# SUMMARIES OF SUBSTANTIVE RATIFIED LEGISLATION

## 1989 GENERAL ASSEMBLY
## FIRST SESSION, 1989

RESEARCH DIVISION
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# INTRODUCTION

This publication contains summaries of substantive legislation enacted by the General Assembly during the 1989 Session, except for local and purely technical bills. Significant appropriations matters related to the subject area specified are also included. For an in-depth review of the appropriations and revenue process, please refer to Overview: Fiscal and Budgetary Actions, prepared by the Fiscal Research Division.

The document is organized alphabetically by subject areas. Where feasible, the subject area is further divided into subgroups. Each subject area also contains, as appropriate, a short summary of the significant pending bills (eligible for consideration during the 1990 Session) and a list of the independent and Legislative Research Commission studies pertinent to the area.

This document is the result of a combined effort by the following staff members of the Research Division: Cindy Avrette, Brenda Carter, Jill F. Cramer, Jennie Dorsett, Sherri Evans-Stanton, Bill Gilkeson, George F. Givens, Cathy Hubbard, Linwood Jones, Linda Kimbell, Sandy Moulton, Hal Pell, Giles Perry, Barbara Riley, Steven Rose, Terry Sullivan, and John Young. If you would like further information regarding any legislation in the various summaries, please contact the Research Division Office at (919) 733-2578.

It is hoped that this document will provide a useful source of information for the members of the General Assembly and the public in North Carolina.

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# AGRICULTURE

(Jill F. Cramer, Linwood Jones)

## RATIFIED LEGISLATION

**Tobacco assessment changes** (SB 702; Chapter 349): Senate Bill 702 increases the maximum assessment that Tobacco Associates, Inc. may levy on flue-cured tobacco farmers pending approval by two-thirds of those farmers voting in a referendum. The bill doubled (from $.10 per pound to $.20 per pound) the maximum amount of the assessment that could be levied by the organization on marketed tobacco. "Funds generated by the assessment are used primarily to promote the export trade of tobacco." This bill was effective June 19, 1989, when ratified. (Note: Shortly after Senate Bill 702 was ratified, the referendum for the assessment was conducted by Tobacco Associates, Inc. and passed.)

**No sales tax on tobacco sheets** (SB 1145; Chapter 748): Senate Bill 1145 exempts the lease or rental of burlap tobacco sheets used to transport and handle tobacco in the warehouse from State sales taxes. This bill was effective August 1, 1989.

**Transport bales of tobacco** (SB 540; Chapter 277): Senate Bill 540 increases the tolerance from five to six inches in the transportation of hogsheads of tobacco. The bill also adds a provision that when sheet or bale tobacco is being transported the load may not exceed a width of 114 inches at the top of the load and the bottom of the truck bed may not exceed 102 inches in width inclusive of allowance for load shifting or settling. The effective date of Senate Bill 540 was June 12, 1989.

**Increase animal cruelty penalties** (HB 1296; Chapter 670): House Bill 1296 increases fines to $1,500 for cruelty to animals, instigating cruelty to or cruel transport of animals, and increases fines for abandonment to $1,000. The effective date of this bill was October 1, 1989.

**Genetic Engineering Act** (SB 44; Chapter 752): Senate Bill 44 creates within the Department of Agriculture the Genetic Engineering Review Board. In coordination with responsible federal agencies, the Board will review and approve/disapprove applications for permits to release genetically-engineered organisms into the environment for testing or commercial use. Prior to approval of a permit, the Board may hold a public hearing in the county in which the organism will be released if it finds significant public interests in and justification for the hearing. A business that fails to obtain a permit or otherwise violates the Genetic Engineering Act faces a penalty of up to $10,000 for each day it is in violation. No release permits are required until July 1, 1990. The Genetic Engineering Act has a sunset provision requiring an expiration date of September 30, 1995. The effective date for this legislation was July 1, 1989.

**Aquaculture Development Act** (SB 44; Chapter 752): Senate Bill 44 creates an Aquaculture Advisory Board to advise the Commissioner of Agriculture, the Governor, and the General Assembly on aquaculture development in North Carolina. The Department of Agriculture is the lead agency responsible for aquaculture development. The legislation authorizes the Department to assist in obtaining permits

for aquacultural activities, to promote investment in aquacultural facilities, and to review and recommend policies concerning aquacultural development. The effective date for this legislation was July 1, 1989.

**LP gas inspection transfer** (SB 183; Chapter 25): Senate Bill 183 transfers the authority to regulate the entry of LP gas service piping into a building from the Department of Agriculture to the NC Building Code Council. The effective date of Senate Bill 183 was July 1, 1989.

**Christmas tree use value** (HB 1397; Chapter 736): House Bill 1397 directs the Department of Revenue to establish gross income requirements for horticultural land used to produce Christmas trees that differ from income requirements prescribed for other use-value property. This bill is effective for taxable years beginning on or after January 1, 1990.

**Unauthorized use of milk crates** (SB 546; Chapter 303): Senate Bill 546 makes it a misdemeanor to take or sell a labeled dairy milk case or crate bearing the name or label of its owner. January 1, 1990 is the effective date of this legislation.

**Migrant housing consolidation** (SB 631; Chapter 91): Senate Bill 631 consolidates all migrant housing regulations into one set of regulations applicable to all migrant labor camps that conforms to the federal Occupational, Safety, and Health Act (OSHA) provisions. Migrant labor camp inspections will be performed by the North Carolina Department of Labor. The effective date for these sections of the bill are January 1, 1990. The bill also requires the Department of Human Resources to adopt and enforce water supply quantity and heating standards for migrant housing. This section of the bill became effective May 8, 1989.

**Plant Protection Act amended** (HB 758; Chapter 508): House Bill 758 makes is unlawful to dig ginseng on another's land during its growing season (April 1 - Sept. 1) and to buy ginseng without a license. The bill gives the NC Plant Conservation Board powers to issue, deny, suspend, revoke or modify permits to dig and or purchase ginseng and allows the Board to assess civil penalties of up to $2,000. The effective date of this legislation was October 1, 1989.

**Pesticide disposal funds** (SB 44; Chapter 752): Senate Bill 752 provides increased funding for the NC Department of Agriculture's pesticide waste disposal program, available to farmers (and homeowners in some cases) to properly dispose of excess pesticides. The effective date of Senate Bill 44 was July 1, 1989.

**Agriculture Cost-Share Program** (SB 44; Chapter 752): Senate Bill 44 adds the remaining 44 counties not currently in the Agriculture Cost-Share Program for Non-Point Source Pollution to the Program. Farmers in all 100 counties will now be eligible for financial assistance to construct grassed waterways, field borders, filter strips, animal waste management systems, sediment control structures, and other improvements to control run-off of agricultural pollutants and wastes. Funds are to be used for both the 1989-90 fiscal year and the 1990-91 fiscal year. The effective date of Senate Bill 44 was July 1, 1989.

**Land Loss Prevention Projects funds** (SB 44: Chapter 752): Senate Bill 44 also provides $100,000 during the current fiscal year to the Land Loss Prevention Project to provide free legal representation to low-income financially distressed small farmers

whose income does not meet specified levels. The effective date for Senate Bill 44 was July 1, 1989.

**Agriculture Finance Authority abolished** (SB 43; Chapter 500): Effective July 1, 1990, this legislation abolishes the N.C. Agricultural Finance Authority, which was originally authorized to issue bonds to generate the funds to make and insure agricultural loans, but changes in the federal tax laws during 1986 hampered the Authority's ability to perform its duties.

**Amend pest control law** (HB 746; Chapter 725): House Bill 746 amends the structural pest control laws by providing that a structural pest control licensee is responsible for supervising work performed under his license. Also, those using restricted use pesticides in the performance of structural pest control must qualify as a certified applicator for the applicable phase or be under the direct supervision of a certified applicator possessing a valid identification card for that phase of structural pest control. Fees for identification cards of licensees and employees are also increased. October 1, 1989 was the effective date of this legislation.

**Agriculture fee changes** (HB 1112; Chapter 544): House Bill 1112 increases various fee statutes including the following areas: grain dealers, plant analysis and nematode testing, fertilizer registration fees; registration fees for commercial feed manufacturers, structural pest control certificates, pesticide dealer licenses, pest control consultant licenses, milk testing licenses, boarding kennel licenses, animal dealer licenses, pet shop operator licenses, weighmasters licenses, etc. The effective date of House Bill 1112 was July 1, 1989.

## PENDING LEGISLATION

The following bills have passed one house and have been received by the other and therefore are eligible for consideration in the 1989 Session. Under the terms of the adjournment resolution, appropriations and revenue measures are also eligible.

**Certify pesticide users** (HB 460): House Bill 460 proposes to require certain persons who apply pesticides to become certified by the North Carolina Department of Agriculture, with an exemption for farmers applying general use pesticides to their own land.

**Well construction amendments** (SB 302;HB 359): These bills propose to create a program to help landowners, including farmers, cap abandoned wells by providing matching funds to counties to establish abandoned well closure programs.

**Gypsy moth control funds** (H 744): House Bill 744 would allocate funds to the NC Department of Agriculture for the eradication of gypsy moths.

**Agrimedicine feasibility study** (HB 312): House Bill 312 would require the UNC Board of Governors to study the need for and feasibility of establishing an agrimedicine program involving diagnosis and treatment of diseases and symptoms

related to exposure to agricultural chemicals, research on pesticide exposure, and training the public and the medical community in recognition of health effects.

**LP gas filler certification** (HB 1526;SB 1161): These bills would require safety training for LP gas fillers, registration with the Department of Agriculture, and provide for civil penalties for noncompliance.

## STUDIES

Independent study commissions: (1) Joint Legislative Commission on Seafood and Aquaculture; and (2) Agriculture, Forestry, and Seafood Awareness Study Commission.

Legislative Research Commission: (1) Agriculture/Agribusiness Plant Variances; (2) Development of Comprehensive Groundwater Legislation; (3) Surface Water Quality and Resource Issues, Coastal Water Quality, Haw in Scenic River System, Pesticides, Water Resources Planning, Toxaway River, and Yadkin River Use and Protection.

# CIVIL LAW AND PROCEDURE

(Jennie Dorsett, Hal Pell, Giles Perry)

## RATIFIED LEGISLATION

### Administrative Procedure

**Administrative rules review change** (SB 82; Chapter 5): Senate Bill 82 allows agencies, in response to objections raised by the Administrative Rules Review Commission in the course of the "existing rules review" mandated in G.S. 150B-59(c), to adopt or recodify, in addition to amend or repeal a rule without holding a rule-making hearing. In addition, the bill amends G.S. 150B-59(c) to provide that rules of an agency subject to the rule-making procedures of G.S. 150B-9 to 150B-17 (Article 2) were repealed effective July 16, 1988, unless the rules were approved by the Commission as complying with G.S. 143B-30.2. Existing G.S. 150B-59(c) limits this "repeal or approval" provision to rules in effect September 1, 1986. The bill became effective upon ratification, and applies retroactively to January 1, 1986.

**ARRC property and computer access** (SB 305; Chapter 35): Senate Bill 305 transfers ownership of assets used by or allocated to the Administrative Rules Review Commission (ARRC) as of July 9, 1988 from the Office of Administrative Hearings to the ARRC. In addition, the bill provides that the ARRC may have computer access to the North Carolina Administrative Code to enable staff to view and copy rules. The bill became effective upon ratification, March 30, 1989.

### Civil Procedure

**Uniform Foreign Judgments Act** (SB 805; Chapter 747): Senate Bill 805 enacts the Uniform Enforcement of Foreign Judgments Act to provide that a judgment, decree, or order of a court of the United States or another state filed under the provisions of the Act is enforceable and has the same effect as a North Carolina judgment. No execution shall issue on the foreign judgment until the expiration of 30 days from the notice of filing. The bill sets out the filing, notice, and fee requirements for judgment creditors and the procedures that a judgment debtor may follow to seek relief from the foreign judgment. The bill became effective October 1, 1989, and applies to foreign judgments entered on or after October 1, 1984.

**Rules for notice of appeal** (SB 799; Chapter 377): This legislation provides that appeals in civil actions or special proceedings from the district or superior court to the appellate division shall be governed by the Rules of Appellate Procedure as to time, manner, and effect. Conforming changes are made to the statute regarding motions for appropriate relief and Rule 62 of the Rules of Civil Procedure regarding stays of proceedings to enforce judgments. The

legislation became effective July 1, 1989, and applies to judgments of the district or superior court entered on or after July 1, 1989.

**Statewide nonbinding arbitration in certain civil actions** (HB 1278; Chapter 301): House Bill 1278 permits statewide court-ordered nonbinding arbitration as an alternative procedure in civil actions where claims do not exceed $15,000. The Supreme Court may adopt rules to implement and supervise the procedure; the rules are to ensure the right to a jury trial and to a new trial if a party is dissatisfied with an arbitration award. The procedure may be used in a judicial district, selected counties, or a court within a district by decision of the Director of Administrative Office of the Courts and the local judges with administrative responsibility. The bill became effective July 1, 1989.

**Legal representation for indigents in certain civil matters** (SB 1124; Chapter 795): Section 25 of Senate Bill 1124 appropriates one million dollars each year of the biennium to provide legal representation for low-income persons in certain civil matters through the local offices of Legal Services. An eligible case is defined to include matters involving family violence, social security, farm foreclosure, employment, custody, support, day care, health, and, for persons over 60 years, wills, housing, estates, retirement rights, Medicare, health, nutrition, and transportation. An eligible case will not cover matters involving abortion, inmates, migrant workers, mental institutions, and criminal issues. Section 25 of Senate Bill 1124 was effective August 12, 1989.

**Statute of limitation tolled for restitution** (HB 259; Chapter 535): House Bill 259 provides that applicable statutes of limitation and repose are tolled against a defendant in a civil action arising out of a criminal offense for which the defendant was convicted until the defendant has paid in full the restitution ordered or imposed. In any event, the action to recover damages arising out of the criminal offense must be commenced within 10 years from the last act of the defendant giving rise to the claim for damages. Motor vehicle violations are not covered by the legislation. Restitution paid by the defendant shall be credited against the defendant's judgment. The act became effective October 1, 1989, and applies to claims arising on or after October 1, 1989.

**Small claims jurisdictional amount increased** (HB 1111; Chapter 311): House Bill 1111 increases the jurisdictional amount in "small claims" civil actions from $1500 to $2000. The bill became effective October 1, 1989, and applies to complaints filed with the clerks of court on or after October 1, 1989.

**Service of subpoenas by civilians** (HB 610; Chapter 262): House Bill 610 amends Rule 45 of the Rules of Civil Procedure to allow telephone service of subpoenas for the attendance of witnesses by a person designated by the sheriff. The designated person must be over 18 years of age and not a party. The bill was effective October 1, 1989.

**Service by publication amended** (HB 1324; Chapter 575): House Bill 1324 amends Rule 4 of the Rules of Civil Procedure to provide that, if jurisdiction is in rem or quasi in rem (which generally means the lawsuit affects a status, property, or thing, including real or personal property, divorce, foreclosure, and attachment), the requirements for service of process by publication are met when publication is made in the county where the action is pending. The bill

became effective July 4, 1989, and applies to actions instituted and service made on or after July 4, 1989.

**Funds subject to completing claims deposited with the clerk of court** (HB 783; Chapter 668): House Bill 783 amends Rule 22 of the Rules of Civil Procedure to allow the court, in an action in which there are multiple claims and persons have been required to interplead and join as parties, to order the funds subject to the competing claims to be deposited with the clerk or a financial institution in an interest-bearing account. The judgment is to provide for disbursement of the principal and interest upon final determination of the action. House Bill 783 became effective July 1, 1989.

**Service of process on limited partnership** (SB 530; Chapter 209): Senate Bill 530 provides that service of process upon the registered agent of a limited partnership is binding on the limited partnership. The bill became effective upon ratification which was June 5, 1989.

**Summons returned immediately after service** (SB 900; Chapter 330): Senate Bill 900 makes explicit that a summons shall be returned **immediately** after it has been served to the clerk who issued it. Senate Bill 900 became effective October 1, 1989, and applies to summons issued under Rule 4 of the Rules of Civil Procedure on or after October 1, 1989.

**Declaratory judgment act amended** (SB 888; Chapter 183): Senate Bill 888 amends the declaratory judgment act to provide that a controversy between two insurance companies as to the extent of liability in a pending action is a justiciable issue, and the court should render a declaratory judgment as to the liabilities and obligations of the insurers. The bill became effective June 1, 1989, and applies to actions brought on or after that date.

## Torts

**Immunity for donated food** (HB 137; Chapter 365): House Bill 137 provides that donors of food for distribution by nonprofit organizations are immune from civil damages or criminal penalties resulting from the use of the food, unless injury is caused by the gross negligence, recklessness, or intentional misconduct of the donor. The nonprofit organization/donee which distributes donated food has the same immunity, with the same exceptions. To the extent that the donor or the donee has liability insurance, the immunity is waived to the extent of the indemnification by insurance. The act became effective on June 20, 1989.

**Credit Union officer liability** (HB 628; Chapter 472): House Bill 628 amended the Nonprofit Corporation Act to provide that "nonprofit corporation," as used in the Act, includes any credit union chartered under any state or federal law. The act became effective on June 27, 1989.

**Tort claims settlement authority** (HB 757; Chapter 228): House Bill 757 increased the authority of the Attorney General to settle claims against the State. The limit on settlements by the Attorney General, without obtaining review and approval by the

Industrial Commission, was increased from $10,000 to $25,000. The act became effective on June 5, 1989.

**Product liability workers compensation** (HB 987; Chapter 420): House Bill 987 amends the Products Liability Chapter of the General Statutes to allow any employee of a buyer of a product to bring a product liability action against the product manufacturer. Prior law allowed such actions by an employee only when the employee did not have workers' compensation coverage. The act became effective on October 1, 1989.

**Good samaritan changes** (HB 1036; Chapter 655): House Bill 1036 provides that any person, including medical or health care providers, who either work at local health department facilities or community health centers, or voluntarily render treatment at such facilities, and who receive no compensation for their services, shall not be liable for damages for the injury or death of persons receiving their services. The treatment must have been reasonably apparent as an emergency situation, and injury or death alleged to have occurred by reason of an act or omission must not have been caused by gross negligence, wanton conduct, or intentional wrongdoing on the part of the person rendering the treatment. The act became effective on September 1, 1989.

**Towing liability amendments** (SB 773; Chapter 644): Senate Bill 773 amends the State towing statutes to clarify that a person who lawfully removes a vehicle may not be liable for damages to the vehicle's owner for the act of removing the vehicle; he may be liable, however, for the intentional or negligent damage of the vehicle or the intentional or negligent infliction of injury upon any person while removing the vehicle. The act became effective on October 1, 1989.

**Abolition of parent-child immunity** (HB 1668; Chapter 782): House Bill 1668 enlarges G.S. 1-539.21 to provide that the relationship of parent and child does not bar an action by a parent against his child for wrongful death, personal injury, or property damage arising out of the operation of a motor vehicle. Prior to amendment, the statute had only provided that the parent/child relationship did not bar an action by a person against his parent. The act became effective on August 12, 1989, and applies to actions arising on or after that date.

## PENDING LEGISLATION

The following bills have passed one house and have been received by the other, and are therefore eligible for consideration in the 1989 Session. Under the terms of the adjournment resolution, appropriations and revenue measures are also eligible.

### Administrative Procedure

**OAH position correction** (SB 781): Senate Bill 781 would amend Section 13 of Chapter 1111 of the 1987 Session Laws to change a list of position classifications for the Office of Administrative Hearings.

**Confirm chief administrative judge** (SB 857): Senate Bill 857 would provide for confirmation of the chief administrative law judge by each house of the General Assembly.

### Civil Procedure

**Notice of settlement act** (SB 527): Senate Bill 527 would provide that recording a notice document in the register of deeds office prior to a real estate closing would fix at that time and for seven business days the priority of title documents recorded later in connection with that real estate closing.

**File court papers by fax** (SB 682): Senate Bill 682 would amend Rule 5 of the Rules of Civil Procedure to permit filing of pleadings and other court papers with the clerk of superior court by facsimile machine, where the office of clerk of superior court has a telefacsimile machine.

**Service of papers upon attorney by fax** (HB 625): House Bill 625 would amend Rule 5 of the Rules of Civil Procedure to permit service of pleadings and other papers upon an attorney by transmission to a telefacsimile machine in the attorney's office.

### Torts

**Sheriff's liability for deputy** (HB 138): House Bill 138 would add a new section to the General Statutes which specifies those situations where a sheriff shall have personal liability for an act performed by his deputy.

**Modify jailkeeper liability** (HB 1273): House Bill 1273 would require a keeper of a jail to intentionally injure a prisoner to be personally liable for treble damages (currently a negligence standard).

**Directors liability** (SB 774): Senate Bill 774 would amend G.S. 57-2.1 to provide for qualified immunity for directors of a medical services corporation, and would authorize indemnification by the corporation of any member of the board, former director, or officer.

**Dangerous dog liability** (SB 994): Senate Bill 994 would define and regulate ownership of dangerous dogs, and provides for strict liability in civil damages for any injury or property damage by a dangerous dog.

## STUDIES

Independent study commissions: Medical Malpractice Arbitration Study Commission.

Legislative Research Commission: Administrative Procedure Act's Rule-Making Process/Office of Administrative Hearings and the Administrative Rules Review Commission.

# COMMERCIAL LAW

(Cathy Hubbard, Steven Rose, Terry Sullivan)

## RATIFIED LEGISLATION

### Business

**Business Corporation Act** (SB 280; Chapter 265): Senate Bill 280 rewrites the present North Carolina Business Corporation Act, Chapter 55, which became effective in 1957. The rewrite is based on the Revised Model Business Corporation Act of 1984, but many features unique to North Carolina have been retained.

Verification of corporate documents will no longer be required and, except for certificates recording changes of name and successions of title by merger, local recordation of corporate documents will no longer be required. There is a more extensive general definition section than in the present act. A significant change in the new act is that corporations and other business entities may serve as incorporators. Presently, only individuals may incorporate.

The concepts of "par value" and "no-par" shares and the categories of "common" and "preferred" shares are eliminated. Shares may still be divided into classes and further subdivided into series with varying preferences, limitations and rights. This allows more flexibility. Shares will now be able to be issued in exchange for promissory notes and contracts for services to be performed. This is prohibited under the present law. Uncertificated shares will also be permitted under the new act.

The automatic preemptive right to acquire stock is eliminated under the new law. This is a significant change from the current law. Preemptive rights may be established in the articles of incorporation, if desired. However, the act specifically provides that corporations incorporated prior to the effective date of the act retain their preemptive rights unless their articles of incorporation provide otherwise. The new act retains a provision unique to North Carolina law permitting minority shareholders to require that dividends be paid by corporations having less than 25 shareholders, where certain fiscal conditions exist. The new act changes North Carolina law regarding cumulative voting for directors. Under present North Carolina law the right to cumulative voting for directors is automatic unless there is an agreement otherwise. The new act provides that cumulative voting is not automatic and does not exist unless the articles of incorporation or a shareholders' agreement so provides. Corporations incorporated prior to the effective date of the new act have the automatic right to cumulatively vote for directors in certain specified circumstances.

The act includes liberal provisions for the indemnification of officers and directors. Some of these are carried over from the 1986 amendments to Chapter 55, but they are further expanded in the new act.

The provisions of the Shareholder Protection Act and the Control Share Acquisition Act are retained with some technical and clarifying changes.

Under the new act, the rights of shareholders to inspect the books and records of a corporation are more precisely set out. Also, the new act provides for every corporation to file annual reports with the Secretary of State setting out certain basic information, such as the address of the principal office and the names, titles, and addresses of its principal officers.

The act will become effective July 1, 1990.

**Business Corporation Act Fees** (SB 1191; Chapter 714): Senate Bill 1191 amends Chapter 265, the new Business Corporation Act, by providing the fee structure for the filing, service, and copying of various documents under the new Business Corporation Act. This act becomes effective July 1, 1990, the same day the Business Corporation Act becomes effective.

**Control Share Acquisition Act Amendments** (SB 309; Chapter 200): Senate Bill 309 removes the sunset date on the North Carolina Control Share Acquisition Act. When originally passed, the act, Article 7A of Chapter 55, was to sunset June 30, 1989. Now it will continue in effect until the new Business Corporation Act takes effect on July 1, 1990. Some amendments to the substance of the Control Share Acquisition Act are made. These are clarifying in nature, except that provisions relating to certain foreign corporations are deleted. Also, the act provides the ability to opt out of its coverage until September 30, 1990. Finally, the act is made applicable to corporations registered under the Securities Exchange Act of 1934, as opposed to its current application to corporations with 500 or more shareholders. The effective date was June 5, 1989.

**Amendments to Article 8 of the UCC** (SB 753; Chapter 588): Senate Bill 753 revises the Investment Securities Article (Article 8) of the Uniform Commercial Code to differentiate between "certificated securities" and "uncertificated securities." Presently, the act only refers to certificated securities. It generally retains the existing provisions for certificated securities, but sets out new rules governing the issuance, transfer, and registration of uncertificated securities. The act became effective October 1, 1989. The Revisor of Statutes is required to print relevant portions of the official comments to the Uniform Commercial Code.

**Certified condemnation appraisals** (HB 238; Chapter 630): House Bill 238 requires that whenever the State or any of its agencies is requires by law or rule to appraise real estate prior to acquisition, the appraisal must be made by a state-licensed or state-certified real estate appraiser. The act becomes effective January 1, 1991.

**Register of deeds omnibus** (SB 265; Chapter 523): Senate Bill 265 amends G.S. 161-10(a) to clarify that the additional $10 per instrument fee for recording a single document with multiple instruments is due only if each such instrument is separately executed and could be recorded alone. It further amends that subsection to make it clear that the register of deeds may charge for making uncertified copies of index pages and may include the cost of computer equipment in determining the amount of the fee. The act transfers the provisions concerning the indexing of documents consisting of multiple instruments from G.S. 161-10 to G.S. 161-22. G.S. 25-9-401(5), -403(3), -404(1), and -405(2) are amended to require the party filing a UCC financing statement to include the most current file number if any continuation has been filed. G.S. 25-9-402(5) is amended to require a financing statement filed as a fixture filing to have the appropriate block checked on the standard form and it relieves the filing officer of the duty to index the statement in the real property indexes if the standard form is not marked as required. Finally, G.S. 143-345.6 is

amended to require the Department of Natural Resources and Community Development to make comparative salary studies on a regular basis of all registers of deeds offices and at the conclusion of each study the Secretary of the Department is required to present his written findings and recommendations to the board of county commissioners and the register of deeds of each county. The effective date of all provisions of the act was October 1, 1989, except for the amendment to G.S. 25-9-402(5), which involves timber and mineral rights, which is effective January 1, 1990.

**Business broker not securities dealer** (SB 52; Chapter 12): Senate Bill 52 amends G.S. 78A-2(2) to make it clear that a person acting as a business broker in a transaction involving the sale of all of the stock in a closely held corporation is not a securities dealer under the North Carolina Securities Act. The sale of all of the stock must be sold to no more than one person or entity. The act was effective March 14, 1989.

**Building code amendments** (SB 497; Chapter 681): Senate Bill 497 makes changes in the statutes dealing with sections of the North Carolina Building Code, and changes in other sections of the statutes related to changes in the building code. The act makes Article 4 of Chapter 66 applicable to all sales of electrical appliances, instead of only sales at retail to the general public. Similarly, all electrical appliances must now carry certain specified information on them. Previously, only those for sale to the general public or offered as premiums had to have such identification. Senate Bill 497 does away with the requirement that electrical goods must be evaluated and approved in accordance with the standards of Underwriters Laboratory. Now, evaluation must be in accordance with nationally recognized standards. This now allows the use of other certifying laboratories. The penalty for a violation of Article 4 is increased from a maximum fine of $50 to a maximum fine of $500, the term of imprisonment is increased from 30 to 90 days, and a combination of fine and imprisonment may now be imposed. A new section is added to Article 4 allowing certain enforcement actions and inspections where reasonable cause exists to suspect nonconformance with the Article. This act also permits the North Carolina State Building Code and local provisions approved by the Building Code Council to regulate activities and conditions that pose dangers of fire, explosion or related hazards. Another important feature of this act is that when questions are raised concerning the North Carolina State Building Code or its application, rather than a full hearing being conducted, a technical interpretation is rendered by the appropriate enforcement agency. In the event of dissatisfaction with that interpretation, an appeal may be taken to the Building Code Council or directly to the Superior Court. The act amends G.S. 160A-436 which concerns frame or wooden buildings within the primary fire district of a municipality. Presently, construction of such buildings may only be allowed upon a permit of the local inspection department with approval of the Commissioner of Insurance. Under the act, the city council must also approve and the Commissioner's approval may be by his designee. The act further allows the Fire Prevention Code of the National Fire Protection Association to be used in setting the North Carolina State Building Code. This is in addition to other standard codes already permitted to be used. The act amends G.S. 143-138(e) to permit local governments to adopt fire prevention codes provided they are approved by the Building Code Council. G.S. 115C-525(b) is amended to change the schedule of fire safety inspections of public school buildings. The previous law provided for inspection every four months. The act now provides for a minimum of two inspections during the year, but the scope of the inspections is broadened to include the entire building, not just certain components of the building.

as was the previous law. The act also requires that if a fire chief's duties include building code enforcement, then the fire chief must be certified for that purpose in accordance with other statutes. The act changes the conformation of the North Carolina Building Code officials qualification board by eliminating one of the two citizen members and substituting a local government fire prevention inspector for the eliminated citizen member. Another important change in the law is that public hearings concerning adoption of the State Building Code may now be held anywhere in the State. The previous law required them to be held in Raleigh. The act became effective September 1, 1989, except for those portions dealing with approval of fire prevention codes, which will become effective when fire prevention code provisions are adopted by the North Carolina Building Code Council.

**Discount buying clubs** (HB 572; Chapter 495): House Bill 572 amends the laws governing discount buying clubs. A discount buying club is an entity that, in exchange for valuable consideration, offers to sell or arranges the sale of goods or services to customers at prices represented to be lower than generally available. House Bill 572 makes exceptions to the requirements that contracts between discount buying clubs and their customers be signed and dated by the customer and that renewable contracts state the amount of renewal fees. The bill provides that these requirements do not have to be met if: the total consideration paid does not exceed a one-time or annual fee of $100; the member had the unconditional right to cancel the contract at any time and receive within 10 days a full refund of the membership fee; the contract contains a notice provision in boldface type explaining the member's right to cancel; and the written contract is mailed to the buyer on or before the date the membership is charged or billed. Senate Bill 572 rewrites the bond requirements to provide that a discount buying club must maintain a bond in an amount of one hundred times the membership fee, or $50,000, whichever is greater. The bill also provides that if a club maintains an additional bond in the amount of $50,000, bills its customers through a credit card account, and meets all the standards set out for exemption from the requirement that contracts be signed and dated, then it will be exempt from the requirement that advance payments for goods and services be held in a separate trust account. Senate Bill 572 became effective upon ratification, which was June 28, 1989.

**Invention development services** (SB 752; Chapter 746): Senate Bill 752 regulates the business of invention developers for the protection of their clients. The bill defines "invention developer" as an individual or business that performs invention development services for a customer. Government agencies, charitable organizations, attorneys acting within the scope of their licenses, persons registered before the U.S. Patent and Trademark Office acting within the scope of their licenses, and persons who receive no compensation other than a percentage of what the customer receives are expressly excluded from the definition of invention developer. The bill defines "invention development services" as acts of an invention developer committed for the purpose of procuring a licensee or buyer of an intellectual property right (patent, copyright, trademark) in an invention. Such acts include the evaluation, perfecting, marketing, brokering, or promoting of an invention, a patent search, and preparation or prosecution of a patent application by a person not registered to practice before the U.S. Patent and Trademark Office. Senate Bill 752 requires an invention developer to: (i) make certain written disclosures to the customer prior to entering a contract for invention development services; (ii) attach to the contract a conspicuous cover sheet clearly specifying certain rights of the customer; (iii) comply with the prescribed contracting requirements and mandatory contract terms; and (iv) meet specified financial requirements. The bill also sets forth remedies for noncompliance with the

bill's provisions. Senate Bill 752 becomes effective January 1, 1990, and expires June 30, 1991.

## Economic Development

**Jobs tax credit** (HB 198; Chapter 111): House Bill 198 amends laws granting an income tax credit to corporations and individuals who create new full-time jobs in severely distressed counties. The General Assembly enacted these laws during the 1987 Session; the laws expire for taxable years beginning on or after January 1, 1993. Pursuant to the 1987 law, to qualify for the tax credit, the taxpayer has to: employ nine or more people for at least 40 weeks during the year, be located in a severely distressed county, and engage in manufacturing, agribusiness, processing, warehousing, wholesaling, retailing, research and development, or a service-related industry. The counties with the 20 highest distress factors and with unemployment rates of seven percent are designated "severely distressed." The distress factor is determined by a ranking of unemployment rate and per capita income. Qualified taxpayers may claim a $2,800 credit for each additional full time employee hired. The 1987 law requires the Employment Security Commission to determine: (i) the number of new full-time jobs eligible for the credit; and (ii) the eligibility of a taxpayer as a manufacturer, agribusiness entity, processor, warehouser, wholesaler, retailer, research and development entity, or a service-related industry. House Bill 198 repeals the two provisions affecting the Employment Security Commission, along with the requirement that a county have an unemployment rate of seven percent or more in order to be considered "severely distressed." The bill also imposes a new requirement that corporations and individuals claiming the credit maintain and open records necessary to determine and verify the amount of credit to which they claim they are entitled. (Senate Bill 740 discussed below makes additional changes to the jobs tax credit laws.) House Bill 198 is effective for taxable years beginning on or after January 1, 1989.

**Name change for Commerce Department** (HB 381; Chapter 751): House Bill 381 changes the name of the Department of Commerce to the Department of Economic and Community Development and adds to the list of Department functions the promotion of and assistance in the orderly development of North Carolina counties and communities. The bill also creates the Housing Coordination and Policy Council within the Department of Economic and Community Development and requires creation of a toll-free telephone number within the Department to provide housing assistance information to citizens of the State. House Bill 381 became effective July 1, 1989.

**Economic development records** (HB 630; Chapter 269): House Bill 630 exempts certain economic development records from the disclosure requirements of the public records law. The records must constitute a trade secret; be the property of a private person; be furnished to the public agency in connection with the owner's performance of a public contract or in connection with a bid, application, proposal, or industrial development project; and be designated "confidential" or a "trade secret" at the time of disclosure to the public agency. House Bill 630 became effective upon ratification, which was June 8, 1989.

**Venture capital companies tax exemption** (HB 945; Chapter 704): House Bill 945 exempts from the intangibles tax evidences of debt or equity securities held by venture capital firms. The bill defines a "venture capital company" as an entity organized for the principal purpose of investing in the equity securities or subordinated debt of companies that, at the time of investment, had no more than 100 owners of their securities, were not financial institutions, and did not derive their income or value primarily from real estate. To qualify as a venture capital company the entity also must have the remainder of its investments in shares of stock or other investments that are not subject to the intangibles tax. House Bill 945 is effective for taxable years beginning on or after January 1, 1989.

**Rural Economic Development Center** (SB 43; Chapter 500): Section 110 of Senate Bill 43 allocates $2,000,000 for fiscal year 1989-90 and $2,000,000 for fiscal year 1990-91 from the funds appropriated to the Department of Commerce (now Department of Economic and Community Development) to the Rural Economic Development Center for pilot projects and research. This section also requires the Center to submit detailed reports on its activities and financial status to the General Assembly and the Office of State Budget and Management. Section 110 of Senate Bill 43 became effective July 1, 1989.

**Employment Security Commission** (SB 43; Chapter 500): Section 111 of Senate Bill 43 appropriates $4,537,708 for fiscal year 1989-90 and $4,537,708 for fiscal year 1990-91 from the Worker Training Trust Fund to the Employment Security Commission for the operation of its local offices. This section also appropriates $1,000,000 each year of the 1989-91 biennium from the Special Employment Security Administration Fund to the Employment Security Commission for administration of the Veterans Employment Program, Employment Services Program, and Unemployment Insurance Program. The section requires the Employment Security Commission to report to the General Assembly on a monthly basis prior to expenditure of these funds. Section 111 of Senate Bill 43 became effective July 1, 1989.

**Microelectronics Center** (SB 43; Chapter 500): Section 113 of Senate Bill 43 prescribes guidelines for Council membership in the event that the manager of the North Carolina supercomputer project appoints a Technical Advisory Council for the purpose of providing advice and assistance to the supercomputer project. Section 113 of Senate Bill 43 became effective July 1, 1989.

**Biotechnology Center** (SB 43; Chapter 500): Section 114 of Senate Bill 43 authorizes the North Carolina Biotechnology Center to recapture funds spent supporting successful research efforts in the nonacademic private sector. This section also requires the Center to submit detailed reports on its activities and financial status to the General Assembly and the Office of State Budget and Management. Section 114 of Senate Bill 43 became effective July 1, 1989.

**Worker Readjustment Program** (SB 44; Chapter 752): Section 149 of Senate Bill 44 appropriates $1,200,000 for fiscal year 1989-90 and $1,200,000 for fiscal year 1990-91 from the Worker Training Trust Fund to the Employment Security Commission for a Worker Readjustment Program. The purpose of the program is to provide a statewide system that will offer a rapid response to workers affected by plant closings. This section also requires the Employment Security Commission to report to the General Assembly on a monthly basis prior to expenditure of the funds. Section 149 of Senate Bill 44 became effective July 1, 1989.

**Business Energy Improvement Program** (SB 44; Chapter 752): Section 151 of Senate Bill 44 creates the Business Energy Improvement Program within the Department of Commerce (now Department of Economic and Community Development), Division of Energy, with the goal of encouraging energy efficiency within the State's industrial and commercial base in order to conserve energy, promote economic competitiveness, and expand employment in the State. Section 151 of Senate Bill 44 became effective July 1, 1989.

**Commerce regional office** (SB 44; Chapter 752): Section 152 of Senate Bill 44 allocates funds appropriated to the Department of Commerce (now Department of Economic and Community Development), Division of Business/Industry Development, for use in establishing an additional regional office for economic development in eastern North Carolina. Section 152 of Senate Bill 44 became effective July 1, 1989.

**Jobs tax credit** (SB 740; Chapter 753): Section 4.1 of Senate Bill 740 amends laws granting an income tax credit to corporations or individuals who create jobs in severely distressed counties. (House Bill 198, summarized above, also amends the jobs tax credit laws.) Under prior law, the Department of Commerce (now Department of Economic and Community Development) designated as "severely distressed counties" the 20 counties with the highest distress factor, which is determined by unemployment ranking and per capita income ranking. Senate Bill 740 expands the number of severely distressed counties from 20 to 25 for the purpose of determining qualification for the jobs tax credit. The bill also imposes a new eligibility standard, which requires the taxpayer to have obtained the jobs tax credit for taxable year 1988, or be engaged in the manufacturing of goods on in an industrial activity. Section 4.1 of Senate Bill 740 is effective for taxable years beginning on or after January 1, 1989.

**Incubator facilities** (SB 1042; Chapter 754): Section 37 of Senate Bill 1042 specifies that the funds appropriated for the 1989-91 biennium to the Department of Commerce (now Department of Economic and Community Development) for the Technological Development Authority must be used to start new incubator facilities; however, funds not used for new facilities as of May 15 each fiscal year may be used for grants of up to $200,000 each for expansion of existing incubator facilities. Section 37 of Senate Bill 1042 became effective July 1, 1989.

**Main Street Financial Incentive Fund** (SB 1042; Chapter 754): Section 40 of Senate Bill 1042 establishes the Main Street Financial Incentive Fund within the Department of Natural Resources and Community Development (now Department of Environment, Health, and Natural Resources). The money in this revolving fund is to be available to North Carolina cities affiliated with the Main Street Financial Incentive Fund. The cities are to use this money for certain eligible activities, such as acquiring or rehabilitating properties in connection with private investment in a designated downtown area and establishing a revolving loan program for private investment in a designated downtown area. Cities may apply for a grant equal to 10% of the projected cost of the proposed project and may apply for additional moneys as loans from the Fund. Section 40 of Senate Bill 1042 became effective July 1, 1989.

**Center for Community Self-Help** (SB 1042; Chapter 754): Section 50 of Senate Bill 1042 requires that $2,000,000 from funds appropriated to the Office of State Budget and Management for the Center for Community Self-Help be used to further

a revolving loan program. The funds are to be leveraged at a 24 to 1 ratio with other funds for home ownership for low and moderate income families in North Carolina. Section 50 requires that the Center submit reports and financial statements to the General Assembly and the State Controller. This section authorizes the State Auditor to audit the revolving fund on an annual basis. Section 50 of Senate Bill 1042 became effective July 1, 1989.

**Industrial Development Fund** (SB 1042; Chapter 754): Section 54 of Senate Bill 1042 permanently establishes the Industrial Development Fund within the Department of Commerce (now Department of Economic and Community Development) for the purpose of assisting the most economically distressed counties in the State in creating jobs. The General Assembly created and funded this program during the 1987 Session for the biennium. Due to the success of the Fund, the General Assembly, through Section 54 of Senate Bill 1042, codified the provisions governing the Fund and made the Fund permanent. The money distributed through the Fund to local government units in the State's most economically distressed counties is to be used for: installation or purchase of manufacturing equipment; repairs and renovations of existing manufacturing and industrial buildings; construction or improvement to new or existing water or other utility lines to serve existing manufacturing and industrial buildings; or with respect to severely distressed counties, construction of or improvement to new or existing water and other utility lines or equipment to serve new or proposed manufacturing and industrial buildings. Funds may be spent at a rate of $1,200 per new job created up to a maximum of $250,000 per project. Section 54 of Senate Bill 1042 became effective July 1, 1989.

## Financial Institutions

### Accounts in financial institutions

**Investment of funds held in fiduciary accounts** (SB 820; Chapter 443): Senate Bill 820 provides, among other matters, that funds awaiting investment or distribution held by trust companies, s&l's, or other corporations exercising fiduciary powers shall not remain uninvested or undistributed longer than is reasonable for proper management of the account. The funds may be invested in short-term, trust-quality investment vehicles through a medium such as a collective investment fund. The fiduciary corporation is specifically permitted to charge a fee for this temporary investment of the funds in addition to those fees otherwise permitted by law. The fee, however, may not exceed 12% of the income produced by the investment. This act was effective on June 26, 1989.

### Banks

**Bank limited service facilities, holidays, and technical changes** (HB 413; Chapter 187): House Bill 413 makes various changes to the regulatory law dealing with banks. Some of the significant changes follow. Limited service facilities are now authorized, that is, those bank offices where deposits are received, monies paid or other teller duties performed, and loan applications taken but not where notes are executed or loan proceeds disbursed. A bank "branch" is now defined to be an

office of a bank in which any function a bank can engage in can be conducted. The Commissioner of Banks is given the discretion to set the amount of initial capital stock required to charter a bank based on a set of criteria (the normal minimum amount is $2,000,000) in lieu of the earlier sliding scale based on population of the anticipated location of the proposed bank. Banks are now specifically required to obtain federal deposit insurance.

Regarding the time of operation of banks, the distinction between 5 and 6 day a week banks is now no more; a bank is now required to operate at least 5 days a week at specified times and is permitted, with its limited service facilities, to operate at other times the bank deems appropriate. The Commissioner may require notification of hours of operation. Banks are permitted to observe as legal holidays Martin Luther King's Birthday and Veterans Day, and to close on the nearest Saturday and Sunday when a legal holiday falls on a Friday or Monday.

The criminal statute on willful and malicious making of derogatory reports on the financial condition of a bank is amended to add the requirement that the derogatory statement maliciously made must also be false in order to constitute a violation. The punishment remains a general misdemeanor with punishment of up to two years imprisonment, a fine, or both.

The act was effective on July 1, 1989.

**Minimum annual assessment for branches and limited service facilities and fees for other services by the Commissioner of Banks** (HB 414; Chapter 561): House Bill 414 requires an annual assessment fee for each limited service facility similar to that for banks and their branches (a maximum of $85 for the first $100,000 or less in assets, $12 for each additional $100,000 or part thereof) and additional fees for trust assets. The Commissioner is given the power to set the fees for other services provided by him. This act was effective July 1, 1989.

**Reduce the period of existence for North Carolina bank to be acquired by regional bank holding company** (HB 542; Chapter 471): House Bill 542 allows the Commissioner of Banks the discretion to reduce from 5 to 3 years the time a North Carolina bank must be in existence to be acquired under the Interstate Banking Act if he finds that the acquisition is necessary to protect the public and to prevent the possible failure of a bank or banking subsidiary of a bank holding company. The act was effective on July 1, 1989.

**Commission allowed on initial bank stock** (HB 85; Chapter 20): House Bill 85 removed the restriction on paying of commissions on initial bank stock offerings. The corporate secretary, as well as the president and cashier, may now certify payment in cash of the capital stock. The act was effective on March 16, 1989.

**Interstate banking confidentiality and notice publication** (HB 86; Chapter 9): House Bill 86 provides in interstate bank applications confidentiality of records shared by another state's or federal regulatory authorities and requires publication of notice of these applications. This act was effective March 8, 1989.

**Registration of bank holding companies** (HB 87; Chapter 10): House Bill 87 eliminates a loophole in the present North Carolina Bank Holding Company (BHC) Registration Act by requiring all bank holding companies whose subsidiaries acquire control of a non-bank subsidiary in North Carolina to register with the Commissioner of Banks. This act was effective March 8, 1989.

## Consumer finance companies

**Regulation of consumer finance companies** (HB 209; Chapter 17): House Bill 209 makes various changes to the laws regulating consumer finance companies. Some of the significant changes follow. The act makes permanent the authority, first enacted in 1985, of consumer finance company affiliates and subsidiaries to make home loans in the same office as the company itself and requires these subsidiaries to register under the Mortgage Bankers and Brokers Article of Chapter 53. Any person facilitating the extension of credit for a tax refund loan is now required to be licensed by the Commissioner of Banks. Consumer finance licensees may now collect from the borrower filing fees to record the security interest or the amount applied to purchasing nonfiling or nonrecording insurance to be set by the Commissioner of Insurance and be at least $1 less than the cost of recording or filing the security interest. The charging of any fee except that paid to a state or local official for releasing a security interest is now prohibited. No licensee may solicit directly or indirectly from a borrower funds to be held on deposit in a bank (does not apply to military allotments and similar programs). Licensees, in refinancing a loan, must supply to the borrower in "clear and distinct terms", listed separately, the principal balance due, the interest charged that is included in the new loan, and rebates on any credit insurance. Licensees having more than one office may keep records at any location approved by the Commissioner of Banks.

The act's technical provisions were generally effective on March 15, 1989. The substantive provisions outlined above dealing with tax refund loans, recording fees, soliciting monies to be held on deposit in banks, and record keeping of consumer finance licensees were effective on August 1, 1989.

## Credit cards

**Intentional factoring of credit card records of sale** (HB 1106; Chapter 161): House Bill 1106 adds, effective October 1, 1989, two new credit card offenses to the Financial Card Crime Act. The first crime is committed by a merchant, his employee, or the person authorized to present things of value upon the presentation of a financial transaction card or its number who remits, with intent to defraud, a card record of sale not made by the person or his agent. This crime is punishable as a misdemeanor by a fine of not more than $1,000 or a year's imprisonment, or both.

The second crime, a Class J felony, is committed by a person employing or soliciting a merchant or his agent to remit for payment a financial transaction card record of sale not made by the merchant or his agent. One committing this crime would be subject to imprisonment of not more than 3 years, a fine or both.

## Credit unions

**Suspension of credit union operations and appointment of conservators** (HB 491; Chapter 72): House Bill 491 specifies that the Administrator of the Credit Union Division or of the Credit Union Commission may suspend the operation of a credit union when the credit union's officer, director or employee affects or is likely to affect its safety or soundness by violating a state or federal statute or administrative rule or by operating in an unauthorized manner, by failing to comply with a final order of the Administrator or Commission, or by refusing to submit to examination, or to permit examination of credit union records. Where the problem is severe the Administrator may issue a conservation order against the credit union appointing a

conservator to immediately take possession of the credit union's assets so as to prevent their dissipation. The act establishes a detailed procedure to protect the officers, directors, employees and members of the credit union. The costs of the conservatorship is chargeable against the credit union. If the Administrator determines that the credit union cannot be rehabilitated, he shall issue an order of merger or of liquidation. The act was effective on April 25, 1989.

**Limited liability of credit union's directors, trustees, and officers** (HB 628; Chapter 472): House Bill 472 specifically provides these individuals with limited civil liability for monetary damages, except as covered by insurance for acts or failures to act in their official capacity. The limitation of civil liability is the same as that enjoyed by directors, trustees, and officers in other non-profit corporations. This act was effective as to causes of action arising on or after June 27, 1989.

## Real Estate Appraisals

**Voluntary licensure and certification of real estate appraisers** (HB 492; Chapter 563): House Bill 492 creates, as of January 1, 1991, two levels of voluntary state regulation of real estate appraisers--a State-licensed and a State-certified real estate appraiser-- and licenses real estate appraising schools and courses, as of July 1, 1990. The Real Estate Commission is the agency designated to regulate these matters.

Chapter 563 is in response to federal proposals subsequently ratified in the Financial Institutions Reform, Recovery and Enforcement Act (PL 101-73). This legislation requires a system of uniform national real estate appraisal standards and the use of State-certified or State-licensed appraisers for real-estate related financial transactions contracted for, or regulated by the federal financial institutions regulators (banks, S&L's, credit unions, VA, FHA loans, and the secondary market--Freddie Mac, Fannie Mae, Ginnie Mae, etc.).

Only those so licensed or certified are permitted to use those protected designations. Anyone is still allowed to appraise real estate. A State-licensed real estate appraiser would be required to have completed within a five-year period preceding the application, 90 hours of class room instruction in subjects determined by the Commission and additional subjects as may be required to make the appraiser eligible to perform appraisals in federally-related transactions requiring a State-licensed appraiser, passed a written or oral examination, or have education or experience equivalent to those requirements. A State-certified appraiser would be required to have at least 90 hours of instruction additional to that for licensure in subjects determined by the Commission and as may be required to make State-certified appraisers eligible to perform federally-related transactions requiring a State-certified appraiser. Licensure or certification is granted on a reciprocal basis to residents of other states. The act grants to the Commission rule-making and disciplinary powers.

**State property acquired appraised by State-licensed or State-certified real estate appraisers** (HB 238; Chapter 630): House Bill 238 requires an appraisal by either a State-licensed or State-certified appraiser before the acquisition of any real property by a State agency, required to be appraised. The act will be effective on January 1, 1991.

## Reorganization of State government

**Department of Commerce name change** (HB 381; Chapter 751): House Bill 381 renamed the Department of Commerce, effective July 1, 1989, the Department of Economic and Community Development. The newly-titled Department continues to house the State Banking Commission and the Banking Commissioner, the Savings Institutions Commission and Division, and the Credit Union Commission and Division.

## Savings and Loans Associations (S&L)

**Savings and Loan omnibus changes** (HB 627; Chapter 76): House Bill 627 made various changes to the State regulation of S&L's. The act was effective on April 26, 1989. Some of the significant changes are set forth below.

The term "Savings Institutions" is substituted for that of "Savings and Loan" throughout the General Statutes when referring to both the Division and Commission within Department of Economic and Community Development regulating these institutions.

To start an S&L, the number of incorporators for a S&L is lowered from 10 to 5. The minimum amount of pledges for withdrawable accounts for the Administrator to approve an application for a mutual S&L is raised from $350,000 to $4,000,000 and of subscriptions for capital stock for a stock S&L from $500,000 to $3,000,000. The Administrator is allowed to vary the amount of pledges or subscriptions based on the same sort of criteria allowed the Commissioner of Banks for banks under Chapter 187 above. The time required for posting of a notice of public hearing for the establishment of an S&L is lowered from 60 to 45 days.

Mutual S&L's would be allowed to reorganize to allow its ownership by a S&L holding company upon the mutual's board adopting the plan by a 2/3's vote. The plan is required to provide that the resulting ownership is vested in a N.C. corporation, the ownership is evidenced by stock shares, the substantial portion of the assets and all insured deposits and part of liabilities are transferred to the subsidiary S&L(s), the reorganization is not subject to either State or federal income taxation, and the plan is fair and equitable to all members of the S&L.

## Worthless checks

**Affidavit of bank employee used in worthless check prosecutions** (HB 1234; Chapter 421): House Bill 1234 amends G.S. 14-107.1 to permit the use of an affidavit of a bank employee in a worthless check prosecution to establish the facts regarding the dishonor of the check, including the existence of the account, the date of processing of the instrument, and the sufficiency of funds in the account. The defendant is specifically permitted to subpoena the bank employee notwithstanding the affidavit. The affidavit is to be automatically provided to the defendant prior to the trial. This new procedure applies to offenses committed on or after October 1, 1989.

## Travel and Tourism

**Tourism grant program** (SB 43; Chapter 400): Section 112 of Senate Bill 43 outlines the method of distribution for funds appropriated to the Department of Commerce (now the Department of Economic and Community Development) for continuation of the tourism grant program administered by the Division of Travel and Tourism. Section 112 establishes a new distribution method, which will direct funds to the counties most in need of financial assistance to promote travel and tourism. Previously, funds were not distributed according to need; instead, grants were capped at $5,000, grantees were required to match State money dollar-for-dollar, and available money was usually evenly allocated among all eligible applicants regardless of need. Pursuant to Section 112, need will be determined by a ranking of counties according to per capita income, unemployment, and rate of population growth. The 20 counties with the lowest per capita income, highest unemployment, and slowest population growth will be eligible to receive a maximum grant of $10,000 each fiscal year, provided the match is one non-State dollar for every four State dollars. Counties 21 to 50 will be eligible for a $5,000 annual grant, provided the match is one non-State dollar for every three State dollars. The remaining 50 counties will be eligible for a $5,000 grant in alternating fiscal years, provided the match is four non-State dollars for every State dollar. Section 112 of Senate Bill 43 became effective July 1, 1989.

**Visitor and welcome centers funds** (SB 44; Chapter 752): Section 153 of Senate Bill 44 allocates: (i) $100,000 for personnel to man the Visitor and Welcome Center on U.S. Highway 17 in Camden County; (ii) $50,000 for personnel to man the Visitor and Welcome Center on U.S. Highway 441 in Macon County; (iii) $50,000 for personnel to man the Visitor and Welcome Center on U.S. Highway 17 South in Brunswick County. Section 153 of Senate Bill 44 became effective July 1, 1989, and will expire June 30, 1991.

**Vanity plate fee increase** (SB 913; Chapter 774): Senate Bill 913 increases the additional fee for personalized license plates from $10 to $20. One-half of the revenue generated by the fee will go to the Recreation and Natural Heritage Trust Fund and the other one-half will go to purposes previously enacted (i.e. 33% to the Department of Commerce for print and advertising for promotion of travel and tourism; 50% to the Department of Transportation for highway beautification; and 17% to the Department of Human Resources to promote travel accessibility for disabled persons). Senate Bill 913 became effective October 1, 1989.

**Celebration '91 activities** (SB 1309; Chapter 799): Section 30 of Senate Bill 1309 authorizes the Department of Commerce (now Department of Economic and Community Development) to continue for the 1989-91 biennium the implementation of Celebration '91 activities to demonstrate history and heritage throughout the State during 1991. Section 30 of Senate Bill 1309 became effective July 1, 1989.

## STUDIES

Independent study commissions: (1) Depository Institutions Study Commission; and (2) State Parks and Recreation Areas.

Legislative Research Commission: (1) Deregulation of Revolving Credit and Authorization of Credit Card Banks/Linked Deposits; (2) State Ports; (3) Tourism's Growth and Effect; and (4) State Procurement Contracts to Minority Business Enterprises/Small Business Technical Assistance Programs.

Other: Feasibility Study for a Cultural Activities Facility on the Elizabeth II - assigned to the Department of Cultural Resources.

# CONSTITUTION

(Bill Gilkeson)

## RATIFIED LEGISLATION

### North Carolina Constitution

(No bills ratified.)

### United States Constitution

**Ratify Anti-Poll Tax Amendment** (HB 109; Chapter 84): House Bill 109 was a belated ratification by North Carolina of the 24th Amendment to the U.S. Constitution. That amendment forbids states from denying the right to vote to anyone for failure to pay a poll tax or other tax. A sufficient number of states had ratified the amendment by 1964, but North Carolina had not. House Bill 109 was made effective upon ratification.

**Ratify Congressional Pay Amendment** (HB 1052; Chapter 572): House Bill 1052 reiterates North Carolina's action ratifying a proposed amendment to the U.S. Constitution concerning Congressional pay. The proposed amendment said that if Congress passed a law raising congressional pay, it could not take effect until an election of representatives had intervened. Although North Carolina ratified the proposed amendment in 1789, not enough other States did. Recently, interest in the amendment has revived among States. The stated purpose of House Bill 1052 was to remove doubt as to the validity of North Carolina's ratification. The bill was made effective July 4, 1989.

**Concerning flag desecration** (S.R. 1323): Senate Resolution 1323, adopted as a simple resolution by the Senate only, laments the decision of the U.S. Supreme Court declaring unconstitutional laws against flag destruction. The Senate also urged Congress to take appropriate action to reinstate bans on flag desecration, including a constitutional amendment if necessary. The Senate adopted the resolution June 27, 1989.

## PENDING LEGISLATION

### North Carolina Constitution

**Gubernatorial veto** (SB 3): Senate Bill 3 would amend the Constitution so that bills passed by the General Assembly would be subject to veto by the Governor, with certain exceptions. The General Assembly could override the veto by three-fifths of those present and voting in each house. Senate Bill 3 passed the Senate; in the House it failed to receive the votes necessary for a constitutional amendment, but it was revived by a favorable vote to reconsider, and was referred to the House Rules Committee. As passed by the Senate, the bill would have exempted from the veto all bills proposing constitutional amendments, bills making certain kinds of appointments, and redistricting bills; in the latest House version, the bill would also exempt local bills from the veto. As passed by the Senate, the proposal would go before the voters on primary day 1990 and take effect January 1, 1993; in the latest House version, the proposal would go before the voters in November 1990, and would take effect January 1, 1991.

**Six-year gubernatorial term** (SB 94): Senate Bill 94 would limit the Governor to a single six-year term, and the Lieutenant Governor to the same. The limitation would be effective for the Governor and Lieutenant Governor elected in 1992.

**Legislators' four-year term** (SB 95): Senate Bill 95 would amend the Constitution so that the terms of all members of the House and Senate would be four years rather than two years. The new term length would be effective beginning with all legislators elected in 1990.

**Appointive judges** (SB 218): Senate Bill 218 would amend the Constitution to provide for the appointment of justices of the State Supreme Court and judges of the State Court of Appeals. The Governor would make the appointment, subject to confirmation by majority vote of the House and Senate. The initial term of an appointed judge would be four years, and subsequent terms would be eight years. The Constitution would leave up to the General Assembly how judges could be reconfirmed after their initial term; a companion bill, Senate Bill 219, would set up a statutory method for legislative reconfirmation. The referendum would be in November 1990, and the effective date January 15, 1991.

## STUDIES

(None.)

# CRIMINAL LAW AND PROCEDURE

(Brenda Carter, Jennie Dorsett, Hal Pell)

## RATIFIED LEGISLATION

### Corrections

**Emergency prison funds** (SB 38; Chapter 008): Senate Bill 38 approves the settlement agreement entered into by the parties in the cases of Small v. Martin and Thorne v. Martin, and provides that funds necessary to satisfy the terms and obligations of the agreement will be appropriated. The bill appropriates over $79 million dollars in funding for the 1989-90, and 1990-91 fiscal years for electronic house arrest, intensive probation/parole, regular probation/parole, the DWI program at Cherry Hospital, the IMPACT program, community penalties program, and for the construction of prison facilities. The act was effective on March 7, 1989.

**Prison stabilization** (SB 40; Chapter 001): Senate Bill 40 amends G.S. 148-4.1 (prison population cap) to require the Parole Commission to parole prisoners when the number of prisoners in the State prison system reaches 98% of 18,000 (was 97%) for 15 consecutive days. The total must be reduced to 97% of 18,000 (was 96%) within 90 days (was 60 days). The bill provides that prisoners convicted for certain sex offenses, kidnapping or abduction, and drug trafficking shall not be eligible for parole under the population cap parole procedure. The bill also authorizes the Parole Commission to both parole and terminate supervision of a prisoner confined only for a misdemeanor, unless the misdemeanor involved a driving while impaired offense. The act was effective on February 1, 1989; G.S. 148-4.1 will expire on July 1, 1991, unless reenacted by the General Assembly.

**Satellite jail fund** (HB 18; Chapter 761): House Bill 18 reduced the amount of an award available under the Satellite Jail/Work Release Unit Fund from $1.5 million dollars to $750,000 for any one county or group of counties. The bill authorizes the custodian of a local confinement facility to transfer a prisoner to a satellite jail upon a judicial determination that the prisoner is qualified for placement, or to transfer the prisoner to the satellite jail if he is otherwise qualified and obtains a job after placement in the local confinement facility. The bill also provides that non-violent misdemeanants, not otherwise qualified, may be placed in the satellite jail under certain prison and jail overcrowding conditions. The act was effective on August 11, 1989.

**Sacramental wine in jails/prisons** (HB 837; Chapter 106): House Bill 837 provides that ordained ministers and rabbis may give sacramental wine to inmates as part of a religious service, as an exception to the criminal statute which makes it a misdemeanor to give alcoholic beverages to inmates in local confinement facilities or State prison. The act was effective on May 16, 1989.

**Clarify jail fees** (SB 684; Chapter 733): Senate Bill 684 clarifies that persons who are awaiting trial, and whose case or proceeding is later dismissed, are not liable for jail fees. The bill also provides that counties may defend persons providing medical or dental services to inmates who are later sued by inmates pursuant to the federal

Civil Rights Act with respect to services rendered. The jail fee amendment was effective on October 1, 1989; the provision for defense of persons providing medical or dental services was effective on August 7, 1989.

## Crimes

**Harassing call/answering machine** (HB 501; Chapter 305): House Bill 501 amends G.S. 14-196(b) to clarify that telephonic communications made or received by way of a telephone answering machine or recorder, telefacsimile machine, or computer modem, are unlawful if the communication is used to threaten or harass another person. The act became effective on October 1, 1989.

**Increase animal cruelty penalties** (HB 1296; Chapter 670): House Bill 1296 increased the maximum fine for cruelty to animals, instigating or promoting cruelty to animals, or conveying animals in a cruel manner, form $1,000 to $1,500; and increased the maximum fine for abandonment of animals from $500 to $1,000. The act became effective on October 1, 1989.

**Machine gun defined** (SB 170; Chapter 680): Senate Bill 170 amended G.S. 14-409 to define "machine gun" or "submachine gun" as any weapon which shoots, is designed to shoot, or can readily be restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The bill also deleted from the statute the provision that automatic shotguns and pistols or other automatic weapons that shoot less than 31 shots shall not be construed to be a machine gun or submachine gun. The act became effective on October 1, 1989.

**Murder conspiracy penalty** (SB 714; Chapter 734): Senate Bill 714 added a new section to the General Statutes entitled "Conspiracy or solicitation to commit murder; conspiracy or solicitation to commit murder of a law enforcement officer, State official, juror or witness; punishments." Conspiracy to commit murder or solicitation to commit murder is a Class E felony. If the conspiracy or solicitation is to commit the murder of a person who is exercising official duties as a law enforcement officer, judge or justice, prosecutor or former prosecutor, juror or former juror or witness or former witness against the defendant, the offense is punishable as a Class D felony. The act became effective on October 1, 1989.

**Counterfeit recordings amendments** (SB 834; Chapter 589): Senate Bill 834 amends the General Statutes pertaining to the counterfeit reproduction of records, tapes, and other recording devices by expanding the scope of the statutes and the severity of the penalties. The bill amends G.S. 14-433 to make it unlawful to knowingly transport any article covered under the statute for profit and to knowingly advertise or rent any such article. The bill would also require a manufacturer of these articles to put his address, as well as his name, on the package of the article. The penalty for a violation of this Act would depend on the number of unauthorized recordings involved in the offense during a 180-day period and upon the number of prior convictions, and range from a Class I felony to a misdemeanor punishable by not more than six months in jail, a fine of not more than $1,000, or both. The act shall become effective on November 1, 1989.

**Slot machines regulated** (SB 874; Chapter 406): Senate Bill 874 amends the criminal statutes relating to slot machines to define "slot machine" in a uniform manner. The bill amends G.S. 14-296, 14-301, 14-302, 14-304, and 14-305 to define slot machine as the term is defined in G.S. 14-306. The definition covers the situation where a person uses tokens rather than actual money to be exchanged for things of value. Senate Bill 874 was effective October 1, 1989.

**Refusal to deliver property** (HB 1054; Chapter 401): House Bill 1054 amends the criminal statute regarding secreting personal property to hinder enforcement of a lien or security interest to provide that the criminal offense applies when refusal to surrender the property is to a law enforcement officer acting pursuant to a judicial order. House Bill 1054 was effective October 1, 1989, and applies to offenses occurring on or after that date.

## Criminal Procedure

**Repeal speedy trial act** (SB 730; Chapter 688): Senate Bill 730 repeals Article 35 of Chapter 15A which covers the "Speedy Trial" provisions of criminal procedure. The speedy trial provisions generally required that defendants be brought to trial within 120 days from the date of arrest, service of criminal process, indictment, or waiver of indictment, whichever occurred last. The bill left intact the provisions under speedy trial that set out the factors the district or superior court judge must consider in determining whether to grant a continuance. The bill became effective October 1, 1989.

**Capacity to proceed to trial amended; "dangerous to self and others" amended** (SB 517; Chapter 486): Section 1 of Senate Bill 517 amends the procedure to determine the mental capacity of a criminal defendant to proceed to trial. Section 1 clarifies that a court may order a local evaluation if the defendant's capacity is questioned. If a defendant is charged with a misdemeanor, the court may order an evaluation by a State facility for the mentally ill only after a local examination. If the defendant is charged with a felony, the court may order the defendant to a State facility for examination at any time. Section 2 of Senate Bill 517 amends the definition of "dangerous to self or others" used in commitments to mental facilities to provide that clear, cogent, and convincing evidence that a person has committed a homicide in the relevant past is prima facie evidence of dangerousness to others. Information from the person's "relevant" past rather than "recent" past may now be used to determine whether a person is dangerous to self or others. Section 1 of Senate Bill 517 became effective October 1, 1989. Section 2 was effective June 28, 1989.

**Crime Victims Compensation Act amended** (SB 147; Chapter 679): Senate Bill 147 makes numerous changes to the procedures relating to the crime victims compensation fund. The definition of "claimant" for third parties was narrowed to include only those persons who provided benefit to the victim or the victim's family other than in the course of employment or as a collateral source. The victim or claimant will now be required to provide necessary medical or psychological information. With the consent of the district attorney, law enforcement will be required to cooperate under certain circumstances. A new statute was added to make confidential the records of the Crime Victims Compensation Commission. The Director of the Commission will be able to negotiate with service providers for a

reduced rate and to pursue restitution from the convicted criminal. The bill became effective July 26, 1989.

**Compensation from the Crime Victims Compensation Fund for DWI victims** (SB 26; Chapter 322): This legislation amended the Crime Victims Compensation Act to allow victims of impaired driving offenses to seek compensation for economic losses from the crime victims compensation fund. The bill was effective June 15, 1989.

**Fair Treatment for Victims and Witnesses Act amended** (HB 524; Chapter 596): House Bill 524 amends the Fair Treatment for Victims and Witnesses Act to extend certain protections and rights to victims and witnesses. The definition of crime was altered to include serious misdemeanors, as determined in the sole discretion of the district attorney, among the offenses covered by the Act. The bill also provides that victims and witnesses (1) may request that the district attorney object to testimony about their home address, (2) be informed that they may be present throughout the entire trial of the defendant, and (3) be provided information about plea bargaining and told that the district attorney may recommend a plea bargain. A provision was added that no cause of action is created for failure to comply with the provisions of the Act. House Bill 524 became effective October 1, 1989.

**Worthless check affidavit** (House Bill 1234; Chapter 421): This legislation allows an affidavit of a bank employee into evidence without further authentication in a worthless check prosecution. The employee's affidavit must be based on personal knowledge. The defendant must be provided a copy of the affidavit before trial and must have the opportunity to subpoena the employee for trial. The bill became effective October 1, 1989, and applies to offenses occurring on or after October 1, 1989.

**Service of subpoenas and criminal process by civilians** (HB 610; Chapter 262): House Bill 610 expands the service of criminal process to allow any employee of a local law enforcement agency, rather than a law enforcement officer only, to execute telephone service of subpoenas. The bill further allows employees of law enforcement agencies to serve a criminal summons at the agency's office if the defendant appears at the agency to be served. House Bill 610 became effective October 1, 1989.

**Failure to return process amended** (HB 1274; Chapter 462): House Bill 1274 amends the criminal statute for failure to return process or making a false return to limit application to willful and intentional violations and eliminates the $100 penalty for making a false return. The bill became effective October 1, 1989, and applies to offenses committed on or after October 1, 1989.

**Remove RICO sunset** (SB 719; Chapter 489): Senate Bill 719 removes the sunset provision of the Racketeer Influenced and Corrupt Organizations Act (RICO), which was October 1, 1989. The bill became effective June 28, 1989.

**Inform alien defendants** (SB 761; Chapter 280): Senate Bill 761 requires superior court judges, before accepting a plea of guilty or no contest, to inform the defendant that, if he is not a United States citizen, the plea may result in deportation, exclusion from admission to the United States, or denial of naturalization under federal law. The bill shall become effective January 1, 1990.

## Drugs

**Methamphetamine trafficking** (HB 275; Chapter 690): House Bill 275 amends the Controlled Substances Act to make the sale, manufacture, transporting or possession of 28 grams or more of methamphetamine (street name "ice") a trafficking offense. The minimum penalty under the statute is a Class G felony, punishable by a minimum sentence of 7 years and a fine not less than $50,000. The bill was effective October 1, 1989, and applies to offenses occurring on or after that date.

**Felony to possess cocaine/phencyclidine** (SB 77; Chapter 641): Senate Bill 77 amends the Controlled Substances Act to make simple possession of any amount of cocaine (including "crack") or phencyclidine (PCP, Angel Dust) a Class I felony, punishable by imprisonment up to five years, or a fine or both. Under previous law, possession of less than one-half gram of phencyclidine or less than one gram of cocaine was a misdemeanor. Senate Bill 77 was effective October 1, 1989, and applies to offenses occurring on or after that date.

**Amphetamine trafficking** (SB 712; Chapter 672): Senate Bill 712 makes the sale, manufacture, transportation, or possession of 1,000 dosage units or more of amphetamine a trafficking offense. The minimum penalty under the statute is a Class G felony, punishable by a minimum sentence of seven years and a fine not less than $25,000. Senate Bill 712 was effective October 1, 1989, and applies to offenses occurring on or after that date.

**Death from cocaine use/murder** (SB 961; Chapter 694): Senate Bill 961 provides that the distribution of cocaine resulting in the subsequent death of the user is punishable as second-degree murder, when ingestion of the substance is the cause of death. Senate Bill 961 was effective October 1, 1989, and applies to offenses occurring on or after that date.

**Controlled substance tax** (SB 699; Chapter 772): Senate Bill 699 imposes an excise tax on the illegal possession of controlled substances. The act is designed to provide additional deterrence and punishment for illegal drug dealers as well as an economic disincentive to trafficking in drugs. Senate Bill 699 will become effective January 1, 1990.

## Law Enforcement

**Wildlife rules enforcement** (HB 327; Chapter 221): House Bill 327 provides that all law enforcement officers of this State have the authority to enforce, within their established jurisdiction, the rules promulgated by the Department of Natural Resources and Community Development and the Wildlife Resources Commission regarding the willful removal of, damage to, or destruction of any property entrusted to those entities. House Bill 327 was effective June 5, 1989.

**Police dogs/no confinement** (HB 1078; Chapter 298): House Bill 298 provides that police dogs who have bitten a person are exempt from confinement requirements (normally 10 days) if the dog's rabies vaccinations are current. House Bill 298 was effective June 12, 1989.

**Private campus police change** (HB 1156; Chapter 518): House Bill 1156 authorizes campus police officers at private colleges and universities to make arrests on portions of a public road passing through campus; allows the board of trustees of the institution to enter an agreement with a municipality to extend the officer's law enforcement authority into the municipality's jurisdiction, and to enter into agreement with the county governing board (with sheriff's consent) to extend officers' authority into any or all of the county's jurisdiction; authorizes the head of a private college or university law enforcement agency to provide temporary assistance to a municipal or county law enforcement agency; and permits private college and university police officers to make arrests outside their territorial jurisdiction if such arrest is made during a suspect's immediate and continuous flight from that territory. House Bill 1156 was effective October 1, 1989.

**Sheriff's penalties change** (HB 1274; Chapter 462): House Bill 1274 provides that the civil and criminal penalties for failure to return process or for making a false return apply only to individuals who personally commit intentional violations, and repeals the $100 penalty for making a false return. House Bill 1274 was effective October 1, 1989.

**Criminal justice training changes** (SB 492; Chapter 757): Senate Bill 492 makes technical changes to the law concerning the North Carolina Criminal Justice Education and Training Standards Commission. The Commission is authorized to establish minimum educational and training standards for initial employment or retention of a criminal justice officer, and to establish minimum standards for in-service training for criminal justice officers; waivers of minimum educational standards may not exceed 12 months. The act specifies that Commission personnel files are subject to the same confidentiality provisions as those of other state and local government agencies. Senate Bill 492 was effective October 1, 1989.

**Confiscated weapons** (SB 826; Chapter 216): Senate Bill 826 authorizes the disposition of confiscated deadly weapons to the North Carolina Justice Academy for official use by that agency. Senate Bill 826 was effective June 5, 1989.

**Services for hearing impaired** (SB 976; Chapter 533): Senate Bill 976 requires that the central communications office of each county sheriff's department and each police department purchase and continually operate at least one TDD (telecommunications device for the deaf). Senate Bill 976 was effective July 1, 1989.

## PENDING LEGISLATION

The following bills have passed one house and have been received by the other and therefore are eligible for consideration in the 1989 Session. Under the terms of the adjournment resolution, appropriations and revenue measures are also eligible.

### Crimes

**Flag desecration unlawful** (SB 1331): Senate Bill 1331 would amend the general statute which makes unlawful the desecration of the United States flag or the North Carolina State flag.

**Kidnapping law extended** (HB 545): House Bill 545 would amend the criminal statute on kidnapping to include in the offense the holding of a child under the age of eight years, without the current requirement that the holding be for ransom; as a hostage; to facilitate the commission of a felony or flight following a felony; doing serious bodily harm or terrorizing the victim; or in involuntary servitude.

**Lottery ticket possession legal** (SB 10): Senate Bill 10 would add a new section to the General States which would legalize the possession of a State or provincial sponsored lottery ticket from a State or province where the lottery is lawful.

**Child pornography punished** (SB 817): Senate Bill 817 would add a new section to the General Statutes creating the offense of "Third degree sexual exploitation of a minor," which provides that possession of materials containing a visual representation of a minor engaging in sexual activity is a felony.

### Criminal procedure

**Jury instructions in capital cases** (HB 626): House Bill 626 specifies the language a judge would use to charge a jury in a capital case regarding the sentence of life imprisonment, emphasizing the possibility of parole and the role of the Parole Commission in granting parole.

**Day in jail defined** (SB 25): Senate Bill 25 would require a defendant to serve at least 10 hours of a day to receive a full day's credit toward a term of imprisonment.

**Warrantless arrest changes** (HB 658): House Bill 658 would amend the arrest statute to allow a law enforcement officer to arrest without a warrant in cases of assault on a female, domestic criminal trespass, or concealment of merchandise in a store.

**Increase criminal enterprise sentence** (SB 713): Senate Bill 713 would designate continuing criminal enterprise as a Class B felony punishable by life imprisonment rather than a Class C felony.

## Drugs

**Felony to hire child pushers** (HB 267): House Bill 267 would make an adult who uses, solicits, or hires a minor to commit a drug violation guilty of a Class E felony, and would hold such person strictly liable for the minor's drug addiction. The bill would increase the sentence for the illegal sale or delivery of drugs to a minor or a pregnant woman, and provide that a person twenty years of age or older who commits a drug offense on school property or within 300 feet of the boundary of a public school is guilty of a Class E felony.

**Drug traffic murder** (SB 117): Senate Bill 117 would make a felony committed while the defendant was engaged in trafficking in a controlled substance an aggravating factor for consideration in determining whether to impose the death penalty on a convicted defendant.

**Criminal liability for drug-induced death** (SB 706): Senate Bill 706 would hold a person who illegally manufactures, sells, or delivers a Schedule I or Schedule II controlled substance strictly liable, both civilly and criminally, for a death where a proximate cause of the death is the ingestion of the substance. Violation would be a Class C felony.

**Criminal enterprise sentence** (SB 713): Senate Bill 713 would increase the sentence for engaging in a continuing criminal enterprise from a Class C felony (maximum 50 years imprisonment) to a Class B felony (life imprisonment).

## Law Enforcement

**Sheriff's liability for deputy** (HB 138): House Bill 138 would clarify a sheriff's personal liability for the acts of his deputy.

**Warrantless arrest changes** (HB 658): House Bill 658 would allow warrantless arrest in cases of assault on a female, domestic criminal trespass, and driving while impaired.

**Local officer inspect ABC premises** (HB 676): House Bill would authorize inspection of ABC-licensed premises by local law enforcement officers.

## STUDIES

Legislative Research Commission: Insanity Verdict/Guilty but Insane Verdict.

Other: (1) Substance Abuse Treatment in Prison - assigned to Special Committee on Prisons; (2) HIV (AIDS) Testing - assigned to Department of Correction, and (3) Centralized Prison System - assigned to House Appropriations Committee on Justice and Public Safety and Senate Appropriations Committee on Justice and Public Safety.

# EDUCATION

(Linda Kimbell, Barbara Riley)

## RATIFIED LEGISLATION

### Community Colleges

**Community College building review** (HB 289; Chapter 58): House Bill 289 adds to the powers and duties of the Department of Administration (pursuant to G.S. 143-341) architectural and engineering review, supervision and inspection of all community college buildings requiring repair or construction estimated to cost $50,000 or more. (G.S. 143-129). The act became effective July 1, 1989.

**College telecommunications** (HB 486; Chapter 451): House Bill 486 amends G.S. 62-110 adding a new subsection (e) providing that the North Carolina Utilities Commission may allow any telephone services offered by nonprofit colleges and universities, and their affiliated medical centers to be shared or resold if offered to students or guests housed in quarters furnished by the institutions, patrons of hospitals or medical centers of the institutions, or persons or businesses providing various services to the institution, its students, or guests. The act will allow these institutions to provide shared or resold services to noncontiguous premises and requires pricing of the access lines between the institutions and the local telephone company on the same basis as it is priced to the exception group in G.S. 62-110(d), presently on a flat rate basis. It permits the institutions to elect optional measured or message rate services. "Networking" of service between two or more different institutions is prohibited. The requirements for adequate access lines for good service and those regarding the rights and obligations of the local telephone company to serve individuals located on these premises remain the same as presently required by G.S. 62-110(d). The bill is effective upon ratification, June 26, 1989.

**Community College Board term** (HB 555; Chapter 521): House Bill 555 amends G.S. 115D-13 and provides for the extension of the regular term of trustees appointed in 1981 and 1987 for one year. The terms of one or more trustees elected under G.S.115D-12 may be extended for one year if necessary to provide for staggered terms. As the terms of trustees currently in office expire, their successors shall serve four year terms. House Bill 555 also provides that, upon failure of a member to attend three consecutive scheduled meetings without justification, the board of trustees may declare the seat vacant and so notify the appointing authority. The act was effective upon ratification, June 29, 1989.

**Wilson Tech name change** (HB 747; Chapter 87): House Bill 747 Changes the name of Wilson County Technical College to Wilson Technical Community College. The act was effective upon ratification, May 4, 1989.

**Dependent care payroll deduction** (HB 1129; Chapter 458): House Bill 1129 authorizes a dependent care assistance program, as available under Section 129 of the Internal Revenue Code of 1986, for State agency employees (G.S. 143-34.1), community college employees (G.S. 115D-25.1), university employees (G.S. 116-17.1), and public school employees (G.S. 115C-441.1). State employers will

enter into annual contracts with employees to provide for a reduction in salaries. State employers electing to offer the program are authorized to enter into contracts with third parties to administer the program only upon a thorough and completely competitive procurement process. The act shall become effective January 1, 1990.

**Youth services tuition waiver** (HB 1211; Chapter 162): House Bill 1211 extends the waiver for tuition and registration fees that the State Board of Community Colleges may provide for by rule to employees of the Division of Youth Services of the Department of Human Resources taking training courses. The act was effective July 1, 1989, and applies to tuition and fees due on or after that date.

**State publication policy** (SB 62; Chapter 715): Senate Bill 62 provides that the Department of Administration, in consultation with the State Librarian and the State Auditor, shall establish guidelines to be used by all State agencies and community colleges and in developing publication procedures manuals for public documents. Initial guidelines for the manuals are to be released by the DOA by December 1, 1989. The DOA shall report to the Joint Legislative Commission on Governmental Operations those State agencies and community colleges failing to timely adopt publication procedures manuals. The initial report is due January 1, 1991. The bill also directs the State Librarian and University Librarian to identify the types of publications that can use acid-free paper and the feasibility of using such. Not later than June 1, 1990, the Administrative Office of the Courts shall adopt (1) a publications procedures manual for public documents other than the N.C. Supreme Court Reports and the N.C. Appellate Reports and (2) an administrative review and approval process for its public documents. The act was effective upon ratification, August 3, 1989.

**Community College contract claims** (SB 180; Chapter 40): Senate Bill 180 adds a new section to Article 8 of Chapter 143 providing for adjustment and resolution of community college board construction contract claims. The new section provides that a contractor who has not completed the contract and who has not received the amount he claims is due is to follow the claims procedure of G.S. 143-135.3(b). This section allows for a verified written claim to be submitted to the Director of the Office of State Construction for the amount due. The Director may deny, allow, or compromise the claim. A claim under this section is not a contested case under Chapter 150B. Contractors who have completed a contract but have not received the amount claimed must follow G.S. 143-135.3(c). This section requires the contractor to submit a verified written complaint to the Director within 60 days of receiving a final statement. The Director has 90 days to investigate. The Director may allow, deny, or compromise the claim. Contractors dissatisfied with the Director's decision may commence, within six months of the final decision, a civil action in Superior Court. The action shall be tried by the judge without a jury. No contested case proceedings under Chapter 150B are allowed. The provisions of G.S. 143-135.6(a), (b), and (c) must be included in all construction and repair contracts entered into by a board of a community college. Conflicting provisions are invalid. G.S. 143-135.6 applies only to those community college buildings subject to G.S. 143-341(3). The act is effective upon ratification, April 4, 1989, and applies to claims submitted after that date. The act does not apply to litigation pending as of effective date.

## Elementary and Secondary

**Teacher of Year on State Board** (HB 53; Chapter 720): House Bill 53 designates the State Teacher of the Year a non-voting, advisory member of the State Board of Education, serving a two-year term. The act was effective when ratified, August 3, 1989.

**School bus driver qualifications** (HB 273; Chapter 558): House Bill 273 mandates that all school bus drivers be at least 18 years old. The effective date was July 1, 1989.

**Alternative schools/programs** (HB 355; Chapter 450): House Bill 355 directs the State Board of Education to work with local governments and school administrative units to create alternative schools and school programs for chronically disruptive students. The act was effective when ratified, June 26, 1989.

**School records/missing children** (HB 567; Chapter 331): House Bill 567 requires school superintendents to flag the records of children reported missing. The school shall notify the agency requesting the flagging whenever information about the record or a copy of it is requested. When a child changes school systems, the new school must obtain a copy of the child's record from the former system or verify any records supplied by the child's parent or guardian. The effective date was August 15, 1989, and applies to records of children reported missing or transferring on or after that date.

**Textbook adoption changes** (HB 577; Chapter 798): House Bill 577 requires the State Board of Education to request sealed bids from the publishers of all books being considered for adoption. The Board is authorized to use $240,504 of the funds appropriated to the Department of Public Education in 1989-90 and 1990-91 to implement the changes in the adoption textbook process. The effective date was July 1, 1989.

**Repeal old certification laws** (HB 578; Chapter 385): House Bill 578 repeals provisions requiring local school superintendents to sign and the local board to approve teacher certificates. The act was effective when ratified, June 21, 1989.

**Amend special needs evaluation** (HB 601; Chapter 388): House Bill 601 requires the written referral of a child for diagnosis and evaluation to be given to the child's teacher, principal, or local superintendent or designee. The local education agency will notify the parent or guardian in writing of the referral and request consent for the evaluation. The agency may request a due process hearing when consent is not given. The agency must convene an individualized education program committee to decide on the appropriate program within thirty days of a special-needs determination. The program must be implemented within ninety days of the initial referral. The parent or guardian must be given a copy of the program proposal before consent for the child's participation is given. An evaluation of the appropriateness of a special needs designation and the child's particular program must be done every three years. The act was effective when ratified, June 21, 1989.

**Teacher aides/teacher assistants** (HB 674; Chapter 585): House Bill 674 redesignates as "teacher assistants" those public school support personnel previously known as aides or teacher aides. The act was effective on ratification, July 5, 1989.

**Chemically dependent children** (HB 679; Chapter 316): House Bill 679 specifies that drug and alcohol addicted children are not "children with special needs" and, therefore, are ineligible for the special programs available to children so designated. The act further directs the State Board of Education to ensure that chemically dependent children are provided with an appropriate education. The effective date was July 1, 1989, and applies to academic years beginning 1989-90.

**Superintendent contract renewal** (HB 1072; Chapter 339): House Bill 1072 clarifies that a county or city school superintendent's contract may be renewed or extended within the last twelve months of the contract. If new board members are to be appointed or elected during this twelve months, they must be sworn in before the contract can be renewed or extended. The act was effective on ratification, June 15, 1989, and made applicable to all contracts renewed or extended since July 1, 1985.

**School Improvement Act** (SB 2; Chapter 778): Senate Bill 2 directs the State Board of Education to develop a Performance-Based Accountability Program in which local administrative units may participate beginning with the 1990-91 fiscal year. Units which take part are exempt from State-required reports and plans and staffing ratios of the State Accreditation Program. Units may include a differentiated pay plan for teachers and administrators and may have increased flexibility in the use of State funds. Local school units opting to participate must submit a local school improvement plan to the State Superintendent of Public Instruction before April 15 of the fiscal year preceding the fiscal year in which participation will begin.

The State Board is further directed to adopt end-of-course and end-of-grade tests for the third through twelfth grades. Annual report cards for participating local school administrative units will also be issued.

Funding for existing Career Development and Lead Teacher Pilot Programs is continued for the 1989-90 fiscal year. If the pilot schools submit local school improvement plans in 1989-90 and after, they may continue to receive Career Development or Lead Teacher funds.

The act was effective when ratified, August 12, 1989.

**Public school personnel/salary increases** (SB 44; Chapter 752): section 38 of Senate Bill 44 authorizes a 6% increase for superintendents, assistant superintendents, associate superintendents, supervisors, directors, coordinators, evaluators, program administrators, principals, and assistant principals for fiscal years 1989-90 and 1990-91. Increases in the 1990-91 fiscal year will be tied into the phase-in of a new salary schedule for administrators to be developed by the State Board of Education by April 1, 1990. The phase-in must be completed by June 30, 1994.

Teachers will receive an average increase of 6% in fiscal years 1989-90 and 1990-91, the first two years of a three-year phase-in of new salary schedules. The schedules have thirty steps equivalent to years of experience with each step separated by a 2% salary increment, except for steps three and four which are separated by a 5% increment. The schedules also provide for longevity payments of 2.5% of base salary after twenty-five years of State employment. The schedules for teachers with advanced degrees are 5% higher for a master's, 7.5% higher for a six-year certificate, and 10% higher for a PhD.

A 4% salary increase is authorized for noncertified employees, except school bus drivers, for fiscal years 1989-90 and 1990-91. An additional 2% is authorized each year for adjustments to bring salaries more in line with those of comparable State employees subject to the State Personnel Act. School bus drivers are authorized at least a 6% increase for fiscal years 1989-90 and 1990-91. The effective date was July 1, 1989.

**Teacher training/learning disabled children** (SB 44; Chapter 752): section 66 of Senate Bill 44 mandates that teacher education programs for students not majoring in special education include courses in the identification and education of children with learning disabilities. Regional Educational Training Centers are directed to provide in-service training for teachers in the identification and education of learning disabled children. The effective date was July 1, 1989.

**Assignment of principals to smaller schools** (SB 44; Chapter 752): Section 73 of Senate Bill 44 directs that a principal paid with State funds assigned to a lower job classification because of a transfer to a school with a smaller number of State-allotted teachers will receive the salary for the lower classification. The act is applicable to transfers on or after the effective date except those resulting from school-system mergers. The effective date was July 1, 1989.

**Preliminary Scholastic Aptitude Test opportunities encouraged** (SB 44; Chapter 752): Section 77 of Senate Bill 44 authorizes the State Board of Education to contract with the College Board to administer the Preliminary Scholastic Aptitude Test at State expense to every student in grades eight through ten who has completed, or is within one month of completion of, Algebra I. The effective date was July 1, 1989.

**Administration of Department of Public Instruction budget** (SB 44; Chapter 752): Section 78 of Senate Bill 44 gives the Superintendent of Public Instruction the responsibility to administer funds allocated to the Department and to enter into contracts for its operations. As Secretary to the State Board of Education, the Superintendent is given the authority to administer funds appropriated to the Department of Public Education. The effective date was July 1, 1989.

**Civic Literacy Act** (SB 109; Chapter 370): Senate Bill 109 directs local school boards to require the teaching of the nation's founding, including the Declaration of Independence, the US Constitution and amendments, and the principle Federalist papers. Curriculum-based tests used statewide after the 1990-91 academic year must test knowledge of the nation's founding. A passing grade in all courses that include primary instruction in the Declaration of Independence, the US Constitution, and the Federalist papers is a requirement for high school graduation. The act was effective on ratification, June 21, 1989, and applicable beginning with the 1990-91 school year.

**City manager on school board** (SB 152; Chapter 49): Senate Bill 152 permits the manager of a city with fewer than 10,000 residents, located in two counties, with the county of the manager's residence not exceeding 40,000 to serve on the county board of education. The act was effective when ratified, April 10, 1989.

**School employee on State Board** (SB 403; Chapter 46): Senate Bill 403 authorizes no more than one public school employee to serve as an appointed member of the State Board of Education. The act was effective when ratified, April 6, 1989.

**Special needs notice change** (SB 430; Chapter 362): Senate Bill 430 requires written notice to the parent, guardian, or surrogate of a child when the local educational agency proposes to initiate or change the identification, evaluation, or placement of a child as a special needs child or refuses to do so. The notice must inform the parent, guardian, or surrogate of all procedural safeguards available and

offer the opportunity for mediation. The act was effective when ratified, June 20, 1989.

**Educator annuity contracts** (SB 600; Chapter 526): Senate Bill 600 authorizes local boards of education to purchase a qualified custodial account in mutual fund shares for a school employee funded through yearly salary-reduction agreements with the employee. The State Board of Community Colleges and the governing boards of State institutions of higher learning are authorized to do the same for their employees. The effective date is January 1, 1990.

**Clerk may disqualify self** (SB 897; Chapter 493): Senate Bill 897 authorizes a clerk of court to transfer a dispute between a local board of education and the board of county commissioners to superior court when the clerk determines the dispute cannot be arbitrated. The act was effective when ratified, June 28, 1989.

**Mandatory drug education/K-12** (SB 1126; Chapter 801): Senate Bill 1126 requires the State Board of Education to develop a recommended list of alcohol and drug use prevention education materials and the Department of Public Instruction to develop curricular materials for use in the Basic Education Program. Local boards of education are required to implement drug and alcohol education prevention programs for kindergarten through sixth grade by the 1990-91 school year and for grades seven through twelve by the 1991-92 school year. The act was effective when ratified, August 12, 1989.

## Higher Education

**UNC-Charlotte parking deck** (HB 557; Chapter 125): House Bill 557 authorizes the construction and financing, without appropriations from the General Fund, of a 1200 vehicle parking deck at the University of North Carolina at Charlotte. The act was effective upon ratification, May 23, 1989.

**NC Memorial Hospital name** (HB 584; Chapter 141): House Bill 584 changes the name of North Carolina Memorial Hospital to the University of North Carolina Hospitals at Chapel Hill. The act also makes changes to G.S. 116-37 regarding terms of the Hospitals' Board of Directors. Each of the nine persons serving on the board as of June 30, 1989, will be reassigned by the Board of Governors of the University to a different term ending June 30, 1989 through 1997. All members shall serve four-year terms. No person may be appointed to more than three four-year terms in succession or a four-year term if preceded immediately by 12 years of service and resignation shall not constitute a break in service. The act was effective upon ratification, May 25, 1989.

**Private campus police change** (HB 1156; Chapter 518): House Bill 1156 amends G.S. 74A-2 (Oath and powers of company police; exceptions) to authorize such officers to make arrests on portions of public roads passing through or immediately adjoining the campus. It also amends G.S. 74A-2 to authorize the board of trustees of a private college or university to enter into an agreement with the municipality to extend the campus officers' law enforcement authority into any or all of the municipality's jurisdiction and to enter into an agreement (apparently with county governing board) with the sheriff's consent to extend officers' authority into any or

all of county's jurisdiction. The bill amends G.S. 160A-288 (Cooperation between law-enforcement agencies) and G.S. 160A-288.2 (Assistance to State law-enforcement agencies) to authorize the head of a private college or university law enforcement agency to provide temporary assistance to a municipal or county law enforcement agency and amends G.S. 15A-402(f) to permit private college and university police officers to make arrests outside their territorial jurisdiction if the arrest is made during the suspect's immediate and continuous flight from that territory. The act was effective October 1, 1989.

**Optometry students** (HB 1277; Chapter 321): House Bill 1277 clarifies that the practice of optometry by students enrolled in optometry schools approved by the State Board of Examiners of Optometry, when a part of the student's course of instruction under the direct supervision of a licensed optometrist and conducted pursuant to such rules that the Board may establish, does not violate the optometry licensure requirements. The act was effective upon ratification, June 14, 1989.

**College grant budget transfer** (SB 37; Chapter 56): Senate Bill 37 authorizes transfers among the 1988-89 General Fund appropriations to the University of North Carolina Board of Governors in order to provide full funding for both the Legislative Tuition Grant Program and the Contractual Scholarship Grant Program. The act was effective upon ratification, April 12, 1989.

**UNC-CH Alumni Center amendments** (SB 88; Chapter 30): Senate Bill 88 amends Section 2 of Chapter 899 of the 1985 Session Laws by increasing the amount authorized for the construction of the Alumni Center to $12,150,300, on a wholly self-liquidating basis. The bill also authorizes additional means of financing and constructing the project. The project shall be exempt from the requirements of G.S. 143-128 (Separate specifications for building contracts). The act was effective upon ratification, March 29, 1989.

**Board of Governors election** (SB 156; Chapter 274): Senate Bill 156 amends G.S. 116-6(d) prescribing the procedure for elections to the UNC Board of Governors. Under the act each house would conduct its own elections for the positions on the Board of Governors assigned to it. Where there is more than one person seeking nomination, the slate of nominees shall contain at least two nominees for any vacancy. Elections shall be held during the first 30 legislative days after committee assignments. The act was effective upon ratification, June 12, 1989.

**Student Loan Recovery Act** (SB 254; Chapter 475): Senate Bill 254 adds Chapter 105B to the General Statutes. The bill allows the State Education Assistance Authority to seek an order of withholding to enforce a judgment against a debtor in default on a student loan. The amount that may be ordered withheld may not exceed 10% of the debtor's monthly disposable earnings and may not reduce the debtor's family income to an amount at or below 200% of the federal poverty guidelines. The court shall not enter an order of garnishment unless the court makes findings of fact that the debtor's family income exceeds 200% of the federal poverty guidelines. The debtor may contest the withholding only on the basis of mistake of fact. Mistake of fact is specifically defined by the statute to be (1) the debtor is not person named in judgment; (2) the debtor has satisfied the judgment; (3) the debtor's monthly earnings or employer incorrectly stated in the Authority's motion; or (4) the debtor's family income is at or below 200%. The debtor may enter into an agreement with the Authority for repayment of the loan. Should such an agreement be reached, the Authority shall withdraw its motion for withholding. If the debtor's

employer willfully refuses to comply with the order to withhold the employer shall be held liable to the Authority for any amount which should have been withheld. Employers may not take disciplinary action against an employee or refuse to employ a person because of the withholding and are subject to civil penalties up to $1,000 as a result of a violation. The act was effective October 1, 1989.

**Scholarships for veterans' children** (SB 383; Chapter 767): Senate Bill 383 broadens the coverage of the State Scholarship program for children of war veterans. The bill provides that the termination date of the Vietnam era shall be May 7, 1975. No education assistance under Article 4 of Chapter 165 of the General Statutes shall be afforded a child after the end of a ten year period beginning on the date the scholarship is first awarded. The scholarship entitlement limitation is 4 academic years. G.S. 165-22(3) is amended to provide that a scholarship may be awarded to children whose veteran parent is or was receiving compensation for a wartime service disability of 20% or more. G.S. 165-22(4) is amended to provide that a scholarship may be awarded to a child whose veteran parent is or was drawing pension for permanent and total disability, non-service connected, or not falling into the other eligibility classes, provided the child is less than 23 at the time of application for scholarship. The act was effective upon ratification, August 11, 1989.

**UNC capital projects** (SB 557; Chapter 501): Senate Bill 557 authorizes construction and financing, without appropriations from the General Fund, of capital improvement projects at the constituent institutions of the UNC system as follows:

| | | |
|---|---|---|
| 1. | Appalachian State University | |
| | Improvements to Student Housing Facilities | $1,761,000 |
| | Parking Deck | 4,054,600 |
| 2. | East Carolina University | |
| | Expansion of Radiation Oncology Center | 7,812,100 |
| | Biotechnology Laboratory Building Completion | $4,746,600 |
| 3. | North Carolina State University at Raleigh | |
| | Research and Technology Building | 7,002,000 |
| 4. | The University of North Carolina at Asheville | |
| | Highsmith Center Renovation and Addition | 3,001,800 |
| | 300-Bed Residence Hall | 5,357,500 |
| 5. | The University of North Carolina at Charlotte | |
| | Student Housing, Phase VI | 8,445,600 |
| | University/Convocation Activities Center | 5,677,300 |
| 6. | The University of North Carolina at Greensboro | |
| | Student Housing. | 6,310,600 |
| 7. | The University of North Carolina at Wilmington | |
| | 200 Student Housing | 4,317,300 |
| 8. | Winston-Salem State University | |
| | Cultural Arts Center | 2,374,200 |

The act was effective upon ratification, June 29, 1989.

**Education annuity contracts** (SB 600; Chapter 526): Senate Bill 600 permits State employees of education personnel, including personnel for elementary and secondary schools (G.S. 115C-341), community college personnel (G.S. 115D-25), and university higher education personnel (G.S. 116-17) to purchase mutual fund shares in lieu of annuity contracts with funds received from a reduction in an employee's salary. The act shall become effective January 1, 1990.

**UNC-CH self-liquidating projects** (SB 693; Chapter 745): Senate Bill 693 authorizes the construction of a $30 million dollar research facility by the University on the Chapel Hill campus to be leased to the Federal Environmental Protection Agency. The UNC Board of Governors may issue revenue bonds pursuant to G.S. 116-41.1 through G.S. 116-41.12 to finance the project. The Board may pledge the revenue derived from the project plus revenues derived from future improvements to the project to the payment of the bonds. The revenue bond shall be secured solely by the revenues and guarantees received by the federal government pursuant to the lease. The bonds shall not be deemed to be a debt of the State or a pledge of the full faith and credit of the State. The lease to the federal government must be approved pursuant to Article 7 of Chapter 146 of the General Statutes. In contracting for the project, the University shall be exempt from requirements of G.S. 143-128 (Separate specifications for Building Contracts).

The act also authorizes a capital improvements project by UNC-CH of a Visiting Investigative Facility for its Institute of Marine Services in Morehead City. Financing is authorized of $106,000 to be met by sale of a house and lot located at 704 Bridges Street, Morehead City, in addition to any other gifts or grants, but not funds appropriated from the General Fund to the University. The act is effective upon ratification, August 9, 1989.

## PENDING LEGISLATION

### Elementary and Secondary

**No school profanity** (HB 531): House Bill 531 would add the use of profanity on the premises of an elementary or secondary school to the statutory prohibition against the use of profanity on public highways (G.S. 14-197).

**No flat roofs on schools** (HB 1137): House Bill 1137 would prohibit the use of State grants or loans for construction of school buildings with roofs with a lower pitch than that specified in the bill.

**Speech pathologist certified** (HB 1316): House Bill 1316 would require the standards for certification of speech pathologists and audiologists employed by the public schools to meet the minimum standards set for State licensure.

### Higher Education

**UNC Print Shops Study** (HB 127): House Bill 127 would require the University of North Carolina to study the efficient use of University system printing facilities.

**UNC in-state admissions** (HB 1241): House Bill 1241 would allow persons with a status of a military dependent and eligible for in-state tuition rates to be considered an in-state applicant for purposes of admissions criteria.

**Expand scholarship tax exemption** (HB 325/SB 212): House Bill 325 would exempt from income tax scholarship funds for travel and related expenses for internships that require the recipient to live away from the educational institution.

**UNC use State telephone network** (SB 539): Senate Bill 539 would allow students at the constituent institutions of the UNC system to use the State telephone network.

## DEFEATED LEGISLATION

**Improve teacher education** (HB 124): House Bill 124 would require UNC system institutions and private colleges which offer teacher training programs to provide more instruction in managing unruly students and to require special education courses. The bill failed second reading in the House.

**Corporal punishment alternatives** (HB 641): House Bill 641 would authorize the State Board of Education to select up to 16 administrative units to participate in a pilot program on alternatives to corporal punishment. The bill failed second reading in the House.

**Teacher personnel file** (HB 1126): House Bill 1126 would give a superintendent the authority not to include information known to be false, inaccurate, or misleading in a teacher's personnel file. The bill failed second reading in the House.

**School lease-purchase** (SB 728): Senate Bill 728 would allow a county to acquire property within a county for use by the local school administrative unit. The bill failed second reading in the Senate.

## STUDIES

Independent study commissions: (1) Education Study Commission; and (2) Commission on Children with Special Needs.

Legislative Research Commission: Proprietary Schools.

# EMPLOYMENT

(Bill Gilkeson, Linda Kimbell)

## RATIFIED LEGISLATION

### Employment Security

**Employment security law conformed** (HB 425; Chapter 707): House Bill 425 states that a person discharged from a job is ineligible for unemployment benefits if that person has been convicted of manufacturing or dealing illegal drugs, regardless of whether the drug offense was related to the work. Previously, a person fired from a job was disqualified only if "discharged for misconduct connected with his work." The bill defines "misconduct with the work" as including reporting to work impaired by alcohol or drugs and consuming alcohol or drugs at the workplace--actions arguably already within the definition. The bill also permits the Employment Security Commission to make disclosures to federal agencies of information from its otherwise confidential records. Those disclosures are mandated by federal law. The bill was made effective August 1, 1989.

**Employment security amendments** (HB 426; Chapter 583): House Bill 426 makes numerous changes in the Employment Security Act, many of them technical. Among the more significant:

* the rewording of the section that disqualifies a person from unemployment benefits if that person quit a job without good cause attributable to the employer. Previously, the law said benefits were to be denied if the employee quit "voluntarily without good cause attributable to the employer." The State Supreme Court had stated in a recent case (Barnes v. Singer) that the burden of proving that the employee was disqualified rested with the employer. House Bill 426 removed the word "voluntary" from the statute and made clear that the burden of showing good cause rests with the claimant, not the employer.
* the clarification of when a reduction of work hours or pay constitutes "good cause," justifying the employee in quitting and not disqualifying him from benefits. The bill said a reduction in hours of more than 20%, or a reduction in wages of more than 15%, is good cause.
* the designation of temporary help agencies (such as Manpower or Kelly) as "employers" liable for paying unemployment insurance tax for their worker.

The bill was made effective July 5, 1989.

**Employment security amendments** (HB 623; Chapter 410): House Bill 623 states that a summer camp does not have to pay unemployment insurance taxes on a full-time student that it employs. The bill was made effective June 22, 1989.

**Employment security debt set-off** (HB 733; Chapter 539): House Bill 733 amends the Setoff Debt Collection Act to include as a claimant agency the Employment Security Commission (ESC). Through this Act, the Department of Revenue may set off any refunds due a taxpayer from the Department the amount of debt owed by the taxpayer to the State through any of its claimant agencies. Hearings and appeals on

contested claims of the ESC shall be conducted in accordance with regulations adopted by the ESC and Chapter 96, the Employment Security law. This act was made effective June 30, 1989.

**Unemployment benefits/bankruptcy** (SB 903; Chapter 666): Senate Bill 903 provides that no otherwise eligible person shall be disqualified for unemployment benefits if that person left work because his employer went bankrupt. The bill was made effective July 24, 1989.

## Pensions and Retirement

**Emergency judge's prior service** (HB 132; Chapter 116): Under this act, a retired district court or superior court judge must have had five years of creditable service (reduced from eight years) in order to qualify as an emergency judge. The act was effective on ratification, May 22, 1989.

**Military system retirement credit** (HB 193; Chapter 762): House Bill 193 allows members of the Legislative Retirement System, the Teachers' and State Employees' Retirement System, and the Local Government Employees' Retirement System to purchase retirement credit for service in the US Armed Forces. Credit will be allowed only for active duty service and only if the member was honorably discharged. The effective date was October 1, 1989.

**Retirement/closed membership** (HB 1107; Chapter 791): House Bill 1107 allows a person whose membership in the Teachers' and State Employees' Retirement System was terminated involuntarily to receive a retirement allowance. To be eligible, the person must be at least 60, have had at least five years creditable service, and not have received a return of contributions to the System. The effective date was July 1, 1989.

**Retirement tax equalization** (HB 1311; Chapter 792): House Bill 1311 allows retirees a state income tax deduction of $4,000 of State, local, or federal retirement benefits or $2,000 of private retirement benefits. When both members of a retired married couple who file jointly receive retirement benefits, each may claim the exemption. A person receiving retirement benefits from more than one source may claim only one exemption. House Bill 1311 is effective for taxable years beginning January 1, 1989.

**Post-retirement allowance increases/retired teachers, State employees, judicial officials, local government employees, and legislators** (SB 44; Chapter 752): The retirement allowance paid to the beneficiaries of the various retirement systems is increased by 3.5%, effective July 1, 1989.

**Conform retirement systems to IRS** (SB 444; Chapter 276): Senate Bill 444 conforms the Legislative Retirement System, the Local Government Employees' Retirement System, the Teachers' and State Employees' Retirement System, and the Consolidated Judicial Retirement System to requirements of the Federal Internal Revenue System and IRS Code. The act also specifies when a members' retirement allowance begins. The effective date was January 1, 1989.

**Retirement contributions refunds** (SB 510; Chapter 731): Senate Bill 510 makes a change in provisions for refund of excess contributions in the Teachers' and State Employees' and the Local Government Employees' Retirement Systems to apply them to Cooperative Agricultural Extension Service Employees. The act also increases the sums the Boards of Trustees of the Systems must reserve for refunds and extends the deadline for applying for them until July 1, 1994. The act was effective July 1, 1989.

**Firemen/rescue pension change** (SB 545; Chapter 693): Senate Bill 545 adds deadlines for purchase of prior service credit in the Firemen's and Rescue Squad Workers' Pension Fund. Those who have previously applied for service credit must pay for it no later than October 1, 1989 or lose the credit. Firemen or rescue squad workers under 35 who apply for service credit have six months from the date of application to pay for it or forfeit it. The act was effective on ratification, July 28, 1989.

**Retirement credit purchases** (Senate Bill 747; Chapter 255): Senate Bill 747 more completely defines "full cost" as it pertains to purchases of retirement service credit in the State-administered retirement systems. The act was effective on ratification, June 7, 1989.

## State Employees

**Merit pay system revised** (HB 73; Chapter 796): House Bill 73 revises the procedure for awarding performance pay to State employees subject to the State Personnel Act. The State Personnel Commission must adopt policies and regulations for the institution and administration of a performance appraisal system for State government. The State Personnel Director has responsibility for the ongoing operation of the system, including the setting of increase ranges. Only employees whose performance exceeds requirements are eligible for performance increases. The act contains safeguards to guarantee the fairness of the system. A supervisor must justify in writing increases that are below or above the midrange of a particular level of performance. Recommendations are reviewed by the next higher level of supervisory authority. The State Personnel Director is authorized to suspend an increase that does not appear to meet the established criteria and require written justification for it. The act also provides for an internal review for disputed performance appraisals or increases.

The State Personnel Director is required to monitor the performance appraisal system and recommend sanctions against departments, agencies, and institutions that are deficient in administering their performance appraisal systems. Sanctions may include withholding of increases from the responsible supervisors and managers. The act was effective July 1, 1989.

**Change annual leave year** (HB 579; Chapter 386): House Bill 579 changes the accumulation of annual leave by public school employees from a calendar to a fiscal year basis. The act was effective July 1, 1989.

**State Personnel Commission members** (HB 852; Chapter 540): House Bill 852 directs that one of the two Personnel Commission members recommended by the association of county commissioners be a local government employee subject to the

State Personnel Act. The act was effective on ratification, June 30, 1989, and applies to subsequent appointments.

**Dependent care payroll deduction** (HB 1129; Chapter 458): House Bill 1129 authorizes the Board of Education, the Board of Community Colleges, the UNC Board of Governors, and the Director of the Budget to provide a dependent care assistance program through payroll deduction for their respective employees. Payroll deductions for dependent care assistance qualify for tax-deferred status under the federal Internal Revenue Code. The effective date is January 1, 1990.

**Chief Administrative Law Judge longevity** (SB 43; Chapter 500): Section 45 of Senate Bill 43 puts the Chief Administrative Law Judge on the same longevity pay plan as State employees subject to the State Personnel Act, effective July 1, 1989.

**Ferry Captain III, shift premium pay** (SB 43; Chapter 500): Section 54 of Senate Bill 43 adds the position of Ferry Captain III, salary grade 70, to those positions eligible for shift premium pay, effective July 1, 1989.

**Benefit and technical adjustments/Teachers' and State Employees' Health Benefit Plan** (SB 44; Chapter 752): Section 22 of Senate Bill 44 directs the Executive Administrator and Board of Trustees of the Plan to establish hospital bill audit and fraud detection programs. As part of the latter program, the coverage of an employee (active or retired) or a dependent who makes a fraudulent claim for medical reimbursement under the Plan will be terminated. Satisfaction of the Plan's deductible requirement is changed from a calendar to fiscal year basis. There is no longer a preexisting condition exclusion for cleft palate and speech therapy. Heart transplant is made a reimbursable organ transplant. Occupational therapy is also added as a covered expense. The chemical dependency treatment benefit is increased. The changes were effective October 1, 1989.

**Most State employees/salary increases** (SB 44; Chapter 752): Section 37 of Senate Bill 44 authorizes a 4% salary increase to State employees subject to the State Personnel Act paid from the General or Highway Funds. Employees subject to written disciplinary procedures may not receive this increase. An additional 2% is set aside for performance increases to be awarded according to the provisions of HB 73, with a cap of 6% on the amount of performance increase an employee can receive. Permanent parttime employees are authorized a 4% increase. The same increase percentages are authorized for fiscal year 1990-91. The effective date was July 1, 1989.

**Limit on number of State employees** (SB 44; Chapter 752): Section 46 of Senate Bill 44 limits the percentage increase in the number of permanent State employees, excluding public school employees paid with State funds, to the percentage of residential population growth in the State. The effective date was July 1, 1989.

**Ports Authority appoint Director** (SB 83; Chapter 273): Senate Bill 83 empowers the Board of the State Ports Authority to appoint the Executive Director, who is given sole operational authority including authority to hire, fire, and set the salaries of other Authority employees. The Secretary of Commerce is designated as one of the seven members appointed by the Governor. The act was effective on ratification, June 12, 1989.

**State Fraud/Abuse Hotline** (SB 125; Chapter 236): Senate Bill 125 guarantees State employees who report violations of State or federal law, rules, fraud, misappropriation of State resources, and activity which endangers public health or safety from job-related retaliation by a supervisor and authorizes civil suits against the agency or supervisor for such retaliation. Remedies for violations include damages, including treble damages for willful violations, job reinstatement and back compensation, and attorney fees. The State Auditor is directed to set up a hotline for anonymous reporting of fraudulent or illegal activities. The effective date was October 1, 1989.

**Ports Authority not State personnel** (SB 467; Chapter 484): Senate Bill 467 adds employees of the North Carolina State Ports Authority to the list of those exempt from the provisions of the State Personnel Act. The act was effective when ratified, June 28, 1989.

**Disability income corrections** (SB 544; Chapter 717): Senate Bill 544 makes various technical corrections in the State Disability Income Plan. Among others, it allows a member of the Teachers' and State Employees' Retirement System whose application for long-term or extended short-term disability benefits was rejected to convert the application to one for early or service retirement and makes conforming changes in other parts of the Plan. The effective date was July 1, 1989.

**Selective Service registration** (SB 842; Chapter 618): Senate Bill 842 makes ineligible for State employment or State-supported financial assistance for post-secondary education anyone subject to Selective Service Registration who has willfully failed to register. The act also directs State entities to adopt rules and regulations to comply with its provisions. The effective date was October 1, 1989.

**Department of Transportation exemption from limitation on number of State employees** (SB 1309; Chapter 799): Section 17 of Senate Bill 1039 exempts the DOT from the provisions of SB 44 for employees hired on specific projects funded by the Highway Trust Fund. The effective date was July 1, 1989.

**State Bureau of Investigation salary adjustment** (SB 1309; Chapter 799): Section 24 of Senate Bill 1309 allows the SBI to continue to pay up to $5,200 per year overtime to supervisory personnel. The Office of State Personnel is directed to study the issue and recommend whether such payment should be continued. The effective date was July, 1989.

## Workers' Compensation

**Product liability Workers' Compensation** (HB 987; Chapter 420): House Bill 987 removes a provision in current law that seems to say that if an person is covered by Workers' Compensation, that person may not sue the manufacturer of a defective product that causes injury to the person while the person is using the product on the job. House Bill 987 became effective October 1, 1989, and applies to claims for relief on or after that date.

**Sole proprietor Workers' Compensation** (HB 1202; Chapter 637): House Bill 1202 relieves a contractor from responsibility for the Workers' Compensation of a

subcontractor who has no employees if that subcontractor states in writing that he does not wish to have Workers' Compensation coverage through the contractor. The bill was made effective July 13, 1989.

**Workers' Comp. tax/assessment** (HB 1926; Chapter 647): House Bill 1926 requires the Commissioner of Insurance to use an "experience modifier" in calculating the tax to be paid into a maintenance fund by an employer who self-insures for Workers' Compensation. If the claims experience of the employer is good, he would pay a lower tax. The bill also increases from 1% to 2% the percentage of its written premiums a stock carrier or mutual carrier of Workers' Compensation insurance must pay into an insolvency fund. The experience-modifier portion of the bill is effective for taxable years beginning on or after January 1, 1990. The rest of the bill was made effective July 15, 1989.

**Asbestosis/silicosis claims** (SB 468; Chapter 439): Senate Bill 468 permits the Industrial Commission to assign a qualified physician to examine a person who claims Workers' Compensation because of asbestosis or silicosis even though the physician is not on the three-member Advisory Medical Committee the statutes designated to do such examinations. The stated intent of the legislation was to expedite the processing of claims. The bill was made effective June 26, 1989 and applies to all awards determined by a Commissioner on or after that date.

## Miscellaneous

**Actuarial notes amendment** (HB 605; Chapter 261): House Bill 605 makes a technical change to clarify the statute requiring actuarial notes for bills affecting State retirement, health, and disability plans. The act was effective on ratification, June 7, 1989.

**Department of Labor fees** (HB 1064; Chapter 546): House Bill 1064 raises the fees charged by the State Department of Labor for inspections of elevators and amusement devices. The act was made effective July 1, 1989.

**Wage/Hour Act amendments** (SB 483; Chapter 687): Senate Bill 483 makes several changes to the State Wage and Hour Act. Most significantly, the bill:

* removes the exemption from the act for employers with fewer than three employees.
* fills a potential gap that would have left certain workers out of an increase in the minimum wage.
* allows employees awarded back wages to be paid interest on those wages at the legal rate (8%).
* prohibits an employer from withholding wages that are not in dispute in connection with wages that are in dispute.
* allows the Commissioner of Labor to assess civil penalties for violations of the act's record-keeping requirements.

The bill was made effective October 1, 1989.

**Employment and Training Act amendments** (SB 911; Chapter 532): Senate Bill 911 amends the Employment and Training Act of 1985 to adapt that act to recent federal legislation. The bill also abolishes a Committee of the State Job Training

Coordinating Council; the Committee's role was to prepare a report that was due in 1986. Senate Bill 911 was effective June 30, 1989.

## PENDING LEGISLATION

The following bills have passed one house and have been received by the other and therefore are eligible for consideration in the 1989 Session. Under the terms of the adjournment resolution, appropriations and revenue measures are also eligible.

### Pensions and Retirement

**Maternity leave/retirement service** (HB 876): House Bill 876 would amend the Teachers' and State Employees' Retirement System to allow female members with 5 years or more of credited service to purchase up to a maximum of 6 month's credit for time lost due to maternity leave.
**State Retirement System reciprocity** (HB 1043): House Bill 1043 amends the various State retirement systems to allow credit accrued in one system to be used in determining eligibility for retirement benefits. Creditable service may be counted only once for the same time period.
**County commissioners retirement benefits** (HB 1271): House Bill 1271 would make county commissioners eligible for membership in the Local Government Employees Retirement System and allow them to purchase credit in the system for service as a county commissioner.

**Local Government Employees Retirement System retirement conversion** (HB 1994): House Bill 1994 would allow a person on early or service retirement to convert to a disability allowance within three years of retirement if the person had met the requirements for disability retirement while still in service.

**Pro Tem. off Pensions Committee** (SB 132): Senate Bill 132 would remove the statutory requirement that the President Pro Tempore of the Senate serve on the Senate Pensions and Retirement Committee.

### State Personnel

**Adjust professional secretary pay** (HB 738): House Bill 738 would authorize State agencies to a give one-step salary increase to employees who have earned a Certified Professional Secretary (CPS) certificate.

**School employee cafeteria benefits** (HB 913): House Bill 913 would authorize the State Board of Education to establish a cafeteria-style benefits plan which would allow public school employees to use payroll deduction to pay for such expenses as day care, vision care, and long-term health care.

**Use of Highway Patrol name** (SB 347): Senate Bill 347 would prohibit the use of "North Carolina Highway Patrol", State Trooper", or variations of these terms in the solicitation of ads for official publications of law-enforcement officers' associations.

**Summer intern use expanded** (SB 382): Senate Bill 382 would add the Department of Community Colleges, Office of State Personnel, and Office of the Senate President Pro Tempore to those agencies allocated summer interns.

## Workers' Compensation

**Workers' Comp/medical records** (SB 814): Senate Bill 814 proposes to allow insurers providing hospital, surgical, or medical insurance to have the right to inspect certain records of the Industrial Commission. The bill would also subrogate group health insurers to any Workers' Compensation payments, to the extent the insurer has provided benefits.

## Miscellaneous

**Extend wage increase deadline** (HB 458): House Bill 458, as passed by the House, would increase the State minimum wage (now $3.35 an hour) to $3.65 effective January 1, 1990, and $3.95 effective January 1, 1991.

**Master-servant terminology** (HJR 487): House Joint Resolution 487 proposes to state the opinion of the General Assembly that it is inappropriate and degrading for legal texts to use the term "Master and Servant" to describe the employment relationship.

**Human Relations Council change** (HB 685): House Bill 685 would change the name of the N.C. Human Relations Council to the Human Relations Commission.

**Workers' Memorial Day** (HJR 1029): House Joint Resolution 1029 proposes to express the General Assembly's tribute to the working men and women who died on the job during 1988.

**Students cannot work past eleven** (SB 329): Senate Bill 329 proposes to prohibit a youth under 18 from working past 11 p.m. when that youth has school the next day, except that a youth of 16 or 17 may work until midnight with written permission from parent and principal.

## DEFEATED LEGISLATION

**Ex-legislator lobbying restricted** (HB 511): House Bill 511 would prohibit legislators from lobbying for two years after leaving the General Assembly. The bill failed on second reading.

## STUDIES

Independent study commissions: (1) Study Commission on the State Personnel System; and (2) Legislative and Judicial Salary Study Commission.

Legislative Research Commission: (1) Public Employees' Day Care and Medical and Dental Benefits; (2) Medical, Disability, Death, Retirement and Related Benefits for Firemen Provided by Federal, State, and Local Governments; and (3) Worker Training Trust Fund Study.

# ENVIRONMENT

(Sherri Evans-Stanton, George F. Givens. Barbara Riley)

## RATIFIED LEGISLATION

### Air Pollution

**Inspection Maintenance Program** (HB 705; Chapter 391): House Bill 705 authorizes the Environmental Management Commission to implement vehicle inspection/maintenance programs as necessary to effect attainment or preclude violations of the National Ambient Air Quality Standards for carbon monoxide or ozone. The bill increases vehicle inspection fees effective October 1, 1989, and again in 1990. The bill directs the Environmental Review Commission to study a contractor-operated centralized emissions inspection program and report to the 1990 Regular Session of the General Assembly. The bill became effective upon ratification on June 21, 1989.

**Air quality permit notices** (HB 1124; Chapter 766): House Bill 1124 provides for public notice of proposed special orders by consent issued by the Environmental Management Commission for causing pollution to water or air. The bill provides for a procedure for public meetings prior to issuing consent orders if the EMC determines there is significant public interest. The bill became effective October 1, 1989, and applies to all proposed consent orders entered into on or after that date.

**Asbestos Control Program** (HB 516; Chapter 724): House Bill 516 establishes a new Article 19 of Chapter 130A of the General Statutes entitled "Asbestos Hazard Management." The program is designed to regulate asbestos and asbestos management. The bill requires that all school buildings subject to the Asbestos Hazard Emergency Response of the Toxic Substances Control Act be inspected for asbestos-containing materials and prepare and submit management plans to the Department of Environment, Health & Natural Resources. The Commission for Health Services shall adopt rules to establish a maximum airborne asbestos exposure level for public areas, as well as sampling and analysis procedures. House Bill 516 also sets up an accreditation for persons performing asbestos management, exemptions to the accreditation, and fees. The fees shall not exceed $100.00 per accreditation category except that the fee for the abatement worker category shall not exceed $25.00. The bill provides that no person shall engage in asbestos abatement involving more than 35 cubic feet, 160 square feet, or 260 linear feet per job of asbestos without a permit. The Department is authorized to collect an application fee for the permit not to exceed 1% of the contracted price or $.20 per square foot or linear foot of asbestos containing material to be removed, whichever is greater. Finally, House Bill 516 increases the total funds budgeted from all sources for the hazardous waste management program from 25% to 30%. The bill was effective upon ratification on August 3, 1989.

**Environmental compliance bonding** (SB 394; Chapter 133): Senate Bill 394 adds a new G.S. 143-215.110(e) which provides for the posting of a bond or other security to ensure compliance with special orders of the Environmental Management Commission. In determining the amount of the bond, the EMC shall consider the

degree and extent of harm, the cost of rectifying such harm, the economic consequences, the person's history of compliance with pollution control requirements, and the history of payment of civil penalties. In the event of noncompliance, the bond shall be forfeited and the amount will be placed in the General Fund. The bill became effective upon ratification on May 25, 1989.

**Air quality classes repeal** (SB 392; Chapter 132): Senate Bill 392 deletes requirements for the Environmental Management Commission to classify sources of air pollution based on levels and types of emissions and other characteristics. The bill directs the EMC to collect information or require reporting from classes of sources which may cause or contribute to air pollution. This bill became effective upon ratification on May 25, 1989.

**Air cleaning device permit** (SB 876; Chapter 492): Senate Bill 876 restricts the entry into certain contracts for the installation of air-cleaning devices without a permit to "irrevocable" contracts. The bill became effective upon ratification on June 28, 1989.

## Coastal/Marine/Aquaculture

**Extend environmental concern area** (HB 34; Chapter 217): House Bill 34 authorizes the Coastal Resources Commission to designate as "areas of environmental concern" primary nursery areas (including contiguous land) and outstanding resource waters (including shorelines of public trust waters). The bill adds a new G.S. 113A-118.2 to require public notice and agency review for all development in primary nursery areas and outstanding resource waters. The CRC may exempt single-family residential development under use standards and conditions and may exempt or issue a general permit for minor maintenance and improvement projects by rule. The bill became effective upon ratification on June 5, 1989.

**Aquaculture water column leases** (SB 428; Chapter 423): Senate Bill 428 adds a new G.S. 113-202.1 to permit the Marine Fisheries Commission to amend shellfish cultivation leases to allow use of the water column directly above the leased bottom. The leases must meet the following minimum standards: (1) aquaculture must produce shellfish at least four times the minimum production rate of bottom leases; (2) use must not significantly impair navigation; (3) area must not be one traditionally used for fishing or hunting activities incompatible with the activities proposed by the leaseholder; and (4) use must not significantly interfere with riparian rights. Prior to amending the lease, the Commission must: (1) require applications/fees, provide notice, and public hearings; (2) determine the projects are commercially feasible and that they cannot be conducted outside coastal fishing waters; and (3) determine activity is least disruptive. The bill provides for rental fees, termination, transfer, and renewal of leases. The bill became effective upon ratification on June 23, 1989.

**Damage to aquaculture forbidden** (SB 797; Chapter 281): Senate Bill 797 adds a new G.S. 113-269 to make the following activities unlawful: (1) stealing or knowingly receiving or possessing fish or aquatic species from an aquaculture facility; or (2) willfully injuring or destroying an aquaculture facility or species reared therein. Violation of (1) is a Class H felony if the value is more than $400; if less

than $400, it is a misdemeanor punishable by a fine of at least $500 and/or imprisonment for up to one year. Violation of (2) is a misdemeanor punishable by a fine of not less than $1,000 and/or imprisonment. The bill also increases the punishment for unlawfully taking shellfish from privately owned or leased bottom area. The bill became effective October 1, 1989, and applies only to offenses occurring on or after that date.

**Penalties for deliberate harvesting of polluted shellfish** (SB 402; Chapter 275): Senate Bill 402 adds a new G.S. 113-20, to make it unlawful to (1) take shellfish at night from areas closed to harvest because of suspected pollution, or (2) willfully possess, sell or offer for sale such shellfish. Persons guilty of violating this section shall be guilty of a class I felony. Senate Bill 402 also increases the fines for violations of the Marine Fisheries statutes (Subchapter IV of Chapter 113). G.S. 113-187 is expanded to make the penalties applicable to violations of the Subchapter. Violation of the statutes or rules is a misdemeanor. Mandatory fines of not less than $250 for a first offense and not less than $500 for subsequent offenses shall be imposed on persons in charge of a commercial fishing operation or vessel violating rules set forth in G.S. 113-187(d) including taking, possessing or selling oysters, mussels or clams from areas closed because of suspected pollution, taking shrimp by use of a trawl net in areas not opened to shrimping and pulled by a vessel not showing required lights at night, using a trawl net where prohibited, violating the provisions of a special permit or gear license, or using a trawl net, long haul seine, swipe net, mechanical methods for oyster or clam harvest or dredge in a designated primary nursery area. The Act became effective October 1, 1989, and applies to offenses occurring on or after that date.

**Increase fine for beach littering** (SB 833; Chapter 491): Senate Bill 833 amends G.S. 14-399 providing that littering a beach (other than intentionally or recklessly) is a misdemeanor punishable by a fine of not less than $50 nor more than $200 for the first offense, and $50 - $500 for subsequent offenses. Intentional or reckless littering is punishable by a fine of not more than $500. The act was effective with respect to offenses committed on or after October 1, 1989.

**Prohibit dumping of medical waste** (SB 130; Chapter 742): Senate Bill 130 prohibits dumping of medical wastes into any recreational, navigable, or ocean waters within the jurisdiction of the State. Medical waste is defined in part as "any solid waste generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals." G.S. 130A-290(12a). The Bill makes willful violation of the act a misdemeanor punishable by up to 1 year imprisonment and a fine not to exceed $10,000. Willful violations of the act resulting in substantial risk of physical injury are Class I felonies punishable by imprisonment and a fine not to exceed $50,000. Civil penalties may also be assessed of up to $25,000 per day for a first violation and $50,000 per day for subsequent violations. The act also requires persons dumping medical wastes to take remedial action to restore the affected area. Violators may also be liable to the State for damages. The act was effective October 1, 1989, and applies to violations occurring on or after that date.

**Cumulative impact/CAMA permits** (HB 36; Chapter 51): House Bill 36 requires denial of a CAMA water pollution control permit if it is determined that there is a practicable alternative that would accomplish the purpose of the project with less adverse impact on public resources. A permit shall also be denied if the cumulative effects of the development would be inconsistent with the nine other justifications for

permit denial enumerated in G.S. 113A-120. House Bill 36 also amends the Environmental Management Commission's (EMC) power to control sources of water pollution through the issuance of permits. The Commission is required to consider the cumulative effect of permit decisions to prevent violations of water quality standards. The act also provides that EMC permit decisions must require the use of practicable waste treatment and disposal alternatives that have the least adverse environmental impact. House Bill 36 was effective July 1, 1989, and applies only to permits issued on or after that date.

**Notice/modification of major CAMA permit** (HB 41; Chapter 53): House Bill 41 amends G.S. 113A-119(b) by adding a requirement for the Secretary to give public notice of a significant modification to an application for a major development permit and of an application to modify substantially a previously issued major permit in the coastal zone. Publication of notice in a newspaper must be made at least 20 days before final action on any major development permit. Public notice is mandatory except for a proposed modification to an application for a minor permit or proposed modification of a previously issued minor permit that does not substantially alter the original project. The notice shall state that comments be submitted by a specific date not less than 15 days from the date of publication of the notice. The act was effective upon ratification on April 11, 1989.

**State guidelines/CAMA** (SB 551; Chapter 313): Senate Bill 551 amends G.S. 113A-107(a) to clarify the scope of state guidelines that may be adopted under the Coastal Area Management Act providing that land and water areas addressed in the State guidelines may include underground areas and resources and airspace as well as the surface of land and surface waters. The act was effective upon ratification, June 14, 1989.

**Establish N.C. Coastal Reserve System** (SB 360; Chapter 344): Senate Bill 360 creates the N.C. Coastal Reserve system for the purpose of acquiring, improving, and maintaining undeveloped coastal land and water areas in a natural state. The system shall be established within the areas defined by G.S. 113A-103(2) and shall be used primarily for research and education. The system is to be administered by the N.C. Department of Natural Resources and Community Development (now Department of Environment, Health, and Natural Resources). It is to be carried out, to the extent possible, in coordination with the National Estuarine Reserve Research System. Acquisition or disposal of property shall be in accordance with the provisions of Chapter 146 of the General Statutes. The act was effective upon ratification on June 19, 1989.

**Coastal area county service districts** (HB 226; Chapter 620): House Bill 226 provides that coastal area counties (as defined in G.S. 113A-103(2)) may define service districts in order to finance the removal of junk cars and street maintenance. The act was effective July 11, 1989.

**Local pollution tax** (SB 523; Chapter 148): Senate Bill 523 permits a local air pollution control program certified by the Environmental Management Commission pursuant to G.S. 143-215.112 to certify that pollution abatement equipment purchased and installed meets the requirements of the EMC for tax deductions or other tax benefits under G.S. 105-122 (corporate franchise tax deduction), G.S. 105-130.10 (corporate income tax deduction), G.S. 105-147(13) (individual income tax deduction) and G.S. 105-275(8) (property tax exclusion). The act is effective for taxable years beginning on or after January 1, 1989.

## Consolidation and Regulation

**Environmental agency consolidation** (HB 480; Chapter 727): This act consolidates most environmental and health programs into a single new department. The act creates the Department of Environment, Health, and Natural Resources (EHNR) and abolishes the Department of Natural Resources and Community Development (NRCD). All NRCD agencies are transferred to EHNR by Type I transfers except as follows. The Wildlife Resources Commission is transferred from NRCD to EHNR by Type II transfer and its independence is preserved. The Community Assistance Division, the Employment and Training Division, and related agencies are transferred from NRCD to the Department of Commerce (renamed the Department of Economic and Community Development in other legislation). The Economic Opportunity Division is transferred from NRCD to the Department of Human Resources (DHR). All other transfers to EHNR are Type I transfers from DHR and include the Division of Health Services, the Radiation Protection Section, the Governor's Waste Management Board, and related agencies. The act provides that the Solid Waste Management Section of the Division of Health Services will become the Solid Waste Management Division and will be transferred intact to the environmental area. Similarly, the Radiation Protection Section becomes the Radiation Protection Division within the environmental area. The act provides that EHNR is to have two deputy secretaries. The act makes hundreds of conforming and technical statutory changes. The Environmental Review Commission is authorized to continue the study of environmental agency consolidation including the implementation of this act, and further study of boards, commissions, councils, regional offices, and statutory recodification. This act was ratified on August 3, 1989, and was effective retroactively to July 1, 1989.

**Coastal Resources Commission changes** (HB 38; Chapter 505): House Bill 38 provides that the Governor-appointed members of the CRC who have experience in commercial fishing, wildlife or sports fishing, marine ecology, coastal agriculture, coastal forestry, conservation organizations, or local government in the coastal area shall not derive any significant portion of income from land development related business activities. The Governor shall establish criteria for determining conflict of interest by executive order. The bill became effective upon ratification on June 29, 1989.

**Environmental Management Commission changes** (HB 40; Chapter 315): House Bill 40 amends G.S. 143B-283(a) to change the requirements for the 13 Governor-appointed members of the EMC. The bill reduces the public at-large Commission members from five to three. The following new Governor-appointed members have been added: one member with experience in air pollution control and the effects of air pollution; and one with experience in freshwater, estuarine, marine biological, or ecological sciences. The bill became effective upon ratification on June 14, 1989, and provides that current members may complete their terms.

## Sanitary Sewage Systems and Training

**On-site sewage regulation** (HB 268; Chapter 764): House Bill 268 amends G.S. 90A-053 to allow a person with one year of experience in environmental health

sanitation plus a degree in environmental health from an accredited university to receive a certificate as a registered sanitarian. The bill changes county and district boards of health to include professional engineers. HB 268 adds a new G.S. 130A-340 that requires the Department to provide a technical review of any scientific data and system design submitted by the applicant upon request for an improvement permit. It also requires that the local health department advise the applicant of possible site modifications or alternative systems prior to denial of the permit and the applicant's right to appeal a denial. The bill adds new sections concerning sites with existing fill, aerobic systems, and experimental and innovative systems. The bill became effective October 1, 1989, and applies to permits issued on or after that date.

**Sanitarian education changes** (HB 1284; Chapter 545): House Bill 1284 clarifies the definition of "sanitarian" and excludes: teachers; researchers; various professionals in engineering and science; public health officials and directors; physicians, veterinarians, or nurses, and laboratory personnel with respect to sanitation-related laboratory functions. The bill allows registration as a sanitarian if a person has a bachelor's or master's degree accredited by the National Accreditation Council for Environmental Health Curricula of the National Environmental Health Association. Registered sanitarians must complete continuing education requirements as specified by the Board for renewal. The bill became effective upon ratification on June 30, 1989.

**Certify sewage systems operators** (SB 372; Chapter 372): Senate Bill 372 requires the Wastewater Treatment Plant Operators Certification Commission to regulate and certify those who install or operate sanitary sewage systems. No certificate shall be required to install or operate "conventional septic tank systems." Membership of the Commission is increased from seven to nine and qualifications include two persons employed as sanitary sewage system operators, wastewater collection system superintendents, water and sewer department directors, or equivalent positions with a North Carolina municipality. The bill is effective July 1, 1990, except that the Commission may adopt rules necessary to implement this act upon ratification, June 21, 1989.

## Waste

**Underground storage tank amendments** (HB 957; Chapter 652): This act amends the leaking underground storage tank legislation and extends the sunset to December 31, 1998. It clarifies the authority of the Environmental Management Commission to adopt rules relating to underground tanks and provides that such rules may incorporate standards and restrictions which exceed and are more comprehensive than comparable federal regulations. The act increases the coverage of the commercial leaking petroleum underground storage tank cleanup fund by reducing the deductible for cleanup of environmental damage from $100,000 to $50,000. Annual fees applicable to commercial tanks are increased. The act also expands coverage by providing for compensation to third parties for bodily injury and property damage in excess of $100,000. Owners and operators of tanks must demonstrate financial responsibility for the amounts they are required to pay under the act. Sources of and management of the Fund are described in the act. The act appropriates $600,000 from the Commercial Fund and $600,000 from the Noncommercial Fund for each

year of the biennium to the Department of Environment, Health, and Natural Resources to implement underground storage tank cleanup and regulatory programs. This act adds a new subsection to G.S. 32-27 to allow the incorporation by reference of specific powers of a fiduciary to comply with environmental laws. Commercial tank fee increases under this act are effective January 1, 1990. The appropriations section of this act was effective July 1, 1989. All other sections were effective upon ratification, on July 15, 1989.

**Hazardous waste management** (SB 324; Chapter 168): This act adds a new Chapter 130B to the General Statutes. Under this act, the North Carolina Hazardous Waste Treatment Commission is abolished and its functions, duties, and powers are transferred to a newly created North Carolina Hazardous Waste Management Commission ("Commission"). The purpose of the act is to develop a regional approach to hazardous waste management through interstate cooperation. Commission membership is set forth in the act. The act authorizes the Governor to determine the facilities to be established by the Commission, to have responsibilities for facility development, and to negotiate interstate agreements. Any agreement must be approved by the General Assembly. The act repeals the 1988 moratorium on siting activities and the ban on siting hazardous waste landfill facilities.

The act emphasizes the importance of reducing the volume, quality, and toxicity of hazardous waste generation and of public participation in the process. It is the General Assembly's intent that the full cost of facility development be borne by waste generators. The act provides for site designation review committees and preferred site local advisory committees as a part of local involvement in the siting process. The act also provides for a negotiation, mediation, and arbitration process to resolve disputes. The act repeals G.S. 130-166.21D, of the "Hardison amendment" applicable to hazardous waste, and provides that State hazardous waste regulations may be more stringent than federal regulations. The act requires the development of a comprehensive hazardous waste management plan for the State by July 1, 1990. Hazardous waste generators required to pay annual or tonnage fees must submit a written description of their waste minimization programs. EHNR is authorized to recommend a revised fee schedule to encourage waste minimization. Modification of permits for existing hazardous waste facilities and issuance of permits for new facilities is conditioned upon a showing that such a facility is needed.

The Environmental Management Commission must develop ambient air policy standards for toxic pollutants and a plan to meet such standards by July 1, 1990. The EMC is also required to develop and adopt emission standards for solid waste, hazardous waste, and medical waste incinerators by July 1, 1991. The Commission must submit monthly reports to the Environmental Review Commission. The act provides for the collection and analysis of information to build a data base for use in hazardous waste reduction programs and states the intent of the General Assembly that an aggressive waste reduction program be implemented. The act was effective May 30, 1989.

**Inactive sites amendments** (HB 644; Chapter 286): This act makes minor changes to the inactive hazardous sites cleanup law enacted in 1987. The Carolina Clean Drinking Water Fund is renamed the Inactive Hazardous Sites Cleanup Fund. The Hazardous Waste Site Remedial Fund is recast as the Emergency Response Fund. The act also adds a new Part 4 of Article 9 of Chapter 130A of the General Statutes entitled "Superfund Program." This provision gives statutory recognition to the existing State role in the administration of the federal Superfund (CERCLA/SARA) program and authorizes the State to enter into contracts with the United States to identify, investigate, evaluate, and cleanup any site or facility covered by the federal

Superfund program. This act became effective on June 12, 1989, except for changes relating to the Emergency Response Fund which became effective June 30, 1989.

**Solid waste revisions** (SB 111; Chapter 784): This act rewrites the law applicable to nonhazardous solid waste and provides that it is the policy of the State to promote methods of solid waste management that are alternatives to disposal in landfills and to assist local governments with solid waste management. The act establishes a hierarchy of methods of managing solid waste. It is the goal of the State that 25% of the total waste stream be recycled by January 1, 1993. The act requires each State agency to develop a solid waste management plan for waste that it generates. The act requires counties, in cooperation with their municipalities, to develop a comprehensive county solid waste management plan and submit it to the Department of Environment, Health, and Natural Resources (EHNR) for approval. The act requires EHNR to develop a comprehensive solid waste management plan by March 1, 1991. Beginning March 1, 1991, EHNR is to prepare an annual report on the status of solid waste management efforts based on information from local governments. Local governments must determine the full cost for solid waste management and rulemaking must be initiated by March 1, 1990, with at least one public hearing.

Each county shall initiate a recyclable materials recycling program by July 1, 1991, that complies with specified requirements. The act sets forth prohibited acts relating to packaging, coded labeling of plastic containers, and landfilling of certain wastes. The act creates the Solid Waste Management Trust Fund to fund promotion of waste reduction and recycling, development of secondary materials markets, demonstration projects, and research. The Fund is to consist of funds appropriated by the General Assembly, contributions and grants from public or private sources, and 10% of the proceeds of the scrap tire disposal fee. The act sets forth regulation of used oil and makes the improper handling or disposal of used oil a misdemeanor. The Department of Transportation is required to study the feasibility of using recycled oil products in road construction activities and is to report to the General Assembly beginning January 1, 1991. EHNR shall develop a grants program for local governments to encourage collection, reuse, and proper disposal of used oil. No grant may exceed $25,000. Rulemaking for the grants program must be initiated by January 1, 1991.

The act sets forth provisions regarding training of facility operators, medical waste landfill closure, and University Research by the University of North Carolina. A person may not work as an operator of a solid waste management facility after January 1, 1996, unless he has completed a training course approved by EHNR. The Commission for Health Services is required to adopt rules regulating the packaging, storage, treatment, and disposal of medical waste by August 1, 1990. Every owner or operator of a landfill is jointly and severally liable for the improper operation and closure of the landfill. Landfill owners or operators must establish a fee to ensure the availability of financial resources for proper closure of the landfill. Failure to collect or report such revenue is a noncriminal violation punishable by a fine of not more than $5,000.

The act imposes a scrap tire disposal fee on the sale or use of new motor vehicle tires beginning January 1, 1990, in an amount equal to one percent of the retail sale or cost price of such tires. Exceptions to the fee, credits, collection, and disposition of the fee are set forth in the act. The Commission for Health Services is required to adopt rules for scrap tire facilities and for the final disposal of scrap tires by January 1, 1990. The owner or operator of a scrap tire collection site is required to provide EHNR with specific information regarding the site by April 1, 1990. Landfilling of whole scrap tires is prohibited beginning March 1, 1990.

The Department of Transportation (DOT) is required to undertake a literature search to evaluate the potential for use of recycled rubber in road construction and of recycled plastic for posts and may conduct additional research as a part of its scheduled projects. DOT is to eliminate unjustified discrimination against recycled material in bid procedures and specifications and is to revise bidding procedures and specifications to encourage use of recycled materials. The Secretary of Administration must study the use of recycled paper and paper products and report to the Governor, the Environmental Review Commission, and the General Assembly by May 1, 1990. The DOT must report to the same groups by January 1, 1991, on the use of recyclable materials in highway construction. State agencies must implement the provisions of the act only to the extent that funds are appropriated. The act was effective October 1, 1989.

**Solid Waste Loan Fund** (SB 115; Chapter 756): This act adds a new Chapter 159I to the General Statutes entitled "North Carolina Solid Waste Management Loan Program." The act creates the North Carolina Solid Waste Management Capital Projects Financing Agency in the Department of the State Treasurer. Membership of the agency is set forth in the act. The Solid Waste Management Loan Fund is under the control of the Agency. The Fund is to be used to establish debt service reserve funds or to obtain credit facilities to support bonds issued by the Agency. The Agency may make loans to, or subsidize interest paid on loans by, units of local government. The act sets forth the purposes for which the loans may be made. The Agency is to determine the eligibility of units of local government. The Commission for Health Services is to adopt rules for the assignment of a priority for each application for a loan from the Fund. Using those rules, the Solid Waste Management Division of the Department of Environment, Health, and Natural Resources will assign a priority to each application. Local governments are authorized to borrow from the Fund and may secure such loans by various methods set out in the act. Bonds or notes issued by the Agency are not secured by the faith and credit of the State. The act also authorizes local governments to issue special application bonds and notes for solid waste management capital projects subject to approval by the Local Government Commission. Such obligations may be secured by a pledge of any available revenues so long as the unit's taxing power is not pledged. This act was effective August 11, 1989. (Note that under SB 1032, Chapter 754 of the 1989 Session Laws, $5 million is appropriated to the Fund.)

**Solid waste rules** (HB 707; Chapter 317): This act clarifies the authority of the Commission for Health Services to adopt rules relating to solid waste management. The Commission is specifically authorized to adopt rules regarding financial responsibility to insure the availability of sufficient funds for closure and post-closure maintenance and monitoring at solid waste management facilities. This act was effective October 1, 1989.

**Degradable six-pack rings** (SB 359; Chapter 371): Senate Bill 359 prohibits any person from selling, or distributing for sale in North Carolina any container connected to another by a yoke or ring-type holding device that is not degradable (as defined in the bill). A nationally-recognized symbol must be embossed on the yoke or device for inspection indicating that it is degradable, and the manufacturer must register the symbol with the state with a sample of the device. Violation of the law is a misdemeanor punishable by a fine of $50.00-$200.00. Violators may be punished by serving a term of community service in lieu of all or part of the fine. The bill is effective January 1, 1990.

## Water and Soil

**Erosion control plan criteria** (HB 1203; Chapter 676): House Bill 1203 grants authority to the Director of the Division of Land Resources, to a local government, or to the Coastal Resources Commission to disapprove an erosion control plan if, within the last two years, the applicant has: (1) conducted land-disturbing activity without an approved plan or has received notice of violation of a plan approved and has not complied; (2) failed to pay a civil penalty; (3) been convicted of a misdemeanor pursuant to G.S. 113A-64 or for violating a local sediment control ordinance; or (4) failed to substantially comply with state rules and local laws relating to the Sedimentation Pollution Control Act. The bill also provides for an undisturbed buffer zone of 25 feet near trout streams where land-disturbing activity cannot take place. Land-disturbing activity would be allowed if the Sedimentation Control Commission finds that the disturbance would be temporary and the extent minimal. The bill also increases the civil penalties for violation of the Sedimentation Pollution Control Act from $100.00 to $500.00. The bill became effective October 1, 1989, and applies to plans submitted and violations occurring on or after that date.

**Watershed protection rules** (HB 156; Chapter 426): House Bill 156 directs local governments to establish watershed protection plans to protect drinking water. The plans must meet or exceed state minimum standards adopted by the Environmental Management Commission. A local government which fails to adopt a watershed program may be subject to a civil penalty. The bill sets up a Watershed Protection Advisory Council to advise the Secretary of the Department of Environment, Health & Natural Resources and the EMC concerning water supply watershed protection. Local governments must submit water supply management and protection ordinances to the EMC for approval by July 1, 1992. The bill became effective upon ratification on June 23, 1989.

**Statewide stormwater plan** (HB 35; Chapter 447): House Bill 35 authorizes the Environmental Management Commission to continue work on a statewide plan for stormwater runoff rules and to implement the rules on a phased-in priority basis as follows: (1) classified shellfish waters; (2) watersupply watersheds; (3) outstanding resource waters; (4) high quality waters; and (5) other waters. The bill requires public hearings prior to the adoption of any rules. The EMC shall report to the 1989 General Assembly on the first day the Regular Session meets in 1990 concerning progress. The bill became effective upon ratification on June 26, 1989.

**State water plan** (HB 157; Chapter 603): House Bill 157 directs local government units to prepare local water supply plans. The Department of Environment, Health & Natural Resources shall provide technical assistance to the local government units. The plans shall include present and projected population and water use within the service area, present and future water supplies, and other related information. The plans must be revised at least once every five years. The bill also requires that the Department develop a State water supply plan. The Department must report semi-annually to the Joint Legislative Commission on Governmental Operations and the Environmental Review Commission beginning October 1, 1989, as to progress in the implementation of this act. The bill became effective upon ratification on July 11, 1989.

**Water treatment changes** (HB 718; Chapter 227): House Bill 718 amends G.S. 90A-31 to provide that the designee and other licensed employees shall be responsible for the water treatment facility and shall be limited as to the number of facilities, distance between facilities, and frequency of visits as can reasonably be handled during the ordinary course of business as well as during emergencies. The bill also adds a new G.S. 90A-33 to authorize the Board of Certification to establish certification programs for personnel who operate the water distribution portion of treatment facilities and who test water for compliance with the N.C. Drinking Water Act. The bill was effective upon ratification on June 5, 1989.

**Offshore oil impact protection** (SB 977; Chapter 656): Senate Bill 977 adds a new Part 2B to Article 21A of Chapter 143. The bill requires specified State agencies to set up a program for emergency response, reporting, removal of discharges, and establishment of an oil spill contingency plan for offshore oil and gas discharges. The bill makes a "responsible person" strictly liable for all cleanup and removal costs and all direct and indirect damage incurred in the territorial jurisdiction of the State. The bill allows the Governor to declare an emergency if there is a spill. The Department of Environment, Health, & Natural Resources has the responsibility to remove the discharges and recover costs. The State shall not impose duties or obligations in conflict with federal limitations or when federal law preempts State law. The bill allows the Attorney General or injured persons to bring a civil lawsuit against violators. The bill became effective upon ratification on July 19, 1989.

**Water pollution control permits** (HB 613; Chapter 453): House Bill 613 allows the Environmental Management Commission to designate classes of minor activity for which general permits may be issued for discharging waste after considering the environmental impact, frequency, need for individual oversight, and need for public review and comment on individual permits. The bill authorizes the EMC to designate certain "minor activities" for which performance conditions may be established by rule and permits are not required. The bill also directs the EMC to adopt rules to exempt filter backwash facilities of swimming pools and spas from permits. Quarterly reports must be submitted for discharging waste to water or emitting contaminants to air, but less frequent filing may be allowed for designated classes of minor maintenance. The bill became effective upon ratification on June 26, 1989.

**Qualify forestry exemption** (SB 379; Chapter 179): Senate Bill 379 limits the forestry exemption with respect to land-disturbing activity under the Sedimentation Pollution Control Act only to those forestry activities conducted in accordance with Forest Practice Guidelines Related to Water Quality (best management practices) as adopted by the Department of Environment, Health & Natural Resources. The bill directs the Secretary to establish a Technical Advisory Committee to assist in the development and periodic review of Forest Practice Guidelines Related to Water Quality. The bill became effective upon ratification on June 1, 1989.

**Local government storm drainage system** (SB 584; Chapter 643): Senate Bill 584 amends G.S. 153A-149(c) to include stormwater drainage systems in the list of purposes for which counties may levy non-voted property taxes, subject to the overall $1.50 rate limit. The bill became effective upon ratification on July 15, 1989.

**Local notice for discharge permits** (SB 942; Chapter 494): Senate Bill 942 requires the Environmental Management Commission to give notice of intent to issue or deny a permit for facilities discharging to surface waters. The applicant must mail to the

clerk of the city or county by certified mail, a copy of the draft permit application and a request that each city and county issue a statement to the EMC within 15 days. The EMC shall not act on a permit until it has received written notice from each city and county whether there is a zoning or subdivision ordinance and whether the proposed facility is consistent with the ordinance. The EMC shall not approve a permit that is inconsistent with a zoning or subdivision ordinance unless it determines that the permit has statewide significance and is in the best interest of the State. The bill became effective October 1, 1989, and applies to permits issued on or after that date.

**Stream Watch Program** (HB 673; Chapter 412): House Bill 673 authorizes the Department of Environment, Health & Natural Resources to establish a Stream Watch Program to encourage volunteer groups to adopt streams and conduct cleanup, monitoring, public education, and other water resources projects. The Department may approve applications from volunteer groups and conduct at least one project each year. The bill became effective upon ratification on July 1, 1989.

## PENDING LEGISLATION

The following bills have passed one house and have been received by the other and therefore are eligible for consideration in the 1989 Session. Under the terms of the adjournment resolution, appropriations and revenue measures are also eligible.

**Penalties for environmental crimes** (HB 1177): House Bill 1177 increases the criminal penalties for violations of the water quality, air quality, oil and hazardous substances control, and hazardous waste management programs that are knowingly committed or that involve knowing endangerment.

**Nonsurface discharge permit/notice** (HB 39): House Bill 39 requires public notice and public meetings for certain treatment works not discharging to surface waters. It has been estimated to cost $195,000.

**Environmental regulations limit repealed** (SB 27): Senate Bill 27 repeals those portions of the General Statutes that prohibit NC regulations and standards regarding motor vehicle emissions, hazardous wastes, underground tanks, water quality, and air quality from being more stringent than comparable federal standards. The bill requires that an assessment report be prepared as to the benefits and burdens likely to result from environmental rule-making and requires that the benefits exceed the burdens. A similar bill (HB 1325) would limit the power of local governments to adopt rules more stringent than State rules.

**Sanitarians continuing education** (SB 960): Senate Bill 960 requires continuing education for local environmental health staff who carry out rules adopted by the Commission for Health Services. The bill imposes a fee on septic tanks sold for use in North Carolina to support the program.

**Air pollution tax** (SB 1251): Senate Bill 1251 adds a new G.S. 143-215.115 to levy an air pollution tax on the emission of air contaminants known to cause air pollution.

**Water pollution tax** (SB 1252): Senate Bill 1252 adds a new G.S. 143-215.9A to levy a water pollution tax on the discharge of waste from point sources to the surface waters of the State.

**Solid waste clearinghouse** (SB 58): This bill would designate the Solid Waste Management Division in the Department of Environment, Health, and Natural Resources as the central clearinghouse for information regarding solid waste management.

**Solid waste ordinances** (SB 113): This bill would authorize counties and cities to adopt ordinances requiring the source separation of material from solid waste prior to collection for disposal and requiring participation in a recycling program which has been approved by the governing board.

## STUDIES

Independent study commissions: (1) Environmental Review Commission; (2) Joint Legislative Commission on Seafood & Aquaculture; (3) Joint Select Committee on Low-Level Radioactive Waste; and (4) Legislative Study on Wetlands Protection.

Legislative Research Commission: (1) Development of State Strategy for Solid Waste (including infectious waste); (2) Development of State Strategy for the Protection of All Groundwater Resources; and (3) Surface Water Quality and Resources Issues; Coastal Water Quality; Haw in Scenic River System; Pesticides; Water Resources Planning; Toxaway River; Yadkin River Use & Protection.

# FAMILY LAW

(Brenda Carter, Jennie Dorsett)

## RATIFIED LEGISLATION

### Adoption

**Adopted adult name change** (SB 529; Chapter 208): Senate Bill 529 clarifies the information to be contained in an order changing the name of a person who is adopted as an adult by requiring the true name, county of birth, and date of birth of the adoptee and the adopted parents and the names of the parent on the birth certificate of the adoptee and the name sought to be changed. The bill was effective upon ratification, June 5, 1989.

### Child Support

**Child support guidelines** (SB 698; Chapter 529): Senate Bill 698 requires judges, beginning July 1, 1990, to determine the amount of child support payments by applying uniform statewide presumptive guidelines set by the Conference of Chief District Judges. The advisory guidelines adopted by the Conference and currently in effect will operate as presumptive guidelines until July 1, 1990. The bill requires periodic review of the guidelines by the Conference and dissemination to various agencies and the public. Senate Bill 698 became effective October 1, 1989.

**Income withholding procedures** (SB 511; Chapter 601): Senate Bill 511 amends the income withholding procedures to require **immediate** withholding by employers and payors in child support cases administered by a IV-D child support agency. Present law subjects an obligor to income withholding if arrearages equal the support payable for one month or if requested. The bill also allows the obligee in non-IV-D cases to request income withholding in cases of delinquent or erratic support payments. The methods for service of process in income withholding are clarified. Senate Bill 511 became effective October 1, 1989, and applied to orders issued on or after October 1, 1989.

**State retirement subject to income withholding** (SB 464; Chapter 665): Senate Bill 464 subjects State-administered retirement systems to income withholding for child support. Current law allows garnishment of State-administered retirement systems for child support. The bill became effective October 1, 1989, and applied to orders entered on or after October 1, 1989.

**Cost recovery provisions repealed** (SB 777; Chapter 490): Senate Bill 777 repeals the cost recovery provisions of the IV-D Child Support Program, which required the actual cost of administrative and legal services to be recovered from the non-AFDC (custodial) parent or the noncustodial parent. Senate Bill 777 was effective upon ratification, June 28, 1989.

**Enforcement of child support by clerks of court amended** (HB 1292; Chapter 479): House Bill 1292 modifies the child support enforcement provisions under the clerks of court to make discretionary the sending of the 21-day notice for failure to pay child support if the clerk has previously sent a notice of delinquency to the obligor within the last 12 months. the clerk is also given the discretion in such cases to cause an enforcement order to be issued immediately. The bill shall become effective January 1. 1990.

## Custody and Visitation

**Custody and Visitation Mediation Program** (SB 1124; Chapter 795): Section 15 of Senate Bill 1124 establishes a Custody and Visitation Mediation Program to provide statewide and uniform services involving custody and visitation of children across the State. G.S. 50-13.1 was amended to provide that, in actions in court involving a contested issue as to custody or visitation, the matter shall be set for mediation, if there is a mediation program established. For good cause, the court may waive the mandatory setting of the matter for mediation. Any agreement reached through mediation is to be submitted to the court and may be incorporated into a court order and enforceable by contempt. Beginning July 1, 1989, the Administrative Office of the Courts will implement a phase-in of local programs into all judicial districts. The bill appropriates $140,000 for the 1989-90 fiscal year and $212,000 for the 1990-91 fiscal year to initiate the phase-in of the local programs. Section 15 of Senate Bill 1124 became effective August 12, 1989.

## Day Care

**Day care timely hearings** (HB 565; Chapter 429): House Bill 565 requires that a hearing on child day care contested cases be scheduled within 120 days of the date that a petition for hearing is received, when the case results from a revocation of license, registration certificate, or Letter of Compliance or when the case involves a situation in which child abuse or neglect in the day care facility or home has been substantiated. A request for continuance from either party may be granted upon a showing of good cause. House Bill 565 was effective October 1, 1989, and applies to cases arising on or after that date.

**Pediatrician on Day-Care Commission** (HB 1192; Chapter 342): House Bill 1192 requires the appointment of a pediatrician, currently licensed to practice in this State, to the North Carolina Child Day-Care Commission. The bill was effective June 15, 1989, and applies to appointments made on or after that date.

**Summer day care change** (HB 1194; Chapter 234): House Bill 1194 provides an exemption from day care regulations for seasonal recreational programs operated for less than four consecutive months in a year. House Bill 1194 was effective June 5, 1989.

## Domestic Abuse

**Domestic violence/represent self** (HB 1268; Chapter 461): House Bill 1268 provides that individuals may represent themselves in domestic violence actions and requires county superior court clerks to provide legal forms to help them do so. In cases in which individuals proceed without counsel, the clerk of superior court will schedule and give notice of hearings and effect service of process through an appropriate law enforcement agency upon payment of fees. House Bill 1268 was effective January 1, 1990.

## Juvenile Code

**Parents ordered into treatment** (HB 144; Chapter 218): House Bill 144 provides that the return of custody to the parent of a child adjudged delinquent, undisciplined, abused, neglected or dependent may be conditional upon the parent's undergoing medical, psychiatric, psychological or other treatment. The cost of treatment is to be met by the parent; if the parent cannot pay, the court may charge the cost to the county. House Bill 144 was effective October 1, 1989.

**Parental custody/judicial review** (HB 251; Chapter 152): House Bill 251 clarifies the authority of the district court to award custody of a dependent, neglected, or abused child to a parent in a judicial review hearing, and expands the dispositional alternatives available to the court in such hearings. The child may be placed in the custody of either parent or any relative found by the court to be suitable. House Bill 251 was effective October 1, 1989.

**Juvenile detention procedure** (HB 249; Chapter 124): House Bill 249 authorizes detention of a juvenile if a DCI or PIN message states that a juvenile petition and secure custody order for that juvenile is on file in another county. The juvenile may then be detained until a copy of the juvenile petition and secure custody order can be forwarded to the juvenile detention facility where the juvenile is detained. Copies must be transmitted to detention facility no later than 72 hours after the initial detention of the juvenile. House Bill 249 was effective October 1, 1989.

**Reduce secure custody hours** (SB 473; Chapter 550): Senate Bill 473 reduces the number of hours of secure custody from 72 to 24 for a juvenile alleged to be undisciplined by virtue of being a runaway and a juvenile alleged to be undisciplined who willfully fails to appear in court after proper notice. Senate Bill 473 was effective October 1, 1989.

**Juvenile placement change** (HB 1210; Chapter 235): House Bill 1210 requires that, in order to facilitate release of a juvenile who has been in the care of the Division of Youth Services, the prerelease planning conference participants consider placement of the juvenile in any of the programs under the auspices of the Division, including the Community-Based Alternatives programs, or under the Administrative Office of the Courts, that may serve as a transitional placement. House Bill 1210 was effective October 1, 1989, and applies to placements on or after that date.

**Expunction of juvenile records** (HB 338; Chapter 186): House Bill 338 provides for expunction of the juvenile record in cases where the juvenile was alleged to be delinquent or undisciplined, but the court dismissed the petition without an adjudication that the juvenile was delinquent or undisciplined. House Bill 338 was effective July 1, 1989.

**Juvenile Study Commission members** (HB 252; Chapter 367): House Bill 252 changes the composition of the Juvenile Law Study Commission to reduce the number of youth members to one, and to provide that a state or local representative of the Guardian ad Litem Services, Administrative Office of the Courts serve as a member of the Commission. The bill was effective June 20, 1989.

## PENDING LEGISLATION

The following bills have passed one house and have been received by the other and therefore are eligible for consideration in the 1989 Session. Under the terms of the adjournment resolution, appropriations and revenue measures are also eligible.

**Parental consent for minor's abortion** (HB 93): House Bill 93 would require consent from a parent for an unemanicipated minor's abortion with provision for consent bypass procedures through the district court, the local county department of social services, and the appellate court system.

**Neglected juvenile defined** (HB 250): House Bill 250 would clarify the definition of a neglected child within the juvenile jurisdiction of the district court.

**Church day care discipline** (HB 1148): House Bill 1148 would provide that Day Care Facilities Law (GS Ch. 110, Art. 7) does not grant the Child Day-Care Commission the authority to regulate discipline, including corporal punishment, in preschool programs offered by private church schools or schools of religious charter if: (1) use of such discipline is part of the religious belief of that school, (2) the form or manner of discipline is one that may be legally employed by a parent or guardian, and (3) a parent or guardian has granted the school prior written authority to employ the specific form or manner of discipline in question.

## STUDIES

Independent study commissions: (1) Study Commission on Aging; (2) Birth-Related Neurological Impairment Study Commission; (3) Commission on Children with Special Needs; (4) Commission on the Family; (5) Public Health Study Commission; (6) Education Study Commission; (7) Social Services Study Commission; and (8) "Willie M" Program assigned to Mental Health Study Commission.

Other: Juvenile Jurisdiction Age, Statutory Rape, and Sales of Violent Videos - assigned to the Juvenile Law Study Commission.

# HUMAN RESOURCES

(Jennie Dorsett, Sandy Moulton, John Young)

## RATIFIED LEGISLATION

### Aging

**Plan for older adults** (HB 69; Chapter 52): House Bill 69 requires the Division of Aging to submit to the General Assembly every two years a plan for serving older adults. The plan, submitted in odd numbered years, must include a detailed analysis of the needs of older adults, a statement of the State's long-term care policy, an analysis of current services and future needs for services, and specific recommendations for expanding services and funding. The bill was effective upon ratification, April 10, 1989.

**Aging data coordination** (HB 70; Chapter 695): House Bill 70 requires the Division of Aging to serve as the lead agency for insuring that adequate statistical data are available regarding the elderly so that the legislatively required Plan for Older Adults may be regularly updated. The bill was effective upon ratification, July 28, 1989.

**Division of Aging/information** (HB 74; Chapter 696): To promote the maximum utilization of information regarding education and training about and for the elderly, House Bill 74 requires the Division of Aging be the information clearinghouse regarding education and training programs about and for the elderly in North Carolina. The Division is also required to produce an annually updated "calendar" of conferences, training events, and educational programs provided about and for the elderly. The bill was effective upon ratification, July 28, 1989.

**Clinicians on Nursing Home/Rest Home Penalty Review Committee** (HB 76; Chapter 556): Because of questions about the appropriateness and size of fines levied against nursing homes and rest homes, the 1987 General Assembly adjusted some of the fines and required the Secretary of the Department of Human Resources to establish a penalty review committee within the Department. House Bill 76 amends the statutes passed last session (GS 131D-34(h) and 131E-129) to describe the duties and membership of the Nursing Home/Rest Home Penalty Review Committee and to require a Committee membership of nine. At least one Committee member must be: a licensed pharmacists; a registered nurse experienced in long-term care; a representative of a nursing home; a representative of a domiciliary home; and a public member. The terms of the members are to be for two years. The bill was effective upon ratification, July 4, 1989.

**Nursing home patients' rights** (HB 174; Chapter 75): House Bill 174 adds a provision to the Nursing Home Patients' Bill of Rights that is already contained in the Rest Home Patients' Bill of Rights. This provision requires that the patient, the patient's responsible family member, or guardian be notified within 10 days when a facility is issued a provisional license or notice of revocation of a licence by the North Carolina Department of Human Resources. The basis of the action must be

disclosed. The bill was effective October 1, 1989 and does not apply to pending litigation.

**Alzheimers Subcommittee** (HB 258; Chapter 368): House Bill 258 amends the statute creating the North Carolina Study Commission on Aging to include the requirement that an Alzheimers Subcommittee be a permanent part of the Commission. This bill was effective upon ratification, June 20, 1989.

**Insurance/no bias** (HB 382; Chapter 369): House bill 382 prohibits health service contracts, health maintenance organizations, and insurance companies from refusing to serve and from charging more for or reducing services provided to persons who are mentally ill or chemically dependent. This provision is effective January 1, 1990.

**Motorized wheelchair registration** (HB 551; Chapter 157): House Bill 551 exempts motorized wheelchairs and similar vehicles not exceeding 1000 pounds gross weight from registration and titling requirements and repeals the requirement for plates for such vehicles. This bill was effective upon ratification, May 29, 1989.

**Medicaid/spousal responsibility** (HB 655; Chapter 701): Beginning June 1, 1979, GS 108A-61 required that the income and financial resources of the spouse of a person in a nursing home would be counted for 180 consecutive days in determining eligibility for Medicaid. House Bill 655 repeals GS 108A-61 because State provisions have been superceded by the provisions of the federal Medicare Catastrophic Coverage Act of 1988. These new federal provisions took effect in September of 1989. The provisions of the bill were effective July 1, 1989.

**Medicaid property transfers** (HB 657; Chapter 120): GS 108A-58, enacted in 1981, restricts transfers of property for the purpose of obtaining Medicaid coverage. But the federal Medicare Catastrophic Coverage Act of 1988 contains some specific provisions related to property transfer with which the states must comply and which are in conflict with GS 108A-58. Therefore House Bill 657 would keep the provisions of GS 108A-58 but make them apply only to transfers made before July 1, 1988. For those transfers after July 1, 1988, the provisions of the Medicare Catastrophic Coverage Act of 1988 would apply. The new federal provisions do not prohibit transfers of property to the spouse living at home. For nursing home residents, the new federal law prohibits transfers made within 30 months prior to Medicaid application. The provisions of this bill were effective July 1, 1989.

**Certificate of Need monitored** (HB 1082; Chapter 233): House Bill 1082 requires the Department of Human Resources to follow-up on promises made in the application process by recipients of Certificates of Need. The Department shall obtain evidence from all recipients that the facility is operating in material compliance with the application. The provisions of the bill are effective October 1, 1989.

**Dual party relay system** (HB 1186; Chapter 599): House Bill 1186 authorizes the Department of Human Resources to petition the Utilities Commission for the creation of special telephone dual party relay services for deaf and speech impaired. The system shall be funded with a surcharge on all residential and business local exchange access facilities. The bill was effective upon ratification. The Act is effective January 1, 1989.

**Pension tax changes** (HB 1311; Chapter 792): House Bill 1311 allows up to a $4,000 State income tax exemption for all public sector retirees and increases the retirement formula for state and local retirees. It also provides up to a $2,000 tax exemption for private sector retirees. This bill is effective beginning January 1, 1989.

**State income tax based on federal law** (SB 51; Chapter 728): Senate Bill 51 structures the State income tax as a percentage of federal taxable income. 700,000 of the poorest North Carolinians are removed from the tax roles.

**Long-term care ombudsman program** (SB 80; Chapter 403): Senate Bill 80 created a special statewide advocate program for patients of long-term care. The new Office of Long-Term Care Ombudsman in the Division of Aging will promote community involvement and volunteerism in long-term care facilities and educate the public about the long-term care system. Senate Bill 80 establishes one State and eighteen regional ombudsman, one in each of the Area Agencies on Aging. Their functions and duties are defined as required by the federal Older Americans Act. The state has tested an ombudsman program since 1978. In addition to supervising the long-term care program, the state ombudsman will certify and train regional ombudsman, establish procedures for access to facilities and patients, resolve complaints, and analyze and report on complaints. The regional ombudsman program will work with nursing and rest home advisory committees to help each county develop its own patient programs, as well as help resolve resident's complaints on the local level. The new law gives ombudsman the authority to enter any level care facility to gain access to any resident there. In addition, they may have access to financial and medical records, with patients' permission. Ombudsman are granted immunity for good faith performance of their official duties. Complaints to an ombudsman are considered confidential and may be disclosed only with the express permission of the person making the complaint. Retaliation against residents or their guardians, employees or anyone else involved with a complaint is prohibited. The bill was effective upon ratification, June 22, 1989.

**Nurses aides registry** (SB 242; Chapter 323): Congress through the Omnibus Reconciliation Act of 1987 has required certain training standards for aides that work in nursing homes. The federal legislation also requires that those aides who have completed the training shall be placed on a registry and that nursing homes must check the registry before the aide is hired. The Division of Facility Services within the Department of Human Resources is implementing these requirements for North Carolina. The Board of Nursing has also established by regulation training requirements and a registry for two levels of Aides. Senate Bill 242 gives them this authority and insures that there is coordination between the federal requirement and the requirements imposed by the Board of Nursing related to level I nurses aides. The effective date of the legislation was July 1, 1989.

**Medigap insurance** (SB 446; Chapter 729): House Bill 749 rewrites the North Carolina Medicare Standards Act of 1981 in order to comply with recent changes in recent federal law. The bill:

1. Complies with the federal Medicare Catastrophic Coverage Act of 1988;
2. Mandates the submittal of all Medicare supplemental insurance ads with Insurance Commissioner;
3. Requires compliance with actual loss ratios rather than anticipated loss ratios;
4. Mandates a "free look" period of 30 days;

5. Mandates filing of insurance experience with Insurance Commissioner on standard form; and
6. Requires the revision by the states of permanent Medicare supplement minimum by at least September 20, 1989.

The bill is effective upon ratification, August 7, 1989.

**Home and community care committee** (HB 1008; Chapter 457): House Bill 1008 establishes within the Department of Human Resources an Advisory Committee on Home and Community Care composed of 26 members. The purpose is to recommend to the Secretary and to the General Assembly strategies for improving in-home and community based care for older adults. Included in the recommendations will be common service definitions and standards, common reporting requirements, eligibility requirements and reimbursement methods. There is a requirement to report to the Governor, President Pro Tempore, Lt. Governor, Fiscal Research and the North Carolina Study Commission on Aging. The bill was effective July 1, 1989.

**Continuing care centers** (SB 519; Chapter 758): The 1987 General Assembly passed legislation that set forth obligations of continuing care providers, that is, people selling lodging plus health services for periods exceeding a year. Providers must disclose detailed information about their background, services to be offered, fees charged, and the entity's financial status. Senate Bill 519 makes changes to the 1987 legislation that would remove the act from statutes related to human resources and place it in Chapter 58 related to insurance. The act would also change from being self-regulating to subjecting continuing care facilities to regulation by the Commissioner of Insurance. Other changes are:

1. Any person offering continuing care must obtain license from the Insurance Commissioner;
2. A license is permanent unless revoked by the Commissioner;
3. A license is non-transferable and requires approval by the Commissioner for sale or transfer of ownership;
4. It permits residents of facilities to organize;
5. The Commissioner may appoint trustees to rehabilitate or liquidate facilities in specified circumstances; and
6. It directs the Commissioner to appoint a Continuing Care Advisory Committee.

There is an application fee of $200 and an appropriation of $75,000 for FY 1989-90 and 110,000 for FY 1990-91. The effective date of the act is October 1, 1989.

**Services for the hearing impaired** (SB 956; Chapter 533): Senate Bill 533 creates a new Council and Division of Services for the Deaf and Hard of Hearing in the Department of Human Resources to study issues and implement appropriate services affecting the deaf. The provisions of the act are effective July 1, 1989.

**Health care facilities complaint investigation funds** (SB 44; Chapter 752): Senate Bill 44 appropriates $250,563 for FY 1989-90 and $292,565 to the Division of Facility Services within the Department of Human Resources to provide eight new positions to increase the investigating capabilities for responding to complaints in health care facilities. The bill was effective July 1, 1989

**Appropriations to four Alzheimers chapters** (SB 1309; Chapter 799): Senate Bill 1309 makes a $50,000 appropriation for each of the 1989-90 and 1990-1991 fiscal years to the Division of Aging for equal grants to the four regional Alzheimers

chapters located in Charlotte, Asheville, Raleigh, and Winston-Salem. The bill was effective July 1, 1989.

**Rest home rate increase** ( SB 43; Chapter 500): Effective January 1, 1990, the maximum monthly rate for ambulatory residents in domiciliary care facilities will increase from $696 per month to $724 per month. The maximum monthly rate for semi-ambulatory residents will increase from $730 per month to $760 per month. Effective January 1, 1991, the maximum monthly rate for ambulatory residents will be increased to $734 per month and $770 per month for semi-ambulatory clients.

**Transportation assistance** (SB 44; Chapter 752): Senate Bill 44 appropriates $2,000,000 each year of the 1989-90 and 1990-91 fiscal years to fund the North Carolina Elderly and Handicapped Transportation Assistance Program. The bill was effective July 1, 1989.

**Information and referral projects** (SB 43; Chapter 500): Senate Bill 43 appropriates $10,000 each to Buncombe, Craven, Cumberland, Guilford, Mecklenburg, Robeson, and Surry counties to fund existing information and referral projects implemented in September 1988. $50,000 is appropriated to the Division of Aging to contract for technical assistance for designing methods to alleviate service fragmentation in the aging services system. The bill was effective July 1, 1989.

## Health Care Facilities

**Rescue/EMS squad fund** (HB 8; Chapter 534): House Bill 8 expands the volunteer rescue fund matching grant program to include EMS equipment of rescue units that provide emergency medical services. The bill was effective on ratification, June 30, 1989.

**Election of hospital trustees** (HB 495; Chapter 283): House Bill 495 makes changes in the qualification requirements of members of the boards of trustees of hospitals that continue to operate under Article 2 of Chapter 131 of the North Carolina General Statutes. The bill was effective on ratification, June 12, 1989.

**NCMH name** (HB 584; Chapter 141): House Bill 584 changes the name of North Carolina Memorial Hospital to the University of North Carolina Hospitals at Chapel Hill. It also changes the terms of the members of the board of directors from 5 year terms to 4 year terms. The bill was effective on ratification, May 25, 1989.

**Hospital director transactions** (HB 979; Chapter 231): House Bill 979 provides that a member of the board of directors of a public hospital may enter into a contract with the hospital as long as the contract is approved in an open meeting and does not exceed a specified amount, the member does not participate in the awarding of the contract, and the amount of the contract is noted in the audited financial statements of the city or county. The bill was effective on ratification, June 5, 1989.

**Certificate of Need monitored** (HB 1082; Chapter 233): House Bill 1082 requires the Department of Human Resources to follow-up on promises made in the application process by recipients of certificates of need. The Department shall

obtain evidence from all recipients that the facility is operating in material compliance with the application. The bill was effective October 1, 1989.

**Rescue squad defined** (HB 1162; Chapter 115): House Bill 1162 defines the terms "rescue", "rescue unit" and "rescue squad" for purposes of eligibility in the Volunteer Rescue Squad Fund and Rescue Squad Workers' Relief Fund. Under the new statutory definition, individuals would be covered who are not necessarily trained in emergency medical services, fire fighting, or law enforcement, but who expose themselves to such perils to remove others to areas of relative safety. The bill was effective on ratification, May 18, 1989.

**EMT ambulance change** (HB 1163; Chapter 300): House Bill 1163 requires that for every ambulance run, regardless of the medical status of the patient, at least one emergency medical technician and one ambulance attendant must be present. An ambulance owned and operated by a licensed health care facility used for nonemergency transports between a residence and health care facility for scheduled medical appointments is exempt from this requirement. The bill was effective July 1, 1989.

**Health care licensing** (SB 245; Chapter 744): Senate Bill 245 establishes licensure for nursing pools. Nursing pools will be licensed by the Department of Human Resources under rules established by the Medical Care Commission. The bill is effective on July 1, 1990.

**EMT categorization repeal** (SB 401; Chapter 74): Senate Bill 401 deletes the authority of the Secretary of the Department of Human Resources to develop a system for classifying and categorizing hospitals according to the kinds and levels of emergency treatment provided by the facilities. The bill was effective on ratification, April 26, 1989.

**Public hospital purchasing** (SB 790; Chapter 350): Senate Bill 790 exempts hospitals from public bidding requirements under specified circumstances. Public record must be made of purchases made under this exemption. The bill was effective on July 1, 1989.

**Hospital facility sale** (SB 847; Chapter 444): Senate Bill 847 amends the statute on the sale of public hospital facilities to nonprofit corporations. It provides that the sale or conveyance of substantially all the equipment of a hospital facility is a sale or conveyance of the facility for the purposes of having to meet statutory requirements for the sale of a public hospital facility to a nonprofit corporation. The bill was effective on ratification, June 26, 1989.

**Hospital privileges** (SB 965; Chapter 446): Senate Bill 965 amends the statute that governs the granting of hospital privileges by the governing body of the hospital. The determination is based upon the applicant's qualifications and the reasonable objectives and regulations of the hospital. The bill provides that a hospital must also make staff privilege decisions "on a non-discriminatory basis." The bill was effective on ratification, June 26, 1989.

**Memorial hospital building** (SB 1098; Chapter 785): Senate Bill 1098 authorizes the construction of an Administrative Office Building by the University of North Carolina Hospitals at Chapel Hill. This bill was effective on ratification, August 12, 1989.

## Health Provider Licensing

**Pharmacy board term changes** (HB 503; Chapter 118): House Bill 503 changes the terms of office of the members of the Board of Pharmacy from three years to five years. The bill was effective July 1, 1989.

**Optometry students** (HB 1277; Chapter 321): House Bill 1277 provides that students enrolled in optometry schools or colleges approved by the North Carolina State Board of Examiners in Optometry (formerly restricted to schools located in North Carolina) may under specified conditions practice optometry. The bill was effective on ratification, June 14, 1989.

**Nurses aides registry** (SB 242; Chapter 323): Federal legislation has required certain training standards for aides who work in nursing homes and has also required that a registry be maintained for nursing homes to check before hiring an aide. The Division of Facility Services within the Department of Human Resources is implementing these requirements for North Carolina. The Board of Nursing has also established, by rule, training requirements and a registry for two levels of aides. Senate Bill 242 provides the Board with enabling legislation and insures coordination between the federal requirements and the requirements imposed by the Board of Nursing related to Level I nurses aides. The bill was effective July 1, 1989.

**Dental investigations confidential** (SB 638; Chapter 442): Senate Bill 638 provides that information developed as the result of investigations by the North Carolina Board of Dental Examiners may be kept confidential prior to being used in a formal notice or hearing. The bill was effective on ratification, June 26, 1989.

**Amend podiatry licensure** (SB 681; Chapter 214): Senate Bill 681 amends the podiatry licensure statute to provide that effective January 1, 1992, applicants for licensure must complete 1 year of clinical residency approved by the North Carolina Board of Podiatry Examiners and must pass the National Board Examination before taking the North Carolina examination. Any person licensed to practice podiatry in this State on or before January 1, 1989, who is actively involved in a postgraduate clinical program approved by the Board shall be permitted to practice podiatry in the approved program pending its completion. The bill was effective on ratification, June 5, 1989.

**Psychologist licensing change** (SB 804; Chapter 554): Senate Bill 804 amends the psychologist's licensure statute to allow an applicant for licensure who has met all licensure requirements except passing the examination at the practicing psychologist level to be issued a license as a psychological associate without having a master's degree in psychology if the applicant passes the examination at the psychological associate level. The bill was effective on ratification, July 4, 1989.

**Marital/family therapy board fees** (SB 806; Chapter 581): Senate Bill 806 increases the application and renewal fees and sets the maximum examination fees to be charged by the North Carolina Marital and Family Therapy Certification Board. The bill was effective on ratification, July 5, 1989.

**Occupational therapy practice** (SB 825; Chapter 256): Senate Bill 825 makes changes to the membership of the North Carolina Board of Occupational Therapy. It also allows to Board to condition renewal of licensure on completion of continuing

education requirements to be established by the Board. The bill was effective on ratification, June 7, 1989.

**Optician/architect fees, changes** (SB 884; Chapter 673): Senate Bill 884 allows the North Carolina State Board of Opticians to increase the fees charged for its services to amounts specified in the bill. The bill was effective on October 1, 1989.

**Practice of chiropractor** (SB 968; Chapter 555): Senate Bill 968 clarifies the subjects about which a chiropractor may testify as an expert witness. It also modifies the educational requirements necessary for licensure. The bill was effective on ratification, July 4, 1989.

**Dental anesthesia regulation/fees** (SB 995; Chapter 648): Senate Bill 995 authorizes the North Carolina Board of Dental Examiners to charge fees for general anesthesia and parenteral sedation permit applications, permit renewals, and office inspections. The bill was effective on ratification, July 15, 1989.

## Medicaid

**Medicaid for infants and pregnant women** (SB 44; Sec 133): The State currently covers pregnant women and infants under one year of age for Medicaid if the family income is equal to or less than 100% of the federal poverty guidelines. Effective January 1, 1990, pregnant women and infants under one year of age with incomes equal to or less than 150% of the federal poverty guidelines will be covered for medical care through the Medicaid Program.

**Medicaid for children** (SB 44; Sec. 133): In 1987 the North Carolina General Assembly appropriated money to cover children under three years of age for medical care through the Medicaid Program if the family income is equal to or less than 100% of the federal poverty guidelines. SB 44 raises the age limit beginning October 1, 1989 for children under six and for children under seven beginning October 1, 1990.

**Medicaid eligibility thresholds** (SB 44; Sec. 135): Senate Bill 44 grants an increase of 2% to the maximum net family annual income eligibility threshold for medical and cash benefits provided under the Medicaid and Aid to Families with Dependent Children Programs.

**Medicaid/spousal responsibility** (HB 655; Chapter 701): Beginning June 1, 1979, G.S. 108A-61 required that the income and financial resources of the spouse of a person in a nursing home would be counted for 180 consecutive days in determining eligibility for Medicaid. House Bill 655 repeals GS 108A-61 because State provisions have been superceded by the provisions of the federal Medicare Catastrophic Coverage Act of 1988. These new federal provisions took effect September 1989. The provisions of House Bill were effective July 1, 1989.

**Medicaid rates, indigents** (HB 656; Chapter 702): G.S. 108A-66 provided for enhanced Medicaid reimbursement to hospitals that serve a disproportionate share of indigent patients. House Bill 656 repeals this statute because it has been superceded by federal requirements. House Bill 656 was effective July 1, 1989.

**Medicaid property transfers** (HB 657; Chapter 120): G.S. 108A-58, enacted in 1981, restricts transfers of property for the purpose of obtaining Medicaid coverage. But the federal Medicare Catastrophic Coverage Act of 1988 contains some specific provisions related to property transfer with which the states must comply and which are in conflict with GS 108A-58. House Bill 657 keeps the provisions of G.S. 108A-58 but makes them apply only to transfers made before July 1, 1988. For those transfers after July 1, 1988, the provisions of the Medicare Catastrophic Coverage act of 1988 would apply. The new federal provisions do not prohibit transfers of property to the spouse living at home. For nursing home residents, the new federal law prohibits transfers made within 30 months prior to Medicaid application. The provisions of this bill were effective July 1, 1989.

## Mental Health

**Area board composition** (HB 340; Chapter 536): House Bill 340 changes the composition of area mental heath, developmental disabilities and substance abuse services boards to allow increased participation of consumers and families of persons served by the area authorities. The bill was effective July 1, 1989.

**Mentally ill minor defined** (HB 526; Chapter 223): House Bill 526 amends GS 122C-3(21) to change the definition of mental illness in a minor in response to a North Carolina Court of Appeals decision, In re Lynette H, which affirmed the trial court decision that the statutory language failed to prescribe an ascertainable standard and was unconstitutionally vague. Although the Supreme Court of North Carolina later vacated the decision on procedural grounds, some concern still remained concerning the criteria for determining mental illness in a minor. This bill changes the definition of mental illness in a minor to "a mental condition, other than mental retardation alone, that so impairs the youth's capacity to exercise age adequate self-control or judgment in the conduct of his activities and social relationships so that he is in need of treatment." The bill was effective on ratification, June 5, 1989.

**Outpatient commitment criteria** (HB 600; Chapter 225): House Bill 600 clarifies the commitment statutes to specify that a person being considered for outpatient commitment is not required to have been hospitalized previously for inpatient treatment. The bill was effective October 1, 1989.

**Physical examination for mental health admission** (HB 663; Chapter 287): House Bill 663 changes the requirement that a person who requests voluntary admission to a 24 hour facility must have a medical examination within 30 days of admission. As amended, the physical examination requirement may be fulfilled by evidence of an examination completed within 12 months of admission. The bill was effective October 1, 1989.

**Chemically dependent children** (HB 679; Chapter 316): House Bill 679 provides that the State Board of Education shall adopt rules to provide an appropriate education for drug and alcohol addicted children. It also provides that, unless they otherwise qualify, drug and alcohol addicted children are not classified as "children with special needs" according to G.S. 115C-109. The bill was effective July 1, 1989.

**Handicapped council changes** (HB 720; Chapter 121): House Bill 720 makes several amendments to the enabling statute of the Governor's Advocacy Council for Persons with Disabilities, including changes in membership and expansion to provide services to the mentally ill and substance abusers. The bill was effective July 1, 1989.

**Adopt mental illness plan** (SJR 267; Resolution 24): Senate Joint Resolution 267 adopts the comprehensive Long-Range Plan for Adults with Severe and Persistent Mental Illness as presented in the January, 1989 report of the Mental Health Study Commission to the General Assembly for the purpose of providing policy guidance for the development of services. The resolution was effective on ratification, June 8, 1989.

**Alcohol/drug abuse name change** (SB 414; Chapter 145): Senate Bill 414 reflects the expansion in the State's alcohol treatment centers to include those with other substance abuse problems. In recognition of this service expansion, the names of the three centers are changed from "alcoholic rehabilitation centers" to "alcohol and drug abuse treatment centers." The new names are: Walter B. Jones Alcohol and Drug Abuse Treatment Center at Greenville; Alcohol and Drug Abuse Treatment Center at Butner; and Alcohol and Drug Abuse Treatment Center at Black Mountain. The bill was effective October 1, 1989.

**Mental health confidentiality** (SB 424; Chapter 438): Senate Bill 424 allows the Department of Human Resources, through the State Computer Center, to maintain an index of the names of clients who have been served in State facilities. The index can be used only by State facilities when information is needed about a client in order to provide appropriate services for the client. The bill was effective October 1, 1989.

**Special needs notice change** (SB 430; Chapter 362): Senate Bill 430 changes the notice requirements to a parent of a child with special needs concerning the identification of individualized education programs for the child. The bill was effective on ratification, June 20, 1989.

**Mental health law changes** (SB 489; Chapter 625): In 1987, the North Carolina General Assembly directed the Division of Mental Health, Mental Retardation, and Substance Abuse Services of the Department of Human Resources to expand its role and responsibility to serve persons with developmental disabilities. Senate Bill 489 reflects this new direction by replacing the term "mental retardation" with "developmental disabilities" when required in the statutes. This bill is effective January 1, 1990, except that Section 25.1 (technical change to HB 340, Area Board Composition) was effective on ratification, July 12, 1989.

**Capacity to proceed to trial** (SB 517; Chapter 486): Senate Bill 517 provides that when the capacity to proceed to trial of a defendant charged with a misdemeanor is questioned, a local forensic evaluation shall be made prior to ordering an evaluation in a State facility. It also amends the statutory definition of "dangerous to himself or others" to consider information from the individual's "relevant" past rather than "recent" past. Clear, cogent, and convincing evidence that the person has committed a homicide in the relevant past is prima facie evidence of dangerousness. The section of the bill providing for local evaluation was effective October 1, 1989. The section of the bill amending the "dangerous to himself or others" definition was effective on ratification, June 28, 1989.

## Nursing

**Nursing scholars program** (HB 316; Chapter 594): House Bill 316 provides for the establishment of the North Carolina Nursing Scholars Commission to implement the Nursing Scholars Program that will provide merit scholarships for nursing students. The scholarship loans will provide $5,000 per year for students in four year programs and $3,000 per year for students in two year programs. The bill was effective July 1, 1989.

**Nursing shortage alleviation act** (HB 320; Chapter 560): House Bill 320 provides for the establishment of the Legislative Commission on Nursing to monitor the development of programs and status of other issues that relate to the nursing shortage in this State. It directs specific agencies to establish programs to increase the number of nurses and also creates a need-based scholarship fund. The bill was effective July 1, 1989.

**Nursing programs funds** (SB 244; Chapter 244): Senate Bill 244 provides for the allocation of funds for a variety of nursing education and training programs, demonstration grants, and recruitment efforts to increase the number of nurses practicing in this State. This bill was effective July 1, 1989.

## Public Health

**Human tissue transportation** (HB 474; Chapter 537): House Bill 474 revises several sections of the Motor Vehicles code to include vehicles used by an organ procurement organization or agency under the special provisions dealing with warning devices, special lights and yielding right of way for emergency vehicles. It extends to transplant coordinators the privilege to use special lights, sirens, etc. and have the right of way yielded when they are operating privately owned vehicles and are engaged in the performance of their duties. The bill also requires that hospital written protocols for the identification of potential organ and tissue donors insure that the organ procurement agency designated by the Secretary of Health and Human Services be notified of potential organ and tissue donors. The bill was effective on ratification, June 30, 1989.

**Environmental agency consolidation** (HB 480; Chapter 727): House Bill 480 creates a new Department of Environment, Health and Natural Resources and consolidates environmental, health, and natural resource management programs within the new department. The bill was effective July 1, 1989.

**Disposition of unclaimed bodies** (HB 513; Chapter 222): House Bill 513 requires that any person having physical possession of a dead body must make reasonable efforts to contact relatives of the deceased or anyone else who might want to claim the body for final disposition. It specifically assigns responsibility for unclaimed bodies to the director of social services of the county of residence or possession to insure appropriate and expeditious burial or cremation. The bill was effective October 1, 1989.

**Medical examiner/physical evidence** (HB 515; Chapter 797): House Bill 515 authorizes the Chief Medical Examiner or the county medical examiner to inspect physical evidence and documents that may be relevant to determine the cause and manner of a death under investigation, as well as seek an administrative search warrant under certain circumstances. The bill was effective October 1, 1989.

**Asbestos control program** (HB 516; Chapter 724): House Bill 516 adds a new article to GS 130A to establish an Asbestos Control Program to fulfill the federal requirement that each state implement a program to require inspections for asbestos containing materials in school buildings. The bill provides for the Commission for Health Services to adopt rules to govern school management plans, to establish maximum asbestos exposure levels for public areas, and to accredit persons who perform asbestos management activities. The bill was effective on ratification, August 3, 1989.

**Medical examiner jurisdiction** (HB 517; Chapter 353): House Bill 517 adds persons executed by the State to the jurisdiction of the medical examiner. It also provides that upon completion of the medical examiner's investigation, the medical examiner shall release the body to the next of kin or other person who will assume responsibility for final disposition. The bill was effective October 1, 1989.

**Prevent lead poisoning in children** (HB 690; Chapter 333): House Bill 690 adds a new article to G.S. 130A to enable the Commission for Health Services to adopt rules for the prevention and control of lead poisoning in children. The bill allows reporting of elevated blood lead levels in children under six years old, investigation and identification of lead poisoning hazards by the Department, examination and testing of children suspected to be at risk, and abatement of lead poisoning hazards in dwellings, schools and day care facilities in which children under six years old live or attend school or day care. The bill was effective July 1, 1990.

**Sanitary district election** (HB 893; Chapter 310): House Bill 893 provides for sanitary district elections to be held in even-numbered years in counties that have no incorporated municipalities and where the sanitary district board serves four year unstaggered terms. The bill was effective on ratification, June 13, 1989.

**Good samaritan changes** (HB 1036; Chapter 655): House Bill 1036 extends the protection of the "good samaritan" statute (GS 90-21.14) to volunteer medical or health care providers who provide emergency treatment without compensation at local health departments or non-profit community health centers. The bill was effective September 1, 1989.

**Athletic health care providers** (HB 1037; Chapter 498): House Bill 1037 extends the protection of the "good samaritan" statute (GS 90-21.14) to volunteer health care providers who provide emergency treatment without compensation to members of athletic teams. This bill was effective September 1, 1989.

**Police dogs/no confinement** (HB 1078; Chapter 298): House Bill 1078 amends the State rabies statutes to allow an exemption from the confinement requirement for a dog who has bitten a person. This amendment would allow a working police dog to continue to perform official duties during the 10 day confinement period upon submission of proof to the local health director that the dog has been vaccinated for rabies. The bill was effective on ratification, June 12, 1989.

**AIDS/Hepatitis test required** (HB 1149; Chapter 499): House Bill 1149 authorizes a judicial official conducting an initial appearance or first appearance hearing to order the defendant to be detained for up to 24 hours for testing for AIDS infection and Hepatitis B infection if there is probable cause that the defendant has posed a significant risk of transmission. The bill was effective October 1, 1989.

**No disclosure of death or illness** (HB 1160; Chapter 592): House Bill 1160 provides that failure to disclose to a buyer or renter that real property was previously occupied by a person who died or had a serious illness while occupying the property is not withholding of a material fact, unless the seller or lessor knowingly makes a false statement regarding the past occupancy. The bill was effective July 1, 1989.

**Sanitarian education changes** (HB 1284; Chapter 545): House Bill 1284 makes several changes to the sanitarian registration statutes. It rewrites the definition of "sanitarian," modifies the experience and education requirements for registration, and adds a continuing education requirement for renewal of a certificate. The bill was effective on ratification, June 30, 1989.

**Disposal of fetal remains** (SB 79; Chapter 85): Senate Bill 79 directs the Commission for Health Services to adopt rules to insure that all facilities that are authorized to terminate pregnancies dispose of the remains by means of burial, cremation, or approved hospital type of incineration. Once the facility sends the remains to a laboratory, the responsibility for disposal shifts to the medical or research laboratory or facility. The bill was effective on ratification, May 4, 1990.

**Birth/fetal death registration** (SB 223; Chapter 199): Senate Bill 223 extends the period for registering births and fetal deaths from 5 days to 10 days. The bill was effective on ratification, June 5, 1989.

**Communicable disease law change** (SB 282; Chapter 698): Senate Bill 282 makes several changes in the public health statutes concerning AIDS and HIV infection. AIDS testing may be done without informed consent if necessary for appropriate treatment. AIDS testing may not be required for continued employment, housing or public services. Employers may not discriminate against those with AIDS to determine suitability for continued employment. The State Fair Housing Act applies to persons with AIDS. Employers are not prohibited from pre-employment AIDS testing, denial of employment based on a positive AIDS test, or reassignment or termination if a person with AIDS would pose significant risk to the health of the employee, coworkers, or the public, or if the employee is unable to perform duties. Health care providers and facilities may not treat a person with AIDS differently unless the treatment is a part of the care, but may refer the person to more appropriate care. A positive HIV infection is made a reportable communicable condition. AIDS and positive HIV infection are added to the list of conditions requiring written notification to persons handling corpses. The bill was effective October 1, 1989.

**Public swimming pool regulated** (SB 386; Chapter 577): Senate Bill 386 adds a new part to the public health statutes to require regulation of public swimming pools. The Commission for Health Services shall adopt rules concerning the construction and operation of public swimming pools and the local boards of health may impose fees for regulatory services. The bill is effective February 1, 1990.

**Nutrition program rulemaking** (SB 415; Chapter 204): Senate Bill 415 changes the rulemaking authority for nutrition programs from the Department of Human Resources to the Commission for Health Services. The bill was effective on ratification, June 5, 1989.

**Clarify immunization requirements** (SB 416; Chapter 122): Senate Bill 416 changes the requirements for exemption from immunization. Instead of a physician granting an exemption, the Commission for Health Services shall determine by rule a list of contraindications that allow exemption. The State Health Director may grant a medical exemption upon request by a physician for a contraindication not adopted by rule. The bill becomes effective February 1, 1990.

**Amend food/lodging regulation** (SB 482; Chapter 551): Senate Bill 482 makes several changes in the statutes regulating food and lodging facilities. Section 1 subjects any facility (not including private clubs) that prepares food or drink, regardless of pay, to regulation. It also adds private homes offering bed and breakfast accommodations to 8 or less persons per night to the regulatory statute. A transitional permit is established for limited use according to the rules of the Commission for Health Services. Section 2 exempts temporary food facilities from quarterly inspections. Section 3 exempts both occasional fund raising events conducted no more frequently than two consecutive days a month and mobile food units or pushcarts operated in conjunction with a permitted restaurant from compliance. Section 4 enables the Commission for Health Services to adopt rules to address the appropriate and reasonable use of gloves or utensils by food service employees who handle unwrapped food. Sections 1 through 3 of the bill is effective February 1, 1990. Section 4 is effective July 1, 1990.

## Social Services

**Social services plan** (HB 141; Chapter 448): House Bill 141 requires the Department of Human Resources, in consultation with other appropriate agencies and groups, to develop a Social Services Plan to include at least the following: (i) a definition of a core of social services that shall be provided in every county; (ii) cost estimates and a timetable for assuring the availability of the core of services in each county; (iii) minimum standards for the provision of core services and public assistance programs, including staffing, caseload, training, and facilities; (iv) State and county responsibilities for the financing of social services, public assistance, administration, facilities, and training; and (v) mechanisms for supervision and enforcement of standards. The Department shall submit the Plan to the General Assembly by the convening of the 1990 Session. The bill was effective upon ratification, June 26, 1989.

**Tax refund offset for fraudulently obtained public assistance** (SB 1227; Chapter 699): Senate Bill 1227 allows the Department of Human Resources to make a claim against the tax refund of a person who fraudulently obtained AFDC or Special Assistance for Adults by intentional misrepresentation, false statement, or failure to disclose a material fact. Senate Bill 1227 shall become effective January 1, 1990.

**Food Stamp Program participation** (HB 1123; Chapter 710): House Bill 1123 requires the Division of Social Services of the Department of Human Resources to

study the reasons for the declining participation in the Food Stamp Program in North Carolina since 1980. The Department is also required to develop recommendations to eliminate the barriers to participation and to estimate the costs of the recommendations. The Department is to submit the report to the Social Services Study Commission and to the General Assembly by April 1, 1990. House Bill 1123 became effective August 1, 1989.

## Miscellaneous

**APA hearing/DHR exempt** (HB 692; Chapter 538): House Bill 692 exempts the Department of Human Resources from the administrative hearing provisions of the Administrative Procedure Act (Chapter 150B) in certain cases involving handicapped children with complex and multiple service needs who are receiving services according to the federal Education of the Handicapped Act. DHR must comply with federal administrative procedural safeguards when hearing these appeals. The bill was effective October 1, 1989.

**Charitable solicitation amendments** (HB 704; Chapter 566): House Bill 704 amends the North Carolina Charitable Solicitation Licensure Act (Chapter 131C) in response to the U.S. Supreme Court decision that portions of the Act were unconstitutional. These amendments allow professional solicitors to seek charitable contributions in this State upon licensure by the Department of Human Resources. The bill was effective October 1, 1989.

**DHR restricted donations** (HB 1109; Chapter 361): House Bill 1109 makes technical changes to the statute concerning donations to the Department of Human Resources to make it clear that the Department of Human Resources may accept conditional and restricted donations for the benefit of certain programs and patients served by the Department. The bill was effective July 1, 1989.

**Dual party relay system** (HB 1186; Chapter 599): House Bill 1186 authorizes the creation of special telephone relay services for deaf and speech impaired persons. These services will be funded by a surcharge of up to 25¢ per month. The bill was effective on ratification, July 7, 1989.

**Assign medical benefits to state** (SB 413; Chapter 483): Senate Bill 413 adds a new section to Chapter 130A to allow an automatic assignment to the Department of Environment, Health and Natural Resources of the right to third party benefits for patients who accept medical assistance from a Division of Health Services medical payment program. The bill was effective October 1, 1989.

**Vocational rehabilitation rules** (SB 507; Chapter 373): Senate Bill 507 makes two changes in the Vocational Rehabilitation Program. It enables the Department of Human Resources to adopt rules as required by the federal Rehabilitation Act of 1973 and its regulations. It also exempts hearings required under the federal Rehabilitation Act of 1973 and its regulations from the hearing process of North Carolina's Administrative Procedure Act. The bill was effective on ratification, June 21, 1989.

**Vocational rehabilitation subrogation** (SB 516; Chapter 552): Senate Bill 516 adds a new section to Chapter 143 to provide that the federal and State governments are entitled to proportionate shares in a beneficiary's recovery from any source. The State's recovery is limited to the cost of service obtained because of financial need. The Division may waive recovery, and willful concealment of the right of recovery is a misdemeanor. The bill was effective October 1, 1989.

**Services for the hearing impaired** (SB 956; Chapter 533): Senate Bill 533 creates a new Division for the Deaf and the Hard of Hearing and a new Council for the Deaf and the Hard of Hearing, both within the Department of Human Resources, to implement programs and study issues affecting the deaf. The bill was effective July 1, 1989.

## PENDING LEGISLATION

The following bills have passed one house and have been received by the other and therefore are eligible for consideration in the 1989 Session. Under the terms of the adjournment resolution, appropriations and revenue measures are also eligible.

### Aging

**Long term care data capability** (HB 201): House Bill 201 proposes to require the Department of Human Resources to establish and maintain the capability to provide necessary data regarding long-term care facilities.

**Elderly care tax credit** (HB 295): House bill 295 proposes to allow a $300 tax credit for a family in which one spouse is not gainfully employed or a student more than half-time and who cares for an elderly parent or relative who lives in the household and would otherwise be in a nursing home.

### Public Health

**Water heater temperature** (HB 1060): House Bill 1060 proposes to regulate the temperature of residential water heaters to help reduce the risk of injuries and death.

**Hot dog vendors** (HB 1247): House Bill 1247 exempts hot dog stands operated by nonprofit or volunteer associations from regulation.

**Hypodermic syringe disposal** (SB 863): Senate Bill 863 would give authority to the Commission for Health Services to adopt rules governing the disposal of hypodermic syringes and needles.

**Sanitarians' continuing education** (SB 960): Senate Bill 960 proposes to require continuing education for local environmental health staff who carry out rules adopted by the Commission for Health Services and to impose a fee on septic tanks sold for use in the State.

## Mental Health

**Group home assistance change** (HB 120): House Bill 120 proposes to provide special assistance funds for residents of group homes under contract to an area mental heath, developmental disabilities, and substance abuse authority.

**Group purchasing** (HB 649): House Bill 649 proposes to allow State mental health, developmental disabilities, and substance abuse facilities to participate in the group purchasing exemption from the procedures required for the letting of public contracts.

**Mental illness definitions clarified** (HB 992): House Bill 992 proposes to clarify the references to persons dangerous to themselves and others in Chapter 122C and to add a definition of severe and persistent mental illness. It also provides that a person who has committed an unlawful homicide and has been found not guilty by reason of insanity or who has committed an unlawful homicide and has been found incompetent to proceed shall be presumed dangerous to others for a period of 5 years.

**Quality assurance committees** (SB 423): Senate Bill 423 provides that the proceedings of quality assurance committees in mental health, developmental disabilities and substance abuse facilities will be confidential and that committee members will not be subject to liability for committee actions.

## Health Care Facilities

**EMS vehicles-red lights/sirens** (SB 300): Senate Bill 300 would allow emergency medical service support vehicles to use warning devices, special lights, etc. when answering emergency calls.

**Hospital authority changes** (SB 846): Senate Bill 846 provides that a hospital authority may establish branch facilities outside the boundaries of its establishing governmental entity under certain conditions.

## Health Provider Licensing

**Raise pharmacy board per diem** (HB 688): House Bill 688 provides for an increase in the per diem allowance for members of the North Carolina Board of Pharmacy.

**Dietetics/nutrition practice act** (HB 710): House Bill 710 creates the North Carolina Board of Dietetics/Nutrition to regulate the practice of dietetics/nutrition in the State.

**Radiation technology practice act** (HB 1070): House Bill 1070 creates the North Carolina Board of Radiation Technology Examiners to regulate the practice of radiation technology in the State.

**Licensing board defined** (SB 756): Senate Bill 756 provides that a licensing board with authority over an occupation or profession that seeks to expand the scope of its practice must comply with the review requirements of Article 18A, Chapter 120, of the General Statutes.

### Miscellaneous

**Human relations council change** (HB 685): House Bill 685 provides that the name of the North Carolina Human Relations Council be changed to the North Carolina Human Relations Commission.

**Hearing/sight impaired jurors** (HB 879): House Bill 879 provides that no person shall be disqualified from jury service solely because of a visual impairment or hearing impairment.

## STUDIES

Independent study commissions: (1) Public Health Study Commission; (2) Mental Health Study Commission (including "Willie M." programs); (3) Medical Malpractice Claims Arbitration Study Commission; (4) Commission on the Family; (5) Social Services Study Commission; (6) Medicaid Resources Limit Study (DHR study); (7) Substance Abuse Treatment and Medical Care in Prisons Study; (8) Energy Assurance Study Commission; (9) Commission on Aging (including Health Care Licensing Study); (10) Birth-Related Neurological Impairment Study Commission (continuation); (11) Legislative Commission on Nursing; and (12) Children with Special Needs.

Legislative Research Commission: (1) Consumer Protection Issues, including those relating to the Elderly; (2) Care Provided by Rest Homes, Intermediate Care Facilities, and Skilled Nursing Homes (study continued)/Necessity for Certificates of Need/Continuing Care Issues; (3) Health Care/Insurance Costs Issues, including but not limited to, Availability, Benefits, Costs, Portability, Long-Term Care Insurance/ Health Insurance Costs/Health Insurance/Infertility Treatment Coverage/Mammogram/Pap Smear Coverage/Health Care Insurance Coverage; (4) Insanity Verdict/Guilty but Insane Verdict; and (5) Homeless Persons.

Other: Medicaid Resources Limit Study by the Department of Human Resources.

# INSURANCE

(Cathy Hubbard)

## RATIFIED LEGISLATION

### Health Insurance

**No discrimination against mentally ill or chemically dependent** (HB 382; Chapter 369): House Bill 382 prohibits hospital, medical, or dental service corporations, health maintenance organizations, and health insurers from discriminating as follows against the mentally ill or chemically dependent: (1) denying benefits or coverage for medical treatment or service for physical illness or injury; (2) charging a higher premium for physical illness or injury coverages or benefits; or (3) reducing physical illness or injury coverages or benefits. These prohibitions apply only to group contracts that cover 20 or more employees. In further defining the scope of these anti-discrimination provisions, the bill provides that service corporations, HMO's, and health insurers may refuse to cover any prior existing physical illness or injury, mental illness, or chemical dependency and may refuse to issue a policy because of the underwriting of any physical condition whether or not related to mental illness or chemical dependency. House Bill 382 becomes effective January 1, 1990.

**Employer-sponsored group health plans** (HB 467; Chapter 775): House Bill 467 embodies recommendations of the General Assembly's Indigent Care Study Commission. The purpose of the bill is to remove barriers to obtaining coverage through employer-sponsored group health plans. Pursuant to House Bill 467, an insurer may not require individual employees who are members of employer groups of 50 or more to prove they are insurable in order to obtain basic coverage. Employer-sponsored group health plans may limit coverage for preexisting conditions; but such conditions must be covered no later than 12 months after the effective date of the coverage. The bill defines the term "employee" as a nonseasonal person who works 30 hours per week and is otherwise eligible for coverage. The bill requires that new employees be added to group coverage within 90 days of their first day of employment. House Bill 467 also provides that when an employer-sponsored group contract is replaced by another group contract the succeeding provider must: (i) provide coverage under the plan for each person eligible for coverage with respect to classes eligible and activity at work and nonconfinement rules; or (ii) with respect to individuals who do not qualify under the preceding standard, provide coverage under the plan if they were validly covered under the preceding plan and are members of the class of persons eligible for coverage under the succeeding plan. House Bill 467 becomes effective January 1, 1990.

**Rules for precertification practices** (HB 1079; Chapter 340): House Bill 1079 authorizes the Commissioner of Insurance to adopt rules governing precertification practices and forms and utilization review organizations. This bill is aimed at reducing administrative difficulties encountered in the process of precertification of hospital admissions. House Bill 1079 became effective upon ratification, which was June 15, 1989.

**Minimum coverage for chemical dependency treatment** (HB 1092; Chapter 175): House Bill 1092 increases the minimum coverages that must be offered by health insurers, hospital and medical service corporations, and health maintenance organizations to their insureds for the care and treatment of chemical dependency. The bill increases the minimum coverages from $6,000 for each 24-month period to $8,000 for each 12-month period; and, the minimum benefit for the life of the policy from $12,000 to $16,000. House Bill 1092 becomes effective January 1, 1990.

**Medigap insurance** (SB 446; Chapter 729): Pursuant to mandate of the Federal Medicare Catastrophic Coverage Act of 1988, Senate Bill 446 revises the minimum standards for Medicare supplement insurance policies. Senate Bill 446 authorizes the Commissioner of Insurance to adopt rules establishing standards for: (i) policy provisions; (ii) benefits and claims payment; and (iii) loss ratios of policies on the basis of incurred claims experience, or incurred health care expenses, and earned premiums. The bill requires that an applicant receive full and fair disclosure at the time of application and authorizes the Commissioner of Insurance to adopt measures to provide for such disclosure. Senate Bill 446 further protects applicants by providing for a 30-day period within which an applicant may return a policy for full refund if not satisfied for any reason and by requiring insurers to submit advertisements for Medicare supplement insurance to the Commissioner of Insurance for his approval. Senate Bill 446 became effective upon ratification, which was August 7, 1989.

**Long-term care insurance improvements** (SB 503; Chapter 207): Senate Bill 503 amends provisions of the Long-Term Care Insurance Act, which the General Assembly enacted during the 1987 Session to promote the availability of and establish standards for long-term care insurance. The amendments conform the Act to the National Association of Insurance Commissioners' model act. Senate Bill 503 prohibits a long-term care insurance policy from covering only skilled nursing care or from providing higher benefits for skilled care in a facility than for lower levels of care. The bill redefines pre-existing condition as a condition for which medical advice or treatment was recommended or received with six months preceding the date of coverage. Under prior law, the six-month period applied only to persons 65 years of age or older; a 24-month period applied to persons under 65. Senate Bill 503 eliminates the following barriers to coverage: (1) any requirement of hospitalization prior to eligibility for benefits; (2) any requirement of a higher level of institutional care before payment of benefits for a lower level of institutional care; (3) any requirement of 30 days in an institution before being eligible for non-institutional care benefits; and (4) any requirement of prior institutional care for eligibility to receive home health care benefits. The bill also expands the period for free inspection of a policy from 10 to 30 days and requires that policy forms be filed with and approved by the Commissioner of Insurance. Senate Bill 503 became effective October 1, 1989.

## Insurer Solvency

**Rehabilitation and liquidation of insurance companies** (HB 583; Chapter 452): House Bill 583, patterned after a model act of the National Association of Insurance Commissioners, rewrites the State's laws on rehabilitation and liquidation of insurance companies. The purpose of these laws is to protect the interest of

policyholders, claimants, creditors, and the general public by providing a regulatory structure through which to first, prevent insurer insolvencies and second, manage insurer insolvencies that cannot be prevented. Specifically, House Bill 583 authorizes the Commissioner of Insurance to supervise the operations of a domestic insurer when the Commissioner determines, after hearing, that an insurer is engaging in activity that would subject it to delinquency proceedings, or, after examination, that an insurer is in such condition to render continuation of business hazardous to the public or its policyholders. The bill establishes standards upon which the Commissioner may petition the Court for orders authorizing him to rehabilitate or liquidate a domestic insurer and creates orderly rehabilitation and liquidation procedures. Finally, the bill sets forth a process to ensure interstate cooperation among all the states in which a financially impaired or insolvent insurer does business and to enable orderly processing of claims of North Carolinians insured by the impaired or insolvent insurer. House Bill 583 became effective upon ratification, which was June 26, 1989.

**Health maintenance organization solvency** (HB 681; Chapter 776): House Bill 681 seeks to strengthen and improve the solvency protection of health maintenance organizations (HMO's) in North Carolina by conforming the State's solvency requirements to those set forth in the National Association of Insurance Commissioners' model act. House Bill 681 requires HMO's to: (1) file with the Commissioner of Insurance any contract forms they will use with health care providers, third party administrators, and marketing consultants; (2) submit to the Commissioner a financial feasibility plan, enrollment projections, rate methodology, projection of balance sheets, cash flow statements, and capital expenditures; (3) submit to the Commissioner an outline of procedures it will use to meet insolvency protection requirements and procedures for resolution of internal grievances; (4) obtain prior approval from the Commissioner for expansion of their service area and changes in health care provider and group contract forms; (5) segregate contingent reserves into a separate account; (6) maintain a minimum net worth of $1,000,000 as of December 1, 1991; (7) through hold harmless agreements, absolve enrollees from any responsibility for amounts owed to health care providers by the HMO, or, in lieu of entering an agreement, maintain a special deposit to cover these expenses; (8) develop an insolvency plan that would provide for continuation of benefits; and (9) compute and include incurred but unreported claims in determining liabilities. House Bill 681 establishes procedures pursuant to which HMO's may provide replacement coverage for an insolvent HMO's enrollees. The bill also gives priority in distribution of assets in an insolvency to health service providers who agree to a hold harmless clause. (Prior to ratification, the bill proposed the levy of a tax of 1/2 of 1% on premiums collected by HMO's. The Senate Finance Committee, however, removed this provision from the bill.) House Bill 681 became effective upon ratification, which was August 12, 1989.

**Postassessment Insurance Guaranty Association Act** (SB 501; Chapter 206): Senate Bill 501 rewrites the Postassessment Insurance Guaranty Association Act, which creates a mechanism to pay covered claims when certain kinds of insurers become insolvent, to conform to the National Association of Insurance Commissioners' model act. Senate Bill 501 expands the types of insurance that are exempt from the Act. The bill provides that: (i) the Guaranty Association's obligation includes only the amount of each claim that is more than $50 and less than $300,000; (ii) the Association is not obligated to pay a claimant who has primary coverage of at least $300,000 with a solvent insurer or a self-insured retention of at least $300,000; (iii) if the primary coverage or retention is less than

$300,000, the Association's obligation to the claimant is to be reduced by the amount of the coverage or retention; and (iv) the Association may recover the amount of a covered claim paid on behalf of persons whose net worth on December 31 of the year preceding insolvency exceeds $50,000,000 or who are affiliates of the insolvent insurer. The bill also sets forth measures governing nonduplication of recovery and prevention of insolvencies. Senate Bill 501 became effective upon ratification, which was June 5, 1989.

## Mortgage Insurance

**Mortgage insurance consolidations** (HB 1121; Chapter 341): House Bill 1121 authorizes the Commissioner of Insurance to adopt rules to govern mortgage insurance consolidations. The bill defines a "mortgage insurance consolidation" as any transaction in which a mortgage loan servicer makes its premium collection services available to mortgage debtors in connection with an insurer's offer of mortgage insurance, which offer is made to debtors who, immediately prior to the offer, had mortgage insurance with another insurer and were paying premiums for that insurance with their monthly mortgage payments. House Bill 1121 became effective upon ratification, which was June 15, 1989.

**Insurance binders at loan closings** (HB 1243; Chapter 459): House Bill 1243 requires lenders who make or service mortgages or deeds of trust on one to four family residences to accept binders issued by licensed agents, brokers, or insurance companies as evidence of insurance. The binder should include the name and address of the insured and the mortgagee, a description of the insured collateral, a provision requiring 10 days' written notice to the mortgagee for cancellation, and the amount of insurance bond. The binder must be accompanied by a paid receipt for one year's premium, and should include an undertaking of an agent to use his best efforts to have the insurer issue a policy. House Bill 1243 became effective upon ratification, which was June 26, 1989.

## Motor Vehicle Insurance

**Definition of private passenger motor vehicle** (HB 242; Chapter 789): Section 1 of House Bill 242 redefines "private passenger motor vehicle" to permit persons who drive their own vans, minivans, or pickups in the course of business to insure those vehicles through their personal automobile policies. This bill cures an inequity that had permitted persons who use their personal sedans, coupes, or station wagons in the course of business to insure those vehicles on their personal automobile policies, but had required persons who use their personal vans and pickups for business pursuits to commercially insure those vehicles. House Bill 242 provides that a personal van or pickup used on business will qualify as a private passenger motor vehicle eligible for coverage under a personal automobile policy if the van or pickup: (i) has a gross weight of less than 10,000 pounds; and (ii) is not used for delivery or transportation of goods or materials unless incidental to the insured's business of installing, maintaining, or repairing of furnishings or equipment, or for farming or

ranching. Section 1 of House Bill 242 becomes effective February 1, 1990, and applies to policies written on or after that date.

**Collision damage waivers** (HB 324; Chapter 631): House Bill 324 authorizes automobile insurers to offer coverage for damage to rental vehicles driven by their insureds, prohibits certain advertising and sales practices of rental car companies, and clarifies the law regarding sales of insurance by rental car company employees. Among other things, the bill requires rental car companies doing business in North Carolina to include in all their advertising the daily rate they charge for collision damage waivers. The bill defines "collision damage waivers" as contracts pursuant to which rental car companies agree for a charge to waive all claims against the renter for any damages to the rented vehicle during the term of the rental agreement. The bill further directs rental car companies to state in all advertising that collision damage waivers are not required and that prospective renters should inquire as to whether their automobile insurance policies will cover damage to rental vehicles. Any violation of the provisions of the bill constitutes an unfair trade practice. House Bill 324 became effective October 1, 1989.

**Recovery of losses of the North Carolina Motor Vehicle Reinsurance Facility** (HB 651; Chapter 332): House Bill 651 extends the four-year time period, which the General Assembly established during the 1987 Session, for the reallocation of the surcharge for recoupment of Motor Vehicle Reinsurance Facility losses among all automobile insurance policies rather than among only those policies with insurance points. The legislation enacted by the 1987 General Assembly, effective beginning July 1, 1988, called for recoupment of 80% of Facility losses through a surcharge on automobile insurance policies with points and recoupment of 20% of losses through a surcharge on all automobile insurance policies. The percentage allocated to all policies gradually increased until July 1, 1992, at which time all losses were to be recouped against all policies. House Bill 651 extends the deadline for reallocation of recoupment surcharge among all polices by three years, from July 1, 1992, to July 1, 1995. House Bill 651 became effective upon ratification, which was June 15, 1989.

**Proof of financial responsibility for drivers' licenses** (SB 141; Chapter 436): Senate Bill 141 amends laws enacted during the 1987 Session of the General Assembly, which require persons obtaining North Carolina drivers' licenses, persons renewing their licenses who have to take the written examination, persons seeking restoration of their licenses after suspension or revocation, and persons seeking a limited driving privilege to show proof of financial responsibility. These laws directed persons required to show proof of financial responsibility by way of a certificate (DL-123) completed and signed by their insurance agents. Senate Bill 141 expands the types of proof by recognizing the following options as effective proof of financial responsibility: (1) the DL-123; (2) an electronically-transmitted facsimile of the DL-123; or (3) a binder for or policy of nonfleet private passenger motor vehicle liability insurance that insures the applicant and states the effective date and expiration date of the policy. The bill exempts from the proof of financial responsibility requirements persons who do not own "currently registered" motor vehicles, as long as they do not operate any motor vehicle unless it is a commercially insured vehicle. Senate Bill 141 became effective upon ratification, which was June 26, 1989.

**North Carolina Motor Vehicle Reinsurance Facility board members** (SB 142; Chapter 67): Senate Bill 142 increases the voting membership of the Board of Governors of the Motor Vehicle Reinsurance Facility from nine to 12. The bill

requires that the Commissioner of Insurance appoint two members who are insurers domiciled in North Carolina and one member from two nominees submitted by the Auto Insurance Agents of North Carolina, Inc. Senate Bill 142 became effective upon ratification, which was April 25, 1989.

**Automobile clubs** (SB 357; Chapter 663): Senate Bill 357 permits qualified surety companies to guarantee arrest bond certificates issued by automobile clubs up to an amount of $1500 per certificate. Under prior law, the amount was not to exceed $500 per certificate. Senate Bill 357 became effective upon ratification, which was July 20, 1989.

**Surcharge and appeal procedures of the North Carolina Motor Vehicle Reinsurance Facility** (SB 448; Chapter 424): Senate Bill 448 requires that automobile insurers combine Motor Vehicle Reinsurance Facility surcharges with premium charges and display them as one charge rather than separate charges on the insured's billing. The bill also refines the procedure for appeal of rulings of the Facility's Board to the Commissioner of Insurance, authorizing the Commissioner to issue an order modifying the Board's action if the Commissioner has ordered the Board to reconsider its ruling and the Board has failed to reconsider. Sections 1 and 2 of Senate Bill 448, which relate to surcharge procedures become effective January 1, 1990. The remainder of Senate Bill 448 became effective upon ratification, which was June 23, 1989.

## Miscellaneous

**Extended warranties by third parties** (HB 242; Chapter 789): Section 2 of House Bill 242 provides that corporations may be organized for the purpose of providing third party extended warranties for home appliances, if the corporation: (i) escrows, in a bank approved by the Commissioner of Insurance, a percentage of the corporation's fees for the extended warranties; and (ii) uses the escrowed money only for the payment of claims under the extended warranties. House Bill 242 authorizes the Commissioner to adopt rules for administering this provision. Section 2 of House Bill 242 becomes effective January 1, 1990.

**Holding Company Act** (HB 380; Chapter 722): House Bill 380 conforms the State's laws regulating holding companies to the National Association of Insurance Commissioners' Model Insurance Holding Company System Regulatory Act. To promote the public interest and the interests of policyholders, House Bill 380 requires disclosure of pertinent information relating to changes in control of an insurer, requires disclosure by an insurer of material transactions and relationships between the insurer and its affiliates, and provides standards governing material transactions between an insurer and its affiliates. Specifically, the bill requires any person attempting to take control of or merge with a domestic insurer to disclose to the Commissioner of Insurance and the insurer relevant information about himself and the take over and obtain approval of the transaction from the Commissioner. House Bill 380 requires every insurer that is licensed to do business in the State and that is also a member of an insurance holding company system to register with the Commissioner. The bill also establishes standards and management criteria for registered insurers within holding company systems. House Bill 380 became effective upon ratification, which was August 3, 1989.

**Continuing education program** (HB 703; Chapter 657): House Bill 703 creates a framework for a continuing education program for adjusters, motor vehicle damage appraisers, agents, and brokers. The bill authorizes the Commissioner of Insurance to promulgate rules to provide an education program that will enhance the competence and responsibility of these insurance professionals, to determine compliance with the program, to approve continuing professional education courses, and to establish fees to be paid by licensees. The annual education hour requirements may not exceed 12 credit hours. The bill also requires the Commissioner to appoint a fire and casualty advisory committee and a life and health advisory committee for the purpose of recommending rules to the Commissioner for administration of the continuing education program. House Bill 703 became effective upon ratification, which was July 19, 1989.

**Insurance for waterslides** (HB 1048; Chapter 232): House Bill 1048 permits the purchase of liability insurance coverage for waterslides directly from insurers without the involvement of a broker or agent. House Bill 1048 became effective upon ratification, which was June 5, 1989.

**Sealed bids for payroll deduction insurance products** (HB 1116; Chapter 299): House Bill 1116 amends the law governing competitive selection of payroll deduction insurance products paid for by State employees to require that proposals for insurance products be sealed until public opening. The purpose of this bill is to ensure that insurance companies do not obtain an unfair advantage in the selection process by ascertaining the contents of competing insurers' proposals prior to public opening. The bill makes it a misdemeanor punishable by a fine of not more than $500 for anyone to open a sealed proposal or disclose or exhibit the contents of a sealed proposal prior to the public opening. House Bill 1116 became effective upon ratification, which was June 12, 1989, and applies to offenses occurring on or after that date.

**Mutual insurance companies** (HB 1122; Chapter 320): House Bill 1122 leaves it to the discretion of the board of directors of mutual insurance companies with guaranty capital as to whether to declare and pay dividends to stockholders of guaranty capital and owners of guaranty surplus, and, if so, in what amount. Under prior law, these stockholders and owners were entitled to annual dividends of no more than 10% on their shares and, in the discretion of the board, an annual increase of no more than 15%, if profits were sufficient. House Bill 1122 became effective upon ratification, which was June 14, 1989.

**Insurance and fidelity bonds** (SB 43; Chapter 500): Section 8 of Senate Bill 43 requires the Department of Insurance to place all insurance and official fidelity and surety bonds authorized for State agencies, and provides for the cost of the placement to be paid by the affected agency with the approval of the Commissioner of Insurance. Section 8 of Senate Bill 43 became effective July 1, 1989.

**Extend Risk Sharing Plan Act sunset date** (SB 447: Chapter 137): Senate Bill 447 extends from July 1, 1989, to July 1, 1991, the sunset date applicable to the Risk Sharing Plan Act. The General Assembly enacted the Risk Sharing Plan Act in an extra session called in 1986, at the height of the liability insurance crisis. The Act authorizes the Commissioner of Insurance to promulgate risk sharing plans or to call upon insurers to develop these plans, when it is determined at hearing that certain insurance is not readily available in the voluntary market and that public interest requires the availability of that insurance. The Act's initial sunset date was June 30,

1988. The General Assembly extended that date to July 1, 1989, during the 1987 Session. Senate Bill 447 became effective upon ratification, which was May 25, 1989.

**Insurance reciprocals** (SB 502; Chapter 425): Senate Bill 502, patterned after Virginia law, rewrites and updates the statutes governing reciprocals. A reciprocal is similar to a mutual insurance organization in that each member of the reciprocal insures part of the risk of each of the other policyholders. An attorney-in-fact represents the members of the reciprocal and also manages the organization. Senate Bill 502 establishes minimum surplus and deposit requirements for reciprocals and provides for the assessment liability of reciprocal subscribers. The bill establishes procedures for formation of reciprocals, requires a fidelity bond for the attorney-in-fact, and provides for advisory committees to supervise the finances of reciprocals. The bill also prescribes the contents of the subscriber's agreement and power of attorney and outlines procedures governing financial impairment and liquidation of a reciprocal. Senate Bill 502 becomes effective January 1, 1990.

**Substantive and technical changes in the insurance laws** (SB 512; Chapter 485): Senate Bill 512 makes numerous substantive and technical amendments to the insurance laws. Important substantive amendments include: (i) Granting the Commissioner of Insurance express authority over policy forms for group health and life insurance and annuities that are delivered to a trust outside of the State and cover North Carolina residents; (ii) Establishing standards for automobile physical damage insurance written on automobiles used as collateral for loans under the Consumer Finance Act; (iii) Authorizing the Commissioner of Insurance to issued cease and desist orders against unauthorized insurers; (iv) Prohibiting insurers from discriminating against individuals because of race, color, or national or ethnic origin; (v) Improving administrative procedures for dealing with licensees; (vi) Requiring deposits of certain foreign life insurers and deposits of capital and surplus of domestic insurers; (vii) Authorizing the Commissioner to adopt rules to require CPA audits of insurers' financial statements; (viii) Refining the statutes governing qualifications for bail bondsmen and runners; (ix) Requiring insurers to file amendments to documents that have been filed with the Commissioner; (x) Granting a lien to employees on their employers' assets when the employers violate the group health insurance cancellation notice law; (xi) Changing the territorial jurisdiction of farm mutuals; (xii) Setting a 20-hour prelicensing instruction requirement for persons seeking to be licensed to sell only accident and health insurance. Under prior law they had to meet a 40-hour requirement; (xiii) Authorizing group health insurers to adjust rates, if justified, as often as every six months after policies have been in effect one year; (ixx) Establishing explicit rate standards for individual accident and health insurance policies. If rates are approved, the insurer must guarantee them for 12 months. Any rate increase must be preceded by written notice 45 days before the increase takes effect; (xx) rewriting civil penalty statute to authorize the Commissioner to impose civil penalties for violations of the insurance laws. Section 9 of the bill governing the Commissioner's authority over group health and life insurance policy forms covering North Carolina residents but in trust outside of the State became effective October 1, 1989; Section 58 of the bill dealing with 12-month rate guarantee for individual subscriber contracts issued by hospital and medical service corporations becomes effective January 1, 1990. The remainder of the bill became effective upon ratification, which was June 28, 1989.

**Collection agency laws** (SB 548; Chapter 441): Senate Bill 548 rewrites the State's collection agency laws in order to bring foreign collection agencies into compliance

with North Carolina law. Among the changes effected by Senate Bill 548 are: (i) Increasing the penalty for operating a collection agency without a permit from a misdemeanor to a Class J felony; (ii) requiring an agency applying for a license whose office or records are located outside of the State to pay the Department of Insurance for administrative expenses incurred in regulating the collection agency; (iii) requiring all businesses or persons to use their own names when collecting accounts of subsidiaries; and (iv) allowing foreign collection agencies to be licensed in North Carolina without maintaining their records or an office in the State. Senate Bill 548 became effective July 1, 1989.

**Repeal of premium tax sunset date** (SB 552; Chapter 346): Senate Bill 552 repeals the sunset date applicable to insurance premium taxes. Repeal of the sunset provision prevents expiration of the tax levied on the premium receipts of insurance companies doing business in North Carolina. The General Assembly first attached a sunset provision to the premium tax laws during the 1986 Session after taking action in response to a U.S. Supreme Court decision to equalize at a rate of 1.75% the premium tax assessed against foreign and domestic insurers. Under prior law, the State had taxed foreign insurers at a rate of 2.5% and domestic insurers at a rate of 1% or 1.5%. Revenue projections indicated that the equalized 1.75% rate would not be revenue neutral as compared to rates in place prior to 1986, but would instead create a significant shortfall in revenue. To ensure review of the revenue neutrality of these tax rates, the General Assembly attached a sunset date of January 1, 1988. During the 1987 Session, the General Assembly reviewed the rates, retained the 1.75% rate, and extended the sunset date to January 1, 1990. The General Assembly again reviewed the issue in 1989, and determined that premium tax receipts had been greater than projected; therefore, the General Assembly determined that a rate adjustment was unnecessary, retained the same rates, and repealed the sunset provision. Senate Bill 552 became effective upon ratification, which was June 19, 1989.

**Windstorm and hail damage** (SB 782; Chapter 376): Senate Bill 782 affects windstorm and hail insurance offered by the N.C. Insurance Underwriting Association. The Association consists of insurers that write essential property insurance. The purpose of the Association is to provide essential property insurance for real property located in beach areas of the State. The Association must also offer windstorm and hail insurance for risks for which essential property insurance has been written. Senate Bill 782 provides that with respect to windstorm and hail insurance the Association must offer replacement cost coverage when the underlying property coverage is on that basis. Senate Bill 782 became effective upon ratification, which was June 21, 1989.

**Fraternal benefit societies** (SB 819; Chapter 364): Senate Bill 819 amends the laws governing fraternal benefits societies. A fraternal benefit society is a non-profit, incorporated society, order or supreme lodge, without capital stock, operated on a lodge system with ritualistic form of work, having a representative form of government, and which provides benefits such as death benefits, endowment benefits, and annuity benefits. Senate Bill 819 corrects a provision relating to voting rights and increases the amount of insurance that an exempt society may write. Senate Bill 819 became effective upon ratification, which was June 20, 1989.

**Prearrangement insurance** (SB 855; Chapter 738): Senate Bill 855 defines the term "prearrangement insurance policy" as a contract issued by an authorized insurer for the purpose of funding a preneed funeral contract or insurance-funded funeral or

burial prearrangement. The bill enumerates specific information that an insurance agent must disclose to a prearrangement applicant prior to accepting a premium or deposit, such as the fact that a prearrangement insurance policy is being used to fund a prearrangement and the nature of the relationship between the insurance agent and the provider of the funeral services. The bill also amends the Funeral and Burial Trust Fund Act pursuant to which the Commissioner of Banks regulates preneed burial contracts funded by trust deposits. The amendments clarify issues related to taxation of the trust fund and to bond sureties and also exempt from the Act preneed burial contracts funded through proceeds of insurance policies. The amendment related to exemption of insurance funded preneed contracts, which is a part of Section 2 of the bill, became effective retroactively, July 1, 1989, and the remainder of Senate Bill 855 became effective upon ratification, which was August 8, 1989.

## PENDING LEGISLATION

The following bills are eligible for consideration in the 1989 Session because they have been passed by one house and received by the other or because they are appropriations or revenue measures.

### Health Insurance

**Health insurance pool** (HB 985): House Bill 985 proposes the creation of the North Carolina Health Insurance Pool. The purpose of the proposed Pool is to offer adequate levels of health insurance to residents of North Carolina who are otherwise unable to obtain this coverage because of their health.

### Miscellaneous

**Insurance crimes** (SB 498): Senate Bill 498 proposes to strengthen the laws relating to insurance crimes, including insurance fraud, embezzlement by agents and brokers, and the making of false statements by persons in the insurance business.

**Arson disincentives** (SB 499): Senate Bill 499 proposes to require fire departments to complete fire incident reports, which shall be made available to insurance companies.

## STUDIES

Legislative Research Commission: Health Care/Insurance Costs/Infertility Treatment Coverage/Mammogram/Pap Smear Coverage.

# LOCAL GOVERNMENT

(Jill F. Cramer, Sherri Evans-Stanton, Giles Perry)

## RATIFIED LEGISLATION

**Reappraisal contracts monitored** (HB 78; Chapter 79): House Bill 78 amends county appraisal statutes to allow counties conducting general revaluation with the assistance of private mass appraisal firms to submit a copy of specifications and the proposed contracts to the Department of Revenue for review before inviting or accepting bids. The bill also states that the board of equalization and review may submit to the Department of Revenue a report outlining the quality of the reappraisal. The act becomes effective for taxable years beginning on or after January 1, 1990.

**Certified condemnation appraisals** (HB 238; Chapter 630): House Bill 238 requires that real property acquired by the State by purchase or condemnation be appraised by State-licensed or State-certified real estate appraisers after January 1, 1991.

**EMS service/fire districts** (HB 302; Chapter 559): House Bill 302 allows county fire protection service districts to provide emergency medical, rescue, and/or ambulance services by resolution in county service districts with a $.15 rate limit. This bill became effective upon ratification on July 4, 1989.

**Water district two-thirds bonds** (HB 469; Chapter 470): House Bill 469 allows county and metropolitan water and sewer districts the same authority as counties and cities to issue general obligation bonds without a vote of the people to the extent that they do not exceed two-thirds of the amount by which the outstanding indebtedness of the water and sewer district has been reduced during the preceding fiscal year. This bill became effective upon ratification, June 27, 1989.

**Demolish unfit dwellings** (HB 490; Chapter 562): House Bill 490 allows a governing body to order demolition of an unfit dwelling after adoption of an ordinance meeting the listed requirements declaring a dwelling unfit for human habitation. The provisions of the bill apply only to municipalities located in counties which have a population in excess of 163,000 based on the last census. The bill became effective upon ratification, July 4, 1989.

**Home rule changes filing** (HB 604; Chapter 191): House Bill 604 eliminates the requirement that cities and counties file certified copies of Home Rule Charter amendments with the Supreme Court Library as recommended by the General Statutes Commission. Certified copies must now only be filed with the Secretary of State and the Legislative Library. House Bill 604 became effective June 1, 1989.

**Economic development records** (HB 630; Chapter 269): House Bill 630 relieves a public agency of the requirement or authorization to disclose a "trade secret" as defined in the Trade Secret Protection Act if it is (1) owned by a private person, (2) disclosed to the public agency in connection with the owner's performance of a public contract or in connection with a bid, application, proposal or industrial development project, and (3) designated as "confidential" or as a "trade secret" at

the time of its disclosure to the public agency. House Bill 630 became effective June 8, 1989.

**City actions in water district** (HB 821; Chapter 741): House Bill 821 prohibits cities from duplicating water or sewer services provided by county water and sewer districts organized under Article 6 of Chapter 162A of the General Statutes unless the governing board consents or the city holds a public hearing and finds inadequate fire protection because of the level of available water service. The bill also makes provisions for annexation of service areas and payment of periodic availability charges. This bill became effective August 8, 1989.

**Local government security interests** (HB 960; Chapter 708): Prior to House Bill 960, G.S. 160A-20 permitted cities, counties, and water and sewer authorities to **purchase** real or personal property by installment contracts which created a security interest in the property to secure payment of the purchase money. HB 960 provides that installment contracts are valid when the project involves construction or repair of fixtures or improvements, or when they involve financing through third parties or escrow accounts in connection with advance funding. These type of installment contracts are also subject to Local Government Commission review. The bill was effective upon ratification, August 1, 1989.

**Government contracts/surveying service** (HB 972; Chapter 230): House Bill 972 provides that on surveying contracts, the Department of Transportation or Department of Administration may provide, upon request from a county, city, town or other subdivision of the State, advice in the process of selecting consultants or in negotiating consultant contracts with surveyors. The bill became effective upon ratification, June 5, 1989.

**Reduce fire service district** (HB 993; Chapter 741): House Bill 993 provides for the reduction in the size of a county service district created for fire protection under county service district statutes when that district or portion thereof is annexed by a fire protection district created under Chapter 69 of the General Statutes. The board of county commissioners can only levy taxes for furnishing fire protection on portions not annexed into fire protection districts. This bill became effective for annexations into fire districts effective on or after July 1, 1989.

**Water authority receive land** (HB 1039; Chapter 517): House Bill 1039 provides that water and sewer authorities have the same power to acquire real property and interests in real property in the same manner and by the same procedures, except by eminent domain, as are provided for acquisition of such property by cities and towns. The bill became effective upon ratification, June 29, 1989.

**Water/sewer outside service** (HB 1103; Chapter 726): House Bill 1103 allows county water and sewer districts to provide services outside their boundaries. The bill became effective upon ratification, August 3, 1989.

**Water/sewer district annexation** (HB 1104; Chapter 543): House Bill 1104 eliminates the requirement that all property owners must be notified of a hearing on annexation to a county water and sewer district when the proceeding was initiated by a petition of all such owners. The bill became effective upon ratification, June 30, 1989.

**County assume district debt** (HB 1105; Chapter 573): House Bill 1105 allows counties to assume the indebtedness of certain water and sewer authorities, metropolitan water districts, metropolitan sewer districts, and county water and sewer districts, subject to approval by county voters. The bill became effective upon ratification, July 4, 1989.

**Regulate junked cars** (SB 192; Chapter 743): Senate Bill 192 allows counties (G.S. 153A-132.2) and municipalities (G.S. 160A-303.2) to adopt ordinances to regulate junked motor vehicles for aesthetic purposes. A county or city may permit junked vehicles to be removed without a written request only if it finds in writing that the aesthetic benefits of removing the vehicle outweigh the burdens imposed on the property owner. The county or city may require the person requesting removal to indemnify the county or city for loss, expense, or liability caused by removal, storage or sale of the vehicle. The person removing the vehicle will not be liable for damages for removal to the person entitled to possession of the vehicle unless there was intentional or negligent damage (to the vehicle) or injury to the person during removal of the vehicle. The bill provides for notice and an opportunity for a hearing prior to removal of the vehicle. The bill was effective October 1, 1989, and does not apply to ordinances passed prior to that date.

**Annexation agreements** (SB 199; Chapter 1043): Senate Bill 199 allows cities to enter into binding agreements concerning future annexation for a duration not to exceed 20 years. The city proposing annexation must give at least 60 days written notice to other parties to the agreement. Prior to entering into the agreement public hearings must be held and the cities may hold joint public hearings. An agreement between cities may be modified or terminated by a subsequent agreement. The bill provides that no agreement is binding beyond three miles of the primary corporate limits of the annexing city unless approved by the board of county commissioners. A participating city may unilaterally withdraw from the agreement by repealing the ordinance and providing five years written notice. A participating city may file a petition to annex territory notwithstanding the agreement if there is an imminent threat to public health or safety that can only be remedied by the city seeking annexation. The bill was effective upon ratification, May 29, 1989.

**Single prime construction contracts** (SB 308; Chapter 480): Senate Bill 308 allows public contracts to be bid in the alternative as multi-prime or single-prime contracts. If the public body uses the single-prime method, it must also seek bids under the multi-prime method and choose the lowest bid. The bill provides that the State have a verifiable 10% goal for participation by minority businesses in the total value of work for each project for which a contract is awarded under G.S. 143-128, and local governments shall establish their own appropriate percentage goal. The bill provides that the State and its political subdivisions shall award public contracts without regard to race, religion, color, creed, national origin, sex, age, or handicapping conditions. Nothing shall require contractors to award contracts or subcontracts to minority business contractors who do not submit the lowest responsible bid(s). The bill was effective June 28, 1989, and expires on June 30, 1995. An executive summary of data shall be submitted to the State Building Commission and a report made to the 1995 Session of the General Assembly.

**Permit pawnbrokers in county** (SB 330; Chapter 524): Senate Bill 330 permits persons to engage in business as pawnbrokers in unincorporated areas of counties, and provides for county boards of commissioners to issue licenses. The bill became effective upon ratification, June 30, 1989.

**Local government storm drainage system** (SB 584; Chapter 643): Senate Bill 584 authorizes local governments to construct and operate storm drainage systems as public enterprises; and provides local governments with funding and taxing authority to finance the construction and operation of storm drainage systems. The bill was effective upon ratification, July 15, 1989.

**Regional sports authorities** (SB 1184; Chapter 780): Senate Bill 1184 allows for the creation of regional sports authorities by two or more units of local government with the adoption of concurrent resolutions. The purpose shall be to research, design, construct, provide, finance and operate facilities for public participation and enjoyment of sports/recreations facilities. A charter shall be established to provide for the powers, duties and functions of each regional sports authority. Property held by an authority is tax exempt. Senate Bill 1184 become effective August 12, 1989.

## PENDING LEGISLATION

**Quick take for water & sewer** (HB 608): House Bill 608 would allow quick-take condemnation when public condemnor [political entity] is acquiring property by condemnation as authorized by N.C.G.S § 40A-3(c)(8)(9)(10) or (12).

**County assess for street lights** (HB 929): House Bill 929 would authorize counties upon petition of two-thirds (2/3) of the owners of residential subdivision lots (outside city limits) to levy an annual assessment at equal rates per lot to cover the cost of installation and operation of subdivision street lights.

**Procedure for complete rezoning** (HB 1297): House Bill 1297 would require notices to be mailed to all affected and adjacent property owners in a municipality or in a county when total rezoning occurs that involves downzoning.

**Municipal pooled projects** (SB 559): Senate Bill 559 would allow issuance of State revenue bonds at a low interest rate and would allow short-term loans of these funds to municipalities for equipment and capital projects.

**Zoning vested rights** (SB 766): Senate Bill 766 would require a developer to own property before filing notice of intent. The notice has no effect against initial zoning.

**Index Homestead exemption** (SB 84/HB 1597): These identical bills would provide relief for those whose "Homestead Exemptions" lose value because of a countywide octennial revaluation through a system whereby the value of the exemption is increased when property values increase.

## STUDIES

Independent study commissions: (1) State Infrastructure Needs and Financing Study Commission; (2) Property Tax Study Commission; and (3) Joint Legislative Commission on Municipal Incorporations.

Legislative Research Commission: Medical, Disability, Death, Retirement, and Related Benefits for Firemen Provided by Federal, State, and Local Governments.

# PROPERTY

(Giles Perry, Steven Rose)

## RATIFIED LEGISLATION

### Condominiums

**Condominium plats and plans** (HB 973; Chapter 571): House Bill 973 amends G.S. 47C-2-109(b), which deals with the requirements of the plats or plans for condominiums, by adding a new subdivision requiring that the plat or plan contain a certificate of a registered land surveyor stating that the plat or plan accurately depicts the legal boundaries and physical location of the unit and other improvements, relative to those boundaries. The act was effective October 1, 1989, and applies to plats and plans filed with the register of deeds on or after that date.

### Estates/Trusts/Wills

**Assignment of year's allowance** (HB 14; Chapter 11): House Bill 14 changes the procedure for assignment of the year's allowance to the surviving spouse and certain children of the deceased by eliminating the requirement that a magistrate be assisted by appointed jurors when determining the nature of the allowance. The bill became effective October 1, 1989, and applies to applications for the assignment of a year's allowance made on or after that date.

**Devolution of devise or legacy** (HB 607; Chapter 244): House Bill 607 provides that where a devise or legacy of any interest in property is given to a person as a member of a class and the person predeceases the testator and is not survived by qualified issue, then, unless a contrary intent is indicated by the will, the entire interest of such person shall devolve upon the members of the class who predeceased the testator, taking by substitution. The bill became effective upon ratification, June 6, 1989, and applies to the will of any person dying on or after that date.

**Validate conveyances** (HB 684; Chapter 390): House Bill 684 amends several statutes, G.S. 45-20.1, 47-51, 47-53, 47-53.1, 47-71.1, 47-108.5, 47-108.11, 28A-14-1.1, 10-12, and 45-21.47, all of which validate either certain documents executed, actions taken by a notary, foreclosure sales, or notices given to creditors prior to a specified date in 1987 where the action taken or document prepared is legally deficient in some technical respect. The deficiencies addressed in these statutes include the omission of a corporate or notarial seal, omission of the notary's signature or name in the body of the document, omission of an officer's seal, expiration of the notary's commission, failure of the notary to continue to satisfy voting registration or residence requirements, failure of a notice to creditors to state the specific date after which claims could not be presented, and foreclosure sales made with an improper person serving as trustee. This bill amends those statutes to validate such documents and actions as long as they were executed or done prior to a specified date in 1989. In, addition the bill provides that no power of attorney

executed before April 1, 1989 shall be invalid for reason that the power of attorney was not signed by the principal under seal. The bill became effective upon ratification, June 21, 1989.

**Amend Incompetency/Guardianship** (HB 711; Chapter 473): House Bill 711 made extensive amendments to the laws regarding incompetency and guardianship. Among the areas amended by the bill were: criteria for appointment of a guardian, bond requirements, guardian's power to lease or sell ward's property, appointment of interim guardian, attorney's fee determination, notice procedure, filing of inventory and accounts, and termination of guardianship. The bill became effective October 1, 1989.

**Notice to decedent's creditor's** (SB 837; Chapter 378): Senate Bill 837 amends several sections of the General Statutes governing notice to decedent's creditors. The bill makes the following changes: (1) it deletes the requirement that published notice to claimants be given within 20 days after granting of letters; (2) it allows the personal representative to mail or personally deliver notice to creditors actually known or reasonably ascertainable within 75 days after the granting of letters; and (3) it provides immunity for a personal representative for notifying or not notifying those he in good faith believes require notice. In addition, the bill amends G.S. 28A-19-3 to permit claims arising from mailed or personally delivered notice under G.S. 28A-14-1 to be presented within 90 days after date of delivery or notice. The bill became effective October 1, 1989, and applies to the administration of the estates of all decedent's dying on or after that date.

**Effect of dissent from a will** (SB 841; Chapter 590): Senate Bill 841 provides that if there is a disposition by the testator's will to an **inter vivos** trust that was revocable by the testator prior to the death of the testator, and in which the surviving spouse had an interest, then the surviving spouse shall be deemed for purposes of the trust to have predeceased the testator. In addition, the bill provides that no person would be liable for making distributions under a will or **inter vivos** trust if the distribution is in accordance with the will or trust and the person making the distribution has no actual knowledge of the facts that constitute a revocation of the surviving spouse's rights. The bill became effective October 1, 1989, and applies to the estates of all decedents dying on or after that date.

**Decedent estate property** (SB 889; Chapter 407): Senate Bill 889 amends several sections of the General Statutes governing collection of property in decedent's estates. Specifically, the bill provides that if a decedent dies without a will and leaves property not exceeding $10,000, then any time after 30 days after the death, any person indebted to or holding property of the decedent may make payment to the heir or creditor of the decedent, or the public administrator upon presentation of the appropriate affidavit by the heir, creditor, or public administrator. In addition, the bill allows, in the case of decedents who die with a will and property not exceeding $10,000, the collection of property by a public administrator (as well as the heir or creditor) upon presentation of the appropriate affidavit by the heir, creditor, or public administrator. The bill became effective October 1, 1989, and applies to persons dying on or after that date.

**Small estates costs** (SB 899; Chapter 719): Senate Bill 899 amends G.S. 7A-307(a) to exempt estates administered under G.S. 28A-25-6 (Payment to clerk of money owed intestate) from the assessment of costs. The bill became effective October 1, 1989, and applies to the estates of decedents dying on or after that date.

**Estates/renunciation amendment** (SB 902; Chapter 684): Senate Bill 902 amends several sections of Chapter 31B of the General Statutes involving renunciation of property and fiduciary powers. The key changes to the renunciation statutes include: adding to categories of those who may renounce; permitting a fiduciary to renounce pursuant to G.S. 31B-2 any fiduciary powers unless the appointing instrument provides otherwise; providing that a fiduciary may not renounce rights of beneficiaries unless the appointing instrument specifically authorizes the fiduciary to renounce; altering provisions governing notice of renunciation to the trustee, and the rights of spouses of those renouncing. In addition, the bill provides that a fiduciary's role does not bar the fiduciary's right to renounce a power, privilege, or immunity; and no person shall be liable for distributing property in reliance on the renunciation if the person has no actual knowledge of facts that constitute a waiver or bar to the right of renunciation, and the distribution is otherwise proper. The bill became effective October 1, 1989, and applies to any renunciation made on or after that date.

## Fair Housing

**Fair housing/ads and temporary relief** (HB 333; Chapter 721): House Bill 333 amends the State Fair Housing Act by repealing the 180 day statute of limitations for civil actions under the Act and making numerous changes in the enforcement provisions of the Act. One of the most significant is the right of the North Carolina Human Relations Council to grant relief which includes compensatory damages and injunctive and other equitable relief, and the assessment of civil penalties. The act was effective upon ratification, August 3, 1989.

**Fair housing/handicapped and family** (HB 334; Chapter 407): House Bill 334 amends the State Fair Housing Act to conform to federal law by extending its protection to handicapped persons and families with children. Complaints continue to be made through and handled by the North Carolina Human Relations Council. The act became effective October 1, 1989.

## Time Shares

**Amend time share act** (SB 358; Chapter 302) Senate Bill 358 amends Article 4 of Chapter 93A, the North Carolina Time Share Act. The act amends G.S. 93A-42 by changing the time within which the developer must record the time share instrument from 120 days following execution of the contract to 180 days thereafter. It also changes the time when the escrow agent must return all payments to the purchaser if the instrument has not been recorded, from 120 days to 180 days following execution of the contract. The act adds a proviso, however, that if prior to the expiration of 180 days following execution of the contract the developer and purchaser provide the independent escrow agent with a written consent, then the developer's obligation to record the time share instrument and the escrow period may be extended for an additional 120 days. A further amendment to G.S. 93A-42 provides that the escrow account may be interest-bearing with the interest belonging to the developer, if agreed upon in writing by the purchaser. However, if the time share instrument is

not recorded within the specified time periods, then any interest earned belongs to the purchaser. The act was effective upon ratification, June 13, 1989, and applies to contracts signed on or after that date.

## Miscellaneous

**Extend foreclosure postponement** (HB 237; Chapter 257): House Bill 237 amends G.S. 45-21.21 to permit a person exercising a power of sale to postpone the sale for up to 90 days under the conditions set forth in the statute. The bill became effective October 1, 1989, and applies to foreclosure proceedings filed on or after that date.

**No disclosure of death or illness** (HB 1160; Chapter 592): House Bill 1160 amends Chapter 39 (Conveyances) by adding a new Article 9, and amends Article I of Chapter 42 (Landlord and Tenant) by adding a new section. The amendments provide that in offering real property for sale or for rent or lease, it shall not be deemed a material fact that the real property was occupied previously by a person who died or had a serious illness. However, both amendments specifically provide that the seller, or the landlord or lessor may not knowingly make a false statement regarding those facts of past occupancy. The act became effective July 1, 1989, and is applicable to acts occurring on or after that date.

**Amend relocation assistance act** (SB 157; Chapter 28): Senate Bill 157 amends the North Carolina Relocation Assistance Act to conform it to recent amendments to the federal Relocation Assistance Act. The act amends the definition of a "displaced person" and adds definitions for "comparable replacement dwelling," "appraisal," and "lead agency." The act places a $1,000 cap on expenses incurred by a displaced business or farm searching for a replacement location, authorizes up to $10,000 for expenses incurred in re-establishing a displaced farm, small business, or nonprofit organization at any site, authorizes displaced homeowners and residential tenants to accept allowances in lieu of actual reasonable expenses; provides for similar fixed payments for displaced farms and businesses; authorizes various additional payments to displaced homeowners (except recent purchasers) to account for inflation with regard to amounts needed to purchase comparable replacement dwellings and to service a comparable debt to finance the replacement dwelling, as well as to provide for various closing costs. The act further provides for payments to be made to displaced residential tenants and certain other displaced homeowners which may be used to either rent, make a down payment on, or pay other incidental expenses relating to the purchase of a comparable replacement dwelling. The act also contains authority for cities, counties and other local governments and agencies to actually construct or renovate housing to be sold or rented to a displaced person, where none is available. The State is now authorized to do so. Finally, the act requires projects to be planned in a manner that will recognize at an early stage actions that may cause the displacement of persons and to plan such projects in a manner that will minimize adverse impacts on displaced persons. Finally, additional payments required (as described in this summary) shall not be mandatory for political subdivisions of the State unless federal law makes such payments a condition of federal funding. The act was effective upon ratification, March 29, 1989.

## PENDING LEGISLATION

**Water heater temperature** (HB 1060): House Bill 1060 would require that thermostats on water heaters to be installed in residential dwellings be preset at no higher than 120 degrees fahrenheit.

**Priority of funeral expenses** (HB 1102): House Bill 1102 would provide that the second class priority for funeral expenses up to $2000 does not include the cost of the cemetery lot and gravestone, and that the lot and gravestone of the decedent would be paid as a second class priority to the extent of $500.

**Clarify survivorship law** (HB 1147): House Bill 1147 would provide that a joint tenancy with right of survivorship in real or personal property may be created if the instrument creating the joint tenancy expressly provides for a right of survivorship; and no document other than the one creating the joint tenancy with right of survivorship would be needed to establish the right of survivorship.

**Probate code amendments** (HB 1291): House Bill 1291 would extend the provisions of those portions of Chapter 28A allowing an heir or creditor to demand payment of indebtedness or delivery of property from persons obligated to a decedent who died leaving personal property in his estate valued at $10,000 or less, to an executor named in the will of the decedent.

## STUDIES

Independent study commissions: Property Tax Study Commission.

Legislative Research Commission: State Capital Assets and Improvements.

# STATE GOVERNMENT

(Jill F. Cramer, Bill Gilkeson, Cathy Hubbard, Linwood Jones, Barbara Riley, Steven Rose)

## RATIFIED LEGISLATION

### Alcoholic Beverage Control

**Beer franchise law** (HB 1020; Chapter 142): House Bill 1020 regulates contracts between beer suppliers (e.g., brewers, bottlers, importers) and beer wholesalers and prohibits a supplier from providing beer to a wholesaler unless a distribution agreement has been filed with the Alcoholic Beverage Control Commission. Filing of the agreement creates a franchise agreement between the supplier and wholesaler which may only be terminated for specified causes; injunctive relief or monetary damages are remedies for wrongful termination. The act limits a supplier's ability to cancel franchise agreements upon transfer of the wholesaler's business, and provides that the supplier may assist a proposed purchaser in acquiring ownership of a wholesaler's business by participation in a limited partnership arrangement or by making a business loan and taking as security the assets of wholesaler's business. Neither the limited partnership or the business loan may exist more than eight years. House Bill 1020 was effective May 25, 1989, and applies to all franchise agreements in existence at that time.

**Chamber of Commerce ABC permits** (HB 1022; Chapter 130): House Bill 1022 authorizes the issuance of special one-time permits to allow Section 501(C)(6) organizations to serve wine, malt beverages, and spirituous liquor at a ticketed event held for fund raising. House Bill 1022 was effective May 23, 1989.

**Regulate tour boats/ABC permits** (HB 1094; Chapter 360): House Bill 1094 modifies the laws regulating the operation of tour boats with ABC permits. Special ABC permits may be granted to tour boats only if home-ported in an area where issuance of permits is legal. The permit is valid during tours that leave and return to home port, regardless of whether the boat crosses into areas where sales are illegal. If the boat docks at a port other than its home port, alcoholic beverages may be sold only to tour passengers. During city-sponsored events and festivals, a boat may open its bars at dockside, and while in port may sell and serve alcoholic beverages only as allowed by local ordinances. Tour boats may have a preannounced itinerary and permit passengers to board or disembark at the boat's home port and at each port listed on the itinerary. House Bill 1094 was effective June 19, 1989.

**Ski resorts ABC elections** (SB 136; Chapter 77): Senate Bill 136 allows any city that provides governmental services to as many as 1,000 snow skiers weekly during the normal ski season from Dec. 1 through March 15 to hold beer, unfortified wine, or mixed beverage elections. If the sale of mixed beverages is approved, purchase-transportation permits shall be issued and sales of liquor shall be made by any local board designated by the State ABC Commission. Senate Bill 136 was effective May 1, 1989.

**Winery special show permits** (SB 494; Chapter 737): Senate Bill 494 authorizes the issuance of winery show permits, allowing the holder of a winery permit to give

free tastings and to sell fortified and unfortified wine at trade shows, conventions or similar events. Senate Bill 494 was effective August 8, 1989.

**Increase liquor purchase limit** (SB 759; Chapter 553): Senate Bill 759 increases from four to five liters the amount of fortified wine or liquor that may be possessed without a permit. Senate Bill 759 was effective July 1, 1989.

**ABC permits in certain areas** (SB 858; Chapter 629): Senate Bill 858 permits the issuance (without an election) of all on-premises permits in special ABC areas, defined as an area with less than 100 permanent residents that meets following description: borders on another state, ABC stores are permitted in at least one city within the county, on premises sales of beer and unfortified wine are permitted in at least two cities, contains more than 1,000 acres, is owned privately and by a club providing municipal services for more than three years, and is incorporated as a municipality or contains tax exempt organization. Permits may be issued in incorporated areas if an election is held; if unincorporated, club members vote and approve the sale of mixed beverages at a meeting certified to the ABC Commission. The act exempts Columbus, Caswell, Person, Granville, Vance, Warren, Halifax, Robeson, Cleveland, Rutherford, Macon, Polk, Davidson, and Davie Counties. Senate Bill 858 was effective July 12, 1989, and does not impair the rights of permit holders located within unincorporated areas who have previously qualified for permits.

**ABC law amendments** (SB 380; Chapter 800): Senate Bill 380 generally, makes miscellaneous changes to alcoholic beverage control (ABC) laws, including technical amendments. The bill removes the export of alcoholic beverages from the list of activities subject to ABC law, and permits holders of unfortified wine, fortified wine and distillery permits to sell products in closed containers to exporters.

The ABC Commission may issue new permits when a permittee changes the name of his business, and may issue duplicate permits when the original is lost or damaged. A permittee going out of business may sell his mixed beverages inventory to a new permittee for continuation of a business at the same location. The ABC Commission may issue a permit to a management company employed to operate a business, and may suspend or revoke a permit if it determines that a place of business is no longer suitable or if the ABC permit is detrimental to the neighborhood. The one permit per quarter limit on special one-time use permits issued to nonprofit organizations is deleted, and such permits may now be issued to nonprofit or political groups which are tax-exempt under <u>either</u> federal or state law, and to political organizations for municipal offices.

The ABC Commission may fine wineries violating GS Ch. 18B, Art. 12 (Wine Distribution Agreements) up to $15,000 for a first offense and up to $35,000 for a second offense. The court's selection of forum for actions brought under that Article is binding notwithstanding a contrary agreement of the parties.

Other changes include: the issuance of brown-bagging permits to tour boats; limited immunity from suit for individual ABC board members; and limitation on ABC stores allowed to sell alcoholic beverage by the use of credit cards.

The bill was effective August 12, 1989, and choice of forum provision applies to actions brought on or after that date. The provisions for replacement of lost permits, and penalties for wineries were effective October 1, 1989.

## Courts/Judges

**Emergency judges' prior service** (HB 132; Chapter 116): House Bill 132 amends G.S. 7A-52(a) to allow retired district judges and judges of the superior court who have not reached the mandatory retirement age (70) to apply to become emergency judges if they have five years of creditable service instead of the current eight years of creditable service. This bill became effective upon ratification on May 22, 1989.

**Magistrates' plea jurisdiction** (HB 236; Chapter 763): House Bill 236 amends G.S. 7A-273(1) to allow any magistrate to accept guilty pleas or admissions of responsibility in misdemeanor or infraction cases other than traffic, hunting, boating, and alcohol offenses, and that the maximum punishment cannot exceed 30 days imprisonment or a fine or penalty of fifty dollars. This bill became effective October 1, 1989.

**Increase State Bar dues** (HB 502; Chapter 172): House Bill 502 amends G.S. 84-34 to increase the membership fee for the North Carolina State Bar from the current $90 to $135. This bill became effective upon ratification on May 31, 1989.

**Juror fees clarification** (HB 586; Chapter 646): House Bill 586 repeals the current six dollar and ten dollar fees in G.S. 7A-306(c)(6) for special proceeding jurors and now entitles them to receive the standard $12/day fee. This bill also made conforming amendments to G.S. 7A-312 regarding the twelve dollar fee for jurors in special proceedings. This bill became effective October 1, 1989.

**Magistrate accept litter plea** (HB 1283; Chapter 343): House Bill 1283 amends G.S. 7A-273 to allow magistrates to accept written appearances, waivers of trial, and pleas of guilty in violations of G.S. 14-399 (misdemeanor littering) and to enter judgments as the chief district judge directs. House Bill 1283 became effective October 1, 1989.

**Court fees increase** (HB 1912; Chapter 783): House Bill 1912 adds a new section to Article 28 of Chapter 7A of the General Statutes regarding fees received by the clerk of court. It is now required that a fee of four percent (4%) of each principal amount shall be conditionally assessed on all funds deposited in an interest-bearing checking account. On all funds invested pursuant to G.S. 7A-112, a fee of five percent of each fund shall be conditionally assessed and collected. The bill also makes conforming amendments to other sections of G.S. 7A-303. This bill became effective upon ratification, August 12, 1989, and applies to all funds on deposit or invested as of August 12 and to all funds received on or after that date.

**Pretrial release fees** (SB 127; Chapter 664): Senate Bill 127 amends G.S. 7A-304(a) to require a judge to impose a fee of fifteen dollars on a criminal defendant upon conviction if the defendant is released to an agency providing pretrial release services. The fee shall be assessed only once in each case and is to be remitted to the county providing the pretrial release services. This bill became effective for defendants released to the supervision of an agency providing pretrial release services on or after October 1, 1989.

**Clerk may disqualify self** (SB 897; Chapter 493) Senate Bill 897 amends G.S. 7A-104 to allow the clerk of court to disqualify himself in a proceeding in circumstances justifying disqualification or recusement by a judge. The bill also amends G.S.

115C-431(b) regarding the procedure for resolution of disputes between a board of education and a board of county commissioners. Currently a dispute may be referred to the clerk of court for arbitration. The amendment now allows the clerk of court to transfer the matter to the superior court within 10 days of the referral if he determines in good faith that the matter cannot be arbitrated. This bill became effective on ratification on June 28, 1989.

**Deputy clerk act outside county** (SB 898; Chapter 445): Senate Bill 898 amends G.S. 7A-102(b) to authorize an assistant or deputy clerk to perform all the duties and functions of the office of the clerk of superior court in another county in any proceeding in the district or superior court that has been transferred to that county from the county in which the assistant or deputy clerk is employed. The clerk of superior court of each county and the presiding judge of any proceeding must give their consent. Senate Bill 898 became effective on June 26, 1989.

**Adjust court fees** (SB 1177; Chapter 786): Senate Bill 1177 amends G.S. 7A-304(a) to provide that no costs may be assessed when a criminal case in district or superior court is dismissed. The bill also increases the amount of criminal court fees in support of the General Court of Justice from $23 to $33 in district court, and from $30 to $40 in superior court. The civil court fees in support of the General Court of Justice are increased from $37 to $47 in superior court and from $10 to $20 in district court. The bill repeals G.S. 7A-308(a)(16). Senate Bill 1177 also amends G.S. 20-7(i1) to require payment of a $25 license restoration fee, but if an individual's license has been revoked under G.S. 20-17(2) [impaired driving], the license restoration fee will be $50 until the cumulative total amount of fees deposited exceeds five million dollars. Thereafter, the restoration fee will be $25. Portions of these fees shall be deposited in the Highway Fund. This bill became effective August 15, 1989, and applies to offenses, actions, and revocations made on or after that date.

## Elections

**Voter purge under general law** (HB 166; Chapter 351): House Bill 166 corrected an oversight so that 15 counties are now governed by the current general law for purging names from the list of registered voters. The general law, which now extends to the 15 counties, requires a county board of elections to remove a voter's name from the books if the person failed to vote in two successive presidential elections and all elections in between. (Before the name is actually taken off, the board must send a mailing to the person and give him an opportunity to show that he is still qualified to vote in the county.) The 15 counties are: Alamance, Columbus, Forsyth, Franklin, Gaston, Harnett, Hertford, Johnston, Martin, Northampton, Randolph, Robeson, Rowan, Scotland, and Washington. The bill was made effective upon ratification, June 19, 1989.

**Recount law changes** (HB 344; Chapter 89): House Bill 344 made three changes to the Automatic Recount Law, enacted in 1987. The 1987 law said candidates are entitled to a recount if their margin of loss was 1% or less of the total vote, even if there was no evidence of irregularities. House Bill 344 alters that by:

* Setting the margin of loss, for statewide races only, at 0.5% or 10,000 votes, whichever is less;

* Entitling any candidate to a recount if he is within the automatic-recount percentage, regardless of whether he is the "next highest" (the terminology used by the 1987 act); and
* Shortening the deadline for calling for a recount.

The bill was made effective with respect to all elections held on or after January 1, 1990.

**Write-in sunset repealed** (HB 346; Chapter 92): House Bill 346 removed the two-year sunset from a 1987 law on write-in votes, making that law permanent. The 1987 law set up a requirement for declarations of intent and petitions for write-in candidates in a general election. If a person does not meet the requirements, any write-in votes for the person are not to be counted. The 1987 write-in bill did not apply to municipal or nonpartisan elections. Write-in votes were not counted in party primaries, and the 1987 act did not change that rule. House Bill 346, removing the sunset, became effective June 1, 1989.

**Broadcast election notice** (HB 347; Chapter 93): House Bill 347 amended several public notice provisions in the Election Law Chapter to state that election officials may use broadcast stations in addition to (but not in lieu of) newspapers to give public notice. The bill was made effective January 1, 1990.

**Party committee exemption** (HB 348; Chapter 449): House Bill 348 exempts from the filing of campaign financial reports any candidate or party committee that meets all the following requirements:

* does not spend more than $1,000;
* does not receive as a contribution more than $1,000; and
* does not borrow more than $1,000.

The bill was made effective with respect to all elections occurring on or after January 1, 1990.

**Campaign solicitation penalty** (HB 350; Chapter 94): House Bill 350 corrects an oversight in a 1987 law that set uniform criminal penalties for election-law felonies and misdemeanors. House Bill 350 makes improper campaign solicitation punishable by imprisonment for up to six months, or a fine of up to $1,000, or both. The bill was made effective with respect to elections held on or after January 1, 1990.

**Election day transfers simplified** (HB 405; Chapter 427): House Bill 405 makes four changes designed to make it easier for people to vote, even though they show up on election day at a the polling place in a precinct from which they moved more than 30 days before. (If those people had notified the county board of elections of their new address before the registration deadline, the board would have notified them of the new precinct to which they were assigned.) The four changes are:

* Allowing precinct assistants (not just registrars and judges) to issue the document transferring the voter to the county board office or to another precinct to vote;
* Allowing election officials to permit these "transfer voters" to vote on any election equipment, not just on paper ballots;
* Allowing county boards to permit "transfer voters" to be sent directly to their new polling places to vote (prior law apparently already permitted this, but House Bill 405 made it clear); and
* Allowing the officials in the new precinct to count the transfer votes like any other votes.

The bill was made effective with respect to all elections held on or after September 1, 1989, but will expire January 1, 1991.

**Sanitary district elections** (HB 893; Chapter 310): House Bill 893 is designed to accommodate a situation involving the Sanitary District Board in Currituck County. The bill is written as a general law using a classification because of a constitutional requirement. The bill affects only counties that:

* Have no municipalities; and
* Have a Sanitary District Board that have unstaggered four-year terms that next expire in 1991.

In such counties, the bill empowers the county commissioners to set the Sanitary District election on the same day as general elections in even-numbered years and to extend the terms of the present Sanitary Board members until 1992. That is an exception to the general rule that Sanitary District elections are held in odd years, as are municipal elections. The bill was made effective June 13, 1989.

**Election law amendments** (HB 1053; Chapter 635): House Bill 1053 makes the following changes to the election laws:

* Corrects overlooked statutes on oaths, so that they follow the uniform rule allowing an alternative in which the oath-taker may say "I do so affirm" rather than "so help me, God." The provision went into effect July 13, 1989.
* Clarifies that no one may vote in a party's primary who has not become registered in that party by the 21st day before the primary. The provision is effective beginning with 1990 primaries.
* Allows a county board of elections to send less than a full supply of ballots to a precinct, if a full supply is available. The provision effects all elections after September 1, 1989.
* Attempts to tighten the control of the county board of elections over the purchase by county commissioners of optical-scan voting equipment in cases where the manufacturer or supplier of the equipment is no longer certified by the State Board of Elections. The provision went into effect July 13, 1989.
* Removes a sunset from a 1987 law allowing boards of elections to make absentee ballots available 50 days, rather than 60 days, before an election. The provision went into effect July 13, 1989.

**Municipal nomination by petition** (HB 1198; Chapter 402): House Bill 1198 reduces from 15% to 10% of the qualified voters the number of names a person must collect on a petition to qualify as an unaffiliated candidate in a partisan municipal election. The bill was made effective upon ratification, June 21, 1989.

**Assisting one-stop voters** (HB 1329; Chapter 520): House Bill 1329 gives voters the same rights to receive assistance if they vote by one-stop absentee ballot at the county Board of Elections office that they would have if they were voting at the polls on election day. Before the bill, a disabled or illiterate person could receive assistance from any person of his choice at the polls, but only from certain specified persons while voting one-stop absentee. (Arguably, federal law required giving the one-stop voter the same rights.) The bill is effective for all 1990 elections, but expires January 1, 1991.

**Second primaries modified** (SB 106; Chapter 549): Senate Bill 106 removes the requirement that a candidate win a majority of the votes in a party primary to receive

the nomination. In its place, the bill puts the rule that the top votegetter in the primary wins the nomination if that candidate receives more than 40% of the vote. If no one receives more than 40%, the next highest votegetter may call for a runoff primary. In a multi-seat contest, a candidate is assured the nomination who polls in excess of the number of votes determined by this formula:

$$0.40 \times \frac{\text{number of votes cast in race}}{\text{number of seats to be filled}}$$

The bill was made effective beginning with primaries in 1990.

**Resign to run for office** (SB 370; Chapter 325): Senate Bill 370 will require anyone holding an elective office to resign from that office upon filing a candidacy for another elective office, if the term of the office held overlaps the term of the office sought by more than 40 days. The resignation must be effective by the last day of qualifying for the office sought. Exempted from the resign-to-run requirement are holders of federal elective office and State judges who are running for other judgeships. The effective date of the bill is January 1, 1991.

**Precinct Boundary Program** (SB 493; Chapter 440): Senate Bill 493 made several technical changes to the Census Redistricting Data Program, a program designed to inventory precinct boundaries in the State and to make adjustments so that data from the 1990 Census will be available by precinct as a tool for redistricting. One portion of the bill was designed to facilitate the continued use of municipal boundaries as precinct lines when annexations have taken place. (Section 75.3 of Senate Bill 525, Chapter 770 of the 1989 Session Laws, made a further change dealing with annexations and precinct lines.) Senate Bill 493 was made effective June 26, 1989.

**Tax check-off consent needed** (SB 1163; Chapter 713): Senate Bill 1163 prohibits a paid preparer of tax returns from checking the "NO" or "YES" box on the State Income Tax Return for the Political Parties Financing Fund without the consent of the taxpayer or the taxpayer's spouse. A "YES" check earmarks $1 of the tax payment to the Fund. Money from the Fund is distributed to political parties in proportion to their voter registration in North Carolina. The bill is effective for taxable years beginning with 1989.

## Historic Preservation

**Historic districts and landmarks** (SB 139; Chapter 706): Senate Bill 139 rewrites the present law concerning the designation and treatment of individual historic properties and historic districts in municipalities and counties. The act repeals Part 3A (Historic Districts) and Part 3B (Historic Properties Commissions) of Article 19 of Chapter 160A. It adds a new Part 3C (Historic Districts and Landmarks) to Article 19 of Chapter 160A. Significant portions of the new Part include a definition of the character of an historic district, the power of municipal and county governing boards to create historic districts as part of zoning or other ordinances, and the power of municipal or county governments to designate historic landmarks. The act establishes procedures for evaluating and identifying historic landmarks, including the establishment of an inventory of properties of historical, architectural, prehistorical,

and cultural significance. The act also provides for the establishment of a preservation commission which is responsible for the inventory and which is also responsible for issuing certificates of appropriateness for alteration and demolition of structures designated as historic landmarks or which are within an historic district. Certificates of appropriateness are required for exterior alteration or demolition of historic landmarks or structures within historic districts. Applications for certificates of appropriateness must be acted upon within a reasonable time not to exceed 180 days from the date of application. In addition, where the certificate seeks authorization to demolish a designated landmark or structure within a historic district, the effective date of the certificate may be delayed for up to 180 days from the date of approval. Thus, a maximum of one year may elapse from the time of filing of an application or certificate to demolish such a structure until the certificate to do so is actually effective. During such period the preservation commission shall negotiate with the owner in an effort to find a means of preserving the building or site. The application for a certificate to demolish such a building may be denied if it has been determined by the State Historic Preservation Officer that the building or site has statewide significance as defined in the criteria of the National Register of Historic Places. The act was effective October 1, 1989.

**State historic properties** (HB 82, Chapter 379): House Bill 82 adds to the powers and duties of the Department of Cultural Resources the encouragement and development of a central clearing house for information on historic preservation for the benefit and use of public and private agencies and persons. The act provides for the Department of Cultural Resources to cooperate with the Department of Administration and to consult with the Departments of Transportation, Commerce, and Natural Resources and Community Development, as well as the League of Municipalities, the Association of County Commissioners, and the Historic Preservation Foundation of North Carolina. The act was effective upon ratification, June 21, 1989.

**State historic places register** (HB 116, Chapter 60): House Bill 116 adds a new section, G.S. 121-4.1, authorizing the Department of Cultural Resources to establish a North Carolina Register of Historic Places. The Register will include districts, sites, buildings, structures, and objects significant in North Carolina history, architecture, archaeology, engineering, and culture. The act provides that the North Carolina Historical Commission shall establish the criteria for properties to be included in the State Register of Historic Places, as well as the criteria providing for levels of significance. In order for any property or district to be included in the North Carolina Register of Historic Places, the owner of the property, or in the case of a district, the owners of the majority of properties, must be given the opportunity to agree with or object to such inclusion or designation. If the owner of the property, or a majority of the owners of the properties within the district, object to inclusion in the Register of Historic Places, the property shall not be included until the objection is withdrawn. The act was effective October 1, 1989.

**Historic property survey change** (HB 180, Chapter 65): House Bill 180 amends G.S. 121-8(b) to make the Director of the Division of Archives and History or the State Historic Preservation Officer the person to nominate appropriate properties for entry into the National Register of Historic Places after approval by the North Carolina Historic Commission. Previously it was the Secretary of Cultural Resources or his designee. The act was effective upon ratification, April 24, 1989.

## Licensing Boards

**Clarify business license information** (HB 264; Chapter 22): House Bill 264 amends G.S. 147-54.15 to provide that a person provided with a written list identifying required State business licenses may not be penalized for failure to obtain a license not identified, provided he submits an application within 60 days of written notice from the Agency responsible for licensing. The act was effective upon ratification, March 20, 1989.

**Increase State Bar dues** (HB 502; Chapter 172): House Bill 502 increases the annual State Bar dues from $90 to $135 beginning in 1990. The act was effective upon ratification, May 31, 1989.

**Pharmacy Board terms** (HB 503; Chapter 118): House Bill 503 extends the term of members of the Board of Pharmacy from three to five years. The act was effective upon ratification, July 1, 1989.

**Cosmetology Board appointments** (HB 564; Chapter 650): House Bill 564 changes the composition of the State Board of Cosmetic Art Examiners to require that one of the governor's appointments be a currently employed teacher of cosmetic art. Members of the Board shall receive compensation for services deemed official business when such business exceeds three hours per day and no per diem or travel expenses shall be allowed for attendance at trade shows or travel out of state. The bill provides for reimbursement of the institution hosting the cosmetology licensing exam and the instructors administering the exam. Expenses to be reimbursed are limited to exam materials, rental of the facility, grading the exam and reimbursement of instructors administering the exam. The act was effective upon ratification, July 15, 1989, and applies to the first appointment made by the Governor, other than the appointment of the public member after ratification, and to Board business and examinations conducted on or after the effective date.

**Increased fees\registered foresters** (HB 620; Chapter 245): House Bill 620 increases the registration and renewal fees for registered foresters. The fee paid upon issuance of the certificate of registration was increased from $15 to $20 and the renewal fee increased from $10 to $20. The act was effective upon ratification, June 6, 1989, and applies to fees due on or after that date.

**Architecture Board jurisdiction** (HB 715; Chapter 81): House Bill 715 adds to the powers of the Board of Architecture the authority to levy a civil penalty of up to $500 per violation against a registered architect for violations of Board standards, dishonest or unprofessional conduct. The degree and extent of harm caused must be considered in setting the amount of the penalty. The Board may commence an action pursuant to Chapter 150B to collect civil penalties levied. The act was effective October 1, 1989, and applies to violations occurring on or after that date.

**Amend private personnel services** (HB 801; Chapter 414): House Bill 801 adds an exclusion to the definition of private personnel service for employer fee paid personnel services and temporary help services that offer temporary to permanent placement when the service: (1) operates on a 100% employer fee paid service basis; (2) requires no applicant placement contract; and (3) has no recourse against an applicant for a fee under any circumstances. Surety bonds required to be deposited with the State by licensed private personnel services are increased to $10,000. The

bill requires temporary help services that operate only as temporary help services to notify the Department of Labor in writing. It also requires employer fee paid personnel services and temporary-to-permanent personnel services to certify annually to the Department that they meet the requirements outlined above. The act was effective October 1, 1989.

**Real Estate Appraisal Act** (HB 492; Chapter 563): House Bill 492 creates the Real Estate Appraisers Act, Article 5 of Chapter 93A of the General Statutes. Under the Act, only those persons choosing to complete the requirements for a State license or State certification may hold themselves out to be State-licensed or State-certified real estate appraisers. Persons who hold themselves out to be State-licensed or State-certified without first obtaining a license or certificate shall be guilty of a misdemeanor. To obtain a State license a person must complete 90 hours of classroom education in a course of instruction in real estate appraisal and satisfy such other requirements to render North Carolina State-licensed appraisers eligible to perform appraisals in connection with federal-related transactions requiring the use of State-licensed appraisers. The North Carolina Real Estate Commission may take disciplinary action against State-licensed or State-certified appraisers. The bill also makes changes to Article 4 of Chapter 93A consistent with new Article 5. Membership on the Commission must include one real estate broker or salesman with at least 5 years experience in real estate appraising in North Carolina. Application fees for a license to operate a real estate licensing school are increased to $250 for each school location and a new application fee of $50 for each prelicensing course is imposed. Annual renewal fees are set at an amount not to exceed $125 for each real estate school location and $25 for each real estate salesman, broker, or appraiser prelicensing course. The act was effective upon ratification, July 4, 1989, except for the provisions relating to real estate licensing programs, which are effective beginning July 1, 1990.

**Penalty up/engineering violations** (HB 932; Chapter 669): House Bill 932 rewrites G.S. 89C-21 clarifying that the Board of Engineering may impose a civil penalty against an engineer or land surveyor who is guilty of professional incompetence. The Board may suspend, revoke, or refuse to renew the license of a person declared insane or incompetent by the courts. The act also provides that the Board may levy civil penalties of up to $2,000 for certain violations of ethical and professional standards. The Board is required to consider the gravity of the offense, the appropriateness of a fine in light of the other sanctions imposed, the willfulness or maliciousness of the act, and any mitigating factors in setting the amount of the civil penalty. The Act was effective October 1, 1989, and shall apply to violations occurring on or after that date.

**Certify electrical contractors** (HB 983; Chapter 709): House Bill 983 makes numerous amendments to the electrical contractors statutes (Article 4, Chapter 87 of the General Statutes). Membership on the Board of Examiners of Electrical Contractors is changed to require that the representative of the N.C. Association of Electrical Contractors must qualify for an unlimited license. The sole proprietor member is changed to a representative of the Carolinas Electrical Contractors Association qualified for an unlimited license. All Board members must be citizens and residents of N.C. The Board will require written examination for certification of qualified individuals. Certification will be issued pursuant to the licensing classifications. The classifications for electrical contracting licenses are (1) limited, under which a licensee shall be permitted to engage in a single electrical contracting project not in excess of $17,500 and which the equipment in the contract is rated at

not more than 600 volts, (2) intermediate, in which the licensee may have a single project not in excess of $75,000 and (3) unlimited, in which a licensee may engage in any contracting project regardless of value. A person, partnership, firm or corporation may be licensed. The Board will also certify "listed qualified individuals" who are qualified individuals who have the specific duty to supervise and direct electrical contracting done by or in the name of a licensee of the Board on whose license the the qualified individual is listed. The Act also provides that, beginning in 1991, the Board, in its discretion, may impose a continuing education requirement for annual renewal of a license. The requirement is limited to no more than 10 hours in any 12 month period. The Act gives the Board the power of subpoena. It also specifies the grounds for refusing or revoking a certification or license, including engaging in business without a license, selling licenses, crimes of fraud or moral turpitude, malpractice or gross negligence. Hearings before the Board are to be conducted pursuant to the Administrative Procedure Act. The Board may accept a compromise of a charge instead of holding a hearing. If so, the accused must pay the Board a penalty of not more than $1,000. Penalties for violation of Article 4, are raised from a maximum of $50 per offense to a maximum of $300 per offense. The Act was effective upon ratification, August 1, 1989.

**Engineer/surveyor board membership** (HB 954; Chapter 108): House Bill 954 changes the qualifications to serve as a member on the State Board of Registration for Professional Engineers and Land Surveyors to require six years lawful practice. The act became effective July 1, 1989, and applies to members appointed on or after that date.

**General contractors redefined** (HB 1118; Chapter 109): House Bill 1118 increases the project cost minimum for applicability of general contractor license requirement from from $30,000 to $45,000. The act was effective upon ratification, May 16, 1989, and applies to bids made, projects undertaken, or permits applied for on or after this date.

**Plumbing/heating license change** (HB 1150; Chapter 623): House Bill 1150 gives the State Board of Examiners of Plumbing and Heating Contractors the authority to require experience as a precondition to taking the licensing exam. Experience is defined to be actual and practical work related to license categories and may include related work for which a license is not required. The experience required may not exceed two years, and half the requirement may be satisfied by academic or technical courses. The act also raises license fees to $75 per year in cities and towns with a population in excess of 10,000 and $50 in cities in towns of less than 10,000 population. Persons employed full time as local government plumbing, heating or mechanical inspectors and have qualifications from the Code Officials Qualification Board pay a $25 renewal fee. Examination fees are increased not to exceed $50. The act also provides that persons with a limited plumbing license who engage in plumbing not authorized by the license are guilty of a misdemeanor. The law had previously only applied to those with limited heating licenses. The act was effective upon ratification, July 11, 1989, and applies to applications submitted, fees due, and violations committed after that date.

**Business broker not securities dealer** (SB 52; Chapter 12): Senate Bill 52 amends G.S. 78A-2(2) to provide that the definition of "securities dealer" does not include a business broker with respect to transactions involving the sale of all of the stock of a closely held company, provided that stock is sold to no more than one person. The act was effective upon ratification, March 14, 1989.

**CPA accounting practice review** (SB 440; Chapter 624): Senate Bill 440 amends G.S. 93-12, establishing the Board of Certified Public Accountant Examiners. The bill provides for annual registration of each firm with maximum registration fees as follows:

Annual registration for 1 office firm: $200.00 maximum
Annual registration for each additional office: $25.00 maximum
Annual exemption application: $25.00 maximum

The bill also authorizes the Board to formulate rules and regulations for report and peer review of specified accounting practices with compliance being necessary to maintain registration after June 30, 1992. Firms that show they are not engaged in the public practice of accountancy may be exempted. This act became effective September 1, 1989.

**Architect registration** (SB 508; Chapter 62): Senate Bill 508 amends the requirements for registration as a licensed architect by deleting the provisions regarding a degree in architecture from an approved college or university degree program. The act was effective upon ratification, April 19, 1989, and applies to applications for licensure submitted on or after that date.

**Register consulting foresters** (SB 578; Chapter 169): Senate Bill 578 provides for State registration of consulting foresters. The bill amends G.S. 89B-2 and defines consulting forester for the purpose of registration under the act. The act became effective October 1, 1989, and applies to applications for registration submitted on or after that date.

**Protective Services Act amendment** (SB 605; Chapter 759): Senate Bill 605 makes several amendments to the Private Protective Services Act, Chapter 74C. The bill extends the grandfather clause for a person who held a valid private protective services license to October 1, 1989. The extension accommodates another change in the bill creating a new license, the Special Limited Guard and Patrol Profession. The new license allows persons licensed under the Alarm Systems statute to provide armed responders to burglar alarms without having to be licensed under the PPS statute as well. It does not require the experience necessary for a security guard and patrol license. The bill deletes the licensure exception for those persons employed exclusively by one employer in connection with the business affairs of the employer in the areas of armored car profession, counterintelligence service, courier service, security guard, guard dog business, and private investigator. The bill specifies that the qualified agent for the business seeking licensure must be a resident of this State and sets out service of process language. It removes the experience requirement for a private detective license because this requirement is established by rule. The bill incorporates into G.S. 74C-12 the reasons why a person seeking a private investigators license maybe denied and specifies that a sworn court official and a holder of a company police commission could not be licensed or registered under this Act. The bill sets forth the responsibilities of the PPS Board and the Attorney General with regards to the training and certification of "certified trainers." It would also create a training program for unarmed security officers allowing the Board to require applicants for a PPS license to complete a Board-approved training program. Finally the bill establishes that the licensee shall reimburse the Recovery Fund in full for any amounts paid from the Fund to an aggrieved party on behalf of the licensee. The licensee's license would be revoked or suspended until the reimbursement is made. The bill became effective October 1, 1989.

**Dental investigations confidential** (SB 638; Chapter 442): Senate Bill 638 adds subsection (g) to G.S. 90-41 and provides that the materials and information gathered by the N.C. Board of Dental Examiners in investigations is not a public record under Chapter 132 of the General Statutes. However, any notice to any licensee of a hearing in a proceeding, notwithstanding that it may contain information gathered in an investigation shall be a public record, as will any information received and admitted into evidence during any hearing before the board. The act was effective upon ratification, June 26, 1989.

**Amend podiatry licensure** (SB 681; Chapter 214): Senate Bill 681 provides that, effective January 1, 1992, applicants for licensure as podiatrists must complete a one year clinical residency and have passed the National Board Examination as a prerequisite to licensure. Those persons licensed to practice before January 1, 1992, who are actively involved in an approved postgraduate program shall be permitted to practice in the approved program pending its completion. The act was effective upon ratification, June 5, 1989.

**Amend Geologist Licensing Act** (SB 772; Chapter 579): Senate Bill 772 amends G.S. 89E-5(e) regarding payment of the expenses of the North Carolina Board for Licensure of Geologists. Funds received by the Board are to be deposited with a financial institution authorized to do business in N.C. Interest may be used to carry out provisions of Chapter 89E. Expenses shall not exceed the revenues of the Board in any one year. The Board may use the services of the Purchase and Contract Division for procurement of personal property in accordance with Article 3, Chapter 143 of the General Statutes. The bill also amends the minimum qualifications for licensure as a geologist. Applicants shall be required to have at least 5 years professional geological work, which shall include at least 3 years under the supervision of a licensed geologist or in charge of geological work approved by the Board. Some of the experience requirement may be met by undergraduate or graduate study. The act was effective upon ratification, July 5, 1989, and applies to applications received on or after that date.

**Psychologist licensing change** (SB 804; Chapter 554): Senate Bill 804 amends the Practicing Psychologists Licensure Act to allow an applicant, who has met all the requirements for licensure as a practicing psychologist except passing the exam at the practicing psychologist level, to be licensed as a psychological associate without having a masters degree if the applicant passes the exam at the associate level. The act was effective upon ratification, July 4, 1989.

**Marital/Family Therapy Board fees** (SB 806; Chapter 581): Senate Bill 806 increases the application fee for certification. The Marital and Family Therapy Certification Board shall charge an amount not to exceed $75. In addition, the Board may also charge an examination fee not to exceed $50. Renewal fees for certificates of qualification are increased to an amount not to exceed $50. The bill was effective July 5, 1989.

**Occupational Therapy Practice Act amended** (SB 825; Chapter 256): Senate Bill 825 amends the Occupational Therapy Practice Act as follows: (1) Includes the use of orthotic devices in definition of occupational therapy; (2) Deletes the requirement that the physician member of the Board of Occupational Therapy be an orthopedic medicine specialist and replaces it with "a physician licensed to practice medicine"; (3) Specifies that the public member cannot be licensed by the Board; (4) Directs the North Carolina Physical Therapy Association to develop a nomination procedure and

provide the Governor with a list of nominees for each position; and (5) Allows the Board to condition renewal of license on completion of continuing education requirement to be established by the Board. The act was effective upon ratification, June 7, 1989, and applies to Board appointments made and licenses renewed on or after that date.

**Optician/architect fees** (SB 884; Chapter 673): Senate Bill 884 increases the fees the State Board of Opticians is authorized to charge. The new fee schedule is as follows:

| | | |
|---|---|---|
| (1) | Examination | $125.00 |
| (2) | Initial License | 25.00 |
| (3) | License renewal | 60.00 |
| (4) | License issued to a practitioner of another state to practice in N.C. | 100.00 |
| (5) | Negotiation of an optional place of business | 25.00 |
| (6) | Application for registration as an optionary apprentice | 25.00 |
| (7) | Temporary license per G.S. 90-241(d) | 25.00 |

Senate Bill 884 also amends G.S. 89A-2(c) to delete the requirement that the seal of design that landscape architects are required to obtain upon registration bear the date of registration. G.S. 89A-6 is amended to increase the examination fee for landscape architects to $450.00. The sections of the act pertaining to opticians are effective October 1, 1989; the portions relating to landscape architects are effective upon ratification, July 25, 1989, and apply to applications for examinations filed on or after that date.

**Dental anesthesia regulation/fees** (SB 995; Chapter 648): Senate Bill 995 permits the Board of Dental Examiners to collect fees not exceeding $50 for each permit application and each renewal and fees not exceeding $350 for each office inspection. The act was effective upon ratification, July 15, 1989.

## Open Meetings/Public Records

**Expunction of juvenile records** (HB 338; Chapter 186): House Bill 338 provides a procedure for a minor to have his juvenile court records expunged where he was alleged to be undisciplined or delinquent, but the charge was dismissed. A procedure already existed for expunction of records where the young person was adjudicated to be undisciplined or delinquent. The bill was made effective July 1, 1989.

**Economic development records** (HB 630; Chapter 269): House Bill 630 adds a section to the Public Records Act stating that the act does not require or authorize a public agency to disclose information that constitutes a "trade secret" and is clearly marked as confidential when it is furnished to the public agency as part of a contract or bid for a contract or industrial development proposal. The bill was made effective June 8, 1989.

**Mental health confidentiality** (SB 424; Chapter 438): Senate Bill 424 authorizes a State mental health facility to furnish client-identifying information to the Department of Human Resources so that the Department can maintain an index of clients served by State mental health facilities. Any facility in the system may use that information only if necessary to appropriately care for the client. The bill was made effective October 1, 1989.

**Settlement records public** (SB 456; Chapter 326): Senate Bill 456 defines as public records the documents that reflect the settlement of a suit, administrative proceeding, or arbitration instituted against the State or one of its agencies. Medical malpractice actions against a public hospital are exempted. Agencies are forbidden to settle a case (except a medical malpractice case) on the condition that the settlement be kept confidential. The bill permits a court, however, to seal a settlement record if the court finds that the presumption of openness is overcome by an overriding interest that cannot be protected otherwise. The bill was made effective with regard to settlements finalized on or after July 1, 1989.

**State information management** (SB 541; Chapter 239): Senate Bill 541 repeals the powers and duties of the Secretary of Administration regarding telecommunications matters and re-establishes those powers and duties under the State Controller. The Controller is to coordinate telecommunications and facilitate cost-sharing arrangements of telecommunications for more than one State agency. The bill also renames the Computer Commission (calling it the Information Technology Commission), shifts it from the Department of Administration to the Office of the State Controller, and revises its membership. With that Commission's advice, the Controller is directed to establish cost-sharing arrangements for information services among agencies, taking care to protect the security of confidential records. (Section 60 of Senate Bill 525, Chapter 770 of the 1989 Session Laws, made an important technical correction in House Bill 541.) House Bill 541 was made effective June 6, 1989.

## Public Officials

**Legislative mileage change** (HB 243; Chapter 117): House Bill 243 lets a member of the General Assembly choose to be reimbursed for travel at 24 cents per mile for the first 15,000 miles and 11 cents per mile for the excess. This is a lower mileage rate than that allowed for other State employees, but it is within the limit set by Internal Revenue Service for business-travel deductions. The bill was effective May 22, 1989.

**Superintendent contract renewal** (HB 1072; Chapter 339): House Bill 1072 clears up an ambiguity over the power of school boards to renew or extend a superintendent's contract during the last year of the contract's term. The law stated that boards could renew the contract in the last year, but if any board members were to be elected or chosen during that last year, the renewal/extention decision should be delayed until they were sworn in. House Bill 1072 states that the Board must wait for the new members only if they were to be chosen and sworn in during the last 12 months of the contract. The bill was made effective June 15, 1989, and was to retroactively cover all contracts renewed since July 1, 1989.

**City manager on school board** (SB 152; Chapter 49): Senate Bill 152 was designed to accommodate a situation involving the city manager of King, who is also a member of the Stokes County Board of Education. It is stated, however, as a general law using a narrow classification because of a constitutional requirement. G.S. 160A-147 prohibits a city manager from serving in an elective office while he holds his appointive office as city manager. Senate Bill 152 carves out an exception allowing a city manager to serve on a county board of education if the following conditions are met:

* The manager's city has has no more than 10,000 people;
* That city is located in two counties; and
* The manager's home county has no more than 40,000 people.

Those criteria were drafted so that the bill would affect King and Stokes County with minimal disturbance to other jurisdictions. The bill was effective April 10, 1989.

## Public Utilities

**Fuel charge sunset extended** (HB 126; Chapter 15): House Bill 126 extended the sunset date on G.S. 62-133.2 from July 1, 1989 to July 1, 1991, allowing electric utilities to continue the annual fuel charge adjustment to electric utility rates. Based upon the actual cost of power for electrical generation, the fuel charge adjustment results in an increase or decrease of cost to the rate payer. The act was effective upon ratification, March 15, 1989.

**Competitive telecommunications services** (HB 415; Chapter 112): House Bill 415 allows the Utilities Commission to permit alternative means of regulation for telecommunications utilities and also permits pricing flexibility, detariffing of services, or both, where competitive telecommunications services are involved. This means that a departure from rate based ratemaking and strict tariffing of services may be permitted under particular circumstances and at the discretion of the Utilities Commission. The Utilities Commission may reinstate traditional regulation and ratemaking if necessary. The act was effective upon ratification, May 17, 1989.

**Natural gas planning** (HB 970; Chapter 338): House Bill 970 requires franchised natural gas local distribution companies to file regular reports with the Utilities Commission detailing plans for providing natural gas service in areas of their franchise territories in which natural gas service is not presently available. The Commission is to develop the rules to carry out the reporting procedure with the initial reports filed not later than January 1, 1990. Update reports are required at least every two years. The Utilities Commission is to develop a system for reviewing current levels of natural gas service and planning the orderly expansion of service to unserved areas. The act also required the Commission and the Public Staff to analyze and summarize the reports and to provide the analyses and summaries, together with status reports of natural gas service in the state, to the Joint Legislative Utility Review Committee. The act was effective upon ratification, June 15, 1989.

**Utilities' regulatory fees** (SB 1320; Chapter 787): Senate Bill 1320 establishes a system whereby the activities of the Utilities Commission and the Public Staff will be funded by fees paid by the regulated utility companies in the State. The fees are based upon a percentage of North Carolina jurisdictional revenues. The percentage rate is proposed by the Utilities Commission and set by the General Assembly. It

will be calculated to produce the funds necessary to operate the Utilities Commission and the Public Staff for the coming fiscal year. The fees are paid quarterly. For the 1989-90 fiscal year the fee is set in the act at twelve hundredth percent (0.12 %), with a minimum of $6.25 per quarter. The fees are to be held in a special fund by the State Treasurer but the money may be spent only pursuant to appropriation by the General Assembly. The Utilities Commission and the Public Staff remain under the provisions of the Executive Budget Act with the exception that unexpended surplus funds do not revert to the General Fund, but will remain in the Special Fund. The act became effective July 1, 1989, and has a sunset date of June 30, 1991.

**Dual party relay system (telephone service for hearing impaired)** (House Bill 1186; Chapter 599): House Bill 1186 provides for the establishment of a dual party relay system, which provides telecommunications services for the state's citizens with hearing or speech impairments. Such a system allows the hearing and speech impaired to use a telecommunications device for the deaf (TDD) to communicate through a special operator with persons who use a regular telephone. The impaired person uses a display terminal to "talk" with the special operator who then relays the message to the hearing person through the telephone. The procedure is reversed when the hearing person replies. The Department of Human Resources must initiate the project not later than February 1, 1990 by filing a petition with the Utilities Commission requesting the system. The system will be financed by a monthly surcharge on all telephone bills. The surcharge may not exceed $.25 per month. In addition, long distance revenues generated through the use of the system will also be used to pay for it. The funds may not be used to purchase TDD's for individual users, but only to operate the actual service. The Department of Human Resources may contract out the operation of the service. Regular reports must be made to the Utilities Commission and the Joint Legislative Utility Review Committee. The act was effective upon ratification, July 7, 1989.

**Statewide 911 service** (Senate Bill 509; Chapter 587): Senate Bill 509 establishes a method for local governments to provide 911 service and enhances 911 service in their communities and allows the cost of certain components of the service to be divided among and charged to the telephone subscribers in the community. The 911 service is a centralized system whereby one number (911) is dialed for all emergency response services. Enhanced 911 service is a more sophisticated system in which the location from which the call originates is automatically located for the dispatcher. In order to adopt an ordinance imposing a monthly 911 charge, the governing authority must either hold a special election or a public hearing. The supplier of the 911 service collects the charges on behalf of the local government and receives a one percent administrative fee for doing so. Use of these funds is limited to obtaining and maintaining the emergency telephone equipment and computer equipment and other nonrecurring costs of establishing a 911 system including "addressing" of the community. Funds may also be used to pay for the telephone service charges associated with the provision of the service. Funds may not be used to purchase real estate, remodel dispatching centers, hire, train, or compensate dispatchers, or for the purchase of mobile communications vehicles or emergency response vehicles. The term "addressing" refers to the providing of house numbers and street addresses for all locations in the community. This is necessary in order to ensure rapid response when emergency calls are received. The act was effective upon ratification, July 6, 1989.

**College telecommunications services** (HB 486; Chapter 451): House Bill 486 permits colleges, universities, and affiliated medical centers which are State owned or

are nonprofit to provide shared or resold telephone service on both contiguous and noncontiguous premises owned or leased exclusively by the institution. Services must be offered to students, guests housed in quarters furnished by the institution, patrons of hospitals or medical centers of the institution, or persons or businesses providing educational, research, professional, consulting, food or other support services to the institution, its students, or guests. The act requires that the charges from the local exchange company be set in the same manner as those provided for shared service offered to patrons of hospitals, nursing homes, rest homes, licensed retirement centers, members of clubs or students living in quarters furnished by educational institutions, or persons temporarily subleasing a residential premise. At the present time, such charges are on a flat rate basis, whereas charges for other shared or resold services are on a measured usage or message rate basis. The act was effective upon ratification, June 26, 1989.

**Alternative operator services** (HB 164; Chapter 366): House Bill 164 deals with alternative operator services and requires the Commission to promulgate rules to protect the public interest and to assure appropriate disclosure of the identity, services, rates, charges and fees of alternative operator services before issuing a certificate of public convenience and necessity to any alternative operator service. The Commission also has authority to require the owner of the facility where the telephone is located to display such notices. The act was effective upon ratification, June 20, 1989.

**No interference with peak load devices** (HB 597; Chapter 119): House Bill 597 makes it a misdemeanor for an unauthorized person to alter, bypass, interfere with or cut off any peak load management device installed by an electricity supplier. The act was effective October 1, 1989.

**Gas pipeline safety** (SB 332; Chapter 481): Senate Bill 332 amends Chapter 62 to specifically authorize Utilities Commission personnel to inspect and investigate any incident involving natural gas as well as records kept pursuant to federal regulations. Any report obtained is subject to public inspection but is not admissible in any civil or criminal proceeding arising from the incident. The act also increases the civil penalties for violations of rules and regulations concerning gas pipe line safety from $1,000 to $10,000 for each violation with the maximum increased from $200,000 to $500,000 for any continuing violation. This brings the civil penalties in line with the current federal regulations in order to allow the State to maintain its inspection and regulation agreements with the United States Government. The act was effective upon ratification, June 28, 1989.

**Exempt homeowners associations** (SB 496; Chapter 110): Senate Bill 496 makes it clear that a water or sewer system owned by a homeowners association that provides water or sewer service only to members or leaseholds of members is not subject to regulation by the Utilities Commission. Such services, however, remain regulated by other agencies of State government to ensure water quality and proper handling of sewage. The act was effective upon ratification, May 17, 1989.

**Capital cost of fuel/joint agency bonds** (SB 769; Chapter 329): Senate Bill 769 clarifies that municipal or joint agency bonds floated for the purpose of financing the construction of electric power generation, transmission or distribution systems may include the capital cost of nuclear fuel. The act was effective upon ratification, June 15, 1989.

## Purchases and Contracts

**Contractors' financial responsibility** (House Bill 571; Chapter 431): House Bill 571 expands the qualifications required of persons who sit for examination for licensure as a general contractor. In addition to competency, ability, and integrity, applicants must now show proof of financial responsibility to the satisfaction of the State Licensing Board for General Contractors. House Bill 571 also increases from $175,000 to $250,000 the single project value limit for holders of limited licenses. The bill became effective upon ratification, which was June 23, 1989.

**Contractor law/federal programs** (House Bill 808; Chapter 159): House Bill 808 provides that Article 1 of Chapter 87 of the General Statutes, governing general contractors, does not operate to prevent the State, its political subdivisions, or their contractors from complying with federal programs designed to assist in the development of drinking water or waste water facilities. The bill became effective upon ratification, which was May 29, 1989.

## State Property

**Single prime construction contracts** (SB 308; Chapter 480): Senate Bill 308 allows public contracts to be bid in the alternative as separate prime or single prime contracts. If the single prime bid is lower than the total of the bids received under the separate prime, the contract may be awarded to the single prime contractor. The bill provides that the State have a verifiable ten percent (10%) goal for participation by minority contractors or subcontractors (including women) in the total value of work for each project costing $100,000 or more, regardless of whether the contract(s) are awarded as single-prime or separate prime. The State cannot ignore the lowest responsible bid(s) in trying to reach the 10% minority participation goal. The bill was effective upon ratification, June 28, 1989, and will expire on June 30, 1995. During the 6-year period it is effective, various State agencies and private trade organizations will gather data to compare the costs of separate prime contracting versus single-prime contracting. The State Building Commission will submit an executive summary concerning the costs and related data to the General Assembly in 1995.

**Building Commission rules** (SB 186; Chapter 50): Senate Bill 186 authorizes the State Building Commission to adopt rules concerning the qualifications and experience for consultants who perform architectural and engineering studies for State construction projects. The bill also allows the State Building Commission to waive the requirement that a project designer or consultant be selected within 60 days of the time funds were appropriated for the project if no project site had been selected prior to the appropriation or the funds were appropriated for advance planning only. The bill also extends the 60-day designer/consultant selection rule to projects authorized by the Governor out of an agency's receipts (where no appropriations from the

General Fund are involved). This bill was effective upon ratification, April 10, 1989.

**Community college building review** (HB 289; Chapter 58): House Bill 289 gives the State Construction Office of the Department of Administration statutory authority to continue reviewing architectural plans, supervising the letting of contracts, and inspecting the work on local community college construction and renovation projects costing $50,000 or more. The board of trustees of the local community college cannot accept the project work until approved by the State Construction Office. This bill was effective upon ratification, July 1, 1989.

**Public building design changes** (SB 179; Chapter 24): Senate Bill 179 provides that repairs exceeding $45,000 in costs involving major structural changes in a public building's framing or support systems require specifications prepared by a registered architect or engineer. The bill also retains the current requirement that specification plans be prepared by a registered architect or engineer for any new public building or new addition exceeding $45,000 in costs or any repair work not involving major structural changes in the framing or support systems exceeding $100,000 in costs. The bill also authorizes any architect or engineer to conduct a building inspection and to issue a certificate of compliance, regardless of whether his or her seal appears on the plans and specifications. This bill was effective upon ratification, March 23, 1989.

**Zoning notice for State lands** (SB 187; Chapter 32): Senate Bill 187 requires Wake County, cities within Wake County, and cities in adjoining counties that exercise any zoning powers within Wake County to provide to the North Carolina Capital Planning Commission the following information: (i) copies of current zoning, subdivision, and related ordinances in effect as of July 1, 1989; (ii) copies of future ordinances within 30 days of their adoption; (iii) copies of proposed zoning or subdivision ordinances under consideration; and (iv) copies of housing standard ordinances applicable to State-owned structures in Wake County. Senate Bill 187 does not exempt the State from municipal and county zoning regulations. This bill became effective July 1, 1989.

**Energy policy extended to community colleges** (SB 177; Chapter 23): Senate Bill 177 extends the energy policy currently applicable to State buildings to local community college buildings. The State's energy policy requires an evaluation of the prospective costs of a State or community college building's lifetime energy consumption and mandates energy conservation practices in such buildings containing 40,000 or more gross square feet. This bill was effective upon ratification, March 23, 1989.

**Community college contract claims** (SB 180; Chapter 40): Senate Bill 180 provides for the adjustment and resolution of contract claims for local community college construction by the Director of the State Construction Office of the Department of Administration and provides for an appeal to Superior Court from the Director's decision. The adjustment and resolution procedures apply only to community college construction or repair projects costing $50,000 or more. The bill was effective upon ratification, April 4, 1989.

**Procurement of surveying services** (HB 972; Chapter 230): House Bill 972 requires governmental agencies to advertise for surveying services just as they are now required to do for architectural and engineering services. The governmental agency may select a surveyor based on the surveyor's competence and qualifications and negotiate a reasonable fee after the selection has been made. The North Carolina Department of Transportation and local government agencies may in writing exempt a project from these procurement requirements if the surveyor's fee on the project is estimated to be $30,000 or less or if the agency states its reasons for the exemption. This bill was effective upon ratification, June 5, 1989.

## State Symbols

**State dog** (SB 832; Chapter 773): Section 1 of Senate Bill 832 adopts the Plott Hound, which is a breed of dog that originated in the mountains of North Carolina in 1750, as the official dog of the State of North Carolina. Section 1 of Senate Bill 832 became effective upon ratification, which was August 12, 1989.

## Wildlife

**Wildlife rules enforcement** (HB 327; Chapter 221): House Bill 327 provides that all law enforcement officers of the State have authority to enforce rules regarding willful removal of, damage to, or destruction of property of the Department of Natural Resources and Community Development (now the Department of Environment, Health, and Natural Resources) or the Wildlife Resources Commission. House Bill 327 became effective upon ratification, which was June 5, 1989.

**Marine fisheries warning tickets** (HB 667; Chapter 308): House Bill 667 gives marine fisheries inspectors the option of issuing warning tickets to offenders of the laws and rules within inspectors' subject matter jurisdiction, when the statutory criteria for issuance of warning tickets has been met. House Bill 667 became effective October 1, 1989.

**Hunter safety course** (SB 338; Chapter 324): Senate Bill 338 requires first time buyers of hunting licenses to complete a hunter safety course prior to obtaining a license. The bill requires the Wildlife Resources Commission to institute and coordinate a statewide course in hunter safety and to issue certificates of competency and safety to persons who successfully complete the course. Senate Bill 338 will become effective July 1, 1991.

**Sales tax proceeds for Wildlife Resources Fund** (SB 44; Chapter 752): Section 159 of Senate Bill 44 modifies the amount of sales and use tax collections that the Secretary of Revenue is required to transfer quarterly to the State Treasurer for the Wildlife Resources Fund. Section 159 sets that amount at one fourth of $2,834,675 (under prior law was $1,960,000) plus or

minus the percentage of that amount by which total sales and use taxes increased or decreased during the preceding year. Section 159 of Senate Bill 44 became effective July 1, 1989.

**Replacement cost for swans** (SB 470; Chapter 113): Senate Bill 470 authorizes the Wildlife Resources Commission to adopt a temporary replacement cost for swans without prior notice or hearing or upon abbreviated notice or hearing; however, the bill requires the Commission to begin, at the same time it adopts a temporary replacement cost, normal rule-making procedures for adding a permanent replacement cost for swans to its replacement cost schedule. Senate Bill 470 became effective upon ratification, which was May 18, 1989.

**Managed hunts for game birds** (SB 486; Chapter 642): Senate Bill 486 authorizes the Wildlife Resources Commission to schedule managed hunts for migratory game birds when federal rules require the State to limit participation in seasons or bag limits for such birds. The bill requires random computerized selection of managed hunt participants from properly licensed applicants. Senate Bill 486 became effective upon ratification, which was July 15, 1989.

**Hunting of bear** (SB 514; Chapter 327): Senate Bill 514 directs the Wildlife Resources Commission to study the need to prohibit the hunting, taking, or killing of a bear weighing less than 100 pounds. The bill also increases the penalties for the unlawful taking, possession, transportation, sale, possession for sale, or purchase of a bear, bear part, or cougar. In the case of a bear or bear part, the minimum penalty is increased from $250 to $2,000 or imprisonment not to exceed two years, or both. In the case of a cougar, the minimum penalty is increased from $250 to $10,000 or imprisonment not to exceed two years, or both. Senate Bill 514 became effective October 1, 1989.

**Wildlife Resources Commission** (SB 560; Chapter 68): Senate Bill 560 revises the way in which the members are appointed to the Wildlife Resources Commission. The bill provides for appointment of members by the Governor and the General Assembly. The bill repeals prior law requiring the Governor to appoint all members from lists of nominees submitted by the residents of each wildlife district. Senate Bill 560 became effective upon ratification, which was April 25, 1989.

**Gas tax proceeds** (SB 1336; Chapter 788): Senate Bill 1336 increases the percentage of gas tax proceeds transferred annually to the Wildlife Resources Commission. The bill increases the percentage from one-eighth of one percent to one-sixth of one percent of the net proceeds of taxes on motor fuels. Senate Bill 1336 became effective upon ratification, which was August 12, 1989, and it applies to the proceeds of taxes levied on or after July 1, 1990.

## PENDING LEGISLATION

### Alcoholic Beverage Control

**Issuance of ABC permits** (House Bill 1139): House Bill 1139 proposes to require the ABC Commission to consider certain factors, such as kinds of businesses already in the neighborhood and zoning laws, in determining whether to issue an ABC permit.

**Sunday ABC sales** (House Bill 1193): House Bill 1193 proposes to prohibit the sale of alcoholic beverages on Sundays by a mixed beverage permittee who also sells motor fuels. This prohibition would apply only in cities or counties that prohibit the sale of malt beverages or wine on Sundays.

**Wine wholesalers** (Senate Bill 939): Senate Bill 939 proposes to modify the definition of "wine wholesaler" to include persons who contract to purchase a wine wholesale business.

### Courts/Judges

**Expand judicial divisions** (SB 226): Senate Bill 226 proposes to increase the number of judicial divisions in the State from four to five. Currently, each Superior Court Judge sits in rotation through the districts within his division. The effect of the bill would be to make each division smaller and therefore give each Superior Court Judge a smaller circuit.

### Elections

**Absentee ballot amendments** (HB 345): House Bill 345 proposes to make certain clarifying changes in the law designed to prevent voters from having trouble voting by absentee ballot.

**Voter registration facilitated** (HB 547): House Bill 547 proposes to allow persons to register to vote by mail and to expand the voter-registration program available through driver's-license examiners.

**Count votes for deceased candidate** (HB 1004): House Bill 1004 proposes to deal with the death of a primary candidate more than 30 days after the filing deadline by allowing the deceased to remain on the ballot. If the deceased won the party's nomination, the bill would let the proper party committee replace him on the general election ticket. Current law handles the death by counting votes only for surviving candidates in the primary.

**New rules for presidential electors** (HB 1028): House Bill 1028 proposes to elect North Carolina's presidential electors by Congressional district and at large, so that a presidential candidate would have the same number of electors as the number of congressional districts he carried, plus two if he carried the whole State.

**Mandatory voter I.D.** (HB 1215): House Bill 1215 proposes to require a voter to present an identification document if precinct officials do not recognize him.

**Residence for registration** (HB 1302): House Bill 1302 makes changes designed to prevent persons with multiple residences from registering to vote in a place where they spend less than half the year.

**Filing period shortened** (HB 374): House Bill 374 would shorten the filing period for candidates to two weeks. The period is now roughly four weeks.

## Historic Preservation

**Historic properties incentive** (HB 170): House Bill 170 amends G.S. 105-278, which allows designated historic property to be taxed at 50 percent of its true value, by lowering the percentage of true value to 40 percent and adding a requirement that the property must be maintained according to standards promulgated by the North Carolina Historic Commission and protected by easements meeting the definitions contained in the North Carolina Historic Preservation and Conservation Agreements Act.

## Licensing Boards

Each of the following bills, proposing to license a profession or occupation, was reviewed by the Legislative Committee on New Licensing Boards during the 1989 session for a recommendation on whether there is a need to regulate the profession or occupation. The Committee's recommendation is advisory only and is listed in parenthesis as favorable or unfavorable:

**Acupuncturists** (HB 1209): House Bill 1209 proposes to create a 5-member Acupuncture Licensing Board to license persons engaged in the practice of acupuncture. (Unfavorable recommendation)

**Crematory Operators** (HB 1307): House Bill 1307 proposes to create an 8-member North Carolina Crematory Authority as an independent agency within the Board of Mortuary Science to regulate persons involved in human cremations. (Favorable recommendation)

**Dieticians/Nutritionists** (HB 710/Senate Bill 655): House Bill 710 and Senate Bill 655 (companion bills) propose to create a 7-member North Carolina Board of Dietetics/Nutrition to license persons engaged in the practice of dietetics or nutritional care services. (Favorable recommendation)

**Electrologists** (SB 937): Senate Bill 937 proposes to create a 5-member North Carolina Electrolysis Certification Board to license persons engaged in the practice of electrolysis (hair removal). (Favorable recommendation)

**Fire Sprinkler Contractors** (HB 1299): House Bill 1299 proposes to authorize the existing State Licensing Board for General Contractors to license persons and firms engaged in installing, repairing, laying out, or restoring fire sprinkler systems. (Favorable recommendation)

**Fire Sprinkler Contractors** (SB 896): Senate Bill 896 proposes to authorize the existing State Board of Examiners of Plumbing and Heating Contractors to license fire sprinkler contractors. (Favorable recommendation)

**Masonry Contractors** (SB 969): Senate Bill 969 proposes to create a 7-member North Carolina State Board of Examiners in Masonry Contracting to license the owner or manager of a masonry contracting business. (Unfavorable recommendation)

**Nail Sculptors** (HB 687): House Bill 687 proposes to authorize the existing State Board of Cosmetic Arts to regulate persons engaged in the practice of nail sculpture. (Unfavorable recommendation)

**Radiologic Technologists** (HB 1070): House Bill 1070 proposes to create a 7-member North Carolina Board of Radiation Technology Examiners to license persons engaged in the practice of radiologic technology (use of X-ray equipment on humans and related medical- diagnostic uses of ionizing radiation). (Favorable recommendation)

**Respiratory Therapists** (HB 528): House Bill 528 proposes to create a 7-member State Board of Respiratory Care to license persons engaged in the practice of respiratory care under the orders of a physician. (Unfavorable recommendation)

## Open Meetings/Public Records

**Open meetings law changes** (HB 204): House Bill 204 proposes to make stricter the requirements that public bodies conduct their business in the open. The bill would considerably narrow the authority legislative committees have to meet in executive session, and it would bring the Council of State and the Governor's Cabinet under the Open Meetings Law.

**Legislator economic interest reports** (HB 351): House Bill 351 proposes to collect in the Legislative Library all the Economic Interest Statements that persons elected to the General Assembly filed with their county boards of elections when they gave notice of their legislative candidacies.

**Quality assurance committees** (SB 423): Senate Bill 423 proposes to immunize members of Quality Assurance Committees in mental health institutions and to guarantee the confidentiality of their proceedings, notwithstanding the Public Records Act.

**Workers' Comp/medical records** (SB 814): Senate Bill 814 proposes to allow insurers providing hospital, surgical, or medical insurance to have the right to inspect certain records of the Industrial Commission.

## Public Officials

**I.D. in legislative buildings** (HB 1289): House Bill 1289 passed the House as a joint resolution to request lobbyists, agency liaisons, reporters, and legislative staff to wear name tags in the State Legislative Building and the Legislative Office Building.

**Notary public rewrite** (SB 75): Senate Bill 75 rewrites the Notary Public Act. Among other changes, it would add the requirement that a notary must live and work in the State and drop the requirement that a notary must be registered to vote in the State.

**Ethics Committee jurisdiction** (SB 162): Senate Bill 162 proposes to expand the powers of the Legislative Ethics Committee so that the Committee may adopt rules specifying what conduct is unethical for legislators and may issue a public censure or private reprimand of a legislator found to be in violation.

**Law officers' oaths** (SB 1013): Senate Bill 1013 proposes to establish a separate and unique oath of office for law enforcement officers.

## Purchases and Contracts

**Force Account Limit Raised** (SB 303): Senate Bill 303 proposes to increase the threshold above which governmental units may not use their work force for construction projects. As introduced, the threshold would go from $75,000 to $125,000; as amended in the House, it would go to $100,000.

## Wildlife

**Wildlife protectors enforcement** (SB 340): Senate Bill 340 proposes to authorize wildlife inspectors and protectors to arrest for violations of G.S. 90-95, which makes it illegal to manufacture, sell or deliver, or possess certain controlled substances.

**Repeal fishing license exemption** (SB 484): Senate Bill 340 proposes to repeal the exemption from hook-and-line fishing license requirements for persons fishing in their county of residence using natural bait.

## STUDIES

Independent study commissions: (1) Energy Assurance Study Commission; (2) Legislative Ethics Committee; (3) Joint Legislative Commission on Governmental Operations; (4) Legislative and Judicial Salary Commission; (5) Legislative Committee on New Licensing Boards; (6) Study Commission on the State Personnel System; and (7) Joint Legislative Utility Review Committee.

Legislative Research Commission: (1) Public Employees' Day Care and Medical and Dental Benefits; and (2) State Capital Assets and Improvements.

# TAXATION

(Cindy Avrette, Sabra Faires, Martha H. Harris)

## RATIFIED LEGISLATION

### Bonds

**Municipal bond refunds** (SB 768; Chapter 735): Senate Bill 768 enables municipalities and joint agencies to issue refunding bonds to pay the interest on outstanding bonds as well as to replace existing bonds. Before a municipality or joint agency can issue this type of refunding bond, the Local Government Commission must conduct an evidentiary hearing and upon the evidence presented find and determine that:

(1) The debt will be managed in strict compliance with the law;

(2) The requirements of the Joint Municipal Electric Power and Energy Act as to the issuance of bonds, the bond details to be disclosed, and the security of the bonds will be satisfied;

(3) The estimated revenues of the project or of the municipality's electric system will be sufficient to service all bonds to be outstanding after the issuance of the refunding bonds;

(4) The application of the proceeds of the refunding bonds will result in the deferral of recovery in rates of a portion of the capital costs of the project for a reasonable period of time;

(5) All capital costs of the project will be recovered over a period ending, and all bonds issued for the project will mature, no later than the end of the then estimated useful economic life of the project;

(6) The issuance of the bonds is in the best interest of the municipality's or joint agency's electricity customers; and

(7) The bond rating of the State and its several political subdivisions and agencies allowed to issue bonds should not be adversely affected.

Any refunding bonds issued to pay the interest on outstanding bonds must be issued on or before June 30, 1992. Also, the latest maturity date for the bonds could be no later than the latest maturity date of other bonds outstanding for the same project.

This act became effective August 7, 1989, the date it was ratified.

**Water district-2/3 bonds** (HB 469; Chapter 470): House Bill 469 extends to county water and sewer districts and metropolitan water districts the same authority given to counties and cities to issue bonds in an amount not to exceed 2/3 of the amount by which the outstanding debt of the issuing authority was reduced in the preceding fiscal year.

This act became effective June 27, 1989, the date it was ratified.

## Income and Franchise Taxes

**Income tax based on federal law** (SB 51; Chapter 728): Senate Bill 51, the Tax Fairness Act of 1989, conforms the State individual income tax to the federal income tax law to simplify calculation of the tax, provide tax relief to low income taxpayers, and enhance the Department of Revenue's ability to enforce the law. The act revises the Individual Income Tax Act, effective with the 1989 tax year, to tax at the rates of 6% and 7% each taxpayer's taxable income, which is calculated as the individual's federal taxable income attributable to North Carolina, minus amounts that are exempt from State income tax, and plus amounts that are taxed by the State but not by the federal government. These revisions have the effect of modernizing the tax system and adjusting it for inflation by increasing personal exemptions and the standard deduction. As a result, taxes will be reduced for approximately 65% of low to moderate income taxpayers and increased to some extent for the remaining taxpayers. Tax exempt bonds and social security benefits will remain exempt from tax.

The act also authorizes married couples to file joint returns, makes conforming changes to the income tax provisions applicable to Subchapter S Corporations and estates and trusts, increases the child and dependent care tax credit from 7% to 10% for pre-school children and disabled dependents, and makes conforming changes to other parts of Chapter 105 of the General Statutes.

The act was amended by Chapter 792 of the 1989 Session Laws to exempt from tax $4,000 of state, local, and federal retirement benefits or $2,000 of private retirement benefits. Because this act will change the amounts of tax that should be withheld or paid as estimated tax for 1989, it provides that no estimated tax penalty will be imposed for an underpayment for the 1989 tax year to the extent the underpayment is due to the changes made by the act.

This act is effective for taxable years beginning on or after January 1, 1989.

**Retirement tax changes** (HB 1311; Chapter 792): House Bill 1311 brings North Carolina tax law into compliance with the United States Supreme Court ruling in Michigan v. Davis, 109 Sup.Ct. 1500 (1989), on March 28, 1989, that the state must treat federal employees and state employees equally for tax purposes. The Court held that Michigan's tax law violated the constitutional doctrine of intergovernmental tax immunity, which prohibits taxes imposed directly on one sovereign by another and taxes that discriminate against one sovereign or those with whom it deals. The case implicated the North Carolina income tax system, which provided full tax exemptions to retirement benefits of State and local government retirees, but only partial exclusions for federal retirees.

In order to bring North Carolina tax law into compliance with the new rule, this act allows an equal tax exclusion of $4,000 for all public retirees---state, local, and federal. To help offset the impact of the tax on state and local retirees who formerly paid no State income tax on their retirement benefits, the act provides for an increase in the amount of benefits paid to these retirees. In addition, in order to partially equalize the treatment of private retirees (who previously received no tax exclusion) and public retirees, the act allows a $2,000 tax exclusion for private retirement benefits.

In the case of a married couple filing a joint return, the maximum amounts of the exclusions provided by this act apply separately to each spouse if both

receive retirement benefits. The $4,000 exclusion for public retirement benefits and the $2,000 exclusion for private retirement benefits are not cumulative, however. A person who receives both public and private retirement benefits is entitled to a maximum exclusion of $4,000.

This act is effective for taxable years beginning on or after January 1, 1989.

**Tax amnesty program** (HB 272; Chapter 557): House Bill 272, called the "Fair Share Tax Act of 1989," seeks to ensure that all taxpayers are paying taxes owed by them. To achieve this purpose, the act creates a one-time tax amnesty program, raises the criminal penalties for failure to pay taxes, and appropriates funds to the Department of Revenue to collect taxes.

The amnesty program established by the act applies during the 3-month period from September 1, 1989, through December 1, 1989. During this period, a person who pays previously unreported, underreported, or assessed but unpaid taxes, plus the interest due on the taxes, cannot be criminally prosecuted. In addition, a person who prepares a tax return submitted under the amnesty program cannot be prosecuted for willfully aiding another to evade taxes.

The amnesty program applies to almost all taxes collected by the State. It applies to inheritance and gift taxes, State privilege license taxes, excise taxes, franchise taxes, income taxes and income withholding taxes, State and local sales and use taxes, intangibles taxes, motor fuels taxes, and motor fuel inspection taxes. It does not apply to insurance gross premium taxes. The amnesty program is expected to generate $25,000,000 in one-time revenue.

Effective with the end of the amnesty period on December 2, 1989, the act increases several of the criminal penalties that apply to the failure to pay taxes. The specific increases are:

| Violation | Former Law | New Law |
|---|---|---|
| Attempt to evade or defeat tax G.S. 105-236(7) | Misdemeanor: $1,000 fine, 6 months imprisonment, or both Presumptive: 2 years | Class I felony: $25,000 fine, 5 years imprisonment, or both |
| Willful failure to collect, withhold, or pay over tax G.S. 105-236(8) | Misdemeanor: $1,000 fine, 2 years imprisonment, or both | Misdemeanor: Unlimited fine, 2 years imprisonment, or both. Also extends time within which a person can be prosecuted from 2 years to 3 years |
| Willful failure to file return, supply information, or pay tax G.S. 105-236(9) | Misdemeanor: Unlimited fine, 2 years imprisonment, or both | Misdemeanor: Same punishment, but extends time within a person can be prosecuted from 2 years to 3 years |
| Willful aiding or assisting in filing fraudulent return or document G.S. 105-236(9a) | Misdemeanor: Unlimited fine, 2 years imprisonment, or both | Class J felony: $10,000 fine, 3 years imprisonment, or both Presumptive: 1 year |

To ensure better compliance with the tax laws, the act couples the increased criminal penalties with appropriations to the Department of Revenue for additional enforcement personnel and related costs. The act appropriates $5,071,142 for the 1989-90 fiscal year and $4,914,908 for the 1990-91 fiscal year. In addition, the act authorizes the Department of Revenue to use up to $1,100,000 of income tax revenue to publicize and pay for the tax amnesty program. The increased criminal penalties coupled with better enforcement are expected to generate additional recurring revenues of $69,000,000 each fiscal year.

The Tax Amnesty Program became effective upon the bill's ratification. The increase in the criminal penalties applicable to the failure to pay taxes becomes effective December 2, 1989. The provisions appropriating money to the Department of Revenue for enforcement personnel and related costs became effective July 1, 1989.

**Income in respect of decedent** (SB 894; Chapter 718): Senate Bill 894 allows a taxpayer to deduct from federal taxable income the amount of inheritance tax paid by the taxpayer on certain property, such as an installment note, that generates future income and an accompanying income tax. The deduction is allowed from federal taxable income because, with the enactment of Chapter 728 of the 1989 Session Laws, North Carolina personal income tax is a percentage of federal taxable income. Federal law allows a similar deduction for the amount of federal estate tax attributable to income-producing property.

The principle underlying this deduction is the avoidance of double taxation of the same property by both an inheritance tax and an income tax. Under prior law, a person who inherited an installment note or other type of property that represents a right to future income paid inheritance tax upon receiving the property and then paid income tax upon receipt of the income. This act eliminates this double taxation aspect by providing an income tax deduction for the amount of inheritance tax paid on the property.

This act is effective for taxable years beginning on or after January 1, 1989.

**Modify jobs tax credit** (HB 198; Chapter 111; Senate Bill 740; Chapter 753): These bills made several changes to the income tax credits for corporations and individuals that create jobs in severely distressed counties. These credits, set out in G.S. 105-130.40 and G.S. 105-151.17, respectively, allow a credit of $2,800 to eligible taxpayers for each additional full time employee hired in a severely distressed county. A severely distressed county was defined as a county whose combined unemployment and per capita rankings were among the twenty worst in the State and that had an unemployment rate of 7% or higher. These acts made the following changes to the credit:

(1) House Bill 198 removed the requirement that, to be eligible for the credit, a taxpayer must be engaged in manufacturing, agribusiness, processing, warehousing, wholesaling, retailing, research and development, or a service-related industry, as determined by the Employment Security Commission. This requirement was meaningless because the Employment Security Commission determined that there were no businesses that failed to fall into one of the categories. The credit was further amended by Senate Bill 740 to limit the credit to taxpayers engaged in manufacturing goods or in an industrial activity or to taxpayers who obtained this credit for taxable years 1988.

(2) House Bill 198 deleted a provision requiring the Employment Security Commission to calculate and report to the Department of Revenue the number of new jobs created by employers. Instead, taxpayers are

required to maintain and make available to the Secretary of Revenue records to verify the taxpayer's eligibility for the credit. The burden of proving eligibility for the credit and the amount of the credit was placed on the taxpayer.

(3) House Bill 198 deleted the requirement that a county must have an unemployment rate of 7% or more to be designated a severely distressed county. Senate Bill 740 increased the number of severely distressed counties from 20 to 25.

These acts are effective for taxable years beginning on or after January 1, 1989.

**Repeal obsolete tax exemptions** (HB 330; Chapter 582): House Bill 330 clarifies existing law and repeals obsolete corporate franchise and corporate income tax credits. Section 1 repeals G.S. 105-129.1 which provides a refund to a manufacturer on franchise taxes paid on natural gas used as an ingredient or component (raw material) of a manufactured product. This provision has not been used in several years.

Section 2 amends the term "private telecommunications service" by deleting language that limits such service to priority use of channels between exchanges. The change will clarify that all private telecommunications services are subject to the 6.5% sales tax levied under G.S. 105-164.4(4c).

Section 3 of the act repeals the tax credit provisions of G.S. 105-120(b) which apply where a city or town has sold at public auction the right to engage in a telephone business in the town for a percentage of the receipts and is now collecting revenue not exceeding one percent of the receipts. Under prior law, the amount of revenue the municipality collected from its percentage of the gross receipts was credited to the business entity against the franchise tax due the State. This credit provision was enacted in 1931 but there is no known use for the provision at this time. In recent years, this provision has never been used by the taxpayers liable for the franchise tax levied under G.S. 105-120(b).

This act is effective for taxable years beginning on or after January 1, 1989.

**Home loan bank deposits tax exempt** (SB 50; Chapter 769): Senate Bill 50 exempts from income taxation the amount of interest earned by savings and loan associations on deposits they maintain at the Federal Home Loan Bank of Atlanta. To be eligible for this exemption, the savings and loan association must meet the qualified thrift lender test set forth in the federal Financial Institutions Reform, Recovery and Enforcement Act of 1989 (Pub. L. No. 101-73).

This act is effective for taxable years beginning on or after January 1, 1989.

**Update IRC reference** (HB 4; Chapter 36): House Bill 4 rewrites the definition of the Internal Revenue Code used in State tax statutes to change the reference date from January 1, 1988, to January 1, 1989. Updating the reference makes recent amendments to the Internal Revenue Code applicable to the State to the extent State tax law previously tracked federal law. This update has the greatest effect on State corporate and individual income taxes because these taxes are a percentage of federal taxable income and are therefore closely tied to federal law.

This act became effective upon ratification, March 30, 1989.

**Increase conservation tax credit** (SB 405; Chapter 716): Senate Bill 405 increases both the maximum individual and the maximum corporate income tax credits allowed for certain donations of property from $5,000 to $25,000. The credit applies to property that is donated to a governmental entity or to a nonprofit conservation

organization and can be used for public beach access, public access to public waters or trails, fish and wildlife conservation, or other similar land conservation purposes.

The credit allowed is 25% of the fair market value of the donated property, not to exceed $25,000. The credit cannot reduce the taxpayer's income tax liability below zero and any excess credit cannot be carried forward to subsequent years.

This act is effective for taxable years beginning on or after January 1, 1989.

**Tax checkoff consent needed** (SB 1163; Chapter 713): Senate Bill 1163 provides that a paid preparer of tax returns, such as an accountant or attorney, may not designate on the taxpayer's income form that $1.00 of the amount of tax paid shall or shall not be used for the North Carolina Political Parties Financing Fund unless the taxpayer or the taxpayer's spouse consents to the designation.

This act is effective beginning with the 1989 tax year.

**Define muscular dystrophy** (SB 731; Chapter 627): Senate Bill 731 provides a technical definition of muscular dystrophy, specifying forty neuromuscular diseases, for the purposes of an individual income tax exemption under G.S. 105-149(a)(8i). G.S. 105-149 was later repealed, however, by the Tax Fairness Act of 1989, Chapter 728 of the 1989 Session Laws.

## Inheritance and Gift Taxes

**Inheritance tax settlements** (HB 1383; Chapter 615): House Bill 1383 requires inheritance taxes to be assessed on the basis of a settlement agreement made by two or more persons who contest the distribution of a decedent's property under a will. Without the act, inheritance taxes would be assessed on the basis of who was given the property by the will rather than on who actually received the property under the settlement agreement. The act thus conforms North Carolina law to federal law on the subject of recognizing settlements in determining the amount of estate or inheritance tax due.

Before a settlement is used to determine the amount of inheritance tax due, however, the taxpayer must prove to the Secretary of Revenue that the settlement was made in good faith to resolve an actual controversy over the distribution of a decedent's property and was not made for the purpose of avoiding taxes. A taxpayer who disagrees with the Secretary's determination of whether the settlement was a "good faith" settlement can appeal the determination to court.

The amount of inheritance tax due on the transfer of property by a decedent depends on to whom the property is given. Transfers to some recipients, such as a spouse or a charity, are exempt from inheritance tax. Transfers to other recipients are taxed at varying rates depending on the relationship of the recipient to the decedent. Transfers to a child, for example, are taxed at a lower rate than a transfer to an unrelated friend.

The act does not affect the determination of inheritance tax due when a court decision directs how property is to be distributed. In that circumstance, inheritance tax is payable based on who receives property under the decision. The act avoids the necessity of having a court decision, however. The persons who dispute the distribution made by the will can settle the dispute outside of court and have the settlement determine the amount of tax payable.

This act applies to the estates of decedents dying on or after October 1, 1989.

**Generation skipping transfers** (SB 893; Chapter 531): Senate Bill 893 makes technical corrections to the State's generation skipping transfer tax statute. It conforms the language and the code references in the North Carolina statute to the Internal Revenue Code. It imposes the tax not only upon a taxable distribution and a taxable termination, but also upon a direct skip as determined under the provisions of the federal generation skipping transfer tax.

This act is applicable to decedents dying on or after the date of June 30, 1989.

## Intangibles Tax

**Venture capital tax exemption** (HB 945; Chapter 704): House Bill 945 exempts venture capital firms from paying the State's intangibles tax. A venture capital firm, as defined in this act, is a person, corporation, partnership, limited partnership, or other entity that:

(1) Invests in the securities of a company for the sole purpose of selling the securities in the future,
(2) Is not organized to make a permanent investment in one type of company,
(3) Is organized for the purpose of investing more than 50% of all its investments, other than its idle funds, in the equity securities or subordinated debt of companies that at the time of the investment:
    (a) had no more than 100 owners of its securities, excluding officers, directors, partners, and employees;
    (b) were not financial institutions; and,
    (c) did not derive their income or value primarily from real estate, and
(4) Has the remainder of its investments in shares of stock or other investments on which no tax either is imposed or is payable under this Article.

The venture capital firm can rely on the written representations of a company as to the number of owners of its securities.

This act is effective for taxable years beginning on or after January 1, 1989.

## Motor Fuel Taxes

**Highway trust fund** (HB 399, Chapter 692): House Bill 399, as amended by Chapter 700, 770, and 788, addresses the State's highway needs and raises sufficient revenue to meet the State's General Fund needs. To provide revenue for the General Fund, the act increases the maximum sales tax payable on the sale of a boat, an aircraft, a railway car, or a locomotive from $300 to $1,500 effective August 1, 1989, it increases the estimated income tax filing threshold from 80% of taxes payable to 90% effective for taxable years beginning on or after January 1, 1990, and raises the short-term rental rates on motor vehicles from 2% to 8%.

To meet the State's highway needs, the act creates the North Carolina Highway Trust Fund and the Joint Legislative Highway Oversight Committee, raises taxes and fees to provide revenue for the Trust Fund, and specifies how revenue in the Trust Fund is to be used. These provisions are in large part a product of the Highway Study Commission. Briefly, the highway provisions of the act:

(1) Increase the motor fuels tax by 5.2¢ per gallon;

(2) Repeal the 2%, $300 maximum sales tax on motor vehicles and replace it with a 3%, $1,000 maximum highway "use" tax payable when a certificate of title is issued for a motor vehicle;
(3) Increase the fees for issuing a certificate of title from $5.00 to $35.00 and increase related fees from varying amounts to $10.00.

The increase in the sales tax cap on boats, aircraft, railway cars, and locomotives and the gasolines tax increase became effective August 1, 1989. The increase in the various title taxes became effective August 15, 1989. The titling tax, also known as the highway use tax, became effective October 1, 1989.

**Vehicle tax exemption change** (HB 1668; Chapter 782): House Bill 1668 gives a retailer who sells a motor vehicle to a nonresident a second chance to report the sale to the Department of Revenue, thereby preserving the conditional exemption of the sale of the motor vehicle from sales tax. Under prior law, G.S. 105-164.13(32) exempted from sales tax motor vehicles sold to nonresidents for immediate transportation to another state. To obtain the exemption, however, a retailer who sold a motor vehicle to a nonresident had to report the sale by affidavit to the Department of Revenue when filing the monthly sales tax return for the month in which the sale occurred. If the report was not filed with the proper monthly return, the exemption did not apply and the retailer was liable for the sales tax.

This act changes the conditional exemption in G.S. 105-164.13(32) to allow a retailer who did not report the sale of a motor vehicle to a nonresident with the proper monthly sales tax return to report the sale within 30 days after the Department of Revenue discovers the omission and still obtain the sales tax exemption for the vehicle. Although a motor vehicle reported within this "second-chance" period is exempt from sales tax, the retailer or the purchaser must pay a penalty of 25% of the amount of sales tax that would otherwise be due.

Because the Highway Trust Fund bill repeals the sales tax on motor vehicles effective October 1, 1989, the problem of omitted reports will eventually disappear. It will continue for a few years beyond the repeal of the tax, however, because it may be two years after a sale to a nonresident occurs before the Department audits the retailer who made the sale and discovers the retailer's failure to submit the report.

The act is effective August 12, 1989, and applies to discoveries of omitted reports made on or after that date. It does not apply to assessments of tax made before that date or to taxes already paid.

**Cherokee tax refund** (SB 740; Chapter 753): Senate Bill 740 authorizes the Department of Revenue to enter into a memorandum of understanding or an agreement with the Eastern Band of Cherokee Indians to make refunds of motor and special fuel taxes paid by the Indians for fuel purchased on the reservation. The refunds will be made to the Tribe on behalf of its members who reside on or engage in otherwise taxable transactions within Cherokee trust lands.

Any agreement would have to be approved by the Tribal Council and signed by the Chief on behalf of the Tribe. Although individual members would still be entitled to a refund, any individual refund amounts would be deducted from the amounts to be refunded to the Tribe. All refunds would be withdrawn from the Highway Fund.

The United States Supreme Court has ruled on numerous occasions that Indians and Indian property on an Indian reservation are not subject to state taxation unless Congress expressly grants this authority to the state. Congress has not granted North Carolina the authority to levy motor fuel taxes on the Eastern Band of Cherokee

Indians. The Eastern Band of Cherokee Indians is the only federally recognized Indian tribe in North Carolina.

This act is retroactive to January 1, 1985.

**Uniform fuel use tax form** (HB 58; Chapter 7): House Bill 58 amends the motor carrier fuel use tax in order to enable North Carolina to adopt a uniform tax reporting form. In Section 19 of the federal Motor Carrier Act of 1980, Congress directed the United States Secretary of Transportation and the Interstate Commerce Commission to study differing state regulations and requirements imposed on interstate motor carriers. As a result, the National Governors' Association formed a working group on state truck issues. The working group developed a consensus agenda and recommended, among other things, that the states adopt a uniform fuel use tax reporting form. The National Conference of State Legislatures has endorsed this recommendation as well.

Before North Carolina could adopt a uniform reporting form, it needed to make minor changes in the scope of the fuel use tax and in the deadline for applying for refunds. This act replaced the current definition of motor carrier in G.S. 105-449.37, one who operates "a passenger vehicle with seating capacity for more than 20 passengers, a road tractor, a tractor truck, or a truck with more than two axles", with a new definition, one who operates "a motor vehicle used, designed, or maintained for transportation of persons or property and (i) having two axles and a gross vehicle weight or registered gross vehicle weight exceeding 26,000 pounds, (ii) having three or more axles regardless of weight, or (iii) used in combination when the weight of the combination exceeds 26,000 pounds gross vehicle weight." This act enables the Department of Revenue to eliminate paperwork and simplify the refund process by altering the tax reporting form to provide space on the face of the form for the taxpayer to request a refund.

This act shall become effective January 1, 1990.

**Allow fuel tax compacts** (HB 556; Chapter 667): House Bill 556 permits the Secretary of Revenue to enter into a "base state compact" with other states concerning administration of the motor carrier road tax, also called the motor fuel use tax, levied under Article 36B of Chapter 105. The road tax is levied on the amount of fuel used by the motor carrier in its operations in this State and is levied at the same rate as the excise tax on motor fuel purchased in this State. A credit is allowed against the road tax for the amount of tax paid on fuel purchased in this State. Thus, only motor carriers who drive in this State and do not purchase in this State the amount of gas used in driving in this state have a net road tax liability.

The act states that an agreement can specify the method for determining the base state for a motor carrier, set recordkeeping and audit requirements, set penalties and interest rates, permit the exchange of taxpayer information among the member states, and determine a method by which the base state will collect and distribute all road taxes or motor fuel use taxes due the member states in which the motor carrier operates. The agreement cannot change the amount of any tax or fee payable to this State by a motor carrier, however.

The act changes the definition of "motor carrier" used in the motor vehicle laws to match the changes made to that term in the tax laws by Chapter 7 of the 1989 Session Laws. Chapter 692 of the 1989 Session Laws, however, repeals the change made by this act in the definition of "motor carrier" because it repeals the "decal" fee effective January 1, 1990, to which the definition applies.

This act became effective July 24, 1989.

## Privilege License and Excise Taxes

**Privilege license tax revision** (HB 512; Chapter 584): Senate Bill 584 amends many of the privilege license tax provisions to:

(1) Eliminate tax rates based on the population of the city where the business is located or other variables such as seating capacity.
(2) Consolidate 10 of the privilege license taxes into one "general business" $50.00 license tax under new G.S. 105-102.5.
(3) Increase many privilege license taxes that were below $50.00 to $50.00.
(4) Repeal two privilege license taxes.

VARIABLE PRIVILEGE LICENSE TAXES CHANGED TO FLAT RATE:

Under the prior law, at least 18 privilege license taxes were based on population or other variables, such as seating capacity or number of vehicles used. For those taxes based on population, the amount of the tax increased as the population of the city where the business was located increased. If a business was located in an unincorporated area, the smallest tax based on population applied to the business. To administer the license taxes that were based on population, the Department of Revenue applied the population figures resulting from the most recent 10-year census.

The act changes all tax rates based on population and most of the tax rates based on other variables to a single rate that applies regardless of the population where the business is located or of other factors peculiar to each taxpayer. The new tax rate is generally a rate approximately midway between the former lowest and highest rates. If the former highest rate was less than $50.00, however, the new rate is $50.00. In many instances, therefore, taxpayers in the more populous cities will enjoy a tax decrease while those in the less populous cities experience a tax increase.

The privilege license taxes that previously varied on the basis of population or other factors and that have been changed to a single rate of tax are listed below along with the new tax rate.

| License Tax | Minimum and Maximum Based on Population | New Rate |
|---|---|---|
| Drive-in Movie<br>G.S. 105-36.1 | Minimum: 67¢ per car<br>Maximum: $1.34 per car | $100.00 |
| Movie Theater<br>G.S. 105-37 | Minimum: $62.50 per theater<br>Maximum: $1,200 per theater | $200.00 per theater |
| Athletic Events, Dances, and Other Entertainment<br>G.S. 105-37.1 | Minimum: $10.00 per place<br>Maximum $50.00 per place | $50.00 per place |
| Circuses and Other Travelling Shows<br>G.S. 105-38 | Minimum: $7.50 per motor vehicle<br>Maximum: $300.00 per railroad vehicle | $50.00 each day a performance is given |
| Undertakers and Retail Dealers in Coffins<br>G.S. 105-46 | Minimum: $ 10.00<br>Maximum: $100.00 | $50.00 |

| | | | |
|---|---|---|---|
| Pawnbrokers<br>G.S. 105-50 | Minimum:<br>Maximum: | $200.00<br>$400.00 | $275.00 |
| Security Dealers Without Ticker Tape Service<br>G.S. 105-67(a) | Minimum:<br>Maximum: | $ 25.00<br>$300.00 | $200.00 |
| Security Dealers With Ticker Tape Service<br>G.S. 105-67(d) | Minimum:<br>Maximum: | $150.00<br>$600.00 | $450.00 |
| Dry Cleaners<br>G.S. 105-74 | Minimum:<br>Maximum: | $ 7.50<br>$75.00 | $50.00 |
| Laundries<br>G.S. 105-85 | Minimum:<br>Maximum: | $ 6.25<br>$62.50 | $50.00 |
| Placing Outdoor Advertising In a City<br>G.S. 105-86 | Minimum:<br>Maximum: | $ 5.00<br>$200.00 | $70.00 |
| Automotive Service Stations<br>G.S. 105-89(a) | Minimum:<br>Maximum: | $10.00<br>$ 5.00 times the number of fuel pumps | $50.00 |
| Wholesale Auto Parts Dealers<br>G.S. 105-89(b) | Minimum:<br>Maximum: | $ 25.00<br>$125.00 | $75.00 |
| Motor Vehicle Dealers<br>G.S. 105-89(c) | Minimum:<br>Maximum: | $ 25.00<br>$200.00 | $100.00 |
| Motorcycle and Motorcycle Parts Dealers<br>G.S. 105-89.1 | Minimum:<br>Maximum: | $10.00<br>$40.00 | $50.00 |
| Employment Agencies<br>G.S. 105-90 and -90.1 | Minimum:<br>Maximum: | $100.00<br>$500.00 | $300.00 |
| Plumbers, Heating Contractors, and Electricians<br>G.S. 105-91 | Minimum:<br>Maximum: | $ 7.50<br>$40.00 | $50.00 |

FLAT-RATE PRIVILEGE LICENSE TAXES INCREASED TO $50:

The act increases most of the privilege license taxes that were less than $50.00 to that amount to make collection of the taxes cost effective. In addition, the act increases several minimum taxes to $50.00 for the same reason.

The act does not increase a few taxes to $50.00, such as the $15.00 tax on electronic video games, because, although the rate itself is less than $50.00, the rate applies to each place or taxable article and a taxpayer who applies for a privilege license includes all places and articles on the same application and therefore generally pays more than $50.00. These taxes are therefore cost effective to collect despite the low rate.

The flat-rate privilege license taxes that were increased to $50.00 are:

(1) Attorneys, doctors, dentists, veterinarians, opticians, registered engineers and land surveyors, landscape architects, photographers, realtors, accountants, morticians, and certain other professionals, G.S. 105-41. The former tax was $25.00.

(2) Private detective or private investigator, G.S. 105-42. The former tax was $25.00.

(3) Installing, servicing, monitoring, or responding to alarms, G.S. 105-51.1. The former tax was $25.00.

(4) Contractor project licenses for projects costing less than $10,000, G.S. 105-54(b). The former tax was $25.00.

(5) Day-care facilities caring for fewer than 50 children, G.S. 105-60. The former tax was $10.00 for fewer than 30 children and $60.00 for 30 to 49 children.

(6) Hotel and motel minimum privilege license, G.S. 105-61. The former tax was $2.00 per room, with a minimum of $10.00. The new tax is $2.00 per room, with a minimum of $50.00.

(7) Restaurants and other prepared food vendors minimum privilege license, G.S. 105-62. The former tax was $1.00 per customer seat, with a minimum of $5.00. The new tax is $1.00 per customer seat, with a minimum of $50.00.

(8) Employment agencies whose sole business is placing teachers or other school employees or placing domestic servants or unregistered nurses, G.S. 105-90 and 105-90.1. The former tax was $25.00.

(9) Manufacturers and wholesale distributors of ice cream and similar frozen products, G.S. 105-97. The former tax was $1.50 per continuous freezer gallon capacity and $5.00 per non-continuous freezer gallon capacity, with a minimum of $10.00. The new tax rate is the same, but the minimum tax is increased to $50.00.

(10) Cooperative associations, G.S. 105-102.1. The former tax was $10.00.

CONSOLIDATED PRIVILEGE LICENSE TAXES:

The privilege license taxes listed below were consolidated in G.S. 105-102.5 into a single general business license having a tax of $50.00. The previous tax for any one of these privilege licenses ranged from $5.00 to $30.00.

The general business license replaces the privilege licenses listed below and permits a person to engage in any of the listed activities. Previously, a person who engaged in all of these activities was required to pay a separate privilege license tax for each activity. The general business license preserves any exemptions that previously applied to the separate licenses as well as any limitations on the adoption of local privilege licenses on the same activity.

The privilege license taxes that were consolidated into a single license tax are the taxes that were levied on:

(1) Those engaged in selling, leasing, or providing movies shown where no admission fee is charged or at a school, former G.S. 105-36.

(2) Bicycle dealers, former G.S. 105-49.

(3) Retail dealers in office equipment, home appliances, or alarms, former G.S. 105-51.

(4) Campground operators, former G.S. 105-61.1.
(5) Pool table operators, former G.S. 105-64.
(6) Bowling alley operators, former G.S. 105-64.1.
(7) Those who sell sandwiches, operate fewer than five vending machines, operate a soft drink stand, or sell tobacco products, former G.S. 105-65.2.
(8) Merry-go-round operators, former G.S. 105-66.
(9) Those engaged in selling or repairing pianos, organs, stereos, tape players, and other audio equipment, former G.S. 105-82.
(10) Retail ice cream dealers, former G.S. 105-97(c).

REPEALED PRIVILEGE LICENSE TAXES:

The following license taxes were repealed:

(1) Checking attendance at a movie or show, former G.S. 105-36. This tax was repealed because no one has applied for the license in years and the tax therefore produced no revenue.
(2) Sundries license for those operating five or more closed-container soft drink vending machines, former G.S. 105-65.2(g). This tax was repealed because operators of closed-container soft drink vending machines pay a flat license tax of $100.00 plus a per drink machine tax of approximately $7.00 per machine.

This act is effective for privilege license taxes levied for fiscal year 1990-91.

**Flea market license changes** (SB 119; Chapter 435): Senate Bill 119 repeals the license tax on flea market vendors and raises the tax on flea market operators from $100.00 to $200.00. In addition, the act substitutes the term "specialty market" for "flea market" in the statute because consumer trades shows as well as flea markets are covered by the law. The act repeals the requirement that licensees submit a copy of a positive identification before receiving a license; this change will eliminate the need for the Department to process applications by hand. The act addresses the concerns of local governments by exempting units of government from the tax. Finally, the act will enhance efforts to regulate licensees and make them accountable by (i) requiring speciality market vendors and operators and other licensees to show positive identification upon the request of a customer or a State or local revenue or law enforcement officer, in addition to displaying their retail sales tax license; (ii) requiring speciality market operators to keep a list with the name, address, and sales tax number of every vendor at the market; (iii) requiring speciality market operators to refuse to allow vendors to sell if they do not have a retail sales tax license; and (iv) imposing an increased penalty of up to $1,000 for a speciality market operator or vendor who fails to comply with these requirements.

This act became effective July 1, 1989.

**Controlled substance tax-1** (SB 699; Chapter 772): Senate Bill 699 imposes an excise tax on the illegal possession of controlled substances. The act is designed to provide additional deterrence and punishment for illegal drug dealers as well as an economic disincentive to trafficking in drugs. The tax applies to possession of more than 42.5 grams of marijuana, seven or more grams of any other controlled substance sold by weight, or ten or more dosage units of a controlled substance not sold by weight. The tax is at the rate of $3.50 per gram of marijuana, $200 per gram of other controlled substance sold by weight, and $400 per ten dosage units of a controlled substance not sold by weight.

Like the cigarette tax, this tax is paid through the purchase of tax stamps. The stamps must be affixed to the substance to show that the tax has been paid. Failure to pay the tax is a felony; a person who possesses a controlled substance on which

the tax is not paid is liable for the amount of the tax plus an additional penalty of 100% of the amount of tax due. Failure to pay the tax is a Class I felony punishable by up to five years' imprisonment, an unlimited fine, or both.

This act requires local law enforcement agencies and the State Bureau of Investigation to notify the Department of Revenue of drug arrests to enable it to collect the tax from those arrested. Because of uncertainty regarding the amount of revenue that may be derived from this tax, any proceeds collected are to be held in a special fund until the General Assembly determines that they may be deposited in the General Fund.

This act shall become effective January 1, 1990.

## Property Taxes

**Christmas tree use value** (House Bill 1397; Chapter 736): House Bill 1397 changes the horticultural use value requirements for land used to produce evergreens intended for use as Christmas trees. The act directs the Department of Revenue to establish, with the assistance of the Use-Value Advisory Board, requirements for horticultural land used to produce Christmas trees that differs from the gross income requirements for other horticultural land.

Under prior law, land qualifying for horticultural use value must have produced an average gross income of at least $1,000 for three years preceding January 1 of the year for which the benefit was claimed. This requirement often could not be met by horticultural land used for the production of evergreens intended for use as Christmas trees because of the income fluctuations that result from their lengthy and varied growth periods.

The act directs the Department to establish a "qualifying requirement" in lieu of a "gross income requirement" to be used for horticultural land used to produce Christmas trees until the evergreens are harvested from the land. The Department will also be establishing a new gross income requirement for this type of horticultural land, that differs from the income requirement for other horticultural land, to be used when the evergreens are harvested from the land.

This act is effective for taxable years beginning on or after January 1, 1990.

**Transferred forest land/use value** (SB 49; Chapter 99): Senate Bill 49 allows an owner of forestland that is classified for taxation at its use value to acquire other land that is classified for taxation at its use value or is eligible for use value classification and, upon acquiring the land, to have the newly acquired land immediately classified for taxation at its use value. In making this change, the act conforms the treatment of forestland with that of horticultural land and agricultural land; these types of land enjoy immediate use value classification when transferred to a person who already owns land classified at use value.

Before this act, an owner of classified forestland who acquired other classified forestland had to wait four years after acquiring the other forestland before being able to have the other land classified for taxation at its use value. This result followed from the general requirement that, to be eligible for taxation at use value, land owned by an individual must be the individual's place of residence or have been owned by the individual for four years and land owned by a corporation must have been owned by the corporation or one of its principal stockholders for four years.

This act is effective for taxable years beginning on or after January 1, 1989, but the benefit applies to land acquired before 1989 as well as during or after 1989. To

give taxpayers sufficient notice of this change, the act allows an application for use value to be filed until September 1, 1989. Normally, these applications must be submitted during the regular listing period.

**Modify $100 auto tax penalty** (SB 175; Chapter 522): Senate Bill 175 allows a county to compromise the $100.00 penalty for falsely certifying that a vehicle has been listed for property tax purposes, as it may the penalty for failure to list, if the penalty has not already been paid. The act further provides that the procedure for collecting the $100.00 penalty shall be the same as for other penalties. These changes become effective with the 1989 tax year.

Section 2 of the act creates an exception to the prohibition on compromising penalties that have already been paid. It provides that, for $100.00 penalties paid for 1988 and 1989 only, a county may refund the penalty if it determines that the taxpayer's false certification was not made intentionally to avoid the property tax. The authority to make these refunds may be delegated to the county finance officer or another county official.

**Tax precious metals at use value** (SB 1146; Chapter 674): Senate Bill 1146 designates certain precious metals as a special class of property, pursuant to the power granted the General Assembly in Article V, § 2(2) of the North Carolina Constitution, and directs how they are to be assessed for property taxation.

The metals affected are precious metals used or held for use directly in manufacturing or processing by a manufacturer as part of industrial machinery. These metals are taxed at either their market value or their original cost less depreciation, whichever is less. To determine original cost less depreciation, the index factor, if any, that is used in assessing the related industrial machinery must be applied, the depreciable life of the metals is the same as the life assigned to the related industrial machinery, and the residual value of the metals may not exceed 25% of the manufacturer's original cost. Without this act, it was unclear how these metals should be assessed. Although it is a statewide act, it affects only Cleveland and Davidson Counties because these counties are the only ones with these metals.

This act is effective for taxable years beginning on or after January 1, 1989. An owner of precious metals classified by this act must apply for the tax benefit granted by the act. In 1989, an owner can file an application any time before September 2. In subsequent years, an owner must file an application within the regular listing period. Once an owner of precious metals has applied for this benefit and the application has been approved, however, the owner continues to receive the benefit in subsequent years without having to reapply as long as the precious metals, or subsequently acquired precious metals, are used in the manufacturing process.

**Lockbox property tax collection** (SB 628; Chapter 578): Senate Bill 628 gives the governing body of a taxing unit the authority to enter into a contract with a bank or other financial institution under which the institution agrees to collect property taxes owed the taxing unit. This type of arrangement for collection of property taxes is commonly known as "lockbox" property tax collection. Without this act or a special local act, the governing body could not enter into this type contract.

Several limitations apply to the collection of property taxes by an institution. The institution can collect only those taxes that are current; it cannot collect overdue taxes on which interest is payable. In addition, the institution cannot give a receipt for payment of taxes; only the tax collector can issue a tax receipt for payment of taxes.

The same benefits apply to the payment of property taxes at an institution as at the tax collector's office. The institution must give the taxpayer any discount

allowed by the taxing unit for early payment of taxes, and the taxpayer may pay by check. If the check is returned unpaid, the institution notifies the tax collector, who proceeds to collect the unpaid taxes in the same manner as other unpaid property taxes.

The act repeals the local acts authorizing specific taxing units to contract for receipt of payment of property taxes. With the enactment of this general law, the local acts are no longer needed. The local acts applied to Cleveland, Gaston, Iredell, and Wake Counties and to the taxing units in those counties.

The act became effective upon ratification, July 5, 1989.

**Attachment of escheat fund** (SB 788; Chapter 580): Senate Bill 788 permits the State or a local property tax collector to recover property in the Escheat Fund and apply the property to the payment of State or local taxes, as appropriate, if the State Treasurer determines that the person who owned the escheated property owed taxes. Previously, it was unclear whether the State or a local tax collector could attach this property in the Escheat Fund in payment of taxes.

Escheated property is property to which the State assumes ownership under Chapter 116B of the General Statutes either because the property is determined to be abandoned or the property was owned by a person who died and had no heirs. Article IX, § 10 of the North Carolina Constitution requires property in the Escheat Fund to be used to "aid worthy and needy students who are residents of this State and are enrolled in public institutions of higher education in this State." The State Treasurer administers the Escheat Fund and resolves the claims of any creditors of those who owned property that has escheated.

This act became effective July 5, 1989, the date it was ratified.

**State tax assessment interest** (SB 787; Chapter 530): Senate Bill 787 changes the frequency with which the Secretary of Revenue sets the interest rate that is charged on late payments of taxes, G.S. 105-241.1(i), and that is paid on tax refunds, G.S. 105-266 through 105-267, from once a year to twice a year. It directs the Secretary to set a rate by June 1 of each year to be in effect from July 1 to December 31, and to set a rate by December 1 of each year to be in effect from January 1 to June 30. If the Secretary does not set a new rate by the designated date, the rate for the previous six-month period continues in effect.

The Secretary must therefore set a rate by December 1 that will be in effect from January 1, 1990, to June 30, 1990. Before this act, the Secretary set the interest rate to be in effect during a calendar year by December 1 of the previous year. As under the previous law, the rate cannot be more than 16% a year or less than 5% a year.

This act became effective June 30, 1989.

**Tax exempt property used by government** (HB 457; Chapter 723): House Bill 457 exempts a limited category of property from property tax. It exempts property that is owned by a nonprofit corporation organized at the request of a local government unit for the sole purpose of financing projects for public use, is leased to the unit of government that requested the formation of the corporation, and is used for a public purpose. Once an owner of this type property applies for the exemption and the application is approved, the act relieves the owner of reapplying for the exemption in future years.

This act is effective for taxable years beginning on or after January 1, 1989. To enable property owners to take advantage of the exemption in 1989, the act permits an application for the exemption to be filed on or before September 1, 1989.

Normally, applications for property tax exemptions must be filed during the regular listing period.

**Disabled veteran tax exclusion up** (HB 1775; Chapter 705): House Bill 1775 increases the maximum amount of the property tax exclusion for specially adapted housing (including land) owned and used by a disabled veteran receiving benefits under 38 U.S.C. § 801 from $34,000 to $38,000. The increase brings the amount of the exclusion in line with the corresponding federal grant amount.

This act is effective for taxable years beginning on or after January 1, 1990.

**Increase quality of reappraisals** (HB 78; Chapter 79): House Bill 78 requires the Department of Revenue to assist counties, upon their request, in the preparation of the specifications and proposed contracts related to the selection of private contractors employed to conduct their general revaluation of real property. Although prior law did not require the Department to assist counties in the preparation of their specifications and contracts, the Department provided this service, as well as other services related to county reappraisals.

G.S. § 105-289(i) requires the Department to maintain a register of appraisal firms and other firms having expertise in one or more duties of the assessor. To register with the Department, the firms must file an annual report with the Department setting forth their qualifications, financial condition, and a complete resume of their employees, experience, and training. This register is available to the counties as a resource in choosing an appraisal firm. To make this tool more valuable to the counties, this act requires that additional information be maintained in the register to give counties a measure of a firm's quality of work.

Under the act, a county board of equalization and review may submit a report to the Department evaluating the appraisal firm that conducted its county's revaluation. The report should outline any problems encountered in the reappraisal process, the number of appeals submitted, and the success rate of the appeals. The act requires the Department to include this report in its register, indexed under the appraisal firm who conducted the revaluation.

The act also requires the Department to include in its register a county's median ratio for the first two years following the effective date of the county's revaluation, and the county's coefficient of dispersion for those two years, indexed under the appraisal firm that conducted the revaluation. The median ratio provides the most accurate representation of the overall level of assessment of real property. The coefficient of dispersion provides the most accurate representation of the degree of uniformity of assessment among the properties.

This act is effective for taxable years beginning on or after January 1, 1990.

**Modify property tax appeals** (SB 63; Chapter 176): Senate Bill 63 allows the board of county commissioners to include in the resolution creating a special board of equalization and review a procedure for appeal of the special board's decisions as to the listing or appraisal of real property to the county commissioners. The act allows but does not require that an appeal procedure be included in the resolution. If an appeal procedure is included in the resolution, the board of county commissioners has the authority to change the orders of the special board on the abstracts and tax records when necessary to give effect to the decisions it makes during the appeal hearings.

This act is effective for taxable years beginning on or after January 1, 1990.

**Property tax appeals extended** (SB 28; Chapter 196): Senate Bill 28 extends the time the board of equalization and review has to complete its duties to December 1

in the year a county conducts a revaluation. The July 1 deadline remains the same for non-revaluation years.

This act is effective for taxable years beginning on or after January 1, 1990.

**Modify tax foreclosure notice** (SB 566; Chapter 682): Senate Bill 566 requires a county tax collector to notify all lienholders of record who have a lien against the listing taxpayer or against any subsequent owner of the property of a pending in rem tax foreclosure action against the property under G.S. 105-375. Under prior law, the tax collector was required to notify only those lienholders who had specifically requested that they be notified.

This act is effective October 1, 1989 and is applicable to foreclosure proceedings begun on or after that date.

**Coastal area service districts** (HB 226; Chapter 620): House Bill 226 will allow the board of county commissioners of any of the 20 coastal area counties to establish service districts within the county to facilitate the removal of junk cars from platted rights-of-ways and the maintenance of platted streets. To finance these services, the board of county commissioners can levy property taxes within the service districts in addition to the property taxes levied throughout the county. The overall effective property tax rate on each $100.00 value of property subject to taxation under Article 153A, when added to the tax levied countywide under G.S. 153-149, cannot exceed $1.50 without voter approval.

This act became effective July 11, 1989, the date it was ratified.

## Sales and Use Taxes

**Highway trust fund** (HB 399; Chapter 692): House Bill 399, as amended by Chapter 700, 770, and 788, addresses the State's highway needs and raises sufficient revenue to meet the State's General Fund needs. To provide revenue for the General Fund, the act increases the maximum sales tax payable on the sale of a boat, an aircraft, a railway car, or a locomotive from $300 to $1,500 effective August 1, 1989, it increases the estimated income tax filing threshold from 80% of taxes payable to 90% effective for taxable years beginning on or after January 1, 1990, and raises the short-term rental rates on motor vehicles from 2% to 8%.

To meet the State's highway needs, the act creates the North Carolina Highway Trust Fund and the Joint Legislative Highway Oversight Committee, raises taxes and fees to provide revenue for the Trust Fund, and specifies how revenue in the Trust Fund is to be used. These provisions are in large part a product of the Highway Study Commission. Briefly, the highway provisions of the act:

(1) Increase the motor fuels tax by 5.2¢ per gallon;
(2) Repeal the 2%, $300 maximum sales tax on motor vehicles and replace it with a 3%, $1,000 maximum highway "use" tax payable when a certificate of title is issued for a motor vehicle;
(3) Increase the fees for issuing a certificate of title from $5.00 to $35.00 and increase related fees from varying amounts to $10.00.

The increase in the sales tax cap on boats, aircraft, railway cars, and locomotives and the gasolines tax increase became effective August 1, 1989. The increase in the various title taxes became effective August 15, 1989. The titling tax, also known as the highway use tax, became effective October 1, 1989.

**No sales tax on tobacco sheets** (SB 1145, Chapter 748): Senate Bill 1145 provides that sales and use taxes do not apply to the 25¢ fee for use of a tobacco sheet. Tobacco sheets are burlap sheets used in handling tobacco in the warehouse and transporting tobacco to and from the warehouse. In order to alleviate a shortage of tobacco sheets, a corporation was formed to repair existing sheets, purchase new sheets, supply sheets to warehouses, and pick up sheets from warehouses and plants for redistribution. Warehouses, farmers, and purchasers of tobacco will pay a 25¢ fee for the use of each sheet in order to finance this supply system. This provision became effective upon ratification, August 9, 1989, and applies to leases and rentals occurring on or after August 1, 1989.

This act also contains a technical correction to the law authorizing the creation of a New Hanover County Airport Authority to clarify that the airport authority will be eligible for sales and use tax refunds to the same extent as a municipal corporation. The technical correction became effective upon ratification, August 9, 1989, and applies to sales and uses taxes paid on or after July 1, 1989.

## Miscellaneous

**Repeal premium tax sunset** (SB 552; Chapter 346): Senate Bill 552 repeals the insurance premium tax sunset that was set at January 1, 1988, by Section 5.1 of Chapter 1031 of the 1986 Session Laws and extended to January 1, 1990, by Section 4 of Chapter 814 of the 1987 Session Laws. The repeal of the sunset thus leaves in effect the reform of the taxes on gross premiums of insurance companies made in 1985 and 1986.

In 1985 and 1986, the General Assembly changed the rates of tax on gross premiums of insurance companies in response to a United States Supreme Court Case, Metropolitan Life Insurance Company v. Ward, which held it unconstitutional to tax premiums of foreign insurance companies at a higher rate than premiums of domestic insurance companies. Before the changes that were made in 1985 and 1986, the State taxed premiums of domestic insurance companies at lower rates than those of foreign insurance companies. Now, the State premium tax rates are the same for foreign and domestic companies. To achieve this equality, the domestic tax rate was increased from 1.5% to 1.75% and the foreign tax rate was decreased from 2.5% to 1.75%.

This act became effective upon ratification, June 19, 1989.

**Revenue laws technical changes** (HB 5; Chapter 37): House Bill 5 makes numerous technical and conforming changes to the revenue laws. Section 1 amends G.S. 105-130.19 to eliminate an installment payment option allowing corporations to pay income tax within an additional period of nine months after the due date of the income tax return. Effective for taxable years beginning on or after January 1, 1989, this amendment will bring the statute in harmony with another provision of the law, G.S. 105-163.41, which requires that 90% of the income tax be prepaid before the due date of the return. Because few corporations elect to use the installment method under G.S. 105-130.19, its elimination will not have a significant impact on taxpayers and will be more cost efficient for the Department of Revenue.

Section 2 deletes two obsolete references to the Internal Revenue Code of 1954 and replaces them with references to "the Code", elsewhere defined as the Internal Revenue Code of 1986. Section 3 amends G.S. 105-147(7) to eliminate a loophole. The statute allowed a nonresident individual to take an income tax deduction for a

prorated portion of deductible dividends even if the dividends were not taxable to North Carolina. G.S. 105-147 was later repealed, however, by the Tax Fairness Act of 1989, Chapter 728 of the 1989 Session Laws.

Section 4 amends G.S. 105-159.1(b) to delete a reference to the Election Campaign Fund and substitute the "Political Parties Financing Fund" in order to conform the statute to a change in the name of the Fund made in 1988. Section 5 repeals G.S. 105-163.05 effective for taxable years beginning on or after January 1, 1990. This statute, which allows an income tax credit for property taxes paid on poultry and livestock, is obsolete because the General Assembly exempted poultry and livestock from property taxes effective with the 1989 tax year.

Section 6 amends G.S. 105-242(b) to provide that the procedure used for serving garnishments will be the same for both local and State taxes. Currently, for property taxes, notice of garnishment may be served "in any manner provided by Rule 4 of the North Carolina Rules of Civil Procedure." (G.S. 105-368). Before this amendment, in the case of State taxes, personal service was required, which could cause embarrassment for the taxpayer if service was made at his or her workplace. Section 6 changes the law for State taxes to allow service as provided in Rule 4.

Section 7 clarifies an ambiguous provision in the Machinery Act. G.S. 105-375(c) provided in certain foreclosure procedures for the assessment of administrative costs against the taxpayer but did not specify whether these costs are to be paid to the clerk of court or to the taxing unit. Section 7 amended the statute to clarify that the costs go to the taxing unit. Section 8 amends G.S. 106-277.28 to eliminate a loophole placed in the statute when it was amended in 1988. The statute set out a license tax for seed dealers with sales of less than $500.00 and for seed dealers with sales of more than $500.00, but none for seed dealers with sales of exactly $500.00. Section 8 corrects that problem.

Sections 1 and 3 of this act are effective for taxable years beginning on or after January 1, 1989. Section 5 of this act is effective for taxable years beginning on or after January 1, 1990. The remaining sections of this act were effective upon ratification, March 30, 1989.

**Local pollution tax certification** (SB 523; Chapter 148): Senate Bill 523 provides that certification of pollution control equipment by a fully certified local air pollution control program is sufficient to qualify the equipment for tax benefits under the corporate franchise tax, corporate and individual income taxes, and property tax. Under prior law, the owner of certain pollution control equipment was entitled to the tax benefits only if the Department of Natural Resources and Community Development (now, Department of Environment, Health, and Natural Resources) certified that the equipment complied with all applicable requirements.

This act is effective for taxable years beginning on or after January 1, 1989. Incidentally, the special individual income tax benefit for this equipment was repealed by Chapter 728 of the 1989 Session Laws effective for taxable years beginning on or after January 1, 1989.

**Use tax information for escheats** (SB 786; Chapter 628): Senate Bill 786 allows the Department of Revenue to furnish to the Department of State Treasurer the names, addresses, and account and identification numbers of taxpayers who may be entitled to property held in the Escheat Fund when the Treasurer requests the information for the purpose of administering the Escheat Fund.

The act also allows the Department to furnish to the Employment Security Commission the names, addresses, and account and identification numbers of taxpayers for the purpose of administering unemployment insurance.

This act became effective upon ratification, July 12, 1989.

## PENDING LEGISLATION

The following bills have passed one house and have been received by the other or they are revenue bills and therefore are eligible for consideration in the 1989 Session. Under the terms of the adjournment resolution, appropriations measures are also eligible.

### Income Taxes

**Food tax credit** (SB 209/HB 328): These bills propose to allow taxpayers who do not receive food stamps and whose net taxable income is $15,000 or less, and whose gross income is $30,000 or less, a refundable income tax credit based on the number of personal exemptions claimed on their tax return.

**Extend tax refund deadline** (HB 1350): House Bill 1350 proposes to allow a taxpayer to file for a refund of taxes paid within one year after the date of payment (now, 30 days) when the taxpayer asserts a valid defense to the enforcement of the collection. The bill would be effective retroactively to tax returns timely filed on or after October 31, 1989.

### Property Taxes

**Index homestead exemption** (SB 84/HB 1597): These bills propose to index the amount of the property tax homestead exemption to the proportionate increase or decrease in the appraised value of property in a county resulting from a horizontal adjustment or reappraisal and the amount of the income limit for eligibility for the exemption to the federal cost-of-living increases given to recipients of social security.

**Elderly property tax deferral** (SB 54): Senate Bill 54 proposes to allow North Carolina residents who are 65 years of age or older, and whose disposable income for the preceding calendar year did not exceed $15,000, to defer the payment of property tax increases on their residences until the property is transferred by the difference between the amount of tax due on the residence for the current year and the amount of tax due on the residence the year before the application for deferral.

**Increase homestead exemptions** (SB 427): Senate Bill 427 proposes to increase the homestead exemption amount from $12,000 to $25,000.

**Motor vehicle property tax** (HB 98): House Bill 98 proposes to tax all motor vehicles, except mobile homes and motor vehicles owned by public service companies, at the time the vehicle registration is obtained or renewed and if the taxes are not paid within four months after they become due, the Division of Motor Vehicles will refuse to renew the vehicle's registration the following year unless the taxpayer obtains a receipt showing that the previous year's taxes have been paid.

**Modify reappraisal schedule** (SB 56): Senate Bill 56 proposes to advance the scheduled octennial reappraisal whenever the level of assessment in the county is significantly below fair market value.

## Sales and Use Taxes

**No sales tax on master tapes** (HB 372): House Bill 372 proposes to exempt master films, master video tapes and master audio tapes utilized by the motion picture, television or audio production industry from the sales and use tax.

**Equalize telecommunications tax** (HB 1454): House Bill 1454 proposes to levy the State's sales tax of 6 1/2% on the gross receipts derived from providing interstate toll or private telecommunications services which either originate or terminate in this State and which are charged to the purchaser's service address in this State.

**Merchants' sales tax discount** (SB 39/HB 367): These bills propose to allow merchants to deduct an administrative fee, for collecting and timely remitting the State sales and use taxes, in an amount of 3% of the first $1,000 of tax collected and 1% of the remainder; however, the amount retained would be limited to $100 per month per business location and $25,000 per year for each retail group.

**Cable TV sales tax** (SB 668): Senate Bill 668 proposes to levy a 3% sales tax on the gross receipts derived from the sale of cable television services.

## Intangibles Taxes

**Repeal intangibles tax** (SB 205): Senate Bill 205 proposes to repeal the tax on intangible personal property, to reimburse the counties and cities for the resulting revenue loss, and to increase the income taxes to pay for the reimbursement.

**Simplify intangibles tax** (SB 717): Senate Bill 717 proposes to exempt from the intangibles tax shares of stock issued by a corporation who earns more than 50% of its income in North Carolina and it proposes to tax 100% of the stock issued by a corporation who earns 50% or less of its income in North Carolina.

## Bonds

**Two-thirds bond bill** (SB 68/HB 195): These bills propose to authorize the issuance of non-voted general obligation bonds in an amount not to exceed $73 million or two-thirds of the amount by which the State's outstanding indebtedness shall have been reduced during the 1987-89 biennium, whichever is less, with the proceeds to be used for the construction, acquisition and equipping of capital improvements for the State and its departments and agencies.

## Miscellaneous

**1989 lottery bill-referendum** (SB 4): Senate Bill 4 proposes to establish a State lottery after a binding referendum with 50% of the total annual revenues returned to the public in the form of prizes, with no more than 16% of the revenues allocated to pay lottery expenses and with the balance of the revenues allocated to the General Fund.

**1989 lottery bill-referendum** (HB 15): House Bill 15 proposes to establish a State lottery after a binding referendum with 50% of the total annual revenues returned to the public in the form of prizes, with no more than 16% of the revenues allocated to pay lottery expenses and with the balance of the revenues allocated to the Department of Public Instruction for non-recurring expenses through June 1995; thereafter, the balance would be transferred to the General Fund for special reserves.

**1989 lottery bill-referendum** (HB 96): House Bill 96 proposes to establish a State lottery after a binding referendum with 50% of the total annual revenues returned to the public in the form of prizes, with no more than 16% of the revenues allocated to pay lottery expenses and with the balance of the revenues to be allocated by the General Assembly as follows: 50% used for the benefit of public education, 25% used for the benefit of the poor and needy people and 25% used for programs for clean water and solid waste management.

**Fire insurance premium tax** (HB 2017): House Bill 2017 proposes to levy a 1% tax on the gross premiums from insurance contracts applicable to fire and lightning coverage, except marine and automobile policies, during the preceding calendar year.

**Air pollution tax** (SB 1251): Senate Bill 1251 proposes to levy an excise tax on the taxable emissions of air contaminants known to cause air pollution with the rate per pound of taxable emission dependent upon the type of air contaminant.

**Water pollution tax** (SB 1252): Senate Bill 1252 proposes to levy an excise tax on the actual discharge of taxable compounds into the surface waters with the rate per pound of actual discharge dependent upon the type of discharge.

## STUDIES

Independent study commissions: Property Tax Study Commission.

Legislative Research Commission: (1) Revenue Laws/Local Revenue Sources Options; (2) Fee Structure for Personalized License Plates and Special Plates; and (3) Long-Range Transportation Needs of the State, Alternative Methods of Transportation, including Bikeways and Sidewalks, and the Impact of the Highway Trust Fund on Potential Revenue Sources for Alternative Transportation.

# TRANSPORTATION

(Jennie Dorsett, Giles Perry)

## RATIFIED LEGISLATION

### Aviation

**Spotter plane regulation** (HB 974; Chapter 612): House bill 974 requires that aircraft used as a spotter plane in commercial fishing must obtain a license for the aircraft from the Marine Fisheries Commission. The bill also makes it unlawful to use a spotter plane in commercial operations directed at fish food without authorization from the Commission, or to use such a plane that is unlicensed or whose license does not identify the specific commercial fishing operation involved. Violations would be a misdemeanor punishable by the greater of a $1000 fine of the boat or catch, or two years imprisonment, or both. The bill became effective October 1, 1989, and applies to offenses on or after that date.

**State aid to rural airports** (HB 1200; Chapter 636): House bill 1200 provides that the Department of Transportation may allow loans and grants of State funds of up to 90% of the total cost of the development of new or unpaved publicly owned rural airports identified in the N.C. Airport System Plan and receiving no federal funding. Funding is limited to land acquisition, site preparation, basic runway, taxiway, apron, lighting, navigational aids, and primary access roads. The bill became effective upon ratification, July 13, 1989.

### Billboards

**Billboard compensation sunset** (HB 446; Chapter 166): House Bill 446 extends the sunset to June 30, 1994, of G.S. 136-131.1, which prohibits local governments from removing lawfully erected billboards along interstate and federal-aid primary highways without just compensation. The bill became effective upon ratification, May 30, 1989.

**Outdoor advertising fee increase** (HB 1565; Chapter 677): House Bill 1565 increases outdoor advertising permit fees from $20 to $60 for the initial fee, and from $15 to $30 for the annual renewal fee. The bill became effective September 1, 1989.

### Highways/Department of Transportation

**Certified condemnation appraisal** (HB 238; Chapter 630): House Bill 238 requires that real property acquired by the State by purchase or condemnation be appraised

by a State-licensed or State-certified real estate appraiser. The bill becomes effective January 1, 1991.

**D.O.T. not to cut down trees** (HB 342; Chapter 63): House Bill 342 provides that except in the process of an authorized construction, maintenance or safety project, the Department of Transportation shall not cut down trees unless (1) the trees pose a potential danger to persons or property, or (2) the cutting down of the trees is approved by the appropriate District Engineer. The bill became effective upon ratification, April 19, 1989.

**D.O.T. private contract sunset** (HB 397; Chapter 749): G.S. 136-28.6 currently authorizes the Department of Transportation to participate in engineering and construction contracts with private developers. Pursuant to Chapter 860 of the 1987 Session Laws, this authorization expired June 30, 1989. House Bill 397 extends the sunset provision from June 30, 1989 to June 30, 1991. In addition, House Bill 397: (1) amends G.S. 136-28.1(a) to increase from $150,000 to $300,000 the limit above which Chapter 136 (Roads and Highways) contracts must be let to a responsible bidder after public advertising, and (2) amends G.S. 136-28.1(b) to increase from from $150,000 to $300,000 the amount below which Chapter 136 (Roads and Highways) contracts must be awarded to the lowest responsible bidder, after three informal bids. The bill became effective upon ratification, August 9, 1989.

**Highway trust fund** (HB 399; Chapter 692): House Bill 399 is a $9.1 billion, 13½ year roads package which creates a 3,600-mile, four-lane intrastate highway system, builds 207 miles of urban loops around seven N.C. cities, and paves 10,000 miles of unpaved secondary roads. The major fee increases included in the bill to fund the program are as follows: (1) Gasoline tax is increased by 5.20 cents on August 1, 1989; (2) Current 2% vehicle sales tax ($300 ceiling) is replaced in bill with a 3% use tax based on trade difference ($1000 ceiling) effective October 1, 1989--ceiling raised to $1500 effective July 1, 1993; (3) Application for a certificate of title is increased from $5 to $35, and all other title fees, previously $3 To $9, are raised to $10 effective August 15, 1989, (according to Senate Bill 1334); (4) The $300 ceiling on 2% tax on sale of aircraft and boats is raised to $1,500 effective August 1, 1989; and (5) The short term (90 days or less) car rental tax is raised from 2% to 8%, and for the remainder of lease or rental period beyond 90 days, the sales tax is 3%. This tax is effective October 1, 1989. House Bill 399 puts $335 million of the proceeds of the fee increases into the General Fund for two years to fund a 6% average state employees salary increase, as well as the Basic Education Plan. The bill also creates a Joint Legislative Highway Oversight Committee.

**Roadway Corridor Amendments** (HB 403; Chapter 595); House Bill 403 provides new procedures for the adoption and content of roadway corridor official maps, municipal participation in improvements to the state highway system, and the dedication of right-of-way with density or development rights transfer.

Specifically, the bill: (1) permits cities to adopt or amend roadway corridor official maps for any street included in a street plan adopted pursuant to G.S. 136-66.2 (Development of a coordinated street system.) If such a map or amendment extends beyond the area under a city's building permit issuance authority or subdivision control ordinances, the city must obtain the approval of the Board of County Commissioners; (2) permits the N.C. Board of Transportation to adopt a roadway corridor official map for any portion of the state highway system; (3) repeals G.S. 136-44.50(c), which provided that no roadway corridor placed on an official map is effective unless the corridor appears on the Transportation

Improvement Program (TIP), or the corridor appears on an official street plan adopted under G.S. 136-66.2, and the adopting city has adopted a capital improvement plan of 10 years or shorter duration showing the cost of construction of the designated highway corridor; and (4) permits cities to prepare environmental impact studies and preliminary engineering work needed for preparation of the maps. If such work was done on a road for which the state is responsible, it must be reviewed and approved by the Department of Transportation (DOT).

In addition, House Bill 403: (1) permits a municipality to call a special referendum at any time to authorize funding for improvements to the state highway system within its corporate limits, although use of such funding cannot be a consideration for any other project by DOT; (2) amends G.S. 136-66.3(f) to eliminate the June 30, 1990 sunset on municipal participation in right-of-way costs for TIP projects; and (3) amends G.S. 136-66.10(a) to expand municipal authority to require dedication of rights-of-way within official roadway corridors by deleting requirements that the road be included in the TIP. The bill became effective upon ratification, July 7, 1989.

**Highway driveway connections** (HB 700; Chapter 158): House Bill 700 provides that the Department of Transportation may require construction and public dedication of driveway connections to secondary roads with a traffic volume of 4,000 vehicles or more per day. The bill became effective upon ratification, May 29, 1989.

**Gov't contracts/surveying service** (HB 972; Chapter 230): House Bill 972 provides that on surveying contracts, the Department of Transportation or Department of Administration may provide, upon request from a county, city, town or other subdivision of the State, advice in the process of selecting consultants or in negotiating consultant contracts with surveyors. The bill became effective upon ratification, June 5, 1989.

**Highway contract clauses** (SB 460; Chapter 78): Senate Bill 460 provides that contracts let by the N.C. Department of Transportation for construction or repair for federal-aid projects shall not contain the federal standard contract provisions for differing site conditions, suspensions of work ordered by the engineer, or significant changes in the character of the work. Instead, the bill provides that the N.C. Department of Transportation use its own standard contract provisions. The bill became effective upon ratification, May 1, 1989.

**D.O.T. rent day-glo uniforms** (SB 704; Chapter 215): Senate Bill 704 allows the rental for Department of Transportation employees of uniforms that include day-glo orange shirts and vests to be paid for through payroll deductions. The bill became effective upon ratification, June 5, 1989.

## License Plates

**Purple Heart license plates** (HB 107; Chapter 264): House Bill 107 provides for the Division of Motor Vehicles, for a $20 fee, to issue specialized license plates to recipients of the Purple Heart award. The bill became effective October 1, 1989.

**Official license plates** (SB 758; Chapter 760): Senate Bill 758: (1) clarifies the letter/numbers designations on official license plates issuable to Superior Court

judges; (2) sets a uniform renewal date of June 30 for renewal of special license plates issued to amateur radio operators; and (3) authorizes the use of a wallet size handicapped I.D. card placed inside the windshield to identify vehicles that transport the handicapped. The bill became effective upon ratification, August 11, 1989.

**Increase vanity plate fees** (SB 913; Chapter 774): Senate Bill 913 increases the fee for personalized license plates from $10 to $20, and places the additional revenue to the Recreation and Natural Heritage Trust Fund. The bill also authorizes the Legislative Research Commission to study the fee structure for personalized and special license plates. The bill became effective October 1, 1989.

## Motor Vehicles

**Warranty begins at purchase miles** (HB 99; Chapter 14): House Bill 99 provides that any express warranty for a new motor vehicle expressed in terms of a certain number of miles begins to accrue from the mileage on the odometer at the date of original delivery to the customer. The bill became effective October 1, 1989, and applies to sales of motor vehicles on or after that date.

**Disclose resale lemon vehicle** (HB 100; Chapter 43): House Bill 100 provides that if a manufacturer resells a motor vehicle that was returned to it pursuant to the New Motor Vehicles Warranty Act, or any other State's applicable law, the manufacturer must disclose to the subsequent purchaser the fact of the return, and the reason for the return. In addition, the bill provides that any subsequent purchaser who purchases the motor vehicle for resale with notice of the return shall make the required disclosures to any person to whom he resells the motor vehicle. The bill became effective October 1, 1989, and applies to resales of motor vehicles on or after that date.

**School bus driver qualifications** (HB 273; Chapter 558): House Bill 273 requires that all school bus drivers and all drivers of school activity buses be at least eighteen years of age. The bill became effective July 1, 1989.

**Parking violation citation service** (HB 298; Chapter 243): House Bill 298 permits the service of a parking offense citation by personal service to the operator of the vehicle if he is present or by service to the registered owner by affixing a copy of the citation to a conspicuous place on the vehicle. The bill also extends to violations of Department of Transportation ordinances the presumption that vehicles parked in violation of a statute or municipal ordinance have been parked by the registered owner of the vehicle. The bill became effective upon ratification, June 6, 1989.

**Traffic signal law clarified** (HB 522; Chapter 285): House Bill 522 amends G.S. 20-158(b)(2) to clarify that a right turn on red is permitted only when a vehicle is facing a red light controlling traffic passing straight through an intersection. In addition, the bill clarifies the meaning of yellow circular and yellow arrow traffic lights. The bill became effective upon ratification, June 12, 1989.

**Motorized wheelchair registration** (HB 551; Chapter 157): House Bill 551 exempts motorized wheelchairs or similar vehicles not exceeding 1,00 pounds gross weight

from motor vehicle registration and titling requirements. The bill became effective upon ratification, May 29, 1989.

**Raise nonresident service fee** (HB 562; Chapter 645): House Bill 562 raises the fee for service upon nonresident drivers of motor vehicles and upon the personal representatives of deceased nonresident drivers of motor vehicles from $3.00 to $10.00. The bill became effective effective July 1, 1989.

**Salvage title amendments** (HB 699; Chapter 455): House Bill 699 changes the definition of salvage motor vehicle to provide that the vehicle need not have been declared a total loss by an insurer to come within the definition. The bill provides that a damaged vehicle titled in another state may be repaired and unbranded title issued in North Carolina only if (1) the cost of repairs does not exceed 75% of fair market retail value; and (2) satisfactory evidence is given to the Division of Motor Vehicles that the vehicle would be eligible for unbranded title in the state where the vehicle is titled. The bill requires the transferor of a salvage vehicle to notify the transferee in writing that the vehicle is a salvage vehicle before transferring it. The Commissioner of Motor Vehicles is authorized by the bill to prepare forms to implement the notification provision. The bill became effective June 30, 1989.

**Vehicle inspection changes** (HB 705; Chapter 391): House Bill 705 requires that the Commissioner of Motor Vehicles implement motor vehicle emissions testing when the Environmental Management Commission certifies to the Commissioner of Motor Vehicles that air quality in an area will be improved by the implementation of a motor vehicle inspection/maintenance program within a specified county or group of counties, as necessary to meet National Air Quality Standards for ozone (in addition to carbon monoxide). The bill also requires that motor vehicles from 1975 and later model years comply with exhaust emission standards.

The bill also changes the safety equipment inspection station fee from $4.25 to $5.25 effective October 1, 1989; and to $6.25 effective October 1, 1990. The bill changes the safety inspection fee from a range of $4.25 to $10.00, to $10.10 effective October 1, 1989; and to $13.00 effective October 1, 1990. The Commissioner of Motor Vehicles' authority to set the fees is removed by the bill.

The bill, except for the noted fees, became effective upon ratification, June 21, 1989.

**Amend DWI assessments** (HB 752; Chapter 691): House Bill 752 makes several changes to the statutes regarding substance abuse assessment of DWI offenders under the Safe Roads Act of 1983. The bill extends the 10 county pilot program until December 31, 1989. The pilot program requires all DWI offenders on probation to be assessed and to follow judicial orders regarding rehabilitation before their driving privileges are restored. The bill postpones from July 1, 1989, until January 1, 1990, statewide implementation of the pilot program, so that assessment will be imposed as a condition of probation for all persons convicted of impaired driving beginning in 1990. A provision was changed to allow offenders to receive services outside their county of residence or conviction. The area mental health facility or contract agency providing treatment or education may now require the defendant to pay the fees before certifying successful completion of the treatment. If the agency or facility declines to certify to the Division of Motor Vehicles that the defendant has completed the treatment, the defendant may file a motion in the criminal case for court review of the agency decision. The court may then rule that the defendant is entitled to restoration of driving privileges and require the agency to send a certificate of

completion to the Division of Motor Vehicles. House Bill 752 became effective July 27, 1989.

**Motorcycle safety program** (HB 1175; Chapter 755): House Bill 1175 creates Motorcycle Safety Instruction Program, administered through the Department of Community Colleges. To fund the program, the bill provides for a $3.00 increase in the motor vehicle tax on motorcycles, with the proceeds to be deposited in the General Fund. The bill also permits any rate bureau member, upon approval of the Commissioner of Insurance, to reduce motorcycle insurance rates for insureds that complete the motorcycle safety instruction program. The bill became effective October 1, 1989, and expires October 1, 1993.

**Lessee's remedies, defective auto** (HB 1201; Chapter 519): House Bill 1201 amends the New Motor Vehicles Warranties Act to provide that if a manufacturer is unable to repair a leased new motor vehicle as stated in the express warranty, he must provide the lessee of the vehicle with a refund of all the money he spent to obtain the lease and all the money he has spent under the terms of the lease, and any incidental and monetary consequential damages, less a reasonable allowance for use of the vehicle. The bill would also require the lessor to transfer title of the vehicle to the manufacturer if necessary to fulfill the consumer's rights as provided in the Act. The bill became effective October 1, 1989, and applies to all motor vehicles under warranty on or after that date.

**Motorcycle helmet usage** (HB 1264; Chapter 711): House Bill 1264 reduces the penalty for failure to wear a helmet while operating a motorcycle from $100 to $25, with no driver license points or insurance surcharge assessed for the violation. The bill requires moped riders to wear helmets, with the same penalty. The bill also amends the driving while impaired statutes to exclude horses, bicycles, or lawnmowers from the definition of "vehicle." The bill became effective October 1, 1989.

**Disclose post-manufacture damage** (HB 1279; Chapter 614): House Bill 1279 provides a manufacturer must disclose in writing to a new motor vehicle dealer, at the time of delivery, all damage and repairs made to a new motor vehicles while in the manufacturer's possession that exceed 3% of the manufacturer's suggested retail price. The bill also provides that a new motor vehicle dealer must disclose in writing to a purchaser of a new motor vehicle any damage or repairs to the vehicle that exceed 5% of the manufacturer's suggested retail price.

**Lower partial license fee interest** (SB 15; Chapter 661): Senate Bill 15 lowers the carrying charge on partial license fee payments to 3% of the deferred portion of the license fee. The bill became effective upon ratification, July 20, 1989, and applies to fees deferred on or after that date.

**Driver license insurance proof** (SB 141; Chapter 436): Senate Bill 141 amends the proof of financial responsibility requirements for obtaining drivers' licenses and limited driving privileges. The bill allows as alternative means of proof (1) a certificate of proof (DL-123) from an insurance carrier; (2) a facsimile of the DL-123 from an insurance carrier; or (3) a binder for or policy of insurance. If a certificate or facsimile from an insurance company is offered as proof of financial responsibility, it must state the effective and expiration dates of the insurance policy and the date of its issuance. The certificate or facsimile remains effective for 30 days after issuance. The bill clarifies that the financial responsibility provisions are

applicable to persons who own currently registered motor vehicles. Senate Bill 141 became effective June 26, 1989.

**Auto club bond limit increase** (SB 357; Chapter 663): Senate Bill 357 increases from $500 to $1500 the authority of qualified surety companies to guarantee each arrest bond certificate issued by an automobile club or association. The bill also allows a guaranteed arrest bond certificate guaranteed by a surety company to be accepted as bond in an amount not to exceed $1500. The bill became effective upon ratification, July 20, 1989.

**Truth in mileage act conformed** (SB 396; Chapter 482): Senate Bill 396 amends several sections of the N.C. Vehicle Mileage Act to comply with the Federal Truth in Mileage Act, and to increases the penalty for odometer fraud.

Specifically, the bill alters the definition of "transferee" and "transferor," and adds definitions of "lessee," "lessor," and "mileage;" alters the required contents of the odometer disclosure statement; adds car lessors to those required to certify mileage before transfer by means of odometer disclosure statements; exempts cars 10 years old from the odometer disclosure requirement; exempts from the odometer disclosure requirements vehicles sold directly by the manufacturer to any agency of the United States; requires issuers of odometer disclosure statements (dealers, distributors, lessors, and auction companies) to retain such records for five years and prohibits conspiracy to violate this requirement; and provides that violation of Article 15 of Chapter 20 (the Vehicle Mileage Act) is a Class J felony. The bill becomes effective January 1, 1990.

**Commercial driver license** (SB 691; Chapter 771): Senate Bill 691 implements the federal Commercial Motor Vehicle Safety Act of 1986 by establishing a comprehensive commercial driver licensing system and the disqualifying offenses for which a person may lose a commercial driver license. Commercial motor vehicle is defined as one (1) with a gross vehicle weight rating of 26,001, or more pounds, (2) designed to carry 16 or more passengers, or (3) carrying hazardous materials. Effective April 1, 1992, drivers of commercial vehicles are required to have a proper license for the vehicle. More than one driver's license is prohibited. An applicant for a commercial license must be a North Carolina resident, over 21 years of age, and pass a knowledge and skills test for the vehicle. The bill permits the Division of Motor Vehicles to contract for the administration of the tests and allows a waiver of the skills test in certain instances. An application fee of $20 is required; a $40 fee is required for issuance of the license. The commercial driver license is to be issued with restrictions as to classes and sizes of vehicles. The commercial driver license is waived for certain classes of vehicles, including military, emergency, and certain farm vehicles. A person with a commercial license must notify the Division of Motor Vehicles and his employer if he is convicted of violating any laws related to motor vehicles, other than parking violations, in another state. Driving without a commercial license is a misdemeanor punishable by $250 for the first offense and $500 for subsequent offenses. Failure of an employee to report convictions is an infraction punishable by a $100-$500 penalty. Allowing an unlicensed employee to drive a commercial vehicle is an infraction punishable by a $500-$1000 penalty. A person may be "disqualified" from driving a commercial vehicle for violation of serious traffic offenses and other specified offenses. Lifetime disqualifications may result for violation of certain drug or serious offenses. The bill also enacts a new misdemeanor offense, impaired driving in a commercial motor vehicle, similar to the present offense of impaired driving in a motor vehicle. A person commits this offense if he drives a commercial motor vehicle on a street or highway while appreciably

under the influence of an impairing substance or with a blood alcohol concentration of 0.04 or more. The offense is punishable by a fine of not less than $100, up to 2 years imprisonment, or both. Senate Bill 691 becomes effective September 1, 1990.

**Auction vehicle inspections** (SB 726; Chapter 467): Senate Bill 726 allows a public auction dealers to sell a motor vehicle displaying a current N.C. inspection sticker, if the sticker is less than 90 days old. The bill became effective upon ratification, June 27, 1989.

## Ports/Navigation/Boats

**Ports Authority appoint director** (SB 83; Chapter 273): Senate Bill 83 authorizes the Board of the State Ports Authority to appoint the executive director of the Authority, and authorizes the executive director to appoint, employ, dismiss and fix compensation of other Ports Authority employees. In addition, the bill adds the Secretary of Commerce as a member of the Ports Authority Board. The bill became effective upon ratification, June 12, 1989.

**Ports Authority not State personnel** (SB 467; Chapter 484): Senate Bill 467 exempts employees of the N.C. State Ports Authority from the State Personnel System. The bill became effective upon ratification, June 28, 1989.

**Boat title act-2** (SB 1151; Chapter 739): Senate Bill 1151 added a new article, the "Watercraft Titling Act," to Chapter 75A, Boating and Water Safety. The Watercraft Titling Act provides that any owner of a watercraft, which is not titled elsewhere, may apply to the Wildlife Resources Commission for a certificate of Title.

The Act defines "watercraft" to include all watercraft (except a seaplane) used or capable of being used as a means of transportation on water.

The Act sets forth the form and content of applications for certificate of title, and sets a fee of $20 for issuance of a title, and $10 for each transfer of title.

The Act requires the Commission to show on the face of the certificate of title all security interests in the watercraft in the order of their priority as shown on the application. The act also governs, with respect to titled watercraft, the filing, priority, and release of of security interests, surrender of certificate of title, and levy of execution on the watercraft.

The Act also provides that issuance of registration under Chapter 75A is **prima facie** evidence of ownership of a watercraft and entitlement to a certificate of title, subject to rebuttal.

The Act is effective January 1, 1990.

## Railroads

**Railroad Corridor Condemnation** (SB 466; Chapter 600): Senate Bill 466 authorizes the Department of Transportation to lease railroad corridors for interim compatible uses; authorizes the Department to condemn land necessary for rail corridor preservation that is a part of a railroad corridor and is not part of an existing, active railroad line; and authorizes the Department rail revitalization funds

to cities. In addition, the bill authorizes cities and counties to use property taxes for railroad corridor preservation, to borrow money and issue bonds for railroad corridor preservation, and to acquire, and lease for compatible purposes, property in a railroad corridor established by the Department of Transportation. The bill became effective upon ratification, July 11, 1989.

## Trucks

**Limitations on semitrailers** (HB 1062; Chapter 790): House Bill 1062 authorizes semitrailers of 48-53 feet to operate on interstate and designated federal-aid primary system highways, provided the kingpin to axle length and underride guard provisions of the bill are met. The bill provides that the owner of a semitrailer less that 50 feet violating length or twin-trailer restrictions is responsible for an infraction with a penalty of $100, and for 50 feet or more, a penalty of $200. The bill provides that a driver who violates the length or twin-trailer provisions is guilty of a misdemeanor, punishable by a fine of $100 for under 50 feet semitrailers, $200 for 50 feet or more. The Highway Safety Research Center is directed to study the safety implications of the bill and report to the 1991 General Assembly. The bill becomes effective January 1, 1990.

**Transport Bales of Tobacco** (SB 540; Chapter 277): Senate Bill 540 provides a six inch load width tolerance for transport of hogsheads of tobacco. Also, for transport of sheet or bale tobacco, the bill sets a 114 inch maximum load width at the top of the load, and a 102 inch load width maximum at the bottom of a load at the truck bed. The bill became effective upon ratification, June 12, 1989.

**Annual review/overweight permits** (HB 219; Chapter 54): House Bill 219 restricts the review and renewal of annual overweight permits to once per calendar year. The bill became effective upon ratification, April 11, 1989.

## Miscellaneous

**Triangle Transit Authority** (HB 694; Chapter 740): House Bill 694, the Regional Public Transportation Authority Act, authorizes the creation of a Triangle area transit authority including Wake, Durham, and Orange counties. The Act states that the purpose of such an Authority is to finance, provide operate, and maintain a safe, clean, reliable, adequate, convenient, energy efficient, economically and environmentally sound public transportation system for the service area of the Authority. The Authority is granted the power of eminent domain to acquire property for its operations. In addition, the Act authorizes the Authority to issue bonds (not pledged on ad valorem tax) and receive State or local appropriations to finance its operations. The Act became effective upon ratification, August 8, 1989.

## PENDING LEGISLATION

The following bills have passed one house and have been received by the other and therefore are eligible for consideration in the 1990 session, under the terms of the adjournment resolution.

### License Plates

**Plates for VFD/Rescue Squads** (HB 1152): House Bill 1152 would provide special semipermanent license plates for members of volunteer fire departments and rescue squads.

**Collegiate Registration Plates** (SB 892) Senate Bill 892 would provide for collegiate insignia license plates.

### Motor Vehicles

**Amend Safe Roads Act** (SB 13): Senate Bill 13 would make numerous changes to the driving while impaired offenses and related statutes, including possible reduction of the blood alcohol concentration level, increasing fines, elimination of open containers of alcoholic beverages in motor vehicles, increasing the civil license revocation period, modifying limited driving privileges, and other substantive and clarifying changes.

**Restrict juvenile driving privileges** (HB 650): House Bill 650 would require that persons under 18 years of age have a "drug-free" record (free of violations of any statutes related to alcohol or controlled substances) to obtain a driver's license.

### Ports/Navigation/Boats

**Exempt Ports Authority from APA** (HB 739): House Bill 739 would exempt the N.C. Ports Authority from the rule making requirements of the Administrative Procedure Act.

### Miscellaneous

**No profane bumper stickers** (SB 5): Senate Bill 5 would prohibit the affixing to a motor vehicle any bumper sticker or other device containing a visual depiction harmful to minors, or indecent words.

## STUDIES

Independent study commissions: (1) Joint Legislative Highway Oversight Committee; (2) State Infrastructure Needs and Financing Study Commission.

Legislative Research Commission: (1) State Ports; (2) Public Transportation Financing and Private Sector Contracts for Public Transportation Services; (3) Long-range Transportation Needs of the State, Alternate Methods of Transportation, and the Impact of the Highway Trust Fund on Potential Revenue Sources for Alternative Transportation; (4) Fee Structure for Personalized License Plates and Special Plates; (5) Lease and Renegotiation of Contracts of the North Carolina Railroad Company and the Atlantic and North Carolina Railroad Company.

Other: State Marine Patrol assigned to Joint Legislative Commission on Governmental Operations.