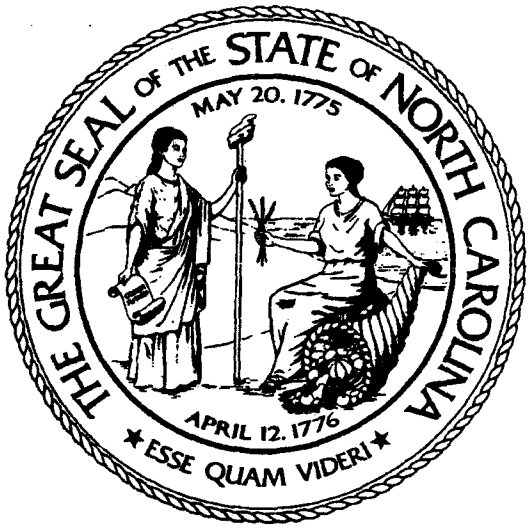

SUMMARIES OF SUBSTANTIVE RATIFIED LEGISLATION

1989 GENERAL ASSEMBLY

2ND SESSION, 1990

RESEARCH DIVISION
N. C. GENERAL ASSEMBLY
SEPTEMBER 5, 1990

INTRODUCTION

This publication is a supplement to last year's document, which summarized the substantive legislation enacted by the 1989 General Assembly, and contains summaries of substantive legislation enacted by the General Assembly during the 1990 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 defeated bills and a list of any new independent or Legislative Research Commission studies authorized by the 1990 General Assembly.

This document is the result of a combined effort by the following staff members of the Research Division: Cindy Avrette, Brenda Carter, Jennie Dorsett, Sherri Evans-Stanton, Bill Gilkeson, George F. Givens, Kristin Godette, Carolyn D. Johnson, Linwood Jones, Sally J. Marshall, M. Lynn Marshbanks, Giles S. Perry, Barbara Riley, Steven Rose, Terry Sullivan, Sandra A. Timmons, 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

(Cindy Avrette)

RATIFIED LEGISLATION

Agricultural Finance Authority (HB 2321; Chapter 1000): Last year the General Assembly enacted legislation abolishing the North Carolina Agricultural Finance Authority, effective June 30, 1990. House Bill 2321, along with Part VIII of Chapter 1074 of the 1989 Session Laws, repeals last year's law so that the Authority can continue its work. The North Carolina Agricultural Finance Authority was established in 1986 as the successor to the North Carolina Agricultural Facilities Finance Agency that had been created in 1983. The Authority was established to provide credit through direct loans, insured loans, etc. to farmers and agribusinesses who cannot obtain credit at reasonable rates elsewhere. House Bill 2321 became effective July 20, 1990.

Strawberry Assessment Act (SB 1380; Chapter 1027): Senate Bill 1380 creates the "Strawberry Assessment Act." The Act provides a means for strawberry producers to voluntarily assess themselves in order to provide funds for strawberry research and marketing. All expenditures of the funds collected must be approved by a funding committee composed of seven members of the North Carolina Strawberry Association, Inc., appointed by the Commissioner of Agriculture.

The Strawberry Association will conduct referenda on the question of whether an assessment should be levied. All persons engaged in the commercial production of strawberries are eligible to vote in the referenda. The amount of the proposed assessment and the method of collection must be set forth on the ballot.

An assessment cannot be collected unless at least two-thirds of the votes cast in a referendum are in favor of the assessment. The amount of the proposed assessment cannot exceed five percent of the value of the previous year's strawberry plant sales, and the period for which each assessment can be levied cannot exceed three years. The Strawberry Association determines the amount of the proposed assessment and the period for which the assessment is levied.

If a referendum receives a two-thirds favorable vote, the Department of Agriculture will notify all strawberry plant growers of the assessment. The assessment would be added by plant growers to the price of all strawberry plants sold for planting in North Carolina. The assessment must be remitted to the Department no later than the tenth day following the end of each calendar quarter; the Department will then forward the money collected to the Strawberry Association.

Senate Bill 1380 became effective July 27, 1990.

CIVIL LAW AND PROCEDURE

(Jennie Dorsett, Kristin Godette, Giles S. Perry)

RATIFIED LEGISLATION

Liability imposed on owners of dangerous dogs (SB 994; Chapter 1023): Senate Bill 994 requires the owner of a dangerous dog to take certain precautions against attacks by the dog and imposes criminal penalties and civil liability on the owner if the dog does attack and cause damage. A "dangerous dog" is one that has killed or inflicted severe injury on a person without provocation, is a "potentially dangerous dog," or is a dog trained or harbored for dog fighting. A "potentially dangerous dog" is defined as a dog that an animal control official has determined to have inflicted a severe bite on a person, has killed or injured another animal when not on the owner's property, or has, off the owner's property, approached a person in a vicious or terrorizing manner. The owner of a dangerous dog is prohibited from leaving the dog unattended unless the dog is inside or secured. If the owner leaves with the dog, the dog must be leashed or restrained and muzzled. Certain criminal penalties are set out relating to the provisions of the act: (1) Violation of the required precautions is a misdemeanor punishable by a fine of up to $100 or imprisonment for not more than 30 days or both; and (2) An owner of a dangerous dog that attacks a person who needs medical treatment costing more than $100 is guilty of a misdemeanor punishable by a $5000 fine or imprisonment up to two years or both. Strict liability is imposed on an owner of a dangerous dog for injuries or property damage the dog inflicts. Senate Bill 994 will become effective October 1, 1990.

Amend pleadings rules (SB 734; Chapter 995): Senate Bill 734 amends the general rules of pleadings to allow a claimant 30 days instead of ten days to respond to a request for a statement of the monetary relief sought. The bill also modifies procedures of the Judicial Standards Commission to provide for waiver of confidentiality. The effective date of this bill is October 1, 1990.

Increase service of process fees (HB 950; Chapter 1044): House Bill 950 amended G.S. 7A-311(a) to increase the fee for items of civil process from $4 to $5. House Bill 950 becomes effective October 1, 1990, and applies to process served on or after that date.

COMMERCIAL LAW

(M. Lynn Marshbanks, Steven Rose, Terry Sullivan)

RATIFIED LEGISLATION

Business

Minority contracts/single-prime bidding (HB 2263; Chapter 1051): House Bill 2263 applies to all government entities required to use the Department of Administration's services in purchasing goods and services and to any private, nonprofit corporation receiving at least $500,000 in an appropriation from the General Assembly in a fiscal year (other than an institution of higher education or a hospital). These entities and corporations are required to report to the Department what percentages of their contract purchases of goods and services and contract bids were from minority-owned businesses, from female-owned businesses, and from disabled-owned businesses. The Department must compile the data and report it annually to the General Assembly. The bill also provides that each full set of separate prime bids shall constitute a competitive single-prime bid in meeting the requirements in G.S. 143-132(a) for three competitive bids for public contracts. Finally, the bill provides that the State Building Commission must develop guidelines by January 1, 1991, governing the opening of bids under Article 8 of Chapter 143 (public contracts) and must distribute the guidelines to all public bodies subject to the Article. The effective date of this bill was July 1, 1990.

Technical amendments (SB 1337; Chapter 1024): Senate Bill 1337 makes numerous technical amendments to the General Statutes and to the Session Laws. Important amendments to the North Carolina Business Corporation Act include: (1) Deleting from the definition of "foreign corporations" corporations that have capital stock; (2) Providing that shareholders of a parent corporation have no right of dissent if the parent corporation merges into itself a subsidiary, where the parent owns at least 90% of the outstanding shares of each class of stock of the subsidiary; (3) Requiring applications for certificates of authority to include the county in which the registered office is located; (4) Limiting information included in applications for amended certificates of authority to information identifying the corporation and stating the changes it is proposing; and (5) Requiring the Secretary of State to send the certificate of withdrawal and a copy of the corporation's application for the certificate to a corporation applying for a certificate of withdrawal. Senate Bill 1337 became effective upon ratification, which was July 27, 1990, except for the amendments to the North Carolina Business Corporation Act, which became effective July 1, 1990.

Director's liability (SB 774; Chapter 1071): Senate Bill 774 amends Article 65 of Chapter 58 to allow for the indemnification of officers, directors, and other employees of nonprofit domestic hospital, medical, or dental service corporations for expenses and financial liability in case of civil or criminal actions arising in connection with their services to the corporation. In order for the corporation to indemnify the person, the

person must have conducted himself in good faith, reasonably believed that his conduct was in the best interest of the corporation, and had no reasonable cause to think such conduct was unlawful. Indemnification may not occur where the person is adjudged liable to the corporation or has gained improper personal benefits from the actions involved. Indemnification of expenses is required when the person is completely successful in defending the action. The protections afforded under this act are similar to those given to directors and employees of for profit corporations under Chapter 55, the Business Corporation Act. The act becomes effective October 1, 1990.

Corporation annual filing fee (SB 1575; Chapter 1057): Senate Bill 1575 increases the fee for filing a corporation's annual report with the Secretary of State from $5 to $10. The effective date of this bill is January 1, 1990.

Exempt certain securities (HB 1019; Chapter 803): House Bill 1019 provides that securities listed on an exchange registered with the United States Securities and Exchange Commission may be exempted from State registration and filing requirements. House Bill 1019 became effective October 1, 1989.

Fire sprinkler contractors (HB 285; Chapter 978): House Bill 285 amends G.S. 87-16 by changing the requirements for membership on the State Board of Examiners of Plumbing, Heating, and Fire Sprinkler Contractors. The statute had provided that one member must be a city plumbing inspector. The amendment allows that member to be a city plumbing or mechanical inspector. In addition, the present requirement that one member must be a licensed plumbing or mechanical contractor is changed. The amendment provides that one member must be a licensed plumbing contractor and removes the option of that person being a mechanical contractor. The act becomes effective October 1, 1990.

Fire sprinkler contractors (SB 896; Chapter 842): Senate Bill 896 adds fire sprinkler contractors to the licensing jurisdiction of the State Board of Examiners of Plumbing and Heating Contractors. The name of the Board is changed to the State Board of Examiners of Plumbing, Heating, and Fire Sprinkler Contractors. The number of members of the Board stays the same, but a requirement for one member who is a licensed fire sprinkler contractor is added, and the public at large membership is reduced from two persons to one. Other changes allow the licensing board to order reprimand or probation in addition to license revocation or suspension as disciplinary actions.

There are limited grandfather privileges for current fire sprinkler contractors. The bill becomes effective October 1, 1990..

Economic Development

Incubator facilities program (SB 810; Chapter 952): Senate Bill 810 allows the North Carolina Technological Development Authority to make more than one grant when establishing a business incubator facility, up to a total of $200,000. It also provides that if the grant recipient has a lease for five years or longer, any firm or entity may

own the incubator facility if (i) the owner does not control the grant recipient, and (ii) the Authority determines that the lease arrangement will further the purpose of the State's incubator facilities program. If a physical facility is not used as an incubator facility for at least five years, a pro rata portion of the incubator grant must be returned for each month the facility is not used as an incubator facility. Senate Bill 810 became effective upon ratification, which was July 18, 1990.

Financial Institutions

Accounts

Technical changes relating to joint, trust, and personal agency accounts at financial institutions (SB 1351; Chapter 866): Senate Bill 1351 makes various changes to the law, first enacted in 1988, authorizing these accounts at banks, S&L's, and credit unions. Senate Bill 1351 provides, among other matters, that a financial institution has no liability to the personal representative of an estate once the representative releases the funds to the surviving joint tenant or beneficiary. The personal representative, however, may seek the funds from the surviving joint tenant or beneficiary. The language of disclosure for these accounts to be signed by the holders need not be exactly that in the statute but "substantially similar." If the trustee dies while the beneficiary is still a minor, the law is clarified to require that the account remains with the institution until the beneficiary's majority or a guardian is appointed and withdraws the funds. The act becomes effective January 1, 1991.

Banks

Clarify the permissible use of the words "bank", "banking," "banker," and "trust" in connection with a business (SB 1352; Chapter 805): Senate Bill 1352 does as the above caption indicates. This bill was effective upon ratification, June 12, 1990.

Conversion of a bank to a S&L and a S&L to a bank (HB 2047; Chapter 845): See the explanation under **Savings and Loan Associations** below.

Loans, Tax Refund Anticipation

Regulation of tax refund anticipation loans (RAL's) (SB 1354; Chapter 881): In 1989, the General Assembly first required the licensing, under the Consumer Finance Act, of those who facilitated the extension of loans to federal taxpayers who, in return, assigned to the lender their anticipated tax refunds. Because the RAL facilitators do not actually make the loans, the General Assembly in 1990 revised the regulatory plan. The enacted plan provides, among other matters, for registration of facilitators with the

Banking Commission; criminal penalties for facilitators' failure to register; exemption from registration for banks, S&L's and credit unions; registrants' filing of fee schedules for RAL's with the Commissioner of Banks; granting to the Commissioner the power to determine that a RAL fee is unconscionable subjecting the facilitator to possible revocation of license and awarding to the debtor liability for three times the amount of the fee; disclosure to the loan applicant by the registrant of specified information; and the prohibition of certain practices by facilitators. This bill becomes effective October 1, 1990.

Real Estate Appraisals

Compliance with federal requirements on real estate appraiser regulations (HB 2050; Chapter 827): The federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), in response to the savings and loan crisis, attempts to insure quality appraisals by establishing minimum appraisal standards and identifying qualified appraisals. It requires that beginning July 1, 1991, in all federally-related real estate transactions, the property must be appraised by a State-certified or State-licensed appraiser. Eighty to ninety percent of all real estate transactions in North Carolina, it is estimated, are federally-related.

In 1989 while FIRREA was still being considered in Congress, the General Assembly attempted to conform to the understanding of what the Federal Government would require on real estate appraiser licensing. A voluntary program was created for the licensing and certifying of real estate appraisers in North Carolina. The statutory framework included the establishment of educational requirements and other qualification criteria by the Real Estate Commission for real estate appraisers and the creation of an advisory group, the Appraisal Committee, to be appointed by the Real Estate Commission.

In reviewing the guidelines established pursuant to FIRREA on the matter of real estate appraiser regulation, the Depository Institutions Study Commission which proposed the original House Bill 2050 determined that the 1989 State program did not conform to the federal requirements. House Bill 2050 renames the Real Estate Appraisal Committee the Real Estate Appraisal Board and establishes in the Board the responsibility for the licensing and certifying of appraisers. The Board's final decisions are not reviewable by the Real Estate Commission but are subject to judicial review. The expanded membership of the Board consists of seven members, five appointed by the Governor, and one each appointed by the Speaker and the President Pro Tempore. Three levels of appraiser licensing are established:

1. State-licensed residential real estate appraisers, who have completed satisfactorily a course in residential real estate appraising;
2. State certified residential real estate appraisers, who consist of State-licensed appraisers with at least two years of experience; and
3. State-certified general real estate appraisers, who have more stringent educational, experience, and testing requirements relating to all types of real estate.

The provisions of the bill relating to the levels of licensure were effective on ratification, July 3, 1990. The remainder of the act becomes effective on July 1, 1991.

Savings and Loan Associations (S&L's)

Conversion of a S&L to a bank and a bank to a S&L (HB 2047; Chapter 845): House Bill 2047 permits a converting financial institution, after approval by its board of directors, to submit a plan of conversion to the appropriate State authority (Administrator of the Savings Institutions Division or Commissioner of Banks). After review of the plan of conversion, the State authority may recommend the approval of the plan to the appropriate State regulatory body. Specific criteria are established for approval of the conversion. After the period of transition, the converted financial institution will have only the rights, powers, and duties of similar institutions to which it has been converted. This act was effective on ratification, July 5, 1990.

Technical and conforming changes to the savings institutions law (HB 2048; Chapter 806): House Bill 2048 makes various changes to the savings institutions law to conform to changes wrought by the federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). Among the act's more significant provisions is that the Administrator of the Savings Institutions Division is granted the authority to review the acquisitions of out-of-state institutions by a North Carolina association. The savings institutions law's references to the corporate law chapter are changed to take into account the new codification of the Business Corporation Act. The act's provisions relating to the Business Corporation Act's recodification are effective on that recodification's effective date, July 1, 1990; the remaining provisions are effective on the date of ratification of House Bill 2048, June 15, 1990.

STUDIES

Independent study commissions: (1) Economic Future Study Commission; and (2) Joint Legislative Commission on Future Strategies for North Carolina.

CONSTITUTION

(Bill Gilkeson)

DEFEATED LEGISLATION

Gubernatorial veto (SB 3): Senate Bill 3, as passed by the Senate, would have amended the Constitution so that bills passed by the General Assembly, with certain exceptions, would be subject to veto by the Governor. The General Assembly could override the Governor's veto by three-fifths of those present and voting in each house. Senate Bill 3 passed the Senate in March 1989, but in a House vote in July 1989 failed to receive the 72 votes necessary for the passage of a constitutional amendment. The bill was kept alive through a motion for reconsideration until the 1990 Session. In 1990 the House Rules Committee sent the bill to the House floor coupled with proposals for four-year terms for legislators, a limitation on the length of the legislative session, legislative confirmation of certain gubernatorial appointees, and gubernatorial appointment of appellate judges. The full House, however, referred Senate Bill 3 in that form back to committee, where it was never taken up again.

Six-year gubernatorial term (SB 94): Senate Bill 94 would have amended the Constitution to limit the Governor to a single consecutive six-year term and the Lieutenant Governor to the same. The limitation would have been effective for the Governor and Lieutenant Governor elected in 1992. The bill passed the Senate but died in the House.

Legislators' four-year term (SB 95): Senate Bill 95 would have amended the Constitution so that the terms of all members of the House and Senate would be four years rather than two years. As Senate Bill 95 passed the Senate, the new term length would be effective beginning with all legislators elected in 1990. Senate Bill 95 died in the House. (The four-year term "idea" was revived in the House briefly as part of a package with the veto and other measures in Senate Bill 3, mentioned above, but in that version the terms would begin in 1992.)

Appointive judges (SB 218): Senate Bill 218 would have amended the Constitution to provide for appointment of justices of the State Supreme Court and judges of the State Court of Appeals. The Governor would make the appointments, subject to confirmation by the General Assembly. 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 the procedure by which the Governor would appoint the jurists and the procedure for reconfirming them after their initial term. A companion bill. Senate Bill 219, would have set up a statutory method for gubernatorial appointment and legislative confirmation and reconfirmation. Both bills passed the Senate and died in the House.

CRIMINAL LAW AND PROCEDURE

(Brenda Carter, Jennie Dorsett, Kristin Godette)

RATIFIED LEGISLATION

Corrections

Prison Bond Act (HB 2245; Chapter 933): House Bill 2245 provides for the issuance of $75 million of general obligation bonds of the State in order to facilitate the payment of the capital costs required in connection with providing additional prison facilities. This bill also raises the prison population cap from 18,715 to 19,324, effective November 1, 1990, and increases it to 20,435, effective June 30, 1991. This bill was effective July 16, 1990.

State Prison and Youth Services Facilities Bond Act (HB 2287; Chapter 935) House Bill 2287 authorizes the issuance of $200 million of State general obligation bonds for State prison and youth correctional facilities, if approved by the voters in the 1990 election. This bill was effective July 16, 1990.

Sentencing Commission (HB 2284; Chapter 1076): House Bill 2284 creates a twenty-three member Sentencing and Policy Advisory Commission. The Commission is to evaluate sentencing laws and policies in relationship to the stated purposes of the criminal justice and corrections systems and the availability of sentencing options. The Commission will make recommendations to the General Assembly for the modification of sentencing laws and policies and for the development of sentencing options as necessary to achieve policy goals. The Special Committee on Prisons was discontinued and its Substance Abuse Treatment in Prisons Study, and any other pending responsibilities, will be transferred to the new Commission. This bill was effective July 28, 1990, and will expire July 1, 1992.

Intensive probation and parole eligibility (HB 2288; Chapter 994): House Bill 2288 makes parolees eligible for intensive supervision and clarifies that both misdemeanants and felons are eligible for the intensive probation and parole program. This bill was effective July 19, 1990.

Impact Program for youthful offenders (SB 1499; Chapter 1010): Senate Bill 1499 provides sentencing judges with the discretion to suspend a sentence to a term of imprisonment and place a youthful offender between the ages of 16 and 25 on probation, with the condition that the offender complete the Intensive Motivational Program of Alternative Correctional Treatment (IMPACT). The bill sets out criteria for selecting and sentencing offenders to IMPACT, a 90-day boot-camp style program. This bill becomes effective January 1, 1991.

DWI house arrest (SB 1506; Chapter 1031): Senate Bill 1506 allows judges to use house arrest as a condition of special probation in DWI cases requiring mandatory

minimum terms of imprisonment and provides that certain misdemeanants may be paroled and placed under house arrest. Provisions of the bill related to parole became effective July 27, 1990; DWI house arrest becomes effective October 1, 1990.

Probation and parole supervision fees (HB 2173; Chapter 1034): House Bill 2173 increases the probation and parole supervision fees paid by persons on supervised probation or parole from $15 to $20 per month. This bill becomes effective October 1, 1990.

Crimes

Child pornography (SB 817; Chapter 1022): Senate Bill 817 creates the offense of third degree exploitation of a minor. The offense is committed by the knowing possession of material depicting minors engaging in sexual activity. Violation is a Class J felony. The bill adopts the definition of sexual activity contained in G.S. 14-190.13, with the exception of excretory functions. The effective date of this bill was October 1, 1989.

Insurance crimes (SB 498; Chapter 1054): Senate Bill 498 amends the laws relating to the reporting and investigation of insurance fraud and the financial condition of insurance licensees, the laws relating to embezzlement by agents and brokers and the reporting thereof, and the laws relating to false statements by persons in the business of insurance. The bill provides limited immunity from civil liability for the Commissioner of Insurance and for those who provide information to the Commissioner of Insurance arising from investigation of the financial condition of licensees. The bill becomes effective October 1, 1990.

Beach bingo (HB 1030; Chapter 826): House Bill 1030 adds a statement of legislative purpose for the conduct of bingo. The bill also prohibits beach bingo games from offering prizes in excess of $10 or in conjunction with an opportunity to obtain anything of value. The effective date of the bill was July 3, 1990.

Dangerous dog liability (SB 994; Chapter 1023): Senate Bill 994 requires the owner of a dangerous dog or potentially dangerous dog to take precautions against attacks by such dogs and imposes criminal penalties and civil liability upon the owner of a dangerous dog which attacks and causes serious bodily injury to a person. The bill becomes effective October 1, 1990.

Criminal Procedure

Indigent Persons' Attorney Fee Fund (SB 1587; Chapter 946): Senate Bill 1587 requires applications for reimbursements from the Indigent Persons' Attorney Fee Fund to contain the social security number of the person against whom judgment is to be

entered or a certificate that the person does not have a social security number. The bill also requires that judgments against convicted indigent persons be indexed as a judgment lien upon the later of (i) the date conviction is final if the indigent person is not ordered as a condition of probation to pay the costs of representation or (ii) the date probation is terminated or revoked if payment is a condition of probation. Senate Bill 1587 shall become effective October 1, 1990, and applies to applications submitted and judgments entered on or after that date.

Littering pleas (SB 951; Chapter 1041): Senate Bill 951 limits the authority of magistrates and clerks of superior court to accept guilty pleas to the charge of littering unless the pleading specifies misdemeanor littering. The effective date of this bill was July 27, 1990.

Victims' compensation for children (HB 2403; Chapter 898): House Bill 2403 extends from one year to two years the time period for filing an application for victims' compensation for economic loss where the victim was ten years old or younger at the time of injury. The effective date of the bill was July 12, 1990.

Increase service of process fees (HB 950; Chapter 1044): House Bill 950 amended G.S. 7A-304(a) to increase the arrest and service of process fee in criminal actions from $4 to $5. House Bill 950 becomes effective October 1, 1990, and applies to process served on or after that date.

Drugs

1990 Omnibus Drug Act (HB 2375; Chapter 1039): House Bill 2375 provides that investigating law enforcement agencies will receive 75% of the monies collected by assessments under the controlled substance tax law, and convicted drug offenders will be required to make restitution of $100 to pay for the costs of lab facilities at the SBI. The possession or distribution of precursor chemicals with the intent to manufacture illegal controlled substances is a Class H felony. Mandatory minimum sentences are increased for habitual driving while impaired violators and apply to offenders who have been convicted of three or more impaired driving offenses within a seven-year period. Habitual impaired driving is a Class I felony, punishable by a minimum one-year term of imprisonment and permanent revocation of the driver's license. Registers of Deeds shall distribute with marriage licenses information on potential harm to children from pre-birth exposure to drug and alcohol abuse. Provisions of the bill related to criminal offenses become effective October 1, 1990.

Drug offenses related to children, pregnant women, and on school property (HB 267; Chapter 1081): House Bill 267 makes various changes to the drug statutes as follows. (1) The bill creates a new felony offense of employing a minor to commit a drug violation. Mistake of age is not a defense to prosecution. If the offender is at least 18 but less than 21 years of age, the offense shall be punishable as a felony that is one class more severe than the violation for which the minor was hired. If the offender is 21 years or older, the offense shall be punishable as a felony that is two classes more

severe than the violation for which the minor was hired. (2) The bill makes it a Class E felony for a person at least 18 years of age to sell or deliver controlled substances to a pregnant female. It is not a defense that the offender did not know that the female was pregnant. (3) The bill makes it a Class E felony for a person at least 21 years of age to manufacture, sell, deliver, or possess with intent to do so a controlled substance on school property or within 300 feet of the school grounds. The transfer of less than five grams of marijuana for which no payment is received is not an offense under this new subsection. The offender must serve a mandatory two-year prison term if convicted. (4) The bill provides that a person at least 21 years of age who employs a minor to commit a drug violation shall be civilly liable for the damages of the drug addiction proximately caused by the violation. Contributory negligence and assumption of the risk are not defenses to the liability. House Bill 267 becomes effective October 1, 1990, and applies to offenses committed on or after that date.

Law Enforcement

Law officer oath of office (SB 1013; Chapter 953): Senate Bill 1013 establishes a separate oath of office for a law enforcement officer. The bill also provides that the oath required by Section 7 of Article VI of the North Carolina Constitution for elected and appointed officials be taken along with the specialized oaths. Senate Bill 1013 becomes effective October 1, 1990.

STUDIES

Independent study commission: (1) State Law Enforcement - assigned to the Joint Legislative Commission on Governmental Operations.

EDUCATION

(Barbara Riley)

RATIFIED LEGISLATION

Community Colleges

React/community college tuition waiver (SB 336; Chapter 915): Senate Bill 336 amends G.S. 115D-5(b) to add REACT team (Radio Emergency Associated Citizen Team) members, when the REACT team is under contract to a county as an emergency response agency, to the list of persons for whom the State Board of Community Colleges may provide tuition and registration fee waivers for training courses. Under the current law, waivers may be provided for training courses for volunteer firemen, local fire department personnel, rescue and lifesaving department personnel, local law-enforcement officers, and persons in a number of other categories. The bill became effective July 16, 1990.

Elementary and Secondary

Channel One/differentiated pay (SB 1427; Chapter 1074): Senate Bill 1427 amends G.S. 115C-98(b) to provide that local boards of education adopt policies for the selection of audio-visual materials. It also changes the term "instructional materials" to "supplementary instructional materials." The bill proceeds to give local boards of education the sole authority to select and procure supplementary instructional materials, including those materials that contain advertising. In addition, the local boards shall have the authority to determine whether such materials fit with the limits of the prescribed curriculum and when the materials may be presented to the students during the school day. Such supplementary instructional materials and the contracts to acquire them are not subject to approval by the State Board of Education. The bill also adds a new subsection (33) to G.S. 115C-47 (Powers and Duties of Local Boards) providing that the local boards of education shall have the sole authority to select and procure supplemental instructional materials.

G.S. 115C-238.4 (Differentiated Pay), part of the Performance Based Accountability Program, is amended by adding a new subsection (f) providing that in those instances when a local administrative unit has included a differentiated pay plan in its local school improvement plan, the plan shall provide that, upon attainment of local school goals, differentiated pay bonuses shall be paid to those certified staff members who are determined to have contributed to the attainment of those goals. The local board of education is to make the determination based upon recommendation of the superintendent and principal, school based committee, or other designee of the local differentiated pay plan.

The State Board shall study the issue of supplementary materials that contain commercial advertising and report to the General Assembly prior to March 15, 1991.

Senate Bill 1427 became effective July 28, 1990.

Handicapped education age change (HB 1679; Chapter 1003): House Bill 1679 creates a new Part 13A of Chapter 143B and establishes an Interagency Coordinating Council for Handicapped Children from Birth to Five Years of Age. The Council shall advise agencies involved in early intervention services in carrying out those services and shall submit an annual report to the Governor and General Assembly on the status of the early intervention system and special education services for preschoolers. Eligible children include infants and toddlers with or at risk for developmental delays or atypical development until they (i) have reached their third birthday, (ii) their parents have requested to have them receive services in the program established pursuant to Part 14, Article IX, Chapter 122 of the General Statutes, and (iii) the children have been placed in the program by the local educational agency. The Secretary of the Department of Human Resources shall have the responsibility for coordinating, administrating, and adopting rules for the early intervention system.

The bill also defines preschool handicapped children as those who have reached their third birthday and whose parents have requested services and services have begun not later than the beginning of the school year immediately after their third birthday (2) who are not eligible for public kindergarten and who because of handicap need special education services. Preschool handicapped children are entitled, at no cost to their parents, to individualized programs designed to meet their unique needs and the Department of Public Education shall cause local school administrative units to make available special education and related services. The State Board of Education shall adopt rules implementing Part 14 in order to receive federal funding under Part B of the Education of the Handicapped Act. Sections 1-4 of the Act (infants and toddlers) became effective July 1, 1990, and Section 5 will become effective July 1, 1991 . (The programs described above are contingent upon annual appropriations by the legislature.)

Exceptional children's appeals (SB 1615; Chapter 1058): Senate Bill 1615 amended the appeals process in cases involving changes or refusals to make changes in the identification, evaluation, or educational placement of children with special needs. Under the act, the decision of the administrative law judge is final unless the matter is appealed to the Superintendent of Public Instruction who appoints a Review Officer. The Review Officer must be an education professional knowledgeable about special education but may not be an employee of the agency involved in the care of the child. Appeals from the Review Officer are to either State or federal court pursuant to 20 U.S.C. § 1415. The act becomes effective October 1, 1990, and applies to appeals filed on or after that date.

Uniform tuition, driving class (HB 2349; Chapter 1065): House Bill 2349 creates the Interagency Defensive Driving-Citation Dismissal Task Force to study the establishment of a statewide defensive driving dismissal program. If such a program proves to be legal, desirable, and feasible, the Task Force shall recommend legislation in its March 1991 report to the General Assembly. The legislation shall address the issues of program implementation, curriculum, fees, record-keeping, and any other matter

deemed desirable. Pending completion of the report, no new programs shall be established in any judicial district. The act became effective July 28, 1990.

Higher Education

UNC management flexibility (HB 2335; Chapter 936): House Bill 2335 implements the recommendations of the report of the Board of Governors of the University of North Carolina and the Office of State Budget and Management on the need for management incentives and flexibility at the campus level to increase savings and operating efficiency. The bill provides for a number of changes to the University System budget presentation. The bill also amends G.S. 143-53.1 to provide that the Secretary of the Department of Administration may increase the "benchmark" expenditure, set at $10,000, in an amount whose increase expressed as a percentage does not exceed the rise in the Consumer Price Index during the fiscal biennium next preceding the effective date of the benchmark increase. This expenditure benchmark is to be used in determining what methods shall be used to solicit bids in the competitive bidding process. Where total expenditures are less than the benchmark, purchase through the Secretary is not mandatory.

House Bill 2335 also provides that the constituent institutions of the University may obtain a refund of sales and use tax paid by them on or after January 1, 1992, for tangible personal property acquired through the expenditure of contract and grant funds.

G.S. 143-27 is rewritten to provide that up to 10% of the receipts within the University System realized in excess of budget levels shall be available for each budget code.

Finally, the bill requires the Board of Governors to adopt standards to create an organized program of public service and technical assistance to the public schools.

The bill became effective July 1, 1990, except for the provisions of Section 1(c) and 5(a) which become effective July 1, 1991.

UNC in-state admissions (HB 1241; Chapter 907): House Bill 1241 provides that a person eligible for in-state tuition under Chapter 116 of the General Statutes shall be considered an in-state applicant for admissions purposes, provided that a person eligible for in-state tuition under G.S. 116-143.3(c) (military dependents) is an in-state applicant for admissions purposes only if at the time of seeking admission he is enrolled in a North Carolina high school or GED program in the State. The act became effective July 13, 1990.

Veteran's education transfer (SB 1439; Chapter 997): Senate Bill 1439 transfers the Veterans and Military Education Program, and funds appropriated therefore, from the Department of Community Colleges and the State Board of Community Colleges to the University of North Carolina System and the UNC Board of Governors. The act became effective July 20, 1990.

Proprietary Schools

Proprietary school bond (HB 2185; Chapter 824): House Bill 2185 completely rewrites the bond requirements for proprietary schools licensed by the Department of Community Colleges. It requires every school that is licensed to have a bond. The bond amount must be at least equal to the maximum amount of prepaid tuition held at any time during the last fiscal year by the school. In no case may the bond amount be less than $10,000. Schools that are unable to secure a bond may, with the consent of the State Board of Community Colleges, provide an alternative to a bond. The alternative would be the assignment of a savings account in an amount equal to the bond required or a certificate of deposit in that amount. The bond protects students only to the extent of tuition or fees lost by the student.

For proprietary schools licensed by the Board of Governors, the bond requirements are very similar to those already in the Board of Governors guidelines for proprietary schools. These requirements are also very similar to those the bill establishes for schools licensed by the Department of Community Colleges. The Board of Governors' bond requirements differ from those set out for the Department of Community Colleges only in that the Board of Governors' statutes do not permit schools to provide alternatives to surety bonds. Schools regulated by the Board of Barber Examiners, the Board of Cosmetic Art, and the Board of Nursing have the same bond requirements as schools regulated by the State Board of Community Colleges. Schools that have already provided a bond under the Community College statutes do not have to provide an additional bond. The bill becomes effective October 1, 1990.

Proprietary school regulation (HB 2186; Chapter 877): House Bill 2186 makes technical and clarifying changes to the law relating to the regulation of proprietary schools by the Department of Community Colleges, Article 8 of Chapter 115D of the General Statutes. The bill changes the term "private business school," which is set out in G.S. 115D-87(3), to "proprietary business school" and adds a requirement that if a school offers classes in more than one county, the school's operations in each county constitutes a separate school. It updates the definition of proprietary business school by removing a list of business courses such as typewriting, key punch, and penmanship and replaces the list with a general description of the courses and subjects taught by business schools. The bill also deletes from the definition of proprietary business schools, classes taught to five or fewer students. The bill also adds a new term, "proprietary technical school." A proprietary technical school must (i) be located within a single county, (ii) be privately owned and operated by an owner, partnership or corporation, and (iii) offer classes conducted for the purpose of teaching, for profit or for a tuition charge, any technical occupation or teaching any or several of the subjects needed to train youths or adults in the skills, technical knowledge and subjects, related information, and job judgment necessary for success in one or more technical or related occupations. The bill clarifies G.S. 115D-88, exempting certain private, for-profit schools from regulation by the Department of Community Colleges. Changes or additions to G.S. 115D-88 include the exemption of (i) schools maintained or classes conducted by employers for their own employees where no fee or tuition is charged; (ii) schools for which there is another legally existing licensing board; (iii) classes or schools that teach purchasers or uses how to use a specific piece of equipment; (iv)

avocational, recreational, and self-improvement types of classes; and (v) high schools approved by any State agency.

Other changes made in House Bill 2186 include amendments to the law to permit the State Board of Community Colleges to carry out some of its powers and duties by and through the President of the Community College System instead of by formal board action. The State Board of Community Colleges, acting by and through the President of the Community College System, also now has the authority to ask other State agencies to regulate a certain course of study.

The bill also gives the President of the Community College System the power to issue a 90-day temporary license to a school upon its sale if the school held a valid, current license prior to the sale and if the President finds that the school is likely to qualify for a license after the sale. This change will make it easier to coordinate the sale of a school and the approval of a license for the new owners. The act becomes effective October 1, 1990.

Proprietary school fees (SB 1475; Chapter 1030): Senate Bill 1475 provides for the collection of fees for the licensure and regulation of proprietary schools at the following rates: $750 Initial License; $500 License Renewal; $100 Approval of New or Revised Program; and $200 Site Visit. The act became effective July 27, 1990.

STUDIES

Independent study commissions: (1) School Improvement and Parental Involvement in Schools - assigned to Education Study Commission; (2) Legislative Study Commission on the Basic Education Program; and (3) Joint Legislative Education Oversight Committee.

Legislative Research Commission: (1) Higher Education Opportunity; and (2) Public Attorneys Education Assistance - assigned to Higher Education Opportunity; and (3) Drivers' Education - assigned to the Legislative Study Commission on the Basic Education Program.

EMPLOYMENT

(Bill Gilkeson, Sandra A. Timmons)

RATIFIED LEGISLATION

Pensions and Retirement

Retiree's increase (SB 1598; Chapter 1077): Senate Bill 1598 increased the retirement formula from 1.63% to 1.64% of average final compensation (average salary during one's four consecutive highest-paid years) for employees in the Teachers' and State Employees' Retirement System and Local Government Employees' Retirement System. It also increased the retirement formula .02% for each of the different categories of members of the Consolidated Judicial Retirement System. The bill also grants a 6.1% cost-of-living increase to retirees of each State and affiliated retirement system. It further increases the formula .02% for each of the different categories of members of the Consolidated Judicial and Legislative Retirement Systems. The net effect of the formula increases is to increase the annual retirement allowance by .6% for all employees who retire on and after July 1, 1990. Senate Bill 1598 became effective July 1, 1990.

LGERS retirement conversion (HB 1994; Chapter 1080): House Bill 1994 allows any retired employee of the Local Governmental Employees' Retirement System to convert to a disability retirement within three years of retirement, if the requirements for disability retirement benefits were met prior to retirement and if the member retired with an early or service retirement benefit. The bill provides that such conversion would be retroactive to the initial effective date of retirement. House Bill 1994 becomes effective October 1, 1990.

Sheriff's supplemental pension (HB 2016; Chapter 1079): House Bill 2016 grants a monthly benefit, from the Sheriff's Supplemental Pension Fund, to former sheriffs who are not eligible to receive any retirement benefit from any State or locally sponsored plan. Eligible sheriffs must have attained the age of 55 and have completed at least 10 years of service as a sheriff. House Bill 2016 became effective August 1, 1990.

Supplemental local retirement (HB 2267; Chapter 948): House Bill 2267 makes several technical corrections to G.S. 135-92(a) to reflect the correct title of the Consolidated Judicial Retirement System and delete the use of the Law Enforcement Officers' Retirement System term. It also adds, as a new group eligible for membership in the Supplemental Retirement Income Plan, the members of retirement and pension plans sponsored by political subdivisions of the State. The bill requires the newly eligible political subdivisions with participating members to report required data to the Plan, as do other State agencies. House Bill 2267 became effective upon ratification, July 17, 1990.

Safety and Health

OSHA penalty increase (HB 736; Chapter 844): House Bill 736 changes G.S. 95-138(a) to increase the maximum civil penalties the Commissioner may assess employers for violations under the Occupational Safety and Health Act of North Carolina. The penalty for a willful violation increases to a maximum of $14,000 per violation. The penalty for a serious violation increases to a maximum of $2,500 while a nonserious violation moves to $1,500. House Bill 736 becomes effective October 1, 1990.

State Employees

Merit pay changes (SB 1345; Chapter 1025): Senate Bill 1345 makes several changes to Chapter 126. It reduces to two the performance levels qualifying for performance pay increases in a five-level performance appraisal system. The bill also permits an agency to use an appraisal system of other than five levels for a particular job classification upon approval by the State Personnel Commission. Senate Bill 1345 clarifies when an employee automatically receives written justification and requires an employee to request written justification when the decision is to award a performance increase of more or less than the mid-range value of the allowable range. The bill allows State agencies to set standards for performance and performance pay increases as long as the standards do not preclude, from consideration for an increase, an employee whose performance exceeds the performance requirements. It permits employees at the top of the pay scale to receive a one-time, lump-sum performance bonus award. Employees who exceed the maximum of the assigned pay scale are specifically excluded. Senate Bill 1345 adds a new section to G.S. 126-35 to specify that a reduction in pay or position which is not imposed for disciplinary reasons shall not be considered a disciplinary action. Involuntary separation and unsatisfactory job performance, unacceptable personal conduct or a combination of the two are viable grounds for contested case hearings. The bill further amends G.S. 126-37 to mirror G.S. 150B by removing the authority of the State Personnel Director and other State Personnel Commission designates to investigate appeals. Finally, the bill specifies that appeals of contested case decisions will be in the form of a petition to the Office of Administrative Hearings. Senate Bill 1345 became effective upon ratification, July 27, 1990.

Performance pay advisory committee (SB 1402; Chapter 1028): Senate Bill 1402 requires each department, agency, and institution to establish a performance management and pay advisory committee to ensure that performance pay increases are distributed equitably. The committee must have a minimum of five members with equal representation of nonsupervisory, supervisory, and management employees. It is to review agency performance pay policies, training and education programs, and performance ratings. The bill requires the committee to meet at least twice a year and submit to the agency head a written report which includes recommended changes and corrections in the administration of the agency's performance management system. The

bill requires that summaries of the report be included in the agency's annual report to the Office of State Personnel. Senate Bill 1402 became effective July 1, 1990.

Flexible benefits plan (HB 1314; Chapter 1059): House Bill 1314 authorizes agencies and institutions to establish flexible benefit plans under Section 125 of the Internal Revenue Code for public school employees and employees in the Community College and University of North Carolina systems. The bill also authorizes the Director of the Budget to provide a flexible benefits plan for all other State employees not specifically identified in the bill. It excludes from the plan retirement, health plan, and disability program benefits, as well as forms of deferred compensation such as vacation and sick leave. The bill authorizes the appropriate Boards of Directors to use third-party contracts for the administration of the plan and requires that these be selected after a thorough, competitive procurement process. House Bill 1314 becomes effective January 1, 1991.

Accelerated pay plan for lowest-paid state employees (SB 1426; Chapter 1066): Section 37 of Senate Bill 1426 instructs the State Personnel Commission to develop and implement an accelerated pay plan for those State employees in the lowest pay grades. The purpose of the plan is to reduce turnover by providing a process by which the State's lower paid employees can more quickly attain a salary level which would entice them to remain in State government. The bill requires that upward movement within the accelerated pay plan be contingent on an employee meeting or exceeding specifically tailored performance requirements. It further excludes employees who participate in this plan from receiving an additional performance pay increase under G.S. 126-7. The bill authorizes that $750,000 be applied to the Salary Adjustment Fund to be used for this purpose. Section 37 of Senate Bill 1426 became effective July 1, 1990.

Workers' Compensation

Disability income plan of NC (SB 1584; Chapter 1032): Senate Bill 1584 extends coverage for disability insurance program benefits to participants who are on an employer-approved leave of absence and are receiving temporary benefits under the Workers' Compensation Act. The bill became effective upon ratification, which was July 27, 1990, and applies to any participant in the Disability Income Plan of North Carolina who becomes disabled on or after that date.

DEFEATED LEGISLATION

No exemptions/adjust retiree formula (HB 2145; SB 1342): In response to the Supreme Court ruling in the Davis v. Michigan case, House Bill 2145 and Senate Bill

1342 proposed to treat all retirees alike. The bills reduced the income tax exemption for State, local, and federal retirees from $4,000 to $2,000 and eliminated them entirely after January 1, 1991. In an effort to honor the long-standing tax-exempt arrangement between State government and its employees, the bills also increased the retirement formula for State and local retirees, from 1.63% to 1.72% of average final compensation, effective July 1, 1990.

State minimum wage (HB 458): House Bill 458 would have increased the State minimum wage, now $3.35 an hour. The State minimum wage covers those employees, estimated at 10% of the State's workforce, who are not covered by the federal minimum wage. As introduced, House Bill 458 would have continued the State's practice of piggybacking its minimum wage onto the federal minimum wage, with a ceiling of $4 an hour for the State wage. As passed by the House in 1989, however, the bill would have increased the State wage to $3.65/hour on January 1, 1990, and to $3.95 January 1, 1991. On the last day of the 1990 session, the Senate passed a different version, raising the State minimum wage for employees of enterprises with annual sales or business of $250,000 or more. For those larger enterprises, the minimum wage would have increased to $3.80 October 1, 1990, and to $4.25 April 1, 1991, basically tracking the federal. For smaller enterprises, the State wage would have remained at $3.35 indefinitely. The House adjourned sine die before voting on concurrence; thus the State minimum wage stays at $3.35 for every enterprise covered by it rather than by the federal.

ENVIRONMENT

(Sherri Evans-Stanton, George F. Givens)

RATIFIED LEGISLATION

Coastal/Marine/Aquaculture

Aquaculture shellfish franchises (SB 1509; Chapter 958): SB 1509 allows the Marine Fisheries Commission to lease water columns above shellfish grants and perpetual shellfish franchises, if the lease produces shellfish in commercial quantities (four times the minimum production rate of leases under G.S. 113-202). The act sets forth minimum standards, an application fee ($100.00), notice of the proposed lease, and public hearings. The annual rental for water column leases shall be $500.00 per acre, prorated, or the then current renewal rate, whichever is greater. Demonstration or research projects may be authorized for two years with no more than one renewal with no rent paid unless commercial production results. The act prohibits the Secretary of EHNR from commencing or continuing an action to terminate a shellfish lease for failure to use the leasehold pursuant to G.S. 113-202(1)(5) until July 1, 1991. This bill became effective July 18, 1990.

Claims resolution/navigable waters (SB 1496; Chapter 869): Senate Bill 1496 extends the deadline by which the Secretary of EHNR must resolve claims to land under navigable waters from December 31, 1990, to December 31, 1994. As a conforming change, the time in which the donation to the State of a claim to submerged lands must be made in order to qualify for a tax credit is extended to December 31, 1994. This bill became effective July 9, 1990.

Fees

CAMA fees (HB 2353; Chapter 987): House Bill 2353 adds G.S. 113A-119.1 (Permit Fees) to the Coastal Area Management Act which allows the Coastal Resources Commission to establish a graduated fee schedule for permits. The fee may not exceed $400.00 and shall not exceed 33 1/3% of the total personnel and administrative costs incurred for permit processing and compliance programs within the Division of Coastal Area Management. Fees collected under the act shall be credited to the General Fund. This bill became effective July 19, 1990.

Radiation emergency response fee (HB 2331; Chapter 964): House Bill 2331 increases the annual fee paid by persons to construct and operate nuclear facilities from "no more than $12,000" to "$18,000." The fee shall be paid into the General Fund and may be used to defray costs of the emergency response activities. This bill became effective July 26, 1990.

Establish mining permit fees (SB 1534; Chapter 944): Senate Bill 1534 allows the Mining Commission to establish a fee schedule for mining permits. The fees may vary based on acreage, size, and nature of the operation. The bill directs the Commission to consider safeguards to prevent unusual fee assessments that would result in "serious economic burden." Permit fees may not exceed one-third of administrative and economic costs incurred in processing permits and related compliance matters in prior fiscal year. Fees are limited for new permits ($2,500) and renewals or modifications ($500). Fees shall be credited to the General Fund and may be used to help defray expenses. EHNR must report on an annual basis to Governmental Operations and Fiscal Research. This bill became effective July 17, 1990.

Establish fees for dam permits (SB 1535; Chapter 976): Senate Bill 1535 allows the Environmental Management Commission to establish a fee schedule for processing applications for approval of construction or removal of dams. Permit fees may not exceed one-third of administrative and economic costs incurred in processing permits and related compliance matters inthe prior fiscal year and may not exceed the larger of $200 or 2% of the actual cost of construction or removal of the applicable dam. Fees shall be credited to the General Fund and may be used to help defray expenses. The Department must make a biennial report to Governmental Operations and Fiscal Research. This bill became effective July 19, 1990.

Establish erosion plan fees (SB 1536; Chapter 906): Senate Bill 1536 allows the Sedimentation Control Commission to establish a fee schedule for the review and approval of erosion control plans. Permit fees may not exceed one-third of administrative and economic costs incurred in processing permits and related compliance matters in the prior fiscal year and may not exceed $50 per acre of disturbed land shown on the plans or actually disturbed during the life of the project. Fees shall be credited to the General Fund and may be used to help defray expenses. The Department must make a biennial report to Governmental Operations and Fiscal Research. This bill does not limit the existing authority of local programs to assess fees for the approval of erosion control plans. This bill became effective July 13, 1990.

Penalties

Increase penalties for environmental crimes (HB 1177; Chapter 1045): House Bill 1177 adds eight new felonies to the two existing felonies directed specifically at environmental crimes. The bill does not add any new crimes but makes certain misdemeanor offenses felonies. It establishes Class J felonies from existing misdemeanors for "knowing and willful" (defined as "intentional and conscious") violations of classifications, standards, and limitations intended to protect water and air resources. A knowing violation which places others in imminent danger of death or serious bodily injury would be a Class H felony. The subject areas covered by the felonies are: (1) Violation of water discharge statutes (primarily focused on NPDES and pretreatment permits); (2) Clean air violations; (3) Oil and hazardous substances discharges; and (4) Violations of the State's hazardous waste statutes.

The bill lists six defenses: (1) Act of God or other natural disaster; (2) Acts by third parties over which the defendant had no control; (3) Acts done in reliance on written or emergency oral advice from EHNR employees; (4) Acts which are consistent with one set of rules but that violate another; (5) Violation for which a civil penalty would not issue; and (6) Water discharge and air emission violations for less than 24 hours, once in 30 days, which causes no significant environmental harm.

The bill cross-references the criminal penalties section in the civil penalties section for water discharge and air emissions violations. This change allows use of the civil penalty provision whenever criminal penalties could be applied and broadens EHNR's discretion to fashion an appropriate remedy for each violation. This bill becomes effective January 1, 1991, and is applicable to offenses committed on or after that date.

Clarify EMC civil penalty powers (HB 2249; Chapter 1036): House Bill 2249 consolidates and clarifies the civil penalty powers of EHNR and the Environmental Management Commission (EMC) relating to water resources, dam safety, oil discharges, oil refining facilities, air pollution, prohibited discharges, and well construction. The Secretary of EHNR rather than the EMC is to assess civil penalties. The Secretary may delegate his powers to the Director of the Division of Environmental Management. If the civil penalty assessment results in a contested case, the EMC makes the final agency decision. The bill specifies factors to be considered in the assessment of civil penalties. A violator against whom a civil penalty has been assessed may waive his right to a contested case hearing and stipulate to the facts on which the assessment was based. If he does so he may request the Secretary to remit the civil penalty in whole or in part. The Chairman of the EMC is to appoint a Committee on Civil Penalty Remissions which is to make the final agency decision on remission requests. The bill lists factors to be considered in reviewing remissions requests and specifies those circumstances in which the entire amount of civil penalty may be remitted. If a civil penalty is not paid within 30 days after the final agency decision, the Secretary may request the Attorney General to bring an action to collect the penalty in the superior court in any county in which the violator resides or has its place of business. This bill becomes effective October 1, 1990.

Waste

Commercial hazardous waste facility resident inspectors required (SB 1631; Chapter 1082): Senate Bill 1631 adds a new section to Article 9 of Chapter 130A of the General Statutes to require that at least one full-time resident inspector be assigned to any commercial hazardous waste facility (including treatment, storage, or disposal) in this State during any time in which the facility is in operation or is undergoing maintenance or testing. These inspectors will be employed by the Division of Solid Waste Management in EHNR and will be responsible for monitoring compliance with all laws and rules relating to environmental protection. The operator of a commercial hazardous waste management facility is required to provide adequate facilities for the resident inspectors and unrestricted access to all operational areas of a facility.

The resident inspectors program is intended to supplement and enhance the already existing monitoring and enforcement. Neither the Department nor the facility

operator is relieved of any existing legal requirements. All costs associated with the program are to be borne by the users of the facility based on a fee schedule adopted by EHNR. The Commission for Health Services may adopt rules providing for resident inspectors on less than a full-time basis at small, special-purpose facilities. Air quality rules for commercial hazardous waste incinerators may be more stringent than comparable regulations.

EHNR is required to make quarterly reports to Governmental Operations and the Environmental Review Commission on the implementation of the resident inspectors program. Receipts and expenditures are to appear as a separate expansion budget request for the 1991-93 biennium. This bill will become effective January 1, 1991, as to the assessment and collection of fees and on March 1, 1991, as to all other provisions.

Regional solid waste authorities (SB 58; Chapter 888): Senate Bill 58 adds a new Article 22 to Chapter 153A. The act allows two or more units of local government to create a regional solid waste management authority by resolution to provide environmentally sound, cost effective management of nonhazardous solid waste. The act sets forth membership in the authority; contents of the charter; organization; withdrawal; and powers. The authority has power to: (1) Operate the facility; (2) Issue revenue bonds; (3) Set fees for use of facilities; (4) Condemn land and acquire property by eminent domain pursuant to authority granted to counties; and (5) Enter into long-term contracts not to exceed 60 years with local government units. This bill became effective July 11, 1990.

Local solid waste ordinances (SB 113; Chapter 1009): Senate Bill 113 clarifies the authority of counties and cities to adopt ordinances to require the source separation of solid waste and to require participation in a recycling program. The bill also clarifies the authority of cities to impose charges for solid waste collection and disposal. The bill provides that a county which levies solid waste disposal fees on any municipality located in that county must do so on the basis of a schedule which applies uniformly throughout the county. This bill became effective July 26, 1990.

Recycling food processing by-products (HB 2282; Chapter 880): House Bill 2282 directs the Environmental Management Commission to initiate rule-making for by-products of food processing, food manufacturing, or fermentation processes to be designated by a name other than "sludge" in permits for land application required by G.S. 143-215.1. This bill became effective July 9, 1990.

Delay landfills in watersheds (HB 1223; Chapter 1014): House Bill 1223 prohibits the Department of Environment, Health, and Natural Resources from issuing a permit for a new nonhazardous solid waste landfill which is proposed to be located within the watershed of surface waters which are assigned water supply classification and for which there was pending on June 30, 1990, a petition for reclassification of the waters to a more protective classification, until the Environmental Management Commission has completed the reclassification of all existing water supply watersheds. G.S. 143-214.5(b) requires the Environmental Management Commission to complete the reclassification of all water supply watersheds by January 1, 1991. This bill does not apply to any permit application filed prior to July 1, 1990. House Bill 1223 became effective July 26, 1990.

Clarify environmental permitting requirement (HB 2254; Chapter 1037): House Bill 2254 clarifies existing requirements that an applicant for a water discharge or an air emission permit demonstrate it is financially qualified to carry out the activities for which the permit is required and that it has substantially complied with other federal and State rules and regulations for the protection of the environment. This requirement applies to the applicant and any parent, subsidiary, or other affiliate of the applicant or parent. The terms "affiliate," "parent," and "subsidiary" are defined as having the same meaning as in the regulations of the Securities and Exchange Commission. This bill became effective July 27, 1990.

Water transfer prohibited (SB 1378; Chapter 954): Senate Bill 1378 imposes a temporary moratorium on the transfer of water from the basin of any named river to the basin of any other named river. The term "named river" means any body of water bearing the designation "river" on the latest edition of the appropriate geological survey 7.5 minute quadrangle map. Eight types of interbasin transfer are exempted from the bill. This bill became effective July 18, 1990, and expires July 1, 1991.

Quick-take for water and sewer (HB 608; Chapter 871): House Bill 608 amends G.S. 40A-42(a) (Vesting of title and right of possession) to allow quick-take of property when a condemnor acquires property by condemnation for Water and Sewer Authorities (Art. 1 of Chapter 162A), Metropolitan Water Districts (Art. 4 of Chapter 162A), Metropolitan Sewerage Districts (Art. 5 of Chapter 162A), or County Water and Sewer Districts (Art. 6 of Chapter 162A). This bill became effective July 9, 1990.

Municipal wastewater discharge (SB 155; Chapter 951): Senate Bill 155 adds two sections to Part 1, Art. 21 of Chapter 143 (Water and Air Resources). The bill requires certain municipalities which violate conditions of court orders regarding the discharge of water from a wastewater treatment plant operated by the municipality to pay the full amount of the penalties specified in the order unless modified, reduced, or remitted by the court. The bill also requires municipalities to notify downstream units of local government within 100 miles, at least 24 hours before and within 24 hours after each instance which is planned or unplanned when untreated or partially treated wastewater is diverted so as to bypass the wastewater treatment plant. The bill became effective July 18, 1990.

Portable toilet waste regulated (SB 917; Chapter 1075): Senate Bill 917 amends Article 11 of Chapter 130A of the General Statutes (Sanitary Sewage Systems) to direct the Commission of Health Services to adopt rules requiring proper treatment and disposal of sewage and other waste from chemical and portable toilets. In addition, the bill makes it unlawful to discharge sewage or other waste from chemical or portable toilets used for human waste at places of public assembly, construction sites, or labor camps except into a sanitary sewage system which has been approved by the Department. The bill became effective July 28, 1990.

Wildlife

Age 70 Sportsman License (HB 2091; Chapter 909): House Bill 2091 makes amendments to Chapter 113 which result in the Wildlife Resources Commission being able to issue an age 70 lifetime sportsman combination license at the reduced fee of ten dollars. Under previous law separate age 70 hunting and fishing licenses were issued. The act became effective July 1, 1990.

Rest Home Resident Fishing (HB 2092; Chapter 926): House Bill 2092 amends G.S. 113-271(d) to provide that individuals who are residents of the State residing in rest homes shall be issued a fishing license at no charge. The license is valid for the life of the individual so long as he remains a resident of the rest home. The act became effective July 1, 1991.

DEFEATED LEGISLATION

N. C. may exceed U.S. environmental regulations (SB 27): Senate Bill 27 would have repealed State law which required that certain environmental rules be no more restrictive than comparable federal environmental regulations. Although SB 27 was not enacted, other legislation was enacted during the 1989-90 Session which repealed the following limiting provisions: (1) hazardous waste and water discharges and air emission from hazardous waste facilities sited or operated pursuant to Chapter 130B of the General Statutes (Chapter 168 - SB 324); (2) motor vehicle emission limits (Chapter 391 - HB 705); and (3) underground storage tanks (Chapter 652 - HB 957). See also Chapter 1082 (SB 1631) discussed in "Waste" above.

STUDIES

Legislative Research Commission: (1) Small System and Individual Water and Wastewater Needs - assigned to Groundwater Study Committee: and (2) Hazardous Waste Management - assigned to the Environmental Review Commission.

FAMILY LAW

(Jennie Dorsett)

RATIFIED LEGISLATION

Medical support for minor children; review of presumptive child support guidelines (HB 1269; Chapter 1067): Section 1 of House Bill 1269 provides that a court may order a parent of a minor child or the parties may agree (i) to maintain health insurance, dental insurance, or both, or (ii) to pay the medical, hospital, or dental expenses of a minor child. Under the bill, orders and written agreements regarding medical support for minor children are valid authorization to insurers to release information and process insurance claims. Written notice of any change in the policy is to be provided to the other party. A party who is required to provide medical insurance and fails to do so shall be liable for any medical expenses incurred during the time the insurance should have been in effect.

Section 3 of House Bill 1269 provides that, prior to August 1, 1991, the Conference of Chief District Judges shall review and make applicable revisions to the presumptive child support guidelines that became effective July 1, 1990. Governmental and public comment is required with at least one public hearing to be held. The new guidelines shall include commentary regarding the origin and basis for the guidelines. A report by the Administrative Office of the Courts and the Department of Human Resources on the new child support guidelines is to be filed with the General Assembly on or before February 1, 1991, and annually thereafter.

Section 1 of the bill becomes effective October 1, 1990. Section 3 of the bill was effective July 28, 1990.

Same probationary period for private adoptions (SB 1622; Chapter 977): Senate Bill 1622 amends the adoption statutes to allow the court the same discretion in a private adoption that the court has in an adoption arranged by a county department of social services or a licensed child-placing agency to shorten the period between the interlocutory decree and the final order of adoption. Senate Bill 1622 was effective July 19, 1990, and applies retroactively to pending adoption petitions and adoption petitions filed on or after July 19, 1990.

Guardian ad litem in termination of parental rights cases (SB 1591; Chapter 851): Senate Bill 1591 amends the termination of parental rights statutes to provide that appointment of a guardian ad litem for the child is not required unless the parent files an answer denying any material allegation, or unless the court, in its discretion, thinks it necessary in determining the best interests of the child. If the child is to be represented by a guardian ad litem, the court may appoint a previously-appointed guardian for that child. The act was effective July 6, 1990.

Amend definition of neglected juvenile (HB 250; Chapter 815): House Bill 250 amends the definition of "neglected juvenile" under the Juvenile Code to provide that it is relevant evidence, in determining whether a juvenile is a neglected juvenile, that the juvenile lives in a home where another juvenile has died as a result of abuse or neglect

or has been subjected to sexual abuse or severe physical abuse by an adult who regularly lives in the home. House Bill 250 was effective July 1, 1990.

DEFEATED LEGISLATION

Parental consent for minor's abortion (HB 93): House Bill 93 would have required consent from a parent for an unemancipated 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.

HUMAN RESOURCES

(Jennie Dorsett, Sally J. Marshall, John Young)

RATIFIED LEGISLATION

Quality assurance committees (SB 423; Chapter 1053): Senate Bill 423 provides good faith immunity from civil liability for members of quality assurance committees while performing peer review functions in State and area mental health, mental retardation and substance abuse facilities, and in private facilities of the same type licensed under Chapter 122C. The bill also provides that the proceedings of, the records and materials produced by, and the materials considered by such committees are not subject to discovery or introduction into evidence in a civil suit against the facility or the provider of professional health services. However, information and documents otherwise available are not immune from discovery or use. In addition, no person attending a meeting of such a committee may be required to testify in a civil action concerning any evidence or other matters produced or presented or as to any actions of the committee or its members, unless that person has knowledge independent of the peer review process. Senate Bill 423 becomes effective October 1, 1990.

Conform social services statutes with federal JOBS legislation (HB 2350; Chapter 966): House Bill 2350 amends certain social services statutes to conform with the federal Family Support Act of 1988. Congress enacted the Family Support Act of 1988 (also called "Welfare Reform") to set a new direction in the way the United States assists families with their needs for financial support and to avoid long-term welfare dependency. The JOBS (Job Opportunity and Basic Skills Training) Program is a significant piece of the package and will provide education, training, and support services to help families become self-sufficient. House Bill 2350 changes the statutes in conformity with the federal requirements to replace the WIN (Work Incentive Program) and the CWEP (Community Work Experience Program) with JOBS. JOBS will begin in North Carolina in October, 1990, in 40 counties and will be statewide by October, 1992. House Bill 2350 becomes effective October 1, 1990.

Amend reporting date for Social Services Plan (SB 1443; Chapter 868): Senate Bill 1443 delays the filing date of a Social Services Plan from the convening of the 1990 Session to the convening of the 1991 Session of the General Assembly. The Social Services Plan is to be proposed by the Department of Human Resources in consultation with interested governmental and private agencies and is to include a comprehensive plan for the delivery of public assistance and social services in North Carolina. Senate Bill 1443 was effective July 9, 1990.

Mental illness definitions (HB 992; Chapter 823): House Bill 992 clarifies the law on the involuntary commitment of the mentally ill by making specific references to the statutory definitions of "dangerous to himself" and "dangerous to others" wherever those phrases appear. This bill also adds a definition of "severe and persistent mental illness" to G.S. 122C-3. These changes became effective June 28, 1990.

Fees/public health programs (HB 2341; Chapter 1064): House Bill 2341 directs the Department of Environment, Health, and Natural Resources to charge lodging facilities and food service establishments, except public school cafeterias, an annual fee of $25. The bill also requires the Department to charge a late fee of $25 for failure to pay within 45 days of billing, and authorizes the Department to suspend or revoke the permit of any facility that fails to pay within 60 days of billing. Fees collected are to be deposited in the General Fund and may be used to support State and local public health programs and activities. The act was effective July 28, 1990, and expires June 30, 1992.

Rest home resident fishing (HB 2092; Chapter 926): House Bill 2092 provides to individual residents of rest homes complimentary North Carolina hook and line fishing licenses. This license is valid for the life of the individual so long as the person remains a resident of a rest home. House Bill 2092 was effective July 1, 1990.

DEFEATED LEGISLATION

Birth Impairment Fund (HB 2296): House Bill 2296 would establish a no-fault birth-related neurological impairment program and trust fund. The study commission that proposed the bill was continued and directed to report to the 1991 Session of the General Assembly.

STUDIES

Legislative Research Commission: (1) Prescription Drug Assistance - assigned to the Social Services Study Commission.

INSURANCE

(Sally J. Marshall, M. Lynn Marshbanks)

RATIFIED LEGISLATION

Fees/retaliatory premium taxes/Consumer Protection Fund/Fire Fund (HB 2257; Chapter 1069): House Bill 2257 accomplishes several important changes. Section 1 of the bill sets forth the bill's purposes, and Sections 2 through 14 raise many fees collected by the Department of Insurance. Section 15 exempts the Department from court filing fees during insurance company rehabilitation and liquidation proceedings. Sections 16 through 19 deal with appeals by insurance companies to the Insurance Commissioner of decisions made by the governing boards of the North Carolina Rate Bureau, Reinsurance Facility, and the FAIR and Beach Plans (parties to appeals required to file papers and evidence prior to hearing and to share cost of hearing transcripts). Section 20 requires parties who subpoena Department employees to testify as expert witnesses to pay the actual cost to the State of temporarily losing the services of those employees. Section 21 amends the retaliatory premium tax law retroactively to January 1, 1987, to make it clear that when calculating their retaliatory premium taxes, foreign insurers may consider the additional tax on fire insurance premiums, except for the portion that goes to the Volunteer Fire Department Grant Program. Section 22 creates the Department of Insurance Consumer Protection Fund which may be used for retaining outside experts in insurance rate cases, recovering missing assets of insolvent insurance companies, and for hiring outside legal counsel to defend the Commissioner and his deputies against extraordinary lawsuits arising from their official duties. Section 24 appropriates $1 million to the Consumer Protection Fund. Section 23 repeals the law that allows the State to recover the costs of outside experts in automobile rate cases from the Rate Bureau. Sections 25 through 28 mitigate the annual drain on the State Property Fire Insurance Protection Fund by reducing the funding responsibility of that Fund and increasing the funding responsibility of the General Fund. The act was effective July 28, 1990, except for the section relating to the retaliatory premium tax, which was effective January 1, 1987.

Multiple employer welfare arrangements (SB 1412; Chapter 1055): Senate Bill 1412 concerns multiple employer welfare arrangements (MEWAs) which are the pooling of employee health benefits by two or more employers. MEWAs are usually administered by a third party and are commonly self-insured. The bill provides for the registration of MEWAs and their administrators and requires licensed insurers that administer MEWAs to file information with the Commissioner. Unlicensed insurers are prohibited from administering MEWAs. Senate Bill 1412 also requires MEWAs to forward verified copies of their federal reports (financial statements and health plan descriptions) to the Commissioner. This bill includes MEWAs in the law that prohibits insurance fiduciaries from stopping premium payments without notifying covered employees and requires fiduciaries to notify their employees of their rights under COBRA. The bill amends the health plan administrator statute by increasing the registration fee from $20 to $100 and allowing for alternative forms of proof of financial responsibility. The bill also authorizes the Commissioner to appoint an

advisory group to study the role of State regulation of MEWAs and to report to the 1991 General Assembly. This act was effective July 28, 1990.

Medicare supplement/long-term care insurance (SB 1408; Chapter 941): Senate Bill 1408 requires persons selling Medicare supplement and long-term care insurance to obtain a supplemental license, pass a written exam, and pay registration and appointment fees. The bill also requires ten hours of additional pre-licensing instruction and two additional hours of continuing education for those persons. Beginning January 1, 1991, all new applicants will have to satisfy these requirements, and persons already holding licenses will have six months to comply. This bill also gives the Commissioner of Insurance the authority to adopt rules governing commissions, and marketing and reporting practices for these policies. The rules on commissions will be directed at replacement policies that do not provide better coverage than the policies replaced. This act will become effective January 1, 1991, except the part of the act giving the Commissioner the authority to adopt rules, which was effective July 17, 1990.

Insurance crimes (SB 498; Chapter 1054): Senate Bill 498 makes the following changes in laws involving insurance crimes. (1) It broadens the immunity from lawsuit for persons who provide information about fraudulent insurance or reinsurance transactions or about the financial condition of any person or entity. (2) It modernizes and recodifies present criminal laws relating to embezzlement by insurance agents, brokers, and administrators. (3) It changes the penalty for willfully making false statements in insurance company financial statements from a misdemeanor to a felony (perjury), and it also subjects the insurance company to a fine of $2,000 to $5,000 to be imposed by the court. Senate Bill 498 also requires every fire department responding to a fire to complete a fire incident report form, then to forward a copy of the form to the county fire marshal or the board of county commissioners if the county has no fire marshal. This copy of the incident report must be made available to any person requesting it. The purpose of this is to deter people from burning their own property and collecting the insurance proceeds. Senate Bill 498 became effective upon ratification, which was July 28, 1990, except that the effective date for the recodification of the embezzlement laws and for the new penalty for willfully making false statements in insurance company financial statements is October 1, 1990, and the effective date for the fire incident reporting procedure is September 1, 1990.

Insurance amendments (SB 499; Chapter 1021): Senate Bill 499 makes the following substantive and technical amendments to the insurance laws. (1) It allows the Department of Insurance to adopt rules to set the maximum permissible periods for contingent assessment liability of a domestic reciprocal, based on the nature of the coverage afforded by the reciprocal. (2) It requires every insurer writing single or dual interest nonfleet private passenger motor vehicle physical damage insurance to file a yearly supplemental financial statement. (3) It repeals a law providing for the regulation of corporations that are formed to issue extended warranties for home appliances. (4) It provides that patient medical records in the possession of the Department are confidential. (5) It extends the date by which fire prevention inspections must complete in-service training. (6) It allows the Department to prescribe the period of time in which an insurer must comply with the Department's requirements when the insurer is under administrative supervision as a result of financial trouble. (7)

It recodifies G.S. 58-4-20 as G.S. 58-2-215. (8) It removes the exemption from a license examination and registration and examination fees for town or county farmers mutual fire insurance companies who solicit and sell insurance other than those kinds of insurance specified in G.S. 58-7-75(5)d. Town and county farmers mutual fire insurance companies soliciting and selling only the kinds of insurance specified in G.S. 58-7-75(5)d will continue to be exempt. (9) It authorizes the North Carolina Rate Bureau to promulgate rates and policy forms for insurance against property damage to rented private passenger motor vehicles. (10) It provides that automobile insurers may not apply an inexperienced driver premium surcharge where the inexperienced driver has only a learner's permit. House Bill 499 became effective upon ratification, which was July 27, 1990, except the effective date for the inexperienced driver provision is January 1, 1991.

Mutual Workers' Compensation Security Fund assessment (HB 2258; Chapter 985): House Bill 2258 levies a one-time assessment on mutual insurers that support the Mutual Workers' Compensation Security Fund, requiring each mutual insurer to pay an amount equal to 2% of its net written premiums for the period covered by the 1989 calendar year upon filing its semiannual return for 1989. House Bill 2258 became effective upon ratification, which was July 19, 1990.

Waterslides-insurance exemption (HB 2401; Chapter 914): House Bill 2401 repeals a sunset provision which was effective December 31, 1989. The sunset provision had the effect of raising the liability insurance on waterslides required by G.S. 95-112(a) from $100,000 to $300,000. The effective date of this bill was December 30, 1989.

LOCAL GOVERNMENT

(Kristin Godette, Carolyn D. Johnson, Giles S. Perry)

RATIFIED LEGISLATION

Municipal redistricting (SB 1620; Chapter 1012): Senate Bill 1620 allows a municipality to postpone its 1991 election to 1992 if the lateness of 1990 Census data throws the municipality so far behind in redrawing its district lines that it cannot hold 1991 elections on schedule with the new lines.

Senate Bill 1620 would give cities that face redistricting a choice if it appears to the Council that redistricting will be necessary and that the Census data is so late that redistricting cannot be completed more than three business days before the filing period is to begin, July 5, 1991. If the Council makes that determination, it may either:

1. Go ahead with the 1991 election, using the regular schedule, except that the filing period would run from July 22 through August 9. Under this option, the old districts would be used.

OR

2. Postpone the election until 1992 and, using the new districts, conduct the election according to a special schedule set out in the bill:

--Cities using the partisan primary and election method (a hand-full of cities including Asheville, Charlotte, and Winston-Salem) would hold the primary at the same time as the primary for county officers (May for first primary, June for second), and the general election in November.

-- Cities using the nonpartisan primary and election method (a few cities including Durham) would hold the primary in May with the first primary date for county officers and the election in June with the second primary.

--Cities using the nonpartisan plurality method (the great majority of cities) would hold the election in May with the first primary for county officers.

--Cities using the nonpartisan election and runoff method (a few cities including Raleigh) would hold the election in May with the first primary, and the runoff in June with the second primary.

The bill provides that, regardless of which option the City Council takes, if its prediction turns out to be wrong and the Census data does come through in time to get the districts redrawn and approved more than 3 business days before the July 5 opening of the filing period, then the election will proceed in 1991 according to the regular schedule--with the new districts.

Senate Bill 1620 became effective July 26, 1990.

Vested property rights (SB 766; Chapter 996): Senate Bill 766 provides that changes in zoning regulations shall not be applicable or enforceable once a vested property right has been established. A vested right is established upon the approval, or conditional approval, of a site specific development plan or a phased development plan by the city or county having jurisdiction, following notice and public hearing. The right shall remain vested for two years. However, the city or county may (i) extend the right to as much as five years, or (ii) provide by ordinance that approval of a phased development plan may vest the right for up to five years. The existence of a vested right will not

preclude application of overlay zoning or building codes and safety ordinances. If the city or county fails to adopt an ordinance defining what triggers a vested right, the landowner may establish a vested right upon approval of a zoning permit or may seek relief in superior court. The effective date of this bill is October 1, 1991.

Notice requirement for total rezoning involving "down zoning" (HB 1297; Chapter 980): House Bill 1297 requires municipalities and counties to notify affected property owners and abutting property owners whenever a total rezoning of all property within the boundaries of such entity would "down zone" the owners' property. This act shall not be construed to affect pending litigation. This act becomes effective October 1, 1990.

Street light assessments (HB 929; Chapter 923): House Bill 929 authorizes counties to levy annual special assessments against benefited property in residential subdivisions within counties but not within a city for the installation of street lights in residential subdivisions. The assessment shall be apportioned among all benefited property on the basis of the number of lots served or subject to being served at an equal rate per lot.

The assessment shall be determined on the basis of the estimated costs for the ensuing year. The assessment determination of the board of county commissioners is conclusive. A petition of at least two-thirds of the lot owners within a subdivision is required prior to the county approving the levy for street lights.

This act became effective July 16, 1990.

County sheriffs' retirement (HB 2016; Chapter 1079): House Bill 2016 provides for benefits to former sheriffs who withdrew their service in the Local Government Employees' Retirement System prior to the creation of the Sheriffs' Supplemental Pension Fund. The bill is applicable only to sheriffs with ten years of service, who are at least 55 years old, and are not eligible for benefits from any other state or local plan. The bill was effective August 1, 1990.

STUDIES

Independent study commissions: (1) Joint Legislative Commission on Future Strategies for North Carolina.

PROPERTY

(Giles S. Perry, Steven Rose)

RATIFIED LEGISLATION

Human Relations Council and Fair Housing Act changes (HB 685; Chapter 979): House Bill 685 amends the North Carolina Fair Housing Act by changing the name of the North Carolina Human Relations Council to the North Carolina Human Relations Commission and by conforming the act to federal requirements. It makes it unlawful to deny access to or participation in multiple listing services. Presently only denial of membership is discriminatory. It eliminates the exemption from coverage presently existing for those who are carrying out plans designed to eliminate present effects of past discriminatory practices. It changes from October 1, 1989, to September 13, 1988, the date upon which housing facilities for the elderly must have qualified for exemption from prohibition from discrimination. It adds a provision requiring the Commission to make final administrative disposition of complaints within one year after filing unless impracticable to do so. The act was effective July 19, 1990.

Probate Code amendments (HB 1291; Chapter 1015): House Bill 1291 makes changes to Chapter 28A regarding small estates. It allows those owing debts to any decedent (now only an intestate) to pay that debt to the clerk of superior court, subject to certain limitations already existing in the statutes. It also amends provisions of Chapter 105 regarding access to safe deposit boxes and bank accounts of a decedent. The bill clarifies that the Clerk of Superior Court may authorize more than one financial institution to transfer property of a decedent to a qualified representative and raises the amount of such transfers from $300 to $2,000. The act becomes effective October 1, 1990, and is applicable to funds of decedents dying on or after that date.

Clarify survivorship law (HB 1147; Chapter 891): House Bill 1147 amends G.S. 41-2 to: (1) Clarify 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; (2) To specify that no document other than the one creating the joint tenancy with right of survivorship is needed to establish the right of survivorship; (3) To provide that upon conveyance by a joint tenant with a right of survivorship to a third party, a tenancy in common is created between the third party and the remaining joint tenants.

House Bill 1147 also amends G.S. 41-2.2 to provide for joint ownership of corporate stock and investment securities with right of survivorship for any parties (formerly husband and wife).

House Bill 1147 provides that nothing in the bill shall be construed to affect the validity of instruments that provide for a right of survivorship executed prior to the effective date of the act.

House Bill 1147 becomes effective January 1, 1991.

Settlement in caveat to will (HB 2269; Chapter 949): House Bill 2269 adds a new section 31-37.1 to the General Statutes providing that in a caveat to a will proceeding.

the parties may enter into a settlement agreement prior to entry of judgment by the superior court and without a verdict by a jury. House Bill 2269 becomes effective October 1, 1990.

Durable powers of attorney (HB 606; Chapter 992): House Bill 606 amends G.S. 32A-14(a) (Durable Powers of Attorney) to provide that a power of attorney executed before Oct. 1, 1988, pursuant to G.S. 47-115.1 as it existed prior to Oct. 1, 1983, shall be deemed to be a durable power of attorney as defined in G.S. 32A-8. House Bill 606 became effective upon ratification.

Uniform federal lien registration (HB 2394; Chapter 1047): House Bill 2394 repeals the existing Article 11 of Chapter 44, the Uniform Federal Tax Lien Registration Act, and replaces it with a new Article 11A, the Uniform Federal Lien Registration Act. The new provisions apply to all federal liens required or permitted to be filed in the same manner as notices of federal tax liens and to notices of federal liens upon real property pursuant to 42 U.S.C. § 9607 (1), Superfund Liens. Federal liens on real property are filed in the office of the clerk of superior court in the county in which the real property is situated. Liens on personal property are filed with the clerk of court in the county where the debtor resides or, if the debtor is a corporation or partnership, in the Office of the Secretary of State. The act became effective August 1, 1990.

STATE GOVERNMENT

(Bill Gilkeson, Linwood Jones, Steven Rose)

RATIFIED LEGISLATION

Elections

Absentee ballot amendments (HB 345; Chapter 991): House Bill 345 makes the following changes related to absentee ballots: (1) Combines the four current absentee ballot application forms (A, B, C, and OS) into one application form; (2) Clarifies that precinct officials need not witness a name change before a person may vote an absentee ballot under a changed name; and (3) Directs the two required witnesses to the voting of an absentee ballot to respect the privacy of the voter unless they are asked for assistance and are otherwise authorized to give it.

The bill was made effective for primaries and elections occurring on or after January 1, 1991.

Economic interest reporting (HB 351; Chapter 890): House Bill 351 requires that the county board of elections forward to the Legislative Library in Raleigh copies of all Economic Interest Statements filed with the county board by legislative candidates if the candidate is elected. A 1988 change in the law had left it so that legislative candidates filed their statements with their county board 10 days after they filed their notice of candidacy, and the statements were never collected in one central place. The bill was made effective with respect to elections occurring on or after January 1, 1990.

Municipal redistricting (SB 1620; Chapter 1012): Senate Bill 1620 permits cities that are required to redistrict their city councils to postpone their 1991 elections until 1992 if the council finds that the Census data will not be available in time to hold the 1991 elections on schedule. The bill was effective July 26, 1990.

Repeal of statewide voter file (Section 30 of SB 1426; Chapter 1066): Section 30 of Senate Bill 1426 (the Current Operations Appropriations bill) abolishes a program in which the Secretary of State collected and compiled voter registration data from those counties that had computer capacity. Established by the 1987 General Assembly, the program called for the Secretary of State to provide a standard computer format to those counties, collect their voter registration data into a once-a-year snapshot of statewide voter registration data, and make that compiled data available to the political parties on computer tape at cost and to others for a higher fee. In 1989 the General Assembly had left the program on the books without appropriating any money to the Secretary of State to implement it. Section 30 of Senate Bill 1426 went the next step and repealed G.S. 163-66.1, the statute that established the program. The bill was effective July 1, 1990.

Licensing Boards

Crematory Authority created (HB 2398; Chapter 988): House Bill 2398 establishes the North Carolina Crematory Authority to assist the North Carolina Board of Mortuary Science in regulating crematory operators. The Board of Mortuary Science, with the advice of the new Authority, will establish regulations governing the crematory industry. All crematory operators are required to be licensed by the Board and Authority beginning January 1, 1991. The Board and the Authority will jointly discipline crematory authorities who violate the law or the regulations. The legislation also creates new restrictions governing the storage of remains awaiting cremation, waiting periods prior to cremation, the commingling of ashes, and related aspects of crematory practice. This legislation became effective July 19, 1990, although no licenses are required until January 1, 1991, and criminal provisions in the bill apply only to offenses on or after October 1, 1990.

Cosmetologist temporary employment permits (HB 1205; Chapter 1013): House Bill 1205 allows graduates of cosmetic arts schools to apply for and obtain temporary employment permits. The permits allow the graduates to work as cosmetologists while waiting to take the required licensing examination. The duration of each permit is set by the Board of Cosmetic Arts Examiners, up to a maximum of six months, with a possible extension of three months. This act became effective July 26, 1990.

Electrolysis Practice Act (SB 1624; Chapter 1033): Senate Bill 1624 requires persons practicing electrolysis after January 1, 1992, to obtain a license from the newly-created North Carolina Board of Electrolysis Examiners. The bill sets the fees for licensure, examination, license renewal, and other services and establishes the requirements for licensure, including graduation from an approved school of electrology and passage of an examination. Persons practicing electrolysis prior to January 1, 1992, may, upon application, be grandfathered in as a licensee without meeting the examination and educational criteria. The bill requires each electrologist to maintain a permanent establishment, subject to inspection for health reasons. The act became effective July 27, 1990, although no license is required until January 1, 1992.

Athlete agents regulated (SB 463; Chapter 865): Senate Bill 463 requires professional sports agents representing or seeking to represent students attending North Carolina colleges or high schools to register with the Secretary of State. Registration includes payment of a fee and disclosure of relevant financial information. The registration requirements apply to both professional sports contracts and financial services contracts. The bill also regulates contact between the agent and the student and specifies the required language of professional sports contracts. An exemption from registration is available to attorneys in certain instances. The act is effective September 1, 1990, but registration and compliance is not required until January 1, 1991.

Dental Board increases (HB 1427; Chapter 892): House Bill 1427 increases the per diem reimbursement for members of the Board of Dental Examiners from $35 to $100 for each day they are engaged in the Board's business. The bill became effective July 12, 1990.

Funeral practictioners fee increases (SB 673; Chapter 968): Senate Bill 673 increases the fees for funeral establishment permits, out-of-state licensee permits, and application fees for North Carolina residents seeking licensure as embalmers, funeral directors, and funeral service practitioners. The bill became effective July 19, 1990.

Barber fee increases (SB 1467; Chapter 1029): Senate Bill 1467 increases all barber fees, including an increase from $20 to $30 for the annual license renewal. The bill also increases the annual license renewal fee for practicing psychologists from $35 to $125. The bill became effective July 27, 1990.

Public Officials

Ports Authority Board (SB 1579; Chapter 1072): Senate Bill 1579 eliminates the Governor's power to remove members of the State Ports Authority without cause. The bill also resets some of the terms of the eleven members of the Authority so as to further stagger the terms. Eventually, all members will serve six-year terms. The bill was effective June 30, 1990.

Drainage commissioners appointments (SB 1616; Chapter 959): Senate Bill 1616 changes the method of selecting drainage commissioners from election by landowners to appointment by the clerk of superior court. The bill was effective upon ratification, July 18, 1990.

Purchases and Contracts

Minority contracts/single-prime bidding (HB 2263; Chapter 1051): House Bill 2263 requires State agencies, public universities, community colleges, public schools, and nonprofit corporations receiving more than $500,000 in State appropriations in a fiscal year to report to the Department of Administration the percentage of procurement contracts awarded to minority-owned, female-owned, and disabled-owned businesses. The Department will compile the information and report to the General Assembly. The bill also clarifies when the single-prime bidding system may be used in awarding State construction contracts. This bill became effective July 1, 1990.

State designer and contractor evaluation (SB 184; Chapter 889): Senate Bill 184 authorizes the State Building Commission to consider a designer's or contractor's prior work on State construction projects as a factor in awarding design contracts and prequalifying contractors to bid on certain projects. The act became effective July 11, 1990.

Utilities

Utility rights-of-way/clarify Commission regulatory authority (HB 2227; Chapter 962): House Bill 2227 has two main operative parts. The first part gives authority to the State Department of Transportation to acquire additional rights-of-way adjacent to highway rights-of-way for the purpose of having sufficient room to allow installation of utility infrastructure. The rights-of-way are acquired pursuant to voluntary agreements between the Department of Transportation and the affected utilities, which agreements provide for reimbursement to the Department of Transportation by the utility of all expenses associated with the acquisition of the additional right-of-way. The act also provides that when a utility pays for the acquisition of such right-of-way prior to actual use by the utility, the cost of the right-of-way may be added to the rate base of the utility, thus allowing a return to be earned on the investment, provided the acquisition of the right-of-way is consistent with a definite plan to provide service within five years and provided the Utilities Commission finds that such acquisition will result in benefits to the ratepayers. If the right-of-way is not used after the five year period passes, the Utilities Commission may remove it from the rate base.

House Bill 2227 also amends Chapter 62 by adding a new section which clarifies the authority of the Utilities Commission to regulate natural gas service agreements. If the Utilities Commission finds that additional natural gas services agreements (transportation agreements) will likely result in lower costs to consumers without substantially increasing the risk of service interruptions, or will substantially reduce the risk of service interruptions without unduly increasing the cost, the Commission may require the franchised natural gas local distribution company to negotiate in good faith to enter into such service agreements within a reasonable time.

The entire act became effective upon ratification, July 18, 1990.

DEFEATED LEGISLATION

Count votes for deceased candidate (HB 1004): House Bill 1004 proposed to deal with the death of a primary candidate more than 30 days after the filing deadline by counting votes for the deceased as for any other candidate. 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. The bill passed the House but died in the Senate.

New rules for presidential electors (HB 1028): House Bill 1028 proposed to elect eleven of North Carolina's thirteen presidential electors by Congressional district, so that a presidential candidate would have the same number of electoral votes as the number of congressional districts he carried, plus two if he carried the whole State. The bill passed the House but died in the Senate.

Mandatory voter I.D. (HB 1215): House Bill 1215 proposed to require a person to present an identification document before being allowed to vote if precinct officials at the polling place do not recognize him. The bill passed the House but died in the Senate.

Residence for registration (HB 1302): House Bill 1302 would have made changes designed to prevent persons with multiple residences from registering to vote in a place where they spend less than half the year. The bill passed the House and the Senate in different forms that were never reconciled.

Filing period shortened (SB 374): Senate Bill 374 would have shortened the filing period for candidates to two weeks. The period is now roughly a month. The bill passed the Senate but died in the House.

STUDIES

Independent study commissions: (1) Cosmetic Arts Regulation - assigned to the Legislative Committee on New Licensing Boards; (2) Open Government through Public Telecommunications; (3) Veterans Home; (4) Economic Future Study Commission; and (5) Joint Legislative Commission on Future Strategies for North Carolina.

TAXATION

(Cindy Avrette, Sabra J. Faires, Martha H. Harris)

RATIFIED LEGISLATION

Income and Franchise Taxes

Utility tax/local share (House Bill 2377; Chapter 813): Article III, § 5 of the North Carolina Constitution requires the State to have a balanced budget. The budget must be balanced on both a cash and budget basis as well as on a financial basis, in accordance with generally accepted accounting principles. The Governor's decision to move the State employees' pay day from June 30, 1990, to July 1, 1990, balanced the 1989-90 budget on a cash and budget basis. House Bill 2377 allowed the budget to be balanced on a financial basis as well by:

(1) Receiving cash in the 1989-90 fiscal year that the State would otherwise have received in the next fiscal year.

(2) Changing what were liability reserves for revenue that is to be distributed to local governments to appropriations from next year's budget.

(3) Shifting certain venture capital investments made from the General Fund and the Highway Fund to special funds, such as the Escheats Fund.

Although this act changed the timing and accounting for certain revenue, it did not generate additional recurring revenue.

Utility companies normally remit sales taxes and pay franchise taxes on a quarterly basis. This act requires utility companies with an accrued sales tax liability or an accrued franchise tax liability for the months of April and May 1990 of at least $2,000 to pay the taxes collected for those months by June 25, 1990. It further requires these utilities to remit taxes that accrue in June 1990 by July 30, 1990. The State receives $58.3 million from these utility tax payments in the 1989-90 fiscal year that it would have otherwise received in the 1990-91 fiscal year. Effective October 1, 1990, Chapter 945 of the 1989 Session Laws, requires most utility companies to begin paying sales taxes and franchise taxes on a monthly basis.

Effective June 21, 1990, excise taxes on beer and wine, franchise gross receipts taxes on utility companies, and taxes on intangible personal property that were reserved for distribution to local governments are credited to the General Fund, subject to annual appropriation to the local governments. This change in liability reserves to appropriations changes the distribution to local governments from an accrual method of accounting to a cash method of accounting. It also had the effect of transferring $140 million in the 1989-90 fiscal year from liability reserves for revenue that is distributed to local governments to appropriations from the 1990-91 budget. Recognizing that the distributions to local governments from these taxes are a traditional revenue source for them, the act states that it is the General Assembly's intent for the appropriations to be continuing appropriations.

Cities receive 3.09% of the gross receipts derived by an electric power company, a natural gas company, or a telephone company from business within the city. The revenue is distributed to the cities on a quarterly basis. Previously, when the utilities

paid the gross receipts taxes, the share of the cities was put in a liability reserve account and was not counted as revenue to the State. Under this act, the cities' share is placed in the General Fund and the amount needed to make the quarterly distributions is appropriated from the General Fund in the State budget.

Currently, cities and counties in which the sale of beer and wine is legal receive 23.75% of the excise tax on beer, 62% of the excise tax on unfortified wine, and 22% of the excise tax on fortified wine. Cities and counties receive this revenue within 60 days after September 30 based on collections for the 12-month period ending on September 30. As with the gross receipts tax, the act changes the accounting method for these excise taxes so that the revenue is not put in a reserve account as it is collected but is instead appropriated in the State budget.

Cities and counties also receive most of the intangibles tax revenue collected. They receive their share as soon as practical after the end of the fiscal year based on collections for the fiscal year. The act likewise changes this distribution to an appropriation. The appropriation must be made by August 30 of each year.

Under prior law, the State Treasurer could invest General Fund and Highway Fund money in the North Carolina Enterprise Corporation and in limited partnership interests in partnerships that are managed primarily for the purpose of investment in venture capital firms and corporate buyout transactions. This act shifts these investments from the General Fund and the Highway Fund to special funds, such as the Escheats Fund. This change was made to release $50 million from liability reserves in the General Fund and Highway Fund and to shift long-term investments out of the General Fund and Highway Fund.

House Bill 2377 became effective June 21, 1990.

Modify taxation NC Enterprise Corporation (Senate Bill 1362; Chapter 848): Effective for taxable years beginning on or after January 1, 1990, Senate Bill 1362 makes two changes in the tax credit allowed in G.S. 105-163.011 for investments in a North Carolina Enterprise Corporation. First, it expands the tax credit to include investments in a limited partnership in which a North Carolina Enterprise Corporation is the only general partner. Second, the act adds gross premiums taxes to the list of taxes for which a tax credit is available as a result of an investment in a North Carolina Enterprise Corporation.

Under prior law, an investment in a North Carolina Enterprise Corporation qualified for a tax credit but an investment in a limited partnership in which a North Carolina Enterprise Corporation was a general partner did not. Also under prior law, a tax credit could be applied to corporate and individual income taxes and corporate franchise taxes but not to gross premiums taxes.

The purposes of the first change are to allow a North Carolina Enterprise Corporation to establish a limited partnership without its investors suffering adverse tax consequences and to allow a North Carolina Enterprise Corporation to reduce its potential corporate income and corporate franchise tax liability by transferring its venture capital and stocks to the limited partnership. As a partner in the limited partnership, a North Carolina Enterprise Corporation would pay taxes on its share of the partnership income but would not have to pay corporate income and franchise taxes on distributions of venture capital income and on its assets. The change reduces a Corporation's potential franchise tax liability by $30,000 and its potential income tax liability by an undetermined amount. To date, the only North Carolina Enterprise

Corporation has not distributed any investment income to its shareholders and its income has been limited to interest earned on its invested cash.

The purpose of the second change is to encourage insurance companies to invest in a North Carolina Enterprise Corporation. Under G.S. 105-228.5, insurance companies pay taxes based on their gross premiums instead of paying corporate income and franchise taxes. Under prior law, an insurance company had no incentive to invest in a North Carolina Enterprise Corporation because the insurance company could not benefit from a tax credit against income or franchise taxes. Allowing a credit against gross premiums taxes will have no effect on revenue in fiscal year 1990-91 and will have an effect in future years only to the extent that insurance companies invest in a North Carolina Enterprise Corporation.

A North Carolina Enterprise Corporation is a corporation established under Article 3 of Chapter 53A of the General Statutes to provide venture capital for businesses located primarily in rural North Carolina. Since the General Assembly authorized these corporations in 1988, only one North Carolina Enterprise Corporation has been established. The State is the principal investor in that corporation, named The North Carolina Enterprise Corporation.

G.S. 105-163.011 provides individual and corporate tax credits for investments in a North Carolina Enterprise Corporation. Individuals are allowed a credit against income taxes equal to 25% of the amount invested or $100,000, whichever is smaller. Corporations are allowed a credit against income or franchise taxes equal to 25% of the amount invested or $750,000, whichever is smaller. A credit is taken in the taxable year following the year in which an investment is made. Total tax credits for investments in a North Carolina Enterprise Corporation and several other types of businesses cannot exceed $12,000,000 in any year.

Pay taxes faster (Senate Bill 1586; Chapter 945): Senate Bill 1586 accelerates the dates on which the following taxes must be paid: sales taxes on utility services, certain franchise taxes on utilities, and income taxes withheld from wages by employers.

Sales taxes on utility services were formerly payable on a quarterly basis by the 30th day after the end of the quarter. Effective October 1, 1990, sections 1 and 2 of this act provide that all utilities, other than telephone companies that make quarterly returns of franchise taxes, must make monthly returns of sales taxes on utility services. A monthly return is due on the last day of the following month, except that the return for May is due June 25. A utility filing on a monthly basis may make estimated returns for the first two months of the quarter and will not be penalized if the amount paid for these months is at least 95% of the amount due.

Franchise taxes on utility companies were formerly payable on a quarterly basis by the 30th day after the end of the quarter. Effective October 1, 1990, sections 3 and 4 of this act require telephone companies that have an average tax liability of $3,000 or more, electric power companies, and natural gas companies to make monthly payments of franchise taxes; reports must be filed each quarter. A monthly payment is due on the last day of the following month, except that the payment for May is due June 25. A utility filing on a monthly basis will not be penalized if the amount paid is at least 95% of the amount due and the balance is paid with the next quarterly report.

The remainder of this act changes the rules governing withholding of income taxes from employees' wages by employers, effective January 1, 1991. Section 5 simplifies definitions relating to withholding and adopts certain federal definitions. Section 6 provides that a member of the clergy will be considered self-employed, and thus not

subject to withholding, unless he or she elects to be treated as an employee for purposes of withholding. This change conforms the State law to the federal law.

Sections 7 and 8 provide that the amount withheld shall be the employee's anticipated State income tax liability, estimated based on the exemptions, deductions, and credits to which the employee is entitled. Section 9 makes clarifying changes.

Formerly, transient and seasonal employers and employers withholding an average of $500.00 or more from wages per month were required to make returns and pay withheld taxes on a monthly basis; all other employers paid quarterly. Section 10 now provides that employers who withhold an average of $2,000 or more per month shall pay the withheld taxes on the date set under the Code for depositing or paying federal income taxes withheld from the same wages. Under current federal regulations, that date is usually three banking days after the end of an "eighth-monthly period" if, at that time, the employer has $3,000 or more in undeposited federal taxes. An "eighth-monthly period" is one of eight periods into which each month is divided under the Internal Revenue Code. Federal law also requires an employer to make a deposit one banking day after accumulating $100,000 or more in withheld taxes; Section 10 provides that this requirement does not apply to deposits of North Carolina taxes. Section 10 also provides that an extension of time for filing a return or paying withheld federal taxes is an automatic extension with respect to withheld State taxes. The Secretary is required to notify each employer of the payment schedule it must follow.

Section 11 provides that an annual information report of State income taxes withheld from wages is due on the same date as the federal information return of federal income taxes withheld from wages. Section 12 clarifies the liability of employers and others for amounts required to be withheld from taxes and clarifies the penalty of 25% for an employer's failure to withhold or pay taxes. Section 13 makes clarifying changes. Section 14 provides that the general enforcement and administration provisions of the Revenue Act apply to withholding taxes. Section 15 provides that the Secretary of Revenue may contract with a financial institution for the receipt of withheld income tax payments from employers.

Finally, this act provides that the nonrecurring revenue it generates shall be used to fund only nonrecurring expenses. It is estimated that the changes in withholding payments will generate $110.5 million in nonrecurring revenue in the 1990-91 fiscal year. The changes in payments by utilities make permanent the changes made by Chapter 813 of the 1989 Session Laws; those changes generated nonrecurring revenue of $58.3 million for the 1989-90 fiscal year. The State will realize some recurring revenue from the interest that will be earned on the taxes paid earlier pursuant to this act. This recurring revenue is estimated at $5.3 million for the 1990-91 fiscal year and $8.9 million for the 1991-92 fiscal year.

Set-off debt collection changes (Senate Bill 1587; Chapter 946): Senate Bill 1587 amends the Setoff Debt Collection Act to allow claimant agencies to file an on-going claim for setting off against an individual's State tax refund the amount of any debt owed by the individual to the State. Currently, a claim must be filed each year. Under this act, the claimant agency files a claim with the Department of Revenue stating the date, if any, that the debt is expected to expire. The claim is effective to initiate setoff against refunds of $50 or more that would be made in calendar years following the year in which the claim was first filed until the date the debt expires.

The act is effective July 1, 1990, and applies to taxable years beginning on or after January 1, 1991. In order to pay for the computer programming, data entry, and

related expenses needed to implement the provisions of this act, the Department of Revenue is authorized to draw up to $81,500 from individual income tax net collections for the 1990-91 fiscal year.

Update I.R.C. reference (House Bill 2067; Chapter 981): House Bill 2067 rewrites the definition of the Internal Revenue Code used in State tax statutes to change the reference date from January 1, 1989, to January 1, 1990. 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. The act is effective upon ratification.

Since the State corporate income tax was changed to a percentage of federal taxable income in 1967, the reference date to the Internal Revenue Code has been updated periodically. In discussing bills to update the Code reference, the question frequently arises as to why the statutes refer to the Code as it existed on a particular date instead of referring to the Code and any future amendments to it, thereby eliminating the necessity of bills like this. The answer to this question lies in both a policy decision and a potential legal restraint.

First, the policy reason for specifying a particular date is that, in light of the many changes made in federal tax law recently and the likelihood of continued changes, the State may not want to adopt automatically federal changes, particularly when these changes result in large revenue losses. By pinning references to the Code to a certain date, the State ensures that it can examine any federal changes before making the changes effective for the State.

Secondly, and more importantly, however, the North Carolina Constitution imposes an obstacle to a statute that automatically adopts any changes in federal tax law. Article V, § 2(1) of the Constitution provides in pertinent part that the "power of taxation...shall never be surrendered, suspended, or contracted away." Relying on this provision, the North Carolina court decisions on delegation of legislative power to administrative agencies, and an analysis of the few federal cases on this issue, the Attorney General's Office concluded in a memorandum issued in 1977 to the Director of the Tax Research Division of the Department of Revenue that a "statute which adopts by reference future amendments to the Internal Revenue Code would...be invalidated as an unconstitutional delegation of legislative power."

House Bill 2067 became effective July 19, 1990.

Tax fairness changes (House Bill 2138; Chapter 984): House Bill 2138 addresses many different tax issues. It addresses some of the unintended tax consequences of the Tax Fairness Act of 1989, it grants a tax credit for State income taxes paid on government retirement benefits received in 1988, it provides that a request for an extension of time to file an income or franchise tax return must be accompanied by a check in the amount of the taxes estimated to be owed, and it reduces the threshold for when a corporation must pay estimated corporate income tax.

The 1989 General Assembly enacted a sweeping reform of the State's personal income tax system by tying the State tax calculation to federal taxable income. The legislation, known as the Tax Fairness Act of 1989, became effective for taxable years beginning on or after January 1, 1989. Despite the scrutiny the legislation received by the General Assembly, and because of the 1989 effective date, there were some tax

consequences of the rewrite that were not discovered until after its enactment. The Revenue Laws Study Committee reviewed these consequences and recommended the changes relating to the Tax Fairness Act contained in this act.

----Subchapter S Corporations

Since 1958, federal income tax law has allowed certain corporations having fewer than 35 shareholders to elect to be taxed as "Subchapter S Corporations." Under the S Corporation option, items of income and loss are not taxable to the corporation but are passed through to the shareholders in the same way items of income and loss of a partnership are taxed to the individual partners. As part of the Tax Fairness Act of 1989, the State allowed S Corporation tax treatment for federal S Corporations. However, the legislation did not provide for the carryover of pre-1989 losses.

Regular corporations are allowed to carry forward net economic losses for up to five years. The legislation enacted in 1989 did not allow losses at the corporate level prior to the conversion to S Corporation status to be used to offset income under the new system and the 1989 effective date did not give the taxpayers the planning period necessary to adjust to the new system. This resulted in unanticipated tax increases for numerous small businesses in North Carolina, including many farmers.

This act provides as a transitional adjustment an extension of time for loss carryforwards. Pre-1989 net economic losses may be carried forward by an S corporation and used to offset the corporation's income in taxable years beginning on or after January 1, 1989, and before July 1, 1991. The corporation may deduct the loss to one-half of the extent it could have deducted the loss if the S Corporation Income Tax Act had not become effective until July 1, 1991. The loss carryforward may not exceed one-half of the corporation's net income. This offset will be passed through to the shareholders of the corporation. The act makes this section retroactive to the 1989 tax year, allowing affected taxpayers to file amended returns for that year. It will expire for taxable years beginning on or after July 1, 1991.

For an S Corporation that does not use the calendar year as its tax year, certain earnings for the corporation's 1988 tax year were taxed at the corporate level under the old law, because the corporation's tax year started before 1989, and also at the individual level under the new law, because the earnings, distributed as dividends, were included in the shareholder's 1989 taxable income. Prior to the enactment of the Tax Fairness Act of 1989, the "double taxation" may have been avoided through the deduction for N.C. dividends. However, under the new law, dividends receive only a limited tax credit, subject to a $300 maximum. This act provides relief to taxpayers in this situation by allowing a full tax credit, without any maximum, for distributions from pre-1989 earnings made before October 1, 1989, or made by a fiscal year corporation during its 1988 tax year. The act makes the applicable sections retroactive to the 1989 tax year, allowing affected taxpayers to file amended returns for that year.

----Mortgage Certificate Credit

Section 25 of the Internal Revenue Code provides that first-time home buyers who do not exceed certain income and sales price levels may obtain a Mortgage Credit Certificate (MCC) that enables the homeowner to take a federal tax credit of up to 25% of the annual mortgage interest payments. The portion of the interest that is taken as a credit may not also be taken as a deduction in calculating federal taxable income. Under the Tax Fairness Act, North Carolina uses federal taxable income as the starting point in calculating North Carolina taxable income; however, it does not allow a tax credit for MCC holders. As a result, an MCC holder whose mortgage interest deduction under the Code was reduced by the amount of the federal credit could not

deduct the full amount of the mortgage interest for North Carolina tax purposes. To correct this oversight, this act allows a taxpayer to deduct from taxable income the amount of the mortgage interest that was not deducted under the Code due to the taxpayer's use of the mortgage interest credit. This deduction ensures that 100% of the mortgage interest costs are deductible for State tax purposes. The applicable section is retroactive to the 1989 tax year, allowing affected taxpayers to file amended returns for that year.

----Credit for the Disabled

Until the 1989 tax year, North Carolina provided an additional personal exemption for taxpayers and some dependents with certain physical conditions, regardless of whether the condition led to the person being disabled. These exemptions, which covered 13 different diseases and physical conditions, were repealed by the Tax Fairness Act of 1989. This act provides a tax benefit for persons who were formerly allowed a deduction by granting an additional tax credit for taxpayers with disabled dependents or spouses. The amount of the credit decreases as the taxpayer's income increases and phases out completely when the taxpayer's income reaches a certain point. The base amount of the credit, along with the phase-out thresholds, are listed below:

		Adjusted Gross Income	
	Maximum Credit	Beginning of Phase-Down	End of Phase-Down
Head of Household	$64.00	$16,000	$32,000
Married, filing jtly	80.00	20,000	40,000
Single	48.00	12,000	26,000
Married, filing sep	40.00	10,000	20,000

----Credit for Taxes Paid on Federal Retirement in 1988

In 1989, the United States Supreme Court ruled in Davis v. Michigan, 109 S.Ct. 1500 (1989), that the doctrine of intergovernmental tax immunity prohibits a state from taxing federal retirement income at a higher rate than it taxes state retirement income. Prior to 1989, North Carolina allowed a $3,000 income tax exclusion for federal and military retirees; it allowed a full income tax exclusion for State retirement income. Legislation enacted in 1989 to comply with Davis provides that all government retirees receive a $4,000 State income tax deduction. The Davis case was decided on March 28, 1989. The effect of the decision was to allow federal and military retirees a full income tax exclusion for their 1988 government retirement income. However, taxpayers who had already filed their 1988 tax returns could obtain a refund only by demanding it within 30 days after the taxes were paid to the Department of Revenue.

Many taxpayers were unable to obtain refunds of the 1988 State income taxes paid on their federal government retirement income because they did not demand a refund within 30 days after paying their taxes to the Department, which many had filed early. For taxpayers who filed before February 26, 1989, the 30-day period for demanding a refund had already expired on March 28 when the Davis case was decided. The result was that the taxpayers who had filed their returns promptly were penalized while those who filed later received refunds. This act addresses this inequity by allowing taxpayers who received government retirement benefits during the 1988 tax year to claim a credit equal to the amount by which the tax paid by the taxpayer for the 1988 tax year would have been reduced if none of the taxpayer's government retirement benefits had been included in the taxpayer's taxable income. The credit may be claimed in equal

installments over the taxpayer's first three taxable years beginning on or after January 1, 1990.

----**Tax Return Filing Extensions**

For federal income tax purposes, the automatic four-month extension of time for filing a return is conditioned upon payment of a reasonable estimate of the tax due when the application for an extension is filed. Federal regulations provide that the penalty for late payment is not imposed if the tax paid with the extension request is at least 90 percent of the total amount of tax due and the remaining balance is paid with the income tax return on or before the expiration of the extension. This act provides a similar rule for State income tax purposes. For taxable years ending on or after July 19, 1990, an application for an extension of time to file an income or franchise tax return must be accompanied by the full amount of the tax anticipated to be due. The Secretary of Revenue may forgive the penalty for underpayment of the tax for good cause; it is anticipated that the Secretary will adopt a rule like the federal regulation which forgives the penalty if 90% of the tax is paid with the application for an extension.

----**Corporate Estimated Taxes**

Effective August 1, 1990, corporations with an expected annual tax liability of $500.00 or more must make quarterly payment of their estimated income tax. Under prior law, only corporations with an estimated annual tax liability of $5,000 had to make the quarterly payment of estimated income tax.

----**Tax Enforcement**

Finally, the act notes that the budget reductions for the Department of Revenue will impair the Department's efforts to modernize the State's tax enforcement program and will have a direct negative impact on the 1990-91 revenue collections. To maintain the integrity of the State's modernized tax enforcement program, the act states an intent that the money generated by this act be used by the Department to continue its tax enforcement programs.

Railroad tax/national guard (Senate Bill 1084; Chapter 1002): Senate Bill 1084 makes two changes in North Carolina's tax laws to resolve conflicts with federal laws and federal constitutional principles. Section 1 of the act repeals the separate franchise tax on railroads levied in G.S. 105-115. Section 2 of the act repeals the $1,500 individual income tax exemption allowed under G.S. 105-134.6(b)(4) for compensation received for service in the North Carolina National Guard. Both changes are effective for taxable years beginning on or after January 1, 1990.

Railroad Tax

In 1976, Congress passed the Railroad Revitalization and Regulatory Reform Act. Among other things, the act declares that a State imposes an unreasonable burden on interstate commerce when it imposes a tax that discriminates against a rail carrier (49 U.S.C. § 11503(b)(4)). G.S. 105-115 imposes a franchise tax on railroads based on the appraised value of the railroad's property. G.S. 105-122 imposes a franchise tax on corporations based on the highest of the corporation's appraised property value, its net worth, or its net book value of property. The tax rate under G.S. 105-115 is .0075. The tax rate under G.S. 105-122 is .0015. G.S. 105-115 therefore discriminates against a rail carrier with respect to franchise taxes. It imposes tax at a rate that is five times the rate that applies to most corporations.

To avoid a lawsuit over the constitutionality of G.S. 105-115, the General Assembly decided to repeal it and let the general franchise tax apply to railroads. The repeal of

the special tax produces a revenue loss to the General Fund of $1.6 million for fiscal year 1990-91 and $1.7 million for fiscal year 1991-92.

National Guard Exemption

In 1989, the United States Supreme Court held in Davis v. Michigan that a state violates the principle of intergovernmental tax immunity when it gives more favorable tax treatment to itself or those with whom it deals than to the federal government or those with whom the federal government deals unless there are significant differences between the two groups that justify the different treatment. Based on this principle, the court in the Davis case held that it is unconstitutional for a state to exempt retirement income of State employees while taxing retirement income of federal employees. The court saw no significant differences between state employees and federal employees that would justify the different tax treatment.

Before 1989, North Carolina exempted all retirement income of retired State employees and exempted only $3,000 of retirement income of retired federal civil service and military employees. As a result of the Davis decision, the General Assembly changed the law to limit the exemption for State retirement income to $4,000 and to raise the exemption for federal retirement income to $4,000 so that the exemptions would be equal and would comply with federal law.

When the General Assembly changed the law on individual income tax exemptions for retirement income, however, it left a $1,500 exemption for National Guard pay in the law. The National Guard is the State militia and is paid from a combination of State and federal funds. The exemption for National Guard pay has been in the law at the amount of $1,500 since 1979.

The decision not to repeal the National Guard exemption in 1989 led to additional problems concerning the issues raised by the Davis case. In the pending case of Swanson v. Powers, in which the federal retirees seek to obtain refunds of taxes paid on federal retirement pay for the years preceding the 1989 tax year, the federal retirees have argued that the State's failure to repeal the National Guard exemption is evidence that the State does not comply with federal law and should therefore be required to make the refunds requested by the retirees.

In addition, federal armed forces reservists and federal active duty military personnel have amended the complaint in the Swanson lawsuit and claim that the $1,500 exemption for National Guard pay violates the principle established in the Davis case. The reservists and active duty personnel claim that they are entitled to a $1,500 exemption for their federal reserve or active duty pay because the State cannot constitutionally treat its militia better than it treats the federal militia.

Losing the Swanson case would have serious adverse revenue effects on the State's General Fund. If the federal retirees prevail and the State has to refund taxes paid on federal retirement pay, the General Fund will suffer a one-time loss of approximately $80 million. If the federal reservists and active duty military personnel prevail in their claim, the State would have to grant them the same $1,500 exemption and would suffer a revenue loss of $8 million for each year a refund must be made. Because the State has had reason to know the $1,500 exemption is unconstitutional since the Davis decision, the State would almost certainly be held liable for some back refunds and possibly three years' refunds or $24 million. In addition, the State could be required to pay the retirees', reservists', and active-duty military personnel's legal costs of the suit if the State loses.

To avoid the potential revenue losses created by the $1,500 National Guard exemption, the General Assembly decided to repeal it. The repeal indicates the State's

good faith compliance with federal law, eliminates a possible recurring revenue loss of $8 million, and produces a revenue gain to the General Fund of $1.9 million for fiscal year 1990-91 and $2 million for fiscal year 1991-92.

Inheritance and Gift Taxes

Inheritance tax adjustment (Senate Bill 1365; Chapter 970): In 1989, the General Assembly repealed the inheritance tax exemption for benefits received by a survivor under a State employee retirement program, but inadvertently retained the inheritance tax exemption for benefits received by a survivor under a federal employee retirement program. As a result, beneficiaries of a federal employee retirement program received more favorable treatment than beneficiaries of a State employee retirement program. Senate Bill 1365 equalizes the inheritance tax treatment of federal and State employee death benefits by repealing the inheritance tax exemption for benefits received by a survivor under a federal employee retirement program, effective September 1, 1990.

This act also authorizes the Legislative Research Commission to study existing inheritance tax exemptions to determine if any changes need to be made in light of amendments to the inheritance tax law enacted since 1985. As part of the Tax Reduction Act of 1985, the General Assembly reduced inheritance taxes. It enacted a total exemption for property passing to a surviving spouse and increased the Class A tax credit, which applies to lineal descendants and ancestors, to an amount that exempts at least $500,000 of property from inheritance tax. The inheritance tax exemptions were not reviewed when these tax reductions were enacted, however.

This act is expected to increase General Fund revenue by an insignificant amount because most death benefits are received by a surviving spouse or a class A beneficiary and would not be taxable due to the existing exemption for surviving spouses and credit for Class A beneficiaries.

This act is based on a recommendation of the Revenue Laws Study Commission that would have expanded the exemption for federal benefits to include State and local benefits but would have limited the exemption to Class A beneficiaries only.

Motor Fuel Taxes

Fuel tax bond increase (House Bill 2074; Chapter 908) House Bill 2074 increases the maximum bond that may be required of fuel distributors and suppliers. Distributors of motor fuel are subject to the Gasoline Tax under Article 36 of Chapter 105 of the General Statutes. Distributors must obtain a license from the Department of Revenue and post a bond in the amount required by the Secretary of Revenue, up to a maximum of $40,000. Suppliers of special fuels (primarily diesel fuel) are subject to the Special Fuels Tax under Article 36A of Chapter 105 of the General Statutes. Suppliers must obtain a license from the Department of Revenue and post a bond equal to three times the supplier's average monthly tax liability, up to a maximum of $40,000. Distributors

who are also suppliers may obtain a single bond to cover both taxes, up to a maximum bond of $80,000.

Effective January 1, 1991, the new law increases the maximum bond required of a distributor of motor fuel or a supplier of special fuels to two times the taxpayer's average monthly liability, or $2,000, whichever is greater. For a person who is both a distributor and a supplier, the maximum bond is the total of the two bonds or $4,000, whichever is greater.

Allow annual fuel tax filing (House Bill 603; Chapter 1050): Effective January 1, 1991, House Bill 603 allows a motor carrier whose annual fuel use tax liability is no more than $200 to file a tax report annually rather than quarterly. The act also authorizes annual, rather than quarterly, special fuel tax reports for users of special fuel (primarily diesel fuel) that use the fuel only in a motor vehicle operated in this State or that file fuel use tax reports annually.

Privilege License and Excise Taxes

Omnibus Drug Act (House Bill 2375; Chapter 1039): House Bill 2375 makes various changes to criminal offenses involving controlled substances, extends the sunset on investigative grand juries from October 1, 1991, to October 1, 1993, requires registers of deeds to distribute information on the harmful effects on a fetus of substance abuse by the mother, and changes the distribution of the excise tax on controlled substances. Effective retroactively to January 1, 1990, the effective date of the excise tax on controlled substances, the act requires 75% of all excise taxes collected by assessment to be remitted to the State or local law enforcement agency that conducted the investigation that led to the assessment of the tax. If more than one agency conducted the investigation, the Secretary of Revenue must equitably divide the 75% among the investigating agencies.

Under prior law, the proceeds of the excise tax on controlled substances were deposited in a a special account designated the State Controlled Substances Tax Fund. As of July 31, 1990, a total of $137,194.29 had been deposited in the Fund while more than $49 million in controlled substance excise taxes had been assessed but not collected. The Department plans to make the first distribution to law-enforcement agencies in the fall of 1990.

Simplify restaurant license tax (Senate Bill 1588; Chapter 1073): Senate Bill 1588 simplifies the annual privilege license tax imposed on restaurants and other establishments that serve prepared food, effective July 1, 1991, by changing the way the tax is calculated. Under prior law, the tax was $1 for each seat in the establishment with a minimum of $50. As changed by the act, the tax is a flat $50 for establishments that have seating for fewer than five customers and is a flat $85 for establishments that have seating for five or more customers.

The act will increase General Fund revenue by $4,000 each year beginning with the 1991-92 fiscal year and will have a varying effect on particular establishments depending on the establishment's seating capacity. The act does not change the privilege tax liability of establishments, such as grocery stores that sell prepared foods

at a deli within the store that have no seating or seating for fewer than five customers. The act increases the privilege tax liability of establishments that have between five and 50 seats from $50 to $85. The act increases the privilege tax liability of establishments that have more than 50 but no more than 84 seats by the difference between their number of seats and 85. The act decreases the privilege tax liability of establishments that have more than 85 seats; some of these establishments have over 350 seats and will therefore enjoy a decrease in tax liability of at least $265.

Property Taxes

Claims to submerged land (Senate Bill 1496; Chapter 869): Senate Bill 1496 extends by four years the time allowed to resolve claims to land under navigable waters. G.S. 105-151.12 gives a person who donates land to the State that is useful for land conservation purposes a tax credit equal to 25% of the donated property's interest. In the case of marshland for which a claim has been filed, the offer of donation had to be made before December 31, 1990, to qualify for the credit. This act extends the credit to December 31, 1994.

In 1965, the General Assembly established a procedure for the registration and resolution of submerged lands claims. Approximately 3,000 claimants registered about 10,000 claims by the deadline date of January 1, 1970. In 1985, the General Assembly extended the tax credit provided in G.S. 105-151.12 to people who donated marshland to the State for which an interest was claimed. The credit gives citizens some incentive to relinquish their marshland claims and allows the State to regain valuable marshland. The cost to the State of the credit is minimal since the property tax value of marshlands is low. Two donations have been made under this provision to date.

The original legislation set a 21-year deadline for the State to resolve the claims in order to prevent the claims from perfecting by adverse possession. In 1988, the North Carolina Supreme Court ruled that lands under navigable waters cannot be acquired by adverse possession, thus removing the need for the 21-year deadline. Although the Division of Marine Fisheries of the Department of Environment, Health, and Natural Resources has worked diligently to resolve the claims by the 1990 deadline, it finds it cannot because of the complex title issues involved and the length of time it takes to complete each claim.

Delay property tax interest (Senate Bill 1617; Chapter 960): G.S. 105-321(c) requires a taxing unit to deliver its property tax receipts to the tax collector by September 1 each year. Senate Bill 1617 provides that if the property tax receipts of a taxing unit for the 1989-90 tax year were not delivered to the tax collector before January 1, 1990, the governing body of the taxing unit may adopt a resolution providing that interest will not accrue on those taxes unless they remain unpaid after July 1, 1990. The taxing unit may also refund interest that accrued on these taxes between January 7, 1990, and July 1, 1990. This act is effective upon ratification; although it applies to all taxing units, only Onslow County will likely adopt a resolution authorized by this act. Property tax receipts for a newly annexed area of the Town of Richlands were not delivered to the Onslow County tax collector until after December 31, 1989.

Property tax technical changes (Senate Bill 1363; Chapter 1005): Senate Bill 1353 makes several conforming and technical changes to the property tax statutes, effective upon ratification. Section 1 makes the time for filing a notice of appeal from a decision of a board of county commissioners the same as the time period for filing a notice of appeal from a decision of a board of equalization and review: 30 days after the date a notice of the decision is mailed to the property owner. Previously, the time for filing a notice of appeal from a decision of a board of county commissioners was 30 days after the decision was entered. Section 2 of the act changes the time when a notice of appeal submitted by mail to the Property Tax Commission is considered to have been filed from the date the notice is actually received to the date the notice is postmarked.

Sections 4 through 7 of the act delete obsolete references to the effective property tax rate. Since 1974, local governments have been required to assess property for taxation at the property's market value. Before then, property could be assessed at a percentage of its market value. These sections delete references to the pre-1974 assessment ratios produced when property was taxed at a percentage of market value.

Sections 8 and 9 make the penalty for submitting a bad check in payment of property taxes the same as for submitting a bad check in payment of other taxes by establishing a $1,000 maximum for all bad checks given in payment of taxes and giving a tax collector the same authority as the Secretary of Revenue to waive the penalty if a taxpayer wrote a bad check on the wrong account through inadvertence. The previous penalty for submitting a bad check in payment of taxes other than property taxes was 10% of the check, subject to a maximum of $200.00, and the penalty could be waived if the Secretary of Revenue found that the taxpayer wrote a bad check on the wrong account through inadvertence. The penalty for submitting a bad check for property taxes was 10% of the check with no maximum and no waiver was allowed under any circumstances.

Sections 1 through 7 of this act have no fiscal effect. Section 8, which increases the maximum penalty for bad checks given in payment of taxes other than property taxes, will increase General Fund revenue by approximately $50,000 annually. Last year, the Department collected $496,137 in bad check penalties. Section 9, which sets a $1,000 maximum bad check penalty for property taxes, will reduce local revenue in a few instances because there is now no cap on the penalty.

Sections 1 through 7 of this act were recommended by the Revenue Laws Study Committee.

Sales and Use Taxes

No sales tax on small power producer (House Bill 2073; Chapter 989): Effective July 1, 1991, House Bill 2073 creates a sales tax exemption for fuel used by a small power producer to generate electricity. Without the exemption, the fuel would be subject to State sales tax at the rate of 1% under G.S. 105-164.4(a)(1c)d.

The United States Code, in 16 U.S.C. § 796(17)(A), defines a "small power production facility" as a facility that produces energy by using primarily biomass waste, renewable resources, geothermal resources, or any combination of these and has a

power production capacity of not more than 80 megawatts. The purpose of the federal law is to encourage the production of energy from alternative energy sources.

Coal used to generate electricity is exempt from sales tax under G.S. 105-164.13(3) if it is sold by the producer. Piped natural gas used to generate electricity is subject to State sales tax under G.S. 105-164.4(a)(4a) at the rate of 3% and is not subject to local sales tax. Other fuel used to generate electricity is subject to State sales tax under G.S. 105-164.4(a)(1c)d. at the rate of 1% and is not subject to local sales tax.

This act is expected to result in a revenue loss to the General Fund of $60,000 for the 1991-92 fiscal year. No local revenue loss will occur because under existing law fuel used by a small power producer to generate electricity is not subject to local sales tax.

Church food sales tax exempt (House Bill 2117; Chapter 1060): House Bill 2117 provides a sales tax exemption for food sold by a church or other religious organization not operated for profit when the proceeds of the sales are actually used for religious activities. The exemption applies to sales made on or after August 1, 1990. Under prior law, religious organizations were required to collect the sales tax for all food sales except sales of "Meals on Wheels" to shut-ins.

Religious organizations are allowed a refund of sales taxes paid by them on certain purchases. The State has also given religious organizations other tax advantages. Examples of the existing tax advantages include a federal and State income tax exemption for nonprofit corporations organized for religious purposes, State inheritance and gift tax exemptions for property passing to religious organizations, intangibles tax exemption for nonprofit religious organizations, property tax exemptions for property owned by religious organizations and used for religious or educational purposes, and privilege license tax exemptions for certain exhibitions and performances benefiting religious purposes, for professional religious spiritual healers, and for peddlers and itinerant merchants who are religious organizations.

Ice sales tax exemption repeal (House Bill 2207; Chapter 1068): House Bill 2207 repeals the sales tax exemption for the retail sale of ice, thus making sales of ice subject to State sales tax at the rate of 3% and local sales tax at the rate of 2%. However, ice used to preserve agriculture, aquaculture, and commercial fishery products until the products are sold at retail retains its exempt status. This exemption overlaps with the sales tax exemption for supplies sold to commercial fishermen; that exemption, granted by G.S. 105-164.13(9), applies to ice.

Effective September 1, 1990, the repeal of the sales tax exemption for ice is expected to generate $280,000 in additional State tax revenue for the 1990-91 fiscal year, which will have only 10 collection months, and $390,000 in additional State tax revenue in the 1991-92 fiscal year. It is also expected to generate $185,000 in additional local sales tax revenue for the 1990-91 fiscal year, and $260,000 in additional local sales tax revenue in the 1991-92 fiscal year.

The sales tax exemption for ice was enacted in 1937 as an extension of an exemption then in the law for certain food items. The reason for the exemption was that ice was used primarily in ice-boxes to preserve food. Today, food is no longer exempt from sales tax and refrigerators, rather than ice-boxes, are used to preserve food.

Miscellaneous

Revenue laws technical changes (Senate Bill 1361; Chapter 814): Senate Bill 1361 makes numerous technical and conforming changes to the revenue laws. Except as otherwise noted, the provisions of this act are effective upon ratification.

Section 1 deletes a cross-reference to a statute that was repealed in 1988. Section 2 corrects an incorrect cross-reference that was added in 1989 and section 3 corrects a grammatical construction.

Effective July 1, 1990, section 4 repeals an obsolete, redundant statute providing for licensure of certain emigrant agents. In practice, all emigrant agent licenses have been issued under G.S. 105-90, which essentially duplicates G.S. 105-90.1. Both the Department of Revenue and the Employment Security Commission confirmed that G.S. 105-90.1 serves no known purpose.

Section 5 deletes a cross-reference to a statute that was repealed in 1989 and corrects a cross-reference to a subsection that was renumbered in 1989.

Sections 6 through 9 make clarifying amendments to the Controlled Substance Tax Act. The first two sections separate criminal and civil penalties for violation of the Act and clarify that interest applies to overdue taxes. The latter two sections clarify that reporting requirements imposed on law enforcement agencies by the Act apply only to arrests where drugs seized are subject to tax.

Sections 10 and 11 delete language in two franchise tax statutes that relates to provisions repealed as obsolete in 1989. Section 12 changes from December 31 to September 30 the cut-off date relating to the return used for computing the proportion of dividends deductible for corporate income tax purposes and the stock value not taxable for intangibles tax purposes. The modification, requested by the Department of Revenue, is needed to enable the Intangibles Tax Division to publish annually the booklet, Stock and Bond Values, in a more complete and timely manner.

Both the corporate and individual income tax allow a credit for construction of a fuel ethanol distillery. In 1987, the bill rewriting these credits was amended at the last minute to extend the sunset date from 1993 to 1994 for the individual income tax credit. Apparently through oversight, the corporate income tax credit sunset was not similarly extended. Section 13 extends the corporate income tax credit sunset date from 1993 to 1994.

Section 14 updates a reference to the former Department of Commerce, now the Department of Economic and Community Development. Section 15 removes "corporation" from the definition of a person under the Individual Income Tax Act. Effective with the 1990 tax year, section 16 authorizes the Secretary of Revenue to issue individual income tax tables, similar to tables issued by the Internal Revenue Service and many other states. This change will simplify tax preparation for North Carolina citizens.

Section 17 makes language changes that were included in a 1989 act but did not take effect due to an error in the coded bill drafting format. Section 18 corrects an incorrect cross-reference added in 1989. Section 19 corrects an ambiguous cross-reference, thus clarifying that the tax rates for single individuals apply to nonresident partners of a North Carolina partnership. Section 20 deletes a stray word that a 1989 law intended to repeal, but due to an error in the coded bill drafting format, did not.

Effective with the 1990 tax year, section 21 corrects the formula for apportioning estate or trust income by providing the appropriate distinction between income that is

for the benefit of a resident of this State and income that is for the benefit of a nonresident. Section 22 deletes a reference to a repealed law. Section 23 corrects an erroneous cross-reference to the statutes providing general administration provisions, penalties, and remedies for the Revenue Act.

Sections 24 through 27 amend gift tax, intangibles tax, and gross premiums tax statues to delete cross-references to repealed statutes and substitute appropriate cross-references to preserve the substance of the law. Section 28 clarifies that corporations as well as individuals may elect to apply all or part of their income tax refunds to the following year's tax liability. Section 29 corrects a grammatical error.

Sections 30 through 34 clarify that only the additional fee for vanity plates is credited to the Personalized Registration Plate Fund; the $20.00 registration fee charged for all passenger vehicles continues to go to the Highway Fund. These sections also correct grammar and replace the phrases "deposited in" and "placed in" with the technically correct phrase "credited to."

Regulate tax refund loans (Senate Bill 1354; Chapter 881): In 1989, North Carolina became the first state to enact legislation regulating Refund Anticipation Loan (RAL) programs in conjunction with electronically filed tax returns. An RAL program is a program in which a person who has his or her federal income tax return filed electronically by a tax preparer can obtain a loan from a national bank in the amount of the anticipated federal tax refund, less charges for the preparation and filing of the return and for the loan. Refund anticipation loans involving North Carolina income tax refunds are prohibited by G.S. 143-3.3.

Senate Bill 1354 creates the "Refund Anticipation Loan Act" to become effective October 1, 1990. The act applies to a "facilitator," any person who processes, receives, or accepts an application for a refund anticipation loan or a check in payment of refund anticipation loan proceeds, or who otherwise facilitates such a loan. "Refund Anticipation Loan" is defined as a loan that the lender (bank) arranges to be repaid directly from the proceeds of the borrower's income tax refund.

Under the new law, facilitators of refund anticipation loans are required to register with the Commissioner of Banks and pay a fee of $250. Failure to register is a misdemeanor punishable by imprisonment for up to sixty days, a fine of up to $2,000, or both. Registration must be renewed annually; the fee for renewal is $100. A facilitator that is a bank, savings and loan, or credit union is not required to register under this act, because these institutions are already regulated by the Department of Economic and Community Development.

Registrants are required to file a schedule of refund anticipation loan fees with the Commissioner of Banks and post that schedule at each office. If the Commissioner finds the fee schedule to be unconscionable, the Commissioner must notify the registrant.

At the time a person applies for a refund anticipation loan, the registrant must disclose the following information:

1. The fee for the loan;
2. The fee for electronic filing of a tax return;
3. The time within which the proceeds of the loan will be paid if approved;
4. That the debtor is responsible for repayment if the tax refund is not paid;

5. The availability of electronic filing and the average time announced by the appropriate taxing authority in which a taxpayer can expect to receive a refund if the return is filed electronically and the taxpayer does not receive a refund anticipation loan; and
6. Examples of annual percentage rates for average RAL's.

Facilitators of refund anticipation loans are prohibited from engaging in the following activities:

1. Misrepresenting a material factor or condition;
2. Failing to arrange for the loan promptly;
3. Fraud;
4. Charging a fee that is different from the posted fee or is in an amount that the Commissioner has notified the facilitator is unconscionable;
5. Arranging for payment of any portion of the loan for an unrelated service; and
6. Arranging for a lender to take a security interest in property other than the proceeds of the tax refund.

Engaging in a prohibited activity or an unfair or deceptive practice may result in entry of a cease and desist order, revocation of registration, and various civil penalties. Appeals may be taken directly from the Commissioner of Banks to the North Carolina Court of Appeals.

UNC management flexibility (House Bill 2335; Chapter 936): House Bill 2335 primarily makes changes in the procedures used by the 16 State universities to account for funds appropriated to them. In addition, it raises the competitive bidding threshold and the State purchasing threshold for all agencies from $5,000 to $10,000 and allows the 16 universities to obtain a semiannual sales tax refund for State and local sales and use taxes paid by them on personal property purchased with contract and grant funds, as opposed to funds appropriated to them by the State. The sales tax refund becomes effective January 1, 1992, and applies to sales and use taxes paid on or after that date.

Under prior law, all purchases made by the universities were subject to sales and use taxes, and no refund was available. Until recently, the universities and all other State-supported agencies were not allowed an exemption from or a refund for sales and use taxes on the theory that a sales tax exemption or refund creates an administrative problem and does not result in a net revenue gain to the agency. If an agency does not have to pay sales and use taxes, the General Assembly does not need to appropriate money to the agency to cover the taxes and can therefore reduce the appropriation it would otherwise make to the agency. In 1986, the General Assembly departed from this theory and exempted purchases made by the Department of Transportation from sales and use taxes.

Allowing the universities to obtain a refund of sales and use taxes beginning January 1, 1992, will reduce State General Fund revenue and local revenue beginning with the 1992-93 fiscal year by an undetermined amount. Because of the delayed effective date, the refund will obviously have no effect on revenues for the 1990-91 fiscal year. The refund will also have no effect on revenues for the 1991-92 fiscal year because the first semiannual refund period for which a university can claim a refund ends June 30, 1992.

Apply egg tax to processed eggs (House Bill 2402; Chapter 1001): House Bill 2402 levies a tax on processed eggs sold for use in this State. Processed eggs include frozen eggs, liquid eggs, and hard-cooked eggs. There is currently an excise tax on shell eggs

in the amount of 5¢ for each case of 30 dozen eggs. Effective October 1, 1990, the excise tax on processed eggs will be 11¢ for each 100 pounds of processed eggs. A person who sells less than 1,000 pounds of processed eggs per year is exempt from this tax.

The Department of Agriculture collects the tax and the money is deposited in the "North Carolina Egg Fund." The money in the Fund is appropriated to the North Carolina Egg Association for research, education, publicity, advertising, and other promotional activities for the benefit of producers of eggs sold in the State.

Strawberry Assessment Act (Senate Bill 1380; Chapter 1027): Senate Bill 1380 creates the "Strawberry Assessment Act." The Act provides a means for strawberry producers to voluntarily assess themselves in order to provide funds for strawberry research and marketing. All expenditures of the funds collected must be approved by a funding committee composed of seven members of the North Carolina Strawberry Association, Inc., appointed by the Commissioner of Agriculture.

The Strawberry Association will conduct referenda on the question of whether an assessment should be levied. All persons engaged in the commercial production of strawberries are eligible to vote in the referenda. The amount of the proposed assessment and the method of collection must be set forth on the ballot.

An assessment cannot be collected unless at least two-thirds of the votes cast in a referendum are in favor of the assessment. The amount of the proposed assessment cannot exceed 5% of the value of the previous year's strawberry plant sales and the period for which each assessment can be levied cannot exceed three years. The Strawberry Association determines the amount of the proposed assessment and the period for which the assessment is levied.

If a referendum receives a two-thirds favorable vote, the Department of Agriculture will notify all strawberry plant growers of the assessment. The assessment would be added by plant growers to the price of all strawberry plants sold for planting in North Carolina. The assessment must be remitted to the Department no later than the 10th day following the end of each calendar quarter; the Department will then forward the money collected to the Strawberry Association.

Uniform federal lien registration (House Bill 2394; Chapter 1047): House Bill 2394 replaces the Uniform Federal Tax Lien Registration Act, codified as Article 11 of Chapter 44 of the General Statutes, with the Uniform Federal Lien Registration Act. The act extends the filing requirements that previously applied to federal tax liens to all federal liens, such as a federal lien against real property for costs paid from the federal Hazardous Substance Superfund to remove hazardous substances from the property. The act does not change the filing requirements concerning federal tax liens or the fees charged for filing the liens. The act was effective August 1, 1990.

Premium tax clarification (House Bill 2257; Chapter 1069): House Bill 2257 makes several changes to the insurance laws. It increases various fees paid by insurers and imposes new fees on insurers, it establishes a $1 million Department of Insurance Consumer Protection Fund, it changes the source of funding for payments to local governments for fire protection provided to State-owned buildings and their contents, and it clarifies the retaliatory insurance tax imposed under G.S. 105-228.8. The clarification of the retaliatory tax is effective retroactively to January 1, 1987, the effective date of the retaliatory tax, and resolves a lawsuit brought against the

Department of Insurance by insurance companies over the meaning of the retaliatory tax.

The retaliatory tax issue is intertwined with the differing tax rates on insurance coverage. G.S. 105-228.5 imposes taxes on insurance companies based on the companies' gross premiums. The general rate is 1.75% of gross premiums. Insurers that provide fire and lightning coverage pay an additional tax at the rate of 1.33% of gross premiums for fire and lightning coverage provided on property other than vehicles and boats. Thus, on certain fire and lightning coverage, insurers pay the general rate of 1.75% plus the additional rate of 1.33% for a total combined rate of 3.08%. Twenty-five percent of the additional 1.33% tax, or .33%, must be deposited in the Rural Volunteer Fire Department Fund. That Fund provides matching grants to rural volunteer fire departments for equipment and capital improvements. The remaining 1% of the additional tax and all the general 1.75% tax is deposited in the General Fund.

G.S. 105-228.8 imposes a retaliatory tax on insurers that are chartered in a state other than North Carolina. The purpose of the retaliatory tax is to equalize other states' treatment of insurers chartered in North Carolina and doing business in those states with North Carolina's treatment of insurers chartered in another state and doing business in North Carolina. For example, if North Carolina taxes insurers at 1.75% and Virginia taxes insurers at 3%, G.S. 105-228.8 imposes an additional 1.25% retaliatory tax on Virginia insurers doing business in North Carolina because Virginia taxes a North Carolina insurer that does business in Virginia at 3%.

In calculating whether an insurer owes retaliatory tax, G.S. 105-228.8(e) provides that "special purpose obligations or assessments based on premiums" and "special purpose dedicated taxes based on premiums" cannot be considered. Thus, in the previous example, if North Carolina imposed a special purpose tax of 1.25% in addition to the general 1.75% tax, the retaliatory tax on a Virginia insurer would still be 1.25% because the Virginia insurer could not count the 1.25% special purpose tax in calculating whether the insurer owed retaliatory tax.

Clearly, therefore, the answer to the question whether a tax is a special purpose tax has a significant impact on determining the amount of tax payable to North Carolina by insurers chartered in another state. Before the passage of this act, the Department of Insurance maintained that the additional 1.33% tax on fire and lightning premiums was a special purpose tax and therefore could not be included in a calculation of whether an insurer owed retaliatory taxes. Insurers sued the Department of Insurance and sought refunds of retaliatory taxes paid on the ground that 1% of the 1.33% tax on fire and lightning coverage was not a special purpose tax because it was deposited in the General Fund and should therefore be included in calculating retaliatory tax liability.

The act resolves the lawsuit by conceding the issue and declaring that 1% of the 1.33% tax on fire and lightning coverage is not a special purpose tax. By implication, the remaining .33% of the 1.33% tax is a special purpose tax. The resulting ability of insurers to include 1% of the 1.33% additional tax on fire and lightning coverage in calculating the amount of taxes paid for purposes of the retaliatory tax will reduce General Fund revenue by $1.8 million each fiscal year.

Because of the retroactive effective date of the retaliatory provision, the Department of Insurance must refund $2.5 million in overpayments of retaliatory taxes made in previous years for which timely refund claims have been submitted. Although not stated in the act, the Department has indicated that it will make the required refunds by allowing a credit for overpayments of retaliatory taxes over a four-year period. The

refunds, taken as a credit over four years, will reduce revenue by approximately $640,000 for each of the four fiscal years beginning with the 1990-91 fiscal year. The four-year annual $640,000 reduction is in addition to the $1.8 million permanent reduction.

SIGNIFICANT LEGISLATION THAT FAILED

Highway use tax/sales tax changes (Senate Bill 1360; House Bill 2069): This bill would have reinstated the sales tax on moped, tow dollies, and certain motor vehicle bodies. Currently, these items escape taxation under both the highway use tax and the sales tax. Under this bill, they would have been subject to sales tax at the general State rate of 3% and the local rate of 2%, for a combined rate of 5%.

Currently, lessors or renters of motor vehicles have the option of either paying the highway use tax when purchasing the vehicle or waiving payment of the titling tax and collecting a tax on the lease or rental receipts. If a lessor decides to pay the optional gross receipts tax instead of the highway use tax, he must pay 8% of gross receipts for the first 90 days of a lease or rental to the same person and 3% of gross receipts after that. To ease the administrative burden on lessors, this bill would have established a uniform long-term leasing rate of 8% for all leases or rentals less than a year and 3% for all leases or rentals made under a contract to lease or rent a motor vehicle for at least one year. It would also have allowed lessors and renters to have the option of paying the highway use tax on the vehicles owned on October 1, 1989. The option would have eased some of the bookkeeping problems caused by preventing them from having a uniform policy concerning the tax.

The bill would have made the submission of a bad check in payment of the highway use tax grounds for suspending or revoking a dealer's license. The legislation enacted last session allows a dealer to collect and remit the highway use tax payable on a motor vehicle when the dealer applies for title on behalf of the buyer of the vehicle. Under current law, if the check is bad, the Division of Motor Vehicles can remove the registration plate from the vehicle for which a bad check was given in payment of the highway use tax. However, this remedy seems unfair when the owner of the vehicle paid the tax to a dealer and the dealer submitted a bad check to the Division.

This bill would also have lowered the minimum highway use tax from $40 to $20 and exempted the following motor vehicles from the highway use tax:

1. Vehicles for which a new title is issued because the owner changed names.
2. Vehicles transferred tot he Department of Human Resources to be equipped for use by the handicapped and then transferred to a handicapped person.
3. Public school buses.
4. Vehicles used in the driver education program of a public school.
5. Vehicles transferred as a result of the death of the former owner.

Finally, the bill made several technical corrections to laws affected by the Highway Trust Fund legislation.

STUDIES

Independent study commissions: (1) Economic Future Study Commission; and (2) Joint Legislative Commission on Future Strategies for North Carolina.

Legislative Research Commission: (1) Mail Order Sales Tax - assigned to Revenue Laws; (2) Budget Restructuring and Legislative Session - assigned to Revenue Laws; and Inheritance Tax - assigned to Revenue Laws.

TRANSPORTATION

(Giles S. Perry)

RATIFIED LEGISLATION

Wipers on/headlights on (HB 416; Chapter 822): House Bill 416 amends G.S. 20-129(a), which regulates headlights and taillights. It also adds a new section to Chapter 20 requiring every motor vehicle to have a working speedometer.

Section 1 of the bill deletes subdivision (3) of G.S. 20-129(a), requiring lights to be on in a school zone during school hours when lack of visibility requires windshield wipers to be on. It adds a new subdivision (4) to require that lights be on any time when windshield wipers are in use because of smoke, fog, rain, sleet or snow, or when weather or environmental factors reduce the ability to clearly discern persons or vehicles at a distance of 500 feet ahead. Violation from October 1, 1990 through December 31, 1991 shall result in a warning only. Thereafter, violation is an infraction requiring a $5 fine but no court costs. Neither drivers license nor insurance points can be assessed because of violation. No negligence or liability may be found because of a violation of the subdivision.

The Commissioner of Motor Vehicles and Superintendent of Public Instruction are required to incorporate into the driver education programs and driver licensing programs instructions encouraging compliance with the headlight requirement.

Section 2 of the bill requires every motor vehicle on the highway to have a properly working speedometer. Violation is an infraction with a maximum fine of $25. No license points, insurance points, or premium surcharges can be assessed for a violation of this section.

The act becomes effective October 1, 1990; in addition, Section 1 of the bill expires June 30, 1991.

Motorcycle safety funds (HB 2116; Chapter 830): House Bill 2116 amends G.S. 20-87(6) (Passenger vehicle registration fees) to clarify that the additional $3 tax on private motorcycles is to be credited to the General Fund and used to implement the Motorcycle Safety Instruction Program created in G.S. 115D-72. The bill was effective June 30, 1990, and expires October 1, 1993.

Handicapped parking penalty (HB 2391; Chapter 1052): House Bill 2391 amends G.S. 20-37.6: (1) To increase the fine for parking in a handicapped parking space from $25 to $50-$100 (effective Oct. 1, 1990); (2) To increase the fine for erecting nonconforming handicapped parking signs from $50 to $50-$100 (effective Oct. 1, 1990); and (3) To require handicapped parking signs to state the maximum penalty for parking in a handicapped space in violation of the law (effective upon ratification, and applicable to signs placed after Dec. 1, 1990).

EMS vehicles, red lights/sirens (SB 300; Chapter 1020): Senate Bill 300 amends G.S. 20-125(b) to require emergency medical service emergency support vehicles to be equipped with special lights, bells, sirens, horns, or exhaust whistles of a type approved by the Commissioner of Motor Vehicles. The bill deletes a provision requiring vehicles

driven by inspectors employed by the N.C. Utilities Commission to be equipped with the above-listed equipment, and adds a provision requiring vehicles of law enforcement officers of the N.C. Division of Motor Vehicles be so equipped. Senate Bill 300 also amends G.S. 20-130.1(b) by excepting emergency medical service support vehicles from the prohibition on the use of red lights. The bill became effective upon ratification, July 27, 1990.

Clarify salvage vehicle title (SB 465; Chapter 916): Senate Bill 465 amends current G.S. 20-71.3 (which provides that a motor vehicle titled in another state and damaged may be repaired and an unbranded title issued in N.C. only if the cost of repairs does not exceed 75% of its fair market value) to remove the requirement that an unbranded title would be issued in N.C. only if satisfactory evidence was given to the Division of Motor Vehicles that the vehicle would be eligible for the issuance of an unbranded title in the state in which it is titled.

Senate Bill 465 further amends G.S. 20-71.4 to provide that it is a misdemeanor for any transferor to fail to disclose that a motor vehicle is, or was, a flood vehicle, a reconstructed vehicle, or a salvage motor vehicle, for any vehicle up to five model years old.

Senate Bill 465 becomes effective October 1, 1990.

Regulate releasing of autos (SB 1618; Chapter 1011): Senate Bill 1618 adds a new section to the General Statutes (20-106.2) entitled "Sublease and loan assumption arranging regulated." This new section provides criminal and civil penalties for motor vehicle subleasing in specified circumstances.

Specifically, this bill provides that it is a Class J felony for a sublease arranger (defined) to arrange a sublease without first obtaining authorization from the vehicle's secured party or lessor or to accept a fee without having first obtained written authorization for the sublease from the vehicle's secured party or lessor. The bill also provides that it is a misdemeanor for a sublease arranger to fail to disclose the location of a vehicle on request of the vehicle's buyer, lessee, secured party or lessor; fail to provide to the third party proper disclosure under the Consumer Credit Protection Act; fail to provide oral and written notice to the buyer or lessee that he will not be released from liability; fail to ensure that all warranty and service contract rights transfer to the third party (unless a rebate is arranged); or, fail to take reasonable steps to ensure that the third party is financially able to assume the payment obligations of the buyer or lessee.

Senate Bill 1618 also provides that any buyer, lessee, sublessee, secured party, or lessor injured or damaged by a violation of this new section may file a civil action for recovery of treble damages, equitable relief, attorney fees, and any other relief the court deems just.

The effective date for Senate Bill 1618 is October 1, 1990.

DEFEATED LEGISLATION

Amend Safe Roads Act (SB 13): Senate Bill 13 would have made numerous changes to the driving while impaired offenses and related statutes, including reducing the blood alcohol concentration level, increasing fines, prohibiting open containers of all alcoholic beverages in motor vehicles, increasing the civil license revocation period, and modifying the limited driving privileges.

STUDIES

Legislative Research Commission: (1) Drivers' Education - assigned to the Commission on the Basic Education Program; and (2) Infrastructure Bonds - assigned to the State Infrastructure Needs and Financing Study Commission.