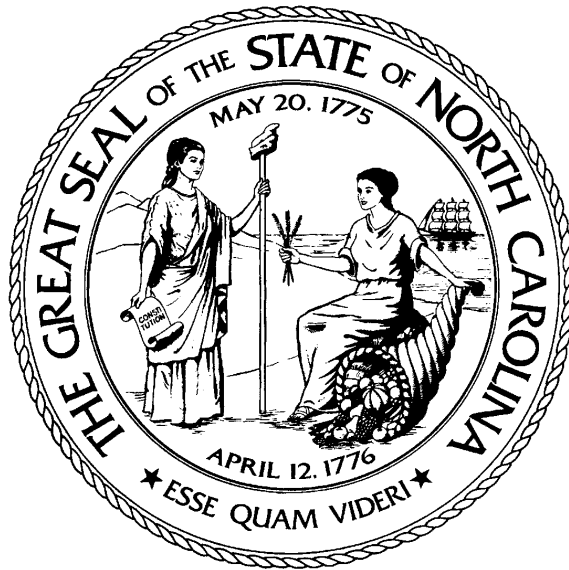


EMERGING ISSUES, HOT TOPICS

AND

TRENDS IN LEGISLATIVE ISSUES



2005

**RESEARCH DIVISION
N.C. GENERAL ASSEMBLY
FEBRUARY 2005**

February 3, 2005

Dear Members of the 2005 General Assembly:

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 2005 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. Brenda Carter edited this document. What follows is the product of this process.

I WOULD EMPHASIZE THAT THIS IS NOT MY PUBLIC POLICY WISH LIST NOR THAT OF ANY STAFF MEMBER. OUR MENTIONING OR FAILING TO MENTION ANY ISSUE SHOULD NOT BE VIEWED AS AN ENDORSEMENT OF OR OPPOSITION TO ANY PROPOSAL.

The names and telephone numbers of the Legislative Services Office staff people most familiar with the area discussed are listed after each main topic. The person or persons preparing the individual entry is found at the end of the entry. If you wish to investigate any of these matters in greater detail, please contact the listed individuals.

We hope that this publication is of use to you as you undertake the work of the 2005 General Assembly.

Terrence D. Sullivan
Director of Research

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Aging

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Overview

According to data provided by the Division of Aging and Adult Services, Department of Health and Human Services, North Carolina ranks thirty-third in the nation with regard to the percentage of the population that is 65 years of age and older. In 2004, North Carolina's population age 65+ totaled 1,016,214 (12.1% of the total population) and the 85+ population totaled 118,511 (1.4% of the total population). Overall, North Carolina ranks tenth among states in the number of persons age 65 and older.

The Baby Boomer generation represents those born between 1946 and 1964. As this generation ages, services provided to older adults and budgets providing those services will be greatly impacted. The oldest Baby Boomers are currently 58 years of age and the youngest are 40. In the next 25 years, the entire Baby Boomer generation will be between the ages of 65 and 83. Not only are North Carolina's citizens aging, but the moderate climate, quality of life, and access to health care found in North Carolina make it a destination spot for retirees migrating from across the country. A positive migration rate indicates that more individuals are moving to a state, than are leaving the state. According to information supplied by the Division of Aging and Adult Services, in the five-year period between 1995 and 2000, North Carolina had a net migration rate of 22.1 per 1,000 among individuals age 65+. North Carolina's current migration rate for older adults is higher than Georgia and Tennessee, but lower than Florida and South Carolina. The 2003-2007 North Carolina Aging Services Plan predicts that by 2020, the age 65+ population in North Carolina will have grown 71% over the 2000 baseline, compared to 36 percent for the general population. By 2030, the prediction is that the State could have 17.8% of the population age 65+, which would represent over 2.2 million individuals.

The North Carolina Study Commission on Aging is statutorily charged with studying and evaluating the existing delivery system of State services to older adults and recommending an improved system to meet present and future needs of older adults. Each biennium, the Commission conducts public hearings across the State to solicit input from citizens on issues of interest and/or concern for older adults. The Commission also invites organizations and associations who advocate on behalf of older adults to address the Commission. The Commission studies a variety of issues each interim and makes an annual report containing findings and recommendations to the General Assembly and the Governor.

Recommendations to the 2004 General Assembly included: restoration of the long-term care insurance tax credit; requiring a study and support for addressing issues related to mentally ill individuals in long-term care facilities; seeking legislation to allow national criminal history record checks of persons seeking employment to provide direct care in adult care homes or contract agencies of adult care homes; increased funding for the Home and Community Care Block Grant, Senior Center development and outreach, and independent housing with services; requiring an examination of whether the State's Medicaid program favors support for individuals in institutional settings over support for individuals living at home; recommending the establishment of a Legislative Study Commission to study State guardianship laws; and support for adult day and adult day health services by providing a rate increase.

Recommendations to the 2005 General Assembly may include: requesting the Office of the State Auditor to conduct a more in-depth assessment of the Community Alternatives Program for Disabled Adults (CAP/DA) program; several recommendations related to improving the quality of care in home care agencies; authorization of a civil penalty to be imposed against adult care home licensure applicants who supply false information or omit material information on licensure applications; increased funding for Senior Games and the Home and Community Care Block Grant; re-enactment of the Long-Term Care Insurance Tax Credit; and collaboration among stakeholders to improve the adult protective services system.

Direct Care Workforce

The aging of the population, especially the Baby Boomer generation, will create an increased need for programs and services for older adults as well as an increased demand for a caring, committed, and knowledgeable workforce to provide those services. The Governor's Advisory Council on Aging recommends that the General Assembly continue to strengthen the long-term care direct care workforce. The Study Commission on Aging may recommend initiatives to increase the population and pay for geriatric care employees.

Health Promotion for Older Adults

The Study Commission on Aging will likely recommend that the General Assembly increase funding for the NC Senior Games program. The Division of Aging and Adult Services, Department of Health and Human Services, reports that at the federal level the Centers for Disease Control (CDC) and the Administration on Aging are placing increased attention on the need for evidence-based health promotion programs for older adults. Evidence-based programs are those that represent the conscientious, explicit and judicious use of current best evidence in

making decisions about the care of individual patients; in the case of seniors the programs generally focus on exercise, nutrition and medical interventions and are evaluated in terms of their impact on life span, quality of life, and cost of medical services. The CDC and Merck Institute of Aging & Health recently released *The State of Aging and Health in America 2004*. Among the ratings contained in the report, North Carolina ranks 49th in 'no leisure-time physical activity,' 47th in 'current smokers,' 47th in 'physically unhealthy days, and 46th in 'oral health.' The Department is especially concerned about health disparities among subgroups of older adults and has formed a team to look at how our State can improve its ratings.

Home and Community Care

The Study Commission on Aging is expected to make recommendations to the 2005 General Assembly concerning health and community care. The Commission is requesting that the Office of the State Auditor conduct a more in-depth assessment of the Community Alternatives Program for Disabled Adults (CAP/DA), an alternative to nursing home care for adults who meet eligibility requirements and are at risk of nursing home placement if they don't get community-based care. In addition, there are several recommendations related to improving the quality of care in home care agencies and increased funding for the Home and Community Care Block Grant. Specific recommendations from the Governor's Advisory Council on Aging include the expansion and strengthening of programs, services, and benefits in areas including Home and Community Care Block Grants, Senior Centers, transportation services, State/County Special Assistance In-Home programs, asset limits for Medicaid for aged, blind, and disabled persons, adult day care/adult day health care services, the creation of an Office of Housing in the Department of Health and Human Services to study housing needs for older adults, funding for indoor plumbing for older adults, increasing the Homestead Property Tax exemption, and ensuring the viability of the CAP/DA program. Priority issues for The Senior Tar Heel Legislature in the 2005 Session include increasing funding for home and community based services, and increasing funding for senior centers.

Long-Term Care

It has been determined that the recently enacted law concerning criminal record background checks for long-term care employees will need to be rewritten. The law, which was set to take effect January 1, calls for nursing homes to seek national criminal background checks on all employees and contract workers whose jobs put them in contact with residents at nursing homes, adult-care homes, home-care agencies and mental health providers. Only direct-care workers

previously were subject to the check. The new law says that others who come into contact with residents, such as janitors and office workers, must also submit to the background check. The FBI has objected to the law because it contains language calling for the State Department of Health and Human Services to share the results of the background checks with private employers, and Federal law opposes this type of disclosure. The Study Commission on Aging will likely make the recommendation to amend the law in response to FBI concerns. It is also anticipated that the Commission will recommend authorization of a civil penalty to be imposed against adult care home licensure applicants who supply false information or omit material information on licensure applications.

The Governor's Advisory Council on Aging supports full implementation of the provisions of Session Law 1999-334 (An Act To Enact Reforms In The Long-Term Care Industry In Order To Improve Quality Of Care, Increase Protection Of Residents, And Strengthen Regulatory Oversight Of Industry Practices). The Council on Aging also supports conducting a study of the mixing of older adults and younger mentally ill adults in long-term care facilities; the General Assembly has enacted a study of the mixing of populations and a report is due to the Study Commission by October 1, 2005.

Reinstating the Long-Term Care Insurance Tax Credit

In 1998, the General Assembly enacted a tax credit of 15%, up to a maximum of \$350, on premiums paid for long-term care insurance. The credit sunset on January 1, 2004. The North Carolina Study Commission on Aging, the Governor's Advisory Council, and the Senior Tar Heel Legislature all support enacting a permanent long-term care insurance tax credit. The Study Commission on Aging will recommend reinstatement of the tax credit in its report to the 2005 General Assembly.

Other State Issues Related to Aging

Other recommendations from the Senior Tar Heel Legislature include strengthening efforts to protect the quality of the State's air, water and soil and modifying State laws to better support grandparents and other relatives who are raising children. Through the NC Senior Fraud Task Force, the Division of Aging and Adult Services, the Office of the Attorney General, AARP-NC, and others continue to examine issues involving older adults who fall prey to frauds and scams. It is anticipated that the Study Commission on Aging will recommend that the Adult Protective Services Task Force collaborate with stakeholders on improvements to the adult protective services system. The Governor's Advisory Council on Aging recommends a study of the State's guardianship laws; a study was enacted during the 2004 Session, but has not yet been undertaken.

Federal Issues Related to Aging

Additional medicare changes are on the horizon for 2006. The Medicare Prescription Drug Improvement and Modernization Act of 2003 (MMA) was signed by the President in December 2003. For 2004 and 2005, this law provides Medicare beneficiaries with the option to purchase a prescription drug discount card, and provides a \$600 credit per year to qualifying low-income individuals. The discount cards will be discontinued and will be replaced in 2006 with the option to enroll in a stand-alone drug plan or to join a private health plan. It is possible that the MMA will be amended during 2005 as concerns linger over the high costs associated with the new law.

The White House Conference on Aging will be held October 23-26, 2005. The Conference occurs once a decade to develop recommendations for the President and Congress on issues, policy and research in the field of aging.

Alcoholic Beverage Control

Brenda Carter, Susan Sitze, Dickie Brown (Research Division 919.733.2578)

A recurring issue is whether legislation should be enacted to make state ABC laws uniform by eliminating the local option system and authorizing the issuance of all ABC permits in locations throughout the State. The opposing viewpoint is that eliminating the necessity of local elections would take away the right of local voters to decide what is best for their communities. The integrity of the local option system is doubted by some because over time the legislature has enacted provisions that allow establishments including sports clubs, private country clubs and resorts in specially defined areas to serve liquor by the drink, without the necessity of voter referendums. As establishments in otherwise "dry" areas of the State continue to seek legislation that will allow the issuance of ABC permits, we can expect to see either growing numbers of requests for special provisions, or more proposals for the statewide issuance of ABC permits. Proponents of statewide liquor by the drink say that the matter is an important economic development and tourism issue that deserves consideration. *Brenda Carter (Research Division 919.733.2578)*

Budget – See Finance

Civil Procedure – See also Insurance, Malpractice and Tort Reform

Kory Goldsmith, Trina Griffin, Tim Hovis, Wendy Graf Ray, Walker Reagan (Research Division 919.733.2578)

Public Agency Work Product Protection

In June 2004, the Court of Appeals ruled that government attorneys have no work product privilege in civil law suits, and that government lawsuit work product documents are subject to the Public Records law. [*McCormick v. Hanson*, 596 S.E. 2d 431 (2004)] The NC Supreme Court has denied the appeal in the case. Government lawyers argued that the client-attorney privilege between the governmental body and their attorneys applies and that work product produced under this relationship should be privileged and not a matter of public record, and should be treated the same as in non-governmental attorney-client relationships. In general, the attorney work-product privilege protects materials prepared by an attorney or others in anticipation of litigation, theoretically preserving the adversarial trial process by shielding materials that would disclose the attorney's theory of the case or trial strategy. It is anticipated that various public agencies and local governments will ask the General Assembly to amend the Public Records laws to exempt government attorney work product. The NC League of Municipalities, the NC Association of County Commissioners, NC School Boards Association, NC Attorney General's Office, and the NC Bar Association are all expected to support this effort; the NC Press Association may oppose this effort. *Walker Reagan (Research Division 919.733.2578)*

Commercial Law and Financial Institutions

Karen Cochrane-Brown and Walker Reagan (Research Division 919.733.2578)

Predatory Lending

In 1999, the North Carolina General Assembly led the nation by enacting laws prohibiting predatory lending practices in the prime and subprime mortgage lending industry. Predatory lending practices include imposing unfair and abusive loan terms on borrowers, often through aggressive sales tactics, taking advantage of borrowers' lack of understanding of extremely complicated transactions, and outright deception. Since enactment of the legislation, there has been compelling evidence that the restrictions and prohibitions contained in the law have been effective in reducing the number of unfair and deceptive lenders in the State.

In January 2004 the federal Office of Comptroller of the Currency, the primary regulator of national banks, promulgated rules that preempt state law and exempt national banks and their operating subsidiaries from state consumer

protection laws and enforcement actions. The federal rules would exempt national banks and their subsidiaries from the requirements of North Carolina's anti-predatory lending laws. According to a report of the National Conference of State Legislatures, several states have extended the exemption to state-chartered banks in order to level the playing field and maintain parity between state and national banks. Although North Carolina was a leader in outlawing predatory lending, the State is also the home of some of the largest banks in the country and has often sought to keep its state-chartered banks on par with national banks. Although it is unlikely that the Governor would sign any bill that undermines the predatory lending law because he championed it as Attorney General, this is a topic that may emerge during the 2005 Session. *Karen Cochrane-Brown (Research Division, 919.733.2578)*

Payday Lending

Since NC's payday lending law was allowed to sunset in 2001, the State has been struggling with the effects of unregulated payday lending operations. These businesses operate by affiliating with national banks that are exempt from the prohibitions of State law. As a result, many NC based businesses that do not qualify for the federal preemption have been put out of the payday lending business while out of state companies continue to operate. In addition, sources for small short-term loans have been severely restricted in the State because under current law such loans are deemed not profitable. Legislation to reauthorize and regulate this business has been introduced in almost every session since the sunset of the previous law, but so far, none have been successful. It is anticipated that NC will again be asked to permit some form of payday lending in 2005. *Karen Cochrane-Brown (Research Division, 919.733.2578)*

Uniform Transfer on Death Securities Registration Act (TOD)

It is likely that the General Assembly will again be asked to adopt the Uniform Transfer on Death (TOD) Security Registration Act, which has now been adopted in at least 46 other states. A bill providing for adoption of the Act was introduced in the 1997 Session, and a bill to adopt the act has been passed by the House every session since 1999. In 2003, HB 798 was passed by the House but was held up in the Senate after a fiscal note showed a potential reduction of between \$5.1 and \$5.5 million dollars in revenue to the General Fund due to the bill's effect in reducing the amount of estate assets that would be subject to probate fees.

TOD permits the owner of securities (stocks, bonds, mutual funds, etc.) to designate a beneficiary to own the security upon the owner's death. The owner retains all ownership rights in the security during his or her lifetime and can change the beneficiary designation anytime up until death. While TOD securities are subject to estate and death tax laws, they pass to the beneficiary outside the

owner's estate and are therefore not subject to probate (not publicly listed in the decedent's estate assets and not subject to probate fees). Transferring the name on the security to the beneficiary is simpler under TOD than when the security passes through the probate estate. North Carolina permits beneficiary designation on almost all other major intangible assets, such as life insurance and retirement accounts, but not for securities.

Because most other states recognize TOD registration, NC citizens may be getting different treatment depending upon where they purchase their securities, and people who move into this State with securities with the TOD designation may have their desires frustrated if they die in NC and the TOD designation is not effective in this State. In the past, the bill has been supported by the General Statutes Commission, the NC Bar Association, the AARP, and the National Securities Dealers Association among others. *Walker Reagan (Research Division 919.733.2578)*

Courts

*Brenda Carter, Kory Goldsmith, Tim Hovis, Walker Reagan, Dickie Brown
(Research Division 919.733.2578)*

Judicial Appointment/Voter Retention

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 system for selecting and retaining appellate judges has been under review for several years, and in every session since 1996 some form of judicial appointment with a retention vote by the people has been considered. Currently, judge selection for State courts in North Carolina at all levels is by nonpartisan election by the people of North Carolina. The argument for changing the current method is that campaigning by judges and election of judges taints the impartial nature of the judiciary. Critics argue that fund-raising efforts by judges, though necessary to an election, creates the appearance that judges can be influenced by those contributing to their campaigns. This appearance can diminish public confidence in the integrity and fairness of judicial decision-making. Proponents of the merit selection/retention election method contend that it resolves these ethical and practical problems and assert that it avoids the issue of lifetime judicial appointments and the criticism that accompanies that method; critics argue that gubernatorial appointment without limitation 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 and proposals have 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. The North Carolina Bar Association has historically supported a change in the way that judges obtain and maintain their offices. *Walker Reagan (Research Division 919.733.2578)*

8-Year Term for District Court Judges

During both the 2001-2002 and 2003-2004 Sessions, bills were introduced to amend the NC Constitution to provide that the term of office for district court judges would be eight years instead of the current four years. Superior and appellate court judges currently serve eight-year terms. Proponents of extending the term of district court judges argue that lengthening the term would encourage more people to be willing to serve as judges. They point out that many more established attorneys are reluctant to give up an established legal practice on the chance that they may be voted out as a judge four years later. Another argument in favor of eight-year terms is that it would reduce the amount of time and expense that current judges have to spend campaigning for office. Opponents of extending the term argue that eight years is too long a term for a "bad" judge that may need to be voted out of office. They argue that since the district court is the "people's court", the public is better protected by a shorter term of office. In the past the Conference of District Court Judges and the NC Bar Association have supported legislation to give district court judges an eight-year term. *Walker Reagan (Research Division 919.733.2578)*

Criminal Law and Procedure

Brenda Carter, Hal Pell and Susan Sitze (Research Division 919.733.2578);

Jim Mills, Chloe Gossage, Doug Holbrook, Denise Thomas (Fiscal Research Division 919.733.4910);

Beth Braswell (Bill Drafting Division 919.733.6660)

Sentencing and Corrections Policy

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 growth in the prison population leveled off after passage of Structured Sentencing, the population began to grow again in the late 1990's. Factors include the general growth in North Carolina population, serious offenders serving longer sentences due to Structured Sentencing, fewer releases of pre-Structured Sentencing inmates and the passage of new criminal penalties by the General Assembly. Since 2001, the General Assembly has authorized the Department of Correction to build six 1,000-bed prisons for the most serious offenders in order to manage the growth in prison population. Operating cost for these prisons is approximately \$18 million per prison. Current prison population projections by the Sentencing and Policy Advisory Commission indicate prison population will exceed DOC bed capacity by approximately 1,100 beds for 2006-2008 and approximately 4,700 inmates by 2012. These projections do not include the impact from 2004 General Assembly legislation that increased criminal penalties, and thus incarceration rates. The increased penalties for domestic violence and for methamphetamine crimes could increase the prison population significantly.

Growth in the prison population will frame the policy debate in the corrections area. The General Assembly will need to consider options for increasing bed capacity (construction, double-celling inmates) and/or revising the sentencing structure to reduce time served for certain offenders. Several bills that would reduce the prison population were introduced in recent Sessions but were not enacted. *Jim Mills, Chloe Gossage, Doug Holbrook, Denise Thomas (Fiscal Research Division 919.733.4910)*

Juvenile Justice Policy and Budget Issues

The General Assembly enacted the Juvenile Justice Act in 1998 and established the Department of Juvenile Justice and Delinquency Prevention (DJJDP) effective July 1, 2000. The Act, among other substantive changes, directed that the state reserve training school beds for the most serious offenders and ensure that misdemeanants and non-violent offenders were sentenced primarily to community-based sanctions. Funding was increased for community based programs and Juvenile Crime Prevention Council was established in each county to oversee these community programs.

Inherent in the Act was a mandate to reduce the number of juveniles placed in institutions (now called Youth Development Centers). Since 1998, the population has been reduced from over 1,100 juveniles to less than 500. However, the five facilities used to house these juveniles are old, in need of repair, and poorly designed. In 2003, the General Assembly authorized funds for the planning

and design of 512 new beds. DJJDP developed a plan based on smaller; treatment oriented facilities and proposed construction of 13 small facilities. In 2004, the General Assembly authorized issuance of debt of \$35 million to build up to five new facilities with a total of up to 224 new beds.

The key issues for consideration by the 2005 General Assembly will be to determine the future bed capacity needs for the more serious juvenile offenders and to assess the cost-benefit of proposals to establish treatment-based staffing in current and new Youth Development Centers. *Jim Mills and Denise Thomas (Fiscal Research Division 919.733.4910); Susan Sitze (Research Division 919.733.2578); Beth Braswell (Bill Drafting Division 919.733.6660)*

DNA Analysis

DNA analysis has been a recurring topic in the media in the last few years, and it has been high on the Attorney General's agenda. The State Bureau of Investigation (SBI) Crime Lab in the Department of Justice provides DNA analysis for all local law enforcement agencies in North Carolina, with the exception of Charlotte-Mecklenburg. Due to resource constraints, until recently the SBI only accepted rape cases for DNA analysis if law enforcement had an identified suspect. For the other "no suspect" cases, the rape kits remained in storage in local law enforcement agencies. The SBI has now accepted a few of these kits on a pilot basis, and plans to accept new "no suspect" kits. The backlog of "no suspect" kits is approximately 6,000, with an estimated 1,000 new kits per year.

In the last three years, the General Assembly has increased the number of DNA analysts, directed the SBI to outsource some of the backlogged kits, and authorized an expansion of the SBI lab building (the expansion had not begun as of January 2005). The SBI has also received federal grant funding for DNA analysis. The SBI will likely request additional DNA analysts in 2005. In a related issue, the SBI also manages the DNA database of convicted offenders (CODIS). In 2003, the General Assembly expanded the database to include DNA from all convicted felons. *Chloe Gossage (Fiscal Research Division 919.733.4910); Susan Sitze (Research Division 919.733.2578)*

Death Penalty Moratorium

In recent years, numerous questions have been raised about how and against whom capital punishment is carried out. Anti-death penalty activists have maintained that the 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 increasing evidence of racial disparity in prosecution or sentencing decisions. In response to those concerns, the North Carolina General Assembly

established the Legislative Research Commission's Capital Punishment—Mentally Retarded and Race Basis Committee to study the matter. 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. In a report to the 2001 General Assembly, the Committee 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 would have required 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. Legislation proposing a moratorium on the death penalty was introduced again in the 2003 Session. The moratorium proposal received approval in the Senate, but was not acted upon by the House. The issue will likely be presented again in the 2005 Session. *Brenda Carter (Research Division 919.733.2578)*

Driving While Intoxicated

The Governor's Task Force on Driving While Impaired (DWI) began meeting in April 2004 and finalized its' recommendations at a December 2004 meeting. The Task Force work involved subcommittees that addressed DWI in four stages: Prior to Arrest, Arrest/Prior to Trial, Adjudication, and Sanctions. It is anticipated that legislation will be introduced based on the Task Force recommendations, which are expected to be broad and to encompass a variety of areas related to DWI. Some of the proposals that may be introduced include:

- A DWI Oversight Committee
- Increase in the use of Ignition Interlock systems
- Increase in training and enforcement
- Admissibility of certain tests at trial
- Additional sanctions for convicted offenders.

Susan Sitze (Research Division 919.733.2578)

Expunction of Criminal Records

Expunction is the process by which a record of criminal conviction is removed by order of the court, and the individual is restored to the status he or she

occupied before the arrest or indictment. North Carolina law currently permits expunction in very limited circumstances, including when charges are dismissed or the person is found not guilty. Principle provisions governing the expunction of criminal records are set out in Article 5 of Chapter 15A of the General Statutes; additional provisions are set out in the Juvenile Code and in the Controlled Substances Act. For example, provisions are made for expunction of the following records:

- Juvenile records relating to a person's having been adjudicated delinquent or undisciplined while a minor
- Conviction for a misdemeanor committed while under the age of 18
- Misdemeanor possession of alcohol or drugs while under the age of 21

The Studies Act of 2004 authorized the Legislative Research Commission to study the conviction and sentencing of youthful offenders for the purpose of establishing a program or system by which youthful offenders with no prior convictions may either maintain or reestablish a sealed, expunged, or reduced criminal record. The proposed study was to include a review of the law regarding conditional discharge and expunction of records for first offenders under the State's Controlled Substances Act. Although the study was not undertaken, the issue may again come before the 2005 Session. As in past sessions, there is also likely to be interest in legislation that would allow any person convicted of a misdemeanor to apply for expunction of the record of that conviction after a specified period (for example, ten years) provided the person has not been convicted of any other criminal offense within that specified period. *Brenda Carter (Research Division 919.733.2578)*

Actual Innocence Commission

Recent developments in DNA testing have confirmed the long standing fear that, despite the superior nature of our justice system, there still exists the possibility that individuals can be convicted of crimes they did not commit. The Actual Innocence Commission was created by the Chief Justice of the North Carolina Supreme Court to provide a forum for education and dialog among prosecutors, defense attorneys, judges, law enforcement personnel, legal scholars, legislative representatives, and victim advocates regarding the common causes of wrongful conviction of the innocent and to develop potential procedures to decrease the possibility of conviction of the innocent in North Carolina. In furtherance of its mission, the Commission has been looking at several issues related to the criminal process in North Carolina with a goal of not only decreasing the chance of convicting the wrong person but increasing the likelihood of

convicting the right person. Issues on the Commission's agenda include co-defendant testimony, plea agreements, jailhouse snitches, attorney competency, police investigation techniques and witness identification. Legislation may be introduced at the request of this Commission to create an innocence claim review process for persons convicted of criminal offenses who claim they are innocent of the crime. *Brenda Carter and Susan Sitze (Research Division 919.733.2578)*

Jury Finding of Aggravating Factor for Increased Sentence

In June 2004, the United States Supreme Court decided the case of *Blakely v. Washington*, 124 S.Ct. 2531 (2004). The Court held that, except for prior convictions, any fact that increases the penalty for a crime beyond the statutory maximum must be submitted to a jury. Because North Carolina's Structured Sentencing Act allows for a judge to make findings that can increase the presumed statutory maximum, there are efforts underway to address the Supreme Court's decision. The North Carolina Sentencing and Policy Advisory Commission has prepared draft legislation that would require a jury to find factors that would increase the sentence, if the defendant does not admit that the factors exist. Additional proposals to amend the State's criminal procedural laws may be offered to facilitate compliance with *Blakely*. *Hal Pell (Research Division 919.733.2578)*

Separate Court-Imposed Post-Release Supervision at Sentencing

The State's statutes require the placement of higher classes of felons (Classes B1 through E) on supervised release nine months before the completion of their active sentence. Upon successful completion of this probationary period, the sentence is terminated. The laws also allow the Department of Correction to reduce the post-release supervision period, dependent upon the probationer's compliance with reintegrative conditions. In 2004, the General Assembly directed the North Carolina Sentencing and Policy Advisory Commission, in consultation with the Post-Release Supervision and Parole Commission and other State agencies, to review the post-release supervision sentencing system and to provide written recommendations to the General Assembly. The directive included the consideration of alternatives for transferring the responsibility for administering post-release supervision within the Department of Correction, to the Judicial Department, or both.

The Sentencing Policy and Advisory Commission assigned a subcommittee to study this issue. The subcommittee recommended that, if the General Assembly chooses to change the organizational placement of post-release supervision, the Courts should be responsible for setting and changing the conditions of post-release and revoking the offender to prison. The subcommittee also recommended changes to current statutes and procedures if the responsibility for post-release

supervision is not transferred from the Post-Release Supervision and Parole Commission. The subcommittee's report was approved by the full Commission in December, and the Commission's report is due to the General Assembly on March 1. The General Assembly can expect to see legislation based on these recommendations in the upcoming Session. *Hal Pell and Susan Sitze (Research Division 919.733.2578); Chloe Gossage (Fiscal Research Division 919.733.4910)*

Street Gangs

The House Select Committee on Street Gang Prevention was established to examine issues related to violent street gangs whose members threaten, terrorize, and commit crimes against the citizens of this State. The Committee is expected to make recommendations to the 2005 General Assembly regarding a Street Gang and Terrorism Prevention Act that will provide penalties for street gang crime, promote efforts to prevent street gangs and provide for intervention for those involved in street gangs. *Susan Sitze (Research Division 919.733.2578)*

Disaster Relief in Western North Carolina

Barbara Riley (Research Division 919.733.2578)

North Carolina was hit by 6 hurricanes in the 2004 season. Western North Carolina was most severely affected, being impacted by both Hurricane Frances and Hurricane Ivan in September. The hurricanes caused landslides and flooding resulting in two presidential disaster declarations. The Federal Emergency Management Agency (FEMA) designated nineteen counties as eligible for Individual Assistance and Public Assistance programs. These counties include Alleghany, Ashe, Avery, Buncombe, Burke, Caldwell, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Transylvania, Watauga, Wilkes and Yancey. An additional 26 counties were designated by FEMA as eligible only for Individual Assistance programs. These counties included Alamance, Alexander, Bladen, Cabarrus, Caswell, Catawba, Cleveland, Columbus, Cumberland, Davidson, Forsyth, Gaston, Graham, Guilford, Hoke, Iredell, Lincoln, Mecklenburg, Randolph, Roberson, Rockingham, Rutherford, Scotland, Stokes, Swain, and Union.

The President Pro Tempore of the Senate and the Speakers of the House of Representatives established the Joint Select Committee on Hurricane Relief to identify the unmet needs resulting from Hurricanes Frances and Ivan in Western North Carolina and to make recommendations for additional relief efforts necessary to assist the affected area in recovering from the storms. The Committee held several meetings in the Asheville area, including a special meeting to inform

the citizens of Western North Carolina of the organizations and agencies offering services and financial assistance to those who suffered damages from the hurricanes and to emphasize the approaching deadline for applications for federal assistance. Other meetings offered county and local government officials and private citizens an opportunity to address the committee about unmet needs in their communities. Some of the needs identified included damages to private roads and bridges, the need for updated floodplain maps and landslide zone mapping, an expansion of State buy-out and relocation assistance to homeowners whose houses were destroyed or damaged by landslides, assistance to small and mid-sized businesses with physical damage and inventory loss, assistance to local governments for infrastructure repairs, and the need to maintain a Western North Carolina Redevelopment Center. The Committee also consulted with the Governor's Western Recovery Task Force, which was charged with designing a recovery plan for the region. In December, the Governor approved a request from the Task Force for \$91 million to provide assistance to local governments affected by the hurricanes. Part of this money is expected to be used to provide the State match for federal disaster assistance funds. The Committee is expected to make a report containing its recommendations to the 2005 Session, including legislation to provide funding for unmet needs resulting from the hurricanes.

Economic Development

Cindy Avrette and Walker Reagan (Research Division 919.733.2578)

Rural Economic Development

As NC continues its efforts to improve the State's economy through economic development recruitment, the legislature can expect to see increasing attention focused on disparities between economic successes in the urban areas and economic development shortcomings in the rural areas.

Restrictions on Outsourcing

There appears to be growing concern about the extent to which the State may be contracting for services performed by companies not employing workers in this State, where the flow of State funds would be of greater benefit to the local economy. The legislature can expect to see efforts to require the State to contract locally for State services, whenever possible.

Financing of Incentives

(Also see the Finance Section)

The General Assembly will be expected to address how, and whether, it will finance economic development incentives. Most of the Bill Lee Act will expire January 1, 2006. Enacted in 1996, the Bill Lee Act is a package of state tax incentives given primarily in the form of tax credits for job creation, worker training, and investment in machinery and equipment, real property, and research and development. Counties are divided into five economic distress tiers based on unemployment rates, per capita income, and population growth. For many of the credits, the lower the tier of the county, the more favorable the incentive. The General Assembly will need to extend the Bill Lee Act, revise it, or devise other means of encouraging and financing economic incentives. In the past few years, the State has relied more heavily on grants through the Jobs Development Investment Grant program and anticipates larger annual appropriations to the One North Carolina Fund. The One North Carolina Fund (formerly the Governor's Industrial Recruitment Competitiveness Fund) was created in 1993 to help North Carolina achieve its stated goal of economic growth through uniform regional prosperity. The fund helps the state achieve this goal by recruiting and expanding quality jobs in high value-added, knowledge-driven industries, and by providing financial assistance to those businesses or industries deemed by the Governor to be vital to a healthy and growing State economy and that are making significant efforts to expand in North Carolina. In addition to these economic development incentive proposals the legislature can expect continuing interest and support for reduction of the corporate income tax rate.

Education: Primary And Secondary

Robin Johnson, Drupti Chauhan, Shirley Iorio, Sara Kamprath, Dee Atkinson (Research Division 919.733.2578); Adam Levinson (Fiscal Research Division 919.733-4910)

Highly Qualified and Competent School Personnel

Teacher Recruitment and Retention

Retirements, a growing student population, and class-size reduction initiatives have all contributed to the teacher shortage. However, simply getting more teachers into the profession will not be sufficient if we are to turn around schools in need of improvement, help all students meet rigorous academic standards, and close the achievement gap. In short, the challenge to the profession is to prepare and retain greater numbers of high quality teachers. This shortfall of teachers is of growing concern. It is not only an issue of pure numbers, but also 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. In order to help address the teacher shortage, interested stakeholders will have to find ways to encourage young people to consider teaching as a career, and then create working conditions that will keep teachers in the profession. Recruitment efforts may need to be targeted for specific subject areas such as math, science, and special education as well as for certain geographic areas of the State. In addition to raising salaries, other states are beginning to recruit teachers by 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.

In addition to the problem of recruiting teachers, legislators will also face the question of how to keep teachers in the profession. Increasing salaries and bonuses for performance along with non-monetary benefits may need to be considered. Determining whether the certification process currently in place is too stringent or too restrictive may be another area that needs to be examined. North Carolina will continue to face pressure to increase standards for the teaching workforce in order to comply with the federal No Child Left Behind Act, and to address various issues raised by the Governor's Teacher Working Conditions Survey, such as full-time mentors for beginning teachers. *Shirley Iorio (Research Division 919.733.2578)*

Teacher Preparation

There continues to be concern over whether schools of education in the State are adequately preparing future teachers. As reflected in the No Child Left Behind requirement that all teachers of the academic subjects be highly qualified, new teachers must have the knowledge, skills, and dispositions to teach to high standards and to be effective with the increasingly diverse population of students in today's classrooms. Many of these new teachers will have to commit to and be able to teach in hard-to-staff content areas and in our most challenging schools. However, we cannot rely exclusively on traditional teacher preparation programs to ratchet up their efforts. Preparing more teachers at the pace necessary to keep up with the demand, while also ensuring that teachers are effective and motivated to stay in the classroom, may require new ways of recruiting, training, and supporting teacher candidates. Legislators will have to continue to consider ways to develop and support new routes to teacher certification, known in North Carolina as lateral entry, giving more candidates more access through high-quality alternative teacher preparation programs. The State Board of Education recently released a report on lateral entry teachers that calls on education leaders to improve training for lateral entry teachers before their first day in the classroom,

and to better support them once they are there. *Shirley Iorio (Research Division 919.733.2578)*

Professional Development

The State spends a great deal of money on professional development programs for teachers, and provides teachers a number of staff development days. These areas could be examined to make sure that both the professional development and the released time are used effectively and efficiently to focus on improving student achievement. *Shirley Iorio (Research Division 919.733.2578)*

Teacher Mentoring

A comprehensive induction program is one of the most effective methods for retaining quality teachers, with mentoring being just one component of such a program. North Carolina has had mentoring programs in place for several years. In the 2003 session, the General Assembly directed the State Board of Education to evaluate the effectiveness of a representative sample of local mentor programs. Legislators may want to consider the findings of this evaluation to determine whether the State-funded mentor programs are doing what they are intended to do – retain teachers. *Shirley Iorio (Research Division 919.733.2578)*

Teacher Salaries

The issue of teacher salaries often raises many questions that legislators may need to consider: Should there be differentiated pay? Should teachers be rewarded based on student growth or gains? Should the base pay be raised? Should the teacher salary schedule be revised to make it more in line and competitive with other employment that has similar education or training requirements? Where can the money for this be found?

When the General Assembly passed the Excellent Schools Act in 1997, one of the goals was to increase teacher salaries over a four-year period so that, by the year 2000, the starting salary for teachers would be at least \$25,000. That goal was reached. Since that time, 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. Between fiscal years 1996-97 and 2003-04, North Carolina's average teacher salary improved from 43rd among states (80.8% of the national average) to 18th (95.6% of the national average). Estimates for 2003-04 rank North Carolina 23rd among states (92.5% of the national average). The national average for teacher salary typically increases by approximately 2-3% annually.

Despite intense budget pressures throughout the past four fiscal years (2001-02 to 2004-05), teachers received "experience step" pay increases each year.

Most other State employees did not receive any pay increases in two of those four years. In fiscal year 2004-05, the General Assembly appropriated approximately \$60 million to provide, on average, a 2.5% increase in compensation for teachers and certified instructional support personnel.

The estimated cost of providing NC teachers with an experience step salary increase in 2005-06, averaging an estimated 1.89%, is approximately \$78 million (including matching benefits). If the General Assembly intends to keep NC teacher salaries close to the national average in order to attract and retain qualified professionals, additional funding will likely be required. *Shirley Iorio (Research Division 919.733.2578); Adam Levinson (Fiscal Research Division 919.733.4910)*

Reemploying Retired Teachers

In the 2004 session, the General Assembly extended for one year - until June 30, 2005 - the sunset on the provision that allows retired teachers to return to the classroom with no earnings restrictions (thereby allowing them to earn full retirement benefits and full teacher salary). This provision removes any restrictions on the amount of post-retirement earnings for any retiree of the Teachers' and State Employees' Retirement System who is employed to teach on a substitute, interim or permanent basis in a public school. To qualify, a teacher must have been retired for six months and not have been employed in any capacity with a public school, except as a substitute teacher or part-time tutor, for at least six months immediately preceding the return to teaching. Local school administrative units are required to pay into the Retirement System a Reemployed Teacher Contribution Rate of 11.70%. Also, there is a provision in the 2004 budget bill that directs the Retirement Systems Division to conduct an analysis of the post-retirement reemployment issue, including a survey of other state systems, cost analyses, review of relevant federal regulations, and the administrative impact of various post-retirement reemployment policies. The Retirement Systems Division must develop findings and recommendations and report to the General Assembly by February 1, 2005.

It is likely that the 2005 General Assembly will again consider the issue of reemploying retired teachers. Legislators will probably consider extending the sunset and whether the retirement contribution policy should continue in its current form. Another issue that may come up is whether to shorten or eliminate the six-month break in service requirement. *Shirley Iorio (Research Division 919.733.2578)*

School Funding Issues

Enrollment Growth

Average Daily Membership (ADM) in the public schools is projected to grow by 26,797, or 1.96%, bringing the Statewide total in FY 2005-06 to 1,395,860. The cost to fund the new growth will be approximately \$141 million, which will be built into the continuation budget. ADM has increased 20% over last 10 years. The 10 largest school systems have accounted for 72% of the growth and 40 school systems have experienced declining ADM. Given the budget constraints that will exist this year and the funding implications related to the Leandro litigation (see next topic), legislators may need to evaluate the appropriateness of the various formulas upon which funding for ADM is based. *Adam Levinson (Fiscal Research Division 919.733.4910)*

Leandro Issues

Ten years have passed since North Carolina's current school funding case ("Leandro") was filed in 1994. There have been two North Carolina Supreme Court rulings in Leandro. The first opinion was issued in 1997 and established for the first time that North Carolina has the constitutional obligation to establish and maintain a system of public schools in which every child has the opportunity to obtain a sound basic education. [*Leandro v. N.C.*, 346 N.C. 775 (1997)] The Supreme Court defined a "sound basic education" as one that will provide the student with at least the following:

1. *Sufficient ability to read, write, and speak the English language and a sufficient knowledge of fundamental mathematics and physical science to enable the student to function in a complex and rapidly changing society;*
2. *Sufficient fundamental knowledge of geography, history, and basic economic and political systems to enable the student to make informed choices with regard to issues that affect the student personally or affect the student's community, state, and nation;*
3. *Sufficient academic and vocational skills to enable the student to successfully engage in post-secondary education or vocational training; and*
4. *Sufficient academic and vocational skills to enable the student to compete on an equal basis with others in further formal education or gainful employment in contemporary society.*

In the second Leandro opinion, the Supreme Court generally endorsed (i) the lower court's finding that an inordinate number of at-risk public school students in Hoke County and other rural, low-wealth counties were not demonstrating that

they had acquired or were on track to acquire a sound basic education and (ii) the lower court's conclusion that the student's academic difficulties proved that they were being denied the opportunity to obtain a sound basic education. [*Hoke Cty. Bd. of Educ. v. State*, 358 N.C. 605 (2004)]

As a result of these decisions, several legal principles are now established. First, the North Carolina constitution guarantees every child in the State the opportunity to receive a sound basic education in the public schools. Second, the obligation to provide that opportunity rests on the State and the State cannot avoid its constitutional duty by demonstrating that local boards of education or superintendents are failing to properly administer their schools. Third, in order to fulfill its obligation the State must have in place a system that ensures there are competent teachers, competent principals, and adequate resources to sustain instructional and support programs that will aid all children, including at-risk children, to gain their opportunity to obtain a sound basic education.

Following the second Supreme Court ruling, the Governor by Executive Order directed \$22 million to fund pilots of the State Board of Education's newly developed Disadvantaged Student Supplemental Funding (DSSF) program. The DSSF program funds educational initiatives and programs recommended by school systems and approved by the State Board of Education (Board). These initiatives and programs are expected to improve the educational opportunities available to and the academic performance of "at-risk" students in Hoke and 15 other rural, low-wealth counties.

In July 2004 the Supreme Court remanded the case to the lower court "and ultimately into the hands of the legislative and executive branches," to craft an acceptable remedy. Beginning in the fall of 2004, there were a series of hearings in which the lower court has examined the Board's efforts to produce a plan that includes education programs and initiatives that can be implemented to meet the State's obligation to provide every child with the opportunity to obtain a sound basic education. (The superior court and the parties are now proceeding as though the Supreme Court also found that at-risk children in large, urban school systems are not receiving the opportunity for a sound basic education; however, the Supreme Court did not directly resolve this issue.)

The DSSF program is one component of the plan the Board is proposing, so the parties have been working to refine the DSSF formula so that it will (i) be stable, (ii) be equitable, (iii) consist of variables that will not change based on the success or failure of funded programs, and (iv) be built on variables that will not be subject to interpretation or application in different school systems. The current version of the DSSF formula takes into consideration three independently verifiable community factors that have a high correlation with student achievement: (i) the percentage of public school students living in a single-parent

household, (ii) the percentage of public school students who have at least one parent with less than a high school diploma, and (iii) the percentage of children age five to 17 who qualify for federal Title I funding because of their poverty. During the most recent hearing on January 11, 2005, the parties agreed this version of the DSSF formula is a reasonable means for funding additional educational opportunities for at-risk students, and the superior court approved it as part of the State's plan.

While the parties and the court endorse the DSSF program, it is not the only remedy appropriate for addressing the issues presented in the case. Moreover, a number of questions, including the following, remain unresolved: How should the DSSF formula be funded? How long should it take to fully fund it? Should other funding allotments, such as low-wealth, be fully funded instead of or in addition to the DSSF program?

Aside from issues related to the DSSF program, other larger issues remain, including whether the State and schools systems should blend or target existing funds so they can be used more effectively to ensure that at-risk students have the opportunity to obtain a sound basic education? Should there be changes in school management or the instructional process so as to increase educational opportunities?

The 2005-06 session will be the General Assembly's first opportunity to formally consider and respond to the plan that is being developed. The Governor's budget is likely to include continuing funds for the DSSF program for the pilot school districts and may include some expansion funding for evaluation of the pilot interventions. It also is expected that advocates and some legislators will push for full funding for the Low-Wealth Supplemental Fund. The General Assembly will need to examine whether the current education funding system and funding levels are appropriate to meet the Leandro requirements and whether administrative changes can improve educational opportunities. The General Assembly also should scrutinize all proposed education legislation and funding within the context of Leandro. Robin Johnson (Research Division 919.733.2578); Adam Levinson (Fiscal Research Division 919.733.4910)

Student Achievement

The upcoming legislative session is expected to bring a continued concerted effort on the part of State lawmakers and policymakers to raise standards for students and educators and hold schools, students and educators accountable for their performance. Within this framework, there will be an emphasis on educating all children including those at high risk for not completing high school and those that have not been able to succeed in traditional school settings. Drupti Chauhan (Research Division 919.733.2578)

Reducing the Dropout Rate

North Carolina has high numbers of dropouts. Issues that will face the Legislature will include finding ways to reduce the dropout rate and encourage high school completion. Data shows that students are particularly vulnerable to dropping out of school when they are in the ninth grade. Other groups of students that are high at risk of dropping out are males, non-English speakers, Native Americans, Hispanics and African Americans. Some proposals and ideas that may continue to surface include looking at the restructuring of high schools and delivery of educational services in high schools and identifying students who may be at risk for dropping out. This early identification would allow for more targeted interventions. Other strategies that may be proposed include increasing collaboration among agencies, developing transitional programs from elementary to middle schools and middle to high schools, adopting policies to encourage attendance to reduce suspensions/expulsions, targeting instructional support services from counselors and social workers for at-risk and disadvantaged students, raising the compulsory attendance age, and creating incentives for local systems to proactively work to reduce the dropout rate. *Drupti Chauhan (Research Division 919.733.2578)*

High School Redesign (New Schools Project)

In 2003, North Carolina received a Gates Foundation grant in the amount of \$11 million to establish the New Schools Project with the challenge to the State that if \$10 million of public and private funds were identified, the Foundation would then award an additional \$10 million. The New Schools Project will award grants and provide other support to create up to one hundred new small high schools across the State. There is research that indicates that smaller learning communities help create a more personal learning environment that raises student achievement. The Gates Foundation grant, however, is limited in size and scope and there has been no comprehensive assessment of the costs that would be incurred by the State if it were incorporated across the State. Other initiatives include early and middle college programs where high school students are taught on the campuses of the local community colleges. *Drupti Chauhan (Research Division 919.733.2578)*

ABCs Program

The ABCs plan, in place since 1996, is an accountability model for the public schools that is designed 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 schooling is expected. The essence of the plan is that there are rewards for educators when schools show academic success and negative consequences for educators and schools when they do not. Last year, the State spent approximately \$101 million on the ABCs bonuses. The 2004-05 budget bill also directed the State Board of Education to evaluate the accountability system and, if necessary, modify the testing standards so that they continue to reflect the State's high expectations for student performance. Any changes must go into effect no later than the 2005-06 school year. One issue that may surface this year is whether the current ABC bonus amounts and criteria for receiving them continue to be appropriate. *Drupti Chauhan (Research Division 919.733.2578); Adam Levinson, Fiscal Research Division 919.733.4910*

No Child Left Behind (NCLB)

This federal act governing education, enacted in 2002, requires states to strengthen their standards and assessment systems so that schools and school systems are held accountable for the performance of all students, including students with disabilities and students with limited English proficiency. At this time, accountability under NCLB is based on whether schools, school systems, and states are making adequate yearly progress (AYP) towards the goal of bringing 100% of their students to academic proficiency in reading, mathematics, and science by the end of the 2013-2014 school year. It is anticipated that the President, in the coming months, will propose an expansion of NCLB into the high schools.

In order to reach 100% proficiency, each state has adopted a timetable that increases the proficiency standards, which are based on student achievement on standardized tests, until 100% proficiency is attained by the end of 2013-2014. In North Carolina, the 2004-2005 school year has a significant "bump" in the proficiency standard required to make AYP. This makes it highly likely that more schools will be identified as failing to make AYP. In addition, every subgroup at a school must make AYP, so the more subgroups there are in a school, the harder it is for the school to make AYP.

For every consecutive year that a school fails to make AYP for one of its subgroups, there are increasing penalties that range from public reporting, to allowing students at that school to choose to attend another school that made AYP for all its subgroups, to offering supplemental services, to eventually taking over the school. Since more schools are likely to fail to make AYP this year than last, it is expected that the consequences and their attendant costs will increase, too.

In addition, the State's accountability system (the ABC's) rewards schools based on additional criteria (primarily whether one group of students makes or exceeds its academic expectations from one year to the next). It is likely that more

schools this year will have two very different public faces – failing to make AYP under NCLB, but rewarded for meeting or exceeding academic expectations under the ABC's. This could lead legislators to scrutinize the criteria for the ABC's so that there is greater alignment with NCLB.

NCLB also requires all teachers of "core academic subjects" to be "highly qualified" by July 1, 2006. (This applies also to special education teachers.) The core academic subjects include English, reading, language arts, mathematics, science, foreign languages, civics and government, social studies, economics, arts, history, geography, and kindergarten through Grade 6 (K-6). Teachers of these subjects must pass a rigorous state test or have completed an academic major in each academic subject they teach. Veteran teachers will have the option to demonstrate their content knowledge via the NC HOUSSSE (High Objective Uniform State Standard of Evaluation). NCLB's "highly qualified" requirements for teachers comes during a time when North Carolina's demand for teachers, especially in science, special education, mathematics, and middle grades, is already quite high. Moreover, veteran teachers who are eligible for retirement may choose that option rather than choosing to prove whether they are highly qualified at this point in their teaching career. All of this makes it even more imperative that legislators and policymakers continue looking for ways to improve teacher retention and recruitment in the State. *Robin Johnson and Drupti Chauhan (Research Division 919.733.2578)*

Distance Learning

There may be a continued focus on distance learning as technology is used to provide greater access to education, particularly for students in rural areas who may not have access to particular courses in their schools. In addition, distance education will provide teachers with more education resources ranging from lesson plans to professional development. Distance learning has the potential to alleviate some of the facilities issues that are facing community colleges and universities as well as allowing the institutions of higher education to reach out to nontraditional students who may not be able to attend traditional community college and university classes. *Drupti Chauhan (Research Division 919.733.2578)*

Continued Class Size Reduction

Although Governor Easley has not proposed any further class size reductions beyond those that have already occurred in grades K-3, the consequences of past reductions will continue to be felt in several contexts. Additional classroom space will be needed as well as additional teachers, both of which will require an increase in appropriations in the coming years, especially as the enrollment growth continues to rise. *Drupti Chauhan (Research Division 919.733.2578)*

Preschool/Early Childhood Education

There is research that indicates 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. There are two programs in particular which will continue to be at the forefront of addressing this issue: Smart Start and More at Four. Smart Start was created by the General Assembly and Governor Hunt and is designed to improve the quality of early childhood programs. For the fiscal year 2004-2005, approximately \$193 million was appropriated for Smart Start. This money is used to fund a wide range of projects that are determined by local collaborative partnerships involving both public and private groups. Governor Easley and the General Assembly created More at Four to target at-risk four-year olds. All More at Four programs are required to select and implement a research-based curriculum. The 2004-2005 appropriation for More at Four was approximately \$51 million. *Drupti Chauhan (Research Division 919.733.2578); Lisa Hollowell (Fiscal Research Division 919.733.4910)*

Infrastructure Needs

School facilities and school construction may be an important issue in the upcoming biennium as many of the rapidly growing school systems are having a difficult time keeping up with their infrastructure demands. These needs come from the recent class size reduction initiatives and rapid population growth in some areas of the State. While the counties are legally responsible for funding school facilities, there has been a pattern of the State providing assistance to the local governments about every ten years and it has been about ten years since this last happened. The last facility needs survey conducted in 2001 (which makes projections for five years) indicated that \$6 billion is needed for school construction. This number does not include the class size reductions which occurred after the survey took place and over 2300 classrooms are needed for just the class size reductions. Various groups would like the State to consider a dedicated revenue stream to help counties meet the State's needs for school facilities. There has been discussion that money from the lottery that Governor Easley will likely propose would be used to fund school facilities needs. *Drupti Chauhan (Research Division 919.733.2578)*

School Calendar Adjustments

One of the last bills enacted during the 2004 Regular Session (S.L. 2004-180) made significant and quite controversial changes to the school calendar.

Beginning with the 2005-2006 school years, schools must begin no earlier than August 25 and close no later than June 10 except in unusual circumstances or in year round schools. In addition, five teacher workdays will be eliminated – without affecting teacher pay; five of the remaining 15 workdays must be scheduled at certain times for teachers to complete instructional and classroom administrative duties, and teachers must receive their first paycheck by August 31.

There are two ways to receive a waiver from the required start and end dates. The more controversial method requires a school to establish a need to adopt a different calendar based on one of the following reasons: (i) to accommodate a special program at a school that is offered generally to the student body of that school; (ii) to serve a special population of students at a school; or (iii) to accommodate a defined program at a school. To date, 77 schools have requested an educational waiver, but the Board will not act on these waivers until its February meeting. It is likely that some of these waivers will not be granted, in which case legislators may be asked to redefine what constitutes an educational purpose.

In addition, the State Board, School Boards Association, and Association of School Administrators have raised a number of other issues that they are likely to ask the General Assembly to resolve. These include (i) the financial ramifications of prepaying teachers who leave employment before working the required time and who fail to repay the school system, (ii) the fact that it will not be possible to complete the first semester before the winter break meaning students will not be able to enroll in dual enrollment programs in community colleges and universities (which start at the beginning of January), (iii) additional transportation costs, (iv) how many days of employment there must be for 10-month non-certified employees, and (v) lack of flexibility in when to schedule teacher workdays. *Robin Johnson (Research Division 919.733.2578)*

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. Currently, there is a statewide cap of 100 charter schools and there are currently 99 charters. Thus, it is likely that a discussion of raising the cap will occur this year. *Shirley Iorio (Research Division 919.733.2578)*

Children's Health Issues

For the past few sessions, the General Assembly has passed legislation that pertains to children's health issues. Legislators may continue to face proposals

concerning children's health issues, particularly childhood obesity and physical education requirements in the schools. The question may also arise as to whether or not to provide more funding for school nurses. *Shirley Iorio (Research Division 919.733.2578)*

EDUCATION: HIGHER EDUCATION

Robin Johnson, Drupti Chauhan, Shirley Iorio, Sara Kamprath, Dee Atkinson (Research Division 919.733.2578); Richard Bostic and Kristine Leggett (Fiscal Research Division 919.733.4910)

Enrollment Growth/Access

Community Colleges

Current community college growth estimates show relatively low growth for the first time in four years. Anticipated enrollment for fiscal year 2004-05 is 191,103 Full Time Equivalency (FTE). This is an increase of 2,493 FTE or a 1.32% increase. Community Colleges are not funded on a projected basis. They are funded based on the prior year or the average of the three previous years. The cost to meet the anticipated enrollment growth is \$7.9 million. *Kristine Leggett (Fiscal Research Division 919.733.4910)*

UNC

The Board of Governors has requested a 4.3% increase in student credit hours for regular term and distance education students in fiscal year 2005-06. This request would fund 533 instructional positions to teach an additional 8,128 students (4,810 FTE on campus and 3,318 FTE distance education) at a cost of \$73.6 million. *Richard Bostic (Fiscal Research Division 919.733.4910)*

Need-Based Financial Aid

Last year Congress enacted legislation that will impact the number of students eligible for and the amount of money that a student can receive through federal Pell grants. Decreasing federal student financial aid combined with increased tuition rates at UNC constituent institutions means that more State-funded student financial aid will be needed to ensure access to higher education for all qualified students. The General Assembly began funding the UNC Need-Based Financial Aid Program in 1999-2000. A total of over \$47 million is now available for resident undergraduate students. Approximately 30,000 undergraduates receive need-based grants averaging \$1600 per student. The Board of Governors has requested \$8.7 million to pay any tuition and fee increases for the students currently receiving this aid and to cover an additional 630 students. *Sara Kamprath (Research Division 919.733.2578)*

UNC Tuition Increases

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 again be a topic of debate especially because of continuing budgetary constraints.

Following several years of system-wide and campus-initiated tuition increases, in 2004 the UNC Board of Governors did not adopt and the General Assembly did not enact a system-wide tuition increase. The only tuition increases in 2004 were campus-initiated tuition increases for both in-State and out-of-State students approved by the UNC Board of Governors. The Board has decided not to adopt a system-wide tuition increase and in February or March will consider very carefully any tuition increase requests from individual campuses. The General Assembly could be faced with a decision that requires balancing the need for a system-wide tuition increase against the possibility that such a tuition increase could put access to higher education out of reach of more families, especially those not eligible for financial aid. *Sara Kamprath (Research Division 919.733.2578)*

Faculty Salaries

The UNC system and community colleges continue to have problems attracting and retaining excellent faculty. North Carolina Community College faculty salaries are reported to be about \$13,000 below the national average. Last year, the General Assembly took several steps as part of a five-year plan to move faculty salaries to the national average. Legislation established minimum salaries based on educational level for full-time curriculum faculty for the 2004-05 school year and the General Assembly appropriated \$1.2 million to bring the salaries of full-time faculty members to those applicable minimums. The General Assembly also appropriated \$12.8 million to give faculty and professional staff an additional 2% salary increase above that provided to other State employees. The new faculty salary plan also rewards those community colleges that have started to move toward the national average with greater flexibility to transfer State funds to be used for faculty salaries. The current estimated cost for the second year of the plan is \$27 million.

The UNC system also faces pressure to remain competitive in the academic market, and lately the campuses have used revenues from campus-initiated tuition increases to augment faculty salaries. The UNC Board of Governors is requesting a 7.5% increase in the salary base for each year of the 2005-07 biennium. Competitive faculty salaries will remain an important issue for some time because studies show that the UNC system will need an additional 10,000 new faculty over

a 10-year period in order to keep up with retirements and enrollment growth. *Sara Kamprath (Research Division 919.733.2578); Kristine Leggett (Fiscal Research Division 919.733.4910)*

Economic Development

As the global economy has shifted from a manufacturing base to a knowledge base, North Carolina has lost the most manufacturing jobs of any state in the nation. The UNC constituent institutions and the community colleges are working to help create high-quality jobs to replace those lost manufacturing jobs, to prepare the workforce to fill the new jobs, and to address other economic development priorities in the State.

In 2004, the General Assembly directed the UNC Board of Governors and the State Board of Community Colleges to study the current academic program offerings and facility needs of both systems to ensure that North Carolina citizens are prepared for the jobs in the growing knowledge economy. A preliminary report to the General Assembly is due by April 15, 2005.

The start-up for the biotechnology initiative between the community colleges and the UNC system was funded through the GoldenLEAF foundation and continuation of these efforts will require additional funding. *Sara Kamprath (Research Division 919.733.2578)*

Seamless Transition from One Institution to Another

Some legislative proposals that may arise this session include facilitating more seamless transitions from one education institution to another. For example, there has been discussion of providing guaranteed admissions to one of the 16 UNC institutions for students who successfully complete an Associate in Arts or Associate in Science at a community college. Other issues include continuing to make improvements to the Comprehensive Articulation Agreement (CAA) to include more pre-major agreements within the CAA; and encourage more collaboration between the community college and university systems. This past year, the Task Force on UNC/NCCCS Partnerships made several recommendations designed to enhance the working relationship between the universities and community colleges. There is an expansion request of \$6.5 million to implement the recommendations of the Task Force with the biggest piece being \$3.5 million to establish a university presence at each of the 58 colleges to advise transfer students and to coordinate program offerings. *Drupti Chauhan (Research Division 919.733.2578); Kristine Leggett (Fiscal Research Division 919.733.4910)*

Higher Education/Immigration

Granting in-State tuition to persons not in legal status may also be a hot topic of discussion for the upcoming session. Various states throughout the

country have granted in-state tuition for higher education studies to persons not in legal status. However, there is federal legislation that prohibits states from granting a post-secondary education benefit to an alien not lawfully present in the United States unless any citizen or national is eligible for such a benefit as well.

Drupti Chauhan (Research Division 919.733.2578)

Elections

Erika Churchill and Bill Gilkeson (Research Division 919.733.2578)

Voting Paper Trail

The Joint Select Committee on Electronic Voting Systems was appointed in 2004 to study the issue of whether direct record electronic voting systems should be banned unless the system provides for the production of a voter-verifiable paper record of the vote that is suitable for a manual recount. The issue is fueled by the loss of 4,438 early absentee votes in Carteret County during the November general election due to a computer programming error. The error resulted in the State Board of Elections ordering a new election in one statewide race. The Joint Select Committee on Electronic Voting Systems was authorized to study any other issues related to electronic voting systems, including compliance with the Help America Vote Act of 2002 (HAVA). The Committee is expected to issue an interim report containing recommendations to the 2005 Session. *Erika Churchill (Research Division 919.733.2578)*

Centralization Of Election Administration

Over the past century and a half, the central authority of elections administration has moved gradually from the precinct and the county level to the State. In light of recent elections problems in certain counties sentiment has been expressed to concentrate more responsibility at the State level. Currently, elections are administered by county boards of elections. The county boards are appointed by the State Board of Elections, which is appointed by the Governor. All boards are appointed from party nominees and must have representation (though not equal representation) from both major parties. County boards hire election directors, who usually supervise the day-to-day administration of elections, and other election staff. All county election employees, including the director, are county employees and are subject to the budget determined by the county commissioners. The county commissioners are required by law to sufficiently fund the legal duties of the county board of elections.

The purchasing of voting equipment is also essentially a county decision, within State Board guidelines. The county elections board may recommend a voting system from a list approved by the State Board, and the county

commissioners may then purchase the recommended voting system. The State Board recently gained the power to disapprove voting systems already in use.

Proposals that may come before the legislature include: making election directors, and perhaps other county election personnel, employees of the State rather than the county; adding a regional layer of administration for a more realistic span of control between the State Board and the 100 counties; giving the State Board greater authority with regard to the procurement of voting systems, either with the State making all the purchases, or with the State setting specifications and negotiating with vendors, leaving the county with the opportunity to decide what general type of system to choose. *Bill Gilkeson (Research Division, 919.733.2578)*

Early Voting Through Election Day

In the five years that North Carolina has made mailed absentee voting and one-stop absentee voting (commonly known as "early voting") more available, we have seen a dramatic increase in its usage. By the 2004 general election, almost 30% of the voters voted early. In doing so, they voted in their county of residence, but without regard to what precinct they lived in. Several county election officials have begun a campaign to make the process used in early voting the universal process for all voters, through election day. A certain number of "super sites" similar to early voting sites would be set up in a county, and during a period beginning a specified number of days before election day and continuing through election day any voter in the county could vote at any one of those sites. The super sites would be staffed by the best permanent and temporary personnel the county board of elections could find, without regard to where they lived in the county. Each site would be equipped with all the ballot styles in the county and with online access to the board's registration and other records. One effect of this would be to discontinue the precinct as a unit of election administration; county boards would no longer find it necessary to recruit officials in each precinct or find polling places in each precinct. Proponents say that training and oversight of personnel could be more effective and that personnel costs would likely go down, as would equipment costs since fewer machines would be needed. One problem is that if precincts were abolished entirely, most election returns would be available at the county level only. If anyone is concerned about the study voting behavior at a neighborhood level, precincts or something like them would need to be preserved as data collection units; that would mean that votes in every contest would need to be made available by precinct.

The General Assembly has required that counties be able to report all absentee voting by precinct as early as the 2006 elections, if they can do it without compromising the secrecy of the ballot -- no county made the report in 2004.

Current absentee/early voting requires that the ballot be tagged with the voter's identity. Early voting through election day, with precinct returns preserved, would require tagging every voter's ballot with a precinct identity, though not necessarily with the voter's identity. The State Election Director has recommended a pilot program to test the idea of early voting through election day. It would end the tradition of neighborhood voting with neighbors staffing the precinct polling place, perhaps a difficult leap for some. *Bill Gilkeson (Research Division, 919.733.2578)*

Voting by mail, Oregon-style

Another means to build on the popularity of early voting would be to follow the lead of Oregon by closing all polling places and early voting sites alike and conducting all elections by mail. This option raises some of the same issues as early voting through election day. *Bill Gilkeson (Research Division, 919.733.2578)*

Voting Provisional Ballots Outside Precinct

In response to the federal Help America Vote Act (HAVA) [42 USC 15301-15545], North Carolina enacted a provisional ballot statute that, together with other statutes and decisions by the State Board of Elections, allows people to vote on election day outside their precinct, and those ballots are then counted in any races for which the voter is eligible to vote. Some states (Ohio, for instance) handle it differently and their position has been upheld in federal court. Apparently the rule is that states may decide whether provisional voters are allowed to vote in their precincts or not. Some candidates and officials are contending in a lawsuit that out-of-precinct voting violates Article VI, Section 2 of the State Constitution; the State argues that the position is a misreading of that constitutional provision. If so interpreted, the State says, the provision would also prohibit early voting and other long-time practices. But even if the lawsuit's theory is rejected, the policy question about out-of-precinct voting on election day remains. North Carolina's approach is very voter-friendly, but it did result in a large number of provisional ballots that essentially had to be counted by hand. Another disadvantage is that some people leave the polls thinking they've cast a vote when in fact the board won't count their vote because they lived in the wrong county. Once people realize they can go to any polling place in the county, some ask, won't more people than we can handle start doing it? Does it mean all ballot styles in the county will soon have to be available in every polling place? The finger points toward the equivalent of early voting on election day, and possibly fewer polling places. Instead, some election administrators prefer the Ohio method of requiring voters on election day to go to their proper precinct before they even cast a provisional ballot. Another long-term issue is whether, now that we have a statewide voter registration system, a move from one county to another should require a

notification to the State Board of change of address rather than a new registration by the voter. The Director of the State Board of Elections has advocated making sure that any voter who votes out of precinct be given the full ballot that voter is eligible to vote. *Bill Gilkeson (Research Division, 919.733.2578)*

Revisit the Rule Concerning New Elections

In 2000, the Election Laws Revision Commission decided to make it clear that any new election must be in the same jurisdiction as the original election, however some may want to revisit the issue if the requirement for a statewide new election presents itself. Another approach, proposed by The Director of the State Board of Elections, would leave the entire-jurisdiction rule in place, but provide that if an identifiable group of voters were denied their right to vote (or their votes were lost, as occurred in Carteret County in the 2004 general election) those people alone would be given a new opportunity to vote. *Bill Gilkeson (Research Division, 919.733.2578)*

Assistance in Absentee Voting

The question has been raised whether North Carolina's statutes about assisting absentee voters are in compliance with federal law, specifically Section 208 of the Voting Rights Act. Section 208, which was codified as 42 USCA 1973aa-6, says: "*Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union.*" North Carolina law provides that in one-stop sites, voters may be assisted only by the election officials at the site or by a near relative or guardian. State law also provides that a patient in a nursing home, rest home, or hospital may only be assisted in marking the ballot by a near relative or guardian; anyone else assisting the patient is guilty of a felony. The nursing home felony statute could perhaps result in somebody being disenfranchised if they're blind and have no near relative or guardian. There may be some proposals for alternatives that prevent the exploitation of patients who are in comas, are afflicted with severe dementia, or feel at the mercy of those assisting them. *Bill Gilkeson (Research Division, 919.733.2578)*

Counting Mail Absentee Ballots

Now that mail absentee ballots are no-excuse and are extensively used, it has been suggested that county boards of elections need to be able to start counting the absentee ballots before 2 p.m. on election day. Some boards of elections have stayed up all night election night opening envelopes and running ballots through a tabulator, only to face counting provisional ballots the next day. The Director of the State Board of Elections has recommended allowing boards of

elections to insert absentee ballots into a tabulator during periodic pre-election meetings to approve absentee applications. If this were done, the tabulator would remember the vote counts from meeting to meeting, and the totals could be run on election day; the board would then have only the latest absentee votes to take out of envelopes and count on election day. One concern raised is that preliminary absentee balloting results could somehow be leaked and affect campaigns. *Bill Gilkeson (Research Division, 919.733.2578)*

Election Day Challenges

When a resident of the precinct challenges another voter at the polls, the statutory scheme for election day challenges calls for the immediate convening of a 3-judge panel of precinct officials at the voting place. The panel is supposed to administer an oath to the challenged voter (although curiously not to the challenger) and conduct a mini-trial there at the polls to determine whether the voter is eligible. If the challenge is sustained by the panel, the voter may vote a "challenged ballot." The challenged ballot is kept under seal unless the election is contested, in which case the county board opens the challenged ballots and rules on whether they should be counted. The need for such an involved procedure is being questioned because of the availability of provisional ballots, and reportedly election day challenges almost never occur. Some find the challenge procedure impractical and say it is hard to imagine how precinct officials could cope with a mini-trial to decide a challenge while lines of voters are waiting out the door and around the block. On the other hand, there is some thought that the challenge procedure serves the purpose of deterring people from thinking they can vote illegally. At any rate, it appears that the statute may be ready for re-examination. *Bill Gilkeson (Research Division, 919.733.2578)*

Department of Correction Assistance to Released Felons in Re-Registering

When a person is convicted of a felony, North Carolina removes the person's citizenship and right to vote. Upon the completion of the sentence, the ex-felon's citizenship is restored. However, in order to vote the person must take the initiative to re-register. There is some interest in requiring the Department of Correction to actively offer voter registration to any person being discharged from a correctional institution. *Bill Gilkeson (Research Division, 919.733.2578)*

Wearing Campaign Gear Into the Voting Place

This question comes up fairly often. In training election officials the State Board of Elections is informing them that it is not necessary to require voters to remove their campaign buttons or conceal their campaign T-shirts when they go into the polls to vote, as long as they don't otherwise electioneer. However, it

appears that the policy is not applied uniformly, perhaps because some long-time precinct officials are not aware of the State Board's interpretation of the statute concerning the limitation on activity in and around the voting place. The legislature may consider changing the law to clarify the issue. *Bill Gilkeson (Research Division, 919.733.2578)*

Prohibiting Piecework Pay for Voter Registrations

In the 2004 election season several boards of elections had to struggle with last minute registration applications that resulted from voter registration drives conducted by groups that used shoddy practices. In the wake of that, the legislature may see a proposal to ban people being paid for voter registration based on the number of forms they turn in. That would reduce the incentive to falsify registration forms. *Bill Gilkeson (Research Division, 919.733.2578)*

Instant Runoff

On August 17 a statewide second primary was held for Superintendent of Public Instruction. It was the only statewide race on the ballot, and the drop-off in turnout from first to second primary was 79.2%. As is often the case, the front-runner in the first primary lost. An active national group called the Center for Voting and Democracy is promoting a method whereby a runoff is made unnecessary by giving every voter a first and second choice in the first primary and counting of second-choices of voters whose first choices did not finish in the top two. In looking at the proposal, the legislature may consider several questions: Is it desirable? Is it do-able statewide, where avoiding a runoff would save the most money? If not now, when? *Bill Gilkeson (Research Division, 919.733.2578)*

Ballot Access for Unaffiliated Candidates: Curative Legislation

The US Middle District Court said in *Delaney v. Bartlett*, No. Civ.1:02 CV 00741 United States District Court, M.D.N.C. (2004), that North Carolina's signature threshold for unaffiliated statewide candidates is invalid because of the disparity with the threshold for new parties: 2% of all registered voters for unaffiliated candidates versus 2% of the last Governor's race turnout for new parties. Two approaches have been suggested, both of which would drop the unaffiliated threshold for statewide candidates to that for new parties: 2% of the last Governor's race. One approach would leave the non-statewide unaffiliated threshold as it is, the other would drop the nonstatewide thresholds proportionally. *Bill Gilkeson (Research Division, 919.733.2578)*

Reforming Judicial Campaign Reform

In 2004, North Carolina had its first nonpartisan election of appellate court judges, and its first appellate judicial election with public campaign financing. The experience resulted in ideas for changes in the young system:

- *Changing the plurality system for mid-year vacancies.* In 2004 a mid-term Supreme Court vacancy drew 8 candidates, one of whom won with 23% of the vote. If this is a problem, is it a problem only for the statewide appellate judges? One solution, letting the Governor's vacancy appointee stay until the next election cycle, would require a constitutional amendment. Short of that, what is the alternative to plurality election-- a costly post-November runoff? This may be a good place to use instant runoff, if legislators deem it desirable and if it is do-able statewide.
- *Removing the \$10 threshold for qualifying contributions.* One judge complained the threshold is ridiculous, and speculated that it came from copying some other state's law.
- *Changing the time restrictions for the State Board to distribute the Judicial Voter Guide.* The statute says the guide must be distributed between the 28th and the 7th day before the election. The result was that the guide reached many voters after they had already voted early.
- *Coming up with additional (or different) funding sources.*

Bill Gilkeson (Research Division, 919.733.2578)

Redefining "Express Advocacy"

North Carolina's current attempt to delineate what is express advocacy of candidates (and therefore subject to campaign finance regulation) as opposed to issue advocacy (not subject to such regulation) was written before the US Supreme Court in McConnell v. FEC [540 U.S. 93, 124 S.Ct. 619 (2003)], which apparently opened things up for states to define the term. It has been suggested that the General Assembly should write a post-McConnell definition of what constitutes express advocacy, since the current definition was written at a time when federal courts in this circuit were taking a much more anti-regulation position than the Supreme Court did in McConnell. *Bill Gilkeson (Research Division, 919.733.2578)*

Regulating Automated Phone Calls and Internet Electioneering

The usual labeling required on political ads is not required on robo phone calls. Robo Calls are prerecorded phone messages delivered to consumers automatically in a rapid and low-cost manner. Vendors using automatic dialing equipment can apparently send hundreds or even thousands of robo calls simultaneously. Because these automated phone calls can be a cost-effective way to reach large numbers of voters they have become a popular medium for political

messages. The North Carolina version of the Do-Not-Call legislation seems to prohibit anonymous robo calls, but enforcement is not through the boards of elections and is somewhat unclear. There is sentiment on the State Board of Elections to include robo calls among the media through which candidate ads must be labeled. Unsolicited electronic messages (e-mails) are also exempted from labeling requirements. Websites are exempted from all campaign finance regulation on the theory that the reader seeks them out rather than passively receiving them. *Bill Gilkeson (Research Division, 919.733.2578)*

Exemption of State Board of Elections from APA

For years the State Board of Elections has placed at the top of its legislative agenda the exemption of all its functions from the Administrative Procedure Act (APA). The APA regulates the actions of State agencies in making rules and deciding contested cases. The State Board of Elections, led by its Chair, has argued that the immediacy of the agency's duties makes the application of the APA's review process impractical. Several past attempts to exempt the agency have resulted in only limited change. *Bill Gilkeson (Research Division, 919.733.2578)*

Environment and Natural Resources

George Givens, Jeff Hudson, Jennifer McGinnis, Tim Dodge (Research Division 919.733.2578)

Air Quality

The General Assembly has taken significant steps to reduce air pollution from stationary and mobile sources over the past decade. Two major efforts include the passage of S.L. 2002-4, commonly referred to as the "Clean Smokestacks Act", which directs the fourteen largest coal-fired power plants in the State to reduce their emissions of sulfur dioxide (SO₂) and oxides of nitrogen (NO_x) by over 70 percent by the year 2013, and the expansion of the Motor Vehicle Inspections and Maintenance (I/M) Program from 9 to 48 counties. Even with these past efforts, however, all or part of thirty-two counties in North Carolina were designated as "nonattainment" counties by the US Environmental Protection Agency for ground level ozone in 2004 and three additional counties were designated as nonattainment for fine particulate matter.

The Environmental Review Commission is currently evaluating various methods to provide incentives for the reduction of air pollution from mobile sources, including measures to reduce vehicle miles traveled and to promote the operation of fuel-efficient vehicles. The Environmental Management Commission recently adopted rules establishing more stringent emission control requirements for heavy-duty and medium-duty diesel engines and modified the emissions

standards for several categories of toxic air pollutants, including most notably hydrogen sulfide. In addition, the Environmental Management Commission is considering several other changes to air quality rules that affect stationary sources in the State, including amendments to the New Source Review rules, which specify the types of pollution control devices needed for new air pollutant sources or modifications to existing air pollutant sources. These topics may result in the introduction of legislation for consideration by the 2005 General Assembly.

Environmental Enforcement

The General Assembly may again be asked to consider increasing civil penalties for violation of State laws and regulations that govern water quality, air quality, mining, and sedimentation control. During the 2003 Regular Session of the General Assembly, bills were introduced in both the House and Senate to modify the following provisions related to violations of various environmental laws:

- Increase the civil penalties for violation of the Sedimentation Pollution Control Act of 1973 or ordinance, rule, or order adopted pursuant to the Act.
- Increase the maximum amounts of certain administrative penalties that may be assessed for violations of Article 9 (Solid Waste Management) and Article 11 (Wastewater Systems) of Chapter 130A of the General Statutes.
- Increase the maximum amount of the civil penalty that may be assessed for a minor or major development violation under the Coastal Area Management Act of 1974 (CAMA).
- Authorize the assessment of reasonable costs of any investigation, inspection, or monitoring that results in the imposition of a civil penalty for major and minor development violations under CAMA.
- Provide that the Secretary of Environment and Natural Resources or a local health director may institute an action for injunctive relief against a person who violates an order issued pursuant to Chapter 130A of the General Statutes. This authority would be in addition to existing authority under the Statute to institute actions for injunctive relief for violations of the Chapter, or any rule adopted by the Commission for Health Services or a local board of health.
- Add a penalty for false reporting under the North Carolina Drinking Water Act (Article 10 of Chapter 130A of the General Statutes).
- Repeal a ten percent (10%) cap on actual costs of collection that may be deducted from civil penalties and civil forfeitures that are collected and payable to the County School Fund.

Liability for Environmental Cleanups

Bills were introduced during the 2004 Regular Session that would limit liability for cleanup of environmental contamination of land in certain circumstances. In general, liability protection would be afforded to owners of contaminated property who did not cause or contribute to the contamination and who did not know or have reason to know of the contamination. "Innocent" landowner liability protection would also apply to owners of contiguous contaminated property. Future purchasers of contaminated properties would also receive liability protection even if they were aware of the contamination prior to purchase in certain circumstances. In all cases, liability protection would depend on the availability of a solvent responsible party or some other mechanism to assure that the property will be cleaned up. The details involved in achieving these objectives, which amount to an extension of principles embodied in previously enacted legislation governing redevelopment of "brownfields" property, are complex and were not resolved to the point that the bills were thought to be ready for action in 2004. Interest in these issues remains high, however, and work on resolution of the remaining issues is ongoing with the goal of having legislation ready for introduction in the 2005 Regular Session.

Saltwater Fishing License

During the 2004 Regular Session, the General Assembly enacted legislation establishing a Saltwater Fishing License. The license requirements of this legislation do not become effective until January 1, 2006. The Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission have been studying issues related to implementation of the Saltwater Fishing License legislation. These issues include license types and fees, exemptions from license requirements, administration of the licensing system, and use of license revenues. A specific issue that the two Commissions are considering is whether to grandfather in and exempt from the Saltwater Fishing License requirements those individuals who have purchased a lifetime license issued by the Wildlife Resources Commission. It is likely that members of the 2005 General Assembly will consider legislative proposals that attempt to address some or all of these issues.

Solid Waste

During the 2002 and 2003 Regular Sessions of the General Assembly, bills were introduced to create a statewide electronics recycling program. Electronics recycling has emerged as a growing issue recently, in part out of concern for the hazardous effects of improper disposal of cathode ray tubes (CRTs) (e.g. television picture tubes) found in computer monitors and television sets. The bills proposed

the establishment of a recycling program for electronic devices containing CRTs. The bills would have imposed a tax on the retail sale of these items, then redistributed the majority of the funds to local governments for implementation of a management program for CRTs. In addition, the bills would have banned the disposal of CRTs in landfills. None of these bills were enacted.

Other recycling related legislation introduced during recent sessions of the General Assembly, but not enacted, included:

- A requirement that holders of certain ABC permits separate, store, and provide for the collection for recycling of all recyclable beverage containers of all beverages sold on the premises.
- A prohibition on the disposal of corrugated cardboard, wooden pallets, and clean wood waste in landfills.

Water Quality

Stormwater Management

As many areas of the State have developed over the past decade and the amount of impervious surface (roads, roofs, parking lots, etc.) have increased, polluted stormwater runoff into our lakes, rivers, and streams has become a major water quality problem. During the 2004 Regular Session, the General Assembly enacted legislation to provide for the temporary implementation of federal stormwater management rules. The federal rules expand the geographic coverage of stormwater management requirements from large municipalities to medium and small-sized municipalities and certain unincorporated areas of counties. The State stormwater management legislation requires new development and redevelopment in certain areas to comply with various stormwater management measures, including post-construction stormwater controls. It was recognized at the time of passage of the legislation that it might need adjustment in the near future. To this end, there have been discussions before the Environmental Review Commission regarding the scope of the stormwater management requirements. New legislation that adjusts the scope of stormwater management requirements or makes other changes to the 2004 legislation may be considered by the 2005 General Assembly.

Sedimentation Control

Sediment is regarded by many as the most serious water quality pollutant facing the State. Sedimentation (erosion of soil and deposition of the soil into surface waters) is caused by construction and other land disturbing activities and results in the loss of topsoil, destruction of aquatic habitat, and reduction of reservoir storage capacity. Several bills to strengthen the Sedimentation Pollution Control Act of 1973 have been introduced over the past four years, but none have

been enacted. The Sedimentation Control Commission has made several recommendations for amendments to the State's sedimentation control programs. The Environmental Review Commission will likely consider these recommendations and may recommend legislative proposals based on them for consideration by the 2005 General Assembly.

Underground Storage Tank Cleanup Program

The Leaking Petroleum Underground Storage Tank (UST) Cleanup Program is funded through revenue from tank fees and a fraction of a cent of the motor fuels tax. A special provision in the 2004 appropriations bill allocated additional funds from the motor fuels tax to the Commercial Leaking Petroleum UST Cleanup Fund and the Noncommercial Leaking Petroleum UST Cleanup Fund (UST Funds) and made other changes to the Leaking Petroleum UST Cleanup Program. The provision directed that the sum of \$19 million be credited to the UST Funds and to the Water and Air Quality Account in September 2004 and an additional fractional amount is to be credited throughout the 2004-2005 fiscal year.

The special provision also directed the Environmental Review Commission and the Joint Legislative Transportation Oversight Committee to jointly study the role of the State and the Department of Environment and Natural Resources in implementing the UST cleanup program. The issues to be studied include:

- The role of the State in assisting owners and operators of USTs in meeting applicable financial responsibility requirements and the availability and adequacy of private insurance.
- The adequacy of current and projected future revenue into the UST Funds.
- The feasibility and desirability of privatizing some or all of the functions of the UST Funds.
- The State's role in the cleanup of orphan UST sites.
- Whether existing UST rules are adequate to prevent future releases from USTs.

These topics may result in the introduction of legislation for consideration by the 2005 General Assembly.

Ethics and Lobbying

Kory Goldsmith, Robin Johnson, Walker Reagan (Research Division 919.733.2578)

Ethics

In light of the recent criminal actions brought against a former member of the Council of State and a former State Senator for ethics violations, and issues

raised during the recent gubernatorial campaign, it is expected that a review of conflict of interest laws and other governmental ethics laws will likely come up this session.

In response to the allegations made against a former State Senator, the 2004 Session adopted new public disclosure and conflict of interest provisions regarding legislators' associations with non-profit organizations that may be considered as recipients of State appropriations. Although these changes do not become effective in 2007, legislators may find a public expectation of increased disclosure during this Session. Related ethical issues arising from these cases may also receive further examination.

On a broader perspective, efforts maybe renewed to update the Legislative Ethics Act to more clearly define the conflict of interest laws and to codify the Executive Order that creates the State Ethics Board and disclosure requirements for executive branch appointees. *Walker Reagan (Research Division 919.733.2578)*

Lobbying

Though not acted upon, legislation was introduced in 2004 that would amend the lobbying laws to restrict amounts that can be spent as lobbying expenses, increase the lobbying expense reporting requirement, and expand the regulations on lobbying of executive branch agencies. The bills were introduced as a follow-up to a report by the Secretary of State's Advisory Council on Legislative Lobbying Policy and Regulation. It is expected that similar bills will be introduced this year. *Walker Reagan (Research Division 919.733.2578)*

Family Law

Drupti Chauhan, Ericka Churchill, Tim Hovis, Dianna Jessup, Robin Johnson, Wendy Graf Ray (Research Division 919.733.2578)

Same-Sex Marriage

In 2004, Massachusetts became the first state to allow same-sex marriages after the Massachusetts Supreme Court found that prohibiting same-sex couples from marrying violated their state constitution. Several other states responded by amending their state constitutions to prohibit the recognition of same-sex marriages. In North Carolina, bills were introduced in the Senate and House in 2004 proposing to amend the North Carolina Constitution to define marriage as the union of one man and one woman, to prohibit the recognition of any other marriage, and to make clear that the rights and privileges of marriage shall not be conferred on unmarried individuals. No action was taken on those bills.

Although our statutes make clear that same-sex marriages will not be recognized in North Carolina (even if validly performed elsewhere), some feel it is

necessary to amend our constitution so that the courts cannot find those statutes to be unconstitutional, as they did in Massachusetts. Accordingly, this issue is likely to surface again in the upcoming session. *Wendy Graf Ray (Research Division 919.733.2578)*

Grandparents' Rights

North Carolina law recognizes a grandparent's right to bring an action for visitation or custody of his or her grandchildren only in certain circumstances. A grandparent may: 1) intervene in an ongoing custody dispute and request visitation with the minor child; 2) petition for visitation, where custody has previously been determined, upon a showing of changed circumstances; or 3) petition for visitation where the minor child has been adopted by a step-parent or relative of the child and a substantial relationship exists between the grandparent and the child. In addition, a grandparent may bring an initial action for custody when the grandparent is alleging that the child's parent is unfit. Once a case is before the court, the judge must look to the best interests of the child in making a determination, but it is also important to note that the US Supreme Court has long held that parents have a fundamental constitutional right to make decisions concerning the care, custody and control of their children. Some other states have expanded grandparents' rights with regard to visitation and custody, but efforts to do so in North Carolina have not been successful. Judging from the frequency with which legislation has been introduced in past years, and the interest expressed by many North Carolina citizens who are grandparents, this issue may be addressed in some way in the upcoming session. *Wendy Graf Ray (Research Division 919.733.2578)*

Alienation of Affection/Criminal Conversation

North Carolina currently recognizes the common law marital torts of alienation of affection and criminal conversation. An action for alienation of affection is brought against a person outside of the marriage who interferes with the right of one spouse to the other's affection, love, society, comfort, and companionship. An action for criminal conversation is brought against a person outside of the marriage who interferes with the right to an exclusive sexual relationship between spouses. Despite a strong national trend to abolish these common law marital torts, attempts to abolish the torts in North Carolina have not been successful in past sessions. However, legislation is likely to be introduced again in the upcoming session. *Wendy Graf Ray (Research Division 919.733.2578)*

Finance

Cindy Avrette, Erika Churchill, Trina Griffin, Judy Collier (Research Division, 919.733.2578)

Mikael Gross, Ashley Hufstetler, Canaan Huie (Bill Drafting Division, 919.733.6660)

Rodney Bizzell, David Crotts, Linda Millsaps, Martha Walston (Fiscal Research Division 919.733.4910)

Overall Budget Considerations

At the current time it appears that the General Assembly will be facing a 2005-06 General Fund budget gap of around \$1.3 billion. The gap is the difference between anticipated revenues, assuming economy-based revenue growth of 5.3% (current year growth through December is 6.8%) and an expenditure level that encompasses both the growth in the continuation budget (Medicaid, public school enrollment) and typical high-priority legislative commitments (pay raises, ABC's bonuses, state health plan, higher education enrollment). The gap is due to a combination of the carryover of a structural budget shortfall for 2004-05 (use of one-time resources to pay for recurring expenditures), a sub-par economic recovery, and no relief from the high growth of health care costs (affects Medicaid and the State health plan). Part of the 2005-06 and 2006-07 budget problems are tied to the sunset of three temporary tax increases:

- A ½ cent State sales tax expires July 1, 2005 resulting in the State tax rate decreasing from 4.5% to 4%;
- An 8.25% income tax rate on high incomes expires January 1, 2006; and
- Federal tax action taken in 2001 has the effect of eliminating the North Carolina estate tax base as of July 1, 2005.

Estate Tax

In 1998, North Carolina repealed its inheritance tax, effective for deaths occurring on or after January 1, 1999, and replaced it with an estate tax that is equivalent to the federal state death tax credit allowed on a federal estate tax return. This type of state estate tax is known as a "pick-up tax" because it picks up for the state the amount of federal estate tax that would otherwise be paid to the federal government. However, Congress enacted legislation in 2001 that: (1) phased out the federal credit for state death taxes and replaced it with a deduction for these state taxes, and (2) phased out the estate tax over the next eight years by increasing the exclusion amount.

In 2002, North Carolina conformed to the increased exclusion amounts, but it did not conform to the phase-out of the federal credit, effective for decedents dying in 2002 and 2003. For these decedents, the amount of the North Carolina estate tax is computed based on the federal credit without regard to the phase-out. In 2003, the General Assembly extended the sunset on this provision from January 1, 2004 to July 1, 2005. Without further legislative action, North Carolina will

conform to the phase-out as of July 1, 2005, and the North Carolina estate tax will, for practical purposes, cease to exist. By that time, the yield from the tax will be over \$150 million.

There are several options for the General Assembly to consider in addressing this issue, including further extension of partial conformity, decoupling entirely from the 2001 federal changes, taking no action (which results in full conformity with federal law), adopting a stand-alone tax, or repealing the estate tax altogether. These options have been presented to the Revenue Laws Study Committee, but the Committee has made no formal recommendation.

Sales Tax

There are several sales and use tax issues facing the General Assembly this session ranging from whether it should allow the expiration of the additional ½% sales tax, which was enacted as a "temporary" measure to meet recent budget shortfalls, to consideration of more sweeping changes to the sales and use tax system, such as broadening the base, lowering the rates, and eliminating multiple rates.

Expiration of ½% State Rate, July 1, 2005

In 2001, the General Assembly increased the State sales tax by one-half percent, from 4% to 4.5%, making the increase effective October 16, 2001 and setting its date of expiration as July 1, 2003. However, in 2003 the General Assembly delayed the sunset from July 1, 2003 to July 1, 2005. The ½% sales tax generates approximately \$400 million per year in revenue. The General Assembly will need to consider whether it wants to let the tax expire, to extend the tax, or to allow counties the option of levying an additional ½%.

Streamlined Sales Tax Project

The Streamlined Sales Tax Project is an effort created by state governments, with input from local governments and the private sector, to simplify and modernize sales and use tax administration for both Main Street and remote sellers for all types of commerce. Forty-two of the 45 states with a sales and use tax, as well as the District of Columbia, are involved in the Project. 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.

North Carolina has been a key state in the Streamlined Sales Tax Project. To continue its leadership in this project by conforming to the Streamlined Sales and Use Tax Agreement, the State will need to eliminate multiple sales tax rates and

caps. The predominant area of concern is the 1% rate on various agricultural and business items, with an \$80 cap.

Expansion of Sales Tax Base

The sales and use tax faces major challenges in the years ahead due to a diminishing sales tax base, which is largely attributable to major changes in the economy. First, the economy has become increasingly more dependent on services, which, for the most part, are not taxed. Second, there continues to be substantial growth in Internet and mail order purchases. Many of these merchants do not have a sufficient presence in North Carolina to be required to collect and remit the sales tax. Therefore, as the General Assembly considers the decline in its sales tax base, it may wish to consider extending that base to include some services and possibly lowering the overall rate. Notably, the Governor's Commission to Modernize State Finances recommended this change in its 2002 report.

Income Tax

Expiration of Bill Lee Act, January 1, 2006

The William S. Lee Quality Jobs and Business Expansion Act, commonly referred to as the "Bill Lee Act," was enacted in 1996 with a 2002 sunset. The act is a package of incentives that are primarily in the form of tax credits for investment in machinery and equipment and real property, for job creation, for worker training, and for research and development. Under the act, counties are divided into five economic distress tiers based on the unemployment rate, per capita income, and population growth of the county. For many of the credits, the lower the tier of a county, the more favorable the incentive. Before 1996, North Carolina had made little use of tax incentives to lure businesses to the State. The array of credits authorized by the Bill Lee Act was viewed as an experiment, to be evaluated in five years to determine whether the incentives were cost effective and actually affected behavior, or merely provided tax reductions to businesses that would have located or expanded in any case.

In 2000, the General Assembly extended the sunset on the act until January 1, 2006. Thus, in the upcoming session, the General Assembly will need to extend the Bill Lee Act, revise it, or devise other means of encouraging and financing economic incentives. In the past couple of years, the State has relied more heavily on grants through the Jobs Development Investment Grant program and it has stated intent to annually appropriate a larger sum of money to the One NC Fund.

Expiration of upper income tax bracket

In 2001, the General Assembly added a new individual income tax bracket that imposed an additional ½% tax on certain North Carolina taxable income for three years, setting the date of expiration as January 1, 2004. The new bracket established an 8.25% tax rate on taxable income over \$200,000 for married couples filing jointly, over \$160,000 for heads of household, over \$120,000 for unmarried individuals, and over \$100,000 for married individuals filing separately. Prior to this change, the highest individual income tax rate was 7.75% on income over \$100,000 for married couples filing jointly, over \$80,000 for heads of household, over \$60,000 for single filers, and over \$50,000 for married couples filing separately.

In 2003, the General Assembly delayed the sunset of the upper-income individual income tax bracket from January 1, 2004 to January 1, 2006. With an annual value of \$104 million, the General Assembly will need to decide whether it wants to maintain the upper bracket or allow it to expire.

Corporate tax rate

A 6.9% corporation income tax is levied on corporate net income derived from all business conducted in this State. The reduction of the corporate income tax rate and the modernization of or elimination of the franchise tax continues to be a much-requested change. In recent years, several bills have been introduced to either reduce the corporate tax rate or to introduce a graduated rate scale, but none of these measures have passed. The rate was last reduced in 1996.

In its 2002 report, the Governor's Commission to Modernize State Finances found that the corporate income tax is one of the most volatile of all revenue sources with substantial decreases in collections in recent years due to declining corporate profits, the increased use of tax planning schemes by multistate corporations, and the use of tax credits. The General Assembly may need to consider changes to its corporate tax structure in order to maintain economic growth and to remain competitive with other states.

Alcohol and Cigarette Taxes

In looking for additional sources of revenue, states have increasingly turned to "sin taxes," which are increased taxes on items like cigarettes and alcohol. While several bills have been introduced over the last few years, the General Assembly has thus far resisted making any substantial increases to these items.

Cigarette Tax

The last increase, which more than doubled the tax, occurred in 1991. Currently, North Carolina's 5 cents per pack of 20 cigarettes is the second lowest cigarette tax in the US behind Kentucky (3 cents). North Carolina's neighboring states have the following rates: Virginia (20 cents), South Carolina (7 cents), Georgia (37 cents), and Tennessee (20 cents). The median cigarette tax rate for the United States is 60 cents per pack.

Alcohol Tax

Excise taxes are levied on beer, wine, and spirituous liquors. Under current law, beer is taxed at a rate of 53.177 cents per gallon, which is equal to approximately 5 cents per can. An excise tax of \$0.21 per liter is levied on unfortified wine while fortified wine is taxed at \$0.24 per liter. Spirituous liquor is taxed at 25% of retail. Although the excise tax for spirituous liquor was reduced from 28% to 25% in 2001, this reduction was in conjunction with the levy of a 6% sales tax on spirituous liquor, from which it had previously been exempt.

General Assembly

Brenda Carter, Dianna Jessup, Walker Reagan (Research Division 919.733.2578)

Session Limits

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

Bills to limit legislative sessions have been introduced every session since 1997. For each of those four sessions, the Senate has passed and sent to the House a bill that would limit the length of session. In 2003, Senate Bill 3 proposed a limit on sessions during the odd-numbered years (long session) of 135 calendar days and a limit on sessions during even-numbered years (short session) of 60 days. It is expected that proposals to limit the length of legislative sessions will be considered again this session. *Walker Reagan (Research Division 919.733.2578)*

Health and Human Services

Dianna Jessup and Ben Popkin (Research Division 919.733.2578);

Carol Shaw and Lisa Hollowell (Fiscal Research Division 919.733.4910)

Federal Limits on Medicaid

The Bush administration and the US Congress are considering a "wide range" of initiatives to curb Medicaid spending by eliminating improper payments and restricting eligibility and benefits. Federal officials are already sending auditors to states to investigate techniques used to shift costs to the federal government. In addition, a proposed rule requires states annually to prepare estimates of total improper payments and error rates for Medicaid and identify the causes of errors and recover excess payments to health care providers. The Bush administration and some members of Congress also favor implementing caps on federal Medicaid spending including block granting Medicaid funding. Any changes to the federal-state partnership for Medicaid will result in increased State costs for the NC Medicaid Program or require the NC General Assembly to make major changes to the program in order to reduce the state share of the program. Medicaid expenditures for fiscal year 2004-05 are projected to be \$2.4 billion and these expenditures are projected to grow over 9% per year over the next biennium assuming no changes on the federal level.

NC Health Choice

NC Health Choice is North Carolina's State Children's Health Insurance Program for Children, funded with a combination of State and federal funds. The program is based on the State Employees Health Plan and it is operated independently from Medicaid. Currently, NC Health Choice is serving over 122,000 children and program enrollment is growing about 1% per month. Unless some children are transferred to Medicaid, program enrollment is frozen, or other program modifications are made, the program will run out of federal dollars before the end of the 2006-07 fiscal year. In addition, the NC Health Choice program will need increased state appropriations to maintain enrollment at current or increased levels.

Child Care Subsidy

The North Carolina childcare subsidy program provides financial assistance for childcare for parents to work and/or improve their education. The program serves families primarily at or below 75% of State Median Income level. The program has grown to almost \$400 million annually, serving more than 160,000 children. The sources of funds in the program include straight state appropriations and state funds through Smart Start, Child Care Development

Fund Block Grant, Temporary Assistance to Needy Families Block Grant, Social Services Block Grant, and family financial participation. While the legislature increased the subsidy budget by \$25 million for fiscal year 2005 through state appropriations and discretionary block grant funds, there remains a waiting list of over 20,000 children.

Alternative Medicine/Naturopathy

The Speakers of the House and the President Pro Tempore of the Senate appointed a committee to study the practice of naturopathy in this State and make recommendations as to whether it would be in the public interest for practitioners to be licensed or otherwise appropriately regulated. The practice of naturopathic medicine is illegal under current North Carolina law because it could be considered practicing medicine without a license. However, there are approximately 22 naturopathic doctors in the State who have received an advanced degree in the field, and there are hundreds of people who practice some form of naturopathy with limited training. The Coalition for Natural Health represents the people who do not have a formal education in naturopathy; it opposes licensure. The Medical Society recognizes the value of natural medicine but it does not support the licensure of naturopathic physicians. The key issues in the licensure area appear to be the definition of naturopathy, the standards to be applied for licensure, and their scope of practice. The Committee will report its findings and recommendations to the 2005 legislative session.

County Financial Participation in the Medicaid Program

North Carolina requires that counties participate in funding the Medicaid program. Many states do not require county financial participation in their Medicaid programs. For some counties, that mandate imposes a difficult financial burden, and they would like to see that requirement eliminated.

Housing

Kathie Austin (Fiscal Research Division 919.733.4910); Kory Goldsmith (Research Division 919.733.2578)

Home Protection Pilot Program and Loan Fund

During the 2004 session, non-profit organizations, such as the North Carolina Housing Coalition and the North Carolina Justice Center, lobbied for a home foreclosure prevention and assistance program, modeled after a foreclosure prevention program operating in Pennsylvania. One major concern for the pilot supporters was the rising number of foreclosure filings in the state.

In response, the General Assembly created the Home Protection Pilot Program in Section 20A.1 of the budget (Session Law 2004-124). The intent of the

pilot program is to help North Carolina workers who have lost jobs as a result of changing economic conditions in the state and are in need of temporary assistance to avoid home foreclosures. The General Assembly appropriated a non-recurring amount of \$1,725,000 to fund the pilot program, of which the North Carolina Housing Finance Agency (NCHFA) may use up to \$25,000 to study North Carolina's foreclosure filing phenomena. Also, the NCHFA, a self-supporting public agency created in 1973 by the General Assembly, is responsible for the development and administration of the pilot program.

NCHFA will report its study findings on foreclosure filings and recommendations to the General Assembly no later than May 1, 2005. *Kathie Austin*
(Fiscal Research Division 919.733.4910)

Information Technology

Brenda Carter and Dickie Brown (Research Division 919.733.2578)

Peter Capriglione (Information Systems Division 919.733.6834)

State Regulation of Spamming

Legislators can expect to hear from constituents regarding the continuing problem of "Spamming". SPAM is unsolicited e-mail on the Internet. From the sender's point-of-view, it is a form of bulk mail, typically sent to a list obtained from a spambot (a program designed to collect or harvest e-mail addresses from the Internet) or to a list developed by companies that specialize in creating e-mail distribution lists. To the receiver, it usually seems like junk e-mail. It is roughly equivalent to unsolicited telephone marketing calls and direct mail marketing. Spammers typically send these e-mails to a distribution list in the millions, expecting that only a tiny number of readers will respond to their offer. Thirty-six states, including North Carolina, have laws regulating unsolicited commercial or bulk electronic mail advertising. Many of these state laws prohibit misrepresenting or falsifying the origin of or the routing information on messages; using an Internet address of a third party without permission, or including misleading information in the subject line of a message. Some states also prohibit the sale or distribution of software that is designed solely to falsify or forge the point of origin of or the routing information on e-mail messages. Most other aspects of state laws, such as labeling requirements for adult-oriented advertising, are preempted by the federal CAN-SPAM Act of 2003 (15 USC §§7701-7713) The act preempts any state law that "expressly regulates the use of electronic mail to send commercial messages, except to the extent that any such statute, regulation, or rule prohibits falsity or deception in any portion of a commercial electronic mail message or information attached thereto." The act prohibits fraudulent and deceptive

commercial e-mail messages and requires senders to include information allowing recipients to opt-out of receiving further messages.

The Federal Trade Commission has adopted a rule, effective May 19, 2004, requiring spam that contains sexually oriented material to include the warning "SEXUALLY-EXPLICIT:" in the subject line. (16 C.F.R. Part 316: Rules Implementing The Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (The CAN-SPAM Act). *Brenda Carter (Research Division 919.733.2578)*

Governance of State Information Technology Services

The legislature will likely be assessing the effect of recent changes and determining what if any additional steps should be taken to improve management of State information technology (IT) systems and services. Legislation enacted in the 2004 Session abolished the Information Resource Management Commission (IRMC) and shifted its responsibilities to the State Chief Information Officer (State CIO). The State CIO is now responsible for setting information technology (IT) technical standards, reviewing and approving State agency IT budget requests, establishing IT security standards, providing for IT procurement (including bulk purchases), and developing a schedule for the replacement or modification of major IT systems. The State CIO is also responsible for developing a biennial State Information Technology Plan to be submitted to the General Assembly at the beginning of each Regular Session. As part of the appropriations process, the legislature will determine the level of funding for the Information Technology Fund (Fund). Money appropriated to the Fund is used to meet statewide requirements, including planning, project management, security, electronic mail, State portal operations, and the administration of system-wide procurement procedures. Each State agency (except UNC and the General Assembly) has been directed to conduct an agency-wide examination and analysis of its IT infrastructure, including expenditures and management functions. The examination is intended to give the General Assembly, the State CIO, the Office of State Budget and Management and the State Controller the ability to determine the amount of State funds being expended annually on IT functions. Agencies will submit their reports to the Office of State Budget and Management by March 1, 2005. *Brenda Carter (Research Division 919.733.2578)*

Insurance, Malpractice and Tort Reform

Kory Goldsmith, Tim Hovis, Walker Reagan (Research Division 919.733.2578)

Closed Blocks of Business

A "block of business" refers to insurance contracts issued by an insurer under a particular policy form. When the insurer ceases to market or sell this particular policy form in the State and no longer adds new contracts to that block, the block becomes a closed block of business. This practice is typically used with accident and health, disability, and long term care policies. As the block becomes older, more claims are made because of illness and the block becomes smaller because of the death of many insureds. This can result in significant increases in premiums, sometimes by exponential amounts.

California and Wyoming have enacted legislation regulating the use of closed blocks, and other states are considering regulation. Regulatory options include requiring insurers to notify and receive approval from the Commissioner before closing a block. The State could also regulate underwriting practices for closed blocks by requiring insurers to spread the claims experience of the closed block to open blocks that are currently marketed and sold by the insurer in the State. *Tim Hovis (Research Division 919.733.2578)*

Health Insurance

The availability and affordability of health insurance is an issue that has been and is likely to continue to be a topic that receives attention at the State and national level. Scope of coverage is also likely to receive attention.

During the 2003 Session, some business groups attempted to address the availability of health insurance for small businesses by amending the North Carolina Small Employer Group Health Coverage Reform Act (Part 5 of Article 50, Chapter 58 of the NC General Statutes) to allow trade associations to establish group health plans for their members (Senate Bill 758). This option is allowed under federal law, but pre-empted by the NC Small Employer Act. The proponents of the bill argued that because the NC Small Employer Act is more restrictive than federal law, group insurance carriers are leaving the market, thereby reducing the availability of health insurance for small businesses. The opponents of the bill expressed concern that other aspects of the legislation could have the effect of removing the more easily insured small businesses from the insurance pool, thereby leaving the most risky insureds in a smaller pool. Given the large number of small employers in the State, and the market pressure to provide health insurance coverage to their employees, the General Assembly should anticipate receiving proposals addressed at this issue.

Another topic of discussion may be the establishment of a State High-Risk Insurance Pool. High-Risk Pools are special state health insurance programs that serve as a safety net guarantee of access to health insurance for people in the individual market with pre-existing, high-risk health conditions. These pools provide benefits similar to major medical individual plans. Premiums are capped, generally somewhere between 125% and 200% of standard rates for comparable coverage. By design, high-risk pools run a deficit and require additional public funding. There has been discussion of federal legislation to extend certain "seed" funding to help states pay for the start-up costs of creating high-risk pools. If federal funding is provided, it could give additional impetus for this approach to improving accessibility.

The scope of coverage of health insurance policies may also receive attention. Over time, the General Assembly has required the State-regulated health insurance plans to provide certain benefits, such as coverage for colorectal cancer screening. An issue that has been repeatedly raised is requiring group health plans and their health insurers to include mental health coverage in their benefits package, i.e., "mental health parity". Advocates argue that mental health disorders are medical disorders that when not treated greatly reduce individual productivity and increase unemployment. Opponents argue that requiring coverage for mental health disorders will cause the cost of insurance to increase to the point that employers cannot afford to offer any coverage. *Kory Goldsmith (Research Division 919.733.2578)*

Federal Regulation of Insurance

Regulation of the insurance industry has traditionally been a State role. However, Congress has been taking an increased interest in federal oversight. The impetus for this interest is coming in part from consumer advocates who seek stricter regulations, but also from some members of the industry who are frustrated by having to meet multiple and often differing State standards for the same insurance product. Although states have responded by adopting streamlined and simplified state insurance laws, federal interest has continued and intensified. While the members of the General Assembly cannot directly affect Congressional action, they may find themselves reviewing legislative proposals that are aimed at addressing industry and consumer concerns in an attempt to diffuse the impetus for federal regulation. *Kory Goldsmith (Research Division 919.733.2578)*

Medical Malpractice

Medical malpractice tort reform was a major issue during the 2003-2004 session and received major billing during the 2004 Presidential campaign. In 2003, the State Senate appointed the Select Committee on Insurance and Civil Justice

Reform that met during session in the spring and summer of 2003. The Senate returned in September 2003 for a two-day session to pass a medical malpractice bill recommended by the Senate committee. In the fall of 2003, the House appointed the House Blue Ribbon Task Force on Medical Malpractice that met in the interim from October 2003 until March 2004. The 2004 Session enacted several provisions related to medical malpractice reform in the areas of patient safety, nursing home medical director liability, and protection from admission into evidence of doctor apologies and offers of remediation when medical injuries occur.

In the 2005 session, the General Assembly is expected to consider if and to what extent a medical malpractice crisis currently exists in NC, the causes for any crisis that exists, solutions that can be constitutionally enacted to address those causes, and how the cost of medical injuries should be paid.

The following specific topics were considered last session and are likely to be included in medical malpractice considerations this session:

Caps On Non-Economic Damages

Proposals to cap or limit the maximum amount an injured patient can recover from a medical provider for non-economic damages (i.e. pain and suffering) suffered as a result of medical negligence will likely be offered again this session. Suggested caps on these damages range from \$250,000 up to \$1 million. Medical malpractice insurers and medical providers argue that caps are needed to reduce medical malpractice premiums by reducing the total claims paid and by providing for greater certainty and predictability. Imposition of these types of caps would also reduce the range for negotiations in settlements of these types of cases, thereby reducing overall costs. Patients and trial lawyers argue that caps on non-economic damages would be unconstitutional in NC, are not the cause of increases in medical malpractice premiums, infrequently exceed \$250,000 currently, and would be an unfair shifting of the financial burden caused by the health provider's negligence.

Caps On Plaintiff's Attorneys' Fees

Proposals to limit the amount of attorneys' fees lawyers representing injured patients can receive will also likely be reintroduced this session. Medical malpractice insurers and medical providers argue that patients' contingent attorneys fees make up at least one-third of the total medical malpractice claim, driving up the cost of settlement, and depriving injured patients of their full compensation. Trial lawyers and patients argue that without the current contingency fee arrangements, many patients would be unable to pursue their rights through the courts to recover damages due to medical negligence. Patients

argue they should be allowed to contract for legal services on whatever basis they believe is in their best interest. Some also question whether caps on attorneys' fees might be unconstitutional under the NC Constitution as denying patients realistic access to the courts.

Abolish Collateral Source Rule

The NC Rules of Evidence do not allow a jury to consider third-party sources of payments received by an injured patient to cover expenses incurred due to medical negligence. These collateral payments could include health insurance benefits, Medicaid, Medicare, disability payments, sick leave and other insurance benefits paid for by the patient or on behalf of the patient. Proposals to amend the Rule to allow juries to hear evidence of collateral source payments are likely to be reintroduced this session. Medical malpractice insurers and medical providers argue that this rule allows for patients to double recover and to receive windfalls for expenses they have not had to actually pay. They argue that allowing this type of evidence will reduce awards of damages to patients and will therefore lower medical malpractice premiums. Patients and trial lawyers argue that benefits that patients contracted for should not go to the benefit of the medical providers who were negligent and cause the injury and damage. They also argue that patients need this recovery to help pay the cost of their attorney and litigation expenses that are not reimbursed or paid by the negligent medical provider when the patient wins. This issue is further complicated by the fact that some third-party payers have rights of subrogation and may be entitled to recover their payments from the recovery received by the patient.

Reduce The Statute Of Limitation For Birth Related Injuries

Under the existing law, an obstetrician or other medical provider treating a child has a potential liability for up to 19 years. Insurers and medical providers argue that this period is too long, and the cost of insurance against this long-term risk exceeds any benefit an injured person might recover. They argue that lawsuits brought so many years after an injury may be very difficult to defend. Memories are not as acute the farther away one gets from an event, witnesses become unavailable and records may be lost. Patients and trial lawyers argue that while actions can be brought on behalf of a minor earlier, the minor is legally incompetent to bring an action on their own behalf until they reach the age of 18 and to change the statute of limitation would deprive them of their rights before they could be legally exercised.

The statute of limitations for medical malpractice actions for all persons except minors provides generally that actions for malpractice shall be brought within 3 years of the date of the occurrence of the last act of the defendant giving

rise to the claim. If an injury was not readily discoverable, then the action must be brought within one year of discovery, but in no event more than 4 years after the last act giving rise to the claim. Where injury is caused by a foreign object left in the body, a claim must be filed within 1 year after discovery of the object, but in no event may the claim be filed more than 10 years after the last act of the defendant giving rise to the claim. The statute of limitations for minors injured by professional malpractice provides that a minor has one year from their 18th birthday to file a malpractice claim.

It is expected that proposals will be offered this year to reduce the statute of limitations for medical injuries to minors to a shorter period, either the same period as for adults or a more specific time, such as 8 to 10 years after the last negligent act.

Permit Periodic Payment Of Damages For Longer-Term Medical Needs And Expenses

Proposals will likely be offered again this session to allow courts to provide for the payment in medical malpractice actions of long-term expenses, i.e. future medical bills or lost income, over time instead of in a lump sum payment at the time of judgment. Insurers and medical providers argue this would reduce their costs without hurting the injured patient, would help the injured patient manage their recovery and would only require payments for actual expenses incurred based on the actual lifetime of the patient. Patients and trial lawyers argue that jury awards are currently reduced to present-day value and patients should have control and authority to manage their own assets and plan for their future.

Improve Patient Safety

Proposals will likely be offered to strengthen the law in the area of patient safety. During the medical malpractice debate, patients and trial attorneys have argued that the focus on solving the medical malpractice crisis should be on the prevention end. They argue that greater efforts should be required to prevent and correct medical negligence errors that would reduce the number and extent of injuries and therefore reduce the costs arising from medical negligence. Medical providers argue that patient safety is already the focus but protective laws should be in place to allow medical providers to monitor their practices and take remedial corrective steps in response to medical errors without fear that these actions will be used as evidence of negligence in a medical malpractice action.

Strengthen Doctor Discipline

Proposals will likely be offered this session to strengthen the laws for disciplining incompetent and chronically negligent medical providers. As part of the emphasis on medical malpractice prevention, patients and trial attorneys argue

that a few medical providers have a disproportionately high share of the incidences of medical malpractice and the disciplinary procedures are not being enforced or applied to eliminate these recurring problems. They are calling for more extensive reviews of negligence claims by the North Carolina Medical Board, more public disclosure of medical malpractice claims and experiences, and some mandatory actions for excessive repeat offenders. Medical providers argue that the current system adequately handles the problems.

Discourage Frivolous Medical Malpractice Lawsuits

Proposals will likely be offered this session to strengthen the laws to prevent and punish persons who initiate frivolous medical malpractice lawsuits. Medical providers and insurers argue that many malpractice claims are without merit and they have to incur significant legal and court costs in defending these claims. They believe that the patient should have to meet certain minimum standards of proof before being allowed to proceed with their claim, including the possible use of medical malpractice review panels. They also think the penalties and punishments for bringing frivolous actions should be increased. Patients and trial lawyers argue that existing sanctions and protections are adequate and that very few of even the unsuccessful claims are frivolous.

Medical Malpractice Insurance Reform

Proposals may be offered this session to modify the regulation of medical malpractice insurance. Patients and trial lawyers argue that the medical malpractice crisis is an insurance crisis not a civil procedure or runaway jury crisis. They believe insurance practices lead to extreme volatility in the market by selling insurance below costs when return on investments and claims are good and drastically increasing costs when returns of investments and claims are bad. They believe greater stability in rates would prevent future crises. Additionally some feel there is inadequate data being reported on medical malpractice claims and settlements and that additional reporting requirements would help the General Assembly better assess the medical malpractice situation.

Under current law, rates for medical malpractice insurance must be filed with the Department of Insurance at least 60 days before the rate is used. The Commissioner may, after a hearing, disapprove the rate. However, current law places the burden of proof on the Commissioner to show that the rate was "excessive, inadequate, or unfairly discriminatory" and should not be enacted. The insurer may use the rate pending judicial review of the Commissioner's decision. Monies received by an insurer from a rate increase are placed in escrow pending the court's review of the rate change.

The Senate passed legislation during the 2003 Session which would have shifted the burden of proof to require the insurer, not the Commissioner, to show that the rate was not excessive, inadequate or unfairly discriminatory. Similar legislation may also be considered during the 2005 Session. Legislation may also be considered which would require the Commissioner to hold a hearing on an insurer's request for a rate change under certain circumstances, such as upon the request of a consumer or health care provider or if the rate change exceeds a certain percentage. *Walker Reagan and Tim Hovis (Research Division 919.733.2578)*

Tort Reform

In addition to the specific reforms in the medical malpractice area, more general concerns have been expressed about the cost to society arising from frivolous lawsuits and extreme class-action lawsuits. Insurers and businesses argue that defense cost for defending frivolous lawsuits drives up their liability premiums that in turn drive up the costs they have to pass on to consumers. They also believe that liberal class-action laws encourage frivolous and unjustified actions that are very expensive to defend. Trial lawyers argue that the current sanctions against truly frivolous lawsuits are adequate and that the current law for certification of actions as class-action lawsuits is adequate to protect against frivolous and unjustified actions from being filed. They also argue that class action lawsuits are a much more judicially efficient way to address a common problem affecting a large number of people. *Walker Reagan (Research Division 919.733.2578)*

Workers Compensation/Independent Truckers

In the 2003 Regular Session, the General Assembly enacted G.S. 97-19.1, which requires a common law test to determine if a truck driver is an independent contractor or an employee. Prior to the enactment of this statute and based on a ruling of the North Carolina Supreme Court, a truck driver operating a truck under another trucking company's Interstate Commerce Commission (ICC) license was considered an employee of the trucking company. As an employee, the trucking company, not the trucker, was required to provide workers compensation insurance. Under G.S. 97-19.1, if the driver is considered to be an independent contractor, the trucking company may require the driver to reimburse the company for the insurance or require the driver to obtain the insurance.

The Workers Compensation Act generally exempts employers with fewer than three employees from the requirements of the Act. However, for independent truckers, G.S. 97-19.1 specifically requires independent truckers to have workers compensation insurance regardless of the number of employees. Legislation amending G.S. 97-19.1 may be considered which would provide that independent

truckers with fewer than three employees are not required to have workers compensation insurance. *Tim Hovis (Research Division 919.733.2578)*

Lottery and Video Poker

Ken Levenbook (Bill Drafting Division 919.733.6660);

Hal Pell and Susan Sitze (Research Division 919.733.2578)

Lottery

Legislation to create a State lottery has been introduced in every session of the General Assembly since 1983. Lottery bills have been passed by the Senate three times and have never passed the House. Virginia's Lottery draws more than \$100 million from this state's economy and South Carolina draws an estimated \$250 million with North Carolinians crossing the borders to buy lottery tickets. Tennessee established a quasi-public lottery corporation in 2004 and North Carolina is now completely surrounded by states operating lotteries.

- All proceeds in Virginia, which has sold tickets since 1988, are earmarked for education.
- In South Carolina, which started lottery ticket sales in January, 2002, the current SC Education Lottery legislation provides "proceeds of lottery games must be used to support improvements and enhancements for educational purposes and programs as provided by the General Assembly and that the net proceeds must be used to supplement, not supplant, existing resources for educational purposes and programs."
- Georgia, which established a quasi-public corporation to run its lottery in 1992, uses its proceeds in the following three educational areas:
 - Capital outlay projects for educational facilities,
 - Tuition grants, scholarships or loans for undergraduate college students (including the very popular Helping Outstanding Pupils Educationally-HOPE scholarships) and for teachers seeking advanced degrees in areas of critical need, and
 - Voluntary pre-kindergarten programs. Georgia passed a constitutional amendment to prevent the supplanting of existing education appropriations by lottery funds.
- Proceeds from the Tennessee Lottery are used for \$3,000 per year HOPE scholarships for qualified high school graduates attending state colleges and technical schools.

Based on conservative fiscal estimates, a North Carolina State Lottery during its first full year of operation could produce more than \$350 million for

public purposes, after providing about \$500 million in prizes to players and more than \$70 million in payments to vendors and retailers.

Modern state lotteries have been operated in the United States since 1964 when the first 20th century lottery was introduced in New Hampshire. Currently, lotteries are operated in 40 states and the District of Columbia. There are numerous multi-state lotteries offered to the public, including Powerball. In fiscal year 2003, the last year for which audited lottery sales figures are available, lottery sales exceeded \$41 billion. North Carolina is the most populace state in the United States without a lottery and the last state on the east coast without a lottery.

With the increasing demands for funds needed for existing and proposed programs, shortfalls from previous years that need to be made up, and possible lawsuit awards against the State, the Lottery is likely to come up again during the 2005 Session. *Ken Levenbook (Bill Drafting Division 919.733.6660)*

Video Poker

The sheriffs will probably continue to push the General Assembly to ban video poker in NC, except on the Cherokee Indian Reservation. *Ken Levenbook (Bill Drafting Division 919.733.6660)*

Mental Health

Kory Goldsmith, Ben Popkin, Shawn Parker (Research Division 919.733.2578)

Reform Implementation

In 2001, the General Assembly passed significant and sweeping reforms for the public mental health system in North Carolina. The impetus for reform came in part from the US Supreme Court Olmstead decision that held that States had an obligation to provide community-based treatment for persons with mental disabilities when treatment officials determined community placement is appropriate, the affected person does not oppose community-based treatment, and the placement can be reasonably accommodated taking into account available resources. [*Olmstead v. L.C.*, 527 U.S. 581 (1999)] Reform was also driven by the findings and recommendations of multiple studies that found that the governance and financing structures for public mental health did not promote quality or accountability.

The reform legislation called for increased accountability, emphasized consumer-driven community-based services, and shifted the role of public agencies from direct service providers to managing and coordinating services. Other legislation directed the Department of Health and Human Services to develop policies to provide appropriate services in community settings for persons

with Olmstead plans who were in State psychiatric hospitals and mental retardation centers.

Over the last four years, area programs have changed their governance structures, divested themselves of service programs, and made other preparations for their new management and oversight functions. However, significant portions of reform await final implementation. For example, the Division of Mental Health is in the final stages of obtaining approval of new service definitions from State and federal regulators. These definitions will govern the types of services the State and Medicaid will reimburse. While intended to represent "best practices", these new service definitions often involve departures from what consumers and service providers are used to and comfortable with. There is also a continuing issue of the extent to which communities will have sufficient capacity to provide necessary services, and private providers are awaiting the adoption of rate structures. Crisis services may also receive attention, not only to address their availability, but also their proper distribution throughout the State. Advocates for persons with developmental disabilities have expressed interest in increasing supported employment services. There is also concern about the sufficiency of resources for non-Medicaid eligible persons with substance abuse disorders. The downsizing and possible closure of certain State institutions may also continue to receive attention. *Kory Goldsmith (Research Division 919.733.2578)*

Dorothea Dix Campus

Pursuant to legislation adopted in 2004, the State Property Office is proceeding with work to develop a Master Plan for the Dorothea Dix Campus. The plan must take into consideration land conservation, mixed use development and anticipated State office space needs. The Dorothea Dix Property Study Commission is charged with making recommendations to the General Assembly based upon the Master Plan by April 1, 2005. Mental health advocates, the City of Raleigh, and Dix property neighbors are just a few of the groups who have expressed significant interest in the progress and ultimate results of this study. Depending upon the final recommendations, the legislature may well be hearing from these and other groups. *Kory Goldsmith (Research Division 919.733.2578)*

Group Homes

In an attempt to provide less restrictive, non-institutional settings for children and youths with significant behavior problems, there has been a substantial increase in the number of group homes. The recent death of a teenager in a group home has brought to light many issues related to residential care for emotionally disturbed children. These issues include the inappropriate use of Level III homes (especially when coupled with out-of-county placements), the

proliferation of group homes in certain areas of the State, lack of monitoring and oversight at the State and local level, and lack of training for the workers in the homes. The Secretary of Health and Human Services is expected to make recommendations to the Governor and the General Assembly on how to address these issues, including additional resources for monitoring by licensing agencies as well as training requirements for group home employees. *Kory Goldsmith (Research Division 919.733.2578)*

Real Property

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Uniform Electronic Recording Act

The General Statutes Commission is expected to recommend that NC adopt the Uniform Electronic Recording Act. In 2004 the General Assembly asked the General Statutes Commission to look at changes needed in the law to permit electronic recording of certain documents in the Register of Deeds offices. This study was requested after several local register of deeds offices asked for local legislation to permit electronic recording, similar to local authority granted to Mecklenburg and Cabarrus Counties in 2002. Concerns were raised regarding statewide uniformity and consistency with other states' laws permitting electronic recording. The Uniform Act provides for the establishing of uniform legal standards for the receipt, recordation, authentication, preservation, and retrieval of electronic documents. This legislation is of particular interest to the NC Register of Deeds Association, the NC Land Title Association, the Real Property Section of the NC Bar Association, the Property Records Industry Association and the Mortgage Industry Standards Maintenance Organization. *Walker Reagan (Research Division 919.733.2578)*

Homeowner Association Regulation

In 1998, the General Assembly adopted the Planned Community Act (Chapter 47F of the General Statutes) as a way to provide for more continuity in the operations and authority of residential homeowner associations. Since that time legislators have been receiving more and more complaints from homeowners and homeowners associations over the operations and powers of homeowner associations. Homeowners have complained that governing officials of the associations are abusing their authority and the cost to the homeowner to defend their rights in court is cost prohibited. Some homeowners are complaining about high fines being imposed and their property being subjected to foreclose for nonpayment. Others are complaining that in disputes over past due owner's dues,

the amount of attorneys fees awarded exceeds the amount of the dues owed. Homeowners complain about secrecy in the operation of the homeowner association and their inability to get access to records and to have audits of collected funds performed.

At least three states, Florida, Arizona and California, have or are considering ways to address these concerns, even to the extent of possibly creating a state agency to oversee the operations of homeowner associations. The General Assembly is expected to be asked to consider reoccurring problems in this area. This is an area of law that has been dominated primarily by homebuilders who initial establish planned communities and lending institutions making home mortgages that want established means in place to insure that the value of their collateral is not reduced by lack of proper management of common community assets. *Walker Reagan (Research Division 919.733.2578)*

State Employees

Karen Cochran-Brown and Theresa Matula (Research Division 919.733.2578);

Marshall Barnes, Stanley Moore, Mark Trogden (Fiscal Research Division 919.733.4910);

Sean Dail and Phyllis Pickett (Bill Drafting Division 919.733.6660)

Overview

State government employees are categorized into those that are Subject to the State Personnel Act (SPA) and those that are Exempt from the State Personnel Act (EPA). According to the Office of State Personnel, as of September 30, 2004 there were 91,259 full-time, part-time, and temporary SPA employees. Of this total, 69,838 employees (76.5%) are employed in State agencies. Three agencies collectively employ 55% of the agency SPA employees: Correction, Health and Human Services, and Transportation. Of the total number of SPA employees, 21,421 (23.3%) are employed in the University System. (Most instructional and research positions in The University System are classified as EPA positions.) Teachers are employees of the school systems in which they teach and while teaching positions are primarily funded by the General Assembly, teachers are not generally referred to as State employees. Benefits for State employees include paid holidays, vacation and sick leave, longevity pay, and the opportunity to participate in a number of pre-tax plans for health-related expenses not otherwise covered. Employees also have the opportunity to participate in supplemental retirement plans. Permanent employees, who work at least 30 hours per week participate in the Teachers and State Employee Retirement System and are required by statute to contribute 6% of gross salary to their retirement account. Permanent employees who work at least 30 hours per week are eligible for health insurance coverage in

the North Carolina Teachers' and State Employee's Comprehensive Major Medical Plan (State Health Plan). This plan is underwritten by the State and administered by Blue Cross Blue Shield. The State currently pays the full cost of the premium for employees who work at least 30 hours per week. Employees pay the cost of dependent coverage.

Retirement

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Employer Contribution and Accrual Rates

The North Carolina Retired Governmental Employees' Association (NCRGEA) acknowledges a surplus for the Teachers and State Employees Retirement System (TSERS), but is concerned that economic conditions could cause this surplus to vanish in the near term if the employer contribution rate is not increased to assure that TSERS earnings keep pace with the cost of living. The NCRGEA believes that, despite recent increases, the employer contribution rate is still low and hopes the General Assembly will address this concern in the upcoming biennium. The State Employees' Association of North Carolina's Policy Platform Objectives for 2005 includes seeking "restoration of the employer's contribution to the Retirement System at 9.35 percent, and seeking an increase in the retirement accrual rate to 2.5, which would translate into approximately 75 percent of average final compensation, for all employees in the Teachers' and State Employees' Retirement System."

Post Retirement Reemployment

Currently, retired teachers are the only group that is exempt from the TSERS earnings cap. S.L. 1998-212, Section 67, which became effective on January 1, 1999 and was set to expire on June 30, 2003, allowed retired teachers to return to work after 12 months and not be subject to the statutory earnings cap. This provision has been extended since that time and was extended in 2004 to June 30, 2005. The time between retirement and return to work has also been shortened to six months and some have sought to shorten it further. Retired employees, other than teachers, that are reemployed may not earn more than \$24,620 or 50% of their last 12 months of compensation, whichever is greater, during the 12 months following retirement, or any calendar year, or their retirement benefit will be stopped. There have been concerns expressed on both sides of this issue regarding the significance of this provision as a recruitment tool, the impact of this provision on the IRS tax qualification of the TSERS, the fairness to other employee groups, and the financial impact on the system. As a result, the 2004 Appropriations Act

(S.L. 2004-124, Section 31.18A) requires the Retirement System to conduct an analysis of the postretirement reemployment issue and report back to the General Assembly by February 1, 2005. This provision also gives the Retirement Systems Division further instructions regarding the request for a ruling from the IRS. (Note: S.L. 2002-126, Section 28.10(a1), required the State Treasurer to seek a private letter ruling from the IRS to determine if the State could allow teachers to return to work after 2 months rather than 6 months without an adverse affect on the tax qualification of the TSERS. S.L. 2004-124, Section 31.18A(f) further refines the request to be made to the IRS.) Finally, this section required school systems that re-employ retired teachers exempt from the earnings cap, to pay the Retirement System 11.70% of the salary. In many cases, the 11.7% contribution has been passed along to the reemployed retiree in the form of a salary reduction. In cases concerning re-employment on a part-time and substitute basis it is possible that the reemployed retiree's earnings would not have exceed the earnings limitation.

Disability

S.L. 2003-284, Section 30.20 established a Study Commission and amended the definition of disability. During the 2004 Session, S.L. 2004-78 amended the changes enacted in S.L. 2003-284, Section 30.20, by enacting a definition of disability that would be effective from July 1, 2003 until August 1, 2005. The current definition of disability means the mental or physical incapacity for the further performance of duty of a participant or beneficiary and further provides that an individual must be no longer able to perform his usual occupation. Effective August 1, 2005, G.S. 135-106(a) will be amended to provide that the Medical Board must certify that a person receiving long-term disability must be unable to perform any occupation or employment commensurate to the beneficiary's or participant's education, training, or experience, which is available in the same commuting area for State employees or within the same local school administrative unit, without an adverse impact on the beneficiary's or participant's career status, and in which the beneficiary or participant can be expected to earn not less than 65% of their pre-disability earnings. The Retirement System reports that the definition change will impact employees across the State and will seriously affect the way the Retirement System's Division administers the Disability Income Plan.

State Employee's Comprehensive Major Medical Plan (State Health Plan)

Mark Trogon (Fiscal Research Division 919.733.4910); Karen Cochrane-Brown and Theresa Matula (Research Division 919.733.2578); Phyllis Pickett (Bill Drafting Division 919.733.6660)

Funding

It has been estimated by the Executive Administrator of the State Health Plan that the Plan will need at least \$375 million in additional funding from the General Fund for the 2005-2007 biennium to maintain State-paid premiums for employees, retirees, and their dependents at current benefit levels. This projected increase is equivalent to a 19.8% premium increase according to the Plan's consulting actuary. Premiums paid by employees and retirees to provide health benefit coverage under the Plan for their dependents would also rise by an equivalent percentage under this scenario.

The Executive Administrator of the State Health Plan reports that he favors a \$220 million appropriation, equivalent to a lesser 12% premium increase, in order lower the rate of premium increase for employee/retiree paid dependent premiums and to lessen funding needed from the General Assembly to fund State paid premiums for employees and retirees. However, this scenario would also require either additional benefit reductions for employees, retirees, and their dependents and/or reductions in charges from medical providers serving plan members in order to keep the Plan solvent.

The North Carolina Retired Governmental Employees' Association is concerned about the long-term stability of the State Health Plan. The Top Ten Policy Platform Objectives for the State Employees Association of North Carolina (SEANC) include seeking a continuation of a fully paid individual health care benefit for all active and retired state employees, and seeking legislation to limit State Health Plan prescription drug co-payment for maintenance medications to one co-pay per quarter.

GASB Statement 45

Governmental Accounting Standards Board (GASB) Statement No. 45, *Accounting and Financial Reporting by Employers for Postemployment Benefits Other Than Pensions*, addresses how state and local governments account for and report their costs and obligations related to postemployment healthcare and other nonpension benefits, which are referred to as *other postemployment benefits*, or *OPEB*. The statement generally requires that state and local governmental employers account for and report the annual cost of OPEB and the outstanding obligations and commitments in the same manner as they currently do for pensions. It is not anticipated that the GASB requirements will be a funding issue in the long session, since these disclosure requirements will not affect the State

until the plan year beginning July 1, 2007. The Department of State Treasurer, Retirement Systems Division is concerned about this requirement with regard to health insurance for retirees.

Salaries

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Pay increases for state employees (employed by agencies and universities) and local employees of public school and community college institutions supported with State funding, constitute a significant portion of the State budget. For fiscal year 2004-05, the cost of each 1% across-the-board salary increase for this group was \$95.13 Million to the General Fund. The total full-time equivalent budgeted position count supported out of the General Fund for this group is approximately 238,000 for fiscal year 2004-2005. Yet to be finalized estimates for fiscal year 2005-2006 are expected to approach or exceed \$100 million for each 1% increase.

For budgeted positions subject to the State Personnel Act (SPA), there are approximately 85,000 permanent full-time equivalent (FTE) positions, of which an estimated 52,000 FTEs are funded out of the General Fund. According to the Office of State Personnel, in 2004 the average SPA employee salary was \$33,854, the average employee age is 43.5 years, and the average employee length of service is almost 10 1/2 years. For fiscal years 2002-03 and 2003-04, State employees received 10 days of bonus annual leave, but no salary increase. For fiscal year 2004-05, State employees received an across-the-board salary increase of \$1,000, or 2.5%, whichever was greater.

The Top Ten Policy Platform Objectives for the State Employees Association of North Carolina (SEANC) include three in the area of pay. SEANC plans to request that the General Assembly fully fund pay plans prior to considering other appropriations. SEANC plans to seek a change in General Statute §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. Finally, SEANC plans to seek special appropriations totaling at least 6.1 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 eight years.

Other Issues

There are a few other issues that may arise during this biennium. It is anticipated that the Office of State Personnel may again pursue a rewrite of the State Personnel Act (Chapter 126 of the General Statutes). The State Employees Association of North Carolina (SEANC) plans to oppose legislation that would remove state employees from the protections of the State Personnel Act through the Office of State Personnel, and supports having each agency continue to report to the Office of State Personnel. SEANC opposes privatization and downsizing of state government services. SEANC plans to endorse the repeal of G.S. §95-98, which prohibits contracts between units of government and labor unions, trade unions or labor organizations concerning public employees. Along these lines, SEANC plans to support the enactment of legislation to govern collective bargaining by North Carolina public employees and plans to seek an amendment G.S. §143-3.3(g) and G.S. 135-18.8 to delete language that voids dues deduction from payroll or from a retirement benefit if an employees' or retirees' association engages in collective bargaining.

In 2003, the General Assembly provided a 1.28% increase to those beneficiaries whose retirement began on or before July 1, 2002; and beneficiaries who retired after July 1, 2002, but before June 30, 2003, received an increase in their retirement allowances on July 1, 2003 equal to a prorated amount of the 1.28% increase. Beneficiaries of the Teachers and State Employees Retirement System who retired on or before July 1, 2003 received a 1.7% adjustment effective July 1, 2004. The General Assembly made no reduction in State Health Plans benefits for the 2003-2005 biennium. However, it is anticipated that changes to premiums and benefits, and/or increases in Plan funding may be considered in the near future as the State struggles to manage the rising cost of health care.

Taxation -- see Finance

Transportation

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NC DOT Investment Strategy

In September 2004, the Department of Transportation (DOT) completed a Long-Range Statewide Multimodal Transportation Plan. This plan, the result of three years of study by the Department, sets out a broad 25-year investment

strategy for all modes of transportation in the State, including highways and transit. A central issue raised by the study is the appropriate balance between spending on highway maintenance/modernization versus highway capacity expansion. The Study recommends that the State spend a greater proportion of its available transportation funds on maintenance and modernization of the current highway system, and a reduced proportion of its available transportation funds on highway capacity expansion. Implementing this recommendation would require legislation to redirect funds to that purpose. *Giles Perry (Research Division 919.733.2578)*

Highway Trust Fund

The Highway Trust Fund Act of 1989 directed DOT to build a network of multilane highway and urban loops around the State. In recent years, the General Assembly has added routes to the list of roads DOT is required to build. Continuing discussion of the routes that should be built with limited Highway Trust Fund dollars, and their completion dates, is anticipated in the upcoming session. *Giles Perry (Research Division 919.733.2578)*

DOT Project Delivery

In 2004, the General Assembly received the results of a report by the Dye Management Group detailing the various causes of project delay at DOT. Among the issues highlighted by the report are internal management issues within DOT, and environmental permitting issues. DOT has publicly committed to working on these issues, but continued concern about project delivery is anticipated. *Giles Perry (Research Division 919.733.2578)*

Gas Tax

The State motor fuels tax is currently based on two components: a flat rate of 17 and 1/2 cents, and a variable rate of 7% of the average wholesale price of motor fuel. Every six months, the Secretary of Revenue adjusts the State fuel tax rate based on this State law. As a result of rising fuel prices, the variable rate of the State motor fuels tax is expected to rise by 2 cents in January 2005, based on current estimates. This anticipated automatic increase in the State motor fuels tax might generate discussion concerning the appropriate rate of fuel taxation in the State. *Giles Perry (Research Division 919.733.2578)*

Transit Funding

Two major rail-based transit projects, in the Charlotte and Raleigh-Durham areas, are under development. The General Assembly will receive additional requests for funding of these projects in the upcoming session. *Giles Perry (Research Division 919.733.2578)*

Prohibit Handheld Cell Phones While Driving – See Utilities

DOT Minority and Disadvantaged Business Program

DOT may propose an update of their existing disadvantaged and minority owned and women owned business program to comply with a recently completed "next generation" disparity study, required by federal court decisions. *Giles Perry (Research Division 919.733.2578)*

DOT Retired Engineers

DOT may ask to remove the State cap on earnings by retired engineers in order to address a DOT reported shortage of qualified personnel in this field. *Giles Perry (Research Division 919.733.2578)*

GARVEE Bonds

DOT may advocate for authority to issue GARVEE bonds (Grant Anticipation Revenue Vehicles) to accelerate various State highway construction projects. GARVEE bonds are federally authorized debt instruments financed by anticipated future federal-aid highway funds. *Giles Perry (Research Division 919.733.2578)*

8-Year Drivers License/Internet DL Renewal

The Division of Motor Vehicles may propose changing the driver's license renewal cycle from 5 years to 8 years for some drivers. DMV may ask for authority to renew some drivers' licenses by the Internet. *Giles Perry (Research Division 919.733.2578)*

Drivers License Security

The recently enacted federal Intelligence Reform and Prevention Act of 2004 (P.L. 108-458, Section 7212) requires the federal Secretary of Transportation, in consultation with the federal Secretary of Homeland Security, to establish nationwide minimum standards for driver's licenses. The national standards are required to include standards for the documentation required to show proof of identity, for verification of documents used to obtain a driver's licenses, for processing of applications to prevent fraud, standards for the information to be included on each driver's license, for common machine readable identity information, and for making driver's license more tamper resistant. Once these national standards are issued, current State laws and rules will need to be amended to comply with this federal mandate. Prior to adoption of the new federal driver's license rules, discussion of this State's current drivers license issuance standards will continue, and will likely include discussion of the issue of

requiring proof of legal residence in the country prior to State driver's license issuance. *Giles Perry (Research Division 919.733.2578)*

Interest on Highway Condemnation Awards

DOT may propose modifying the rate of interest paid on highway condemnation awards from the current 8 % to a variable market based rate. *Giles Perry (Research Division 919.733.2578)*

DOT Driveway Connection Changes

DOT may propose amending their authority to issue driveway connection permits to require additional lanes and traffic signals upon issuance of the driveway connection permit. *Giles Perry (Research Division 919.733.2578)*

Utilities

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E911 Surcharges

In 1989, the General Assembly enacted Article 1 of Chapter 62A, the Public Safety Telephone Act. The legislation authorized local governments to levy surcharges against telephone subscribers for the purposes of establishing and operating E911 services. These are systems that allow emergency service providers to pinpoint the location from which a call for help is made, when the call is made on a landline telephone. However, the uses that may be made of these funds is restricted to expenses to establish the systems (such as addressing in rural areas where the old route and box number addresses were in use) and the purchase and maintenance expenses associated with the computerized equipment which receives the call and locates the address from which the call originated. The past two legislative sessions have seen the introduction of a number of bills that would expand the authorized uses of the surcharge funds to include items such as salaries of employees associated with the emergency call centers, sophisticated radio systems for emergency service providers, construction of new call centers, and purchase of emergency response equipment.

During the 2001 session, the bills were referred to the Joint Legislative Utility Review Committee for the purpose of studying the issue and making recommendations. The Committee did a large amount of work on the issue and would have recommended statewide legislation expanding the use of the surcharge funds, however, it wanted to see consensus among the interested parties as to the content of the bill. In other words, it was willing to expand usage if all parties could agree so that the matter would not continue to be brought up. The

parties could not reach a consensus and no recommendations were made. Items at issue included placing a cap on the surcharge and the actual uses of the funds. Bills were introduced again in the 2003 session, but none passed.

The issue remains and has grown in importance to local governments as they seek to shift certain services from tax supported services to fee supported services, thus allowing the property tax rate to be kept down. It is, therefore, likely that bills will be introduced in 2005 to expand the allowable expenditures, while possibly placing a cap on the amount of surcharge permitted. *Steven Rose (Research Division 919.733-2578)*

Prohibit Handheld Cell Phones While Driving

In March 2003 the Highway Research Center located at the University of North Carolina in Chapel Hill released a study showing that a very high percentage of rear end collisions involved drivers using handheld cell phones at the time of the accident. The study suggested that about 1500 car crashes in NC each year involved drivers talking on a cell phone at the time of the accident. Driver inattention as a result of the cell phone use was suggested as the cause in most of these. House Bill 623 was introduced in the 2003 legislative session. It would have banned the use of a handheld cell phone while driving, thus requiring a headset or a speakerphone. The bill was turned into a study in the Studies Act of 2003, but that bill did not pass. It appeared again in the Studies Act of 2004, authorizing the Legislative Research Commission to study the issue. The study was not funded.

The issue remains active with a number of states keeping statistics on the involvement of cell phones in crashes. Also, a number of states have considered bills regulating cell phone usage while driving, although few have passed. Cell phone companies usually oppose such legislation, preferring warnings and educational programs. Because the issue of distracted drivers using cell phones remains in the public eye (often literally), and with many of the sponsors of the 2003 bill returning, it is likely that legislation will be considered in the 2005 session. *Steven Rose (Research Division 919.733-2578)*