. In addition, the Act authorized counties to adopt zoning regulations for large swine farms and imposed additional setback requirements for swine operations.

S.L. 1998-188 extended the moratoria on the construction or expansion of swine farms to September 1, 1999. This legislation amended two exemptions to the statewide moratorium that allow the Environmental Management Commission, after consultation with the Animal and Poultry Waste Management Center of North Carolina State University, 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 technology. In addition, swine growers must 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.

During the 1999 Regular Session, the General Assembly enacted the Clean Water Act of 1999 (S.L. 1999-329; HB 1160), containing various measures designed to protect the water quality of the State. Among other water quality issues addressed, the Act extends the Statewide and Moore County moratoria on construction or expansion of swine farms and animal waste treatment systems until July 1, 2001. In addition, the Act directs DENR to develop an inventory and risk ranking of inactive animal waste lagoons.

Recently the State of North Carolina entered into agreements with two major pork producers that provide for the development and implementation of environmentally superior animal waste management technologies. Under the agreements, Smithfield Foods, Inc., and its subsidiaries and Premium Standard Inc., and its subsidiaries agree to fund research efforts by N.C. State University to develop environmentally superior animal waste disposal technologies. Smithfield Foods, Inc., is supplying $15 million for the research while Premium Standard Inc., is providing $2.5 million. N.C. State researchers will begin to identify and develop new technologies immediately and will have two years to complete their research. After the research is complete, both

producers are required to implement the new technologies on their company-owned farms within three years. The pork producers are required to provide to their contract farms the financial and technical assistance necessary to facilitate the conversion to environmentally superior animal waste management technologies within three years as well. The agreements also mandate other action by the two pork producers to protect and enhance the environment.

Underground Storage Tanks

The General Assembly has enacted a series of bills designed to prevent soil and water contamination from leaking Underground Storage Tanks (USTs), establish liability for the releases from USTs, 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 to adopt rules establishing a risk-based approach to assessing, prioritizing, and cleaning up releases from USTs. The primary purpose of the risk-based approach is to protect the solvency of the Commercial and Noncommercial Funds and to ensure that the limited resources of the funds will be spent on sites that present the greatest risk to human health and the environment. Thus, if a risk assessment reveals that a site poses a degree of risk "that is no greater than the acceptable level of any risk established by the Commission" under the risk-assessment rules, further cleanup costs incurred will not be covered under either Fund.

S.L. 1998-161 represents the General Assembly's effort to expedite both the cleanup of low risk releases from UST sites and the review and closure of these sites. This legislation includes a provision that defrays the cost of complying with the risk-based corrective action rules for those individuals who have initiated assessment work under the prior cleanup rules. It also provides that the cost of connecting third parties to public water systems is eligible for payment or reimbursement from the Commercial Fund or Noncommercial Fund if DENR determines that such connection is a cost-effective measure to reduce risk to human health or the environment. The preapproval provision allows the Environmental Management Commission to require an owner, operator, or landowner to obtain approval from DENR before proceeding with any task that will result in a cost that is eligible for payment or reimbursement from the Commercial or Noncommercial Fund. This legislation also requires that an owner or operator of a commercial UST must comply with State and federal spill and overfill protection requirements and corrosion protection requirements in order to receive and maintain an operating permit.

The Division of Waste Management has instituted two changes to the UST program to facilitate the expeditious review and closure of sites containing low risk releases. Division of Waste Management staff increased their review of sites containing low risk releases and this has resulted in an increase in the number of sites closed in accordance with the risk-based rules. In addition, the Division of Waste Management

has accepted the use of less-expensive testing methods for the determination of the existence of a discharge or release.

During the 1999 Regular Session, the General Assembly enacted SB 1159 (S.L. 1999-198) broadening the authority of DENR to allow the imposition of land-use restrictions designed to protect public health and the environment on contaminated property subject to a DENR remediation program. This legislation required the imposition of land-use restrictions when contaminated sites were to be remediated to a "less than pristine" level of cleanup.

Because of unforeseen issues related to the application of SB 1159 to the UST program, S.L. 2000-51 was enacted exempting sites contaminated by leaking petroleum underground storage tanks (USTs) and remediated to "risk-based" rather than "pristine" standards from the land-use restrictions and deed recordation requirements imposed by SL 1999-198 (SB 1159). The exemption applies retroactively to October 1, 1999 and expires September 1, 2001. This act also directs the Environmental Review Commission to continue studying issues related to the application of land-use restrictions to UST sites that are remediated to risk-based standards and to report its findings, recommendations, and any legislative proposals to the 2001 General Assembly. The Environmental Review Commission continues to study this issue through the mechanism of an interested parties working group and hopes to have a recommendation for consideration by the 2001 General Assembly.

Despite an improvement in the balance of the Commercial Fund, the solvency of the Commercial Fund remains a concern. The Petroleum Underground Storage Tank Funds Council, established in 1991 by the General Assembly, continues to monitor the solvency of the Commercial Fund and to study measures of ensuring its continued solvency.

Beach Preservation and Restoration

(Emily Johnson (BDD) - 733-6660 and Barbara Riley (RD) – 733-2578)

In 1997 the Legislative Research Commission (LRC) undertook a study on coastal beach movement, beach renourishment, and storm mitigation. North Carolina's beach communities are impacted by beach erosion problems that have been exacerbated in recent years by Hurricanes Bonnie, Fran, Dennis and Floyd. Erosion has damaged public infrastructure and property, private property, and the public beach. The erosion of the beaches and the loss of property may threaten the beach tourism that supports the economy of the coastal region.

The original committee authorized by the LRC to study the problems with beach erosion was unable to complete its work due to the extraordinary length of the 1998 session. Therefore, the LRC reauthorized the committee to continue its work during the 1999-2000 biennium. The current LRC Study Committee on Coastal Beach Movement, Beach Renourishment, and Storm Mitigation has filed a report recommending two pieces of legislation to the General Assembly. The first is a study of the impact of the tourism industry on the State's economy. The second piece of legislation would create an independent commission, housed administratively within the Department of Environment and Natural Resources, that would develop a State plan and strategy to preserve and restore the State's beaches. The legislation would also create a North Carolina Beach Preservation and Restoration Fund. The commission would administer

the Fund and make grants to local governments for public beach access, beach preservation, and beach restoration activities. The legislation provides for a one million dollar appropriation from the General Fund for Fiscal Year 2001-2002 and a two million dollar appropriation for Fiscal Year 2002 –2003. The legislation also proposes a schedule of increasing appropriations to the Fund until such appropriations reach 12 million annually.

Wetlands Reimburse/Local Tax Base -- see that heading under **TAXATION.**

X. ETHICS

(Walker Reagan (RD) – 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. In 1999, HB 1087 was introduced. This bill would have codified the Governor's Executive Order. No action was taken on the bill.

On January 12, 2001, Governor Easley issued his Executive Order No. One to continue the State Ethics Board as it had been constituted under Governor Hunt, but made the order only applicable to appointed officials and not perspective appointees. It is uncertain whether Governor Easley will recommend this ethics procedure be codified.

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 definition of potential conflicts of interest, defined appropriate lobbying activities, and established 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.

In 2000, HB 1174 was introduced to study the issue of conflicts of interest for public members of governmental advisory boards and commissions. The bill was incorporated as Sec. 12.1 of SB 787, the 2000 Studies bill, and the matter was referred to the Legislative Ethics Committee for study. The Committee took no action on the study.

Similar legislation affecting both legislative ethics and governmental ethics might be reintroduced in 2001.

XI. FAMILY LAW

Settlement Procedures in District Court Family Financial Actions
(Walker Reagan (RD) – 733-2578)

In 1997 the General Assembly authorized the design, implementation and evaluation of a pilot program to allow judges to require parties in equitable distribution, alimony and child custody cases to attend mediated settlement conferences prior to trial. (G.S. 7A-38.4). In 1998 the General Assembly expanded the judge's authority to refer cases to other settlement procedures including arbitration.

The NC Bar Association, as well as the Chief District Court Judges and the Dispute Resolution Commission, are recommending legislation to implement a statewide settlement procedures program in these types of cases.

Abolition of Common Law Torts of Alienation of Affection and Criminal Conversation

The NC Bar Association is expected to recommend legislation to abolish the common law doctrines of alienation of affection and criminal conversation which allow a spouse to sue a third party for damages arising from the third party's interference with the couple's marriage. Because of changes in the law governing alimony and post-separation support, a spouse seeking support can sue a third party under these theories without affecting their right to recover from their spouse.

North Carolina is one of only a few states that still recognize claims for alienation of affection and criminal conversation. Earlier conflicting decisions by the NC Court of Appeals and the NC Supreme Courts have left uncertainty in the law.

In 1999, HB 946 was introduced that would have codified the current law of alienation of affections. No action was taken on the bill.

Marriage License Laws
(Wendy Graf (RD) – 733-2578)

At the urging of the American Civil Liberties Union (ACLU), Senate Bill 1018 was introduced in the 1997 Session to resolve the constitutional questions surrounding the requirement that Social Security numbers be provided before a marriage license could be issued. The bill passed, amending the law to allow applicants to submit an affidavit stating that he or she does not have a Social Security number, but it also included a provision for continuing a study of the marriage license procedure.

The Legislative Research Commission's Marriage License Laws Committee studied the marriage license statutes and determined that they had not been comprehensively reviewed since they were enacted over 100 years ago.

Who may solemnize a marriage. The first priority of the Committee was to address constitutional questions that had been raised regarding who is authorized to solemnize a marriage in North Carolina. The ACLU has taken the position that the statutes, as they are now, are unconstitutional in that they give certain religious groups preferential treatment. Specifically, there have been several complaints from Native Americans whose traditional Native American marriage ceremonies are not recognized

as valid under North Carolina Law. The recommended bill expands the language of the statute to be inclusive of all religious groups in an effort to eliminate any questions of constitutionality.

Prisoners' marriages. The constitutional issues involved with prisoner marriages were a concern of Prisoner Legal Services. The Supreme Court has held that prisoners have a constitutional right to marry, but some prisoners in North Carolina are being denied this right because they are unable to appear in person at the Register of Deeds' office to apply for a marriage license. The statutes do not currently address this issue, but the recommended bill adds a provision to the statutes allowing a party who is unable to appear in person to submit a sworn and notarized affidavit in lieu of personal appearance.

Marriages of underage applicants. The other issue where there seemed to be some controversy, was the issue of marriages of underage applicants. The recommended bill would require judicial approval before an applicant under the age of 14, where the female is pregnant or has given birth, could be issued a marriage license. The statutes currently require only parental consent. NC-NOW supports the effort, but would like the legislature to take it further. They take the position that both judicial and parental consent should be required in all cases of applicants under the age of 16, where the female is pregnant or has given birth. There was disagreement over whether, as a matter of public policy, the State should place more emphasis on the interest in legitimating the child involved or the best interests of the underage applicant.

XII. GENERAL ASSEMBLY

Veto

(Gerry Cohen (BDD) –733-6660)

With approval of the 1995 Regular Session and the people in a November 1996 referendum, North Carolina became 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 ten 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 have 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 the 1977 and 1999 Sessions no bills were vetoed, but two did become law

during the 1997 Session 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.

XIII. HEALTH AND HUMAN SERVICES

(Linda Attarian, Erika Churchill, Dianna Jessup, Theresa Matula (RD) -- 733-2578)

Abandoned baby "safe-places"

(Erika Churchill, Dianna Jessup (RD) – 733-2578)

Last session, the General Assembly considered joining a number of states that have adopted abandoned infant legislation. Stories of abandoned infants being left at roadsides and trash bins, and possibly even being left for dead, motivated some states, beginning with Texas in 1999, to adopt legislation that would allow mothers to leave their infants in "safe" places without fear of prosecution. Under current law in North Carolina, a mother abandoning her infant could be charged with abandonment or child abuse. Identical bills introduced in the 2000 Session of the 1999 General Assembly (HB 1616 and SB 1257) would have decriminalized abandonment under certain circumstances. This legislation was proposed upon the recommendation of the Child Fatality Task Force and was supported by the Covenant for Children.

Abortion and its relation to RU 486, the newly approved "abortion pill"

(Erika Churchill (RD) – 733-2578)

The Food and Drug Administration has recently approved the drug mifepristone, which is often referred to as 'RU486' and is used to terminate early pregnancy, for use in the United States. North Carolina law currently allows abortion only under certain circumstances. Termination of a pregnancy in the first 20 weeks is allowed when the procedure is performed by a North Carolina licensed physician in a hospital or clinic certified by the Department of Health and Human Services (DHHS). After the 20th week, the pregnancy may be terminated if there is substantial risk that continuance of the pregnancy would threaten the life or gravely impair the health of the woman, and the procedure is performed in a hospital. No doctor, nurse or hospital is required to perform an abortion or provide abortion services. A topic of discussion this session could include whether the current law permits the use of mifepristone in North Carolina.

Birth Defect Prevention (Para-natal health initiatives)

(Linda Attarian (RD) – 733-2578)

North Carolina ranks 45th among the fifty states in its infant mortality rate. According to the NC Child Fatality Task Force, each year more than 1,000 babies die before their first birthday, and only five states suffer a higher rate of infant deaths than North Carolina. Birth defects, birth-related conditions, and Sudden Infant Death Syndrome typically account for well over half the 1,600 children who die in our State

each year. North Carolina spends millions of dollars to save and treat premature infants and to provide care for babies born with birth defects and other problems that will follow them throughout their lives. For example, its costs the NC Medicaid program an average of $1,893 to pay for the delivery for a healthy, full-term baby, but a baby born nine to eleven weeks premature costs the program about $75,283. To address these issues, the N.C. Child Fatality Task Force is proposing a comprehensive list of six steps the State can take to reduce the number of infant deaths. These steps include everything from a folic acid awareness campaign for women to enhanced prenatal care for needy women. The estimated cost of the initiatives exceeds three million dollars.

Child support collections office update

(Erika Churchill (RD) – 733-2578)

Prior to October 1, 1999, child support payments were officially collected by the Clerk of Superior Court in each county and the Department of Health and Human Services. The two agencies utilized separate computer systems. Federal legislation required the State to establish one point of collection for child support payments by October 1999. North Carolina's Centralized Collections Operations (CCO) went into effect permanently on October 1, 1999. Significant issues arose with the implementation of the one point of collection, often resulting in delayed payments to custodial parents. Additionally, the agencies did not combine the legal enforcement portion of child support, adding to the confusion for the users of the system. At the recommendation of the Joint Legislative Public Assistance Oversight Committee, the General Assembly required that the agencies involved study the issue for solutions. An interim report detailing the results of the study was presented to the Joint Legislative Public Assistance Oversight Committee, confirming that the two systems can be combined. The two agencies are to provide the General Assembly, by March 1, 2001, with the cost figures to combine the two systems.

Continuity of Care

(Linda Attarian (RD) – 733-2578)

The LRC on Managed Care Issues has recommended legislation that would require an HMO to provide an insured the option of continuing coverage with a health care provider who leaves the insurer's provider network for reasons other than poor quality of care, when the insured is suffering from an ongoing special condition, such as terminal illness or pregnancy.

Dentists and Dental Hygienists Licensure Reform

(Linda Attarian (RD) – 733-2578)

The North Carolina Institute of Medicine Task Force on Dental Care Access reported in 1999 that as many as 57% of North Carolina's low-income population lacked access to appropriate dental health care. (*The North Carolina Institute of Medicine Task Force on Dental Care Access, Report to the NC General Assembly and to the Secretary of the NC Department of Health and Human Services;* April, 1999). One of the contributing factors to the lack of access is the fact that North Carolina currently has a shortage of licensed, practicing dentists. Currently, there are 3,218 licensed dentists in NC, which makes this state 47th among all states in the number of dentists per capita in 1999. Further, sixty-four counties across North Carolina have seen a reduction in the number of dentists since 1989, and four counties have no dentists at all.

The task force recommended that one way to attempt to solve the shortage of dentists is to amend the Dental Practice Act to allow "Licensure by Credentials" so that out-of-state dental practitioners could, through the discretion of the Board of Dental Examiners, be licensed to practice in this State under certain conditions, without having to take a mandatory clinical examination. Currently, if an out-of-state dentist moves to this State and attempts to gain NC licensure, the applicant must go through a rigorous two-day clinical exam, regardless of the applicant's experience, certifications, or any and all other credentials. At this time NC is 1 of 16 states that utilize this type of independent licensing. The task force recommended that the following considerations should replace the mandatory examination to evaluate the competency of petitioning dentists: 1) Graduation from an accredited school; 2) Passage of another state or regional examination; 3) Proof of current licensure in another state; 4) Minimum of two years of clinical dental experience; 5) Personal interview of applicant; 6) Minimum of three professional references; 7) Criminal record is checked with certification required to assure that no criminal charges are pending; 8) Passage of written examination testing knowledge and skills of infection control; and 9) Pass the North Carolina dental jurisprudence exam.

The NC Board of Dental Examiners are concerned that Licensure by Credentials would threaten the quality of dental care the citizens of NC currently have. The Board cites evidence that approximately 22.2% of all out-of-state applicants fail the required exam, compared to 12.6% of the graduates UNC-CH Dental School. The Board also contends that expunging the examinations does not necessarily mean that the number of dentists in the State will increase. Other states with less restrictive licensing laws than NC have similar shortages, especially within rural areas.

Disaster Funding

(Lynn Muchmore (FRD) – 733-4910)

Funding for disaster response quickly rose to the top of the agenda for the Disaster Response and Recovery Commission that began meeting in August. The $837 million appropriation for Hurricane Floyd relief passed in the 1999 Extra Session nearly depleted the Savings Reserve Account ("Rainy Day Fund"). The Commission is concerned that unless earmarked disaster funding is established, the State may be unable to react effectively to future catastrophes. Particular attention has been paid to the example set by Florida, where a tax on insurance premiums supports emergency management activities at the local level.

Health Insurance / Managed Care -- see **INSURANCE**, that heading.

Medicaid Reimbursement Rates

(Linda Attarian (RD) – 733-2578)

The North Carolina Medicaid program provides dental coverage for all eligible Medicaid recipients. Federal law requires North Carolina Medicaid to assure that payments to providers are sufficient to enlist enough providers so that dental care available under the plans is "available to recipients to the extent that those services are available to the general public" (42 C.F.R. 447.204). However, access to dental care by Medicaid recipients in North Carolina is very limited. On average, only 20% of Medicaid recipients visited the dentist in State fiscal year 1998 (NC DHHS, 1999). One of the primary barriers to accessing dental care is the lack of an adequate provider network to deliver services to low-income families and children. It has been reported that North Carolina has one of the lowest rates of actively participating dentists in the country (NC DHHS, 1999). A recent study by the NC Institute of Medicine Task Force on Dental Care Access found that one of the most significant reasons given by dentists for their lack of participation in Medicaid is its low reimbursement rates. (*The North Carolina Institute of Medicine Task Force on Dental Care Access, Report to the NC General Assembly and to the Secretary of the NC Department of Health and Human Services; April, 1999).* The Institute of Medicine Task Force report stated that the average Medicaid reimbursement to participating dentists is approximately 62% of their usual customary, and reasonable charges (UCR) for the most common dental procedures for children, and 42% of the UCR for other procedures. The Task Force recommended that the Medicaid reimbursement rates for all dental procedure codes should be increased to 80% of the UCR. The estimated cost to implement this recommendation was $27.4 million. The federal share would be $17.4 million, the State share, $8.7 million, and the county share $1.5 million. These figures were calculated using the 80% of the UNC-CH faculty practice dental fee schedule and assumed a 10% increase in utilization rates. New appropriations from the General Assembly would be required to fund the recommendation.

Mental Health Governance Reform

(Linda Attarian (RD) – 733-2578)

In 1998 and 1999 the General Assembly directed the State Auditor to coordinate and contract for a study of the State Psychiatric Hospitals and the Area Mental Health Programs. The "Study of State Psychiatric Hospitals and Area Mental Health Programs" (Study), April 1, 2000, was conducted by the Public Consulting Group, Inc. under the coordination of the State Auditor, and with the cooperation and assistance of the Department of Health and Human Services and other organizations and individuals. The findings and recommendations of this study were endorsed by the General Assembly and legislation was enacted (HB 1519) to establish the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services (MH/DD/SAS). The purpose of the Oversight Committee is to review and consider the recommendations of the Study and other matters and to recommend the necessary changes in State law and policy related to the governance, financing, and organizational structure, and service delivery systems of area authorities and MH/DD/SAS. The Oversight Committee has made membership appointments of nonvoting representatives of various interest and professional groups to five subcommittees: Governance, Services, Hospitals/Facilities, DD, and Finance. Each of these subcommittees have met and discussed their assigned focus topics. The overall goal of the subcommittees is to advise the Committee on how to build a new system whish serves the citizens and provides appropriate, effective and efficient services. The subcommittees will report their findings and recommendations to the Oversight Committee co-chairs for final decision making by the Committee. Any legislative proposals will be introduced in the 2001 General Assembly.

Older Adults

(Theresa Matula (RD) – 733-2578)

According to the Division of Aging, North Carolina's older adult population is projected to number more than 1.2 million (14.1% of the State's population) by 2010, 1.6 million (17.3%) by 2020, and should exceed more than 2 million (21.4%) by 2025. Many of these individuals will need long-term care services provided in the home, in the community, or in a residential or institutional setting.

Long-Term Care Plan

"…Long-term care lurks as the sleeping giant of the health-care system and the stakes are high unless steps are carefully taken to forge a long-term care system in this decade that is accessible to all the citizens of this State," these remarks are found in the introduction of the interim report by the North Carolina Institute of Medicine Long-Term Care Task Force. This report is in response to S.L. 1999-237, Section 11.7A, in which the General Assembly requested the development of a system to provide a continuum of long-term care for elderly and disabled individuals and their families. The interim report explored the availability of long-term care services, work force shortages in the long-term care industry, and the quality and financing of long-term care. Legislative action on particular items is requested in the interim report, and the Task Force currently has work scheduled through July 2002.

Home-Based Services

Many older adults prefer services that offer support in the least restrictive manner enabling them to maintain the greatest degree of independence. Public Hearings conducted by the NC Study Commission on Aging revealed concern about the availability and funding of services individuals receive at home or in the community: transportation services, adult day and adult day health services, in-home aides, respite care, and home delivered meals/nutrition programs. Legislative proposals in upcoming sessions will focus on the funding and availability of home-based services and a variety of other long-term care services designed to address the needs of North Carolina's growing older adult population.

Prescription Drugs

(Linda Attarian, Theresa Matula (RD) – 733-2578)

Rising prescription drug costs are problematic for all consumers, but particularly impact low-income elderly and disabled individuals. S.L. 2000-67 (HB 1840), Section 11.39 rewrote Section 11.1(a) of S.L. 1999-237 increasing the Prescription Drug Assistance Program to one million ($1,000,000) for the 2000-01 fiscal year. The program currently pays the cost of outpatient prescription drugs for treatment of cardiovascular disease or diabetes for those persons: (1) Over the age of 65 years and not eligible for full Medicaid benefits; (2) Whose income is not more than one hundred fifty percent (150%) of the federal poverty level; and (3) Who have been diagnosed with cardiovascular disease or diabetes. The current number of enrollees for the Prescription Drug Assistance Program is approximately 2,250. According to the Department of Health and Human Services, enrollees were notified that the prescription drug benefit would probably not be available for the entire fiscal year. Currently, the Department projects funds will be exhausted by February or March of 2001. This may create a hardship for individuals who have relied upon the program, however the Department is working to identify available money to address the immediate need for funding through the end of FY 2000-01. Additionally, the Department is researching the possibility of a prescription drug program to cover low-income elderly as well as disabled not fully covered under Medicaid.

Readiness for Kindergarten/Early Childhood Education for At-Risk Four-Year Olds – see **EDUCATION: PRIMARY AND SECONDARY**, that heading.

State Children's Health Insurance Program (NC Health Choice) Funding

(Linda Attarian (RD) – 733-2578)

North Carolina has a program that provides health care coverage to children in low-income families but who are not eligible for Medicaid. North Carolina is a leader among other states in its success in enrolling eligible children. This success has resulted in an enrollment cap as of January 1, 2001 to prevent a budget shortfall this year. Of the funds appropriated to Health Choice for the 1999-2000 fiscal year, (the year prior to this fiscal year), approximately $1.5 million were unexpended and carried forward and placed in a reserve. The proponents of the Health Choice program are recommending that these reserved funds be used to allow for continuing enrollment this year without interruption. However, S.L. 2000-67, Section 11.8(b) (HB 1840), limits fiscal year

2000-2001 expenditures for NC Health Choice to amounts appropriated for that year to match federal funds for that program. The purpose of this provision is to prohibit the allocation of funds other than the specific amount appropriated to it for the 2000-2001 fiscal year. Thus, it will take a legislative enactment to repeal or revise this provision to authorize the reserved funds to be used during the 2000-2001 fiscal year.

XIV. INFORMATION TECHNOLOGY

(Phyllis Pickett (BDD) – 733-6660; Brenda Carter (RD) – 733-2578; Dennis McCarty (ISD) – 733-6834)

It is commonly recognized that the Internet is moving us into a new world of electronic products, transactions, services and communications. By some estimates, more than 100 million Americans currently make use of the Internet. The Internet is dramatically reshaping the way we live, work, and interact with one another. These changes create a whole new landscape for public policy. One view of the role of state legislatures in this new landscape is to encourage economic growth and competition while offering necessary safeguards for citizens. The recognized challenge for state legislatures is to decide how to expand current laws to accommodate the growing electronic environment, while preserving fundamental rights and protections rooted in existing law.

The explosive use of the Internet throughout the world permits enormous amount of information about individuals and organizations to be readily accessible to anyone. Today's technology quickly analyzes the information collected and presents it back to the requester as knowledge of an individual's (or organization's) personal background, spending habits, travel profiles, etc. In addition to the information provided voluntarily when a survey or registration form is completed or a credit card or grocery store discount card is used, credit bureaus and government also collect information that is made available.

The ease of accessibility presents new threats and risks such as identity theft and cyber stalking. Electronic commerce growth, especially as it applies to the European Community Data Directive, is also affected by the abundance and availability of information -- information that is so readily available that even social security numbers and court records are available for a fee.

The US has Federal Statutes and there are cyber laws in every state. Although attempts to self-regulate the free flow of personal information over the Internet is slowly gaining momentum, this subject will become increasingly more important and will be the subject of much discussion in the future.

Information Privacy

In November 1999, President Clinton signed into law the Gramm-Leach-Bliley Act ("GLB," P.L. 106-102, 15 U.S.C. 6801 et seq.) to protect nonpublic personal information from unauthorized disclosure by financial institutions having a consumer relationship with a customer. GLB is significant in the IT context because it is with the advent of vast and extensive information technology that personal privacy issues come into very sharp focus. Overall, GLB provides that financial institutions must adopt privacy policies and practices to protect their customers.

State law is not preempted by GLB. State laws providing greater protections for consumers will not be held as inconsistent with GLB. Given that there is a growing momentum around the country to strengthen electronic and other privacy protections, this area could be a topic of interest to the 2001 General Assembly.

Uniform Laws

Uniform Computer Information Transactions Act. The Uniform Computer Information Transactions Act (UCITA) began its development as a joint project of the National Conference of Commissioners on Uniform State Laws (NCCUSL) and the American Law Institute (ALI). UCITA establishes rules for selling new kinds of computer-based products, including software, databases and storage devices such as disks and CDs. UCITA also governs what are commonly known as "click wrap" or "click through" agreements. UCITA denotes these arrangements as "mass market licenses." The mass market license is an electronic form contract with a consumer end user for computer information licensing that incorporates standard terms and conditions binding all consumers. UCITA provides rights and remedies that affect both the licensor and end user.

Because the law has raised red flags among consumer groups who fear that it fails to protect buyers, it has been introduced in only a handful of states. Some provisions of the proposed uniform law became quite controversial. Toward the end of the development phase, the ALI declined to approve the draft law and withdrew from the process. The NCCUSL approved the final version of the uniform law by a vote of 43 states to 6 states, with North Carolina among the minority opposed to UCITA's adoption. Maryland and Virginia have now passed UCITA, with the Maryland statute effective October 1, 2000 and the Virginia statute effective July 1, 2000. The legislation to adopt the uniform law was introduced in Delaware, Hawaii, Illinois, Oklahoma, New Jersey and the District of Columbia. No action on UCITA has been taken in North Carolina.

Uniform Electronic Transactions Act. The Uniform Electronic Transactions Act (UETA) has been adopted by about half the States, including North Carolina in 2000. (S.L. 2000-152. G.S. 66-311, et seq.) Essentially, UETA provides that where both parties to a transaction have consented to handle the transaction by electronic means, electronic records and signatures have the same legal force and effect as paper writings and manual signatures. Although UETA does not provide specific methods of signing electronically, a contract cannot be invalidated solely because an electronic record was used in its formation. UETA pertains only to the procedural aspect of transactions, and does not affect substantive law.

The federal "E-Sign" law -- Electronic Signatures in Global and National Commerce Act" -- enacted by Congress in 1999 (P.L. No. 106-229) is based on UETA, but it is not as broad and comprehensive. "E-Sign" includes preemption language that provides for certain exemptions to federal preemption of state law. A state law may be exempt from preemption if it constitutes an enactment of UETA or if it meets other specified requirements. Since the North Carolina version of UETA is not a pure enactment of the uniform act, some parties have voiced concern that it may be subject to challenge and preemption by federal law. Some changes to UETA may be proposed in the 2001 Session.

State Government

State governments are also embracing the Internet as a faster and better way to get services and information to people. Citizens with a computer can file their income tax online, renew licenses, apply for jobs, and pay fines or request welfare and health. Here in North Carolina, improved access to government services is one part of the focus of the legislature's Joint Select Committee on Information Technology. The Committee continually reviews current information technology as it impacts public policy, including electronic data processing and telecommunications, software technology, and information processing. The goals and objectives of the Committee include developing electronic commerce in the State and coordinating the use of information technology by State agencies in a manner that assures that the citizens of the State receive quality services from all State agencies and that the needs of the citizens are met in an efficient and effective manner. Because of the need to make more information available more efficiently, many State agencies are experiencing an increased need for funding of information technology, and the legislature can expect the issue to be part of budget discussions in the 2001 Session and beyond.

Telecommunications and Networking

(Dennis McCarty (ISD)– 733-6834)

In 1992, the Government Performance Audit Committee (GPAC) made ten recommendations to improve government efficiency that were directly related to telecommunications. The recommendations centered on the duplication/consolidation, funding, and governance of networks. For the most part, the findings and recommendations provided in the 1992 GPAC report still apply. Although some consolidation occurred, there are still multiple networks competing for the same user base (AOC, NCIH, NC-REN, etc.). The advantages of the economies of scale are, at times, missed due to funding and governance shortcomings. Putting this into numerical terms, the cost of telecommunications equipment and services has increased by 251% over the last 10 years.

As the telecommunications technologies evolve and mature, new processes for evaluating the telecommunications procurements, consolidation potentials, and funding will need to be developed. Extending telecommunication high-speed access to all citizens (thus reducing the “Digital Divide”) will require both the active participation of telecommunications designers and regulators. Issues such as Internet Taxation will also become a discussion for potential legislation.

In October 2000 the Joint Select Committee on Information Technology recommended four actions to be taken regarding Network Planning for North Carolina. They are:

- That the General Assembly put all telecommunications expenditures into a telecommunications program fund;
- That the Information Technology Appropriations Committee review the program fund and recommend appropriations in this sector;
- That the executive branch create a centralized governance structure to work with the Information Technology Appropriations, and to cure the issues of fragmentation and coordination; and,

- That the Office of Budget and Management present a telecommunications program fund made up of all telecommunications initiatives in the upcoming budget.

XV. INSURANCE

Health Insurance/Managed Care Issues

HMO Patient Protection
(Trina Griffin (RD) - 733-2578)

Generally, when a managed care plan denies coverage or there is some other matter in dispute between the plan and an insured, the insured has the option of going through a two-step internal appeal and grievance procedure. Increasingly, lawmakers at both the federal and state levels have been examining these procedures and finding them to be inadequate to protect the rights of insureds. One modification that has been suggested by the National Association of Insurance Commissioners is an external second-level review of grievances.

A legislative study committee has recommended legislation, proposed by the North Carolina Department of Insurance, to allow HMO enrollees who are not satisfied with a plan's initial noncertification decision or second-level grievance review decision to file an administrative appeal with an independent review organization selected by the insurance commissioner. This external, independent review process would allow managed care enrollees to obtain an unbiased review of disputes and a binding decision regarding complaints and issues relating to their health benefit plan.

This Patient Protection proposal also creates a cause of action against managed care entities that are negligent in making health care treatment decisions. The legislative study committee found that HMOs are increasingly making determinations that govern the health care of their insureds as the functions of paying for health care, determining covered services, and providing the care are becoming more integrated. The proposal establishes a standard of care for managed care entities when making health care treatment decisions and provides remedies for violations of that standard. The proposal does not impose any additional liability against physicians or health care providers.

A legislative study committee recommended both of these proposals last year and legislation was introduced during the 2000 Regular Session of the 1999 General Assembly but failed to be enacted.

XVI. LABOR

(Bill Gilkeson (RD) - 733-2578)

Ergonomics and other OSHA issues

In North Carolina, the State Department of Labor enforces the Federal Occupational Safety and Health Act. During 1999 and 2000, the former Commissioner of Labor proposed rules under OSHA to prevent repetitive motion disorders in the workplace. The rules, generally labeled ergonomics, would have been among the first in the nation. Opposition from organized business groups and lack of enthusiasm in the General Assembly led to the blocking of the rules. Business opponents cited the competitive disadvantage in which such rules would place North Carolina employers. They also cited the prospect of ergonomics rules at the federal level.

Job Training

There is a recurrent argument that the overall job-training effort in North Carolina is fragmented, duplicative, and unfocused. Some activists in the State Department of Commerce and the Workforce Development Commission wish to bring all State-sponsored job-training under the JobLink program, with one-stop centers in each county serving any need an unemployed person or other person with job problems might have.

XVII. LOCAL GOVERNMENT

(Erika Churchill, Frank Folger, Trina Griffin (RD) - 733-2578)

Local Government Tort Liability

Last session, the General Assembly amended the State Tort Claims Act to provide recovery from the State for parties injured by the negligence of the State and its employees up to $500,000 in damages. This has generated discussion as to whether the local governments in North Carolina should be subject to a similar requirement. Currently, a local government is immune from liability except to the extent that the local government has purchased liability insurance for negligent acts committed while performing a governmental function. A recent Court of Appeals case from Greensboro has also brought to light an issue regarding whether a local government has the authority to waive its immunity in any manner other than purchasing liability insurance. (*Dorowolska v. Wall and the City of Greensboro,* No. COA98-1533, slip op., NC App. 2000)

The Legislative Research Commission through its State Tort Liability and Immunity Committee has recommended further study of the entire issue, and has recommended legislation clarifying that a local government may waive immunity through adopting a self funded reserve. The Committee heard from the League of Municipalities, Association of County Commissioners, and the Academy of Trial Lawyers. While they did not agree on a Local Government Tort Claims Act, the three groups did agree that the recommended legislation addressed a portion of the issue.

Public Duty Doctrine

The public duty doctrine may be an issue for the 2001 General Assembly in light of the North Carolina Supreme Court opinions issued in April 2000. The Public Duty Doctrine embodies that idea that there are some services local governments perform for which the local government has a duty to all of its citizens, but no particular duty to any one citizen. Absent the particular, or "special duty," owed to a particular individual, the governmental entity is protected from being sued for negligence that occurs when performing the service for all of its citizens. Traditionally the doctrine has been used as a defense in claims arising from actions of local law enforcement, because courts recognize law enforcement's limited resources and the overwhelming burden of liability for failure to prevent criminal acts. For example, an individual citizen may be barred from recovering damages from a law enforcement agency for its failure to protect that individual from a criminal act.

Since the Supreme Court adopted the doctrine in 1991, the Court of Appeals has extended the doctrine beyond law enforcement situations to include building inspection, animal control, taxicab permitting, and fire protection. But earlier this year, the State Supreme Court put the brakes on this practice, effectively overruling that series of Court of Appeals' cases. (See *Thompson v. Waters*, 351 N.C. 462, 526 S.E.2d 650 (2000); *Lovelace v. City of Shelby*, 351 N.C. 458, 526 S.E.2d 652 (2000)). The Supreme Court noted that it has refused to extend the public duty doctrine against a county or municipality in any situation involving a group other than law enforcement. Some argue that these decisions will have a monumental effect on the liability of local governments with regard to non-law enforcement activities. Also, there may be some uncertainty with regard to the use of the public duty doctrine in claims against State agencies after these rulings. Consequently, efforts may be made to clarify or modify this doctrine by the League of Municipalities and the Association of County Commissioners and others. The Academy of Trial Lawyers has traditionally supported the narrower interpretation given by the Supreme Court.

Prior attempts to limit or eliminate the use of the public duty doctrine as a defense under the State Tort Claims Act have failed. In 1997, SB 1277 contained a provision that would limit the use of the doctrine under the Tort Claims Act. This bill passed the Senate but was not reported out of committee in the House. In 1999, SB 925 and its companion, HB 1240, also proposed that the doctrine did not apply to claims brought pursuant to the State Tort Claims Act. The Senate version was not reported out of committee and the House version was reported unfavorably.

Governmental Functions vs. Proprietary Functions.

An additional issue raised by both the League of Municipalities and the Association of County Commissioners was the elimination of the court-interpreted distinction between governmental and proprietary functions. The North Carolina courts have, over a period of time, made a not-so-clear distinction between the types of functions that local governments perform. The distinction is important for tort liability purposes: governmental immunity may be a defense for governmental functions but not for proprietary functions. While the case law is often unclear, proprietary functions are typically those functions that a local government provides for a fee or those in which the

local government is acting more like a proprietor than a local government. The Academy of Trial Lawyers' position on eliminating the distinction was unclear.

Smart Growth – see that heading.

XVIII. 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 about $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. The people of South Carolina passed a constitutional amendment last November to allow their General Assembly to enact a state lottery.

Based on conservative fiscal estimates, a North Carolina state lottery during its first full year of operation could produce about $350 million for public purposes, after providing approximately $600 million in prizes to players and $61 million in payments to retailers.

With the identified deficit, the continually 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 2001 Session.

In 1999, it was reported that a "lottery election" in Alabama failed. This would have been only the second time that a lottery referendum was turned down when submitted to a vote of the people. In fact, the referendum was not a "pure" lottery vote. The language of the Alabama constitutional amendment proposal on the ballot stated, in part: "Proposing an amendment to the Constitution of Alabama of 1901,to establish an Alabama Education Lottery…to create an Alabama Education Lottery Corporation to regulate and administer the lottery; to prohibit the operation of casinos…and to allow the Legislature to implement the Alabama Education Lottery through appropriate general law." Two matters that made the passage of this amendment problematic were the mention of casinos. There were voters who supported building casinos like those in Mississippi to prevent the flow of gaming dollars from Alabama to that state who voted against the lottery amendment and the lottery opponents were able to link the concept of the lottery and casinos because they were mentioned so close together on the ballot. There was, also, no drafted lottery bill so the argument could be made about uncertainty as to the details of any state lottery.

In 2000, the South Carolina constitution was amended as a result of a vote of the people to permit the South Carolina General Assembly to enact a lottery bill. The margin by which the bill passed was relatively narrow and the uncertainty argument described above was strongly proffered during the public debate. There have been reports that the same forces that fought the lottery amendment will continue their fight in the South Carolina General Assembly and there is no guarantee that South Carolina will pass a lottery before their legislature adjourns.

On January 11, 2001, a bill was offered in the Arkansas legislature to start the process of amending their constitution to allow for the creation of a state lottery.

XIX. PUBLIC UTILITIES

(Steve Rose, Esther Manheimer, and Frank Folger (RD) - 733-2578)

Electric Restructuring

The 1997 General Assembly established the Study Commission on the Future of Electric Service in North Carolina. A number of states have passed restructuring legislation. The 30 member Study Commission is examining the potential impact of providing for retail electric competition in North Carolina. The Commission hired the Research Triangle Institute to produce the following reports (which can be found at their web address: http://www/rti.org):

- Summary of Written Public Comments
- Summary of Public Hearings
- Rate Comparisons
- Reliability Considerations in Electric Industry Restructuring
- Policy Options for NC's Municipal Power Agencies (Volume 1 of Stranded Costs)
- State and Local Tax Considerations in Electric Industry Restructuring (Volumes 1 and 2)
- Stranded Cost Estimates for a Restructured Electric Industry in North Carolina (Volumes 2 and 3 of Stranded Costs)
- Utility Cost Impacts of Government Tax and Financing Policies
- Estimates of the Benefits and Detriments of Electric Industry Restructuring
- Environmental Considerations Associated with Electric Industry Restructuring NC.

The Study Commission also held 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 a final report to the 1999 General Assembly (2000 Regular Session). The Commission has also attempted to tackle the burdening debt problem of the municipal power agencies and is still working on a solution.

A brief summary of the Commission's 2000 recommendations is as follows:

Retail Choice. Competitive retail electric service will begin January 1, 2005 with full retail competition by January 1, 2006.

Stranded Costs. With regard to the investor owned utilities, the issue of stranded costs will be addressed to the extent possible through a rate freeze at current rates as of March 31, 2000. The rate freeze will continue until December 31, 2004.

Municipal Power Agency Debt. At this time, no recommendation is made as to the handling of the municipal power agency debt. A recommendation regarding the debt problem will be made to the 2001 General Assembly.

Recommended Legislation. The Commission will recommend specific legislative language necessary to accomplish its recommendations to the 2001 General Assembly and, where necessary, the 2003 General Assembly.

Consumer Protection. The Commission's recommendations to the 2001 General Assembly will address issues of consumer protection.

Environment and Alternative Energy. The Commission's recommendations to the 2001 General Assembly will consider issues of environmental protection and promoting the use of alternative energy sources.

Tax Laws. The Department of Revenue will recommend to the Commission not later than July 31, 2002 changes needed to the tax laws of the State due to the introduction of a competitive environment for the retail sale of electricity.

Transmission and Distribution. The North Carolina Utilities Commission will report to the Commission not later than July 31, 2002 the intended structure of a transmission entity and the intended framework for the regulation of distribution systems that will promote competition in the sale of electricity while assuring reliable electric service at reasonable rates to all consumers in North Carolina.

Commission Authority. The authority of this Commission, including its funding authority, will be extended until June 30, 2006.

The Commission continues to meet and research the issue of restructuring. It is anticipated that the Commission will recommend legislation to the 2001 General Assembly.

XX. REDISTRICTING

(Bill Gilkeson (RD) 733-2578)

Redistricting

The process of redrawing district lines based upon current population data occurs every ten years, coinciding with the release of the census data. Although the detailed data is not scheduled for release until March 2001, North Carolina has already been informed of a potential additional United States Congressional Seat. Litigation filed by the State of Utah (*Utah v. Trandahl*, No. F-2-01-CU-23C, (D., Utah)) challenging the award of the seat to North Carolina has been filed, and is scheduled to be heard in federal district court in Utah in mid-March, about the time North Carolina had planned to get started on the redistricting process for our congressional districts. An appeal to the United States Supreme Court may delay this further. Resolution of this lawsuit could delay the start of Congressional Redistricting here.

Redistricting of the State was last done in 1991-92, and several lawsuits ensued thereafter. The results of the Census and the outcomes of the lawsuits will affect this year's redistricting process, along with many longstanding issues surrounding redistricting. Some of the topics most likely to be discussed include:

- Where should the 13th congressional district be drawn? Where should the other districts be drawn? There are now 12 incumbent Congress members, 7 Republicans and 5 Democrats. Those incumbents and their supporters are likely to express great interest in the remapping. So will the political parties and groups such as the NAACP and the ACLU. We know unofficially that population in the State has grown fastest in the Triangle, the Charlotte area, and the southern and northern coast. It has grown slowest in the northeastern coastal plain.
- To what extent must/should/may the General Assembly take race into account in drawing districts? In 1992 the General Assembly drew 2 majority-black congressional districts and numerous majority-minority legislative districts. Will population shifts shown in the 2000 Census allow 2 now? Section 5 of the Voting Rights Act prohibits redistricting that puts minority voters in a worse position than in the past. In the 1990s the Justice Department, in enforcing that Act, insisted on more than one minority district. The General Assembly responded with a plan that the U.S. Supreme Court struck down in *Shaw v. Hunt*, 517 U.S. 899 (1996) as violating the new doctrine against "racial gerrymandering." States like North Carolina were left with an uncertain trumpet about how much they *must* take race into account and how much they *may* take it into account. Litigation over the 1990s North Carolina congressional plan is still before the U.S. Supreme Court. Will the Supreme Court explain what role race should play in its pending decision in *Cromartie v. Hunt*, No. 4:96-CV-104-BO(3), (E.D.N.C. Mar. 7, 2000); prob. juris. noted, 68 U.S.L.W. 3789 (U.S. June 20, 2000) (No. 99-1865).
- Should N.C. continue with a mix of single-member and multi-member legislative districts? The 50-member Senate has 34 single-member districts and 8 two-member districts. The 120 member House has 81 single-member districts, 12 two-member districts, and 5 three-member districts. Many states use single-member districts exclusively. Some members who represent multi-member districts argue that they are too expensive to campaign in and too hard to represent. Multi-seat contests also complicate the ballot, perhaps confusing some voters. Multi-member districts, however, can make a district map less bewildering, leaving more counties undivided in a district.
- Should N.C. use multi-member districts with some kind of proportional election method: preference voting, limited voting, cumulative voting? A national advocacy group with active members in North Carolina has repeatedly argued that these methods are a better tool for assuring minority representation than gerrymandered districts. A major argument against them is complexity and lack of user-friendliness for the voter.
- Should special care be taken to avoid splitting precincts? Counties? Other political entities? Redistricting committees typically adopt criteria for drawing lines. A statement of what units should not be split is typically a part of it. Precincts that contain more than one district have caused much havoc in election

administration in recent years, and election officials often exhort legislators not to do it. Splitting counties is harder to avoid, but officials from small counties often plead not to be split. Respecting political subdivisions and other communities of interest in redistricting can have important legal consequences: It can justify higher deviations from the ideal population figure of a district. Too much disregard for "traditional redistricting criteria" such as respecting communities of interest may trigger the courts' suspicion that racial gerrymandering is afoot.

- To what extent should incumbents be protected? The courts have said that incumbent protection is a valid part of the political process of redistricting. Legislators, however, are not necessarily under a legal obligation to protect all incumbents equally.
- Should redistricting be done by an independent commission rather than the General Assembly? Common Cause and similar groups have endorsed the idea of removing the redistricting process from the politics of the General Assembly and giving the duty to an independent commission. Several states have approximated that ideal to one degree or another. The idea has its fervent proponents in the General Assembly, but many argue that redistricting is inherently political.

XXI. SMART GROWTH

(Beth Barnes Braswell (BDD) – 733-6660; George Givens, Jeff Hudson, Rick Zechini – 733-2578)

In 1999 the General Assembly created the Commission to Address Smart Growth, Growth Management, and Development Issues (Smart Growth Commission) to study growth, growth management, and development issues and recommend initiatives to promote comprehensive and coordinated local, regional, and State planning and growth management. The Smart Growth Commission met regularly to discuss these issues and made a number of recommendations to the 2001 General Assembly.

Many of these recommendations focus on improving the ability of local governments to promote Smart Growth within their jurisdictions. For example, all local governments would be required to develop Smart Growth plans and resources would be provided to support these efforts. Local governments would be given the taxing and zoning authority necessary to promote Smart Growth. Regional planning entities could also be formed and funded to ensure that the plans developed throughout a region are consistent. Local and regional plans, as well as State programs and agencies, would be required to comply with a State Smart Growth framework. The Smart Growth Commission also recommended that the General Assembly create a permanent Smart Growth Policy Commission to provide advice on State growth policy and periodically review the State Smart Growth framework.

The Smart Growth Commission also made several more specific recommendations. For example, the Commission recommended the promotion and enhancement of open space and the protection of floodways through the restriction of development in the 100-year floodplain. It also advocated increased reuse of existing building and sites, including the redevelopment of brownfields, and encouraging

investment in downtown areas. One of the Commission's recommendations regarding transportation is to encourage cooperation and coordination of land use and transportation planning between local, regional, and State governments.

XXII. STATE EMPLOYEES

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

State Employee Health Benefit Plan Solvency

(Sam Byrd (FRD) – 733-4910)

At an October 18, 2000, meeting of the Legislative Committee on Employee Hospital and Medical Benefits, which oversees the operations of the State Employee Health Benefit Plan, Dr. Jack Walker, Executive Administrator of the Plan, said that the Plan's self-insured indemnity program will end the 2000-2001 fiscal year with only a $17 million cash balance. According to Dr. Walker, such a minimal amount of cash reserves will require the use of the $51.3 million in additional General and Highway Fund Reserves appropriated by the 2000 Session of the General Assembly in order for the program to remain solvent. For the 2001-2003 biennium, Dr. Walker said that the program will require a premium rate increase of over 48% without a cut in benefits or a reduction in payments to health care providers. Such an increase in premiums will require an additional General Fund appropriation of $245 million for 2001-2002 and $325 million for 2002-2003 according to Walker. He further said that by being allowed to cut benefits and payments to health care providers, he could reduce the premium rate increases required by the program to 22%. Such a reduction in premium rate increases would require additional General Fund appropriations of $133 million for 2001-2002 and $176 million for 2002-2003 based upon his estimates. In addition, at a December 13, 2000, meeting of the Board of Trustees of the State Employee Health Benefit Plan, Dr. Walker informed the Trustees that the Plan's self-insured indemnity program needed $778.3 million to remain solvent through the 2001-2003 biennium. He suggested ways to deal with the problem, which were $372.7 million in additional funding by the State of North Carolina for employees and retirees and by employees and retirees for their covered spouses and dependent children, $249.9 million in benefit reductions to employees, retirees, and their families, and $155.7 million in reduced payments to hospitals and physicians. The $778.3 million that Dr. Walker says the Plan needs is after getting $224.5 million in savings from reduced payments to pharmacists and members of the program for outpatient prescription drugs during the biennium, based upon a new drug program implemented by him in December 2000, and January 2001.

Compensation

(Theresa Matula (RD) 733-2578)

Three of the top ten policy platform objectives from the State Employees Association of North Carolina (SEANC) concern pay plan funding for State employees. These objectives include:

(1) Full funding of pay plans by the General Assembly prior to considering other appropriations.

(2) Special appropriations totaling at least five percent of total payroll to be included in the continuation budget to enable the pay plan to catch up the ground lost to inflation over the past six years.

(3) Change G.S. 126-7 to fully fund the Comprehensive Compensation System at the following levels:

- Fund the career growth at a minimum of two percent, to be included in the continuation budget;
- Tie the cost of living adjustment to the Consumer Price Index (CPI) of the previous calendar year, and;
- Fund the performance bonus at a minimum of two percent of total payroll.

The cost of living adjustment and the performance bonuses will be funded from the expansion budget.

Other issues related to compensation that have received discussion subsequent to the adjournment of the 2000 Regular Session have been the adequacy of the Salary Adjustment Fund and salary equity.

Retirement

(Karen Cochrane-Brown (RD) – 733-2578)

The State Employees Association of North Carolina (SEANC) has again proposed an increase in the retirement accrual rate to 2.0% and full restoration of the employer's contribution to the Retirement System at 9.35%. Additionally, SEANC proposes to reduce the number of years required for full retirement from 30 to 28; to remove the limit on the amount of sick leave that can be used at retirement; and to reduce the employee's contribution rate from 6% to 5%.

The North Carolina Retired Governmental Employees' Association (NCRGEA) has recommended that the accrual rate be increased from 1.81% to 1.83% and that retired teachers and State employees be granted a total post retirement increase of 4.6% (including a 1.1% increase attributable to an increase in the accrual rate). NCRGEA disagrees with the SEANC proposal to reduce the employee contribution rate to 5%, fearing that it might encourage the Legislature to further reduce the employer contribution rate. Although both rates are used to fund the benefits administered by the Retirement System, there is no connection between them.

The Trustees of the North Carolina Retirement System met on December 14, 2000, and considered the recommendations of the employee and retiree representative organizations. The Board will determine its legislative program and make recommendations to the General Assembly.

XXIII. STATE GOVERNMENT

State Construction

(Wendy Graf (RD) – 733-2578)

In 1998, the issue of how to streamline the State construction process and make it more efficient was referred to the Legislative Research Commission's Committee on State Construction. The Committee identified several issues that needed to be addressed, and legislation was passed that addressed the problem of lack of specific project information available when project funding requests are made. However, the Committee did not have time to address all of the issues it identified and recommended that the study be continued.

The State Government Construction Review and Approval Committee was charged with continuing the study. After the passage of the higher education bonds in November of 2000, the Committee focused on the effect this unprecedented increase in projects would have on the State construction process. However, the Committee was reluctant to make changes to such a complex process without more information regarding the increased workload, and therefore it did not recommend any specific legislation.

The Committee did recommend the establishment of a task force made up of members from previous LRC Committees, representatives of State agencies involved in the construction process, client groups, and other interested parties. The task force would be a working group, designed to deal with issues, as they arise, resulting from the expected increased workload.

With the increase in workload, many State agencies have concerns about staffing issues. They have had problems keeping full staffs because the private sector is able to offer more competitive salaries to professional employees such as architects and engineers. It is expected that some State agencies, including the State Construction Office and the Department of Insurance, will be requesting funding to implement salary increases that have been approved by the Office of State Personnel.

XXIV. TAXATION

(Cindy Avrette (RD) – 733-2578)

Community Care Retirement Centers (CCRC's) Tax Exemption

Legislation will be introduced that provides a property tax exclusion for certain qualified retirement facilities that provide charity care and/or community benefits. The percentage of the exclusion depends upon the percentage of the facility's resident revenue that is provided in charity care, in community benefits, or in both. The proposal is a compromise reached by the CCRCs, the NC Department of Revenue, the NC Association of County Commissioners, and the NC Tax Assessors and Collectors. This issue has been debated for the last three years. The current property tax exclusion for CCRCs expires July 1, 2001.

Extend Tax Deadline

Legislation will be introduced that waives the tax penalties for failure to obtain a license, failure to file a return, and failure to pay taxes when due, if these activities

should be performed during the period of time that federal tax-related deadlines have been extended by the Secretary of the Treasury in an area of the State because of a Presidentially declared disaster. This proposal codifies the Department of Revenue's current published penalty policy. Under this policy, the occurrence of a disaster is an automatic reason to waive penalties.

Increase Property Tax Homestead Exclusion

For the past several years, the General Assembly has considered legislation that would increase the property tax homestead exclusion. To qualify for the exclusion, a person must be 62 or older or totally disabled and the person must have an income of less than $15,000. If the person qualifies for the exclusion, the first $20,000 in assessed value of the person's home is excluded from property tax. The issues in these earlier bills include: the homestead exclusion amount, the income eligibility amount, the idea of indexing the amounts, and reimbursement to local governments for the resulting property tax revenue loss. The Revenue Laws Study Committee plans to recommend legislation that would increase the homestead exclusion amount to 50% of the tax value of the property, if this amount is greater than the statutory amount of $20,000. This proposal would provide greater relief to low-income elderly and disabled homeowners with homes appraised at a value greater than $40,000. The proposal also would increase the current income eligibility limit of $15,000 by a percentage equal to the COLA percentage used to increase SSI benefits for the preceding calendar year, effective for the 2002 property tax year. The proposal would not reimburse local governments for the resulting revenue loss.

Streamline Sales Tax Project

This project seeks to enhance a state's collection of the sales and use taxes owed to it under the current law. The proposal makes it easier for out-of-state retailers (namely mail-order companies and internet companies) to collect a state's sales and use tax.

This proposal was developed by the National Governors' Association, NCSL, and other major state and local organizations. North Carolina is very active in the project, and the General Assembly enacted legislation in 2000 to enable the State to be one of the four or so states participating in a pilot project. Participation in the project is voluntary on the part of the retailer.

Telecommunications Tax

Last year, the Revenue Laws Study Committee recommended legislation that would simplify the tax on telecommunications by applying one tax at one rate to all telecommunications services, including interstate long distance. The legislation repealed the current gross receipts franchise tax and lowered the sales rate to 4.5%. It also taxed prepaid telephone calling cards at the point of sale, established a local sourcing rule for wireless telecommunications, and eliminated the complicated distribution formulas for local revenue sharing while preserving the local revenue stream. The Revenue Laws Study Committee is considering proposing similar legislation this biennium.

Wetlands Reimburse/Local Tax Base

Last session, bills were introduced to require a unit of local government that purchases or condemns land for the purpose of wetlands mitigation to pay to the county where the land is located a sum equal to the estimated amount of property taxes that would have accrued to the county for the next 10 years had the land not been acquired. This situation has adversely impacted counties where a major component of their tax base is land. The Revenue Laws Study Committee plans to introduce similar legislation this biennium that applies only to land acquired in Tier one and Tier two counties.

Under the Bill Lee Act, all counties are divided into five enterprise tiers, ranked by economic distress as measured by a formula that combines unemployment, per capita income, and population growth. Tiers are designated annually, but 3-year averages are used to measure unemployment and income. Tier one and two counties are considered the poorer counties, and as such they receive more favorable incentives than those in tiers three through five.

Gift Tax Repeal

Since the repeal of the State inheritance tax in 1999, the question of whether to repeal the gift tax continues to be debated. The cost of repealing the gift tax is at least $20 million annually.

Local Option Revenue Sources

During the last biennium, several local governments requested local option sales taxes to help with school or other needs. It is likely that local governments will again request this authority, especially in light of the *Leandro* decision (see below).

Private Pension Tax Relief

Currently, private pensions receive a $2,000 exemption whereas government pensions are either totally exempt (NC, local, and federal employees who vested prior to August 1989) or exempt up to $4,000 (federal and all-state and local government retirees vesting after that date). Issues surrounding private pension tax relief include whether to exempt all state and local government retirement income, regardless of the date of vesting; whether to exempt the government retirement income of other states' government retirees to the same extent those states exempt the income of NC government retirees; and whether to allow a greater exemption for private sector pension income.

Readiness for Kindergarten/Early Childhood Education for At-Risk Four-Year Olds – see **EDUCATION**: **PRIMARY AND SECONDARY**, that heading.

Sales Tax Holiday

Seven states (Florida, Texas, Iowa, Maryland, Connecticut; Pennsylvania, and South Carolina) had some sort of sales tax holiday in the year 2000. A sales tax holiday is a period of time in which certain items are exempt from sales tax. In some states the holiday is an annual event; in others it was a one-time event. The states differ on the period of time, the items covered, and the amount of the exemption. For example, some say clothing and footwear priced under a certain amount; Pennsylvania exempts

personal computers, and South Carolina exempts “back-to-school” items with no price limit.

Marriage Penalty.

Legislation that would eliminate this penalty for State income tax purposes by providing that the income tax rate bracket amounts and the amount of the standard deduction for married taxpayers would be twice the amounts applicable for unmarried taxpayers.

XXV. TRANSPORTATION

(Giles Perry (RD) - 733-2578; Evan Rodewald, Bob Weiss (FRD) - 733-4910)

Bicycle helmet laws

Currently, at least eleven municipalities in the State require children to wear helmets when operating a bicycle: Apex, Ayden, Black Mountain, Boone, Carolina Beach, Cary, Chapel Hill, Greenville, Holly Springs, Raleigh, and Southern Shores. Some of these local ordinances also include a requirement for children to wear helmets while using other devices, such as skateboards and the currently popular "blade" scooters. During the 1999-2000 session of the General Assembly, legislation was introduced and passed the House to establish a statewide requirement that children use helmets while operating bicycles. Staff of the Department of Transportation bicycle program expects this issue to continue to be of interest during the 2001 session.

Funding Needs:

Overview. North Carolina is spending $3.3 billion in FY 2000-2001 on its transportation programs, including $1.5 on the Transportation Improvement Program (TIP) and $500 million on maintenance. In a report to the Legislative Research Commission Transportation Finance Committee, the Department identified needs for additional transportation investments of over $1 billion per year. Key areas identified for additional funding include construction, maintenance, and transit.

Additional Construction. DOT has identified construction funding needs in the following areas:

Additional TIP projects: Approximately $15 billion dollars worth of projects have been identified by DOT but are not included in the current draft TIP for 2002-2008. Many of these projects will eventually be included in the TIP and will be completed in future years, but funding and completion remains uncertain for many of these projects.

- Interstates: Widening of all of I-95 from Virginia to South Carolina, and portions of I-77, I-85, I-40, and I-26 has been identified as a need by DOT but is not currently planned. DOT estimates the total cost for these projects at $4.1 billion.
- Bridges: According to an analysis by DOT, using the Bridge Management System program, about 3,400 bridge structures out of 17,000 in North Carolina should be replaced. This replacement need is above and beyond current plans for replacement.

- Highways – Trust Fund Projects: DOT's estimate of the cost to complete the Intrastate System is $6.3 billion and its estimate of the cost to complete the Highway Trust Fund loops is $2.3 billion, for a total of $8.6 billion. Many of the individual project cost estimates, however, are out-of-date or based on inadequate information. The actual cost to complete the Trust Fund projects is not known.
- Highways – Other: DOT has identified approximately $15 billion in projects in thoroughfare plans for municipalities around the State. These projects have been identified by DOT and local governments as needed over the next twenty years, but are generally not included in the TIP or other construction plans.

Maintenance Backlog. DOT has identified and reported to the General Assembly a large maintenance shortfall, growing from a current annual level of about $300 million. DOT's own assessment is that the system is deteriorating, while current projections for the Highway Fund do not show increased availability for maintenance spending.

Transit. In 1998, Governor Hunt's *Transit 2001* Committee reported that the State should be spending a minimum of an additional $100 million annually. The State faces pressure to fund regional transit systems planned by the Triangle Transit Authority (TTA), in Charlotte-Mecklenburg, and the Triad. While TTA is well along in its financial planning, Charlotte and the Triad are earlier in the process. Generally, the federal government is expected to pay fifty percent of the cost of these new starts, while local and State government each pay twenty-five percent.

For passenger rail, DOT has identified $50 million as an appropriate additional amount to supplement the State's current spending.

Local Funding Sources. One of several solutions for the transportation funding dilemma facing the State is authorization of local sources of revenue for transportation needs. Some local governments in North Carolina want to raise local revenues to fund their own public transportation and road construction projects. However, local governments need statutory authority before they can raise revenues.

INDEX