SUMMARIES OF SUBSTANTIVE RATIFIED LEGISLATION

1991

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RESEARCH DIVISION
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INTRODUCTION

This publication contains summaries of substantive legislation enacted by the General Assembly during the 1991 Session, except for local and purely technical bills. Significant appropriations matters related to the subject area specified are also include. For an in-depth review of the appropriations and revenue process, please refer to Overview: Fiscal and Budgetary Actions, prepared by the Fiscal Research Division.

The document is organized alphabetically by subject areas. Where feasible, the subject area is further divided into subgroups. Each subject area also contains, as appropriate, a short summary of the significant pending bills (eligible for consideration during the 1992 Session) and a list of the independent and Legislative Research Commission studies pertinent to the area.

This document is the result of a combined effort by the following staff members of the Research Division: Cindy Avrette, Brenda Carter, Jennie Dorsett, Sherri Evans-Stanton, Bill Gilkeson, George F. Givens, Kristin Godette, Tim Hovis, Carolyn Johnson, Robin Johnson, Linwood Jones, Sally Marshall, Lynn Marshbanks, Giles Perry, Barbara Riley, Steven Rose, Terry Sullivan, Mary Thompson, Sandra Timmons, Jim Watts, and John Young. Also contributing were Martha Harris of the Bill Drafting Division and Sabra Faires of the Fiscal Research Division. 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

(Sherri Evans-Stanton, Robin Johnson, Linwood Jones)

RATIFIED LEGISLATION

Agriculture

Plant Pest Inspection Fees (HB 390; Chapter 442): House Bill 390 authorizes the Board of Agriculture to levy fees for its plant pest inspection and plant pest certification activities. This act became effective June 28, 1991.

Companion Animal Certificate of Examination Fees (HB 424; Chapter 227): House Bill 424 authorizes the Secretary of Environment, Health, and Natural Resources to establish a fee for companion animal certificate of examination forms. These forms are to be distributed by the Department of Environment, Health, and Natural Resources to licensed veterinarians upon request. The fee established by the Secretary cannot exceed the cost of producing and shipping the form. This act became effective July 1, 1991.

Seed Dealer Fees (HB 464; Chapter 588): House Bill 464 requires each seed dealer or grower offering seed for sale to pay the 2¢ seed inspection fee at the same time it makes its quarterly reports to the Commissioner of Agriculture on the quantity of seed sold. The bill also allows the Commissioner of Agriculture to issue a stop-sale order on any seed for which the dealer files a false report or does not file a timely report. This act becomes effective July 1, 1992.

Pesticide applicator definition (HB 467; Chapter 87): House Bill 467 amends G.S. 143-460(29) [definitions for the pesticide control program] to add the following persons to the definition of "pesticide applicator":

1. Persons who are certified by the Water Treatment Facility Operators Board of Certification or by the Wastewater Treatment Operators Plant Certification Commission and who apply pesticides labeled for treatment of water or wastewater; and
2. Persons who apply antimicrobial pesticides that are not classified for restricted use and are not being used for agricultural, horticultural, or forestry purposes.

The act also adds a new subdivision to G.S. 143-460 that defines "antimicrobial pesticide" as any substance intended for preventing, destroying, repelling, or mitigating any microorganism pest. The bill became effective upon ratification, May 14, 1991.

Bee and Honey Act (HB 468; Chapter 349): House Bill 468 makes the following two changes to the North Carolina Bee and Honey Act, Article 55 of Chapter 106:

(1) A person who wants to sell or distribute bees in this State must obtain a permit from the Commissioner of Agriculture and pay a $25 fee for an annual permit. The permit requirement does not apply to persons who sell fewer than 10 bee hives in a year, to a one time going out of business sale of less than 50 hives, or to the renting of bees for pollination purposes or movement of bees to gather honey.

(2) The Commissioner may impose a civil penalty of up to $10,000 for violations of the Bee and Honey Act or a rule implementing the act. Violations include failure to obtain the required permit to sell bees and failure to quarantine bees as required.

The bill becomes effective January 1, 1992.

Crop Destruction Offense (HB 838; Chapter 534): House Bill 838 makes it illegal for any person to willfully destroy the lawfully-grown crop, pasture, or provender of another. The offense is a misdemeanor, punishable by up to 2 years imprisonment and/or a fine, if the damage is $2,000 or less. Damage in excess of $2,000 constitutes a Class I felony, punishable by up to 5 years imprisonment and/or a fine. The former crop destruction law was limited to certain crops and punished all offenses as Class I felonies, regardless of the amount of damage. This act becomes effective October 1, 1991 and applies to offenses committed on or after that date.

Stray livestock (HB 874; Chapter 472): House Bill 874 repeals Chapter 79, which provided for the taking up of certain stray livestock, and adds the repealed provisions, with some modifications, to the livestock impoundment law in Chapter 68. The basic provisions for impounding the animal and notifying the owner are still the same, although there are some differences. For example, the impounder is now responsible for running the newspaper notice. The register of deeds' recording fee is increased to $10.00. Notice of a sale of the livestock is also required in three public places within the township where the livestock is impounded, and the impounder, rather than the sheriff, is to conduct the public auction. This bill applies only to livestock; dogs that stray or run at large are not subject to it. The bill became effective upon ratification, July 1, 1991.

Bona Fide Farm Defined (SB 148; Chapter 69): Senate Bill 148 defines bona fide farm purposes as "the production and activities relating or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agricultural products having a domestic or foreign market." The phrase is defined for purposes of the county zoning statutes. Counties cannot adopt zoning ordinances that affect bona fide farms. This act became effective May 6, 1991.

Agriculture defined in Agricultural Development Act (SB 149; Chapter 81): Senate Bill 149 defines the terms "agriculture" and "agricultural" in the Agricultural Development Act to include raising livestock, aquaculture, and the production of crops, including fruits, vegetables, flowers, ornamental plants, trees and timber. The bill became effective upon ratification on May 9, 1991.

Production and sale of fallow deer (SB 150; Chapter 317): Senate Bill 150 allows farmers in North Carolina to raise fallow deer for production and sale, subject to regulation by the Department of Agriculture. Fallow deer are small European deer raised commercially for food purposes. The bill authorizes the Department of Agriculture to establish an hourly rate to be paid by the processors of fallow deer for the purpose of defraying the expenses incurred in the Department's inspection of the fallow deer meat. The bill directs the Wildlife Resources Commission to regulate the possession and transportation of live fallow deer and to adopt rules to prevent the release or escape of fallow deer upon finding that rules are necessary to protect fallow deer or to prevent damage to the native deer population and its habitat. The bill became effective upon ratification, June 19, 1991.

Seed dealers' and fertilizer manufacturers' bond deleted (SB 507; Chapter 98): Senate bill 507 deletes the $500 bond requirement for seed dealers and growers and the $1,000 bond requirement for commercial fertilizer manufacturers and distributors. The bonds were designed to ensure the faithful reporting and payment of fees to the Department of Agriculture. The bill became effective July 1, 1991.

Feed testing fee (SB 508; Chapter 649): Senate Bill 508 authorizes the Department of Agriculture to collect a $75.00 fee with each feed sample that is to be tested for the presence of fumonisin. The bill became effective July 1, 1991.

Federal commodity assessment program (SB 509; Chapter 99): Senate Bill 509 adds a new section, G.S. 106-555.1, to Article 50 of Chapter 106 (Promotion of Use and Sale of Agricultural Products) providing that for any federal commodity assessment program, the producers' agency designated by the Board of Agriculture under G.S. 106-555 is to be the official State board for that commodity and no additional referendum will be required. The bill became effective upon ratification on May 22, 1991.

Storage of fertilizer materials (SB 654; Chapter 100): Senate Bill 654 authorizes the Board of Agriculture to adopt rules for the storage of fertilizer materials. The bill became effective May 22, 1991.

Pork promotion assessment (SB 669; Chapter 605): Senate Bill 669 adds a new Article 66 to Chapter 106, authorizing the N.C. Pork Producers Association to conduct a referendum among pork producers on whether to authorize an assessment on the sale of swine raised for feeder pigs, seed stock, or slaughter. The amount of the assessment must be set out on the ballot, with a maximum of $.05 cents per head. The bill provides for the payment, collection, refund, and repeal of assessments. Assessment revenues will be used for promoting the interests of the pork industry, but they cannot be used for activities funded under the federal Pork Promotion, Research, and Consumer Information Act of 1985. Pork producers also are excluded from Article 50 of Chapter 106, which permits a certified group of producers to hold a referendum on the question of an assessment to be used to finance marketing, advertising, or production of agricultural products that the group represents. The bill became effective upon ratification on July 9, 1991.

Farms for Future Act (SB 733; Chapter 734): Senate Bill 733 establishes a "North Carolina Farmland Preservation Trust Fund," which consists of all monies appropriated from the General Fund or transferred from counties or private sources for the purpose of purchasing agricultural conservation easements over qualifying farmland with the consent of landowners. The creation of the Trust Fund will enable the State to receive federal guarantees and interest rate assistance for loans made by lending institutions to the Trust Fund under the federal Farms for Future Act of 1990, enacted to promote a national farmland protection effort to preserve vital farmland resources for future generations. The bill became effective August 1, 1991.

Weights and Measures Act changes (SB 283; Chapter 642): Senate Bill 283 amends G.S. 81A-26 to require (1) that the delivery ticket accompanying bulk deliveries of heating fuel for residential, retail deliveries state the price per gallon or pound and any other charges; (2) that the invoice corresponding to the delivery ticket contain all of the information that must be stated on the delivery ticket as well as sales tax and the total amount charged; and (3) that a seller who quotes low introductory prices or favorable terms not representative of prices charged to similar existing customers must disclose that information. The Commissioner of Agriculture may assess a civil penalty not to exceed $5,000 for willful violations. This act becomes effective October 1, 1991 and does not affect pending litigation.

Tobacco Checkoff (HB 553; Chapter 102): House Bill 553 creates the Tobacco Research Commission and authorizes a referendum for tobacco growers on the establishment of a tobacco checkoff for tobacco research. The bill became effective May 22, 1991.

Marine Resources

Increase penalties for violating Marine Resources rules (HB 117; Chapter 176): House Bill 117 increases the general penalties for violating rules adopted by the Marine Resources Commission or the Wildlife Resources Commission under G.S. 113-135 as follows: First conviction - not less than $25.00 nor more than $100; Second or subsequent conviction within one year - not less than $100.00 nor more than $500.00. This bill became effective August 1, 1991.

Fisheries technical corrections (HB 118; Chapter 86): House Bill 118 makes the following technical changes: (1) Deletes prohibition against dredges weighing more than 100 pounds; (2) clarifies that either buoys or beach markers may be used with respect to G.S. 113-185(a) (prohibition against fishing in the ocean from vessels with a net within 750 feet of an ocean pier); (3) adds "Kemp's ridley" turtles to the list of protected sea turtles. This bill became effective upon ratification, May 14, 1991.

Ocean Affairs Council (SB 389; Chapter 320): Senate Bill 389 abolishes the North Carolina Marine Science Council and creates the North Carolina Council on Ocean Affairs, to be administered by the Dept. of Administration. The 16-member Council represents interests set forth in the bill and is appointed as follows: (1) Six members by the Governor; (2) Four members by the President Pro Tempore; (3) Four members by the Speaker of the House; and (4) one member each from the Departments of Environment, Health, and Natural Resources and of Economic and Community Development. The Council is directed to serve as the central ocean and marine policy planning body for the State. The bill also requires the Office of Marine Affairs to administer the aquariums and adds a provision in G.S. 143B-390.4 for local advisory committees for the aquariums. This bill becomes effective September 30, 1991.

Marine fisheries license increase and amendments (SB 809; Chapter 545): Senate Bill 809 amends Chapter 113 of the General Statutes to provide that commercial fishing licenses, oyster, scallop, and clam licenses, fish dealer licenses, and spotter aircraft licenses be issued on a fiscal year basis rather than annually. Licenses issued between Jan. 1, 1992 and June 30, 1992 will cost 50% of the full license fee and will expire June 30, 1992. The bill eliminates the restrictions on nonresidents in G.S. 113-152(e) and requires nonresidents obtaining licenses to certify that their conviction record in their state of residence would not make them ineligible for a license in North Carolina. The bill also amends G.S. 113-151.1 to provide that the Secretary of DEHNR may require fishing license agents to post bonds, enter into contracts to keep records and make reports, and allow audits and inspections to be conducted. The bill increases the compensation for license agents from 50 cents to $1.00 per license, and clarifies that it is unlawful for license agents to add more than the surcharge to the fee for each license sold. The bill became effective upon ratification, July 4, 1991.

Wildlife

Hunting statement (HB 374; Chapter 70): House Bill 374 provides that before a person may hunt or obtain a hunting license on or after July 1, 1991, the person must sign a statement on a form provided by the Wildlife Resources Commission, rather than an affidavit, confirming that the person had a hunting license issued before July 1, 1991. If the person fails to sign this statement, the person will have to produce a hunting license

issued before July 1, 1991 or a certificate showing the person has completed a hunter safety course. The bill became effective upon ratification, May 6, 1991.

Hunters wear blaze orange (HB 392; Chapter 71): House Bill 392 amends G.S. 113-291.8(a) and extends the requirement that a hunter (other than the landowner or the landowner's spouse or child) wear blaze orange when hunting the following game animals and game birds with a firearm: bear, deer, rabbit, squirrel, wild boar, grouse, pheasant, and quail. Enforcement will be by a warning ticket only until October 1, 1992 for someone hunting rabbit, squirrel, grouse, pheasant, and quail. All other violations will be an infraction, subject to a $25 fine. The bill became effective July 1, 1991.

Nonresident Bear Hunting/Nongame Fish Traps (HB 1160; Chapter 671): Section 1 of House Bill 1160 abolishes the $250.00 annual fee charged for a nonresident bear hunting license. Section 2 of the bill limits the size and number of traps that can be used in 5 Southern Piedmont counties for taking nongame fish from inland fishing waters. Section 1 became effective July 13, 1991 and section 2 becomes effective October 1, 1991.

Taking migratory game birds (SB 635; Chapter 366): Senate Bill 635 eliminates the criminal penalty for taking migratory game birds with an unplugged or improperly plugged shotgun. The bill became effective June 24, 1991.

Striped bass season (SB 460; Chapter 104): Senate Bill 460 adds a new subsection to G.S. 113-292, authorizing the Wildlife Resources Commission or the Executive Director to issue proclamations suspending or extending the hook-and-line season for striped bass. The Executive Director must keep a permanent record of all proclamations, certified copies of which would be entitled to judicial notice in any civil or criminal proceeding, and must make a reasonable effort to give notice to persons who may be affected by a proclamation. The bill sets out the means for communicating a proclamation's terms. The bill was effective upon ratification, May 23, 1991.

Wildlife officers jurisdiction (SB 670; Chapter 730): Senate Bill 670 adds a new subsection to G.S. 113-136 to authorize Wildlife Protectors to assist in the enforcement of laws when a crime has been committed in their presence or when a state or local law enforcement officer has requested temporary assistance. The bill does not expand the authority of protectors to initiate or conduct independent investigations into violations of criminal laws outside the scope of their subject matter or territorial jurisdiction. The bill becomes effective October 1, 1991.

Criminally negligent hunting (SB 678; Chapter 748): Senate Bill 678 adds a new Article 21B (Criminally Negligent Hunting) to Chapter 113, making it unlawful while hunting to discharge a firearm (1) carelessly and heedlessly in wanton disregard for the safety of others, or (2) without due caution or circumspection, and in a manner so as to endanger any person or property; and resulting in property damage or bodily injury. Violation is a misdemeanor, punishable according to a schedule of penalties, based on the extent of property damage or bodily injury. In addition, the bill provides for the suspension of hunting privileges from 1 to 5 years, depending on the nature of the injury resulting from the violation, and provides for additional penalties (including the requirement that the person satisfactorily complete a hunter safety course before being issued another license) if the person hunts with a suspended license. Enforcement will be by law enforcement officers of the Wildlife Resources Commission, sheriffs, deputy sheriffs, and other peace officers. The bill becomes effective October 1, 1991.

PENDING LEGISLATION

Wildlife

Prohibit impaired hunting (HB 832): House Bill 832 proposes to make it a misdemeanor to either discharge a firearm or hold a loaded firearm while under the influence of an impairing substance or after having consumed alcohol to an alcohol concentration of 0.10 or more. The bill also would establish (in a manner substantially similar to that for testing of impaired drivers under G.S. 20-16.2) that a purchaser of a hunting license gives consent to a chemical analysis if charged with a violation of the new law.

STUDIES

Legislative Research Commission: (1) Horse Racing in NC; (2) Turfgrass and Forage Assessment; (3) Crop Depredation Caused by Wildlife such as Deer and Bear; (4) Transfer of Soil and Water Conservation Division of the DEHNR to the Department of Agriculture; (5) Transfer of Forest Resources Division of DEHNR to the Department of Agriculture; and (6) Regulation of Aerial Application of Pesticides.

Other: (1) Transfer of Authority to Grant Shellfish Leases from Marine Fisheries Commission to DEHNR Study by Joint Legislative Commission on Seafood and Aquaculture; (2) License to Sell Fish Study by Joint Legislative Commission on Seafood and Aquaculture; and (3) Organizational Structure of the Marine Fisheries Commission Study by Joint Legislative Commission on Seafood and Aquaculture.

CIVIL LAW AND PROCEDURE
(Jennie Dorsett, Kristin Godette, Tim Hovis, Steven Rose)

RATIFIED LEGISLATION

Administrative Procedure

Repeal Administrative Procedure Act Sunset (SB 11; Chapter 103): Senate Bill 11 repeals the sunset provision of the Administrative Procedure Act. The sunset provision would have been effective January 1, 1992. Under the provisions of Senate Bill 11, there would no longer be a sunset. The act was to become effective upon appropriation of funds for its implementation.

Administrative Rule-making Process (SB 12; Chapter 477): Senate Bill 12 makes various provisions governing administrative rule-making. It makes the Department of Correction and the Department of Transportation subject to the rule-making process as provided in Article 2A of Chapter 150B as enacted in Chapter 418 of the 1991 Session Laws. It also makes the rules enacted by the Department of Revenue subject to review by the Rules Review Commission and requires that they be published in the North Carolina Register. The Department of Correction is not subject to the provisions of G.S. 150B-20, which allows an agency to be petitioned to adopt a rule. The Rules Review Commission is required to review the rules of the Departments of Correction, Transportation, and Revenue to determine whether they meet the standards for review in G.S. 143B-30.2. A rule that does not meet the standards is repealed effective January 1, 1994. Other provisions of Senate Bill 12 are conforming and clarifying in nature. The act becomes effective October 1, 1991.

Improve the Administrative Rule-Making Process (SB 155; Chapter 418) Senate Bill 155 substantially modifies Chapter 150B of the General Statutes, the Administrative Procedure Act, by repealing the current Article 2 (Rule-Making) and Article 5 (Publication of Administrative Rules) and substituting a new Article 2A (Rules). Other things accomplished in this act include creation of the new position of Codifier of Rules and changing the name of the Administrative Rules Review Commission to Rules Review Commission. Modifications to the rule-making procedure include a new provision permitting agencies to publish notice of a proposed rule which includes a statement of the subject matter of the proposed rule-making rather than the text of the proposed rule. The notice of intent must give the reason for the proposed action. A public hearing is not necessarily required, but the notice must provide instructions on how a public hearing may be demanded.

With regard to temporary rules, new Article 2A requires that the agency head sign a statement of the need for the temporary rule. A temporary rule must be submitted to the Codifier of Rules for review to ensure that the requirements for adoption of temporary rules as provided by the statute are met. If the Codifier of Rules rejects the temporary rule as not meeting the statutory requirements and the agency declines to provide additional findings or submit a new statement, the agency notifies the Codifier of Rules who must then enter the rule in the North Carolina Administrative Code on the sixth business day after receiving the agency's notice. A person aggrieved by the temporary rule may file an action for declaratory judgment in Wake County Superior Court.

The Rules Review Commission reviews permanent rules to ensure they fall within the authority allocated to the agency, are clear and unambiguous, and are reasonably necessary

to fulfill the duties delegated to the agency. If the Commission objects to a permanent rule, the agency may change the rule to satisfy the Commission's objection and submit the revised rule to the Commission, or it may submit a written response to the Commission indicating that it will not change the rule. Objection by the Commission does not prevent the publication of the rule in the North Carolina Administrative Code. However, the Codifier of Rules must reflect the Commission's objection and must state the standard on which the Commission based its objection. When the rule has been entered in the Administrative Code with an objection by the Commission, a person aggrieved may file an action for declaratory judgment in Wake County Superior Court.

The act makes substantial conforming and clarifying changes to other sections of the General Statutes. It has also been amended by Senate Bill 12, as described above.

Senate Bill 155 becomes effective October 1, 1991.

Administrative Hearing Procedures (SB 157; Chapter 35): Senate Bill 157 makes various changes to the provisions in Chapter 150B dealing with the conduct of hearings before Administrative Law Judges. These changes involve requirements for prehearing statements, methods of service of subpoenas, ruling on objections to discovery and on prehearing motions and other matters dealing with the conduct and procedure of administrative hearings. The act is effective October 1, 1991.

Civil Procedure

Ease satisfaction of judgment (SB 696; Chapter 426): Senate Bill 696 allows the execution of unsatisfied judgments on the property or debts of the judgment debtor that is held by another. The bill was effective upon ratification, June 27, 1991.

Protect bona fide purchasers (SB 817; Chapter 607): Senate Bill 817 amends G.S. 1C-1604, which suspends the statute of limitations on judgments for property that is exempt from execution. The bill provides that the statute of limitations on the enforcement of a judgment is not suspended unless the judgment creditor has recorded in the office of the register of deeds a copy of the order designating the exempt property. The bill also makes more specific the descriptions of exempt property in documents to be filed by the debtor. Senate Bill 817 is effective October 1, 1991. However, for one year from October 1, 1991, the clerk of superior court, upon request of the debtor or creditor, may amend any order previously entered for the purpose of more specifically describing exempt property. Also, if a judgment lien on exempt property would expire because of the provisions of this bill, the statute of limitations is suspended for one year from October 1, 1991.

Admission of depositions (HB 418; Chapter 491): House Bill 418 codifies the common law to provide that Rule 32 of the Rules of Civil Procedure, which relates to use of depositions at trial, governs over the similar provision in Chapter 8 (Evidence) when in conflict. The bill also modifies the circumstances under which depositions of members of the General Assembly may be used. The bill became effective July 2, 1991.

Time to appeal in forma pauperis (HB 944; Chapter 563): House Bill 944 provides that appeals in forma pauperis must be taken within 30 days of the entry of judgment or order from which the appeal is taken. House Bill 944 is effective October 1, 1991 and applies to appeals from a judgment or order entered after that date.

No bond for certain actions (HB 928; Chapter 278): House Bill 928 adds an exemption to the requirement that the plaintiff post a bond prior to entry of a default judgment where service was by publication. The bill would exempt actions in which the State of North

Carolina or a county or municipality thereof is the plaintiff. The bill became effective June 12, 1991

Actions against surveyors (SB 764; Chapter 268): Senate Bill 764 adds a subdivision to provide for a three year statute of limitations for actions against surveyors, or persons under their supervision, for physical damage or economic or monetary loss due to negligence in surveying or platting. The bill provides that similar actions can in no event be brought more than ten years from the last act or omission giving rise to the action. The bill also modifies mapping requirements for plats and subdivisions. The act became effective upon ratification, June 12, 1991, except for the provisions of section 1, amending the statute of limitations, which becomes effective October 1, 1991.

Protect certain judgments (SB 473; Chapter 543): Senate Bill 473 repeals G.S. 47-8 which provided that an attorney not administer oaths to any "paper-writings" used in legal proceedings in which he appears as attorney. The bill adds a new G.S. 47-8.1 which provides that judgments, otherwise proper, entered in actions in which documents were verified in violation of G.S. 47-8 are not void or voidable. The bill also provides that deeds of trust recorded prior to January 1, 1991 in which the notary public was also named as a trustee only are validated. Senate Bill 473 was effective upon ratification, July 4, 1991.

Withdrawal of Appeal and Attachment of Costs (HB 224; Chapter 63): House Bill 224 adds a new subsection to G.S. 15A-1431 providing that once a case has been calendered, a defendant may withdraw his appeal for a trial de novo only with the consent of the court and the attachment of court costs, unless the costs are forgiven by the court. The act becomes effective October 1, 1991 and applies to offenses occurring on or after that date.

Revenue Employees Serve Summonses (HB 462; Chapter 157): House Bill 462 specifically authorizes agents or employees of the Department of Revenue to serve civil summonses and other civil documents where the Secretary of Revenue is a party or has an interest in the matter. The service would be authorized by the Secretary. The act became effective July 1, 1991.

Filing by FAX Rules (SB 419; Chapter 168): Senate Bill 419 amends Rule 5(e) of the North Carolina Rules of Civil Procedure by authorizing the filing of pleadings or other papers by telefacsimile transmission, provided the Supreme Court and the Administrative Officer of the Courts establish the rules, regulations, procedures and specifications for doing so. The act became effective upon ratification, May 30, 1991.

Jury Expense Clarification (SB 655; Chapter 729): Senate Bill 655 amends G.S. 9-1 to make it clear that the expenses of administering the jury system are to be paid by the county, and to make it clear that the Clerk of Superior Court shall furnish such other personnel, in addition to clerical assistance, as the Jury Commission may reasonably require. The expenses involved are those having to do with the selection and summoning of juries. The act became effective July 1, 1991.

Mediation

Pilot mediated settlement conferences in superior court actions (SB 791; Chapter 207): Senate Bill 791 adds a new section to Chapter 7A, Judicial Department, to set up a pilot program of court-ordered mediated settlement conferences in civil actions in superior court. The Director of the Administrative Office of the Courts is to implement the program in such judicial districts or parts of districts as he and the senior resident superior court judge

of that district may determine. Under the program, the parties would be required to attend a pretrial settlement conference conducted by a mediator. Costs are to be shared by the plaintiff and defendant. Supreme Court rules are to make provision for parties who are unable to pay. Negotiations are inadmissible as evidence.

The Director of the Administrative Office of the Courts is required to evaluate the program and report to the General Assembly by May 1, 1995. The program is to be implemented either within funds available or from private sources.

Senate Bill 791 becomes effective October 1, 1991, and applies to mandated settlement conferences established after the Supreme Court adopts rules.

Exempt dispute settlement centers (HB 939; Chapter 387): House Bill 939 clarifies that mediation and dispute settlement centers, which are generally nonprofit tax-exempt corporations, are not collection agencies and not subject regulation by the Department of Insurance. House Bill 939 was effective upon ratification, June 24, 1991.

International commercial arbitration (HB 991; Chapter 292): House Bill 991 enacts the North Carolina International Commercial Arbitration Act. The act is intended to promote and facilitate international trade and commerce by providing a forum for the resolution of disputes that may arise and to promote the use of arbitration. The bill sets out rules for the conduct of arbitration proceedings within the scope of the act and provides for appeal to the superior court. The bill became effective June 13, 1991.

Miscellaneous

Action under Civil Rights Act (HB 563; Chapter 433): House Bill 563 authorizes the North Carolina Human Relations Commission to bring an action on behalf and with the consent of any person subjected to a violation of Chapter 99D of the General Statutes, Civil Rights. Compensatory and punitive damages may be awarded to the person on whose behalf the action was brought. Court costs may be awarded to the Commission or the defendant, whichever prevails. House Bill 563 was effective upon ratification, June 27, 1991.

Enforce lien for car repairs (SB 690; Chapter 344): Senate Bill 690 allows the holder of a lien to secure the payment of charges for the repair, servicing, towing, or storing of a motor vehicle, motorboat, watercraft, or boat trailer who has involuntarily lost possession of the vehicle to institute an action in small claims court to regain possession of the motor vehicle, etc. Involuntary relinquishment of possession is defined as only those situations where the owner or other party takes possession of the motor vehicle without the lienor's permission or without judicial process.

If the owner retains possession, the owner must pay a bond to the clerk of court for the amount of the lien asserted. The clerk may distribute the undisputed portion to the lienor upon application. The magistrate is to direct the appropriate possession of the vehicle and disbursement of the remainder of the bond. Either party may appeal to district court for a full trial.

Senate Bill 690 becomes effective October 1, 1991.

Corporate instrument execution (SB 778; Chapter 647): Senate Bill 778 provides that a corporate instrument registered with the register of deeds that appears on its face to have been signed by one of a list of corporate officers and attested or countersigned by the secretary or assistant secretary of the corporation, is as valid with respect to the rights of innocent third parties as if executed pursuant to authorization from the board of directors, unless the instrument reveals on its face a potential breach of fiduciary obligation. The provisions of G.S. 55-36 continue to apply to all instruments executed before July 1, 1990.

STUDIES

Independent study commissions: Birth-Related Neurological Impairment Study Commission.

Legislative Research Commission: The Legislative Research Commission may study the following topics - (1) Medical Malpractice Claims Arbitration; (2) Personal Liability of State Personnel for Official Acts; and (3) Basic Civil Rights of Law Enforcement Officers.

COMMERCIAL LAW

(Kristin Godette, Tim Hovis, Robin Johnson, Sally Marshall, Steve Rose)

RATIFIED LEGISLATION

Business

Credit Repair Services Act (HB 33; Chapter 327): House Bill 33 adds a new Article to regulate credit repair businesses that offer to improve correct or repair a consumer's credit rating or to obtain credit. The bill prohibits payments in advance of performance and the making of untrue or misleading representations. Consumers would also have a three day option to cancel. The bill becomes effective October 1, 1991.

Unfair debt collection practices (HB 34; Chapter 68): House Bill 34 increases from $1.000.00 to $2,000.00, the penalty amount that can be imposed for violation of the debt collection practices act. The bill authorizes a penalty "for each violation" by a professional debt collection agency. The bill became effective upon ratification, May 2, 1991.

Business opportunity (HB 267: Chapter 74): House Bill 267 amends the definition of "business opportunity" meaning a method of starting a business as follows: (1) Transactions involving less than $200 in which a seller either agrees to refund money or repurchase products when a person who buys products from the seller is not satisfied are excluded from the definition. Under former law, there was no minimum monetary threshold. (2) The monetary threshold for inclusion in the definition is increased from $100 to $200 for those transactions in which a person who sells products to another also provides a marketing program that enables the buyer to sell the products at a profit. The bill also amends the requirements for charitable solicitation license applicants who act as professional fund-raising counsel or professional solicitors to allow a certificate of deposit, payable to the State, in lieu of a bond. The bill became effective upon ratification, May 7, 1991 and is applicable to sales consummated on or after that date.

OSHA changes (HB 381; Chapter 329): House Bill 381 increases OSHA civil penalties for each violation as follows: (1) willful and repeated violation, maximum penalty of $70,000 with a minimum penalty of $5,000; (2) serious violation, mandatory penalty of up to $7.000; (3) non-serious violation, maximum penalty of $7,000; (4) failure to correct violation, maximum penalty of $7,000; (5) violation of posting requirements, maximum penalty of $7,000. The bill becomes effective January 1, 1992 and applies to violations committed on or after that date.

Clarify trademark registration (HB 450; Chapter 626): House Bill 450 requires an applicant for registration of a trademark to list either the applicant's principal place of business or distribution in the State. If the trademark relates to services, the applicant must list the physical location at which services are being rendered or offered. Each registration is effective for a period of ten years. Five years following registration, the applicant must submit to the Secretary of State a specimen showing evidence of current use of the mark. If the registrant fails to comply with the five-year evidence of use requirement or obtains the registration by means of false statements, the Secretary may cancel the registration. Trademarks obtained under previous acts shall continue in force for

the full ten-year term which is in effect as of October 1, 1991. House Bill 450 becomes effective October 1, 1991.

Amusement devices (HB 478; Chapter 178): House Bill 478 amends the Amusement Device Safety Act by exempting 11 specific devices from the Act, excluding three other specific devices unless those devices are located in an amusement park or carnival area, limiting the definition of "amusement device" to mechanical and structural devices, and excluding persons on a device for amusement from the definition of "operator." The bill became effective upon ratification, May 30, 1991.

Clarify spin-off rule (HB 582; Chapter 179): House Bill 582 clarifies that spin-offs of professional corporations are allowed only if carried out in accordance with the Internal Revenue Code of 1986, as amended (underlined language added). House Bill 582 becomes effective October 1, 1991.

Unclaimed Garments and Property (HB 662; Chapter 531): See the summary contained in the Property section.

Ticket Price Service Fee (HB 926; Chapter 165): House Bill 926 amends G.S. 14-344 which currently restricts service charges on ticket sales to a maximum of $3.00. The amendment would allow a promoter or operator of the property where the event is to be held to agree with a ticket sales agent to a reasonable fee higher than $3.00 but only for the first sale of the tickets. The act was effective upon ratification, May 29, 1991.

International Commercial Arbitration (House Bill 991; Chapter 292): House Bill 991 enacts the North Carolina International Commercial Arbitration Act. The act is intended to promote and facilitate international trade and commerce by providing a forum for the resolution of disputes that may arise and to promote the use of arbitration. The bill sets out rules for the conduct of arbitration proceedings within the scope of the act and provides for appeal to the superior court. The act became effective upon ratification, June 13, 1991.

Subchapter S clarification (SB 103; Chapter 752) See the summary contained in the Taxation section.

CPA Education Requirements (SB 267; Chapter 214): Senate Bill 267 makes changes in the educational requirements for certified public accountants. The first set of changes becomes effective January 1, 1997 and the second set of changes becomes effective January 1, 2001. Effective January 1, 1997, the subjects of examination for certification as a CPA are changed. Accounting theory and accounting practice are eliminated. The subject of accounting is substituted. The substitution of two years college combined with two years practical experience, in lieu of a bachelor's degree, is eliminated, but the waiver of the education requirement by use of a special written examination is retained. Effective January 1, 2001, the requirement of 150 college semester hours, or a minimum of 120 college semester hours with a concentration in accounting, is added to the requirement of a bachelor's degree. The requirement that the college or university be accredited by a regional accrediting association is removed, but the requirement that the institution have standards substantially equivalent to a regionally accredited institution is retained. The candidate's total postsecondary school education may be viewed in determining whether there was a concentration in accounting. Presently, the candidate's degree studies must include such a concentration. The ability to have supplemented degree studies with courses determined to be substantially equivalent to a concentration in accounting is retained. The sections of the act become effective as indicated above.

Voting stock by fiduciary (SB 396; Chapter 460): Senate Bill 396 specifies how to count the votes of two or more personal representatives or trustees voting corporate stock or other securities. Senate Bill 396 becomes effective October 1, 1991.

Raise corporate copying fee (SB 397; Chapter 574): Senate Bill 397 increases the fee charged by the Secretary of State for copying, comparing, and certifying documents filed under the Business Corporation Act, the Nonprofit Corporation Act, and the Revised Uniform Limited Partnership Act. The bill became effective upon ratification on July 8, 1991.

Amendments to the Business Corporation Act (SB 398; Chapter 645): Senate Bill 398 makes a number of changes to the Business Corporation Act, many of which were recommended by the General Statutes Commission. The 1989 General Assembly completely rewrote the North Carolina Business Corporation Act based upon the Revised Model Business Corporation Act of 1984. The rewrite became effective July 1, 1990. The amendments contained in Senate Bill 398 clarify certain provisions, simplify certain filings, bring forward certain provisions of the former Business Corporation Act, not believed to be controversial, that had been requested by practitioners, and correct some oversights. Some changes include allowing a corporation to change its registered office or registered agent in its annual reports; clarifying that the statutory provision allowing a shareholder to compel payment of dividends is not exclusive and that the ability to compel payment of dividends based on principals of equity still exists; clarifying that holders of debt obligations with voting rights are to be treated as shareholders in that regard; specifying that cumulative voting, where authorized, does not apply if the entire board of directors is to be removed; clarifying the ability of members of the board of directors to participate in meetings through telecommunications unless the articles of incorporation, the bylaws or the board of directors provide otherwise; allowing special meetings of the board of directors to be called by the president or any two directors, unless the bylaws provide otherwise (restoring language from the prior Act); adding bylaws by the shareholders as an alternative place where a supermajority voting requirement for amendments to the articles of incorporation may be imposed; elimination of the requirement that amendments to the articles of incorporations, articles of merger or share exchange, and articles of dissolution, state the number of votes for or against; clarification that transfer of all assets to a wholly owned subsidiary does not give rise to dissenter's rights; requiring a certificate of withdrawal for a foreign corporation authorized to transact business in this state which ceases to exist as a result of a merger with another foreign corporation; providing that a foreign corporation whose certificate of authority has been administratively revoked may not obtain a new certificate until the grounds for revocation have been corrected; permitting facsimile signatures; changing the prohibition on cumulative voting of shares from those corporations listed on a national securities exchange, or held by more than 2,000 shareholders to those which are public corporations as defined in G.S. 55-1-40(18a); provides that the Professional Corporation Act does not apply to corporate successors to corporations that were permitted by law to render professional services prior to June 5, 1969; allowing a corporation whose articles of incorporation or certificate of authority has been suspended to be reinstated at any time upon compliance with current statutory requirements for reinstatement (rather than within five years).

The act becomes effective October 1, 1991 except for the provisions dealing with cumulative voting, professional corporations, and restoration of corporate rights, which became effective upon ratification.

Revise Limited Partnership Act (SB 414; Chapter 153): Senate Bill 414 allows an amendment to a certificate of limited partnership to be valid if signed by one general partner and all new general partners. When the name of a limited partnership holding title to real property is changed, a certificate reciting the change must be recorded in the office

of the register of deeds. The bill also provides that a document relating to a limited partnership is effective at the time of filing or at a time specified in the document. Senate Bill 414 becomes effective October 1, 1991.

Motor Club Financial Statements (SB 656; Chapter 425): Senate Bill 656 amends G.S. 58-69-10 by providing that motor club license applicants shall submit audited financial statements with an initial license application. Audited statements for renewal of licenses is discretionary with the Commissioner of Insurance. The Commissioner may require an audited statement if it is reasonably necessary to determine whether or not a renewal license should be issued. The act was effective upon ratification, June 28, 1991, but applies to renewals of licenses beginning with those which expired June 30, 1991.

Invention Development Services Act (SB 662; Chapter 235): Senate Bill 662 repeals the June 30, 1991 sunset on the Invention Development Services Act.

Geologists and Occupational Therapists in Professional Corporation Act (SB 679; Chapter 205): Senate Bill 679 adds geologists and occupational therapists to the list of professions which may form professional corporations under the Professional Corporation Act. The act became effective September 1, 1991.

Directors conflict of interest (SB 686; Chapter 172): Senate Bill 686 makes those provisions in G.S. 58-65-173(b) relating to conflicts of interest applicable to nonpublic as well as public hospital, medical, and dental service corporations. Also, shareholder approval is no longer required for bylaws, contracts, or resolutions to be effective as to claims made against a director prior to its adoption or approval by the board of directors. Senate Bill 686 became effective upon ratification, May 30, 1991.

Enforcement of Corporate Acquisition Law (SB 706; Chapter 440): Senate Bill 706 adds a new Chapter 75E to the General Statutes. It makes violations of Article 9 of Chapter 55 (Share Holder Protection Act) and Article 9A of Chapter 55 (Control Share Acquisitions) unlawful. It also makes unlawful untrue statements of material facts or omission of material facts, or engaging in fraudulent, deceptive or manipulative acts or practices in connection with Article 9 or Article 9A of Chapter 55. The bill grants the Attorney General the power to make investigations and to institute civil actions to prevent violations. It also allows an injured party to maintain an action for damages and injunctive relief. Attorneys' fees and costs may be awarded. An individual party may be awarded up to three times the amount of damages if the violation is willful. In a suit by the Attorney General, a civil penalty of $100,000 may be assessed for each violation, which may be trebled if the violation is willful. The act became effective upon ratification, June 28, 1991.

Bed and breakfast inns (SB 727; Chapter 733): Senate Bill 727 defines "bed and breakfast inn" as a business establishment of not more than 12 guest rooms that offers bed and breakfast accommodations to at least nine but no more than 23 persons per night for a period of at least one week and (1) does not serve food and drink to the general public for pay, (2) serves only a breakfast meal and only to overnight guests, (3) includes the price of the breakfast in the room rate, and (4) is the permanent residence of the owner or manager. The bill also requires the Commission for Health Services to adopt sanitation rules for bed and breakfast inns. The bill became effective upon ratification, July 16, 1991.

Restrict fiduciary power (SB 780; Chapter 174): Senate Bill 780 rewrites G.S. 32-34 to state limitations on a fiduciary exercising a power for the fiduciary's own benefit (power of appointment). Senate Bill 780 became effective July 1, 1991.

Economic Development

Business incubator extension (HB 249: Chapter 111): House Bill 249 extends to five years (was three years) the maximum time that a small business concern may stay in an incubator facility if approved by the North Carolina Technological Development Authority. The bill became effective upon ratification, May 23, 1991.

Investment tax credits (HB 487; Chapter 637): See the summary contained in the Taxation section.

Air Cargo Airport Authority (SB 649; Chapter 749): Senate Bill 649 creates the North Carolina Air Cargo Airport Authority, which is established to own, operate, and finance global air cargo facilities within North Carolina. The Authority is governed by a Board of Directors consisting of at least 14 members (seven appointees of the Governor; six appointees of the General Assembly; State Treasurer serves as an ex officio non-voting member). The board of county commissioners of each county in which land is acquired as part of an air cargo complex may also appoint one member to the Board. Terms shall be for two years.

The Authority may develop, construct, and operate cargo airports, cargo handling systems, and the supporting infrastructure. Numerous powers of the Authority are specified including the power to (1) contract; (2) sell, lease, and own real and personal property; (3) charge and collect fees and rents; (4) condemn property (with the approval of the Council of State); (5) construct and operate highways, bridges, and mass transit systems; (6) employ necessary persons; and (7) accept and administer loans, grants, and gifts.

The Authority may issue bonds, including refunding and special user project bonds. The State Treasurer may invest up to twenty-five million dollars in assets of the Escheat Fund in the Authority's bonds. The General Assembly will, however, appropriate monies to the Fund to cover any losses resulting from such an investment. Also, the bill provides that a county in which all or part of an air cargo complex is located may agree to provide payments to the Authority. This agreement will not be a pledge of the county's faith and credit, however.

Senate Bill 649 became effective upon ratification, July 16, 1991.

Financial Institutions

Banks

Banking omnibus changes (SB 42; Chapter 677): Senate Bill 42 makes various changes, effective October 1, 1991, to the State regulation of banks. Some of the significant changes are set forth below.

The Commissioner of Banks is relieved from further responsibility and liability when the Commissioner appoints an agent under federal law to oversee liquidation of a bank. Banks may subscribe to or purchase capital stock of the Federal Home Loan Bank. In determining undivided profits from which dividends may be made, one of the deductions from actual profits must be all overdrafts **over $1,000** that have been on the books for 60 days or longer. Banks must write off any asset or portion of asset that is classified as uncollectible unless it is secured by collateral acceptable to the Commissioner. Banks may keep records by any means "capable of conversion into written form within a reasonable time," and computer data, which is capable of conversion into written form within a reasonable time, is deemed to be an original record for all purposes.

The Commissioner may issue cease and desist orders, issue subpoenas, and assess civil money penalties. The Banking Commission must review any orders issued or penalties assessed by the Commissioner and may assess additional money penalties.

International Banking Act (SB 70; Chapter 679): Senate Bill 70 adds a new Article 18A to Chapter 53, entitled the North Carolina International Banking Act, which sets forth the terms and conditions under which an international banking corporation, organized and licensed under the laws of a foreign country, may establish and operate branches or agencies, but not both, in this State. The country in which the corporation is chartered must permit banks chartered in this country to establish similar facilities there. The actual value of assets of the corporation must be at least $50,000,000 greater than its liabilities.

If the corporation is licensed to operate as a branch, it may conduct a general banking business, which includes the receipt of deposits and the exercise of fiduciary powers, in a manner similar to that of a bank existing under the laws of this State. If the corporation is licensed to operate as an agency, it may conduct a general banking business similar to that of a bank existing under the laws of this State, except that it may not receive deposits of exercise fiduciary powers; it may maintain credit balances for the account of others.

If the corporation does not transact a banking business in this State, but has an office here (defined as an international representative office) to act in a liaison capacity with existing and potential customers and to generate new loans, each office must register with, and pay a fee to, the Commissioner by January 31 each year. The Commissioner may review, at least annually, the operations of each office to assure it is not transacting a banking business.

The Article also provides for filing reports with the Commissioner, renewal of each license, revocation of a license, termination of the operation of a branch or agency, dissolution of the corporation, and maintaining actions against the corporation. It also restricts investments, loans, and acceptances, and establishes a formula for calculating the amount of securities required to be held by the corporation in this State. The Banking Commission has rulemaking authority. The Commissioner may issue cease and desist orders, which may be appealed directly to the Court of Appeals, and may impose civil money penalties.

The new Article becomes effective October 1, 1991.

Credit cards, credit sales, and loans

Reverse Mortgage Act (HB 22; Chapter 546): House Bill 22 adds a new Article authorizing and regulating reverse mortgage loans. Only authorized lenders would be able to make the loans. The bill sets out procedures for approval and for giving notice to borrowers, places limits on borrowers' liability, and lists prohibited acts. Borrowers would be required to obtain counseling prior to taking out the loan. The bill becomes effective October 1, 1991 and expires on October 1, 1995.

Property exemptions and loan fees (HB 869; Chapter 506): House Bill 869 increases the dollar amounts for property that a debtor is entitled to keep free of creditors' claims and clarifies that the effect of the exemptions is that a creditor cannot repossess the debtor's household items in which the creditor holds a nonpossessory, nonpurchase money security interest until the creditor fully complies with the notice procedures in G.S. 1C-1603. The bill also authorizes and increases various loan fees as set forth below.

Lenders may now charge a renewal fee not to exceed the greater of $50.00 or 1/4 of 1% of the outstanding balance at the time of modification, renewal, extension, or amendment of a loan, extension of credit, or equity line of credit. If a loan or extension of credit is not secured by real property, lenders may charge an origination fee not to exceed the greater of 1/4 of 1% of the outstanding balance, or $50.00. There is no limit on fees charged on loans or extensions of credit greater than $300,000. A lender also may now

charge a party to a loan secured by real property a reasonable appraisal fee; the lender will be required to provide a copy of the appraisal report, if the borrower requests. Currently, there are no statutory provisions for renewal, origination, or appraisal fees.

Assumption fees, where a party assumes a loan secured by real property, are increased to $400 when the mortgage or deed of trust has a due on sale clause and the original obligor is released from liability on the original obligation, and to $125 where the mortgage or deed of trust (a) does not have a due on sale clause, or (b) has a due on sale clause, but does not release the original obligor from liability on the original obligation.

The bill also authorizes charges on the extension of credit under open-end credit plans, including revolving credit card plans (i.e., bank cards) and consumer credit sales (i.e., retail credit cards).

The bill becomes effective October 1, 1991.

Consumer credit sales and the Rule of 78s (SB 34: Chapter 602): Senate Bill 34 adds a new section to the Retail Installment Sales Act providing that in a consumer credit installment sale, where the contract is secured by real estate or by a residential manufactured home, the buyer may pay off the debt, regardless of the amount, at any time before maturity, and be credited with all unearned finance charges. The buyer may pay off the debt when the seller obtains a judgment on this type of debt, or when the seller forecloses or repossesses the collateral, or both. In this case, the borrower must be credited with all unearned finance charges as if the payment in full was made on the date the judgment was obtained or 15 days after foreclosure or repossession, whichever occurred first. Under prior law, the buyer in a consumer credit installment sale contract could pay off the debt at any time before maturity, when the seller obtained a judgment, or when the seller foreclosed or repossessed the collateral and the buyer was entitled to receive a rebate, computed under the 'rule of 78s.' The definition of consumer credit sale is amended to include sales of goods or services in which a debt of any amount is secured by real property. The bill became effective on July 1, 1991 and is applicable to contracts made on or after that date.

Credit unions

Foreign Credit Unions (HB 52; Chapter 271): House Bill 52 adds a new Article regulating foreign credit unions. The bill authorizes a credit union incorporated in another state to operate in this State, subject to the approval of the Administrator of the Credit Union Division, if reciprocity is granted by the state in which the credit union is incorporated.

The bill becomes effective October 1, 1991.

Credit union technical amendments (HB 54; Chapter 651): House Bill 54 makes several technical amendments to the statutes relating to credit unions and increases the penalty for submitting late reports to the Administrator of Credit Unions from five dollars ($5.00) a day to seventy-five dollars ($75.00) a day. The bill becomes effective October 1, 1991.

Savings and Loans Associations (S&Ls)

Savings institutions omnibus changes (SB 41; Chapter 707): Senate Bill 41 makes various changes to the State regulation of S&Ls. Some of the significant changes are set forth below.

Classification of directors and their terms may be set out in the certificate of incorporation (formerly as provided in the North Carolina Business Corporation Act). A majority of directors may dissolve an association when "substantially all" assets have been sold for purposes of terminating business. The Administrator or any employee of the

Savings Institutions Division may continue a debt acquired by a State savings bank through the secondary market. The bill deletes the requirement of stockholders' weighted voting for directors and adds a requirement that associations have at least five directors. An association exercising its right of setoff against a member's account may freeze the account during the 30-day grace period allowed to the member, and a member's interest in a joint account may be subject to setoff provisions. Minors may have interests in joint accounts.

A new section is added to Chapter 54B allowing the merger of banks and savings and loan associations when the association, upon a majority vote of directors, applies to the Administrator to merge with bank, the Administrator approves the plan for merger, the plan is submitted to the stockholders or members of the association for approval by majority vote, and the Administrator approves the requested merger. The bill became effective upon ratification, July 16, 1991.

Savings bank charter (SB 91; Chapter 91): Senate Bill 91 creates a new Chapter 54C, entitled "Savings Banks," which establishes a savings bank charter in this State. Recommended by the Depository Institutions Study Commission, the principal reason for the bill is to create a locally owned and managed housing lender whose principal federal regulator is the FDIC. The major provisions of the bill are set forth below.

The term "savings and loan association," when found in the General Statutes, includes savings banks. Procedures for incorporation, organization, and operation of State savings banks in either mutual or stock form are enumerated. Procedures are also provided for conversions, mergers, consolidations, removal of officers or directors, and voluntary or involuntary dissolutions. The Administrator of the Savings Institutions Division will administer and enforce Chapter 54C, and the Administrator will supervise savings banks and their activities.

Investments in savings banks are limited to those activities permitted to State or national banks or federal S&Ls. A savings bank must have and maintain a minimum ratio of net worth to total assets of 5%. The bank must maintain books and records in accordance with generally accepted accounting principles. Minimum liquidity ratio to total assets must be at least 10%. The bank must maintain 60% of its assets in investments that qualify under section 7701(a)(19) of the Internal Revenue Code, except that no more than 10% of the 60% shall be in investments consisting of cash and U.S. or State obligations. The bank is prohibited from investing in stock other than investment grade, and may lend and invest no more than 15% of its total assets in loans for business, commercial, and agricultural purposes.
The bill becomes effective October 1, 1991.

Worthless Checks

Bad check processing fee (SB 198: Chapter 455): Senate Bill 198 increases the processing fee for returned checks from $15.00 to $20.00. The bill becomes effective on October 1, 1991 and applies to checks written on or after that date.

Miscellaneous

Community Foundation Endowment Funds (HB 68; Chapter 39): House Bill 68 amends Chapter 36B of the General Statutes, the Uniform Management of Institutional Funds Act. Specifically, this bill makes the Uniform Management of Institutional Funds Act applicable to **community foundation** or **community trust funds**, deemed to be "publicly supported" under the Internal Revenue Code (CFR §1.170A-9), and which are held by a bank, trust company, or other fiduciary. House Bill 68 become effective October 1, 1991.

Transmission of money and sale of checks (SB 69; Chapter 715): Senate Bill 69 enhances the regulatory provisions of the Sale of Checks Act, renamed as the Money Transmitters Act (Article 16 of Chapter 53 of the General Statutes). A person who sells or issues checks in North Carolina as a service or for a fee and is not organized under the banking laws of a state or the United States, such as credit card companies, must be licensed under this Act. Under former law, the $500 investigation fee was applied to the license fee for the first year if the license was granted. Under this bill, an applicant who is granted a license must pay the license fee in addition to the investigation fee. If the license is not granted, the investigation fee is not refundable. In addition, the annual license fee is increased from $500 to $1,000, and an additional fee is required for each location at which the licensee's checks are sold. Every licensee must have on hand unencumbered cash, unencumbered investment securities, unencumbered obligations, and other approved investments (all defined as "permissible investments") in a total amount equal to the face value of all outstanding checks sold by the licensee for which it is liable for payment. The Commissioner may waive this requirement after an examination of audited financial statements and if the required bond is sufficient to cover the amount of liability. The licensee must post a certificate in each location disclosing the name of the issuer and the authority under which the issuer is operating, and checks must have identifying information concerning the issuer imprinted on the check or on another document given to the purchaser at the time of sale. The licensing and reporting periods are changed from a fiscal to a calendar year, and the licensee must file quarterly reports of agent activity with the Commissioner. The Commissioner may adopt rules to implement the Act.

The bill becomes effective October 1, 1991.

MAJOR DEFEATED LEGISLATION

Financial Institutions

Revolving credit finance charges (HB 155; SB 196): These bills proposed to amend G.S. 25A-14 to increase the maximum per month finance charge from 1.5% to 1.75% on consumer revolving charge accounts that have a 25-day grace period and no annual fee. The bills also would have allowed sellers to impose a minimum charge of 50¢. Each bill failed in the house in which it was introduced.

Credit card deregulation (HB 242; SB 174): These bills proposed to authorize credit card banks and to deregulate the rate of interest and fees applicable to credit card accounts, open-end credit, and revolving charge accounts. Each bill failed in the house in which it was introduced.

STUDIES

Legislative Research Commission: (1) Impact of National Developments within the North Carolina Depository Institutions Industry; (2) Horse Racing in North Carolina; (3) Information on the Financial Soundness of Financial Institutions; (4) Financial Institutions; (5) Economic Development and Revitalization of Downtowns; (6) Methods to Increase the Developmental Lending Capacity of Financial Institutions to Strengthen Low and Moderate Income Communities; (7) Minority Tourism Proposal; and (8) Tourism's Growth and Effect.

CONSTITUTION
(Bill Gilkeson)

PENDING LEGISLATION

Appointment of Appellate Judges (SB 71).

Election of Governor in Non-presidential Election Year (SB 232).

State Superintendent Chairman of State Board of Education (HB 77 & SB 250).

MAJOR DEFEATED LEGISLATION

Of the two dozen bill that would have altered the State Constitution, none passed; most of those bills never passed their house of origin and are not eligible for consideration in 1992; two of those bills, S.B. 244 (Gubernatorial Veto) and H.B. 62 (Four-Year Terms for Legislators) were defeated in such a way that the rules prevent even the contents of those bills being revived as a part of subsequent bills.

CRIMINAL LAW AND PROCEDURE
(Brenda Carter, Jennie Dorsett, Kristin Godette, Giles S. Perry)

RATIFIED LEGISLATION

Corrections

Prison Bond Appropriations (HB 83, Sec. 239; Chapter 689): Of the $200,000,000 State of North Carolina Prison and Youth Services Facilities Bonds authorized by the 1989 General Assembly and approved by the voters on November 6, 1990, $112,500,000 was appropriated for the purposes of financing the cost of State prison facilities and youth services facilities. The appropriation includes the cost of constructing capital facilities, renovating or reconstructing existing facilities, acquiring equipment, purchasing land, and paying the costs of the issuance of bonds and notes.

Parole notification (HB 442; Chapter 288): House Bill 442 requires the Parole Commission to provide notification by first-class mail to the prisoner, the district attorney of the district where the prisoner was convicted, the head of the law enforcement agency that arrested the prisoner, and the victim or the victim's immediate family members 30 days in advance of considering certain prisoners for parole. The law enforcement agency and the victim or the victim's family must make a written request for notification. House Bill 442 amends G.S. 15A-1380.2 to require that the notification be made in advance of considering the parole of prisoners convicted of first or second degree murder, assault with a deadly weapon with intent to kill or assault with a deadly weapon inflicting serious injury. It also amends G.S. 15A-1371(b) to require that the notification be made in advance of considering the parole of a prisoner sentenced as a felon for first or second degree murder, first degree rape, or first degree sexual offense; and to require the Parole Commission to consider any information provided by the relevant parties before consideration of parole. The Parole Commission must then give notice to the parties of its decision within 10 days. House Bill 442 becomes effective October 1, 1991.

Modify prison cap (HB 1304; Chapter 437): House Bill 1304 amends G.S. 148-4.1, which governs the release of inmates from the State's prisons. Under the cited statute, if the number of prisoners housed in facilities owned or operated by the State of North Carolina for the Division of Prisons exceeds 98% of the population cap for 15 consecutive days, the Secretary of Correction must notify the Parole Commission. The Parole Commission must then release on parole a number of inmates sufficient to reduce the prison population to 97% of the population cap. House Bill 1304 modifies the prison population cap from 20,435 to 19,646 effective July 1, 1991; from 19,646 to 20,394 effective February 1, 1992; from 20,394 to 20,594 effective May 1, 1992. The Secretary of Correction is authorized to advance or delay the effective dates of the changes in the cap by up to 45 days, based on the availability or lack of prison space. House Bill 1304 requires the Secretary of Correction to report on the progress of prison construction and on prison capacity in the 1991-93 biennium to Appropriations Committees of the House and Senate. House Bill 1304 became effective June 27, 1991.

Parole changes (SB 415; Chapter 217): Senate Bill 415 amends G.S. 15A-1372(d), with regard to prisoners serving a sentence of imprisonment for a misdemeanor (other than impaired driving), to allow the Parole Commission to parole the prisoner at any time but continue to supervise him for a period determined by the Commission. This portion of the

bill applies to prisoners currently serving active sentences. Senate Bill 415 amends G.S. 15A-1373(d), concerning violation of parole from a sentence for a misdemeanor or felony not covered by the Fair Sentencing Act, to provide that time spent on parole in compliance with conditions (except for the last six months) must be credited against the maximum term of imprisonment on recommitment. This portion of the bill applies to parole violations committed on or after the ratification date of June 5, 1991. Senate Bill 415 also amends G.S. 15A-1371(h), regarding misdemeanants and felons not covered by the Fair Sentencing Act, and G.S. 15A-1380.2(h), regarding felons covered by the Fair Sentencing Act, to provide that when the Parole Commission grants community service parole it may decide the amount and schedule of community service to be performed. The total amount of community service is not to exceed an amount equal to 32 hours for each month of active service remaining in the prisoner's minimum sentence (if he was sentenced prior to July 1, 1981), or 32 hours for each month of active service in one half of his sentence imposed under G.S. 15A-1340.4. For a misdemeanant or a felon not covered by the Fair Sentencing Act, the Parole Commission may dispense with the requirement of community service if it finds it inappropriate to a particular case. This portion of the bill applies to prisoners currently serving active sentences or currently on parole. Senate Bill 415, which became effective upon ratification on June 5, 1991, also removed the July 1, 1991 sunset provision on the prison cap legislation.

Satellite jail commitment (SB 934; Chapter 486): Senate Bill 934 amends G.S. 15A-1353(d) to provide that the sentencing judge may commit a person convicted of a misdemeanor to a satellite jail/work release unit, if the judge orders work release and the sentenced person consents to the work-release commitment. Senate Bill 934 also amends the definition of a jail in G.S. 15A-1340.2 to provide that for purposes of awarding credit for good behavior, a satellite jail/work release unit is considered a local confinement facility. The bill became effective upon ratification, July 2, 1991.

Transfer Community Penalties (SB 465; Chapter 566): Senate Bill 465 transfers the Community Penalties Program from the Department of Crime Control and Public Safety to the Administrative Office of the Courts, and expands the pool of offenders eligible for community penalties to include all misdemeanants and Class H, I, or J felons who would be eligible for intensive probation or house arrest - except for those Class H felons convicted of involuntary manslaughter.

Senate Bill 465 changes community penalties boards from advisory to directory boards, and sets out board duties for budget development, selection of personnel and board members, arranging for independent annual audits, and development of procedures for contracting for services. Senate Bill 465 became effective July 1, 1991.

Crimes

Ethnic intimidation (HB 513; Chapter 493): House Bill 513 creates a new offense of ethnic intimidation and adds a new aggravating factor of ethnic animosity in sentencing for felonies. House Bill 513 makes it a misdemeanor offense for a person to assault another person or damage the property of another, or threaten to do so, because of race, color, religion, nationality, or country of origin. The bill also adds a new aggravating factor in sentencing for felonies, other than Class A or B felonies, under the presumptive sentencing act where the offense was committed because of the race, color, religion, nationality, or country of origin of another person. House Bill 513 becomes effective October 1, 1991, and applies to offenses committed on or after that date.

Assault on governmental officers and employees (HB 283; Chapter 525): Under House Bill 283 the misdemeanor crimes of assault, assault and battery, or affray against any officer or employee of the State or of any political subdivision of the State when that official is discharging or attempting to discharge official duties will have an aggravated punishment of imprisonment for not more than two years, or a fine, or both. The previous statute only aggravated the punishment when the assault was against certain classes of government employees, such as law enforcement officers, social workers, school personnel, etc. House Bill 283 also makes it a Class I felony to assault with a firearm or other deadly weapon any officer or employee of the State or of any political subdivision of the State in the discharge of their duties. Under the previous statute only assaults upon law enforcement officers, firemen, or emergency medical personnel qualified for the Class I felony punishment. House Bill 283 becomes effective October 1, 1991, and applies to offenses committed on or after that date.

Amend certain property crimes (HB 180; Chapter 523): House Bill 180 modifies certain property offenses to raise the dollar value of the property and thus allow the State to charge and convict for a felony rather than a misdemeanor. House Bill 180 first amends the worthless check statute to make it a Class J felony to issue a worthless check over $2,000. Worthless checks of $2,000 or less are punishable as misdemeanors. The punishment provisions that apply to worthless checks of $2,000 or less were amended (1) to increase from $50 to $100 the value of a worthless check where the punishment is to be a maximum of 30 days imprisonment or $50 fine, (2) to increase from "over $50" to "over $100" the value of a worthless check where the punishment is to be a maximum $250 fine or six months imprisonment, and (3) to provide that a person convicted of a fourth offense must be ordered, as a condition of probation, to refrain from maintaining checking account for three years. House Bill 180 increases from $400 to $1000 the value of goods for which a person is charged and convicted as a felon for the offenses of larceny of property, receiving stolen goods, or possessing stolen goods. The bill also amends from $400 to $2,000 the value of property taken to authorize forfeiture of a conveyance, such as a vehicle, watercraft, or aircraft, when it is used in larceny of property. Finally, House Bill 180 amends the food stamp fraud statute to raise the value of the food stamps from $400 to $2,000 where the State may charge and convict for a felony rather than a misdemeanor. House Bill 180 becomes effective October 1, 1991, and applies to offenses committed on or after that date.

Increase fines for littering (HB 413; Chapter 609): House Bill 413 amends G.S. 14-399 to increase the fines for littering; and adds a new subsection to provide that littering involving the operation of a motor vehicle results in a one point penalty on the violator's driver's license, but with no insurance premium surcharge or assessment of points under the classification plan. The bill also amends G.S. 7A-148(a) to add littering to the list of topics to be discussed at the district judges meeting. House Bill 413 becomes effective October 1, 1991, and applies to violations that occur on or after that date.

No tobacco sales under 18 (HB 852; Chapter 628): House Bill 852 amends G.S. 14-313 to make it a misdemeanor punishable by a fine of up $500, imprisonment of up to six moths, or both, to knowingly sell cigarettes, cigarette wrapping paper, or smokeless tobacco to any person less than 18. House Bill 852 becomes effective October 1, 1991, and applies to offenses committed on or after that date.

North Carolina Securities Act and Investment Advisors Act (SB 245; Chapter 456): Senate Bill 245 amends the North Carolina Securities Act and the Investment Advisors Act. The bill prohibits "telephone rooms" and manipulation of the market, authorizes the Secretary of State to appoint enforcement personnel, amends the law relating to civil and

criminal penalties, provides for the appointment of a special prosecutor, and authorizes restitution in addition to injunctive relief. The bill becomes effective October 1, 1991.

Increase sentence/ethnic animosity (SB 403; Chapter 702): Senate Bill 403 amends G.S. 15A-1340.4 to make the fact that a defendant acted based on the victim's race, color, religion, nationality, or country of origin an aggravating factor for sentencing purposes. It also amends G.S. 14-3 to provide that any misdemeanor with punishment less than a general misdemeanor is increased to a general misdemeanor (fine, imprisonment up to two years, or both) when the offense is committed with ethnic animosity. If the offense is a general misdemeanor, the punishment is increased to a Class J felony (fine, imprisonment up to three years, or both), when the offense is committed with ethnic animosity. Senate Bill 403 becomes effective October 1, 1991, and applies to offenses occurring on or after that date.

Animal research interference (SB 518; Chapter 203): Senate Bill 518 adds a new section to Chapter 14 (Criminal Law) to make unlawful the unauthorized entry into a research facility that keeps animals for research with the intent to disrupt the research, damage the facility, or release or interfere with the animals; willful damage to the research facility or the personal property; or willful unauthorized release of or interference with the care of animals at the research facility. A person who commits the offense is guilty of a misdemeanor. If an animal is released and has an infectious disease, the violation is a Class J felony (maximum of 3 years; presumptive of 1 year). As a condition of probation, the violator may be ordered to pay restitution for damages to the animal, damages to personal property, damages for the costs of repeating the experiment, and actual and consequential damages owed the research facility. Senate Bill 518 takes effect October 1, 1991, and applies to offenses occurring on or after that date.

False bomb alarm/felony (SB 792; Chapter 648): Senate Bill 792 amends G.S. 14-69.1 to provide that knowingly communicating a false report that there is a bomb or explosive device in a hospital or health clinic facility is, upon first conviction, a misdemeanor punishable by a minimum of 100 hours of mandatory community service. Upon second or subsequent conviction, the offense is punishable as a Class I felony (punishable by fine, imprisonment up to five years, or both). Senate Bill 792 also amends G.S. 14-69.2 to establish that using a false bomb to create a bomb scare in a hospital facility is, upon first conviction, a misdemeanor punishable by a minimum of 100 hours of mandatory community service. Upon second or subsequent conviction, the offense is punishable as a Class I felony (punishable by fine, imprisonment up to five years, or both). Senate Bill 792 becomes effective October 1, 1991, and applies to offenses occurring on or after that date.

Criminal Procedure

Amend assigned counsel (HB 690; Chapter 304): House Bill 690 requires that the manner and method of assigning counsel, either by the public defender or by the court, for representation of indigent persons shall be governed by the rules of the North Carolina State Bar Council and applicable in every county. House Bill 690 becomes effective October 1, 1991.

Automatic commitment/insanity (SB 43; Chapter 37): Senate Bill 43 significantly revises the procedures and standards related to defendants who are found not guilty by reason of insanity and committed to mental institutions. The most important changes are (1) automatic commitment to a mental institution for 50 days, (2) holding release hearings in a

public courtroom, and (3) shifting the burden of proof to the defendant under a different standard.

Under current law an initial hearing for involuntary commitment is held when a defendant is found not guilty by reason of insanity by a jury or upon a pretrial determination of insanity. If the defendant is committed, there is no minimum commitment time. At subsequent hearings on release, the State must prove by clear, cogent, and convincing evidence that the person is both mentally ill and dangerous to self and others. All proceedings related to commitment, evaluation, and release are conducted privately in hospitals before district court judges.

Senate Bill 43 requires automatic commitment to a State hospital of a defendant who is charged with a crime and found not guilty by reason of insanity or determined to be insane. The insanity acquittee is given a hearing before the expiration of 50 days from the date of the commitment. The hearing will be open to the public and in the same trial division as the original trial. At the hearing the burden of proof is shifted to the insanity acquittee to prove by a preponderance of the evidence that he is no longer dangerous to others. A respondent who met that burden would not be released without also next proving that he does not have a mental illness or that he does not need to be confined for his own safety or for treatment of his illness. The court may continue the commitment for a period not to exceed 90 days. The present requirements and procedures relating to representation of the parties, notice by the clerk, copies, etc. are retained. At rehearings the standards, procedures, and requirements are the same as those at the 50-day hearing. The court may continue the commitment for 180 days and annually thereafter if the insanity acquittee does not meet his dual burden of proof.

Senate Bill 43 was effective upon ratification, April 16, 1991, and applies to all hearings and review hearings on discharge or conditional release of insanity acquittees occurring on or after ratification.

Voluntary dismiss/defer prosecution (SB 763; Chapter 109): Senate Bill 763 would allow district attorneys the discretion to dismiss charges in a deferred prosecution case. The bill retains the limitation on the authority of the district attorney to dismiss impaired driving charges. A deferred prosecution case is one in which the criminal trial is postponed under a written agreement between the district attorney and the defendant, and the defendant is placed on probation to demonstrate good conduct. Senate Bill 763 was effective upon ratification, May 23, 1991.

Victims compensation sunset off (HB 534; Chapter 301): House Bill 534 removes the July 1, 1993 sunset on the Victims Compensation Act of 1983. The Act established the Crime Victims Compensation Fund to assist victims of criminally injurious conduct with expenses related to medical care, rehabilitation and other remedial treatment and care. The 1983 Act provided that no claims could be filed for criminally injurious conduct occurring after December 31, 1991, and that any remaining moneys would revert to the General Fund on July 1, 1993. House Bill 534 deletes those provisions effective June 17, 1991.

Domestic violence arrest (SB 52; Chapter 150): Senate Bill 52 amends G.S. 15A-401(b) to allow a law enforcement officer to arrest, without warrant, a person whom the officer has probable cause to believe has committed one of the following misdemeanors out of the officer's presence: (1) domestic criminal trespass under G.S. 14-134.3, which prohibits the entry of the premises of a former or separated spouse after being forbidden to do so by the lawful occupant; (2) simple assault under G.S. 14-33(a), assault that inflicts serious injury, or assault with a deadly weapon under G.S. 14-33 (b)(1), or assault on a female under G.S. 14-33 -(b)(2), where the person is the spouse or former spouse of the victim or the person is living or has lived with the victim as if married. Senate Bill 52 becomes effective October 1, 1991.

Park offenses waivable (SB 130; Chapter 151): Senate Bill 130 adds State park and recreation area rule offenses under Chapter 113, "Conservation and Development," to the list of waivable offenses for which magistrates and clerks of court may accept waivers of trial and pleas of guilty and, thus, avoid the hearing in court. Senate Bill 130 became effective upon ratification, May 29, 1991, and applies to offenses committed on or after January 1, 1992

Electronic judgment docket (SB 291; Chapter 167): Senate Bill 291 adds a new section to the General Statutes which makes it clear that judgment records may be maintained by the clerk of superior court using an electronic data entry system, provided the system is established pursuant to rules prescribed by the Director of the Administrative Office of the Courts. Senate Bill 291 became effective upon ratification, May 30, 1991.

Worthless check jurisdiction (SB 664; Chapter 520): Senate Bill 664 amends G.S. 7A-180 to increase the jurisdiction of the Clerk of Superior Court with regard to accepting guilty pleas in worthless check cases. The amount is increased from $1,000 to $2,000. The bill also amends G.S. 7A-273 to increase the jurisdiction of the magistrate in worthless check cases from $1,000 to $2,000. The magistrate has the power to try certain worthless check cases as well as accept guilty pleas. The act is effective October 1, 1991 and applies to offenses committed on and after that date.

Drugs

Revision of schedule III steroids (HB 463; Chapter 413): House Bill 463 amends the definition of "anabolic steroid" to include "any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids) that promotes muscle growth". The bill also adds several substances to the list of steroids to conform state law to federal law. The bill became effective July 1, 1991.

Grand jury drug investigations (SB 716; Chapter 686): Senate Bill 716 changes the procedures related to special grand juries convened to investigate certain drug related crimes and repeals the sunset on the initial legislation. The bill would permit the drug-trafficking investigative grand jury to be convened from an existing grand jury or to be convened as an additional grand jury to an existing grand jury. The jurors would serve for 12 months. The presiding superior court judge must hear any matter concerning a drug-trafficking investigative grand jury **in camera** when necessary to prevent disclosure of its existence. A court reporter is to record and transcribe **in camera** proceeding. The bill became effective upon ratification, July 13, 1991.

Controlled substance exams (SB 723; Chapter 687): Senate Bill 723 would add a new Article to Chapter 95 (Department of Labor and Labor Regulations) to be entitled "Controlled Substance Examination Regulation. The bill would apply to controlled substance examinations administered by employers to employees or job applicants. Samples would have to be collected under reasonable and sanitary conditions and analyzed by labs that have demonstrated satisfactory performance in the testing programs of the National Institute on Drug Abuse or the College of American Pathology. Any sample that produced a positive result would have to be confirmed by a second test and a portion of every sample that produced a positive test would have to be preserved by the lab for at least 90 days. The examiner would have to establish chain of custody procedures for collection, examination, identification, handling, labeling, and record keeping. The act becomes effective October 1, 1991.

Drug possession in prison (SB 762; Chapter 484): Senate Bill 762 amends G.S. 90-95(e) of the Controlled Substances Act to make it a Class I felony (imprisonment up to five years, a fine or both) to possess a controlled substance on the premises of a penal institution or local confinement facility. A person sentenced under this subdivision would serve a mandatory minimum term of imprisonment of at least two years to run consecutively with any sentence already being served. The sentence would commence at the end of any sentence already being served. Senate Bill 762 becomes effective October 1, 1991, and applies to any offenses occurring on or after that date.

Law Enforcement

Federal Officer Immunity (HB 976; Chapter 262): House Bill 976 authorizes federal law enforcement officers to enforce criminal laws anywhere in North Carolina when the federal officer is asked by the head of a state or local law enforcement agency to provide temporary assistance within that agency's jurisdiction, or when the federal officer is asked by a state or local law officer to provide temporary assistance when the local officer is acting within the scope of his subject matter and territorial jurisdiction. Under these circumstances, House Bill 976 grants a federal officer the same powers and immunities as a North Carolina officer, but provides that a federal officer is not to be considered an officer or agent of any state or local law enforcement agency. In addition, House Bill 976 provides that, for purposes of the Federal Tort Claims Act, a federal officer is acting within the scope of his employment while acting pursuant to this act. House Bill 976 does not expand the authority of federal officers to initiate or conduct independent investigations into violations of State law. House Bill 976 became effective upon ratification on June 11, 1991, and applies to actions by federal law enforcement officers occurring on or after that date.

Miscellaneous

Expunction of Records (SB 744; Chapter 326): Senate Bill 744 permits a person who has been charged with a crime and who has had charges dismissed or has been found not guilty to expunges official records relating to the arrest and trial; provided' there has not been a previous expungement or a previous conviction of a felony. Senate Bill 744 was effective upon ratification.

Restoration of citizenship for felons (HB 421; Chapter 274): House Bill 421 authorizes the automatic restoration of the rights of citizenship to persons convicted of crimes in other states upon unconditional discharge, unconditional pardon or satisfaction of a conditional pardon. The bill also clarifies the procedure for filing the certificate of restoration. The act became effective upon ratification, June 12, 1991.

STUDIES

Legislative Research Commission: (1) Use of Prison Inmates; (2) Rights of Victims of Crime; (3) Basic Civil Rights of Law Enforcement Officers; (4) Revision of Arson Statutes; (5) State Correctional Education; and (6) Law Enforcement Issues.

EDUCATION
(Mary Thompson, Jim Watts, Barbara Riley)

RATIFIED LEGISLATION

Community Colleges

Remediation (SB 126; Chapter 279): Senate Bill 126 requires the State Board of Community Colleges and the UNC Board of Governors to work toward agreements to provide local remediation. The bill also requires implementation of a reporting system on community college student performance to be used by high schools. Senate bill 126 becomes effective July 1, 1991.

Community College Personnel (HB 569: Chapter 84): House Bill 569 adds a new Article 2A to Chapter 115D that sets forth the privacy of employee personnel records. The bill establishes that the personnel records of employees of boards of trustees are not subject to examination under the public records laws. Each board of trustees is required to maintain a file of information on an employee that is open to inspection. The act also provides for exceptions to the rule that such records are not subject to inspection and a method for employees to object to information contained in the confidential file. The bill became effective May 13, 1991.

Community College Trustee eligibility (SB 594; Chapter 283): Senate Bill 594 adds to the requirements to serve on a community college board of trustees the requirement that no board shall elect any person employed by the board to serve. The bill provides that any such persons currently serving on a board shall be allowed to complete their term. The bill became effective June 13, 1991.

Elementary and Secondary

Remove educational leave limit (SB 270; Chapter 718): Senate Bill 270 amends G.S. 135-8(b) increasing the limitation for Teacher State Employee Retirement System creditable service for approved educational leaves of absence from four years to six years. Act is retroactive to January 1, 1991.

Local Boards of Education Power to Redistrict (SB 225, Chapter 400): Senate Bill 225 allows local boards of education to revise electoral district boundaries where board members are elected by district after a federal census is taken or territory is annexed to or excluded from the local unit.

Gifted student procedures change (SB 282; Chapter 142): Senate Bill 282 amends G.S. 115C-113(d) revising the reevaluation requirements for academically gifted school children. Eliminates the need for a reevaluation for a child who is certified as academically gifted during or after the first semester of the third grade. Effective October 1, 1991.

Amend school weapon prohibition (SB 284; Chapter 622): Senate Bill 284 amends G.S. 14-269.2 removing the criminal penalty limits for carrying a weapon on school premises.

The offense continues to make violators guilty of a misdemeanor. Effective October 1, 1991.

Homeless Children; Student Assignment (SB 324, Chapter 719) Senate Bill 324 clarifies and streamlines the student assignment laws. It allows homeless children to enroll in a local school unit where the child is actually living and provides that homeless children may not be charged tuition. Prohibits students from transferring from one local school administrative unit to another for athletic purposes. The bill became effective July 16, 1991 and applies to all school years beginning with the 1991-1992 school year.

Oak Ridge named official state military academy (SB 506; Chapter 728): Senate Bill 728 adopts honorary designation for Oak Ridge Military Academy as the official military academy of North Carolina. The bill became effective July 16, 1991.

Merged Unit Supplemental Tax (SB 550, Chapter 325): Senate Bill 550 revises existing law on supplemental school tax to include counties that have three LEAs, two of which are located entirely within the county and one of which is located in more than one county. Provides that if legislation is enacted to merge two units located entirely within a county and one of the merging units has a supplemental tax that is in effect, then from July 1, 1991 and for two years following merger, the county commissioners can create a special tax district and levy a supplemental tax in that district without approval of the votes. Bill also affects ability of inter-county and intra-county merged units to levy taxes to be applied to the payment of notes, bonds, or refunding bonds issued to finance capital costs of school facilities. The bill became effective July 19, 1991.

Legislators' children in school (SB 599; Chapter 407): Senate Bill 599 permits the child of a legislator to attend school in the administrative unit in which the child resides while a parent serves in the General Assembly upon payment of applicable out-of-county fees. The bill became effective June 26, 1991.

School employee criminal record check (SB 766; Chapter 705): Senate Bill 766 allows the Department of Justice to provide a criminal record check to the local board of education for school employees or job applicants if those individuals consent to the record check. The bill became effective July 15, 1991.

Corporal punishment policy (SB 798; Chapter 269): Senate Bill 798 amends G.S. 115C-390 allowing local boards of education to develop local policies prohibiting the use of corporal punishment in the schools. Effective beginning with the 1991-92 school year.

Dropout prevention (HB 148; Chapter 307): House Bill 148 encourages local units to explore alternative programs to reduce dropout rates. The bill requires the State Board of Education and the State Board of Community Colleges to adopt rules and procedures for improving dropout programming, data collection and accountability. The bill also requires the Department of Public Instruction to conduct research on specific aspects of student attendance. Research required in this section shall be reported back to the Joint Legislative Education Oversight Committee by April 1, 1992. The bill became effective May 28, 1991.

Textbook disposal rules (HB 333; Chapter 328): House Bill 333 amends G.S. 115C-102 authorizing the State Board of Education to adopt rules regarding local school board disposal of surplus discontinued instructional materials. The bill became effective June 19, 1991.

Low performing school (House Bill 493; Chapter 529): House Bill 493 directs the Department of Public Instruction to identify and aid failing school units. Units will develop improvement plans which are to be implemented with technical assistance from the Department of Public Instruction. If, after a period of time, no improvement is shown, the State Board may then appoint a caretaker board or administrators to guide the failing system. Under the bill, the financial management of a system may be closely scrutinized and may be taken over if a local unit is not in compliance with State laws. The bill became effective July 3, 1991.

Business contributions to education (House Bill 494, Chapter 706): House Bill 494 amends G.S. 115C-47 by requiring local boards of education, in consultation with local business leaders, to develop voluntary guidelines relating to after-school employment. Local boards are required to compile information about the numbers of students working and the numbers of hours worked. The bill became effective July 15, 1991.

Dual personnel evaluation processes (HB 495; Chapter 331): House Bill 495 amends G.S. 115C-238.2(b) requiring the Department of Public Instruction to provide technical assistance to local school systems to develop dual evaluation systems for both professional growth and criteria for personnel decisions. The bill became effective June 19, 1991.

Superintendent contracts (HB 854; Chapter 238): House Bill 854 amends G.S. 115C-271 allowing local boards of education to renew superintendents' contracts after the first twelve months of the contract not to extend for a term greater than four years. The bill becomes effective October 1, 1991.

Flashing school buslights (HB 861, Chapter 290): House Bill 861 requires the driver of a motor vehicle to come to a full stop when a school bus is flashing red stoplights. The bill becomes effective October 1, 1991.

Special Education Hearing Subpoena (SB 281, Chapter 540): Senate Bill 281 allows review officers in special education appeals to issue subpoenas. The bill became effective July 4, 1991.

Teachers' Deferred Compensation (SB 312, Chapter 389): Senate Bill 312 adds teachers to the N.C. Public Employee Deferred Compensation Plan so teachers may authorize payroll deductions in order to defer income. The bill became effective June 25, 1991, and applies to deferral elections made on or after that date.

Special Provisions (Education) House Bill 83

Consolidate school administrator allotments (HB 83; Sec. 31): Consolidates allotments of assistant and associate superintendents and supervisors and converts the allotment from positions to dollars.

Driver training (HB 83; Sec. 32): Amends G.S. 20-88.1 providing that local school boards may contract services for driver education. Provides that Certified Driver Education teachers will be paid on the teacher salary schedule and their workday will be the same number of hours required of other teachers. Amends G.S. 115C-215 allowing that driver training instructors need not be certified.

Merger of school units (HB 83, Sec. 37): Under this special provision of the budget bill, county commissioners may elect to merge school units within a county, such a merger would not be subject to voter approval. Under the same provision, a city unit may elect to

dissolve itself, and the State Board would then merge the former system with the county system.

Payment of year-round teachers (HB 83; Sec. 39.3) Amends G.S. 115C-302(a) providing that teachers and school employees employed in a year-round school shall be paid in 12 equal installments.

Differentiated Pay Monies (HB 83, Sec. 194): Appropriates $10 million for staff development activities and $29.4 million for differentiated pay. Requires a vote by affected staff on two options for differentiated pay: 1) to continue or modify existing differentiated pay plans, or, 2) to have across the board bonuses.

Basic Education Program (HB 83; Sec. 196): Amends G.S. 115C-81(a) requiring that the State Board of Education to review the Basic Education Program in an effort to simplify the BEP and insure that the BEP provides equal access to all students. Requires the State Board of Education to report on the review to the Joint Legislative Education Oversight Committee and General Assembly by March 15, 1992. Amends G.S. 115C-12(9) requiring systems to fully implement the standard course of study in the 1991-92 school year. Requires the State Board of Education to establish benchmarks to measure progress in the implementation of the BEP and to report to the Education Oversight Committee and the General Assembly by December 31, 1991. Requires the State Board of Education to develop management accountability indicators to measure the efficiency and appropriate use of staff. Requires the Department of Public Instruction to report to the Education Oversight Committee and to the General Assembly before May 1, 1992 on methods used to measure student achievement.

Outcome-Based Education (HB 83, Sec. 199): Directs the State Board to select four sites to demonstrate outcome-based education. Appropriates $100,000 planning monies for the first year, and $3 million the second year to implement the program at the chosen sites. The State Board is to adopt expectations for student achievement and proficiencies for graduation from high school.

Administrative training (HB 83; Sec. 200): Amends G.S. 115C-284. Requires the State Board of Education, in collaboration with the University Board of Governors, to develop a plan to improve principal and assistant principal preparation programs, plan to be submitted to the General Assembly no later than March 1, 1992. State Board of Education shall not issue provisional certification for principals and assistant principals. Amends G.S. 115C-12.1 requiring the State Board of Education to establish minimum training requirements for State Board members. Adds G.S. 116-11.2 expanding the Principals Executive Program and requires the institutions with programs in educational administration to revise programs to reflect increased standards.

Small School System Supplemental Funding (HB 83, Sec. 201.1): Provides additional funds to county school systems 1) with ADM of less than 3000 students and 2) with ADM of 3,000 to 4,000 students if the county has an adjusted property tax base per student below the state adjusted property tax base.

Low-wealth counties - Supplemental Funding (HB 83, Sec. 201.2): Provides supplemental funds to low-wealth counties in which the adjusted property tax base per student for that county is less than the state average adjusted property tax base per student. Requires counties receiving funds under this section to maintain an effective county tax rate that is at least 100 percent of the state average effective tax. Supplemental funds are not to supplant other state or local school funds.

Higher Education

Special Provisions relating to Higher Education (HB 83; Chapter 689): House Bill 83, the continuation budget bill, contained a number of special provisions concerning higher education in North Carolina. Most notable of these is Section 206.2 which provides additional management responsibilities to those constituent institutions so designated by the UNC Board of Governors. "Special responsibility constituent institutions" will have the ability to move funds across line items and budget purposes, retain up to 2 1/2% of reversions above the historic reversion rate, make purchases of up to $25,000 without formal competitive bids, and establish and abolish positions within certain guidelines. The UNC Board of Governors is to set guidelines for the SRCI's.

UNC Assistance to public schools (HB 131; Chapter 346): House Bill 131 amends Section 7 of Chapter 936 of the 1989 Session Laws requiring the University of North Carolina Board of Governors to adopt standards to create a program of public service and technical assistance to the public schools. The amendment requires the Board of Governors to report on an annual basis to the Joint Legislative Commission on Governmental Operations on the progress in implementing Section 7. The bill became effective June 20, 1991.

Nursing shortage programs (HB 314; Chapter 550): House Bill 314 establishes a number of steps to be taken to remedy the nursing shortage in North Carolina. Among these steps are the following: (1) The bill amends G.S. 90-171.61(b) and creates a new subdivision providing that the Nursing Scholars Program shall be used to provide a 2-year scholarship loan of $6,000 per year for two years of study leading to masters in nursing. Recipients must hold a baccalaureate degree in nursing. (2) The bill provides that the State Education Assistance Authority may forgive a scholarship loan if the recipient, within 10 years following graduation from or termination of enrollment in a nursing education program, cannot repay due to death or permanent disability. (3) The Board of Directors of the UNC Hospitals are to establish policies and rules governing the study and implementation of of classification and compensation plans for registered and licensed practical nurses. (4) A North Carolina Center for Nursing is established to address issues of supply and demand for nurses in North Carolina and to establish a statewide plan for nursing manpower. As part of its mission, the Center shall establish a database on nursing supply and demand in the State, convene various interested groups to review and recommend systemic changes, and promote recognition, reward, and renewal activities for nurses in the State. (5) The State Board of Nursing shall review the nursing curriculum for relevancy to current practice settings in North Carolina. (6) Community colleges are to counsel nursing students to take as many of their courses from college transfer offerings as possible to enhance educational mobility. (7) Funding for clinical sites may be used to train preceptors at self-selected clinical sites if they meet the rural, long-term care and critical care shortage guidelines contained in Chapter 560 of the 1989 Session Laws. (8) The UNC Board of Governors is to direct admissions officers to determine whether health occupations education courses taken beyond the core requirements for university admission may be viewed as enhancing a student's preparation for health care studies. Findings shall be reported to the Department of Public Instruction by March 31, 1992. (9) The Office of State Personnel is to select a State institution employing nurses to experiment with differentiated practice models based on clinical experience and expertise to determine whether such a model, used as personnel deployment systems positively impact the quality of patient care and the satisfaction and retention of nurses. For purposes of this project, the State Personnel Commission may waive rules implementing Chapter 126 of the General Statutes regarding hiring and paying of state employees other than provisions regarding

non discrimination. OSP is to report its finding by June 1, 1993. The bill became effective July 1, 1991.

Winston-Salem State capital improvements ((HB 488; Chapter 589): House Bill 488 authorizes the construction of a 400 student men's dormitory in the amount of $9.124,200 without appropriations from the General Fund. The bill became effective July 8, 1991.

East Carolina University capital project increase (HB 490; Chapter 590): House Bill 490 increases the funding for a wholly self-liquidating capital improvement project at ECU from $4,081,800 to $5,391,100. The bill became effective July 8, 1991.

UNC System capital improvements (HB 491; Chapter 657): House Bill 491 authorizes a number of capital improvement projects at several of the constituent institutions of the University of North Carolina and the UNC Hospitals. The projects are to be financed from funds available to the institutions without appropriations from the General Fund. The bill became effective July 12, 1991.

Clarify UNC Board Election Process (HB 923; Chapter 436): House Bill 923 amends G.S. 116-6 and clarifies the procedure for nominating and electing members to the UNC Board of Governors. The bill also amends the provision in the statutes regarding service on the board by persons who have served at least one full term as Chair of the Board. The amendment removes the age limit of 70 years but provides that Chairmen may serve only one four-year term as a member emeritus beginning at the expiration of the member's regular elected term. The bill became effective June 27, 1991.

Piedmont Triad Research Institute (HB 1086; Chapter 316): House Bill 316 adds a new Article 31 to Chapter 116 of the General Statutes. The bill establishes the Piedmont Triad Regional Institute and Graduate Engineering Program. The Institute is to be established as a non profit corporation whose board of directors shall be composed of individuals from business and industry and representatives from N.C. A & T, N.C. State, Winston-Salem State, and WaKe Forest. The purpose of the Institute is to further education and research in engineering, particularly as may be applied to medicine. The Graduate Engineering Program will be housed in facilities provided by Bowman-Gray School of Medicine and will support faculty and graduate students in engineering at the campuses of the University of North Carolina. The program shall begin phasing in for the academic year 1991-1992. The UNC Board of Governors shall adopt rules to implement Article 31 as it affects the role of the University in the program and in the education and research projects at the Institute. Funding for the Institute, in part, shall come from funds appropriated from the State in support of the Graduate Engineering Program. The bill became effective July 1, 1991.

Appalachian State capital improvements (HB 1163; Chapter 599): House Bill 1163 authorizes construction of a more economically and environmentally efficient power plant and auxiliary facilities at Appalachian State. The bill became effective July 8, 1991.

UNC Governors Amendments-2 (SB 822; Chapter 220): Senate Bill 822 provides for the appointment of a student member to the UNC Board of Governors. The bill also provides that a person who has served at least one term on the Board of Governors after having served as Governor of North Carolina shall be a member emeritus of the Board. The bill became effective June 5, 1991.

UNC-CH & EPA Project (SB 483; Chapter 306): Senate Bill 483 amends section 1 of Chapter 745 of the 1989 Session Laws providing for the construction by UNC-CH of a research facility to be leased to the US Environmental Protection Agency. The bill

increases the authorized cost of the project from $30 million dollars to $37 million dollars. The bill became effective June 18, 1991.

Miscellaneous

Parolees pursue degree (HB 208; Chapter 54): House Bill 208 amends G.S. 15A-1374(b) adding that the Parole Commission require a parole attending a basic skills program during incarceration, continue attending a basic skills program in pursuit of a General Education Development Degree or adult high school diploma. This act becomes effective April 25, 1991.

Vocational Education equipment standards (HB 754; Chapter 570): House Bill 754 amends 115C by adding a new section 115C-154.2, directing the State Board of Education to develop equipment standards for vocational programs in the public schools. These standards are to be met to the extent that State, local and federal funds are available. This act becomes effective July 4, 1991.

MAJOR DEFEATED LEGISLATION

No pass, no drive (SB 179) would have required that minors be attending and passing in school to obtain and to maintain a driver's license.

Prekindergarten instruction (HB 399) proposed the establishment of prekindergarten programs in public schools.

PENDING LEGISLATION

Local School Improvement (HB 828) The original legislation passed by the House outlines teacher involvement in school performance plans. The Senate Committee Substitute includes language regarding specific waivers to be granted to local schools as well as a timeline for the granting of those waivers.

School Improvement and Accountability Act (SB 2) Changes (SB 3: Incorporated into HB 828) would have spelled out changes to the School Improvement and Accountability Act of 1989 to clarify that waivers should be allowed concerning: the assignment and use of teacher assistants; class size; employee certification; evaluation of teachers; use of staff development funds; traditional class units to allow for more individualized pacing of students; summer school funds; use of school buses; placement in academically gifted classes; and calculation of graduation requirements to include courses taken at community or four-year colleges.

Governance (SB 9) would have made the Superintendent of Public Instruction the chairman of the State Board of Education.

Governance (SB 250) proposes a constitutional amendment to reorganize the State Board of Education and make the Superintendent of Public Instruction an appointed rather than an elected officer.

Project Genesis (SB 732) proposes a pilot project for charter schools in North Carolina.

Principle Tenure (HB 599) would have eliminated tenure for principals.

Limit Students' Work Hours (HB 628) House Bill 628 provides restrictions on the number of hours a student may work if they have an academic average below "C".

STUDIES

Education Oversight Committee, G.S. 120-7080 et seq., has broad authority to study all education issues. This permanent committee may adopt some of the following studies, or the studies may be done as part of the LRC.

Worker Training Trust Fund (HB 170): A continuation study which was part of the 1990-91 LRC. The purpose of the study is to recommend the use of the funds in the Trust.

Education and training of nurses and the nursing shortage (HB 312 and SB 276).

Length of the school year and compulsory school attendance (HB 1186).

Physical fitness among North Carolina youth (SB 15).

State correctional education (SB 945).

Educational leadership (SB 441) to study the evaluation, certification requirements, training programs and the recruitment and selection of public school administrators.

Teacher Leave (HB 334), to increase the amount of leave which may accrue beyond the end of the current year.

EMPLOYMENT
(Bill Gilkeson, Sandra Timmons)

RATIFIED BILLS

Employment Security

Employer account benefit charge (HB 855; Chapter 276): House Bill 855 amends the Employment Security law regarding charges against an employer's account for unemployment benefits paid. The bill provides that no benefit charges may be made to an employer's account for benefit years ending on or before June 30, 1992 when those benefits were paid because of a discharge due directly to the reemployment of a veteran mandated by the federal Veterans' Reemployment Rights Act.

Employment Security Changes (SB 287; Chapter 421): Senate Bill 287 provides that an employer's Experience Rating Account in the unemployment insurance system will not be terminated if the employer's business is closed solely because one of the business's principals enters into military service. The rule had been that the account (on which a business's unemployment-insurance tax rate is based) was terminated if the business was closed. Senate Bill 287 was made effective upon ratification, June 27, 1991.

Employment Security Late Filing (SB 319; Chapter 422): Senate Bill 319 requires the Employment Security Commission to excuse employers from paying penalties for late filing of required reports under the following circumstances: (1) report sent to wrong agency; (2) employer had death or serious illness in family; (3) business records destroyed by casualty; (4) ESC was at fault for not providing requested reports or interviews on time; (5) employer unexpectedly entered the military; or (6) Chair or Assistant Chair of ESC decide penalty would be unfair. Senate Bill 319 was made effective upon ratification, June 27, 1991.

Employment Security Technical Changes (SB 320; Chapter 458): Senate Bill 320 provides that, where is person is employed by two or more related corporations, each related corporation will be considered to have paid the employee only the amount it individually dispersed to him rather than the total amount dispersed by the group of corporations. The bill also requires that, beginning September 30, 1992, every employer of 250 employees or more must make a computer filing of his Quarterly Wage and Tax Report. The bill also preserves the one-week waiting period for payment of unemployment insurance benefits by providing that, where a benefit was paid out as a result of an administrative adjudication and the decision is reversed, the benefit paid is an overpayment. The bill was made effective upon ratification, July 1, 1991.

Conform Employment Security Law (SB 321; Chapter 423): Senate Bill 321 provides that if eligibility of an alien employee for unemployment insurance benefits is based on his being admitted for permanent residence, then that status will be measured at the time the employee performed the services in question. The bill was made effective upon ratification, June 27, 1991.

Employment Security Information to Controller (SB 401; Chapter 603): Senate Bill 401 directs the Employment Security Commission to furnish the State Controller with any information he needs to prepare and publish a comprehensive annual financial report. The

provision is written as an exception to the statute that requires ESC to keep certain information confidential. The bill was made effective upon ratification, July 9, 1991.

Amend Unemployment Hearings (SB 429; Chapter 723): Senate Bill 429 makes three additions to the statutes governing hearings on unemployment compensation: (1) Forbids an appeals referee from engaging in the private practice of law; (2) Specifies that "good cause" for the granting of continuances includes the fact that a party, witness, or attorney must serve in the General Assembly or attend a hearing in a higher court. (3) Allows ESC to disclose information from the records of a proceeding to any party in the proceeding. The bill was made effective upon ratification, July 16, 1991.

Expanded Base Period Defined (SB 724; Chapter 409): Senate Bill 724 extends the eligibility test for unemployment-insurance benefits so that persons who have been out of work for job-related injuries will be able to meet the threshold for eligibility. The general rule is that a person who has been laid off from a job qualifies for unemployment-insurance benefits only if, among other things, he earned at least $2,211.54 during his base period. That base period is the first four of the five calendar quarters completed before the employee filed the claim. Senate Bill 724 will mean that, if any person fails to meet that threshold base-period earning because of a job-related injury for which he received Workers Compensation, the base period will be extended backward for that person until he meets the earning threshold and qualifies. The bill was made effective October 1, 1991, and expires June 30, 1993.

Unemployment Benefit Disqualification (SB 745; Chapter 219): Senate Bill 745 allows the Employment Security Commission to remove a person's disqualification for unemployment benefits if the person left work to move with his spouse to a new residence too far to commute to the job, if the reason for the move was a job the spouse found in the new location. The bill was made effective upon ratification, June 5, 1991.

Pensions and Retirement

Salary related contributions/employers (HB 83, Section 188; Chapter 689): Section 188 of House Bill 83 reduces the State's employer contribution rates budgeted for the various retirement systems.

LGERS creditable sick leave (HB 366; Chapter 753): House Bill 366 increases the amount of accumulated sick leave creditable toward retirement by local government employees. Employees will now be given a maximum of 12 days for each year of service. The bill prohibits granting any post-retirement increases or cost-of-living adjustments to retirees for 1991 until the issue receives full consideration during the General Assembly's 1992 Regular Session. The bill became effective July 1, 1991 and applies to retirements on or after that date.

TSERS/LGERS late payment penalty (HB 367; Chapter 585): House Bill 367 establishes a penalty of one percent per month, with a minimum amount of $25.00, when required employer contributions have not been received by the given date. Such penalty will be assessed by the Boards of Trustees of the Teachers' and State Employees Retirement System and Local Governmental Employees Retirement System, respectively. The bill became effective July 8, 1991.

Register of deeds pension changes (HB 414; Chapter 443): House Bill 414 reduces to ten years the minimum period of service required for each register of deeds to qualify for a

supplemental pension. The maximum aggregate benefit receivable under the Local Governmental Employees Retirement System and the supplemental plan is increased to 75 percent. The bill became effective July 1, 1991.

Clarify deferred compensation (HB 901; Chapter 277): House Bill 901 exempts local government investments for deferred compensation plans from the provisions of G.S. 159-30 and 31. The bill allows plan funds to be invested in a number of forms approved by the Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan. The bill became effective June 12, 1991.

Clarify retirement definition (HB 368; Chapter 51): House Bill 368 clarifies the definition of "compensation" as it is used in the Local Governmental Employees and Teachers' and State Employees Retirement Systems. The bill became effective April 23, 1991.

Register of deeds pension payday (HB 365; Chapter 50): House Bill 365 requires that registers of deeds supplemental pension fund payments be made on the same day as benefits paid from the Local Governmental Employees' Retirement System. The bill became effective April 23, 1991.

Political Activity

See summaries contained in the State Government Section.

State Employees

Restore Christmas holiday (HB 1014; Chapter 750): House Bill 1014 authorizes the State Personnel Commission to add one additional paid holiday for State employees in those years when Christmas Day falls on a Tuesday, Wednesday, or Thursday. The bill prohibits the Commission from providing more than 11 paid holidays per year in other years. The bill became effective July 16, 1991.

Office of State Personnel decentralization (HB 83, Section 18; Chapter 689): Section 18 of House Bill 83 mandates the Office of State Personnel (OSP) to decentralize the classification and salary administration functions of all State departments with more than 500 full-time employees subject to the State Personnel Act. With a January 1, 1993 completion date, OSP is to report its progress annually to the Joint Legislative Commission on Governmental Operations beginning on December 1, 1991.

Reduction in force priority (HB 942; Chapter 474): House Bill 942 establishes a reemployment priority consideration for employees who have been separated due to reduction in force. Such employees are to receive priority consideration for a period of 12 months from the date they receive notification of their impending separation. The bill became effective July 1, 1991.

State employee cost of living priority (HB 83, Section 187; Chapter 689): Section 187 of House Bill 83 prescribes that general cost of living or across-the-board increases are to be awarded before any performance pay increases. Performance pay increases will be given when the total funding allocation for increases is two percent or more. The bill eliminates

the role of the State Personnel Commission in determining and recommending the percentages for general and performance based increases.

Career employees under SPA (Senate Bill 122; Chapter 354): Senate Bill 122 redefines "career State employee" and outlines new service requirements to determine when a State employee has attained career status. The bill creates a primary, secondary, professional, and management position categories and decreases the length of required service to the immediate 12, 24, 24 and 36 preceding months of State employment, respectively. The bill becomes effective July 1, 1993, and applies to employees hired on or after that date.

Just cause defined by rule (SB 425; Chapter 722): Senate Bill 425 authorizes the State Personnel Commission to adopt rules which define "just cause" for disciplinary action, subject to the approval of the Governor. The bill became effective July 1, 1991.

Area authority SPA exemption (HB 953; Chapter 564): House Bill 953 provides that area mental health authorities, with approval of the county board(s) of commissioners, may establish and maintain a personnel system for its employees which is substantially equivalent to the State system. With the exception of equal employment opportunity, authority employees would be exempt from the State Personnel Act. The State Personnel Commission must approve such systems and the Office of State Personnel will monitor them to ensure compliance. The bill becomes effective October 1, 1991.

Personnel supervisory training (HB 959; Chapter 416): House Bill 959 requires that each newly appointed supervisor or manager participate, within one year of appointment or promotion, in the Equal Employment Opportunity Institute operated by the Office of State Personnel. The bill became effective July 1, 1991.

Shortage occupation assistance (Senate Bill 277; Chapter 357): Senate Bill 277 allows the Employment Security Commission to waive the 21-day listing period for job openings in position classifications that the State Personnel Commission declares to be in short supply. The agency may request the waiver if it demonstrates the listing requirement hinders the agency in providing essential services. The bill became effective June 24, 1991.

State Personnel technical amendments (SB 10; Chapter 65): Senate Bill 10 clarifies that priority reemployment applies when current State employees are competing for a vacancy against one another and that disciplinary demotions are subject to the procedural protection of G.S. 126-35. The bill became effective May 1, 1991.

State Health Plan Benefits

Health benefits/handicapped (HB 279; Chapter 427): House Bill 279 makes a number of benefit, eligibility, administrative, and technical changes in the Teachers' and State Employees' Comprehensive Major Medical Plan. Among other provisions, the bill specifically:

- Provides health benefits under the State's major medical plan for handicapped dependents over the age of 19 and allows those who were excluded previously to enroll October 1, 1991;
- Makes benefits payable on an 80 percent basis by the Plan and 20 percent by the covered individual;
- Replaces current prescription drug copayment with 90 percent coverage of average wholesale price plus with copayment equal to provider dispensing fee set by the Plan administrator;
- Increases deductibles to $250 for individuals and $750 for families;

°Provides that the first $50 of an emergency room charge is not covered when it does not coincide with hospital admission and less costly alternative medical care is available;
°Adds coverage of immunizations, Pap smears, x-rays, mammograms, blood pressure checks, and other routine diagnostic examinations and tests up to a maximum of $150 per fiscal year.
°Increases outpatient psychiatric care deductible to $250;
°Provides that the physical illness deductibles, durational limits, and coinsurance factor apply to mental illness coverage; and
°Includes lung, heart-lung, and pancreas transplants to coverage and increases the maximum lifetime benefit to one million dollars.

The bill became effective July 1, 1991.

Wage and Hour

Raise Minimum Wage (HB 5; Chapter 270): House Bill 5 increases the State Minimum Wage from $3.35/hour to $3.80/hour, effective January 1, 1992, and to $4.25/hour, effective January 1, 1993. The State Minimum Wage covers all employees in North Carolina who are not covered by the Federal Minimum Wage. The Federal Minimum Wage covers any employee who works for a business whose gross annual sales are not less than $500,000, and any employee in a company with gross sales of less than that if the employee is engaged in interstate commerce or the production of goods for interstate commerce. The Federal Minimum Wage has been $4.25 since April 1, 1991. In addition to changing the State Minimum Wage, the bill empowers employers to pay a "training wage" under certain circumstances, similar to the one available to employers covered by the Federal Minimum Wage. House Bill 5 was made effective January 1, 1992,

Clarify Labor Law (HB 453; Chapter 330): House Bill 453 makes several changes to the Wage and Hour Law: (1) adds daily and semimonthly pay periods to the definition of "pay period." The definition had included only 7-day and 14-day periods; (2) repeals special overtime provisions for hospitals and nursing homes; (3) permits courts to require payment of wages found to be due under the Wage and Hour Law; (4) allows employers to count tips up to 50% of a minimum wage even if the employee refuses to certify tips accurately, as long as the employer can demonstrate by monitoring tips that the employee regularly receives them in the amount the employer reports. The employer must also comply with other existing requirements for counting tips toward the minimum wage. House Bill 453 was made effective upon ratification, June 19, 1991.

Conform Wage and Hour Law (HB 455; Chapter 492): House Bill 455 changes the State Wage and Hour Law to require covered employers to pay time-and-a-half for work in excess of 40 hours a week. This change conforms the State overtime threshold to the Federal; the State overtime threshold has been 45 hours a week. The bill also conforms the State rules on work by 14- and 15-year-olds to the Federal rules so that the State rules will: (1) Prohibit working more than 3 hours on any day school is not in session; young students may no longer work six hours on Friday; (2) Prohibit any work later than 7 p.m. except during the summer when school is not in session and a student may work until 9 p.m.; (3) Replace the sliding scale of allowable weekly hours with a two-part rule: 18 hours when school is in session; 40 when it is not; (4) Prohibit any outside work during school hours. The coverage division for State and Federal overtime and child labor provisions is similar to that for minimum wage, described in the explanation of House Bill 5 above. House Bill 455 was made effective January 1, 1992.

Wage and Hour Act Attorney Fees (HB 456; Chapter 298): House Bill 456 requires that an employer be ordered to pay $300 in fees to an employee's attorney when a default judgment is entered against the employer in a Wage and Hour action brought in court by the Commissioner of Labor. The bill also deletes from the current Wage and Hour section on recovery of unpaid wages a provision allowing a court to award "exemplary damages" not to exceed the back wages plus interest at the legal rate. In place of that provision, the bill puts one that says a court shall make an additional award of "liquidated damages," also equal to the back wages plus interest. But in this new doubling-the-damages formulation, the court may reduce the "liquidated damages" from the full amount, or not award them at all, if it finds that the employer acted in good faith on a reasonable assumption that it was not violating the law. The act was made effective upon ratification, June 17, 1991.

Workers Compensation

Industrial Commission/Chairman Duties (SB 286; Chapter 264): Senate Bill 286 makes the Chairman the "chief judicial officer and chief executive officer" of the Industrial Commission. Those terms are not defined, but the bill states that the Chairman shall have "such authority as is necessary to direct and oversee the Commission" and that the Chairman shall exercise his authority as chief judicial and chief executive officer pursuant to the provisions of G.S. Chapter 26 (State Personnel) and the policies of the State Personnel Commission. The bill also permits the Governor to designate a Vice Chairman of the three-member Commission. Senate Bill 286 was made effective upon ratification, June 12, 1991.

Workers Compensation Technical Changes (SB 434; Chapter 703): Senate Bill 434 makes various technical changes to G.S. Chapter 97, governing Workers Compensation. In addition to the technical changes, the bill increases by double and more the assessments employers pay for the Second Injury Fund. Senate Bill 434 was made effective upon ratification, July 15, 1991.

Workers Compensation Third Parties (SB 657; Chapter 408): Senate Bill 657 adds a new item to the Workers Compensation statute's top-priority category for payment of money out of claims against third parties: expenses incurred by the employee in the litigation of the third-party claim. The bill also makes changes in the method for determining a subrogation amount if a judgment is insufficient to compensate the subrogation claim of the Workers Compensation insurance carrier or if an employee and third party have reached a settlement. The bill was made effective October 1, 1991.

Workers Compensation Foreign Injuries (SB 769; Chapter 284): Senate Bill 769 allows a worker to be compensated under Workers Compensation if the work-related injury occurs outside the State and the worker's principal place of employment is inside the State. The law on out-of-State injuries has been that N.C. Workers Compensation will pay if the contract of employment was made inside the State or if the employer's principal place of business is inside the State. The bill becomes effective October 1, 1991.

Miscellaneous

State claims assignment/school employees payroll deduction (SB 828; Chapter 688): Senate Bill 828 permits employees of local boards of education or community colleges to authorize payroll deductions for paying dues to employees' associations with at least 2000

members, the majority of whom are State employees. Such payroll deduction plan is void if the association engages in collective bargaining with the State or the employee's employer. The bill became effective July 13, 1991.

PENDING LEGISLATION

Equal Opportunity Program (HB 1006): House Bill 1006 proposes to strengthen the current administration of State government's Equal Employment Opportunity Program.

MAJOR DEFEATED BILLS

Workers Compensation/Redefine Injury (HB771): House Bill 771 would have added a new type of injury as an exception to the strict "accident by injury" standard for Workers Compensation. The new type would be "injuries to extremities of the body." Currently back injuries are exempted from the general strict standard for injury, which usually requires a slip, trip or fall. The bill was defeated on second reading in the House.

STUDIES

Independent Study Commission: Study Commission on the State Personnel System

Legislative Research Commission: The following issues may be the subject of studies by the Legislative Research Commission: (1) alternative approaches to deal with discrimination in employment; (2) regulation of temporary and other employment agencies; (3) Workers' Compensation for farm workers; (4) inequities in the salaries of equally qualified minorities, females, and nonminority males within occupational categories in State employment; (5) firefighter benefits, including retirement, death, and disability; and (6) pay plan for state employees.

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

RATIFIED LEGISLATION

Air Pollution

Clean Air Act implementations (HB 551; Chapter 552): House Bill 551 authorizes the Environmental Management Commission ("EMC") to implement a graduated fee schedule to be used solely to cover all costs to the state to develop and administer an air pollution permit program that meets the requirements of Title V of the 1990 amendments to the Federal Clean Air Act. No permit fee can be collected for more than 4,000 tons per year of any individual regulated pollutants. The bill creates a separate Title V nonreverting account for assessments and permit fees. HB 551 amends G.S. 143-215.108 to authorize the EMC to designate certain classes of activities for which a general permit may be issued, but only after considering factors such as the environmental impact of an activity and after a public hearing.

The bill renames the Air Quality Council the Air Quality Compliance Advisory Panel and changes the appointments as follows: (1) two appointed by the Governor to represent the general public; (2) two appointed by the House (one each by the Speaker and minority leader); (3) two appointed by the Senate (one each by the President Pro Tempore and the minority leader); and 4) one appointed by the Secretary of DEHNR. The bill directs the Secretary of DEHNR to set aside an office for an ombudsman for the Small Business Stationary Source Technical and Environmental Compliance Assistance Program.
The bill also amends G.S. 143-215.107 to direct the EMC to regulate sulfur dioxide allowances in accordance with 1990 Clean Air Act amendments.

The bill creates the Clean Air Act Advisory Council, with 11 members representing interests set out in bill. The Council must advise the Secretary of DEHNR regarding implementation of the program and development of a permit fee schedule. The bill creates an assessment for current holders of permits for control of sources of air pollution, to be used to help fund the special Title V account until the permit fee schedule is established. The bill directs that unless EPA requires that rulemaking be initiated earlier, the EMC may not initiate Title V-related rulemaking until either May 1, 1992, or the date the EMC receives the Council's final report, whichever is earlier.
The bill directs the Environmental Review Commission to study issues relating to reduction of the emission of ozone-depleting chlorofluorocarbons and report its findings and recommended legislation to the 1992 legislative session.

The bill became effective upon ratification on July 4, 1991.

Air permits/local ordinances (HB 924; Chapter 629): House Bill 924 amends G.S. 143-215.108, to provide that an applicant for a permit for a new facility or expansion of an existing permitted facility must request each local government having jurisdiction to issue a determination within 15 days of receipt of the notice as to whether the proposed facility is consistent with any applicable zoning or subdivision control ordinance. Unless the local government or court makes a subsequent determination that the proposed facility is consistent with applicable local ordinances, the Commission must attach as a condition to the permit, that the applicant will comply with all applicable ordinances, before construction or operation of the facility. The bill clarifies that it does not limit the opportunity for local government to comment on applications under other laws or rules. The bill becomes effective October 1, 1991.

Coastal/Marine/Aquaculture

Aquatic weed control (HB 554; Chapter 132): House Bill 554 creates the Aquatic Weed Control Act of 1991. The bill empowers the Secretary of DEHNR to designate plant organismS as noxious aquatic weeds under standards specified in bill, and to direct the control, eradication, and regulation of such weeds. The bill authorizes the Commissioner of Agriculture to regulate the importation, sale, use, culture, collection, transportation, and distribution of such weeds as a plant pest. Violation of rules adopted pursuant to this new article is a misdemeanor punishable for each offense by fine of $50 to $1,000 or imprisonment of 10 to 180 days or both. The bill also authorizes the Secretary of DEHNR to to request the Attorney General to institute a civil action for injunctive relief to restrain violations. The bill becomes effective October 1, 1991.

Consolidation and Regulation

Eco. Impact Req./Exceed US Air/Water Regs. (SB 386; Chapter 403): Senate Bill 386 removes restrictions that prevented the Environmental Management Commission from adopting air and water pollution rules more restrictive than federal rules. Prior to adopting more restrictive rules, the Commission must consider an evaluation prepared by the Department and must find that the environmental, public health, safety and welfare benefits justify the costs. The evaluation must include an estimate of the economic and social costs.

The evaluation does not apply to water quality or air quality standards and practices for facilities sited or operated pursuant to Chapter 130B (Hazardous Waste Management Commission) that exceed comparable federal regulations. Except as required by federal law or regulations, the Commission may not adopt effluent standards or limitations applicable to animal and poultry feeding operations, unless manmade pipes, ditches, or other conveyances have been constructed for the purpose of willfully discharging pollutants to the waters.

In a judicial review of a more restrictive standard or limitation, there is a rebuttable presumption that the environmental, public health, safety and welfare benefits from the proposed air emission standards or limitations exceed their social and economic costs. To overcome the presumption, persons challenging the rule must present clear and convincing evidence that the benefits of the agency rule do not justify the costs.

This act becomes effective January 1, 1992 and shall not be construed to affect the validity of any rule in force on the date this act becomes effective or to proposed rules for which a notice becomes effective.

Environmental Policy Act Amendments (HB 410; Chapter 431): The North Carolina Environmental Policy Act of 1971 (SEPA) (G.S. 113A-1 **et seq.**) was originally enacted with a sunset provision that has been extended three times during the last twenty years. House Bill 410 repeals the sunset and makes SEPA permanent. The bill amends G.S. 113A-4 to provide that a unit of local government or other interested party that may be adversely affected by a proposed action may submit written comment within the established comment period. The bill also amends G.S. 113A-8 to clarify the authority of units of local government to require preparation of environmental impact statements (EIS). A local EIS requirement may be imposed only by ordinance, may not be designed to apply only to particular projects, and must be applied consistently. The purpose of such an ordinance is to provide information that the local government may consider in connection with matters within its jurisdiction. No local EIS may be required if an EIS or functionally equivalent document is prepared under federal or State law. A local ordinance must establish

minimum criteria to be used in determining whether a EIS is required. The bill became effective upon ratification (27 June 1991).

DEHNR Confidential Information Protected (SB 438; Chapter 745): Senate Bill 438 amends G.S. 130A-304 to provide that certain information received or prepared by EHNR in the course of carrying out its duties and responsibilities with respect to solid waste management is confidential and not subject to disclosure under G.S. 132-6, the public records act. The bill adds a new G.S. 104E-9 to provide for similar treatment of information received in connection with the Radiation Protection Act. Confidential information includes information that the Secretary of EHNR determines is entitled to confidential treatment as a trade secret under G.S. 132-1.2, information confidential under any other provision of federal or state law, and information compiled in anticipation of enforcement or criminal proceedings. The Secretary may refuse to accept or may return information that is claimed to be confidential as a trade secret that the Secretary determines is not entitled to confidential treatment. In any event, the Secretary is required to inform the provider of such information of its nonconfidential status at the time such determination is made. Any officer or employer of the State who knowingly discloses confidential information is guilty of a misdemeanor punishable by a fine of not more than $500 or imprisonment for not more than two years. The bill also makes clarifying changes to G.S. 132-1.2, and is effective upon ratification, 16 July 1991.

Improve Environmental Enforcement (SB 451; Chapter 725): Senate Bill 451 makes various amendments to improve the investigation and enforcement of crimes against the environment. G.S. 14-399(i)(3) and G.S. 114-15 are amended to authorize the State Bureau of Investigation to enforce the littering law and to investigate various environmental offenses. The bill amends G.S. 143-215.6A to provide that: (1) a civil penalty of not more than $10,000 may be assessed for certain violations of water quality statutes; (2) local governments that are authorized to administer pretreatment programs may assess civil penalties for violations of those programs, provided that the total civil penalty assessed by the local government and by the Secretary of EHNR may not exceed the maximum penalty authorized under State law; and (3) provides for review of civil penalty assessments by local governments. G.S. 143-215.6B(f) through (h) are amended to limit criminal liability for violations of water discharge standards to those established in rules adopted by the Commission, and to broaden coverage to include violations of any permit issued under the Water Quality Statutes and to negligent failure to apply for or secure a permit. The bill also amends various environmental statutes to provide that an action to collect a civil penalty assessment must be filed within three years after the assessment becomes final. The bill becomes effective 1 October 1991.

Hazardous Waste

Hazardous Waste Inspectors delay (HB 228; Chapter 20); House Bill 228, delays by three months the implementation of the program requiring full-time, resident inspectors at each commercial hazardous waste facility in the State. The bill was retroactively effective to February 1, 1991.

Recycle Hazardous Waste (HB 412; Chapter 286): House Bill 412 amends G.S. 130A-294.1(1) to exempt from annual fees paid a by commercial hazardous waste facility, a manufacturing facility that receives hazardous waste for the purpose of recycling. The hazardous waste received must come from the use of a product typical of the manufacturing process. A manufacturing facility exempt from the fee provisions under the bill must have

a permit covering the recycling activity that specifies the type and amount of waste allowed to be received. The act became effective upon ratification, June 13, 1991.

Hazardous waste landfill barriers (HB 1097; Chapter 450): House Bill 1097, adds a new subdivision to G.S. 130A-294, Solid Waste Management Program, requiring all hazardous waste to be packed in containers for disposal. The Commission is directed to adopt rules that may provide for some waste to be excluded from the containerization requirement. The Commission is further directed to adopt standards for design and construction of containers. Requirements for containers and performance or engineering standards for hazardous waste disposal facilities may not substitute for or replace each other. House Bill 1097 also amends the Resident Inspector's Program to require the Commission for Health Services to adopt rules concerning resident inspectors at special purpose commercial hazardous waste facilities. Special purpose facilities are defined as those facilities that: (1) manage limited quantities of hazardous waste; (2) limit activities to reclamation or recycling, including energy or materials recovery, or a facility which stores hazardous waste primarily for use at such facilities; (3) are determined to be low risk under rules adopted by the Commission. The Commission must establish classifications of special purpose facilities using factors including the size of the facility, the type of treatment or storage, and whether the facility uses automated monitoring or safety devices that adequately perform functions that would otherwise be performed by resident inspector. Rules adopted by the Commission must specify minimum number of inspections while facility is in use. Facilities that utilize hazardous waste as a fuel source must be inspected a minimum of 40 hours per week. Special purpose facilities must be open to inspection at all times. Records of inspections must be kept by the Department. The bill became effective June 28, 1991.

Inactive Sites Cleanup discretion (SB 377; Chapter 281): Senate Bill 377 gives the Secretary of EHNR discretion whether to seek federal approval of state programs to clean up inactive hazardous waste sites. The bill also provides that if a federal permit is not required for removal or remediation conducted entirely on-site, then the State may waive state requirements for permits if the owner or responsible party enters into an agreement with the Secretary to implement voluntary remedial action. Public participation shall be invited in the development of any remedial action plan prior to a permit waiver being granted. The bill became effective upon ratification, June 13, 1991.

Sanitary Sewage Systems and Training

Definition of Repair/Maintenance of Sanitary Sewage (HB 423; Chapter 256): HB 423 defines the term "repair" as used by the industry, and defines the term "maintenance" (i.e., replacement of broken pipes, cleaning, or adjustment to an existing sanitary sewage system). A person must obtain an improvement permit for repair of a sanitary sewage system, but not for maintenance of such a system. This bill became effective upon ratification, June 11, 1991.

Water treatment facility operators (SB 412; Chapter 321): Senate Bill 412 adds a new G.S. 90A-25.1 to provide that water treatment facility operators' certification requirements must include continuing education and that certificates expire on Dec. 31 of the year issued. The bill amends G.S. 90A-26 to allow discipline of operators who fail to comply with certification requirements or to renew certificates. Finally, SB 412 authorizes the Board of Certification to set a fee not to exceed $50.00 for issuance or renewal of a certificate and a penalty not to exceed $30.00 for late renewals. The bill became effective upon ratification on June 19, 1991.

DOT to Use Recycled Goods (HB 133; Chapter 522): House Bill 133 amends G.S. 130A-309.14(f) to direct the Department of Transportation, consistent with economic feasibility and applicable engineering and environmental quality standards, to use scrap tires, demolition debris, and untreated, stabilized, or encapsulated ash from boilers and incinerators in highway construction and maintenance projects. The bill became effective 1 July 1991.

Clarify Powers of Regional Solid Waste Authorities (HB 134; Chapter 580): House Bill 134 amends the powers and duties of regional solid waste authorities created under Article 22 of Chapter 153A of the General Statutes to make it clear that the jurisdiction of an authority extends only to solid waste and recyclable materials generated within the authority's service area and transferred to the authority. The bill became effective upon ratification, 8 July 1991.

Used Oil Carriers to be Marked (HB 135; Chapter 488): House Bill 135 amends G.S. 130A-309.23(c) to require the Department of Transportation to adopt rules requiring that all vehicles that transport used oil be marked as such in a manner that is clearly visible to other highway users. The bill becomes effective 1 September 1991.

Oil Spill Cleanup Liability (HB 520; Chapter 432): House Bill 520 adds G.S. 143-215.94A to limit the liability of persons engaged in the removal of oil discharges consistent with the federal Oil Pollution Act of 1990. The bill provides that a person is not liable under the General Statutes or under a common law course of action in tort for acts or omissions that are consistent with the National Contingency Plan or that are directed by appropriate authorities. The limitation on liability does not apply to responsible parties (as defined in the bill), to cleanups under the federal Superfund or State inactive sites program, to cleanups of leaking petroleum underground storage tanks, with respect to personal injury or wrongful death, or if the person is grossly negligent or engages in wilful misconduct. The bill becomes effective 1 October 1991.

Recycle Lead-Acid Batteries (HB 620; Chapter 375): House Bill 620 makes it unlawful to knowingly dispose of a used lead-acid battery in a landfill, incinerator, or waste-to-energy facility. Retailers and wholesalers of lead-acid batteries are required to accept from their customers at least as many used batteries as the customer purchases. Retailers are required to post a notice of this recycling requirement. DEHNR is authorized to inspect any premises subject to these requirements and to issue warnings of noncompliance. Violators are subject to a civil penalty of $50 per violation. This bill becomes effective 1 October 1991.

State Recycling in Public Areas (HB 746; Chapter 336): House Bill 746 requires the Board of Agriculture to provide and maintain recycling bins for newspaper, aluminum, glass, and recyclable plastic beverage containers at the State fairgrounds, and requires DEHNR to provide similar collection facilities at the North Carolina Zoological Park. The Department of Transportation is required to conduct a pilot project to study the use of collection bins for recycling at highway rest areas, and DEHNR is to conduct a similar study in the State Parks System. Each study is to involve not less than six sites with results to be reported to the General Assembly on or before 1 February 1993. This bill became effective 1 July 1991.

Solid Waste Amendments (HB 1109; Chapter 621): In 1989, the General Assembly ratified Senate Bill 111, a comprehensive solid waste management and recycling law.

Among its many provisions, Senate Bill 111 established several goals and policies, including a goal of recycling at least 25% of the total waste stream by 1 January 1993, a requirement that, by July 1991, units of local government holding solid waste management permits institute recycling programs designed to reduce the amount of waste being disposed of by 25% by 1 January 1993, and a requirement that a "majority of marketable materials" be offered for recycling if economically feasible. House Bill 1109 converts the State's 25% recycling goal to a 25% waste reduction goal by 30 June 1993, and adds a longer range waste reduction goal of 40% by 30 June 2001. The bill clarifies how progress toward the solid waste reduction goals is to be determined and eliminates the requirement that local recycling programs separate a "majority of marketable materials." The bill also provides for further study of solid waste issues by the Environmental Review Commission, and makes a technical correction to Senate Bill 773 dealing with recyclable six-pack rings. The bill is effective upon ratification, 9 July 1991 except for the technical correction, which is effective 1 October 1991.

Demolition Asphalt as Fill (HB 1131; Chapter 537): House Bill 1131 amends G.S. 130A-309.09(b)(1) to provide that demolition debris consisting of used asphalt or used asphalt mixed with dirt, gravel, etc. may be used as fill, and need not be disposed of in a permitted disposal facility, provided that such demolition debris may not be placed in water or below the seasonal high water table. This bill is effective upon ratification, 3 July 1991, and expires 1 July 1993.

Underground Storage Tank Amendments (HB 1222; Chapter 538):

BACKGROUND -- Federal law requires owners and operators of underground storage tanks (UST) to demonstrate financial responsibility of $1,000,000 per occurrence for leaks from tanks. Financial responsibility requirements may be met by insurance; however such insurance is unaffordable for most tank owners and operators and is generally unavailable at any price. In response to this, the 1988 General Assembly created two funds, the Commercial Fund and the Noncommercial Fund, to clean up leaks. (The Commercial Fund covers commercial petroleum tanks after the owner or operator has paid a deductible. In general, commercial tanks are those of more than 1,100 gallons capacity, regardless of ownership or use made of the tank.) The Commercial Fund is financed by tank fees and is running out of money. If the fund is depleted, the Environmental Protection Agency will decertify the program as a means of demonstrating financial responsibility.

TANK FEES -- House Bill 1222 addresses the condition of the Commercial Fund in several ways, including increases in tank fees. The following table summarizes the past, present, and future annual tank fees:

Tanks of:	1989	1990 to present	1992	1993 and after
3,500 gal. or less	$30	$45	$100	$150
more than 3,500 gal.	$60	$75	$150	$225

GASOLINE TAX -- The bill also imposes an additional gasoline tax of 1/2¢ per gallon beginning 1 January 1992. One-half of this (1/4¢) goes to the Commercial Fund and one-half (1/4¢) to a new Loan Fund. Beginning 1 January 1995, this drops to 1/4¢ per gallon, payable to the Commercial Fund. This tax sunsets on 1 January 1999.

DEDUCTIBLE -- The current Commercial Fund deductibles are $50,000 for cleanup costs and $100,000 for third party liability. The bill lowers the cleanup deductible to $20,000 beginning 1 January 1992 through 31 December 1993 and thereafter for tanks that meet the technical standards required by EPA for all tanks in 1998. Beginning 1 January

1994, the cleanup deductible for tanks not meeting the 1998 technical standards will be $20,000 plus 40% of costs above $20,000 up to a maximum of $137,500. Thus the maximum deductible for cleanups is intended to be $75,000. The $100,000 deductible for third party liability is not changed.

LOAN PROGRAM -- A Loan Fund is created, financed by the 1/4¢ per gallon gas tax mentioned above, to provide loans to tank owners to upgrade or replace existing tanks to meet the 1998 technical standards. Applications for loans must be received by 31 December 1994.

UST COUNCIL -- A nine member council is created to advise DEHNR on the condition of the Funds, and to recommend rules regarding reimbursement of cleanup costs and the administration of the loan program.

OTHER PROVISIONS -- Prior to the enactment of House Bill 1222, if the Commercial Fund balance exceeded $15,000,000 on 1 July, the obligation to pay tank fees was suspended for the following year. (The obligation to pay fees resumed when the Commercial Fund balance falls below $5,000,000.) House Bill 1222 repeals this "click off" provision.

The bill adds a tank fee late payment penalty of $5.00 per day per tank, up to an amount equal to the tank fees due.

The bill authorizes the Noncommercial Fund to pay cleanup costs for commercial tanks located on land owned by an innocent landowner. The bill also amends the oil discharge controls statutes (G.S. 143-215.84) to protect innocent landowners from liability for leaks. DEHNR is authorized to use the Noncommercial Fund to abate an imminent hazard from a leaking commercial or noncommercial tank if the owner or operator cannot be located or refuses to act. In the latter case, DEHNR may seek reimbursement from the owner or operator.

The Environmental Management Commission is directed to adopt rules governing reimbursement of costs on or before 1 July 1991. DEHNR is directed to adopt rules for the Loan Fund on or before 1 March 1991. DEHNR is required to report to the Joint Legislative Commission on Governmental Operations and the Environmental Review Commission twice a year (instead to the General Assembly once a year) on the administration of this program and the condition of the Funds. The bill has a complex effective date section that provides that various sections of the bill become effective on different dates between 30 June 1991 and 1 January 1999, when the entire program is scheduled to sunset.

Plastic Bags/Notice Deadlines (SB 142; Chapter 23): Senate Bill 142 amends G.S. 130A-309.10(c)(1) to provide that the requirement that a notice of recyclability be printed on plastic shopping bags provided to retail customers applies to bags purchased by the retailer after 1 January 1991. The bill became effective 1 January 1991.

Recyclable 6-Pack Rings (SB 773; Chapter 236): The 1989 General Assembly prohibited the use of nondegradable plastic yoke or ring type holding devices. Senate Bill 773 allows the use of nondegradable rings if they are recyclable and have no orifice larger than 1 3/4 inch in diameter (as corrected by House Bill 1109). Devices must be embossed with the standard recycling symbol indicating the plastic resin used to produce the device and must be registered with the Secretary of State. The bill becomes effective 1 October 1991.

Waste

Increase fines for littering (HB 413; Chapter 609): House Bill 413 amends G.S. 14-399(c) and (d) to increase fines for littering under 15 pounds from minimum of $50 to minimum of $100, and from maximum of $200 to maximum of $500 for the first offense, with maximum of $1,000 for the second offense. Fines for littering over 15 pounds and under 500 pounds are increased from a minimum $100 to a maximum $1,000. HB 413 also adds a new G.S. 14-399(f1) to provide that littering involving a motor vehicle results in a one point penalty on the violator's driver's license, but no insurance premium surcharge or assessment of points under the classification plan. This bill becomes effective October 1, 1991.

Definition of term "other waste" (HB 422; Chapter 287): House Bill 422 defines "other waste" in the water and air pollution statutes to include, "dissolved and suspended solids, sediment and all other substances, except industrial waste, sewage, and toxic chemicals." This bill becomes effective October 1, 1991.

Permit/land application of waste (HB 667; Chapter 498): House Bill 667 amends G.S. 143-215.1(d) to require an applicant for a permit for disposal of waste by land application to give written notice to each city and county government with jurisdiction over the land involved. The Environmental Management Commission may consider comments submitted by local governments in determining whether to issue the permit. The bill becomes effective October 1, 1991.

Water and Soil

Sedimentation Control Commission (HB 512; Chapter 551): House Bill 512 amends G.S. 143B-299 to authorize the Governor to designate the chair of the Sedimentation Control Commission. The bill also adds two new members appointed as follows: (1) one jointly nominated by the NC League of Municipalities and NC Assoc. of County Commissioners; and (2) a professional registered engineer. Commission members shall serve staggered three-year terms. The bill became effective on July 1, 1991.

Water pollution permit amendments (HB 344; Chapter 156): During the 1989 Legislative Session, backwash discharges from swimming pools and spas were exempt from permit requirements that apply to all other discharges. This exemption was removed in House Bill 344 to be consistent with federal law. This bill becomes effective October 1, 1991.

Stop-work orders/Sedimentation Control Act (HB 448; Chapter 412): House Bill 448 adds a new G.S. 113A-65.1 to permit the Secretary of Environment, Health, and Natural Resources, or his designee, to order work stopped on projects when a person knowingly and willfully violates sedimentation control laws and when (1) sediment threatens to or has severely damaged water or adjacent land; or (2) work is being conducted without an approved control plan or in violation of a plan. The stop-work order may be issued for no longer than three days, must be served on the person at the site of the land-disturbing activity who is in operational control of the activity, and a copy of the order must be delivered to any other person whom the Department reasonably believes is responsible for the violation. Any person who violates a stop-work order may be assessed a civil penalty of not more than $5,000. The Secretary must rescind the order when issued in error, or when all violations are corrected and all necessary abatement measures have been taken.

A stop-work order is a final agency decision subject to judicial review under Art. 4 of G.S. Ch. 150B. The Attorney General must file a lawsuit to abate violations that resulted in issuance of a stop-work order within two days of its service. The lawsuit shall include a motion for an ex parte temporary restraining order to abate the violation and the motion must be heard within two days after the complaint is filed.

This bill becomes effective October 1, 1991.

Sedimentation Control Amendments (HB 449; Chapter 275): House Bill 449 adds a new definition, "Tract" to G.S. Ch. 113A (the Sedimentation and Pollution Control Act) to mean, "all contiguous land and bodies of water being disturbed or to be disturbed as a unit, regardless of ownership." The Act requires that an erosion and sedimentation control plan be filed for land disturbing activities on one or more tract.

Stormwater utilities (HB 501; Chapter 591): House Bill 501 amends G.S. 160A-314 (for cities) and 153A-277 (for counties) to require a public hearing before a unit can establish charges for stormwater utilities, to set out factors that may be involved in setting such charges, to limit charges to the unit's cost in providing the system, and to permit a unit to specify the order in which partial payments are to be applied among various enterprises. With respect to fees, the bill provides the following: (1) Fees must be made applicable throughout the area of respective city, county, or service area; and (2) no stormwater utility fee may be levied whenever two or more units of local government operate separate structural and natural stormwater and drainage system services in the same area within the county. However, two or more units may allocate among themselves the functions, duties, etc. for jointly operating such a system service in the same area within a county, provided only one unit may levy a fee under act within joint service area. The bill also amends G.S. 162A-2 and G.S. 162A-9 to give comparable authority to water and sewer authorities. The bill became effective upon ratification on July 8, 1991.

Water projects plan (SB 84; Chapter 181): Senate Bill 84 adds a new G.S. 143-215.73A to require annual preparation of a plan by DEHNR of water resources development projects for the next six years. The plan is to be submitted to the Director of Budget by July 1. The Director may modify the plan and must adopt it by October 1. The plan must list, describe and set priorities and funding recommendations for each project. Copies of the plan must be provided to the Advisory Budget Commission and the General Assembly. The Director must determine which projects will be included in the recommended biennial budget and the revised budget for the second year of biennium. The budget document transmitted to the General Assembly must identify projects recommended for funding. The bill became effective upon ratification on June 3, 1991.

Stream obstruction enforcement (SB 330; Chapter 152): Senate Bill 330 amends G.S. 77-13 to make it a strict liability crime to obstruct a stream and increases the penalties to a maximum fine of $500 or six months imprisonment, or both. The bill also amends G.S. 77-13 and 77-14 to empower the court to order the removal of the obstruction and restoration of the waterway and to permit authorized employees of the enforcing agency to enter the property. SB 330 extends enforcement authority to all law enforcement officers having territorial jurisdiction or by the county engineer. The bill became effective upon ratification on May 29, 1991 and applies to acts committed on or after that date.

Clean water loan transfer (SB 344; Chapter 186): Senate Bill 344 transfers the Clean Water Revolving Loan and Grant Program from the Office of State Budget and Management in the Department of Administration to the Department of Environment, Health, and Natural Resources. This bill became effective upon ratification on June 3, 1991.

Community water systems (SB 449; Chapter 576): Senate Bill 449 adds a new Article 10 to Chapter 130A of the General Statutes to require operating permits for community water systems regulated under the North Carolina Clean Water Act and to authorize fees based on the number of persons served by the system. This bill becomes effective January 1, 1992, except that the Commission for Health Services may adopt rules to implement the bill upon ratification (July 8, 1991).

State policy re: water withdrawals (SB 802; Chapter 567): House Bill 802 adds a new G.S. 143-215.22A to make it against public policy to withdraw water from any major river or reservoir if (1) the withdrawal will cause the natural flow of water in river or a portion of the reservoir to be reversed and (2) substantial portions of water are not returned to the river system after use. This bill became effective upon ratification on July 4, 1991.
Subsequent to the passage of this bill, SB 943 (Chapter 712 of the 1991 Session laws made the following changes: (1) G.S. 143-215.22A(b) was amended to provide that the section does not create an independent cause of action by the State or any person and that the section does not apply to a project or facility for which a withdrawal of water began prior to the effective date of the act (made effective retroactively to July 4, 1991); and (2) G.S. 143-215.22A(c) was repealed (gave courts jurisdiction over matters involving water withdrawals against public policy).

Registration of water withdrawals (SB 943; Chapter 712): Senate Bill 943 adds a new G.S. Part 2A to Art. 21 of Ch. 143 entitled, "Registration of Water Withdrawals and Transfers" and names the 38 affected rivers. The bill requires any person who withdraws one million gallons or more per day from the surface waters of the State or transfers one million gallons or more per day from one river basin to another to register the withdrawal or transfer with the Environmental Management Commission ("EMC") no later than six months after the initiation of the withdrawal or transfer. The EMC must be provided with: (1) the maximum daily amount of water withdrawal or transfer; and (2) the location of points of withdrawal and discharge and capacity of each facility used to make withdrawal or transfer. Any person planning to initiate a new water withdrawal or transfer must register with the EMC at least one year before submitting plans and specifications to the Department. Withdrawals and transfers of surface waters that are existing or planned on the act's effective date (July 16, 1991) must be registered by January 1, 1992. The Department must submit a report to the General Assembly by April 1, 1992 on the provisions of this act.
(See also, discussion re: SB 802 described above).

Water Supply Watershed Protection Program Amendments (HB 124; Chapter 579): In 1989 the General Assembly created the Water Supply Watershed Protection Program. G.S. 143-214.5. House Bill 124 amends that statutory section to clarify state and local powers and duties. G.S. 143-214.5(b) is amended to direct the Environmental Management Commission (EMC) to adopt minimum statewide requirements to protect water supply watersheds by (1) controlling development density, (2) providing for performance based alternatives to develop density controls, or (3) a combination of both (1) and (2). The EMC may adopt rules that require that any permit issued by a local government for a development by that local government in a water supply watershed be approved by DEHNR. Variances from the minimum statewide requirements must be approved by the EMC. Except as otherwise provided by law, the EMC has exclusive authority with respect to development activities by State agencies. The 1989 legislation required local governments to enforce minimum statewide management requirements. House Bill 124 clarifies that requirement by providing that local ordinances may be adopted pursuant to the general police power, any power to regulate land use, or any combination of such powers. A local ordinance may impose requirements that are more stringent than the State minimums, provided that in adopting such ordinances local

government must comply with notice requirements applicable to zoning. Local requirements applicable to agriculture and silviculture may be no more restrictive than the statewide minimum requirements. The EMC may designate another State agency to administer the minimal requirements applicable to agricultural and silvicultural activities and, if the Commission makes such a designation, local requirements shall not apply to such activities. The bill clarifies the circumstances under which the EMC would assume responsibility for a local water supply watershed program and clarifies the procedure for judicial review of orders by the EMC respecting local programs. The bill also clarifies the EMC's enforcement authority and civil penalty powers under this program, and makes conforming changes to G.S. 143-215.6A(e). See also, House Bill 873. The bill became effective upon ratification, 8 July 1991.

Water Supply Watershed Protection Deadline Extension (HB 873; Chapter 471): House Bill 873 extends by six months, from 1 January to 1 July 1992, the date by which the Environmental Management Commission must complete the classification of all existing water supply watersheds in the State. The bill extends the deadline by which local governments must submit a local water supply management and protection ordinance to the EMC from 1 July 1992 to 1 July 1993 for municipalities with a population of 5,000 or more, to 1 October 1993 for municipalities with a population of less than 5,000, and to 1 January 1994 for counties. The bill also amends G.S. 143-214.5 to require every state agency to act in a manner consistent with the policies and purposes of the water supply watershed protection program. See also, House Bill 124. This bill was effective upon ratification, 1 July 1991.

Water Pollution Control Operators Amendments (SB 450; Chapter 623): The 1989 General Assembly made extensive amendments to Article 3 of Chapter 90A of the General Statutes relating to the certification of wastewater treatment plant operators. Those amendments would have been effective on 1 July 1990. Because of difficulties in administering those amendments, resulting in part from the consolidation of regulatory functions into DEHNR, the 1990 General Assembly extended the effective date of the 1989 legislation until 1 September 1991, and directed the Environmental Review Commission to study the matter. This bill implements the recommendations of the Environmental Review Commission. The 1989 legislation is repealed without ever having become effective. Article 3 of Chapter 90A is retitled as "Certification of Water Pollution Control System Operators" and amended extensively. A "water pollution control system" is defined as a system for the collection, treatment, or disposal of sewage or similar waste, but does not include installers of such systems, as would have been the case under the 1989 legislation. A certificate is required to operate a conventional septic tank system. The bill makes various changes relating to the issuance and validity of operator's certificates, and substantially increases the fees applicable to the certification program. Fees are to be placed in a separate nonreverting fund within DEHNR and, subject to appropriation by the General Assembly, are to be used to defray the cost of the program. The bill amends G.S. 143B-300 and G.S. 143B-301 to rename the Wastewater Treatment Plant Operators Certification Commission as the Water Pollution Control System Operator Certification Commission, and to increase the membership of the Commission from seven to nine members. The Commission is authorized to establish an implementation schedule for the classification of water pollution control systems and for the certification of water pollution control system operators. Full implementation of the bill is to occur by 1 July 1993. The bill became effective 1 July 1991.

STUDIES

Legislative Research Commission: (SB 917, Chapter 754): (1) Surface Water Issues (2) Transfer of the Soil and Water Conservation Division of EHNR to the Department of Agriculture (3) Transfer of the Forest Resources Division of EHNR to the Department of Agriculture (4) Glass and Plastic Beverage Container Deposits and Refunds (5) Ways to promote the conservation of energy and the use of renewable energy sources in residential, commercial, industrial and public facilities (6) Promoting the development of environmental science and bridging environmental science and technology with public policy decision-making (7) Hazardous waste treatment and disposal
(8) Management of hazardous materials emergencies and establishment of regional response teams (9) Transfer of the Health Division from DHR to EHNR (10) State strategy for protection of groundwater resources (11) Solid waste and medical waste management and (12) Advance disposal fees to promote nonhazardous solid waste reduction and recycling.

Independent Legislative Study Commissions: Environmental Review Commission; Energy Assurance Study Commission; and Joint Select Committee on Low-level Radioactive Waste.

Other Studies: Clean Air Demonstration (SB 788; Chapter 738); Recyclables Study Extended (SB 144; Chapter 19).

FAMILY LAW
(Brenda Carter, Lynn Marshbanks, Jim Watts)

Adoption

Adoption Expenses (HB 640; Chapter 335): House Bill 640 amends G.S. 48-37, which generally prohibits the charge or payment of any compensation for the placement of a child for adoption, to provide that adoptive parents may pay the reasonable and actual medical expenses incurred by the biological mother incident to the birth of the child. In the petition for adoption the adoptive parents must disclose the amount of payments made under this provision and must represent that there were no prohibited payments made. The bill also makes a conforming amendment to G.S. 48-16(a), to require that the pre-adoption investigation include an investigation of compliance with the law regarding compensation. The act became effective June 19, 1991.

Adoption consent/legitimation of children (HB 479; Chapter 667): House Bill 479 shortens the time period for revocation of consent to adoption from three months to thirty days. The bill also allows the putative father of a child born to a woman who is married to another man to initiate a proceeding to legitimate the child. The woman's husband is a necessary party, and presumption of legitimacy may be overcome by clear and convincing evidence. The act becomes effective October 1, 1991.

Alimony

Clarify alimony law (HB 396; Chapter 569): House Bill 396 deletes G.S. 50-19(c), which states that a divorce judgment for a supporting spouse on grounds of separation or incurable insanity does not affect the dependent spouse's rights in a pending alimony or alimony pendente lite action, and adds to G.S. 50-11(c) a provision that a divorce judgment shall not affect either spouse's rights in a pending alimony or alimony pendente lite action. The bill also provides that a judgment of absolute divorce does not affect a spouse's right to receive alimony or alimony pendente lite under a prior or concurrent judgment of absolute divorce, removing the exception for divorce on the grounds of the dependent spouse's adultery. The act becomes effective on October 1, 1991.

Child Support

Child support payor change (SB 380; Chapter 541): Senate Bill 380 clarifies the law relating to child support payors' notice and responsibilities. It amends G.S. 110-136.8(b) and (d) to require payors' of child support withholding to provide the date of withholding to the clerk of court; and amends the definition of mistake of fact in G.S. 110-129(10) to include that the obligor had more money withheld than was required to satisfy the support order. The act became effective July 1, 1991.

Day Care

See **Human Resources** section.

Divorce

Divorce summary judgment (HB 395; Chapter 568): House Bill 395 allows a court to enter summary judgment for absolute divorce. The act becomes effective on October 1, 1991, and any summary judgment of absolute divorce entered before that date is valid, if otherwise proper.

Domestic Abuse

Domestic violence arrest (SB 52; Chapter 150): Senate Bill 52 amends G.S. 15A-401(b) to allow a law enforcement officer to arrest, without warrant, a person whom the officer has probable cause to believe has committed one of the following misdemeanors out of the officer's presence: (1) domestic criminal trespass under G.S. 14-134.3, which prohibits the entry of the premises of a former or separated spouse after being forbidden to do so by the lawful occupant; (2) simple assault under G.S. 14-33(a), assault that inflicts serious injury, or assault with a deadly weapon under G.S. 14-33 (b)(1), or assault on a female under G.S. 14-33 -(b)(2), where the person is the spouse or former spouse of the victim or the person is living or has lived with the victim as if married. Senate Bill 52 becomes effective October 1, 1991.

Equitable Distribution

Marital asset distribution (HB 398; Chapter 635): House Bill 398 allows a court to order the transfer of assets between spouses pending a final equitable distribution judgment and provides that the transferred assets will be subject to a full accounting upon final judgment. It also establishes a rebuttable presumption that property acquired during marriage is marital property unless the property is designated as separate property under G.S. 50-20(b)(2). The act becomes effective on October 1, 1991, and applies to equitable distribution actions pending or filed on or after that date.

Equitable distribution for incompetent (HB 417; Chapter 610): House Bill 417 adds G.S. 50-22 to allow a guardian for an incompetent spouse to commence or defend any divorce action, except that a guardian may not file for absolute divorce on behalf of an incompetent spouse. It also creates an exception to G.S. 50-21 to allow a court to enter an equitable distribution order on behalf of an incompetent spouse without a prior divorce decree, after the parties have lived separate and apart for one year; and makes clear that a competent spouse may seek and obtain a divorce from an incompetent spouse. The act becomes effective October 1, 1991.

Juvenile Code

Juvenile Commitment Procedures (HB 605; Chapter 434): House Bill 605 adds G.S. 7A-651(e) which requires detailing of a judge's order committing a juvenile to the Division of Youth Services. The legislation requires that the court provide evidence that alternatives to commitment had been attempted unsuccessfully and that the juvenile's behavior represents a threat to persons or property in the community prior to commitment to the Division. The act becomes effective October 1, 1991, and applies to commitments ordered on or after that date.

Pretrial release of juveniles (HB 1118; Chapter 352): House Bill 1118 amends G.S. 7A-611 requiring that a release order shall specify the person(s) to whom a juvenile may be released. This act becomes effective October 1, 1991, and applies to pretrial release orders issued on and after that date.

Juvenile intermittent commitment (HB 1119; Chapter 353): House Bill 1119 amends G.S. 7A-649 to provide that the authority of a judge to order commitment of juvenile delinquents for noncontinuous periods is limited to no more than five 24-hour periods. The time of service is in the judge's discretion, so long as it is completed within a period of 90 days from the date of disposition. This act becomes effective October 1, 1991 and applies to dispositions on or after that date.

Miscellaneous

Indigents' Representation (SB 424; Chapter 575): Senate Bill 424 provides for payment of a court appointed guardian **ad litem** in a proceeding to terminate parental rights. The bill also authorizes the Administrative Office of the Courts to enact a pilot program to provide representation to indigent persons. Section 1 of Senate Bill 424 is becomes effective October 1, 1991 and Section 2 was effective upon ratification.

Modify marital deduction trusts (SB 775; Chapter 736): Senate Bill 775 provides that if (i) a marital trust requires that the trust income be paid at least annually to the spouse, and (ii) a federal estate or gift tax marital deduction is claimed with respect to the trust, then, except in certain cases, the spouse may require that unproductive trust property be made income productive or be converted to productive assets. The bill also provides that, absent contrary trust provisions, all accrued income of a marital trust will be paid to the beneficiary's estate when the income interest ends, if the trust does not qualify for the federal estate or gift tax marital deduction because it does not actually say that that is what will happen. The act was effective on July 16, 1991, and applies to irrevocable trusts in existence or created on or after that date.

Child name change (HB 616; Chapter 333): House Bill 616 provides that the name of a minor child may be changed twice (previously a change was allowed once). This act becomes effective June 19, 1991.

Family preservation services (SB 141; Chapter 743): Senate Bill 141 establishes the Family Preservation Services Program in the Department of Human Resources. The program is to be phased in over a four-year period, beginning with fiscal year 1991-92. By the end of the four-year period, to the extent that funds are available, locally-based family preservation services are to be available in all 100 counties. The purpose of the

Family Preservation Services Program is, where feasible and in the best interests of the child and the family, to keep the family unit intact by providing intensive family-centered services that help create positive, long-term changes in the home environment. The act sets out service and eligibility requirements for the Program, and establishes the Advisory Committee on Family-Centered Services to provide guidance and advice to the Secretary of Human Resources in the development of a plan for statewide implementation of family preservation services. The Committee is to report to the Governor, the Joint Legislative Commission on Governmental Operations, and to the Commission on the Family by May 1, 1992. The act becomes effective October 1, 1991, provided specific funds have been appropriated.

PENDING LEGISLATION

Child support reform (HB 542): House Bill 542 proposes to adopt a reformed, state-supervised child support system in North Carolina. It would combine the child support programs administered by the Department of Human Resources and the Administrative Office of the Courts into one program.

Consent for minor's abortion (SB 815): House Bill 815 proposes that parental consent or judicial waiver of need to consent be required before a physician may legally perform an abortion on an unmarried or unemancipated minor under 18; and that the performance of such abortion without consent or waiver would be a misdemeanor. Consent would be from parent with custody, guardian, or parent with whom minor lives; or would allow a minor to seek judicial waiver if she elects to do so, if proper persons refuse consent, or if they are unavailable.

Parental leave act (HB 930): House Bill 930 proposes that an employer provide an employee a total of 12 workweeks of parental leave during any 24-month period because of the birth of a child of the employee or adoption of a child under age five. The 12-week leave could be used at any time within the first year after the birth or adoption. The leave would be unpaid, but employee or employer could elect to substitute employee's paid vacation leave, personal leave, or other parental leave for all or part of the 12 weeks. Upon return from leave, the employee would be entitled to be restored to the position of employment held before the leave began.

STUDIES

Independent study commissions: (1) Child Fatality Task Force; (2) Commission on Children with Special Needs; (3) Commission on the Family; (4) Social Services Study Commission.
Legislative Research Commission: The following subject may be studied by the Legislative Research Commission: child day care issues.

HUMAN RESOURCES

RATIFIED LEGISLATION

Aging

Alzheimer's special care units (HB 75; Chapter 222): House Bill 75 requires the Medical Care Commission, which makes rules for nursing homes, and the Social Services Commission, which makes rules for rest homes, to develop rules containing standards for special care units for patients with Alzheimer's disease and related dementia. The named commissions shall make a report to the North Carolina Study Commission on Aging by October 1, 1991.

Caregiver support sharing (HB 83; Chapter 689; Section 119): This section of the appropriations bill adds a new provision to require 10% local match for caregiver support funds. No new local revenues will be required since these funds were budgeted in 1989-91

In-home aging services (HB 83; Chapter 689; Section 120): This section of the appropriations bill adds a new provision to require 10% local match for these funds. No new local revenues will be required since these funds were budgeted in 1989-91.

Senior center outreach (HB 83; Chapter 689; Section 121): This section of the appropriations bill adds a new provision to require 10% local match for these funds. No new local revenues will be required since these funds were budgeted in 1989-91.

Public health program fees/exemption for the elderly (HB 83; Chapter 689; Section 179): This section of the appropriations bill amends G. S. 130A-248(d) to exempt nutrition programs for the elderly administered by the Division of Aging from the payment of a $25 annual public health program fee.

Rest home personnel rules (HB 204; Chapter 462): House Bill 204 amends G.S. 143B-153(3)b to give authority to the Social Services Commission to establish personnel requirements for staff in rest homes. Any proposed personnel requirements that would impose additional costs on owners of rest homes must be reviewed by the Commission on Governmental Operations before the rules are adopted. The bill became effective July 1, 1991.

Respite care change (HB 505; Chapter 332): Respite care is a program that provides relief to caregivers of impaired adults who cannot be left alone. House Bill 505 would change the current program in two ways. First, it would expand eligibility for services to include persons 60 or older caring for persons 18 and over. Secondly, it would eliminate the ceiling on maximum allowable hours of 48 hours per month or 576 hours per year. The bill became effective July 1, 1991.

Rest home regulation report (SB 102; Chapter 41): The Secretary of the Department of Human Resources, under his authority, has transferred responsibility for licensing and monitoring of rest homes from a number of agencies to the Division of Facility Services. SB 102 requires the Department to report on certain matters related to this transfer to the Study Commission on Aging by September 1, 1991. The bill became effective upon ratification, April 27, 1991.

Rest home reimbursement study (SB 158; Chapter 32): Senate Bill 158 requires the Department of Human Resources to study certain issues related to State reimbursement for rest homes. The report shall go to the Legislative Commission on Governmental Operations by January 1, 1992.

Rest home penalty review time limit (SB 161; Chapter 66): Senate Bill 161 requires that the state-level staff to the Penalty Review Committee complete its review of penalty recommendations from local departments of social services within 60 days of receipt by the Department of Human Resources. The effective date is January 1, 1992.

Rest home cost reports (SB 164; Chapter 89): Senate Bill 164 amends the rest home cost reporting requirement in G. S. 131D-3 to require that rest homes obtain an independent certification of the cost report before reporting to the Department of Human Resources. The bill became effective May 21, 1991.

Home/community care block grant (SB 165; Chapter 241): Senate Bill 165 establishes a Home and Community Care Block Grant administered by the Division of Aging and coordinates existing funding under the Older Americans Act, State funds for home and community-based services administered by the Division of Aging, and portions of the State In-Home and Adult Day Care funds administered by the Division of Social Services. Future State funding for in-home and community-based services targeted to older adults will be appropriated from the fund. The bill became effective upon ratification, June 10, 1991.

Aging-fee for services (SB 166; Chapter 52): Senate Bill 166 gives the Division of Aging the authority to establish a sliding fee schedule based on the type of in-home or community-based service provided and the income of the person receiving the service. the local agency will retain the fee and use it to extend the availability of in-home and community-based services. The bill becomes effective January 1, 1992.

Rest home appeals process (SB 257; Chapter 572): Senate Bill 257 amends the rest home licensing statutes to shorten the appeals time frame in certain contested cases. A facility, under the provisions of the bill, must file a petition within 20 days to contest summary suspension of admission and within 30 days for a penalty levied by the Secretary of the Department of Human Resources. There is new authority that allows the Department of Human Resources to issue a provisional license with the right for an administrative hearing provided that the facility files a petition within 30 days requesting the hearing. The bill becomes effective October 1, 1991, and applies to licenses issued and appeals entered on or after that date.

Nursing home administrator qualifications (SB 760; Chapter 710): Senate Bill 760 requires the Board of Examiners for Nursing Home Administrators to recognize 12 weeks service as an administrator or assistant administrator for a hospital based long term care unit as meeting the administrator-in-training requirement for licensure as a nursing home administrator. Hospital administrators who meet this alternative requirement would still be required to sit for the State exam and meet the other requirements defined by the Board. The bill became effective July 16, 1991.

Advisory committee on home and community care changes (SB 814; Chapter 711): Senate Bill 814 makes changes in the Advisory Committee on Home and Community Care contained in G. S. 143B-181A by adding "older adults" to the name of the Committee, by shifting the focus to examining the design and implementation of managed care for older adults, and by emphasizing county-based programs and services and "high-risk" older

adults. The reporting date is changed to every odd-numbered year beginning in 1991. The bill became effective July 1, 1991.

Families and Children

Ban day care corporal punishment (HB 956; Chapter 640): House Bill 956 prohibits corporal punishment as a form of discipline in any day care facility or day care home, and requires that a day care facility's written policy of discipline clearly state that prohibition. The bill exempts church day care facilities that: (i) file notices with the Department of Human Resources stating that corporal punishment is part of their religious training, and (ii) clearly state this in their written policies of discipline. The bill also exempts religious-sponsored day care homes that comply with (i). The act becomes effective on October 1, 1991.

State day care encouragement (HB 122; Chapter 345): House Bill 122 authorizes state agencies and local boards of education to contract for the establishment of day care services for their employees in state buildings and public schools. The facility operators will be responsible for financial, legal, and insurance matters, and the state or local boards of education will be responsible for building maintenance. The act was effective on July 1, 1991.

Child day care law changes (HB 416; Chapter 273): House Bill 416 makes technical and clarifying changes in the child day care laws, as well as the following substantive changes: (1) allowing public health nurses and certified nurse practitioners, rather than only physicians and their agents, to perform mandatory check-ups on children entering day care; (2) requiring the Day Care Commission to adopt requirements for ongoing training for all day care staff; (3) specifying that the Secretary of Human Resources or the Secretary's designee may inspect any area of a child day care facility in which there is reasonable evidence that children are in care. The act becomes effective on October 1, 1991.

Child fatality prevention (HB 83; Chapter 689, Sec. 233): This section of House Bill 83 establishes the North Carolina Child Fatality Review Team (State Team) and the North Carolina Child Fatality Task Force (Task Force). The State Team will review deaths of children when those deaths are attributed to child abuse or neglect or when the decedent was reported as an abused or neglected juvenile before death. It will report to the Task Force on its activities and its recommendations for changes to laws, rules, and policies that would promote the safety and well-being of children. The Task Force will do a statistical study of the incidence and causes of child deaths in the State during 1988 and 1989, and will establish a profile of child deaths. It will develop a system for multidisciplinary review of child deaths. It will also examine laws, rules, and policies relating to confidentiality that affect agencies with responsibilities for children, and it will recommend changes if the exchange of information necessary to protect children from preventable deaths is inappropriately impeded. The Task Force will report to the Governor and General Assembly in 1992 and in 1993 with its recommendations, including any recommendations of changes to law, rule, or policy to promote the safety and well-being of children. Funds are appropriated to implement this section.

SBI day care abuse task force (HB 597; Chapter 593): House Bill 597 requires that the director of a local department of social services notify the SBI immediately if the director's initial investigation of a report of abuse in a day care facility reveals that sexual abuse may have occurred. The SBI may send a task force to investigate and gather evidence that

could be presented at a criminal trial. The Director must also notify the Department of Human Resources. The act becomes effective on October 1, 1991.

Adoption consent/legitimation of children (HB 479; Chapter 667): See summary contained in Family Law.

Newborn screening program (HB 890; Chapter 661): House Bill 890 establishes a newborn screening program in the Department of Environment, Health, and Natural Resources, to include education and laboratory tests, follow-up services to assure treatment of identified children, and genetic counseling and support services for their families. The Department may collect a reasonable fee for tests; the fees will remain in the Department to support the program, subject to appropriation by the General Assembly. The bill was effective on July 12, 1991.

WIC administrative penalties (SB 358; Chapter 691): Senate Bill 358 allows the Secretary of the Department of Environment, Health, and Natural Resources to fine vendors violating WIC rules where vendor disqualification would result in hardship to WIC participants. The act was effective on July 15, 1991.

Abolish Perinatal Council (SB 411; Chapter 518): Senate Bill 411 repeals G. S. 130A-128 which abolishes the Perinatal Health Care Program Advisory Council. The bill became effective on ratification, July 3, 1991.

Health

Asbestosis exams/fees (SB 359; Ch 481): Senate Bill 359 transfers the authority to set fees for screening tests for asbestosis or silicosis to the Secretary of Environment, Health and Natural Resources. It also allows the Secretary to set the amount paid for reading screening films at an amount not to exceed $10.

Health care power of attorney (HB 821; Chapter 639): House Bill 821 creates a power of attorney for health care and amends the Natural Death Act. The health care power of attorney section of the bill authorizes a person (the "principal") to name a third party (the "agent") to make health care decisions for the principal in the event the principal is unable to do so. The power of attorney becomes effective if the physician(s) designated by the principal determines in writing that the principal lacks sufficient understanding to make or communicate health care decisions.

The remainder of the bill amends the Natural Death Act by: allowing a person who makes a Living Will to specify that he does not wish to be kept alive by artificial hydration and nutrition if he becomes terminally and incurably ill; adding "persistent vegetative state" as an alternate situation that triggers the directions in a Living Will; and making the above changes to the part of the Natural Death Act that deals with the situation where a person is dying, but does not have a Living Will. The bill becomes effective October 1, 1991.

Local health board rules (HB 18; Chapter 650): House Bill 18 concerns well construction rules. Pursuant to the North Carolina Well Construction Act, the Environmental Management Commission (EMC) has authority to adopt and enforce rules regarding well construction. This bill authorizes local health departments to adopt by reference EMC rules or stringent rules when necessary to protect the public health. However, rules adopted by the Commission for Health Services prevail over rules adopted by the EMC or local health departments. The bill became effective upon ratification, July 12, 1991.

Health care samaritans (HB 425; Chapter 655): House Bill 425 provides limited liability to volunteer (unpaid) medical or health care providers at local health departments or nonprofit community health centers. These volunteer providers would be immune from liability except for death or injury caused by their gross negligence, wanton conduct, or intentional wrongdoing. However, the local health department or community health center is not immune from a volunteer provider's failure to exercise ordinary care. Due care must be exercised in selecting volunteer providers. The bill became effective upon ratification, July 12, 1991.

Medical examiner fee (HB 220; Chapter 463): House Bill 220 authorizes an increase in the fee charged by the medical examiner for an investigation into the cause of death from $50 to $75. The bill also requires the county, instead of the State, to pay the investigation fee or autopsy fee when the deceased was a resident of the county where the fatal injury occurred, as well as when the deceased was a resident of the county where the death occurred. The bill became effective July 1, 1991.

Regulate medical devices (SB 742; Chapter 578): Senate Bill 472 limits the Board of Pharmacy's authority to regulate medical devices to those labeled "Caution: federal law requires dispensing by or on the order of a physician". It also excludes devices used in hospitals and devices used or provided by health care providers licensed under Chapter 90 of the General Statutes, provided the devices are not used to dispense or administer drugs. The bill became effective upon ratification, July 8, 1991.

Bedding sanitation law (HB 82; Chapter 223): House Bill 82 amends the definition of "bedding" in the bedding sanitation law by including padded or stuffed items, changing the language "used principally for sleeping" to "designed to be or commonly used for reclining or sleeping", and by removing the "more than one inch" limitation i.e. the thickness would not matter if the item otherwise fell within the definition of "bedding". The bill becomes effective January 1, 1992.

Vaccine injury program (HB 352; Chapter 410): House Bill 352 requires persons suffering a vaccine-related injury to seek compensation under the federal vaccine-related injury compensation program before seeking compensation under the North Carolina program. The time limit for filing a claim is stayed beginning with the date that the claimant files a petition under the federal program and ends 120 days after the date final judgment is entered on the petition. The bill became effective June 26, 1991, and applies to claims filed with the Industrial Commission on or after that date.

Tanning facility regulation (SB 758; Chapter 735): Senate Bill 758 permits the Radiation Protection Commission to include in its product safety program establishment of minimum qualifications for operation of products or sources of nonionizing radiation. The bill prohibits the Commission from adopting training requirements for tanning bed operators that are effective before June 1, 1992. It also directs the Radiation Protection Division to develop a training program for tanning bed operators, provides that the training program may be developed in cooperation with community colleges, and requires that the training program be available six months before the effective date of the training rules adopted by the Commission. The bill became effective upon ratification, July 16, 1991.

Clarify immunization law (HB 724; Chapter 381): House Bill 724 amends the law concerning immunization requirements at colleges and universities. The bill does the following: excludes students taking a course load of four credit hours or less and residing off campus from immunization provisions; provides that a certificate or record of immunization must be presented on or before the date the student first registers for a quarter or semester, instead of the first day of matriculation; and provides that if

immunization requires a series of doses which extends beyond the date of first registration, the student is to be allowed to attend college with a doctor's written certification that the series is in progress and the time period needed to complete the series. The act became effective on ratification, June 24, 1991, and applies to those registering on or after that date.

Certificate of need amendments (SB 816; Chapter 692): Senate Bill 816 makes several technical and clarifying changes to the certificate of need (CON) law. The bill adds a new definition of "nursing care", changes the definition of "certified cost estimate" and "new institutional health services", and deletes several definitions. The bill also does the following: authorizes the Department of Human Resources to review all records that pertain to construction and acquisition activities, staffing or costs and charges for patient care, etc.; provides that any facility or service acquired or developed under an exemption provided in the CON law is not subject to restrictions on use if the facility or service could otherwise be offered or developed without a CON; adds a provision concerning academic medical center teaching hospitals; provides that a CON shall not be transferred or assigned except as allowed in the CON law; provides that no more than 20 days from the conclusion of the written comment period, the Department must ensure that a public hearing is conducted if any of the circumstances specified in the bill occur; and makes clear that a civil penalty may be assessed for violation of conditions as well as the terms of a CON. The bill became effective upon ratification, July 15, 1991.

Certificate of Need changes (HB 408; Chapter 701): House Bill 408 does three things: (1) it allows the Division of Facility Services to count the number of chemical dependency beds located in residential treatment facilities in the inventory of "chemical dependency treatment beds" in the State Medical Facilities Plan; (2) it provides that the need shown in the State Medical Facilities Plan is the sole determinate of the number of beds or facilities that may be approved: and (3) it makes it clear that to the extent that the law permits the Division to issue a certificate of need pursuant to a settlement agreement, that agreement is a final agency decision and any affected person shall be entitled to intervene in a contested case. The bill becomes effective October 1, 1991.

Innkeeper allow dogs (HB 1107; Chapter 663): House Bill 1107 allows innkeepers to permit pets in hotel rooms, if they post signs that pets are permitted. They must keep at least 10% of the rooms as non-pet rooms, and post a sign about their availability. Violation of this law is a misdemeanor punishable by a fine not over $500, imprisonment of not more than 30 days, or both. The provisions do not apply to assistance dogs. The act becomes effective October 1, 1991.

Communicable disease penalty (SB 356; Chapter 187): Senate Bill 356 bars release of persons imprisoned for violating the communicable disease laws before the expiration of their sentence, unless the district court is satisfied that they no longer represent a threat to the public health. The bill also exempts health law violators from the prison cap statute and the "good behavior/gain time" statute. The act becomes effective October 1, 1991, and applies to offenses committed on or after that date.

Regulate home water heaters (SB 476; Chapter 190): Senate Bill 476 requires the manufacturer or installer of a new residential water heater offered for sale or lease for use in a dwelling to preset the thermostat no higher than 120°F, except on water heaters supplying space heaters that require higher temperatures. If the occupant resets to a higher temperature, the manufacturer or installer is relieved from liability from the resetting. There must be a warning tag on or near the thermostat about the danger from high temperature. The act becomes effective on January 1, 1992.

Simplify communicable disease law (HB 218; Chapter 225): House Bill 218 repeals G. S. 130A-160 through G. S. 130A-178 dealing with venereal disease, inflammation of eyes of newborns, and tuberculosis and amends G. S. 130A-144 to carry forward from the repealed sections provision that local health departments must provide examination and treatment for tuberculosis and for sexually transmitted diseases at no cost. This bill is a clean-up of the statutes since Part 1 of Article 6 of 130A still contains the general grant of authority for communicable disease reporting and treatment. The bill becomes effective February 1, 1992.

Food and lodging permits (HB 219; Chapter 226): House Bill 219 adds a new subsection to the statute concerning the regulation of restaurants and hotels (G .S. 130A-248) and provides that a sanitation permit for a food or lodging establishment expires one year after the facility closes, unless the permit is the subject of a contested case under the Administrative Procedure Act. The bill becomes effective October 1, 1991.

Public health fees (HB 452; Chapter 656): The 1989 Session of the General Assembly authorized the Department of Environment, Health, and Natural Resources to charge a fee of $25 for the inspection of restaurants, school cafeterias, summer camps, food and drink stands, sandwich manufacturing, push carts, hotels, motels, tourist homes, and bed and breakfast establishments. Since the State had never charged a fee for these types of public health inspections, the measure was controversial and a sunset of June 30, 1992 was placed on the provisions of the bill. House Bill 452 removes this sunset and adds "nutrition programs administered by the Division of Aging" to the programs exempted from the inspection fee. The bill became effective July 12, 1991.

Health director qualifications (HB 498; Chapter 612): House Bill 498 sets as a minimum requirement for a local health director one of the following: (1) MD degree; or (2) masters in public health administration plus one year managing public health programs; or (3) masters in another public health field plus three years managing public health programs; or (4) masters related to public health plus two years managing public health programs; or (5) masters in a related field plus three years managing public health programs; or (6)bachelors degree in public health administration or public administration plus three years experience managing public health programs. Before appointing a person with qualification (5), a local board of health must forward a candidate's application to the State Health Director to determine that the masters degree is related to public health. The bill becomes effective January 1, 1992.

Public health projects (HB 183; Chapter 548): House Bill 183 directs the Department of Environment, Health, and Natural Resources to conduct public health related projects. The various projects include: (1) increasing the capacity of local health departments to secure private sector resources; (2) establishing a statewide system for assessing health status and needs in every county; (3) developing a computerized statewide data collection system; and (4) adopting and implementing statewide health outcome objectives by the Commission for Health Services. The bill became effective upon ratification, July 4, 1991.

Public health mission (HB 499; Chapter 299): House Bill 499 establishes the mission of the public health system and defines the essential services that shall be available and accessible to all residents of the State. The bill becomes effective October 1, 1991.

Clarify lead poisoning law (HB 506; Chapter 300): The 1989 General Assembly passed legislation which provided for the prevention and control of lead poisoning in children. A primary component of the law requires property owners to eliminate lead hazards from homes, schools, and day care facilities. However the statute did not prevent landlords from evicting tenants from a dwelling and then renting it to another family with children. House

Bill 506 adds a provision to the current statute that when the Department of Environment, Health, and Natural Resources issues an order to abate a lead poisoning hazard, removal of children from the facility does not constitute an abatement. The bill became effective June 17, 1991.

Hospital must itemize charges (HB 588; Chapter 310) House Bill 588 requires all hospitals licensed pursuant to G. S. 131E, Article 5, upon request, to itemize charges on a discharged patient's bill within 30 days of discharge. The patient shall be notified that he may request an itemized bill. The provisions are effective for bills issued on or after October 1, 1991.

Housing of safekeepers (HB 1044; Chapter 535): Whenever prisoners are arrested in such numbers that the county jail is inadequate for safekeeping of such prisoners, the resident judge of superior court may order the prisoners transferred to a State unit. Such prisoners have been designated "safekeepers". House Bill 1044 amends G. S. 162-39 to allow the admission of safekeepers to an inpatient prison medical or mental health unit when a prison health care clinician considers it necessary to admit a safekeeper to such a facility. The bill became effective upon ratification, July 3, 1991.

Imminent hazard redefined (SB 360; Chapter 631): Senate Bill 360 amends G. S. 130A-2 to define "imminent hazard" as a threat to human life, or serious physical injury, or of serious adverse health effects. Before this change "imminent hazard" included "immediate threat to life". The bill became effective upon ratification, July 11, 1991.

"EACH" program authorization (SB 717; Chapter 521): The Essential Access Community Hospital (EACH) is a grant program established by the federal government to increase Medicare reimbursement to rural hospitals. Senate Bill 717 authorizes the Office of Rural Health to participate in the "EACH" program. The bill became effective July 1, 1991.

Contested case hearings change (SB 325; Chapter 143): Senate Bill 325 amends the statutory chapter on health care facilities to provide a 30-day time limit for filing contested case petitions after mailing of notice of an agency decision. The bill also amends the Nursing Home Licensure Act to provide that contested case petitions must be filed within 20 days after mailing of notice of: (i) denial of license renewal; (ii) recall, suspension or revocation of an existing license; or (iii) suspension of admissions. The act was effective on July 1, 1991, and applies to petitions filed on or after that date.

State nutrition program (SB 357; Chapter 188): Senate Bill 357 allows the nutrition program in the Department of Environment, Health, and Natural Resources to advise local agencies in the establishment of food, nutrition, and food service management standards. It also gives the program additional discretion in deciding which activities to conduct. The act was effective on June 3, 1991.

Nurse aide registry (SB 326; Chapter 185): Senate Bill 326 amends G. S. 131E-111 to establish authority for the Department of Human Resources to maintain a registry of names of all nurse aides working in nursing facilities in North Carolina. This registry includes findings of abuse, neglect, and misappropriation by an aide of a client's property in a nursing facility. There is also established a mechanism for an aide to contest a finding of abuse, neglect, or misappropriation. The bill became effective July 1, 1991.

Infant mortality reduction plan (HB 83; Chapter 689) House Bill 83 provided funds for the second and third years of the State's five year plan to reduce the infant mortality rate. This includes the following for the 1991-92 fiscal year: (1) $43,892 to the Office of Rural

Health for one position for maternity care coordinator and expansion of the physician/nurse midwife recruitment; (2) $356,648 to expand the Medicaid service package to cover nutritional counseling, psycho-social counseling, and home visits by maternity care coordinators and public health pre- and postpartum; (3) $620,000 to establish two new regional outpatient and residential treatment centers for substance abusing pregnant women which is effective 1-1-92 and continue support for Robeson Center; (4) $300,000 to provide funding for Medicaid transportation services for pregnant women and children through local DOT public transportation plans; (5) $300,000 to expand the Rural Obstetrical Care Incentive Program; (6) $500,000 to expand the WIC program; (7) $189,769 to fund one position in the State Public Health Laboratory for newborn screening; (8) $125,000 for maternity care coordination for non-Medicaid eligibles in public health departments which is effective 1-1-92; (9) $60,000 to continue funding for Bowman-Gray neonatal placement coordination; (10) $500,000 to expand high risk infant tracking for children under five which is effective 1-1-92; (11) $750,000 to expand family planning; (12) $75,000 to continue funding for Adolescent Pregnancy Prevention Coalition; (13) $40,000 to the Department of Insurance to study the extent to which women still lack insurance coverage for prenatal care and delivery services; and (14) $95,000 to the UNC Board of Governors to establish a nurse midwifery school at ECU. The total appropriation for FY 1991-92 is $4,491,600 and will increase to $5,779 493 in FY 1992-93. The above summary does not include the additional Medicaid funding to continue to cover pregnant women and infants up to 185% of the federal poverty guidelines. This change, made last year, is now included in the overall cost of the State's Medicaid program.

North Carolina Medical Database Commission amendments (SB 336; Chapter 480): Senate Bill 336 changes the sunset date of the N.C. Medical Database Commission from July 1, 1991, to July 1, 1996. It also requires that employer representatives on the Commission are to be from businesses unrelated to health care providers or third-party payors, and provides that the nurse and the health care provider on the Commission are to be persons who provide raw data to the Commission or who are employed by those persons. The Secretary of Environment, Health, and Natural Resources is added as an ex officio nonvoting member of the Commission. If a member of the Commission no longer satisfies the statutory requirements for appointment to the Commission, that member is to be removed. The bill also specifies conditions under which the Commission must release individual records to the State Health Director on the Health Director's request. The bill was effective July 1, 1991, except that changes regarding Commission membership by the nurse and health care provider become effective July 1, 1992.

Wholesale drug distributors (HB 1010; Chapter 699): House Bill 1010 establishes a licensing program for wholesale drug distributors in conformity with the requirements of the federal Prescription Drug Marketing Act of 1987. After January 1, 1992, the Act will prohibit unlicensed wholesale drug distributors from distributing prescription drugs in interstate commerce unless that person is exempted by the Act. Conviction of distributing drugs without a license and other violations of the Act carry a maximum penalty of 10 years imprisonment or a $250,000 fine or both. The Commissioner is also authorized to impose a civil penalty of up to $10,000 for violations.

Under this bill, wholesale drug distributors must obtain an annual license from the Commissioner of Agriculture. There is a reciprocity provision for out-of-state distributors, and a provision for wholesale distributors who have no facilities in North Carolina. The bill requires the establishment of written policies for the receipt, storage, security, inventory, and distribution of prescription drugs. The bill sets up a five member Wholesale Distributor Advisory Committee in the Department to review all rules proposed by the Commissioner and to advise the Commissioner on the implementation and enforcement of the Act.

The bill becomes effective January 1, 1992. The Commissioner may issue a wholesale distributors license to applicants who had a facility in the State on July 1, 1991 without an inspection.

Licensing and Certification

Dietetics/nutrition practice act (HB 564; Chapter 668): House Bill 564 provides for licensing and regulation of persons engaged in the practice of dietetics/nutrition. The bill creates a seven member Board of Dietetics/Nutrition. In order to qualify for a dietitian/nutritionist license an applicant must either: currently be a Registered Dietitian; or have completed a bachelors degree in nutrition or a related field of study and completed 900 hours of clinical practice and passed an examination set by the Board of Dietetics/Nutrition; or have a masters degree in nutrition or a related field and completed 900 hours of supervised practice and passed the Board's examination; or have a doctorate in nutrition, an equivalent field, or medicine.

The act does not apply to: health care professionals licensed under Chapter 90 of the General Statutes; students and trainees fulfilling experience requirements or course work for licensure; nutritionists who are employees of certain federal agencies; dietetics/nutritionist aides; certain State or local government employees practicing dietetics/nutrition; retailers of food, dietary supplements and other goods; certain persons providing weight control services; employees or independent contractors of hospitals; herbalists; and persons not holding themselves out as a dietition or nutritionist when furnishing nutrition information on food, food materials, or dietary supplements. The act becomes effective October 1, 1991.

Clinical social worker certification (SB 694; Chapter 732):Senate Bill 694 makes mandatory certification for clinical social workers, and, with certain exceptions, prohibits the practice of clinical social work by anyone not certified as a clinical social worker. The bill grandfathers persons engaged in clinical social work practice for one year prior to January 1, 1992, provided those persons pay the required fees prior to January 1, 1993. The bill exempts social work students, governmental employees, and employees of hospitals and certain other health care facilities. The bill also provides for a temporary license and adds one more clinical social worker to the Board . The bill becomes effective January 1, 1992 and is repealed effective January 1, 1997.

Nursing practice act amendments (SB 329; Chapter 643): Senate Bill 329 amends the Nursing Practice Act by allowing only registered nurses holding an active license to vote for members of the Board of Nursing; deleting the requirement that examinations given by the Board must be written examinations; changing the conditions for issuance of a temporary nursing license; requiring the Board to investigate any information it receives concerning violations of the Nursing Practice Act or rules established under the Act; allowing the Board to revoke, suspend, or deny a license for violations of the Nursing Practice Act or the rules established under the Act, not just for willful violations; limiting the types of institutions that may operate a nursing program to general hospitals and approved post-secondary educational institutions, and; making the operation of a non-Board approved refresher course for activation of a license a violation of the Nursing Practice Act. The bill became effective July 12, 1991.

Fee-based practicing pastoral counselors (HB 881; Chapter 670): House Bill 881 establishes a certification system for persons who practice pastoral counseling and pastoral psychotherapy for a fee. The bill establishes a seven member Board of Examiners of Fee-based Practicing Pastoral Counselors and sets forth requirements for certification, including

education and experience requirements. It also prohibits persons from representing themselves as certified fee-based practicing pastoral counselors or associates without being certified in N.C. The bill becomes effective October 1, 1991.

Home care licensing (HB 168; Chapter 59): House Bill 168 creates a single level of licensure for many types of agencies that provide home care services: home health agencies, agencies that provide continuous nursing care, agencies that provide in-home aide services, and agencies that provide sophisticated services such as intravenous technologies. The bill does not cover sole practitioners or nursing registries that disclose certain information, physical, occupational, or speech therapists, health promotion, preventative health and community health services, and maternal and child health provided by a public health department, developmental evaluation clinics, hospitals when providing follow-up care initiated within six months, mental health facilities, certain school services, midwifery services, hospice, and incidental health care provided by an employee of a physician. The North Carolina Medical Care Commission is to develop a core set of requirements for all covered agencies and specific service requirements for different levels of service for the agencies covered by the bill. The bill becomes effective July 1, 1992.

Dentist/general anesthesia (SB 58; Chapter 678): Senate Bill 58 allows independent administration of anesthetics of any kind by a dentist working in an accredited hospital facility of not more than 144 beds if such dentist has successfully completed a residency in anesthesiology approved by the American Society of Anesthesiologists at a medical school accredited by the Liaison Commission on Medical Education of the Association of Medical Colleges and is certified by the National Board of Anesthesiology. This act became effective July 13, 1991 and its authority expires July 1, 1996.

Changes in podiatry practice act (SB 316; Chapter 457): Senate Bill 316 amends the statutes governing podiatrists to allow the Board of Examiners to raise the fee charged to applicants for examination or reexamination from $200 to $350 and to increase the fee for podiatry license renewal from $150 to $200. The number of years in a college or university required for application for a license is increased from two years to three years. It further amends the statute to authorize the Board to issue temporary licenses to applicants who are podiatry residents and to require at least five years prior practice in another state in order to qualify for comity admission, with at least three of those years being in a state that grants similar reciprocity to North Carolina podiatrists. The bill became effective upon ratification, July 1, 1991.

Chiropractic diagnostic imaging (SB 684; Chapter 633): Senate Bill 684 requires the Board of Chiropractic Examiners to certify the competence of a chiropractic employee who practices X-ray technology or any other diagnostic imaging. Applicants for certification must demonstrate proficiency in five listed technical fields. The Board may adopt rules pertaining to initial education requirements, examination of applicants, and continuing education requirements. The bill became effective upon ratification, July 11, 1991.

Board of medical examiners subpoenas (HB 355; Chapter 348): House Bill 355 allows the Board of Medical Examiners to subpoena patient records, notwithstanding the physician-patient privilege. However, the Board may not release the identity of a patient unless the patient expressly consents to the disclosure. The bill becomes effective October 1, 1991.

Controlled substances security (HB 532; Chapter 309): House Bill 532 authorizes the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services to adopt rules concerning security requirements for controlled substances. The bill becomes effective October 1, 1991.

Medicare/Medicaid

Medicaid therapeutic leave changes (HB 372; Chapter 126): Persons who are recipients of Medicaid in nursing homes may leave the facility under certain conditions without losing their place in the facility. House Bill 372 makes two changes in the program by: (1) calculating the amount of leave by calendar year rather than the current 12 month period; and (2) increasing the number of consecutive days that may be taken without approval from the Division of Medical Assistance from 14 days to 15 days. The bill became effective July 1, 1991.

Medicare eligibility change (HB 373; Chapter 127): By federal mandate, certain qualified working individuals are eligible to have the State Medicaid program pay for Part A of the Medicare premium. House Bill 373 authorizes this mandate in statute. The bill became effective July 1, 1991.

Medicaid state/federal coordination (HB 996; Chapter 388): House Bill 996 conforms State law to federal law by stating: (1) that the State will reimburse a provider under the Program at the amount approved by the federal Health Care Financing Administration; and (2) that the effective date of a change in a reimbursement amount is the effective date set by the federal Health Care Financing Administration. This language makes clear that when the federal government approves a reimbursement amount based on a method established by the Division, the effective date of the reimbursement amount is the date set by the federal Health care Financing Administration and not the date set by APA. This change allows federal reimbursement sooner thereby increasing reimbursement. The bill becomes effective September 1, 1992.

Mental Health

MH/MR/SAS care in jails (HB 428; Chapter 237): House Bill 428 requires that minimum medical care standards for local confinement facilities (jails) include mental health, mental retardation and substance abuse services. The bill also requires the local health director to consult with the area mental health, developmental disabilities, and substance abuse authority before approving a medical care plan for a local confinement facility. The bill became effective June 6, 1991.

MH/DD/SAS jail recommendations (SB 376; Chapter 482): Senate Bill 376 adopts the recommendations of the Mental Health Study Commission concerning mental health, developmental disabilities, and substance abuse services in jails. The act was effective on July 2, 1991.

Attorney General commitment role (HB 427; Chapter 257): House Bill 427 clarifies the responsibilities of the Attorney General's staff in commitment hearings, rehearings, and supplemental hearings for respondents who are involuntarily committed to State facilities for the mentally ill and to the University of North Carolina Hospitals at Chapel Hill. The act became effective upon ratification, June 4, 1991.

Mental health contract services (SB 293; Chapter 215): Senate Bill 293 bill allows area mental health programs to provide services under contract to governmental and private entities, including Employee Assistance Programs. The bill became effective upon ratification, June 5, 1991.

Mental health client records (SB 372; Chapter 359): Senate Bill 373 allows any State facility or the psychiatric service of the University of North Carolina Hospitals to share confidential information with any of the other of the above listed facilities without the previously required written determination by the responsible professional that the disclosure is necessary to coordinate the care of the patient. The bill becomes effective October 1, 1991.

Mental health inmate services (SB 516; Chapter 405): Senate Bill 516 eliminates the authority of the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services to adopt substance abuse standards for prison inmates and makes other technical changes. The bill also forth qualifications for three of the nine members of the Substance Abuse Advisory Council, which gives substance abuse consultation to the Secretary of the Department of Correction, and makes changes regarding the terms of members. The bill became effective June 26, 1991.

Mental health records access (SB 771; Chapter 544): Senate Bill 771 allows information regarding a patient's diagnosis and prognosis, medications used and side effects, and the patient's progress to be given to the next of kin or family member who has a legitimate role in the patient's treatment with consent of patient or the patient's legally responsible person. The consent may be written or oral, but if oral, the client must consent in front of a witness selected by the client. The bill allows the family to request certain additional information which, if the patient has consented to the disclosure described in the first sentence, may be provided after notification to the client. If the next of kin or family member asks for information other than that set forth in the bill, the responsible professional either may provide the information or refuse to do so based on standards specified in the bill. The bill also requires the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services to adopt rules to define the "legitimate role" referred to above. The bill became effective July 4, 1991.

Mental health client transportation (SB 470; Chapter 704): Senate Bill 470 provides that magistrates, as well as clerks of court, may order law enforcement officers to transport involuntarily committed clients, voluntarily admitted minors, and certain other clients from one 24-hour facility to another. The bill becomes effective October 1, 1991.

Adopt substance abuse plan (SB 294; Chapter 216): Senate Bill 294 adopts the Adult Substance Abuse Treatment Plan approved by the Mental Health Study Commission to provide policy guidance for developing services. The act was effective on June 5, 1991.

Miscellaneous

DSS representatives (HB 440; Chapter 258): House Bill 440 amends the duties and responsibilities of the county director of social services to allow the director to delegate to the social services staff any and all of the duties specified in G. S. 108A-14. Conforming changes are also made in the Juvenile Code (G. S. 7A-517). The bill became effective upon ratification, June 11, 1991.

Continuing care amendments (HB 483; Chapter 196): House Bill 483 amends the law concerning continuing care facilities. The bill does the following: requires those in the business of offering, as well as providing, continuing care to be licensed; allows the Insurance Commissioner to require a continuing care facility to provide an actuarial report about its capacity to meet its contractual obligations to residents; rewrites provisions concerning financial disclosure to prospective residents of new and existing facilities; adds

nonrefundable fees specified in a contract to the fees that may be retained upon cancellation of the contract; requires facilities to maintain specified operating reserves; rewrites the law governing funds that facilities must put in escrow accounts; provides for release of escrowed funds to subscriber or resident upon death, nonacceptance by the facility, or voluntary cancellation. The bill became effective upon ratification, June 3, 1991.

Interpreter fee authorization (HB 485; Chapter 465): House Bill 485 authorizes the Division of Services for the Deaf and the Hard of Hearing to charge a $50 fee for participation in the Interpreter Classification System Program, to be used in the operation of the program. The act was effective on July 1, 1991.

Notice of intent to eject (HB 951; Chapter 166): House Bill 951 provides that if a tenant notifies the landlord that the tenant wants to apply for emergency assistance for rental payments from the local department of social services, the landlord must, upon the tenant's request, give the tenant a written, signed statement, stating: (1) any past due rent, (2) any late fee, and (3) that the landlord may pursue summary ejectment if the rent is not paid. It also provides that such a statement shall be sufficient formal notification of eviction under the AFDC Emergency Assistance Program. The act was effective on July 1, 1991, and expires on June 30, 1992.

PENDING LEGISLATION

Aging

UNC gerontology funds (HB 71): House Bill 71 would appropriate to the Board of Governors $100,000 to create the position of Gerontology Coordinator in the General Services Administration.

In-home funds (HB 72 and SB 76): These companion bills would appropriate additional State monies for in-home services for the elderly.

Long-term care ombudsman funds (HB 73 and SB 77): These companion bills would appropriate State monies to increase the working hours of the 14 part-time ombudsmen.

Transportation assistance funds (HB 74 and SB 78): The purpose of these companion bill is to reauthorize funding of the transportation assistance program at the same $2 million level.

Alzheimer's association funds (HB 145 and SB 79): These companion bills would appropriate $80,000 for each year of the biennium to be divided equally among the four Alzheimer's Chapters in North Carolina.

RSVP program funds (HB 579): House Bill 579 would appropriate $150,000 to the Division of Aging for retired senior volunteer programs. $100,000 would be used for new programs and $50,000 would fund existing programs.

High-risk elderly funds (HB 1204 and SB 857): These companion bills would appropriate $1.1 million each year of the biennium to the Division of Aging to provide services and establish coordinated managed care programs for the high-risk elderly in Cleveland, Durham, Pamlico and Surry counties. The Division of Aging is to establish guidelines and

the county commissioners in each county are to approve a plan consistent with these guidelines.

Senior Citizen's Federation funds (SB 552): Senate Bill 553 would appropriate 40,000 to the North Carolina Senior Citizen's Federation, Inc.

Equalize homestead exemption (HB 1279): House Bill 1279 would change the method of granting the homestead exemption by indexing the amount of the exemption and would also phase out the State reimbursement to localities for a portion of the lost tax revenues.

Index homestead exemptions-2 (HB 1283): House Bill 1283 would Index the amount of the property tax homestead exemption and the amount of the income limit for eligibility for the exemption.

Elderly property tax deferral (SB 57): Senate Bill 57 would permit elderly individuals to defer payment of property tax increases on their residence until the property is transferred. It would apply to North Carolina residents 65 or older with disposable income for the preceding calendar year of $ 15,000 or less.

Retirement equitable distribution (HB 397): House Bill 397 would clarify the authority of the courts to equitably divide pension, retirement, and deferred compensation plan benefits.

Health

AIDS testing without consent (SB 755): Senate Bill 755 would permit a licensed health care provider or facility to test a person for HIV infection without that person's consent when the
person's attending physician determines that there has been a significant risk of transmission of the HIV infection due to a blood or body fluid exposure during a medical procedure.

No separate consent for AIDS testing (SB 756): Senate Bill 756 would permit a licensed physician rendering medical services to a person with adequate consent to order an HIV test without a separate consent if, in the physician's reasonable medical judgment, the test is appropriate for treatment of the person or protection of health care workers. The bill also requires the patient to receive notification that a test may be performed and information on the test results.

Funeral and burial trust act (SB 51): Senate Bill 51 would transfer regulatory authority over preneed funeral funds from the Banking Commissioner to the Board of Mortuary Science and rewrite the Funeral and Burial Trust Act.

Prescription drug assistance act (HB 108): House Bill 108 would establish a program in the Department of Environment, Health, and Natural Resources to provide assistance in purchasing arthritis, diabetes, epilepsy, and cardiovascular disease medications to persons whose income is less than 200% of the poverty level.

Department of Human Resources license fees (HB 1255): House Bill 1255 would have imposed licensing fees for the first time for health care facilities licensed or certified by the Division of Facility Services.

Jail emergency medical services (SB 651): Senate Bill 651 limits the responsibility of local confinement facilities or jails to pay for emergency medical treatment for prisoners.

Audit inmate medical records (HB 1045): House Bill 1045 would prohibit hospitals from charging the Department of Correction or any of its auditing contract agents an audit fee to audit an inmate's hospital bill.

Physicians promote highway safety (SB 315): Senate Bill 315 would grant good faith immunity from any civil or criminal liability to a physician or optometrist who reports a patient to the Division of Motor Vehicles who in their good faith opinion is unable to safely drive.

Medicaid/Medicare

Increase Medicaid reimbursement (HB 1215 and SB 908): These companion bills would increase Medicaid reimbursement by assessing hospitals $90 million. The funds assessed from hospitals would be used to draw down federal matching dollars for the State Medicaid program. Hospitals would receive an increase in reimbursement for Medicaid while the State Medicaid program would be expanded to include all elderly, blind and disabled North Carolinians up to 75% of the federal poverty guidelines and all supplemental security income recipients.

STUDIES

Independent study commissions: (1) Child Fatality Task Force; (2) Commission on Children with Special Needs; (3) Social Services Study Commission; (4) Study Commission on Aging; (4) Birth-Related Neurological Impairment Study Commission; (5) Commission on the Family; (6) Mental Health Study Commission, (7) Public Health Study Commission.

Legislative Research Commission: The following subjects may be studied by the Legislative Research Commission: child day care issues; medical malpractice claims arbitration; public health system; prehospital emergency cardiac care; Emergency Medical Services Act of 1973; licensure of radiologic technologists.

MAJOR DEFEATED LEGISLATION

Aging

Long term care managers (SB 731): Senate Bill 731 would give the Department of Human Resources another remedy against long-term care facilities that are being operated inadequately. Under certain conditions, it would permit DHR to petition the court for appointment of a temporary manager. If granted, the temporary manager would be granted broad control over the operation of the facility. The court would review the need for the temporary manager every 30 days.

Health

Birth impairment fund (HB 546 and SB 718): These two bills would have created a no-fault injury compensation system for birth-related neurological impairment injuries. There would have been established a trust fund from an assessment on physicians and hospitals up to a combined total of $170 per birth. Although the bills failed to pass either the House or Senate during the 1991 Session and are not eligible for consideration in 1992, the Birth-Related Neurological Impairment Study Commission was re-authorized and could recommend legislation which could be introduced and considered in 1992.

Triplicate prescription pads (HB 539) House Bill 539 would have required triplicate prescription pads for a controlled substance. Under the bill, all practitioners would have had to re-register with the Department of Human Resources in order to purchase "official" prescription forms. A copy of the prescription containing the patient's name, the drug prescribed and the date of treatment would be filed with DHR.

Determination of death act (HB 1042) House Bill 1042 would have adopted the uniform definition of "death" drafted by the Uniform laws Commission of the United States.

Licensing and Certification

Radiation technology practice act (SB 738): Senate Bill 738 would have established an occupational licensing board for radiation technologists. Although the bill is not eligible for consideration, the Legislative Research Commission may study the issue.

INSURANCE
(Linwood Jones, Lynn Marshbanks, Sally Marshall)

RATIFIED LEGISLATION

Health Insurance

Regulate Multiple Employer Welfare Arrangements (HB 433; Chapter 611): House Bill 433 regulates Multiple Employer Welfare Arrangements (MEWA's) that are not regulated by the federal Employee Retirement Income Security Act (ERISA). A MEWA is the pooling of employee health benefits by two or more employers. The bill prohibits non-ERISA MEWA's from operating without a license from the Commissioner of Insurance, and limits MEWA's eligible for a license to those that are (1) nonprofit; (2) established by a trade, industry, or professional association; (3) operated under a trust agreement giving a board of trustees complete fiscal control; (4) not offered or advertised to the public; and (5) operated according to sound actuarial principles. MEWA's must issue evidence of benefits and coverages to each eligible employee with a statement that the benefits are not established or underwritten by an insurance company and are not protected by an insurance guaranty fund. MEWA's must maintain excess insurance and establish appropriate loss reserves, and must file annual reports of financial condition and annual actuarial certifications of financial soundness with the Commissioner. The Commissioner has the authority to deny, suspend or revoke a MEWA's license for numerous reasons listed in the bill. The bill becomes effective January 1, 1992.

Mammogram/pap smear coverage (HB 347; Chapter 490): House Bill 347 requires health insurance contracts issued, renewed, or amended on or after January 1, 1992 to provide coverage for mammograms and pap smears. The bill applies to accident and health insurance policies, hospital and medical service plans (Blue Cross Blue Shield), Medicare Supplement plans, and HMO plans, but not to the State Plan. Mammograms must be performed in an accredited facility in order to be covered; pap smears must also meet accreditation standards to be covered. The N.C. Medical Care Commission is directed to adopt standards (rules) for pap smears and for facilities that perform mammograms. In the meantime, a facility performing mammograms must meet the federal standards for health Medicare/Medicaid coverage. Mammograms are covered as follows: one or more mammograms a year for women at risk of breast cancer; one baseline mammogram for women ages 35 through 39; one mammogram every other year for women ages 40 through 49; one mammogram a year for women ages 50 or over. The bill also requires coverage for one pap smear a year, or more frequently if recommended by a physician. (The Small Employer Group Health Reform Act (HB 1037) requires that mammograms and pap smears be covered in the "standard health plan" to the same extent as required by this bill; the Insurance Commissioner is to consider including these coverages in the "basic health care plan".) The bill became effective upon ratification, except for Sec. 5, which becomes effective January 1, 1992.

Small employer group health reform (HB 1037; Chapter 630): The purpose of House Bill 1037 is to help make accident and health insurance available to small employers (employers with 5 to 25 full-time employees). The Insurance Commissioner will appoint a Small Employer Carrier Committee representing small employers, insurance agents, insurance carriers, and consumers served by group insurance plans for small employers. The Committee will recommend to the Commissioner a "basic" and a "standard" health

plan, each to have both a health insurance and an HMO-type plan. The plans are exempt from all statutes mandating coverage of health care services, except that the "standard" plan must include coverage for screening mammograms and pap smears as required by ratified HB 347. There are requirements for the plans, including limits on exclusions for preexisting conditions, a requirement that the policy be renewable at the option of the small employer in most circumstances, and limits on premium rates and increases in premiums. After approval of the plans by the Commissioner, every insurer offering health insurance to small employers must offer at least one basic and one standard plan. Every small employer who agrees to the premiums and other conditions must be issued the plan. The bill establishes a nonprofit N.C. Small Employer Health Reinsurance Pool and requires membership by all insurers issuing or providing health benefits coverage in N.C., except those that the Commissioner approves to be risk-assuming carriers. Annual assessments of members will fund the Pool, and the Pool is exempt from state tax. The provisions of G.S. 58-50-120, Small Employer Carrier Committee, and G.S. 58-50-125, Health Care Plans, formation, approval, offerings, became effective September 1, 1991. The remainder of the act becomes effective January 1, 1992.

North Carolina Medical Database Commission amendments (SB 336; Chapter 480) - See summaries under Human Resources

HMO amendments (HB 460; Chapter 195): House Bill 460 requires that evidence of coverage issued by a health maintenance organization (HMO) include a description of the reasons for which an enrollee's enrollment may be terminated for cause. It also permits an HMO to refuse to issue a converted policy to or to renew a policy for a person terminated from an HMO for cause. The bill also redefines an HMO's "assets" as tangible assets and other investments permitted under G.S. 58-67-60, provided that the depreciated cost of office furniture and equipment in the HMO's principal office may not exceed 10% of an HMO's net worth. The bill became effective June 3, 1991.

IV-D medical insurance information (SB 237; Chapter 419): Senate Bill 237 provides that if the Department of Human Resources notifies an employer in the state that information is needed to enforce a child support order or to locate a parent to collect child support, the employer must give the Department information about the employee's existing or available medical, hospital, and dental insurance coverage. The bill also provides that the insurer or employer of a parent required to provide insurance to a child must give the other parent, upon request, information on the child's insurance coverage. The act becomes effective on October 1, 1991.

Insurer Solvency

Insurance solvency program (SB 342; Chapter 681): Senate Bill 342 is based on model legislation from the National Association of Insurance Commissioners (NAIC) and attempts to ensure that the Department of Insurance fulfills the NAIC's new accreditation standards. Its provisions give the Department the power to monitor insurance companies' solvency more closely. A few of the bill's provisions follow: (1) Provides for acceptance of an examination report of a foreign company from its state of domicile if that state is accredited under NAIC guidelines, if the report was prepared by an accredited state, or if a representative of an accredited state participated in the examination; (2) Establishes examination completion and report issuance deadlines and provides that examination work papers are confidential; (3) Requires an actuarial opinion with each financial statement filing by an insurer; (4) Requires a broker controlled by an insurer to disclose that relationship to a prospective policyholder; (5) Gives the Department more power to

monitor a licensed insurer sold to new owners or reorganized, where the business of the insurer would change considerably; (6) Requires that interim, as well as annual, financial statements of insurers be filed with the NAIC, and provides for confidentiality of the financial analysis files; (7) Defines the types and quality of securities acceptable to the Department as collateral deposits by insurance companies for the protection of their policyholders; (8) Gives the Department more control over regulating the transfer of reinsurance from domestic insurance companies; (9) Requires the Department's approval for a domestic insurer to assume reinsurance if it has less than ten million dollars in policyholders' surplus; (10) Allows the Department to require that insurers maintain more capital and surplus to do business in the State; (11) Regulates the placement of business by a broker with an insurer controlled by the broker; (12) Completely rewrites the current investment laws for insurers (see Secs. 29 and 30); (13) Requires the Commissioner's approval before any assets can be pledged; (14) Increases the amount of unencumbered assets required to be maintained; (15) Requires foreign insurers to report any change in control or change in assets of 25% or more to the Commissioner; (16) Increases minimum capital and surplus requirements; (17) Charges an insurer's management with the obligation to report any financial impairment of the insurer to the Commissioner, and penalizes the failure to do so as well as certain acts causing an insurer's financial impairment or insolvency; (18) Gives the Commissioner authority to examine or audit the books or records of any person if they relate to the business activities of an insurer that has been put under receivership law provisions; (19) Provides more grounds for the Commissioner to put a domestic insurer under supervision, and specifies what the Commissioner could require an insurer to do to improve its financial situation; (20) Provides for administrative supervision of insurers by the Commissioner, and provides the Commissioner with additional conditions that could cause an insurer to be put under supervision; (21) Requires agents of an insurer being liquidated to provide the receiver with policyholder information so the receiver may pay claims, refund premiums, and close the insurer's books; (22) Imputes personal liability on any person who is the recipient of any property as a result of a fraudulent transfer; (23) Specifies how obligations between insurers subject to liquidation orders and others may be set off or balanced out; and (24) Rewrites the Life and Health Guaranty Association law to conform to the NAIC model act (see Secs. 55-57 & 59). Except as otherwise noted, the act was effective on July 13, 1991.

Insurance guaranty association amendments (SB 581; Chapter 424): Senate Bill 581 provides that the following persons, and their beneficiaries, assignees or payees, are covered by the state's Insurance Guaranty Association Act: (1) a life, health, or accident insurance policy holder who is a North Carolina resident, and (2) a life, health, or accident insurance policy holder who is a resident of a state with a statutory insurance guaranty association, who is not covered by that association, and who has a policy issued by an insurer domiciled in North Carolina and not licensed in the other state. The act was effective on June 27, 1991.

Motor Vehicle Insurance

No SDIP points for first accident (SB 39; Chapter 713): Senate Bill 39 prohibits premium surcharges or assessment of Safe Driver Incentive Plan (SDIP) points against an insured who is at fault in a "minor accident" (up to $1000 property damage), who is not convicted of a moving traffic violation in connection with the accident, and who has been covered by liability insurance with the same company or group for the six months before the accident. Also, no one in the vehicle owner's household may have been convicted for a moving traffic violation or had any at-fault accidents in the three years before application for a policy or date of preparation of the policy renewal. If an insured has been covered

by liability insurance with a company for less than six months preceding the accident, and the other requirements are met, an insurance company may choose not to assess a premium surcharge or points. Once the insured has been covered for six months, any premium surcharge or points must be removed. The act became effective July 16, 1991.

No SDIP points for certain speeding offenses (HB 300, Ch. 101): House Bill 300 provides that there will be no Safe Driver Incentive Plan (SDIP) points nor premium surcharges for speeding 10 miles per hour or less over the speed limit when the speed limit exceeds 55 miles per hour. The relief is limited to persons with no previous moving violation convictions during the three year period preceding the speeding offense. The act becomes effective January 1, 1992 and applies to offenses occurring on or after that date.

Increase Motor Vehicle Property Damage Insurance (HB 826; Chapter 469): House Bill 826 increases from $10,000 to $15,000 the minimum amount of property damage liability insurance for motor vehicles. The bill also makes conforming increases in related motor vehicle liability insurance and bond laws. The minimum requirements for bodily injury liability are not affected by the bill. The act becomes effective for all new or renewal policies written to be effective on or after January 1, 1992.

Redefine "clean risk" (SB 652; Chapter 709): Senate Bill 652 rewrites the definition of "clean risk" in the North Carolina Motor Vehicle Reinsurance Facility to make clear that the driving experience of persons in the owner's household must be as "licensed drivers" and to require that none of those persons may have been assigned any Safe Driver Incentive Plan points during the three years before the application for insurance or preparation for renewal. The act becomes effective on October 1, 1991.

Uninsured and underinsured motorist coverage (SB 688; Chapter 646): Senate Bill 688 amends G.S. 20-279.21(b)(3) and (4) to provide that if a motorist buys uninsured or underinsured motorist coverage, he or she may buy coverage in an amount no less than the statutorily-required bodily injury liability limits, nor more than one million dollars. A named insured's selection of an amount (or no amount) of uninsured or underinsured motorist coverage binds all insureds and vehicles under the policy; the named insured must make a written request to exercise another option. The bill also prohibits intrapolicy or interpolicy stacking of uninsured motorist coverage and intrapolicy stacking of underinsured motorist coverage. The bill also clarifies that an "underinsured highway vehicle" is one for which the sum of the liability limits under all policies in force at the time of the accident is less than the underinsured motorist coverage limits of the vehicle involved in the accident and insured under the owner's policy. The bill also provides that the limit of underinsured motorist coverage applicable to a claim is based on the coverage applicable to the vehicle involved in the accident. The bill also provides that if a claimant is insured under the underinsured motorist coverage on different policies, the limit of coverage is the difference between the amount paid to the claimant under the exhausted policies and the total limits of the claimant's underinsured motorist coverages as determined by combining the highest limit available under each policy. The substantive provisions of the act become effective 60 days after the Insurance Commissioner approves rate and policy form filings made by the North Carolina Rate Bureau. The Rate Bureau must make these filings by September 10, 1991. The act was effective on July 12, 1991. It will not affect claims arising before, nor litigation pending on, the effective date of the substantive provisions.

Vehicle insurance cancellation (SB 307; Chapter 402): Senate Bill 307 provides that an insurer is not required to notify the Division of Motor Vehicles when one of its liability policies is terminated if: (1) the insurer issues a new insurance policy upon cancellation or termination of the old policy, (2) no lapse in coverage results, and (3) the insurer sends the

certificate of insurance form for the new policy to the Division. The act was effective on July 1, 1991.

Miscellaneous

Clarify funeral benefits (HB 78; Chapter 62): House Bill 78 clarifies that a funeral benefit provided to a member of a burial association shall not exceed $200 in cash or merchandise and service.

Continuing education hours (HB 621; ch. 554): House Bill 621 provides that insurance agents holding more than one of the following licenses is required to complete no more than 18 credit hours of continuing education annually: life and health, accident and health, fire and casualty, title, auto physical damage, medicare supplement and long term care. The 2-hour instructional course required of licensed agents holding supplemental licenses for medicare and long term care is included in the 18-hour limit. The bill also provides that unexpended revenues derived from continuing education fees do not revert to the General Fund. The bill was effective upon ratification, July 4, 1991.

License rental car agents (HB 717; Chapter 139): House Bill 717 regulates the sale of insurance by rental car agencies. A limited license allows sale of excess liability insurance, accident and health insurance, and personal effects insurance in connection with rental car agreements of 30 days or less. The licensee must provide to renters written material with certain information about the insurance, including that: (i) coverage may duplicate insurance coverage the renter already has, and (ii) the renter need not buy insurance to rent a car. Licensees must have training programs for employees dealing with rental customers. The act becomes effective on October 1, 1991.

Options for bond requirements (HB 788; chapter 212): House Bill 788 allows certain categories of licensees to file one of the following in lieu of a bond with the Department of Insurance: cash; certificate of deposit from a bank organized under N.C.'s laws, or from a national bank with its principal office in N.C.; or securities, held in accordance with Article 5 of Chapter 58. The four categories covered are surplus lines brokers and agents (Section 1); brokers (Section 2); insurance premium financing companies (Section 3); and collection agencies (Section 4). The act becomes effective October 1, 1991.

Register of Deeds Liability Insurance (HB 851; ch. 740): House Bill 851 requires a county to provide liability insurance coverage for its register of deeds to the same extent that it provides the coverage for other county officers or employees. The chairman of the board of county commissioners must notify the register of deeds of its intention not to provide insurance by the first Monday in December each year; otherwise, it is liable for damages that would have been covered by the insurance. This act became effective July 1, 1991.

Limited representative license (HB 865; Chapter 398): House Bill 865 allows a limited representative to be licensed, without examination, to sell credit property insurance and automobile physical damage insurance issued in connection with a loan. The act was effective on June 25, 1991.

Farm Insurance Coverage (HB 902; Ch. 339): House Bill 902 removes farm dwelling and farm personal property insurance coverages from the jurisdiction of the Rate Bureau. This act became effective June 19, 1991.

Insurance employees' activities/designated agents (HB 918; Chapter 562): House Bill 918 provides that insurance agency employees need not be licensed to perform certain office duties, if the duties do not amount to the sales, negotiation, or interpretation of policies, the signing or verification of applications, or an underwriting function. The bill also provides for transfer by designated agents under the North Carolina Motor Vehicle Reinsurance Facility of their designations. The act was effective on July 4, 1991.

Fraternal benefit societies/insurance instruction (SB 227; Chapter 476): Senate Bill 227 increases from $2,000 to $3,000 the maximum death benefit that the Insurance Commissioner may authorize certain fraternal benefit societies to pay to any one person. The bill also allows persons qualifying for the medicare supplement and long-term care insurance supplemental license to complete a six-hour course instruction requirement in lieu of taking the written examination, and it extends the time for them to qualify. The act was effective on July 1, 1991.

Firemen's Association changes (SB 273; ch. 240): Senate Bill 273 allows the North Carolina Firemen's Association to change its name in accordance with its bylaws. The bill also removes the $40,000 limit on the amount of real and personal property the Association can hold. The bill became effective on ratification (6/27/91).

Insurance department fees (SB 338; Chapter 721): Senate Bill 338 raises the amount of miscellaneous fees collected by the Department of Insurance. The act was effective on July 16, 1991.

Insurance substantive amendments (SB 339; ch. 644): Senate Bill 339 makes numerous amendments to the insurance laws. The following is a brief overview of each section's changes: (1) Requires unlimited assessment policies to print on the policy a prescribed warning about policyholders' liability; (2) Provides that a charitable organization has an insurable interest in the life of a consenting third person; (3) Makes conforming amendment relating to section 2; (3.1) Prohibits duplicative Employee Insurance Committees for state government employees; (4) Allows insurer subject to Insurance Regulatory Reform Act to develop and use its own rates and forms for unique risks, subject to Commissioner's approval; (5) Authorizes Commissioner to allow insurers to offer functional replacement coverage on fire policies to replace insured property with functionally equivalent property when property of like size, kind, and quality is not available; (6) Allows ocean marine insurance policies to be written without a license from the Commissioner; (7) Eliminates the requirement that annuities be dependent upon continued life; (8) Broadens the requirement of timely payment of death proceeds to beneficiaries to all policies paying death benefits, not just life and accident insurance policies; (9) Increases from $2,000 to $10,000 the amount of coverage to which an individual is entitled under a converted group life policy, unless the actual amount insured under the group policy was less; (10) Provides that the disclosure requirements for preneed funeral contracts funded by insurance policies are applicable to both individual and group policies; (11) Requires group health insurers to give their policyholders 45 days notice of policy revisions, rate increases, or nonrenewal; (12) Extends mandated newborn care coverage to HMOs and also to adoptive children upon their placement in the adoptive home if a petition for adoption has been filed and is pursued to a final decree of adoption; (13) Extends from 30 days to 90 days the time in which the Commissioner has to approve or disapprove an HMO policy form and from 30 to 60 days the time in which he has to approve or disapprove an HMO premium change before they are automatically deemed approved; (14) Requires health insurers to respond within 10 days to documented inquiry whether a transplant is covered; (15) Requires motor clubs to display their licenses at each office; (16) Provides for a limited representative license for surety bondsmen; (17) Authorizes Commissioner to revoke, suspend, deny or refuse to renew license of surety

bondsman for financial irresponsibility; (18) Prohibits spouses of certain law enforcement and criminal justice personnel from serving as a surety on a bond; (19) Increases the criminal penalties for violations of the bail bond laws; (20) Makes it a Class J felony for a bondsman to knowingly falsify a report to the Commissioner or the clerk of superior court; (21) Clarifies the Commissioner's authority to examine bail bondsmen's business activities through the general examination law applicable to insurers; (22) Requires agreements between principal and surety to defer bond premium payments to be in writing and to specify certain details of the agreement; and requires bail bond records to be segregated from other business records and to be maintained for a period of 3 years; (23) Requires out-of-state collection agencies to maintain a designated trust fund for collections owing to North Carolina creditors; (24) Allows the use of long-term care insurance policies with a prior hospitalization requirement as long as policies without the requirement are also offered; (25) Authorizes the Commissioner to transfer the deposit of an employer self-insured for workers compensation to the Self-Insurance Guaranty Association for the payment of workers compensation claims and premium taxes attributable to the employer; (26) Eliminates the Department of Insurance's responsibility for furnishing financial statement forms to insurers; (27) Increases the amount of prior notice an insurer must give its policyholder for nonrenewal of certain accident and health policies; (28, 29) Repeals the old cease and desist order law for violations of the unfair and deceptive trade practices act (sec. 29) and replaces it with a new, but similar, law (sec. 28); (30) Requires the parties to an appeal from a decision of the board of the Life and Accident and Health Insurance Guaranty Association to file their arguments and proposed orders in advance with the Commissioner; (31) Makes the same requirement as sec. 30 for North Carolina Insurance Guaranty Association appeals; (32) Eliminates the lower capitalization amount for stock companies organized in one state and increases the surplus requirements and number of risks for a town or county mutual company; (33) Adds a 2-year extension (until July 1, 1993) to the law governing joint underwriting associations for commercial property and liability insurance unavailable in the State; (34) Authorizes the Manufactured Housing Board to revoke, suspend, or deny the license of a manufactured home dealer or set-up contractor for knowingly using an unlicensed person to perform set-up work; (35) Clarifies that set-up contractors and dealers licensed by the Manufactured Housing Board must also meet the applicable requirements of any other licensing board; (36) Authorizes the Manufactured Housing Division of the Department of Insurance to provide clerical and staff support to the Manufactured Housing Board; (37) Increases from 30 to 45 days the required prior notice by an insurance fiduciary who intends to stop paying group insurance premiums and strengthens the penalty for violations; (38) Makes conforming changes in the language of the notice required under sec. 37; (39) Authorizes the Rate Bureau to consider proximity to bodies of water, to the same extent it considers proximity to fire hydrants, in setting credits for fire insurance rates; (40) Authorizes insurers to consider proximity to bodies of water, to the same extent it considers proximity to fire hydrants, in setting credits for fire insurance rates; (41) Provides for licensing by reciprocity of surplus lines insurers licensed in a state bordering North Carolina if the licensing state meets certain requirements; (42) Shortens from 5 to 3 years the period during which records of surplus line contracts must be maintained; (43) Increases from $75,000 to $100.000 the amount of the bond that must be posted with the Secretary of State by a person issuing a warranty on real property fixtures.

Senate Bill 339 became effective July 12, 1991, except for sections 8.9, and 12, which became effective September 1, 1991; and sections 1, 15, 16, 19, 22, 23, 28, 37 through 41, and 43, which become effective October 1, 1991.

Insurance technical amendments (SB 333; Ch. 720): Senate Bill 333 makes numerous technical amendments and corrections to the insurance laws. None of the amendments are substantive changes in the law. Many of the technical changes are corrections to cross-references within Chapter 58 of the General Statutes.

No required repair companies (HB 897; Chapter 386): House Bill 897 prohibits adjusters or appraisers from recommending to a claimant a particular service to repair property damage without making it clear that the claimant does not have to use that service. It also prohibits an adjuster or appraiser from accepting any renumeration from a repair service for recommending it to a claimant. The act became effective October 1, 1991.

Road service fee limit off (SB 249; Chapter 401): A "motor club" is defined by statute as a person or organization that promises its members to render three or more of certain listed services. The list includes "emergency road service," which is defined as the roadside adjustment of a motor vehicle so that it may be operated under its own power, if the cost of service is not over fifty dollars. Senate Bill 249 changes that definition by removing the fifty dollar restriction. The bill was effective on June 26, 1991.

TPA law rewrite (HB 482; Chapter 627): House Bill 482 rewrites the laws on third party administrators. It has the following provisions, among others: (1) Requires a written agreement between a TPA and an insurer; (2) Provides that premiums paid to a TPA are considered to be payments to the insurer and that claims forwarded by the insurer to the TPA are not considered to have been paid to the insured or claimant until that person receives payment; (3) Requires TPAs to keep their books and records in their offices for the period of the service contract and for five years after the contract ends and to make those records available for inspection by the Insurance Commissioner; (4) Sets out the responsibilities of the insurer and the TPA; (5) Requires TPAs to hold collected premiums in a fiduciary capacity; (6) Sets out criteria and limitations for compensation to the TPA by the insurer; (7) Requires TPAs to notify insureds about the relationship between the TPA and the insurer and to disclose certain information to the insurer; (8) Requires TPAs to be licensed with the Department of Insurance, and specifies criteria for licensing and grounds for suspension or revocation. The act was effective on October 1, 1991.

PENDING LEGISLATION

Insurance Premium Financing Companies (HB 846): House Bill would restore the pre-1989 law on the transfer of premium financing agreements between insurance premium financing companies.

STUDIES

Independent study commission: Conference on Access to Health Insurance.

Legislative Research Commission: The following subject **may** be studied by the Legislative Research Commission: Beach and FAIR Plans.

LOCAL GOVERNMENT
(Sherri Evans-Stanton, Robin Johnson, Carolyn Johnson)

RATIFIED LEGISLATION

Housing

Low income housing preservation (HB 165; Chapter 581): House Bill 165 amends existing law that authorizes a city to adopt an ordinance requiring that dwellings unfit for human habitation be repaired or demolished. Under HB 165, once a determination is made that a dwelling must be demolished, at least 45 days notice of the proposed demolition must be given to any organization or person known to be involved in providing or restoring dwellings for affordable housing that has filed a written request for such notices. During that 45 days organizations or persons interested in affordable housing may try to make arrangements with the owner to use the property to provide affordable housing. This bill becomes effective October 1, 1991.

Housing Code Notice (HB 290; Chapter 526): House Bill 290 amends G.S. 160A-445 to allow notice by publication of housing code enforcement complaints or orders in instances when the owners whereabouts are known but service by registered or certified mail has been refused. The act became effective July 3, 1991.

Rental assistance fund (HB 182; Chapter 582): House Bill 182 requires the North Carolina Housing Finance Agency to establish a demonstration program, within one or more counties, that creates a security and utility deposit revolving loan fund to enable people in shelters and transitional housing projects to move into permanent housing. The agency shall adopt rules to administer the fund and shall operate it within funds available through the Multifamily Rental Assistance Fund. The agency shall report to the Joint Legislative Commission on Governmental Operations by January 31, 1993. The act became effective July 1, 1991.

Housing code violations in Historic Districts (HB 912; Chapter 315): House Bill 912 authorizes municipalities to issue orders to vacate and close dwellings in historic districts if (1) after public hearing, the Historic District Commission determines that the property is of significance or value toward maintaining the character of the district and (2) the property has not been condemned as unsafe. The act became effective June 18, 1991.

Rental referral agency regulations (SB 779; Chapter 737): Senate Bill 779 authorizes rental referral agencies to charge a fee not to exceed $20.00 provided that (1) any and all advertising discloses clearly and conspicuously the agency's name, the fact that it is a referral agency, and the fact that it charges a fee and (2) the agency verifies the availability of property advertised prior to collecting a fee or obtaining the prospective tenant's signature on a contract.

Senate Bill 779, also, requires an agency to verify the availability of property within 8 hours of submitting property descriptions to an advertising medium, and property verification must be made not earlier than 96 hours prior to publication. The act became effective June 16, 1991.

Land Use Regulation

Subpoenas/Stop Orders/Zoning Votes (HB 1017; Chapter 512): House Bill 1017: (1) repeals G.S. 160A-80(c) which precludes cities with populations under 5000 from issuing subpoenas and compelling the production of evidence; (2) provides that boards of adjustment may subpoena and compel the production of evidence; (3) provides that property owners or builders may appeal stop orders involving alleged violations of local zoning ordinances by written notification to the board of adjustment; and (4) provides that the three-fourths vote requirement for protested zoning decisions does not apply to an amendment to an adopted special use district or conditional use district if the amendment does not (a) change the types of permitted uses (b) increase the approved density for residential development (c) increase the total approved size of non-residential development, or (d) reduce the size of any buffers or screening approved for the district. The bill became effective July 2, 1991 and applies to zoning decisions made on or after that date.

Annexation/services provided (HB 159; Chapter 25): House Bill 159 amends G.S. 160A-35 (Cities less than 5,000) and 160A-47 (Cities more than 5,000) to provide that no municipal policy or ordinance may diminish a municipality's participation in the construction or financing of major public services to a newly annexed area unless the policy or ordinance is effective at least 180 days before adoption of the resolution of intent to annex the area. This bill is effective as to resolutions of intent adopted on or after March 1, 1992.

Annexation documents filed (HB 370; Chapter 586): House Bill 370 clarifies the procedures filing annexation documents with the Secretary of State pursuant to G.S. 160A-29, 160A-39, and 160A-51. The bill becomes effective October 1, 1991 and applies to annexation documents filed after that date.

Taxes and Assessments

Drainage assessment notice (HB 132; Chapter 634): House Bill 132 amends the notice requirement in G.S. 156-93.1(a) by authorizing the board of drainage commissioners to either: 1) send notice to owners of property subject to assessment; or 2) publish notice 1/4 page in size, once a week for two successive calendar weeks in a newspaper having general circulation in the area. This bill becomes effective October 1, 1991.

Payment of property taxes and interest (HB 308; Chapter 584): House Bill 308 amends G.S. 105-321(e), effective upon ratification - July 8, 1991, to allow local governmental units to contract with financial institutions for receipt of payments of delinquent property taxes and interest. It also amends G.S. 105-357(b), effective for taxes imposed for taxable years beginning on or after July 1, 1991, to allow local tax collectors to accept tax payments by credit card and to add a fee to each credit card transaction to offset any service charge.

Distressed County designation (HB 1236; Chapter 517): House Bill 1236 provides that a county may be designated as a severely distressed county if its distress factor is one of the thirty-three highest in the State. A distress factor shall be assigned based upon the sum of (1) a county's rank by rate of unemployment, (2) a county's rank by rate of per capita income, and (3) a county's rank by percentage of growth in population. House Bill 1236, also, repeals the sunset provision for income tax credits to employers who create jobs in

severely distressed counties. The changes in distressed county designation are effective for taxable years beginning on or after January 1, 1992.

Water, Sewage, and Other Services

Metropolitan sewerage district board procedures (HB 713; Chapter 351): House Bill 713 amends G.S. 162A-67(d) to allow the district board of a metropolitan sewerage district to appoint an assistant secretary and assistant treasurer or an assistant secretary-treasurer, none of whom need to be members of the district board. The bill was effective upon ratification, June 20, 1991.

Collectible liens for county or city supported ambulances (HB 728; Chapter 595): House Bill 728 amends G.S. 44-51.4 to allow a county or municipality to use attachment and garnishment when charges for services by an ambulance service supplemented by municipal funds are not paid. The bill was effective upon ratification, July 8, 1991.

Dissolve sanitary district (HB 966; Chapter 417): House Bill 966 allows the County Board of Commissioners to dissolve a Sanitary District located entirely within one county when no District Board members have been elected for the preceding eight years and when certain conditions are met. The bill became effective upon ratification, June 26, 1991.

City require garbage service (HB 985; Chapter 698): G.S. 160A-317 authorizes a city to require connections to water or sewer service. House Bill 985 grants a city power to require an owner to do any of the following with respect to solid waste: (1) place solid waste in specified places or receptacles; (2) separate materials; (3) participate in a recycling program; or (4) participate in a solid waste collection service. A city may impose a fee for solid waste collection service, but the fee many not exceed the cost of the program. This bill became effective upon ratification, July 15, 1991.

Ordinance violations (HB 786; Chapter 415): House Bill 786 provides that a violation of an ordinance adopted by a Metropolitan Sewerage District is a misdemeanor punishable by a fine of not more than $50.00, or imprisonment for not more than 30 days. The bill becomes effective October 1, 1991.

Water and Sewer Authority (HB 1132; Chapter 516): House Bill 1132 authorizes the governing body of a single county to organize a Water and Sewer Authority pursuant to Chapter 162A of the General Statutes. The act became effective July 2, 1991.

Miscellaneous

Airport authority and certain school district security interests (HB 126; Chapter 741): House Bill 126 amends G.S. 160A-20 to authorize following local government units to purchase property using security interest: counties, cities, water and sewer authorities, airport authority sited entirely within a county with a population over 120,000 in an area of less than 200 square miles, airport authority in county in which there are two incorporated municipalities with population of over 65,000, and local school units in a county with a population over 90,000 with authority to levy a school tax. The bill became effective upon ratification on July 16, 1991.

Demolition orders (HB 211; Chapter 208): House Bill 211 amends G.S. 160A-443(5a) to allow public officers to issue orders to repair, or vacate and close dwellings. This bill became effective upon ratification on June 4, 1991.

Cemetery Act amendments (HB 301; Chapter 653): House Bill 301 increases the maximum limit for various fees and financial requirements related to cemeteries, authorizes new fees, specifies that each failure to deposit funds in a trust fund is a separate offense, creates a new Class J felony for failure to deposit certain funds in a trust account if the delinquent deposits are at least $20,000, and declares non-government liens and other interests in certain cemetery company property void. The bill becomes effective on October 1, 1991.

Increase local ordinances fines (HB 682; Chapter 446): House Bill 682 increases the maximum fine for violations of ordinances from $50.00 to $500.00. The ordinance must expressly state that the fine is greater than $50.00. The bill becomes effective October 1, 1991 and applies to offenses committed on or after that date. The bill repeals all laws in conflict.

Purchases by volunteer fire departments (HB 714; Chapter 199): House Bill 714 amends G.S. 143-49.1 to allow volunteer fire departments and rescue squads to purchase other supplies, in addition to gas, oil and tires for their vehicles, under State contract through the Department of Administration. The bill was effective upon ratification, June 3, 1991.

Municipal airport authorities (HB 719; Chapter 501): House Bill 719 amends G.S. 63-53 to grant municipalities certain powers relating to air cargo development projects as authorized by Sec. 13 of Art. V of the Constitution of North Carolina. This bill became effective upon ratification on July 2, 1991.

Local revenue bond changes (HB 965; Chapter 508): House Bill 965 amends Chapter 159 of the General Statutes to authorize municipalities to finance revenue-producing utility or public service enterprise facilities owned or leased by the issuing unit through the issuance of revenue bonds. The bill also specifies the use of revenue bond project reimbursements as well as certain restrictions on the use of funds. The bill also amends G.S. 128-1.2 to provide for ex officio service by city representatives and officials. The bill became effective upon ratification on July 2, 1991.

Sheriffs' education and training standards (SB 422; Chapter 265): Senate Bill 422 provides that justice officers exempted from the required entry level certification standards of the North Carolina Sheriffs' Education and Training Standards Commission must meet those standards to retain certification. Justice officers and criminal justice officers are not required to maintain certification for any period served as Sheriff. The bill becomes effective October 1, 1991.

PROPERTY
(Giles S. Perry, Steve Rose)

RATIFIED LEGISLATION

Estates/Wills/Trusts

Survivorship law clarified (SB 689; Chapter 606): Senate Bill 689 amends G.S. 41-2, which deals with survivorship in joint tenancies. The bill specifically allows a party to create a joint tenancy with right of survivorship by a conveyance to himself and one or more other parties. This makes it clear that the "four unities" required at common law (time, title, interest and possession) are not required to create a joint tenancy with right of survivorship under this statute. The bill also validates any such conveyance from January 1, 1991. Senate Bill 689 becomes effective October 1, 1991.

Probate accounting period (SB 774; Chapter 485): Senate Bill 774 allows a personal representative to select the fiscal year on which annual accountings for estates are to be filed. The bill requires accounts to be filed by the fifteenth day of the fourth month after the close of the fiscal year and annually thereafter. In no event may a personal representative select a fiscal year-end that is more than twelve months from the date of death of the decedent or, in trust administration, more than twelve months from the date of opening of the trust. Senate Bill 774 is effective October 1, 1991.

Notice of claims against estates (SB 399; Chapter 282): Senate Bill 399 reduces from six months to three months the time for presentation of claims against a decedent's estate. The bill became effective on ratification and applies to decedent's dying on or after January 1, 1992.

Revival of will provisions (HB 419; Chapter 587): House Bill 419 provides that provisions of a will in favor of a former spouse that are revoked by the dissolution of the marriage will be revived by the testator's remarriage to that spouse. The act becomes effective October 1, 1991, and applies to persons dying on or after that date.

Amend durable power of attorney (SB 741; Chapter 173): Senate Bill 741 makes several changes in the statutes relating to durable powers of attorney. Where a durable power of attorney grants authority only upon the principal's incapacity or mental incompetence, any person may rely on an affidavit by the attorney-in-fact stating that incapacity or incompetence exists. A new subsection was added regarding revocation of a durable power of attorney that has not been registered with register of deeds to specify that the the power of attorney is revoked by (1) the death of the principal, (2) any method provided in the power of attorney itself, (3) the destruction by the principal while the principal is not incapacitated or incompetent, or (4) a subsequent written document executed like a power of attorney. If the attorney-in-fact executes an affidavit that he did not know of the revocation of an unregistered power of attorney or termination by death of the principal, the affidavit is conclusive proof of nonrevocation of the power of attorney at that time. Senate Bill 741 was effective upon ratification, May 30, 1991, and applies to all durable powers of attorney in existence or created on or after that date.

Renunciation of Future Interest (SB 392; Chapter 744): Senate Bill 392 clarifies the fact that the time for renouncing future interests under G.S. 31B-2(b) presently differs from the

time for disclaiming a future interest for federal estate tax purposes. The bill was recommended by the General Statute Commission. The act was effective upon ratification, July 16, 1991.

Termination of Small Trusts and Clarification of Charitable Trusts Administration Act (SB 395; Chapter 747): Senate Bill 395 adds a new Article to Chapter 36A. It permits the trustee of a small noncharitable trust, with assets valued at $10,000 or less, to terminate the trust if the trustee determines that the cost of administration would defeat or substantially impair the purposes of the trust. Instruments creating trusts may specify that the law will not apply. Senate Bill 395 also clarifies the provisions of Chapter 36A-53(b) (Charitable Trusts Administration Act) by updating the references to the Internal Revenue Code. The amendment to G.S. 36A-53(b) was effective upon ratification. The portion of the bill dealing with termination of small trusts becomes effective October 1, 1991 and will apply to trusts created prior to the effective date unless the trust contains spendthrift provisions. The new law will be applicable to all trusts (including spendthrift trusts) created on or after its effective date.

Power of Fiduciary to Split or Combine Trusts (SB 661; Chapter 192): Senate Bill 661 amends G.S. 32-27 to add two additional fiduciary powers that may be incorporated by reference in wills or trust instruments. A fiduciary is empowered to divide funds of one trust into two or more separate trusts representing two or more fractional shares of the funds or property being divided. A fiduciary is also empowered to consolidate trusts where the terms are substantially similar and the beneficiaries are identical. The act becomes effective October 1, 1991.

Personal Property

Change Unclaimed Garment Law (HB 662; Chapter 531): House Bill 662 makes changes in the law governing the disposition by laundries and dry cleaners of unclaimed clothing. Presently, the establishment must retain the garments for 60 days after they are delivered for cleaning. The bill changes this 60-day period to 90 days, and provides that the garments may then be disposed of after 30 days notice to the owner's last address by certified mail. The provisions requiring property worth more than $500 to be held for a period of one year are repealed. A new provision is added stating that after 180 days the laundry or dry cleaning establishment may dispose of the garments without giving any notice.

House Bill 662 also makes a change to the way unclaimed property may be disposed of by a sheriff. Presently, it may only be disposed of at public auction held at the courthouse door of the county. The amendment permits such auctions to be held at the county law enforcement headquarters. Municipal police departments may already hold such auctions at their headquarters. The act was effective upon ratification, July 3, 1991.

Indexing and Filing of Certain UCC Statements (HB 848; Chapter 164): House Bill 848 makes two changes to the Uniform Commercial Code. It deletes the requirement that the address of the debtor must be shown in the index of financing statements. It also requires the creditor to file the termination statement within 30 days after there is no further secured obligation. Written demand by the debtor is no longer required. With regard to other types of financing statements, the creditor must file termination statements directly. This is a change from the requirement that the termination statements must be supplied to the debtor on demand. The act becomes effective October 1, 1991.

Record of Consigned Goods (HB 1111; Chapter 536): House Bill 1111 requires persons who engage in the business of selling used tangible personal property (except motor vehicles) to keep a record of each item consigned for sale. The record must contain a complete description of the property, complete identification of the owner of the property, the date of consignment, and the owner's stated value. The owner is provided with a copy. Law enforcement agents may examine the records during business hours. Failure to keep the records is a misdemeanor. The section is not applicable to nonprofit organizations exempt from taxation under the Internal Revenue Code. The act becomes effective October 1, 1991.

Real Property

Minimum Land Records Standards (HB 850; Chapter 697): House Bill 850 amends G.S. 143-345.6 to provide that the Department of Environment, Health, and Natural Resources, in cooperation with the N.C. Association of Registers of Deeds and the North Carolina Bar Association Real Property Section, shall adopt rules specifying the minimum standards for lands records management; and a copy of these rules must be posted in each register of deeds office. The bill also adds a new section to Chapter 161 (Registers of Deeds) to require registers of deeds to follow the rules described in the bill, effective July 1, 1993. House Bill 850 became effective upon ratification, July 15, 1991.

Register of Deeds Vacancies, Terms (HB 206; Chapter 60): House Bill 206 amends G.S. 161-5 (filling vacancies in the office of the register of deeds) to require that the board of county commissioners appoint the person recommended by the county executive committee of the party which elected the register of deeds who vacated the office. The bill also amends G.S. 161-2 to state that all terms of registers of deeds are four years, and provides that the bill does not change the terms of registers of deeds already in office, or the time for their election. House Bill 206 became effective upon ratification, April 29, 1991.

Validate Certain Conveyances (HB 289; Chapter 489): House Bill 289 changes the effective date of numerous sections of the General Statutes which validate conveyances and documents where seals were omitted or notaries were not qualified, etc. All of the statutes are updated to cover instruments executed or actions taken prior to January 1, 1991. In addition, a new G.S. 45-24.3 is added which validates deeds or other conveyances executed prior to January 1, 1991 where an attorney-in-fact acted under a power of attorney in which the signature of the principal was not affixed under seal. The act became effective upon ratification.

Review of Exempt Property (SB 128; Chapter 134): Senate Bill 128 amends G.S. 105-282.1 to require that application for exclusion of property from property taxes must contain a complete and accurate statement of facts qualifying property for such exemption or exclusion. The bill requires the tax assessor to annually review at least one-eighth of the parcels in the county exempted or excluded from taxation to verify that they still qualify. The owner must make available information reasonably needed to verify the continuing qualification. The bill also makes changes in G.S. 105-273 which result in a failure to notify the assessor that the previously exempted or excluded property is no longer qualified is the same as failure to list the property. The act was effective upon ratification, April 10, 1991.

Property Tax Records Secrecy (SB 347; Chapter 77): Senate Bill 347 permits the county tax assessor to make certain confidential taxpayer business records available to the

Employment Security Commission upon request. Senate Bill 347 became effective upon ratification, May 8, 1991.

Notice of Settlement Act (HB 868; Chapter 261): House Bill 868 permits an attorney or owner of record interest in real property to file a notice of a pending settlement affecting title to real property that the attorney or owner reasonably believes will take place within three business days of filing. Filing of the notice establishes priority in the grantee or mortgagee for three business days as against the grantor's lien creditors or others claiming under the grantor. Recording of the deed or mortgage within three days of filing the notice continues this priority. Only one notice is allowed with respect to any particular settlement. House Bill 868 is effective July 1, 1992, but expires June 30, 1993.

Power of sale (SB 639; Chapter 255): Senate Bill 639 is intended to make it clear that foreclosure under a power of sale is applicable to a leasehold interest in real property which has been made subject to a mortgage or deed of trust. The act is effective October 1, 1991.

Record separate instruments (HB 849; Chapter 114): House Bill 849 amends various statutes to make mandatory the filing of separate instruments containing subsequent entries regarding deeds of trust, mortgages, and other instruments, rather than the previous practice of recording notations on the original instrument. The registers of deeds, however, are still permitted to continue making marginal notations as well. House Bill 849 becomes effective January 1, 1992.

Miscellaneous

Payments to Subcontractors (HB 1027; Chapter 620): House Bill 1027 amends G.S. 22C-2 which provides for payment to subcontractors. The amendment provides that payment by the owner to a contractor is not a condition precedent to payment to a subcontractor and payment by a contractor to a subcontractor is not a condition precedent to payment to any other subcontractor. It further provides that an agreement to the contrary is unenforceable. The bill seeks to codify, at least in part, the result in Statesville Roofing & Heating Company v Duncan 702 F.Supp. 118 (W.D.N.C. 1988). The act was effective upon ratification.

Security interests in rents and profits (SB 645; Chapter 234): Senate Bill 645 provides for registration of assignments of leases, rents, issues, and profits. The interest is then perfected from the time of recording and is valid and enforceable against subsequent assignees, lien creditors, and purchasers. If the assignment is a collateral assignment, after default the assignee is entitled to lease revenues, rents, issues, and profits subject to the assignment. The bill becomes effective October 1, 1991 and applies to leases, rents, etc. whether recorded prior to or after the effective date.

Historic Buildings Time Delay (HB 1060; Chapter 514): House Bill 1060 would lengthen the period for which an historic properties commission could delay the effective date of the certificate allowing demolition or relocation of an historic district property from 180 days to 365 days. The bill became effective upon ratification, July 2, 1991.

Public Bathroom Equity Act (HB 1108; Chapter 515): House Bill 1108 requires the Building Code Council to review the North Carolina State Building Code to ensure that an adequate number of rest room fixtures are available for women at newly constructed publicly and privately owned facilities where the public congregates. If diaper-changing tables are provided in women's rest rooms, such tables are also provided in men's rest rooms. The doors to the rest room stalls open to the outside, and unisex bathroom facilities

for disabled and handicapped persons are to be provided in strategic locations of large shopping centers, airports, major public buildings, and highway rest stops in order to allow spouses and other attendants to physically assist handicapped persons. The Building Code Council must report to the Human Resources Committees of the Senate and the House during the regular 1992 Session of the 1991 General Assembly. The act was effective upon ratification, July 2, 1991.

Abandoned Public Cemeteries (SB 177; Chapter 36): Senate Bill 177 adds abandoned public cemeteries to the provisions covered by Article 10 of Chapter 65 which presently covers access to and maintenance of private graves only. The act becomes effective October 1, 1991.

Emerald Isle Beach Access (SB 634; Chapter 365): Senate Bill 634 repeals a 1983 law requiring the Department of Environment, Health, and Natural Resources to build a regional beach access facility on Emerald Isle. Senate Bill 634 became effective upon ratification, June 24, 1991.

STUDIES

Legislative Research Commission: Amortization of Nonconforming Uses; Statewide Comprehensive Planning; Annexation Laws.

REDISTRICTING

(Bill Gilkeson, Terry Sullivan, Giles Perry, Linwood Jones, Carolyn Johnson)

RATIFIED LEGISLATION

(NOTE: REGARDLESS OF THE DATE ON WHICH THE GENERAL ASSEMBLY MAKES ELECTION-LAW BILLS EFFECTIVE, THEY CANNOT BE IMPLEMENTED UNTIL THEY ARE APPROVED BY THE U.S. ATTORNEY GENERAL UNDER SECTION 5 OF THE VOTING RIGHTS ACT OF 1965. THE ATTORNEY GENERAL WILL NOT OFFICIALLY CONSIDER BILLS FOR APPROVAL UNTIL THEY HAVE BEEN RATIFIED AND SUBMITTED TO HIM.)

Congressional redistricting (SB 16; Chapter 601): Senate Bill 16 draws new congressional districts for North Carolina based on the 1990 Census. Based on the Census, the new plan has 12 congressmen representing the State in the U.S. House of Representatives. Since 1961, North Carolina had had only 11 congressmen. For the first time in modern history, the 1991 congressional plan includes a district that is majority black--the First District has a total population that is 55.69% black. In addition, 51.34% of its registered voters are black. The bill was made effective upon ratification, July 9, 1991.

Senate redistricting (SB 17; Chapter 676): Senate Bill 17 draws new State Senate districts based on the 1990 Census. The plan increases from three to five the number of districts that are majority black. The bill reduces the number of multi-member districts and relies more on single-member districts, so that the total number of districts goes up from 35 in the 1980s to 42 in the 1991 plan. The bill was made effective upon ratification, July 13, 1991.

House redistricting (HB 1303; Chapter 675): House Bill 1303 draws new State House districts based on the 1990 Census. The plan increases from 11 to 14 the number of seats that would be filled by districts a majority of whose registered voters are members of a minority group. (A 15th district has a black majority of total population, but not of voter registration.) For the first time in the State's history, a district was created with a Native American majority, House District 85 in the Lumbee Indian areas of Robeson and Hoke counties. The bill reduces the number of multi-member districts and relies more on single-member districts, so that the total number of districts increases from 72 in the 1980s to 95 in the 1991 plan. The bill was made effective upon ratification, July 13, 1991.

School board redistricting (SB 225; Chapter 400): Senate Bill 225 gives school boards, as a general statewide law, the authority to revise the districts from which their members are elected. This authority is limited to revisions after the 10-year federal census and after territory is added to or deleted from a school administrative unit. Also, if the General Assembly has revised a school board's districts by local act, that school board may not change the districts until a new census or territorial change occurs. Senate Bill 225 was made effective upon ratification, June 26, 1991.

Judicial district boundaries (HB 1309; Chapter 746): House Bill 1309 allows for changes in the boundaries of Superior Court judicial districts to avoid having voting precincts that straddle those district boundaries. Any change must be approved by the county board of elections, the State Board of Elections, and the Secretary of State. The change may not be

made if it puts a judge in a different district, or if it compromises a minority group's control in a district. The bill was made effective upon ratification, July 16, 1991.

PENDING LEGISLATION

Residency districts (HB 963): House Bill 963 would delineate the terms "electoral district" and "residency district" in the statutory chapters affecting the governing boards of cities and counties. "Electoral district" would be defined as one in which only the voters in the district may elect their representative on the board. "Residency district" would be one in which the candidates must live in the district to run, but are subject to the voters of the entire city or county. The bill would require that electoral districts be created and revised so that they are as nearly equal as possible, but would give greater leniency in the drawing of residency districts. Those policies reflect the attitudes of the federal courts toward the two kinds of districts. The bill would permit county boards of commissioners to revise residency districts in the direction of greater equality of population without submitting their revision to a referendum. That change would give them the same power that city councils now have. The bill passed the House and is pending in the Senate.

Precinct change amendments (SB 910): Senate Bill 910 would make certain updating changes to the General Assembly's effort to make sure voting-precinct boundaries are in sync with the boundaries used by the U.S. Census Bureau for census blocks. Among other things, the bill would clarify the process by which certain counties could change precinct boundaries after January 1, 1992: that process involves the approval of the Executive Secretary-Director of the State Board of Elections. The bill would also require certain counties to file voter statistics with the Legislative Services Office in January of every year. The bill would apply to 48 counties that are named in the bill. It would be effective upon ratification. Senate Bill 910 passed the Senate, and is pending in the House.

STATE GOVERNMENT
(Brenda Carter, Terry Sullivan, Linwood Jones, Bill Gilkeson, Giles Perry)

RATIFIED LEGISLATION

Alcoholic Beverage Control

Mixed beverages catering permit (HB 770; Chapter 669): House Bill 770 authorizes the ABC Commission to grant a mixed beverages catering permit that would authorize a hotel or restaurant that has a mixed beverages permit to bring spirituous liquor onto the premises where the hotel or restaurant is catering food for an event and serve liquor to guests at the event. The fee for the mixed beverages catering permit is set at $100. House Bill 770 became effective upon ratification on July 13, 1991.

Alumni association ABC permits (HB 911; Chapter 340): House Bill 911 allows a nonprofit alumni organization that has a mixed beverages permit or special occasion permit to obtain a permit for the sale of malt beverages, unfortified wine, or fortified wine on the campus of a public school or college. The Bill became effective upon ratification on June 19, 1991.

Hotel guest room cabinets (HB 989; Chapter 565): House Bill 989 establishes a hotel guest room ABC permit and imposes a $750 initial fee and a $500 annual renewal fee for the permit. The fee applies to each hotel that has a guest room cabinet permit and not to each room in the hotel, and only those hotels holding mixed beverage permits will be eligible for the guest room cabinet permit. The bill requires a hotel that has a guest room cabinet permit to designate and maintain at least 10% of its guest rooms as rooms without a cabinet. House Bill 989 also prohibits the storage of other spirituous liquor with liquor intended for sale from a guest room cabinet, and makes additional changes concerning the purchase and transportation of mixed beverages by the holder of a guest room cabinet permit. House Bill 989 is a public bill but is limited to those counties that are authorized to hold township ABC elections, and to those counties having a population in excess of 150,000. House Bill 989 becomes effective October 1, 1991.

ABC law amendments (SB 343; Chapter 459): Senate Bill 343 raises from four liters to five the amount of liquor or fortified wine that a person may possess at the residence of another, on noncommercial property not open to the public with the consent of the owner, and at a brown-bagging establishment; raises from four liters to five the limit that can be held in a member's locker at a private club, including congressionally-chartered veterans organizations; and makes the same raise for patrons of brown-bagging establishments.

Senate Bill 343 makes criminal statutes regarding embezzlement of property received by virtue of office or employment and malfeasance of corporation officers and agents applicable to persons appointed to or employed by an ABC board, and makes violations of those statutes by such persons a Class H felony (punishable by fine, imprisonment up to 10 years, or both).

Senate Bill 343 removes the requirement that local governing bodies receive approval from the ABC Commission for alterations in the distribution of ABC revenues, but copies of governing body resolutions agreeing to new distribution formulas and the new distribution formula must be sent to the ABC Commission for review and audit purposes. The bill also provides that in any hearing in which the suitability of a location or an

applicant for an ABC permit is an issue, a local government official may be designated by the local governing authority to make recommendations and testify at the hearing without further qualification or authorization.

Senate Bill 343 specifies that the wholesale distribution agreement for malt beverages filed with the Commission must describe the brands which the wholesale is authorized to sell, and the territory in which such sales may take place. It further specifies that the wholesale may not distribute any brand to a retailer whose premises are located outside the territory so specified.

Finally, Senate Bill 343 allows purchase-transportation permits for mixed beverage permittees to be issued for containers that are 375 milliliters or larger. Senate Bill 343 became effective upon ratification on July 1, 1991.

Winery special events permits (SB 624; Chapter 267): Senate Bill 624 renames the winery special show permit to the winery special event permit and expands the types of activities for which such permits may be granted to include free wine tasting and sales at shopping malls, street festivals, holiday festivals, agricultural festivals, balloon races, and local fund raisers. Only holders of unfortified winery permits or limited winery permits may obtain the winery special event permit. Senate Bill 624 became effective upon ratification on June 12, 1991.

Councils and Commissions

Council on Disabilities change (HB 332; Chapter 608): House Bill 332 restructures the Governor's Advocacy Council for Persons with Disabilities by reducing the number of gubernatorial appointees, and eliminating six representatives of state agencies who served as ex officio members of the Council. Under House Bill 332, the Council will consist of 21 members, 7 appointed by the Governor, 7 by the General Assembly upon recommendation of the President of the Senate, and 7 by the General Assembly upon recommendation of the Speaker of the House. The bill requires that at least 12 of the members of the Council be disabled persons or family members of disabled persons, and specifies the disabilities to be represented. Appointments to the Council will be made after consultation with statewide disability advocacy and membership organizations. House Bill 332 became effective August 1, 1991.

Indian Affairs Commission director (HB 350; Chapter 88): House Bill 350 provides that the executive director of the North Carolina State Commission of Indian Affairs serves at the pleasure of the Commission. House Bill 350 became effective upon ratification on May 15, 1991.

Farmworker Council membership (HB 409; Chapter 130): House Bill 409 increases the membership of the North Carolina Farmworker Council from 12 to 13 members by adding the Secretary of Environment, Health, and Natural Resources as an ex officio member. House Bill 409 became effective upon ratification on May 27, 1991.

Sanction State Games (HB 411; Chapter 96): House Bill 411 authorizes the Governor's Council on Physical Fitness and Health to serve as the sanctioning body for the the State Games and for other competitive athletic events for which sanctioning by the State is required. The bill became effective May 21, 1991.

Council on the Status of Women (HB 562; Chapter 134): House Bill 562 changes the name of the Council on the Status of Women to The North Carolina Council for Women. The change became effective upon ratification of the bill on May 27, 1991.

Meherrin Indian Commission Member (HB 595; Chapter 467): House Bill 595 adds a member from the Meherrin Tribe to the Commission on Indian Affairs, and makes technical changes to reflect the participation of the Eastern Band of Cherokees on the Commission. House Bill 595 became effective upon ratification on July 1, 1991.

Mortuary Science Board Changes (HB 400, Chapter 528): House Bill 400 changes the period for nominating candidates for the Board of Mortuary Science. The bill also authorizes the Board to register one apprentice-trainee per funeral establishment for each 100 funerals conducted during the previous year. A funeral establishment with less than 100 funerals during the year can have 1 trainee registered. This act became effective July 3, 1991.

State Building Commission Appointment (HB 891, Chapter 314): House Bill 891 allows a licensed building contractor or an employee of a company holding a general contractor's license to serve on the State Building Commission. This act became effective June 18, 1991.

USS North Carolina Battleship Commission Terms (SB 362, Chapter 73): Senate Bill 362 extends USS North Carolina Battleship Commission member's terms from 2 years to 4 years. This act became effective July 1, 1991.

State Controller Changes (SB 458, Chapter 542): Senate Bill 458 makes primarily technical amendments to the laws governing the State Controller, repeals obsolete statutes governing the State Controller, and reenacts an inadvertently repealed statute creating the Equity Investment Advisory Committee. Among the changes concerning the State Controller are a requirement that State agencies on the Controller's central payroll processing obtain his prior consent before paying employees on other than a monthly basis; a requirement that notices of appointments to State boards and commissions be filed with the Controller; and a charge to the Controller to provide local governmental units access to a central telecommunications system on the same cost basis as it will be provided to State agencies. This act became effective July 4, 1991.

Science Technology Board members (SB 373; Chapter 573): Senate Bill 373 amends 143B-426.31 to increase the membership of the North Carolina Board of Science and Technology from 13 to 17. Additional members will be appointed from the Microelectronics Center of North Carolina, the North Carolina Biotechnology Center and two from private industry. The act also provides that the Secretary of Administration rather than the Secretary of Economic and Community Development will provide clerical services to the Board. This act becomes effective July 1, 1991.

Homeowners Recovery Fund (HB 37; ch. 547): House Bill 37 establishes a fund with the State Licensing Board for General Contractors from which homeowners can recover losses in the construction or alteration of their single-family homes caused by general contractors. Only those losses that remain unsatisfied after judgment against the contractor may be recovered. City and county inspectors will collect a fee of $5.00 per single-family dwelling for each building permit issued. The local government retains 20 percent of the fee and forwards the remaining 80 percent to the Board for the Homeowners Recovery Fund. The Board may suspend collection of the fee in any year where it appears to have sufficient monies in the Recovery Fund. This bill takes effect October 1, 1991, and applies to losses occurring on or after that date.

Youth Council Changes (HB 385; Chapter 128): House Bill 385 amends the makeup of the Youth Advisory Council by increasing the terms of youth members of the Council from one to two years; and by adding a requirement that one of the adult members of the

Council is to be an advisor of a local youth council at appointment and for the duration of the term. The act became effective upon ratification on May 27, 1991.

Courts/Judges

Omnibus courts bill (HB 1287; Chapter 742): House Bill 1287: (1) appropriates funds to the Administrative Office of the Courts and changes some court fees; (2) increases the maximum number of magistrates authorized for certain counties and adds full-time district attorneys for certain prosecutorial districts; (3) divides District Court District 3 into two districts; (4) changes the method for filling district court vacancies; and (5) includes magistrates' prior service as wildlife officers and campus police officers in determination of longevity credit. Except as otherwise provided, the act was effective on July 1, 1991.

Indigents representation (SB 424; Chapter 575): Senate Bill 424 provides that an attorney or guardian ad litem appointed in a termination of parental rights case be paid a reasonable fee. The parent or guardian shall not be required to pay the fee in a proceeding to terminate parental rights unless the parent's rights have been terminated. The effective date is October 1, 1991. The bill also provides for a pilot program in which the Administrative Office of the Courts may contract with private attorneys for specialized representation of indigents. The effective date was July 8, 1991. The Office shall file a written evaluation of the program with the General Assembly by May 1, 1993, and the program shall end on June 30, 1993.

Elections

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Withdraw From Super Tuesday (HB 83, Section 15; Chapter 689): House Bill 83, the Appropriations/Revenue Bill, included a section returning the North Carolina Presidential Preference Primary to the same date as the primaries for State and county offices, the Tuesday after the first Monday in May. For the 1988 Presidential election year, North Carolina had joined an arrangement with other Southern states to have a primary all on the same day, the Tuesday after the first Monday in March ("Super Tuesday"). The bill was made effective as of July 1, 1991.

Election Law Reform (SB 485; Chapter 727): Senate Bill 485 made several election-law changes:

* Made a Class I felony the misrepresentation of the law, through mass mailing or other means, "where the intent and the effect is to intimidate or discourages (sic) potential voters from exercising their lawful right to vote."

* Authorized county boards of elections to keep the polls open till 9:30 p.m. when undue delays have occurred. Current law allows most county boards to extend the normal 7:30 closing time to 8:30.

* Allow each party's poll observers 3 lists on election day of the people who have voted. The practice had been to allow parties to have observers, or to get lists, but not both.

* Codify a 1979 State Supreme Court ruling that college students may register to vote in the campus town without pledging that they intend to live there after graduation.

* Liberalize the absentee ballot law by allowing voters to apply for a ballot up to 5 p.m. on the day before the election.

* Extend for 15 days the time a party has to replace a nominee who resigns from the ticket more than 120 days before the election. The party's old deadline was 90 days before the election; the new deadline is 75 days.

The bill was made effective for all primaries and elections after January 1, 1992.

Unaffiliated Candidate Petition (HB 391; Chapter 297): House Bill 391 standardized the requirements for independent candidates to get on the ballot in partisan general elections below the statewide level. The bill requires all independent candidates to to collect on a petition the signatures of four percent of the registered voters in the area covered by the office. (Two percent is the figure for statewide offices, and the bill did not change that.) Existing statutes had set the percentage at 5% for multi-county district office, 10% for county and single-county legislative district office, and 10% for partisan municipal municipal office. The 10% for county offices had been challenged in U.S. District Court, and had been held unconstitutional at the time the 1991 General Assembly was considering the bill. House Bill 391 was made effective with respect to all primaries and elections held after January 1, 1992.

Register of Deeds Vacancies (HB 206; Chapter 60): House Bill 206 specifies that all county Boards of Commissioners shall fill a vacancy in the office of register of deeds by appointing the person nominated by the county executive committee of the political party whose nominee the vacating register of deeds was when elected. Previously, the vacancy statute (G.S. 161-5) offered two methods: the one just described, which covered 40 counties, and a method whereby the county commissioners had total discretion to fill the vacancy without consulting with anyone. House Bill 206 was made effective upon ratification, April 29, 1991.

Election Results Filing (HB 324; Chapter 428): House Bill 324 required all county boards of elections to send the Secretary of State general election returns for certain offices within seven days after the board canvasses those returns. The Secretary is required to compile those results in a document, deliver copies of the document to the General Assembly, and update the document to if inaccuracies come to light in the original returns. House Bill 324 was made effective upon ratification,

Election Day Transfer Simplified (HB 32; Chapter 12): House Bill 32 made permanent a bill that the 1989 General Assembly had enacted on a trial basis. The bill streamlined procedures at the polling places on election day so that voting is made somewhat easier for the voter who is registered to vote, but who has moved from his old voting precinct more than 30 days before the election without notifying the board of elections. Such a voter may

vote, but not at the old voting place. The bill was ratified March 21, 1991, and was made effective for any election held at least 30 days after its approval by the U.S. Attorney General under the Voting Rights Act.

Absentee Ballots/Guardians (HB 750; Chapter 337): House Bill 750 allows a registered voter's "verifiable legal guardian," as well as a near relative, to apply on the voter's behalf for an absentee ballot. The bill affects only the old-style absentee-ballot procedure, not the more streamlined (and more commonly used) methods of simultaneous issuance or one-stop absentee voting. House Bill 750 was made effective January 1, 1992.

Elections Board Compensation (HB 752; Chapter 338): House Bill 752 changes the compensation of county elections board members from $25 per day, proratable to the precise amount of time spent in the discharge of duties that day, to a flat $25 per meeting (as long as no member is paid for more than one meeting a day). Also, the bill raises the pay of election supervisors in counties with less than full-time offices from $6 per hour to $8 per hour. House Bill 752 was made effective as of July 1, 1991.

Clarify Ballot Instructions (HB 1073; Chapter 641): House Bill 1073 changes the wording of the instructions for voting on ballots in a attempt to clarify that, if a voter wishes to designate a straight ticket vote but then split his ticket in a multi-seat race, then the voter must designate individually all the candidates for whom he wishes to vote in the split-ticket race--he cannot rely on the straight-party vote to count for any candidate in that race. The bill also requires that, where mechanically practical, State House and State Senate races be placed on a ballot separate from other races, and that House and Senate be on the same ballot, unless one of them is a single-seat race and the other a multi-seat race. House Bill 1073 was made effective upon ratification, July 11, 1991.

Registrations Forwarded Promptly (SB 488; Chapter 363): Senate Bill 488 specified that any officer authorized to accept applications to register to vote must forward those applications to the county board of elections within 72 hours after the close of registration for any election. Failure to forward within that time shall not disqualify any otherwise qualified voter from voting. The bill was made effective upon ratification, June 24, 1991.

Nonpartisan Primary Ballots (HB 964; Chapter 341): House Bill 964 makes clear that in a nonpartisan municipal primary, as in other elections, no voter may vote for more candidates than there are offices to be filled. House Bill 964 was made effective upon ratification, June 19, 1991.

Fees

Secretary of State fee increase (HB 371; Chapter 429): House Bill 371 raises the fee the Secretary of State may collect for certifying a document or record on file from $2.00 to $6.25. The act was effective on July 1, 1991.

Vital records fees (SB 341; Chapter 343): Senate Bill 341 establishes a $10 fee for issuing a copy of a vital record or for conducting a search of a vital record file. The act was effective on July 1, 1991.

Increase marriage license fees (SB 935; Chapter 693): Senate Bill 935 increases the marriage license fee from $20 to $40. It appropriates the extra $20 from each license to the Domestic Violence Center Fund, which is to be used to make grants to nonprofit

corporations assisting domestic violence victims. The act was effective on August 1, 1991, and applies to marriage licenses issued on or after that date.

Landscape contractor exam fee (HB 1146; Chapter 180): House Bill 1146 increases the amount of the examination fee the Board of Landscape Contractors may charge from $25 to $75. The bill became effective upon ratification on May 30, 1991.

Amusement device fees (HB 1121; Chapter 475): House Bill 1121 provides that the Department of Labor may assess a fee for an inspector's time and travel costs if the owner of an amusement device requests an inspection at a specific time and the device is not ready for inspection at that time. Fees are ¢.23 per mile for additional travel and $15.00 per hour for the inspector's time. House Bill 1121 is effective October 1, 1991.

Hearing aid dealer fees (HB 556; Chapter 592): House bill 556 authorizes the Hearing Aid Dealers and Fitters Board to set and collect fees for examinations, training, continuing education programs, and licenses. The bill also raises the limits on several fees and requires the board to adopt an annual balanced budget. The bill became effective upon ratification, July 8, 1991.

General Assembly

Open Meetings Law changes (HB 14; Chapter 694): Prior to the enactment of House Bill 14, the Open Meetings Law, Article 33C of Chapter 143 of the General Statutes, acknowledged the "inherent right" of legislative committees and subcommittees to hold executive sessions to prevent personal embarrassment or when in the "best interest of the State" and left to either house of the General Assembly to provide by rule for notice of meetings of these bodies. House Bill 14 makes meetings of commissions, committees and standing subcommittees of the General Assembly generally subject to the provisions of the Open Meetings Law specifically requiring these meetings to be open to the public.

These meetings may be held in executive session only for the same reasons, as found in G.S. 143-318.11, that are generally applicable to meetings of any public body. Commissions, committees and standing subcommittees of the General Assembly include not only the committee structure of each house but also specifically statutory existing legislative management and study groups, including the Legislative Services Commission and the Legislative Research Commission.

Violations of the Open Meetings Law by legislators are punishable as provided by the rules of the house concerned. The House of Representative by House Rule 28.1 has established a procedure for investigations into violations of this law. House Bill 14 specifically provides that the validity of any enacted law or joint resolution or passed simple resolution is not affected by the Open Meetings Law.

House Bill 14 exempts these legislative bodies from the general notice provisions but requires that they give reasonable public notice of meetings. This is defined to include, but not be limited to, notice given on the floor of the House or Senate, or notice posted on the press room door of the State Legislative Building and delivered to the Legislative Services Office. Specifically excluded from the Open Meetings Law are the Legislative Ethics Committee, conference committees, and caucuses of legislators.

House Bill 14 would also allow video or video and sound recordings to be used in lieu of written minutes for a meeting of any public body and make other technical changes to the Open Meetings Law. House Bill 14 is effective on September 1, 1991.

Legislative Ethics Committee Jurisdiction (HB 1106; Chapter 700): HB 1106 expands the jurisdiction of the existing Legislative Ethics Committee to encompass violations not

only of the Legislative Ethics Article, as under the present law, but also violations of rules of either house proposed by the Legislative Ethics Committee and of the criminal law if the legislator was acting in his official capacity in the law-making process while engaged in the criminal activity. Under the law prior to House Bill 1106, the Committee's jurisdiction extended only to violations of the Legislative Ethics Article. The process of investigation and disposition of complaints is clarified and the Committee is specifically given the additional power to issue public or private admonishments to legislators for the above violations. The issuance of an admonishment is appealable to the house in which the legislator is a member. House Bill 1106 was effective July 15, 1991.

Senate Members' Appointment (SB 801; Chapter 739): Section 15 of Senate Bill 801 transfers from the President of the Senate (Lieutenant Governor) to the President Pro Tempore of the Senate the power to appoint the Senate members of the Legislative Ethics Committee and in odd-number years to appoint the chair of that Committee. Senate Bill 801 applies to appointments made on or after January 1, 1993.

Licensing Boards

Military Personnel Grace Period on Occupational Licenses (SB 427, Chapter 362): Senate Bill 427 grants persons deployed or called to active duty as a part of Operation Desert Storm 90 days after their return to renew occupational licenses that expired during their service. Any license that expired during that period is also automatically validated until renewed within the 90-day period. The renewal fee must also be pro-rated to reflect the period of absence while in service. This act was ratified June 24, 1991 and applies retroactively to August 6, 1990.

Psychologists Conduct Code (HB 915, ch. 239): House Bill 915 strengthens the statutory ethical code for practicing psychologists by authorizing disciplinary action for, among other things, the psychologist's inability to practice with reasonable safety and skill because of illness, inebriation, or misuse of drugs or alcohol. The bill defines immoral, dishonorable, unprofessional, or unethical conduct; for example sexual harassment of a client, exploitation of a client for financial gain, or refusal to cooperate with and respond to investigations by the Board of Examiners of Practicing Psychologists. The bill also adds remediation or rehabilitation, including counseling and treatment, as disciplinary actions that may be imposed by the Board. The Board may also require supervision of a psychologist's professional services as a disciplinary action. The Board may petition a court to order a licensee to submit to a psychological evaluation, at the Board's expense, if probable cause is shown that the licensee is not capable of safely practicing the profession. This act became effective June 6, 1991.

Plumbing/Heating Exam Grace Period (HB 925, Chapter 507): House Bill 925 allows licensure as a plumbing or heating contractor without examination to an individual who (1) has not previously held a license in the area for which the application is made, (2) has engaged in the business of plumbing or heating contracting for at least 5 years prior to July 6, 1971, in any locality in which the Plumbing and Heating licensure law did not apply prior to July 6, 1971, and (3) has been continuously engaged, as a primary occupation, in plumbing or heating contracting. An individual seeking licensure under these provisions must present evidence of his eligibility to the Board by December 31, 1991 and pay the applicable fee. This act became effective July 2, 1991 and expires December 31, 1991.

State Bar/Attorneys (HB 309; Chapter 210): House Bill 309 makes various amendments to Chapter 84, which regulates the practice of law. Provisions requiring Bar approval of

prepaid legal service plans and allowing the Bar to create a nonprofit corporation to supply prepaid legal services are eliminated. A provision is added requiring prepaid legal service plans to register with the North Carolina State Bar Council. A requirement is added providing that out-of-state attorneys must be domiciled in another state and admitted to practice in that state in order to be granted limited admission in the courts of this state. Presently, the requirement is that the out-of-state attorney be admitted to practice in another state, but there is no provision regarding the place of domicile. State Bar deposits will be required to be secured in the same manner that funds of local governments and public authorities are. Information collected and compiled by the Board in connection with examinations or licensing matters will not be considered public records. Changes are made in the provisions regarding discipline and disbarment. The maximum period of suspension is changed from three years to five years. Public censure is eliminated and censure is substituted. Private reprimands are eliminated and reprimands are substituted. Admonition is added as a form of discipline. Definitions are provided for all of these. Both the Disciplinary Hearing Commission and the Grievance Committee are empowered to impose additional continuing legal education in cases of censure, reprimand or admonition. Pleas of guilty are added to convictions and pleas of no contest in describing criminal offenses showing professional unfitness. Inactive status for mental incompetence or physical disability is combined to be known as disability inactive status. A clarifying amendment makes it clear that an appeal of disciplinary action is to the Court of Appeals. The act becomes effective October 1, 1991.

Pharmacy Act technical amendments (HB 353; Chapter 125): House Bill 353 makes various technical amendments to the Pharmacy Practice Act. It corrects a typographical error, and makes clear that the law on the availability of pharmacy records applies not only to pharmacies but also to any other places where prescriptions are dispensed. House Bill 353 also deletes a portion of G.S. 90-85.20 which provided that an applicant who had taken and failed to pass the examination for licensure in North Carolina could not be granted reciprocal licensure in this State until completion of five years of practice in another state. House Bill 353 became effective upon ratification on May 27, 1991.

Licensing examinations secure (SB 385; Chapter 360): Senate Bill 385 amends the law governing examination procedures for occupational licensing boards to provide that an occupational licensing board is not required to disclose the contents of any questions or examination except to a failing exam-taker, who has the privilege of reviewing his exam in the presence of a board representative. The bill also amends the law regarding the offense of tampering with examination questions to provide that any stealing or unauthorized buying, receiving, selling, giving or offering to buy, give, or sell any examination is a general misdemeanor.

Revise and recodify Notary Public Act (SB 426; Chapter 683): Senate Bill 426 recodifies and amends the statutes related to notaries public. Chapter 10 is repealed and replaced with a new Chapter 10A. The more significant substantive changes follow.

A definitional section is added to clarify the terms used in the Chapter. The requirement that a notary applicant be registered to vote in North Carolina is deleted, thus allowing application from anyone who resides or works in North Carolina and meets the other application requirements. The requirement of a high school education is also deleted as an application requirement. The bill creates a new statute that sets out grounds for which the Secretary of State may deny an application to become a notary. Essentially, the grounds for denial are crimes involving dishonesty or moral turpitude, official misconduct, or suspension of a notarial commission or other professional license.

The fees for applying for or renewing a notary commission are increased from $15 to $25. The appointee is given 90 days to go for commissioning by the register of deeds. The maximum fee that a notary may charge is raised from $1 to $2.

Senate Bill 426 makes violations of certain provisions of the Chapter crimes and sets out the penalties upon conviction. A person who performs notarial acts without being commissioned commits a misdemeanor. A notary who performs a notarial act without proper identification of the signer commits a misdemeanor. A notary who performs a notarial act knowing it to be false commits a Class J felony. A person who solicits or coerces a notary to commit official misconduct is guilty of a misdemeanor.

The bill also specifies what changes in the status of a commissioned notary, such as a residence address change, require notice to the Secretary of State and a new commission.

Senate Bill 426 becomes effective October 1, 1991, and applies to all original applications and recommission applications made on or after that date.

Wholesale drug distributors (HB 1010; Chapter 699) - See Summaries under Human Resources

Plumbing/heating license number (SB 123; Chapter 355): Senate Bill 123 authorizes the initial holder of a plumbing and heating contractor license to assign his license number to a licensee who has been employed by the original licensee's plumbing and heating company for at least 10 years or to a licensee who is a one of the relatives specified in the bill. Upon payment of a $10 fee and the original licensee's written designation, the Board of Examiners of Plumbing and Heating Contractors must assign the license number to the new licensee. Each successive licensee may also assign the license number. The bill became effective upon ratification, June 24, 1991.

General Contractors Licensing Board (HB 38; Chapter 124): House Bill 38 amends G.S. 87-2, changing the composition of the State Licensing Board for General Contractors. The bill increases the membership of the Board from seven to nine persons, and requires that one member be a registered engineer practicing structural engineering. The bill also increases the number of Governor-appointed public members from two to three and increases from one to two the number of residential contractors who are members of the Board. One of the residential contractors on the Board must hold an unlimited general contractor's license. The bill amends G.S. 87-11 to increase the number of Board votes required to reissue a revoked license from three to five. The act became effective upon ratification on May 27, 1991.

Lobbying/Campaign Finance

Lobbying revisions (HB 89; Chapter 740): House Bill 89 requires the annual registration of lobbyists with the Secretary of State and imposes a $75 registration fee. Under the former law the registration was good for the legislative biennium and the fee was $75.

The term "lobbyist", under House Bill 89, includes any individual, business, organization, or group which attempts to influence legislative action for compensation, including reimbursements, of $100 or more. Under the former law, reimbursement of actual personal travel and subsistence expenses were not to be included in determining whether one was a lobbyist.

Each registered lobbyist is to file an expense report for each principal who employs him within 60 days of the adjournment of the annual regular session of the General Assembly. The report is to list all expenditures made between the first of the year and the end of the session. A supplemental report must be filed by the end of February of the following year for expenditures made between the end of the session and the end of the calendar year. The former law required the report to indicate the date and amount of each expenditure. House Bill 89 requires the listing also of the names of the legislators who benefitted from the expenditure. The names of individual legislators are not required to be

reported where more than 10 legislators benefitted or were invited to benefit from an expenditure, but the number of legislators and the specific basis for their selection must be reported. No expenditure made in connection with the attendance of a legislator at a fund-raising function or event for a non-profit corporation need be reported.

The lobbyists' principal is also required to file similar reports. Former law excluded the reporting by the principal of compensation paid to full time employees or annually retained lobbyists. House Bill 89 requires that the principal report the estimated compensation paid to all lobbyists for lobbying.

The portions of House Bill 89 dealing with lobbying registration and reporting are generally effective on January 1, 1992.

Fund-Raising during Legislative Sessions (HB 89; Chapter 740). Fund raising from lobbyists for legislators or Council of State members while the General Assembly is in regular session is regulated by Part II of House Bill 89. No state legislator, member of the Council of State, or either's political committee may solicit or accept from, or at the request or recommendation of a lobbyist a campaign contribution. No lobbyist may make these contributions.

The following are not regulated by the new law: contributions to or by political parties district executive committees; contributions to or solicitations for political committees operating on a Statewide basis in conjunction with a political party's executive committee assisting candidates for Council of State or General Assembly; contributions made by the candidate him or herself; contributions made to or solicitations for a nonprofit corporation; contributions accepted to defray legal expenses in connection with a contest of elections results; and contributions to State legislators, the Council of State members, and their political committees if that individual has filed an official notice of candidacy for any office. State-wide elective office holders file their notice of candidacy at the beginning of even-numbered years.

A violation of this section is a misdemeanor, punishable by imprisonment for six months or a fine of not more than $1,000, or both in the discretion of the court (G.S. 163-272.1). No person may be prosecuted for a violation, however, until the State Board of Elections has notified the person of the apparent violation by certified mail and has given the person the opportunity to return or request the return of the contribution and the individual has not returned or requested that return within 10 days after the receipt of the notification.

Candidates Financing Fund Extension (HB 787; Chapter 397): House Bill 787 extends for an additional four years the accumulation of money in the North Carolina Candidates Financing Fund, originally created in 1987 to provide matching funds for candidates for the Council of State who would abide by stated expenditure limits in political campaigns. These monies are contributed by taxpayers by designating all or part of the refund they are due on their State income taxes. HB 787 limits the application of that Fund to the 1996 race for governor.

The Secretary of Revenue, the State Treasurer, and the Executive Secretary of the State Board of Elections are to monitor and evaluate the growth of the fund on May 15, 1993 and May 15, 1995 and report to the General Assembly. If the 1995 General Assembly decides that there are insufficient monies in the Fund to appropriate for 1996 gubernatorial candidates, the money is to be transferred to the General Fund. HB 787 was effective on June 25, 1991.

Political Parties Fund Administration (HB 276; Chapter 347): House Bill 276 transfers the administration of the Political Parties Financing Fund from the State Treasurer to the State Board of Elections. House Bill 276 was made effective upon ratification, June 20, 1991.

Political Activity by Government Employees

Use of Political Influence in State Employment (House Bill 837; Chapter 505): Under existing law it is unlawful for a State employee or official, other than an elective officer or person serving in only an advisory function, or any other person to coerce a State employee subject to the Personnel Act, or a temporary or probationary State employee to support or contribute a political candidate or party by threatening termination of employment. House Bill 837 makes it unlawful to so coerce an applicant for a position subject to the Personnel Act and expands the coverage of the statutes to threats of any change in employment status (rather than just termination) and to preferential personnel treatment. This bill will be effective on October 1, 1991.

Local Governmental Employees' Political Activities (HB 1013; Chapter 619): House Bill 1013 limits political activities of city and county employees. The bill creates new General Statute sections, G.S. 153A-99 and G.S. 160A-99, which prohibits county and city employees, respectively, while on duty or in the workplace, from using their official authority or influence for the purpose of interfering with an election or nomination for political office; coercing, soliciting, or compelling political contributions by another employee; or using county funds, supplies, or equipment for partisan purposes, or for political purposes except where otherwise permitted by law. HB 1013 also establishes the principal that none of these employees may be required as a condition of their employment to contribute funds for partisan or political purposes. This bill becomes effective on October 1, 1991.

Public Utilities

Fuel Charge Adjustment Sunset Extended (HB 407; Chapter 129): House Bill 407 extends the sunset provision of G.S. 62-133.2, the fuel charge adjustment provisions for electric utilities, from July 1, 1991 until July 1, 1997. It also adds a provision providing for reports from the Utilities Commission to the Joint Legislative Utility Review Committee summarizing the procedures conducted pursuant to the statute. The Utility Review Committee must report to the General Assembly on the information provided by the Utilities Commission together with a recommendation on whether the fuel charge adjustment statute will be continued, repealed, or amended. The act was effective upon ratification, May 27, 1991.

Rural Electrification Regulatory Fee (HB 908; Chapter 473): House Bill 908 establishes a system whereby the North Carolina Rural Electrification Authority will be funded by fees paid by the electric and telephone membership corporations which it regulates, rather than through an appropriation from the General Fund. For the 1991-92 fiscal year, the fee will be 3 3/4¢ per quarter for each meter connected for service and 3 3/4¢ per quarter for each telephone access line connected for service. Beginning with the 1992-93 fiscal year, the quarterly fees will be set by the General Assembly. The Rural Electrification Authority will propose the rates when it prepares its budget request for the upcoming year. The State Treasurer will establish a special fund for these fees which shall be an interest bearing account. All interest is credited to the fund and the fund does not revert at the end of the fiscal year. However, no expenditures may be made from the fund without an appropriation by the General Assembly. The act became effective July 1, 1991 and the fee was applicable to meters and access lines connected for service on or after that date.

University Join Joint Municipal Assistance Agencies (HB 967; Chapter 291): House Bill 967 authorizes constituent institutions of the University of North Carolina to become members of joint municipal agencies (related to construction, ownership, maintenance or operation of electric systems). It also allows joint municipal assistance agencies to provide for associate members which shall not have a commissioner or the right to vote, shall not be entitled to distribution of assets upon dissolution of the agency, and do not have any right to income from the assistance agency. The act was effective upon ratification, June 13, 1991.

Revenue Bonds for Gas Systems (HB 1016; Chapter 511): House Bill 1016 amends G.S. 159-96A to permit units authorized to issue revenue bonds under the Local Government Revenue Bond Act to do so for facilities for the generation, production, transmission, or distribution of gas. However, bonds may not be used to finance systems or facilities for the transmission or distribution of gas to users outside the corporate limits of a municipality if service is available or will be available within a reasonable time from a regulated local distribution natural gas utility. The bill contains provisions for notification of local distribution companies certificated within the area for which service is proposed. The act was effective upon ratification, July 2, 1991.

Joint Municipal Power Agency Financing (HB 1018; Chapter 513): House Bill 1018 amends the Joint Municipal Electric Power and Energy Act to allow joint power agencies to separately finance facilities and equipment other than those used directly for the generation and transmission of power. This would include things such as administrative buildings, computer equipment, and the like. The concept of no deficiency judgment being allowed is maintained. Only the pledged property is forfeited in the event of a default. The act was effective upon ratification, July 2, 1991.

Natural Gas Expansion and Costs (HB 1039; Chapter 598): House Bill 1039 is designed to stimulate the introduction of natural gas service to the many unserved and underserved areas of North Carolina. It also updates the method of making adjustments to natural gas rates which take into account the changing costs of gas and transportation of gas.

House Bill 1039 repeals the old gas cost adjustment law which was passed before gas was deregulated and substitutes a new provision for gas cost adjustments which also includes an annual review of all gas cost adjustments, as well as all gas cost expenses to determine that they were prudently incurred, with provision for a true-up for under- or over-recovery. The bill also amends the Local Development Act to clarify that the authority of local governments to extend utilities for industrial development includes the authority to construct and own those facilities.

The bill requires the Joint Legislative Utility Review Committee to review the subject of gas cost adjustments and report to the 1992 Session of the General Assembly. The act was effective upon ratification, July 8, 1991.

Study Pay Phone Cut-Off (HB 1046; Chapter 240): House Bill 1046 requires the Utilities Commission to authorize telephone companies to evaluate the cost effectiveness, public benefit, and feasibility of implementing a limitation on the duration of local telephone calls placed at coin operated and coinless public telephones. Two types of experiments may be authorized. In one, the public telephone will automatically terminate the connection after a period of between seven and ten minutes. In the other type, a "metered" service will be provided. That is, the customer will be required to insert additional money in order to continue the telephone conversation. The study shall be for not less than six months nor more than one year and shall be completed no later than December 31, 1992. The Utilities Commission must report the results and its conclusions to the Joint Legislative Utility Review Committee within three months after completion of the study, but not later than March 1, 1993. The act was effective upon ratification, June 6, 1991.

Repeal Sunset Provision for Utility Regulatory Fee Statute (SB 205; Chapter 451): Senate Bill 205 repeals the sunset provision of G.S. 62-302, which would have expired June 30, 1991. G.S. 62-302, passed by the 1989 General Assembly, established a method of assessing fees against the income of regulated public utilities in order to pay for the operation of the Utilities Commission and the Public Staff. The act was effective upon ratification, June 28, 1991.

Transmission Line Siting (SB 417; Chapter 189): Senate Bill 417 amends Chapter 62 to provide a uniform procedure for the siting of high voltage electric transmission lines. There is presently no specific requirement for approval by the Utilities Commission prior to construction. Senate Bill 417 requires the Utilities Commission to issue a certificate of environmental compatibility and public convenience and necessity for the construction of an electric transmission line with a capacity of 161 kilovolts or greater. The bill specifies the content of the application for the certificate, who must be served, how public notice is given, and the findings which the Commission must make in order to issue the certificate. The act is effective December 1, 1991.

Exempt Cellular Telephones (SB 551; Chapter 82): Senate Bill 551 adds a new section to Chapter 62 permitting the Utilities Commission to exempt cellular telecommunications service providers from regulation under any or all provisions of Chapter 62. In order to do this, the Commission must find such services are competitive and that such exemption from regulation would be in the public interest. The act was effective upon ratification, May 13, 1991.

State Property

Hammocks Beach Parcel Removed (SB 213, ch. 318): Senate Bill 213 removes a very small parcel of property at the entrance of Hammocks Beach park from the park system so that it may be traded for another small parcel near the entrance. The purpose of the trade is to make the boundary with the adjoining landowner straighter and easier to maintain. This act became effective June 19, 1991.

Surplus property changes (SB 306; Chapter 358): Senate Bill 306 clarifies the law regarding State and federal surplus property by amending existing law to limit its applicability to surplus federal property, and designating the Department of Administration as the State agency for federal surplus property. Senate Bill 306 also enacts a new G.S. Chapter 143, Article 31A1 to regulate the disposition of State surplus property. The Department of Administration is assigned the responsibility of selling surplus, obsolete, or unused supplies, materials and equipment, warehousing it, and distributing it to tax-supported or nonprofit tax-exempt organizations. The Department of Administration is authorized to act as a clearinghouse of information for agencies and private nonprofit tax-exempt organizations who may be interested in obtaining surplus property, and may assess and collect fees related to the warehousing, distribution or transfer of of surplus property. Any fees collected will be placed in an equipment reserve fund, from which expenditures may be made upon approval of the Director of the Budget, following consultation with the Advisory Budget Commission and the Joint Legislative Commission on Governmental Operations. Senate Bill 306 became effective July 1, 1991.

State Symbols

Official State Tartan (HB 932; Chapter 85): House Bill 932 adopts the Carolina Tartan as the official Scottish tartan of the State of North Carolina. The Carolina Tartan is a variation of a tartan associated with King Charles II, who gave the grant in 1663 that made Carolina a proprietary colony. House Bill 932 became effective upon ratification on May 13, 1991.

State flag description (SB 413; Chapter 361): Senate Bill 413 modifies the statutory description of the State flag to remove the commas from the dates to conform with the way they appear on the flag, and to conform the description with standard sizing by providing that the length of the flag shall be one-half more than its width. This enlarges the width of the blue union which contains the star. House Bill 413 became effective upon ratification on June 24, 1991.

Miscellaneous

Composer-laureate (SB 87; Chapter 56): Senate Bill 87 authorizes the Governor to appoint a distinguished living composer as composer-laureate for the state.

Travel and Tourism Policy Act (SB 703; Chapter 144): Senate Bill 703 enacts the Travel and Tourism Policy Act which makes findings and states policy pertaining to travel and tourism within the State. The act lists the duties and responsibilities of the Division of Travel and Tourism and provides that the Division shall implement the policies and make an annual report to the General Assembly. The bill became effective upon ratification, May 28, 1991.

Travel and Tourism Board (SB 522; Chapter 406): Senate Bill 522 creates the North Carolina Travel and Tourism Board to promote the development of the travel and tourism industry in the state. The act was effective on June 26, 1991.

Private, Nonprofit Entities Receiving State Funds (House Bill 83, Sec. 13; Chapter 689) This section of the appropriations bill provides that, before State funds may be disbursed to any eligible private nonprofit entity, the entity must file with the disbursing agency a notarized copy of its policy addressing potentially involving the entity's management, employees and members of its governing body. The policy must address situations in which any of these individuals might benefit, except as the entity's employees or members of its governing body, from the disbursement of State funds and specify the actions to be taken by the entity, individual, or both, to avoid the conflict and the appearance of impropriety. This provision was effective on July 1, 1991.

State Games Cars (SB 241; Chapter 294): Senate Bill 241 authorized the Department of Administration to allow N.C. Amateur Sports to use state trucks and vans for the 1991 State Games of North Carolina. The bill became effective June 17, 1991.

State Awards System (HB 441; Chapter 131): House Bill 441 provides that state awards may be made to native North Carolinians living outside of the State, for preeminent accomplishment in not more than two of the listed fields of endeavor. The bill became effective May 27, 1991.

Attorney General debt collection (HB 388; Chapter 95): House Bill 388 permits agencies to use their own debt collection procedures for unpaid billings of less than $500, and for amounts owed by patients of state institutions that are less than the federally established Medicare Part A deductible. House Bill 388 became effective upon ratification on May 21, 1991.

Library/History Museum Operations (SB 350; Chapter 757): Senate Bill 350 transfers the responsibility for administering State publications from the Department of Administration to the State Library, and authorizes the State Library to revise guidelines originally issued by the Department of Administration. Proposed revisions of the guidelines must be distributed to all affected agencies who then have a 30-day review and comment period.

Senate Bill 350 amends the duties of the State Library Commission, makes changes in the membership of the Commission, and establishes standing committees from the Commission's membership to advise the Secretary of Cultural Resources, the Commission, and the State Librarian.

Senate Bill 350 authorizes the Department of Cultural Resources to enter into an agreement with a private nonprofit corporation for the management of facilities to provide food and beverages at the N.C. Museum of History. Net proceeds from the food and beverage operation must be devoted to the work of the Department of Cultural Resources.

Senate Bill 350 also provides that the N.C. Museum of History will continue to maintain records of items of historical or cultural importance which are owned or acquired by the State for use in the State Capitol, Executive Mansion, or other state-owned buildings. The bill became effective July 16, 1991.

Archaeological permit changes (SB 400; Chapter 461): Senate Bill 400 provides that archaeological permits will be issued by the Department of Cultural Resources rather than the Department of Administration. The bill creates the Archaeological Record Program in the Division of Archives and History to assist private owners of archaeological resources in preserving and protecting those resources. Participation in the program is voluntary. The N.C. Archaeological Record will include a list of archaeological resources owned privately by each person participating in the program. Senate Bill 400 sets out the procedure for a person to obtain a permit from the Department of Cultural Resources to conduct an archaeological investigation on private land that is the site of an archaeological resource enrolled in the record. Senate Bill 400 became effective upon ratification on July 1, 1991.

State Publications on Acid-Free Paper (HB 186, Chapter 224): House Bill 186 requires State publications of historical or enduring value to be published on acid-free paper. The State Librarian and the UNC-CH Librarian are responsible for annually designating the publications to be published on acid-free paper. This act became effective June 5, 1991.

Fire Inspectors Technical Amendment (HB 559, Chapter 133): House Bill 559 gives local fire inspectors employed with local governments as of July 1, 1989 until July July 1, 1993 to complete the in-service training program. Completion of the in-service training program exempts a local fire inspector from the certification requirements of the Code Officials Qualifications Board. This act became effective May 27, 1991.

State Trails Designations (SB 134, Chapter 115): Senate Bill 134 authorizes the Department of Environment, Health, and Natural Resources to designate State trails by written agreements with private landowners and local governmental units without requiring the Department to possess an interest in the property. This bill becomes effective October 1, 1991.

Trail System Liability (SB 136, Chapter 38): Senate Bill 136 extends the limited liability under the trails system to landowners, units of government, trails developers, and trail maintainers. This bill becomes effective October 1, 1991.

National Guard Awards (SB 659, Chapter 367): Senate Bill 659 extends the eligibility for NC National Guard State Active Duty Awards to active guard personnel and reserve personnel who actively participate in tours of State active duty. The bill also creates a NC National Guard Achievement Medal for individual service and a NC National Guard Outstanding Unit Award. Subject to the approval of the Governor, the Adjutant General of the Guard may create other awards to recognize meritorious service or outstanding achievement. This act becomes effective October 1, 1991.

MAJOR DEFEATED LEGISLATION

Courts

Appointed judges -- Constitution (SB 71): Senate Bill 71 would amend the North Carolina Constitution to provide for the appointment of appellate judges by the Governor, with the advice and consent of the General Assembly.

Appointed judges -- statute (SB 72): Senate Bill 72 would establish a system of appointment of appellate judges, subject to the voters' approval of the constitutional amendments in Senate Bill 71. The Governor would submit the names of potential nominees to a Judicial Selection and Retention Commission, which would report to the Governor whether each candidate were "well qualified," "qualified," or "not qualified." The Governor would then submit the name of a nominee, with the Commission's finding, to the General Assembly. A majority of each house would be needed to confirm the nominee. A newly-confirmed appellate judge would serve a four-year term. The Commission would investigate an appellate judge's performance to determine whether to recommend to the General Assembly that the judge be reconfirmed. A 60% vote in each house of the General Assembly would be required to reverse the Commission's recommendation. The term of a reconfirmed judge would be eight years.

PENDING LEGISLATION

Elections

Mail-In Registration (HB 106): House Bill 106 would establish a system whereby people could register to vote by mail. Currently, registration must be done in person. The bill was approved by the House Committee on Courts, Justice, Constitutional Amendments, and Referenda. It was re-referred to the Committee on Appropriations. Because it would require an appropriation, it is eligible to be considered in 1990.

Election Amendments (HB 655): House Bill 655 would prohibit the use for commercial purposes of voter registration lists acquired from a county board of elections. That prohibition was added to the bill by the Senate Election Laws Committee. As originally introduced, and as passed by the House, the bill would only have added certain items of information to the lists of registered voters that must already be made available to political

parties. The bill is pending in the Senate, having been given a favorable report by the Senate committee.

Elect Governor Even-Numbered Year (SB 232): Senate Bill 232 would shift the election of the Governor and the other nine members of the Council of State to the non-presidential four-year cycle. Senate Bill 232 passed the Senate and passed a House committee in an altered form, but was not taken up on the House floor.

Abolish Second Primary (SB 193): Senate Bill 193 would abolish the second, or runoff, primary for partisan elective office so that the candidate in a party primary who received a plurality of the vote in a primary would be given the nomination. The bill passed the Senate and is pending in the House.

Incorporation Vote/Filing Period (SB 556): Senate Bill 556 would shorten to two weeks the filing period for candidates in partisan primaries. The bill would also allow absentee voting in a referendum on incorporation of a municipality.

STUDIES

Chapter 754 (SB 917: §§ 2.5 and 2.6, respectively) authorizes the Legislative Research Commission to study regulation of lobbyists and the advisability of imposing or requiring codes of ethics for state and local administrative officials and employees.
LRC Committee: Methods to Improve Voter Participation.

TAXATION

(Cynthia Avrette, Sabra J. Faires, and Martha H. Harris)

RATIFIED LEGISLATION

The Appropriations and Budget Revenue Act of 1991

1991-93 Appropriations Act (HB 83; Chapter 689): House Bill 83 is the Appropriations and Budget Revenue Act of 1991. Title IV (Parts 46 - 56) contains most of the revenue provisions of the act. A few other revenue provisions are found throughout the act. Those provisions are summarized at the end of the explanation of Title IV of the act.

Part 46.-----Internal Revenue Code Update

Part 46 of Chapter 689 rewrites the definition of the Internal Revenue Code used in State tax statutes to change the reference date from January 1, 1990, to January 1, 1991. Updating the reference makes recent amendments to the Internal Revenue Code applicable to the State to the extent that State tax law previously tracked federal law. This update has the greatest effect on State corporate and individual income taxes because these taxes are based on federal taxable income and are therefore closely tied to federal law. The inheritance tax, franchise tax, and intangibles tax also determine some exemptions based on the provisions of the Code.

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 periodic updates. The answer to the 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."

A number of changes made by the Revenue Reconciliation Act of 1990 will affect the State corporate and individual income tax. The changes in corporate tax law are fairly minor and will not have a significant impact on State revenues.

The State individual income tax will not be affected by the 1990 changes in the federal tax rate structure; these changes include an increase in the maximum federal tax rate to 31%, a lower federal rate for capital gains, and an increase in the federal alternative

minimum tax rate. Recent changes in the calculation of federal taxable income will, however, have a significant impact on North Carolina individual income tax. Beginning with the 1991 tax year, the Internal Revenue Code provides that the deduction for personal exemptions is phased out for taxpayers with adjusted gross income above a threshold amount. The threshold amounts are $150,000 for married couples filing jointly and $100,000 for single taxpayers. The personal exemptions must be reduced by 2% for every $2,500, or fraction thereof, by which the taxpayer's income exceeds the threshold. The personal exemptions are fully phased-out by the time a married couple's income reaches $272,500 and a single taxpayer's income reaches $222,500.

During the House debate on this legislation, the question arose of whether using federal taxable income, that may include only part or even none of the personal exemption deduction, to calculate State taxable income violates the North Carolina Constitution. The General Assembly concluded that it did not. Article V, § 2(6) of the North Carolina Constitution states: "The rate of tax on incomes shall not in any case exceed ten percent, and there shall be allowed personal exemptions and deductions so that only net incomes are taxed." The question was whether this provision guaranteed each person the same personal exemption in calculating income. Although the Constitution requires only net income to be taxed, it does not define net income. The amount to be subtracted from gross income in calculating net income is left to the discretion of the General Assembly. Under current law, every taxpayer gets to deduct a minimum standard deduction. The vast majority of taxpayers get additional deductions. Therefore, the phase-out of one type of deduction, the federal personal exemption, does not violate the North Carolina Constitution.

Another major change in the Code is the limitation on itemized deductions for high-income taxpayers. Effective beginning with the 1991 tax year, married taxpayers filing jointly must reduce their itemized deductions by 3% of the amount by which their adjusted gross income exceeds $100,000. For married individuals filing separately, the threshold is $50,000. However, a taxpayer's itemized deductions may not be reduced by more than 80%. The reduction in allowable deductions results in an increase in federal taxable income, the basis for North Carolina taxable income.

Two changes in the Code necessitated a technical adjustment to the State tax law. The Revenue Reconciliation Act of 1990 enacted two new tax credits that, if elected by a taxpayer, require the taxpayer to reduce related federal deductions. State tax law does not pick up federal tax credits, but the reduction of the taxpayer's deductions would be passed through for State purposes. A technical correction provided in this part allows the taxpayer the full benefit of otherwise allowable federal deductions in the calculation of North Carolina taxable income when there is no corresponding State tax credit.

The Revenue Reconciliation Act of 1990 contained a number of other changes that affect the individual income tax. These changes include disallowance of a medical expense deduction for cosmetic surgery, extending income exclusions for certain employer-paid benefits, extending a deduction for health insurance costs paid by self-employed individuals, reducing a deduction for costs of making businesses accessible to disabled individuals, and expanding the percentage depletion allowance for oil and gas producing properties.

This Part of the act is effective for taxable years beginning on or after January 1, 1991. It is estimated that the additional State General Fund tax revenue from this Internal Revenue Code update will be at least $10 million per year, beginning with the 1991-92 fiscal year.

Part 47.-----Corporate Income Tax Changes

Part 47 of Chapter 689 raises the corporate income tax rate from 7% to 7.75%, effective for taxable years beginning on or after January 1, 1991. It also imposes a temporary surtax equal to a stated percentage of the corporation's income tax liability. The percentage rate of the surtax is 4% for taxable years beginning on or after January 1, 1991. The rate is reduced by 1% each taxable year until January 1, 1995, when it will no

longer exist. This Part also updates the definitional statute for the corporate income tax law by defining and clarifying terms currently in use. It is estimated that the amount of revenue gained from the corporate income tax rate increase and the temporary surtax will be $85 million for the 1991-92 fiscal year.

Part 48.-----Cigarette Tax Changes

Part 48 of Chapter 689 increases the excise tax on cigarettes from one mill per individual cigarette to two and one-half mills per individual cigarette. This translates into an increase from 2¢ per pack to 5¢ per pack. The increase was effective August 1, 1991, and it is expected to generate $20 million in additional General Fund revenue for the 1991-92 fiscal year.

Part 49.-----Other Tobacco Tax Changes

Part 49 of Chapter 689 imposes an excise tax on tobacco products other than cigarettes at the rate of 2% of the cost price of the products. The cost price is defined as the price paid for the product by the person liable for the tax before any discount, rebate, allowance, or tax imposed by this Part. As with the tax imposed on cigarettes, the following transactions are exempt from the tax imposed by this part: tobacco products sold outside the State, tobacco products sold to the federal government, and sample tobacco products distributed without charge.

The wholesale or retail dealer who first handles tobacco products subject to the tax in this State is liable for the tax. The dealer must remit the tax to the Secretary of Revenue on a monthly basis. The Secretary may require a dealer to obtain a bond in an amount sufficient to protect the State from loss if the dealer fails to pay the taxes due. A dealer who is primarily liable for the tobacco products tax may deduct 4% from the amount of tax to cover losses due to damage to tobacco products, expenses incurred in preparing the records and reports, and the expense of furnishing a bond. A wholesale dealer must obtain a continuing tobacco products license for each place of business and pay a tax of $25 for the license. The retail dealer must also obtain a continuing tobacco products license and pay a tax of $10 for it.

The excise tax on tobacco products other than cigarettes becomes effective January 1, 1992. The estimated amount of revenue from this new tax is $500,000 for the 1991-92 fiscal year.

Part 50.-----Soft Drink Tax Administrative Changes

Part 50 rewrites much of Article 2B of Chapter 105, the Soft Drink Tax Act, to make the law easier to understand, simpler to administer, and more equitable among the groups of taxpayers subject to the tax. This Part makes the following substantive changes effective October 1, 1991; it does not change the soft drink tax rate.

(1) It eliminates payment of the excise tax on soft drinks based on the purchase of stamps and crowns. Existing law allows but does not require payment based on stamps and crowns; this method is used infrequently.

(2) It establishes a uniform monthly reporting method for payment of the excise tax by distributors, wholesale dealers, and retail dealers. Existing law allows but does not require payment of tax based on monthly reports. The new law does not change the time allowed for filing a monthly report.

(3) It establishes a uniform 4% discount, allows the discount only if the tax is paid on time, and does not allow a discount on bottled soft drinks subject to tax at a reduced rate. The 4% discount is the same percentage discount as is allowed under the alcoholic beverage excise tax.

Under existing law, the discount varies with the method of payment, can be claimed whether or not the tax is timely paid, and applies both to bottled soft drinks taxable at the regular rate of 1¢ per bottle and to bottled soft drinks taxable at the reduced

rate of 1/2¢ a bottle. This reduced rate applies to the first 15,000 gross of bottled soft drinks sold at wholesale each year by each distributor and wholesaler.

(4) It establishes a procedure for identifying soft drinks that are exempt from tax because they will ultimately be sold outside the State or to the federal government. By this procedure, a distributor or wholesale dealer who sells an otherwise taxable item that is to be resold outside the State or to the federal government can sell the item without collecting tax on it if the purchaser gives the distributor or wholesale dealer a written statement certifying that the item will be resold in a non-taxable transaction.

Under existing law, tax is collected whenever a bottled soft drink or base product is sold. If a distributor or wholesale dealer sells to a person who resells the item outside the State or to the federal government, the person notifies the distributor. The distributor then gives the person a credit on the next tax the distributor collects when selling a bottled soft drink or base product to the person, and the distributor applies to the Department of Revenue for a refund. The new procedure will be simpler and less time consuming.

(5) It replaces the exemption for soft drinks that contain at least 35% natural fruit or vegetable juice and have no artificial flavoring, coloring, or preservative with an exemption for soft drinks that are 100% natural fruit or vegetable juice. Under existing law, there were over 500 exemptions for soft drinks that contain at least 35% juice but less than 100% juice. The new law eliminates the exemption for these items. Elimination of the exemption will save time for the Department of Revenue because it will no longer have to register each of these items and periodically check the formula of the item to ensure that it is still tax-exempt.

(6) It deletes the exemption for soft drink base products that are for domestic as opposed to commercial use and are not otherwise exempt from tax.

In addition to these substantive changes, Part 50 makes numerous technical changes. It deletes unnecessary or obsolete language and makes various clarifying changes. It is estimated that this act will generate approximately $500,000 in the 1991-92 fiscal year and $800,000 in the 1992-93 fiscal year.

Part 51.-----Insurance Tax Changes and Regulatory Charge

This Part makes several changes concerning the taxation and regulation of insurance companies. The changes are designed to increase revenue for the General Fund, make the Department of Insurance a receipt-supported agency, and enable insurers to recoup assessments paid by them to provide funds to cover claims against insolvent insurers.

To increase revenue for the General Fund, the Part makes a two-step increase in the insurance gross premiums tax rate. It increases the rate from 1.75% to 1.875% effective for the 1991 tax year and, effective for the 1992 tax year and subsequent years, increases the tax rate again from 1.875% to 1.90%. The increases are expected to raise General Fund revenue by $3.1 million in fiscal year 1991-92 and by $3.8 million in fiscal year 1992-93.

To make the Department of Insurance receipt-supported and thereby eliminate General Fund support of the Department, the Part imposes a regulatory charge on certain insurance companies. The regulatory charge imposed is similar to the charge imposed on utilities by the North Carolina Utilities Commission.

The charge will be imposed beginning with the the 1991 tax year and will be a percentage of an insurer's gross premiums tax liability for a year. For the 1991 year the charge is 6.5% of gross premiums tax liability. For each subsequent year, the amount of the charge will be set by the General Assembly. The charge is due when the gross premiums tax is due; therefore, an insurer that pays the gross premiums tax in installments must also pay the regulatory charge in installments. The 1991 charge is expected to generate $11.9 million.

Because the charge is a percentage of gross premiums tax liability, it does not apply to insurers, such as health maintenance organizations, that are not subject to the gross

premiums tax. It also does not apply to hospital, medical, or dental service corporations, such as Blue Cross Blue Shield and Delta Dental Corporation, because these nonprofit corporations are specifically exempted from the charge even though they are subject to the gross premiums tax.

The statutes creating the charge distinguish the charge from a tax. Consequently, the statutes provide that the charge is not to be counted as a tax in determining this State's tax rate on insurance companies for the purpose of calculating an out-of-state insurer's liability for any retaliatory taxes due this State and, conversely, for the purpose of calculating an in-State insurer's liability for retaliatory taxes due another state.

From North Carolina's perspective, retaliatory taxes are taxes payable by an out-of-state insurer whose home state requires North Carolina-based insurers to pay a higher tax to that state than North Carolina requires the out-of-state insurer to pay to this State. If the other state's taxes are higher, the out-of-state insurer must pay tax to this State as if this State had the same tax rate as the other state, and the difference between this State's rate and the other state's rate is called the retaliatory tax.

From the perspective of another state, retaliatory taxes are taxes payable by a North Carolina insurer to a state whose tax is lower than North Carolina's rate. The difference between that state's rate and North Carolina's rate is a retaliatory tax for that state.

To preserve the regulatory charge as a source of operating support for the Department of Insurance, this Part establishes the Department of Insurance Fund and credits to the fund all revenue from the regulatory charge as well as all revenue from fees collected from motor clubs, collections agencies, bail bond sureties and runners, and building code inspectors. Revenue in the Fund can be used only to support the Department of Insurance and does not revert to the General Fund at the end of a fiscal year.

To enable insurers to recoup assessments paid to cover claims against insolvent insurers, this Part allows insurers to claim a tax credit against their gross premiums tax for the amount of assessments paid to the North Carolina Insurance Guaranty Association or the Life and Accident and Health Insurance Guaranty Association. These associations require insurers to pay assessments when revenue is needed to cover claims against insolvent or impaired insurers. Under this Part, an insurer who pays an assessment can take 20% of the amount paid as a tax credit in each of the succeeding five years. Because an insurer is allowed a credit, the Part repeals a provision that allowed insurers to recoup assessments by increasing premiums. The tax credit is effective with the 1991 tax year.

Part 52.-----Individual Income Tax Changes

Part 52 of Chapter 689 adds a third tax rate bracket of 7.75% to the individual income tax rate schedule, effective for taxable years beginning on or after January 1, 1991. The higher tax rate bracket is expected to increase revenue $51 million for the 1991-92 fiscal year. Under prior law, there were only two tax rates-- a 6% rate and a 7% rate. The new third bracket affects higher income taxpayers; the Part does not change the incomes subject to the 6% rate. The new rate schedule is as follows:

Filing Status	Income Bracket	Rate
Married, filing jointly	Up to $21,250	6%
Surviving spouses	$21,251 to $100,000	7%
	Over $100,000	7.75%
Heads of households	Up to $17,000	6%
	$17,001 to $80,000	7%
	Over $80,000	7.75%
Unmarried individuals	Up to $12,750	6%
	$12,751 to $60,000	7%
	Over $60,000	7.75%

Married, filing separately	Up to $10,625	6%
	$10,626 to $50,000	7%
	Over $50,000	7.75%

Part 53.-----Alcohol Tax Changes

Part 53 increases several alcoholic beverage taxes and permit fees and changes the hours during which alcoholic beverages may be sold or consumed. Under prior law, a mixed beverage permittee who purchased spirituous liquor for resale in mixed beverages paid a surcharge of $15.00 per gallon. Of the $15.00 mixed beverage surcharge, $5.00 went to the General Fund, $1.00 went to the Department of Human Resources for substance abuse treatment and education, and $9.00 was distributed to local ABC boards and local governments in the same manner as other alcoholic beverage receipts. Effective August 1, 1991, Part 53 increased the mixed beverage surcharge from $15.00 to $20.00. The additional $5.00 will go to the General Fund; the amounts going to the Department of Human Resources and to local boards and local governments will remain the same.

Effective October 1, 1991, Chapter 565 of the 1991 Session Laws authorizes the sale of spirituous liquor in hotel guest room cabinets. Under that act, a guest room cabinet permittee who purchases spirituous liquor for resale in a guest room cabinet would pay a surcharge of $15.00 per gallon. Part 53 increases the guest room cabinet surcharge from $15.00 to $20.00 to make it the same as the mixed beverage surcharge.

Effective May 1, 1992, Part 53 increases the following ABC permit application fees from $100.00 to $200.00: on-premises malt beverage permits, off-premises malt beverage permits, on-premises unfortified wine permits, off-premises unfortified wine permits, on-premises fortified wine permits, off-premises fortified wine permits, and combined malt beverage or wine permits. Effective May 1, 1992, Part 53 also increases to $100.00 the annual privilege license taxes for retail malt beverage licenses and retail wine licenses. It is estimated that the tax and fee increases in Part 53 will increase General Fund revenues by $2.9 million in the 1991-92 fiscal year and $6.3 million in the 1992-93 fiscal year.

Finally, effective August 1, 1991, Part 53 expanded the hours during which alcoholic beverages may be sold. Under prior law, sales of alcoholic beverages could be made until 1:00 a.m. and alcoholic beverages could be consumed on-premises until 1:30 a.m. During daylight saving time (April - October), however, sales could be made until 2:00 a.m. and consumption could continue on-premises until 2:30 a.m. Now, the same hours apply all year: alcoholic beverages may be sold until 2:00 a.m. and consumed on-premises until 2:30 a.m.

Part 54.-----Sales Tax Changes

To increase State revenue, this Part increases State sales taxes in two ways. First, it increases the general State sales tax rate from 3% to 4%. Second, it increases the preferential sales tax rate on boats, aircraft, railway cars, and locomotives from 2% to 3%, but does not change the $1,500 maximum per article tax for these items. The changes became effective for sales made on or after July 16, 1991.

The increase in the general sales tax rate is expected to generate $430 million for the General Fund in fiscal year 1991-92 and $516 million for the General Fund in fiscal year 1992-93. The 1% increase in the preferential rate on boats, aircraft, railway cars, and locomotives is expected to generate $2 million for the General Fund in fiscal year 1991-92 and $2.1 million for the General Fund in fiscal year 1992-93.

Part 55.-----Highway Tax Changes

Part 55 makes several changes that affect revenue in the Highway Fund and the Highway Trust Fund. It transfers funds from the Highway Fund to the General Fund to offset the General Fund loss due to the Department of Transportation's sales tax exemption, exempts several types of vehicle transfers from the highway use tax, increases

the highway use tax on out-of-State vehicles, and raises fees collected by the Division of Motor Vehicles.

Since 1986, sales to the Department of Transportation have been exempt from State and local sales and use taxes. Sales to most other State entities are not exempt. Because the Department of Transportation uses Highway Fund money to make purchases, and because State sales and use tax proceeds are credited to the General Fund, the effect of the Department of Transportation's exemption is to increase the Highway Fund at the expense of the General Fund. Earlier versions of House Bill 83 had proposed repeal of the Department of Transportation's tax exemption. In lieu of a repeal, the final version of the bill provides for a quarterly transfer from the Highway Fund to the General Fund of the amount of revenue lost by the General Fund due to the sales tax exemption.

The transfers begin in the 1991-92 fiscal year. For fiscal year 1991-92, $8.7 million will be transferred from the Highway Fund to the General Fund, and $9.4 million is expected to be transferred in fiscal year 1992-93. The transfers have the same fiscal effect on the State as repealing the tax exemption, but do not place on the Department of Transportation the administrative and accounting burden it predicted would result from repeal of the exemption.

Part 55 exempts certain transfers from the highway use tax effective August 1, 1991, as recommended by the Revenue Laws Study Committee. The highway use tax is the 3%, $1,000 maximum motor vehicle titling tax enacted in 1989 to help fund the Highway Trust Fund. The General Assembly created the Highway Trust Fund in 1989 to provide a separate source of funds for a $9.1 billion highway program. To provide additional revenue for the Fund, in 1989 the General Assembly increased the motor fuels tax, increased the fee for issuing a certificate of title from $5.00 to $35.00, and increased related motor vehicle title and registration fees from varying amounts to $10.00.

Unlike the former sales tax on motor vehicles, which was payable only when a motor vehicle was sold, the highway use tax is payable every time a certificate of title is issued for a motor vehicle. A title is issued every time a motor vehicle is transferred to a new owner regardless whether any cash changes hands in the transfer. A new title is also issued if the owner's name, as shown on the title, needs to be changed or corrected. Part 55 reflects the General Assembly's determination that the following motor vehicles, which were formerly subject to the minimum highway use tax of $40.00, should be exempt from the tax:

(1) Vehicles transferred as a result of the death of the former owner.
(2) Vehicles transferred as a result of a conveyance between a wife and husband or a parent and child.
(3) Vehicles transferred in a distribution of marital property as a result of a divorce.
(4) Vehicles for which a new title is issued to reflect a change or correction in the owner's name.

Part 55 also increases from $100.00 to $150.00 the maximum highway use tax that applies when a title is issued for a vehicle that has been titled in another state. This increase became effective August 1, 1991.

Finally, Part 55 increases and makes technical corrections to a series of fees and civil penalties paid to the Division of Motor Vehicles. The increases will generate revenue for the Highway Fund and the Highway Trust Fund to help offset the revenue-reducing provisions of Part 55. The fee and penalty increases are as follows:

Fee or Civil Penalty	Increase
Learner's permit	From $5.00 to $10.00
Limited learner's permit	From $5.00 to $10.00
Duplicate drivers license	From $5.00 to $10.00
Special identification card	From $5.00 to $10.00

Extract of drivers license record	From $4.00 to $5.00
Certified copies of drivers license record	From $4.00 to $5.00
Penalty for owner's failure to obtain timely title	From $4.00 to $10.00
Penalty for dealer's failure to obtain timely title	New fee: $10.00
Overweight permit, single trip	From $5.00 to $10.00
Overweight permit, annual per vehicle	
1 - 50 vehicles	From $25.00 to $50.00
Next 50 additional vehicles	From $20.00 to $40.00
Next 50 additional vehicles	From $15.00 to $30.00
Any additional vehicles	From $10.00 to $20.00
Vehicle dealer/distributor's license	From $30.00 to $50.00
Vehicle manufacturer's license	From $75.00 to $100.00 and
for each factory branch	From $45.00 to $70.00
Vehicle sales representative's license	From $5.00 to $10.00
Factory representative's license	From $6.00 to $10.00
Reissuance of representative's license to reflect employer name change	New fee: $5.00 beginning October 1, 1991, until June 30, 1992; thereafter, one-half of fee for original license.

These fee and penalty increases became effective August 1, 1991, except that the increases in the fees for annual licenses for vehicle dealers, distributors, and others, become effective July 1, 1992, and the fee for renewal of these licenses to reflect a new employer name becomes effective October 1, 1991.

The fee and penalty increases will generate approximately $10 million annually. The net effect of all the changes made by Part 55 will be an annual gain of $350,000 for the Highway Trust Fund and no gain or loss for the Highway Fund.

Part 56.-----Conveyance Tax Changes

Article 8E of Chapter 105 of the General Statutes levies an excise tax on instruments transferring real property. The tax is known as the deed stamp tax and is collected by the register of deeds of the county in which the real property is located when the deed transferring the property is recorded. This Part changes three aspects of that tax-- the tax rate, computation of the tax, and distribution of the tax revenue.

The Part increases the tax rate from 50¢ for each $500.00 (0.1%) of the value of the property conveyed, less the value of any assumed lien, to $1.00 for each $500.00 (0.2%) of the value of the property conveyed, including the value of any assumed lien. Thus, the Part doubles the tax rate and eliminates the deduction for assumed liens in computing the amount of tax due. The increase is expected to generate $11.9 million for fiscal year 1991-92 and $13.9 million for fiscal year 1992-93.

In addition, the Part directs each county to remit one-half of the net proceeds of the tax to the Department of Revenue, which will credit 15% of the amount received to the Recreation and Natural Heritage Trust Fund, established under G.S. 113-77.7, and will credit the remaining 85% of the amount received to the General Fund. Under prior law, all the proceeds of the tax were retained by the counties.

The Part became effective August 1, 1991, and applies to transfers made on or after that date. A transfer is made when a deed is properly executed, and not when a deed is recorded. Thus, the changes do not apply to deeds executed before August 1, 1991, but recorded after that date.

Miscellaneous Revenue Provisions

The appropriations provisions of the Appropriations and Budget Revenue Act of 1991 made several changes in the tax laws. The provisions require the cost of the Local Government Commission to be borne by local governments, exempt motor fuel sold for State vehicles from the per gallon excise tax, "freeze" local government reimbursements at their 1990 level, and allow State agencies to receive a refund of local sales and use taxes.

Local Government Commission Funding: Section 24 of this act provides that the cost of the Local Government Commission in the Department of State Treasurer will be paid from the proceeds of the intangibles tax, effective July 1, 1991. Until this change, the Local Government Commission had been funded by annual appropriations from the General Fund. The Local Government Commission performs services for local governments, as provided in the Local Government Finance Act, Chapter 159 of the General Statutes. Several other State programs that provide assistance to local governments are already paid for out of intangibles tax revenue, which is distributed to local governments. These programs are:

(1) Collection of the intangibles tax by the Department of Revenue.
(2) Services performed by the Department of Revenue and the Property Tax Commission in connection with local property taxes.
(3) Training programs operated by the Institute of Government in property tax appraisal and assessment.

Section 24 adds the cost of the Local Government Commission to the list of programs funded from intangibles tax revenue. This change will create an annual saving of approximately $1,047,000 for the General Fund.

State Fuel Tax Exemption: Section 25 of this act provides a fuel tax exemption for motor fuel purchased by the State for use in State-owned vehicles for State business, effective August 1, 1991. Under existing law, the Department of Transportation receives quarterly refunds of motor fuel tax it pays. Other State agencies do not receive fuel tax refunds.

Local Revenue Sharing and Reimbursement Freeze: Section 28 of this act freezes the amount of revenue distributed to local governments under both existing revenue-sharing and reimbursement statutes. As a form of revenue sharing, the State has traditionally distributed to local governments part of the revenue derived from excise taxes on beer and wine and from franchise gross receipts taxes on utility companies, and all the revenue from intangible personal property taxes. In 1990, the laws providing for this revenue sharing with local governments were changed in order to improve the State's balance sheet. The amounts that were formerly earmarked from the tax proceeds and held in a liability reserve for distribution to local governments were credited to the General Fund to be appropriated annually.

This section changes the method for determining how much revenue is to shared. It provides that local governments will share an amount equal to the dollar amount that should have been distributed to them under each statute in the 1990-91 fiscal year and will not receive a fixed percentage of the tax revenues, as formerly designated by statute. Thus, local governments will receive the same amount each year and will not benefit from any growth in revenues from these taxes. The annual distribution will be measured by the amount that should have been distributed in 1990-91 rather than the amount that was distributed in 1990-91 because the Governor, in order to balance the State budget, withheld some of the distributions that should have been made in the 1990-91 fiscal year.

Local governments also receive annual reimbursements from the State for part or all of their revenue losses due to repeal of the property tax on inventories, repeal of part of the intangibles tax, exemption of food stamp sales from sales tax, and allowance of the property tax homestead exemption. Most of the statutes providing the reimbursement

formulas allowed for annual growth in the amount to be reimbursed to reflect the fact that the amount that local governments otherwise would have received from the taxes, had they not been repeal or limited, would have grown each year. Section 28 provides that the amount to be distributed each year will be frozen at the amount that should have been distributed in the 1990-91 fiscal year. The annual distribution will be measured by the amount that should have been distributed in 1990-91 rather than the amount that was distributed in 1990-91 because the Governor, in order to balance the State budget, withheld some of the distributions that should have been made in the 1990-91 fiscal year.

The total amount to be appropriated each year for distribution to local governments pursuant to these revenue-sharing and reimbursement statutes will be frozen at $474,606,174. This freeze reduces the amount that otherwise would have been appropriated from the General Fund by approximately $25 million in the 1991-92 fiscal year and $48 million in the 1992-93 fiscal year.

State Agency Local Sales Tax Refund: Section 32.1. of the act allows a State agency to claim a refund for the amount of local, as opposed to State, sales and use taxes paid by the agency on its direct purchases of property and on its indirect purchases of supplies and fixtures for a building owned or leased by the agency. A "State agency" is any unit of the executive, legislative, or judicial branch of government, including The University of North Carolina but excluding local boards of education.

To enable an agency to claim a refund for tax paid on indirect purchases, the act requires a person who purchases material that becomes part of a building project for an agency to give the agency sufficient information for the agency to determine the amount of refund due the agency. Each State agency is responsible for verifying the accuracy of the information submitted.

The section directs agencies to file claims for a refund within 15 days after the end of each calendar quarter. A late application will be accepted, however, without reduction of the amount of the refund otherwise due. The provision applies to property purchased on or after April 1, 1991.

The purpose of allowing the refund for local sales and use taxes was to generate revenue for the General Fund. The section therefore requires all refunds received by the agencies to be credited to the General Fund. As a result of this provision, the General Fund is expected to receive approximately $14 million in fiscal year 1991-92. The refund provision intentionally targets local sales and use taxes and does not include State sales and use taxes because allowing a refund for State sales and use taxes would not bring any additional revenue to the General Fund. All State sales and use tax revenue is already credited to the General Fund.

Under prior law, a few agencies were granted an exemption from or allowed a refund of both State and local sales and use taxes. The Department of Transportation was exempt and remains exempt from State and local sales and use taxes on its direct purchases. The amount of revenue, however, that the General Fund loses each year as a result of the Department's exemption from State sales and use taxes is transferred from the Highway Fund to the General Fund under Part 55 of the act.

In addition to the exemption for the Department of Transportation, prior law allowed three agencies to receive refunds of both State and local sales and use taxes. The three agencies are the North Carolina Low-Level Radioactive Waste Management Authority, the North Carolina Hazardous Waste Management Commission, and, for purchases made with contract or grant funds, The University of North Carolina.

Franchise Tax

Franchise tax amendments (HB 13; Chapter 30): Effective for taxable years beginning on or after September 1, 1991, House Bill 13 makes two changes to the corporate franchise tax. First, it repeals the requirement that a new corporation file an initial franchise tax return within 60 days after it is authorized to do business in this State and pay a tax of $25.00 for the period from the date of beginning business until the end of the first income year. A new corporation is a corporation that files articles of incorporation in this State or, if the corporation has already been formed in another state, applies for authorization to do business in this State.

Second, it increases the minimum annual corporate franchise tax from $25.00 to $35.00. The act increases the annual minimum to offset the revenue loss that would otherwise occur by repealing the initial return requirement. Overall, therefore, the act neither increases nor decreases franchise tax revenue to the State. The act, however, increases the tax for a corporation liable for only the minimum franchise tax from $25.00 to $35.00.

Corporations pay franchise tax annually based on the value at the end of the tax year of the largest of (i) capital stock plus surplus and undivided profits apportioned to North Carolina, (ii) 55% of the value of real and tangible personal property in North Carolina plus the value of intangibles, or (iii) the net book value of real and tangible personal property in North Carolina. The tax is at the rate of $1.50 for every $1,000 of value, with a minimum tax of $25.00 until September 1, 1991, and a minimum of $35.00 for taxable years beginning on or after that date. Many corporations are not affected by the increase in the minimum tax because their franchise tax liability is at least $35.00.

Prior law required a new corporation to file an initial corporate franchise tax return within 60 days after beginning business in this State and to pay a tax of $25.00 for the period from the date the corporation began doing business until the end of the corporation's first income year. This act deletes this requirement but does not change the requirement that a new corporation and any other corporation that does business in this State file a franchise tax return and pay franchise tax at the end of each of the corporation's tax years.

Under prior law, if a corporation failed to file the initial franchise tax return and pay the $25.00 tax, its charter or certificate of authority was suspended, even if it filed its subsequent annual returns. Thirty percent of corporate suspensions were a result of failing to file this return. The Department of Revenue reported that this situation caused an administrative burden for the Department of Revenue and the Department of Secretary of State and was inconvenient for taxpayers.

The Department of Revenue also reported that its operation would not be hampered by repeal of the initial return requirement because G.S. 55-16-22 requires corporations other than professional corporations to file an initial report with the Secretary of State within 60 days after the end of the month in which they first incorporate or begin doing business. The Department of Revenue can obtain whatever information it needs regarding these corporations from the Secretary of State and can obtain information about professional corporations from the licensing boards that govern the professions.

Fuel Tax

Gasoline tax amendments (SB 110; Chapter 42): Senate Bill 110 makes two types of changes to the motor fuel tax laws. First, it makes a temporary change to the bond amount required of distributors and suppliers of fuel to keep the maximum bond at $40,000 until July 1, 1991. Second, it makes numerous unrelated changes to these laws to

make them clearer and easier to administer. To accomplish this purpose, the act resolves current ambiguities and inequities in the law and makes uniform the provisions that apply to distributors of gasoline and suppliers of special fuel, which is primarily diesel fuel.

The 1990 General Assembly changed the maximum amount of the bond required from a distributor of gasoline or a supplier of diesel fuel from $40,000 to two times the distributor's or supplier's expected tax liability, effective January 1, 1991. Many distributors and suppliers who have a history of timely tax payments had difficulty obtaining bonds at the higher amounts. In recognition of the severity of this problem, this act did two things to help a distributor or supplier who could not obtain the bond required under the 1990 legislation:

(1) It allowed the Secretary of Revenue to accept an irrevocable letter of credit in lieu of a bond from a distributor of gasoline or a supplier of diesel fuel.

(2) It established a temporary ceiling of $40,000 for a bond required of a distributor or supplier by postponing the effective date of the change in the required bond from January 1, 1991, until July 1, 1991. Chapter 441 of the 1991 Session Laws, effective June 28, 1991, established a permanent solution to this problem by setting a maximum bond amount of $125,000.

The act makes uniform the provisions that apply to both distributors of gasoline and suppliers of diesel fuel. It clarifies that a corporation or a limited partnership must be authorized to do business in this State to be a distributor or a supplier, requires an individual or a general partnership to designate an agent for service of process, and makes the language concerning a license application and bond of a distributor the same as for a supplier of special fuel. The act adds failure to keep records to the list of actions for which criminal liability attaches and for which a distributor's or supplier's license can be revoked, inserts a requirement of willfulness in failing to file a report or pay tax when due, specifies the amount of notice that must be given before the Secretary cancels a license of a distributor or a supplier, and conforms the language concerning cancellation of a distributor's license to that used for a supplier. The changes in the amount of notice required are made to ensure due process. The act also provides that a supplier is an agent of the State in collecting the special fuel tax. Distributors are declared agents of the State in G.S. 105-444.

The act makes other changes to the motor fuel tax laws to make them clearer and easier to administer. It gives the Secretary of Revenue the discretion to waive the penalty for a late application for a refund of motor fuel or special fuel taxes rather than require an automatic reduction in the amount of the refund equal to the amount of the penalty. The Secretary generally has the power to waive penalties concerning the late payment of taxes.

The act clarifies that a refund is available only for tax paid on fuel used in the previous year. This is the clear intent of the statute but taxpayers have argued that G.S. 105-446 entitles them to a refund of taxes paid for any year. The question arises only when the Department assesses a taxpayer for the excise tax that was not paid but should have been paid on fuel.

The act deletes the requirement that a bulk-user store at least 100 gallons of fuel. Under prior law, it was not clear how a person who stores less than 100 gallons of fuel for the person's use should be treated.

The act clarifies the liability of a supplier and a user-seller for any tax due on fuel sold or used by the supplier to the user-seller. It makes clear that a supplier is liable for taxes due on fuel sold to a user-seller unless the fuel is dispensed into a tank that is marked "For Nonhighway Use" and that a user-seller is liable for taxes due on fuel that is dispensed into a tank marked "For Nonhighway Use" but is used for a highway purpose.

The act clarifies that a user-seller who uses more fuel than the user-seller reports is presumed to have acquired the extra fuel tax-free for use in a licensed motor vehicle. The prior law stated that the user-seller is presumed to have acquired the extra fuel tax-free but did not go the extra step and presume that the fuel was acquired for a taxable purpose, thereby creating a presumption that the fuel is taxable. Chapter 441 of the 1991 Session

Laws, effective January 1, 1992, expands this presumption to cover fuel incorrectly reported as well as fuel that is not reported at all.

The act allows a truck that is cited for not having a registration card or identification marker to continue to operate if payment of the $75 penalty is not in jeopardy. Prior law prohibited further operation of the vehicle until payment of the $75 penalty regardless of whether payment of the penalty was in jeopardy or the circumstances of the vehicle.

The section of the act establishing a temporary ceiling of $40,000 for a bond or letter of credit required of a distributor or supplier was effective retroactively to January 1, 1991, and expired July 1, 1991. The remainder of the act became effective upon ratification, April 22, 1991.

Diesel fuel tax report (SB 112; Chapter 182): Senate Bill 112 resolves a conflict in reporting dates for persons eligible to file annual road tax reports and diesel fuel reports. It changes the filing period for annual diesel fuel reports from a calendar year to a fiscal year so that both the annual road tax report and the diesel fuel tax report are due at the same time. This change will simplify reporting for the taxpayers and the Department of Revenue. The conflict arose after the General Assembly enacted Chapter 1050 of the 1989 Session Laws. That act allowed a motor carrier whose annual liability for the road tax is less than $200.00 to file an annual report rather than a quarterly report. The allowed annual report covers a fiscal year rather than a calendar year. Chapter 1050 also allowed a user of diesel fuel to file a report on an annual basis if the user is allowed to file an annual road tax report. The act set the filing period for the diesel fuel report on a calendar year basis, however, rather than on a fiscal year basis.

The act also clarifies how the motor carrier who files an annual report should compute the amount of tax liability or credit. The road tax on motor carriers is set at the same rate as the per gallon excise tax. The per gallon excise tax rate has two components--a flat tax of 17¢ a gallon and a variable component equal to the greater of 3 1/2 cents per gallon or 7% of the weighted average wholesale price of gasoline and No. 2 diesel fuel for the most recent six-month base period. In computing the tax liability or credit for a motor carrier filing on an annual basis, the act provides that the average of the two variable cents-per-gallon rates of tax in effect during the year should be used.

This act was effective upon ratification, June 3, 1991.

Special fuels reporting/bond changes (HB 46; Chapter 441): House Bill 46 provides a permanent solution to the bonding dilemma addressed temporarily in Senate Bill 110, ratified as Chapter 42 of the 1991 Session Laws, and modifies the licensing and reporting system for the sale of special fuel, which is primarily diesel fuel as opposed to gasoline. The changes to the licensing and reporting requirements become effective January 1, 1992, and will make the administration of the special fuels statutes easier for the Department of Revenue and less cumbersome for the public.

The 1990 General Assembly changed the maximum amount of the bond required from a distributor of gasoline or a supplier of diesel fuel from $40,000 to two times the distributor's or supplier's expected tax liability. Many distributors and suppliers who had a history of timely tax payments had difficulty obtaining bonds at the higher amounts. Chapter 42 of the 1991 Session Laws provided a temporary solution to the problem by reinstating the $40,000 maximum bond amount until July 1, 1991. Effective July 1, 1991, this act sets the maximum bond required of a distributor of gasoline or a supplier of special fuel at $125,000. The maximum bond for a person who is both a supplier and a distributor is $250,000.

The act also establishes a different bonding requirement for importers of gasoline. Under the act, the amount of the bond required of distributors who import or exchange fuel is based on the amount of fuel imported or exchanged rather than the amount of fuel sold to other licensed distributors. These importers have large potential tax liabilities and some have few assets or ties to the State. Under prior law, the bond amount for these

importers and traders was based on the amount of tax payable on the sale of gasoline to others. However, no tax is due when an importer or trader sells to a licensed distributor; the tax is due when the purchasing distributor subsequently resells or uses the gasoline.

In addition to changing the bond requirements, the act expands the reporting requirements for special fuel. Beginning January 1, 1992, the act requires all suppliers of special fuel to obtain a license from the Department of Revenue and to report all sales of special fuel. Currently, only suppliers of special fuel to be used for highway purposes are licensed and only sales of special fuel to be used for highway purposes are reported. In addition, the act exempts suppliers of nonhighway fuel from the bonding requirement and allows these suppliers to report sales quarterly instead of monthly.

The act modifies the licensing and reporting requirements for users of special fuel. A user is a person who uses special fuel in a licensed motor vehicle. The act exempts motor carriers who file road tax reports from the reporting requirement, allows the Secretary to waive the reporting requirement for motor carriers who are not required to file road tax reports, exempts users whose vehicles weigh less than 10,001 pounds from both the licensing and reporting requirements, and replaces the reporting requirement for the remaining users with a requirement that the users file an annual statement certifying that they did not use non-taxpaid fuel during the year in their motor vehicles. Currently, all users of special fuel whose vehicles weigh more than 6,000 pounds must file either quarterly or annual reports that list each purchase of fuel, including the date of the purchase, the seller of the fuel, and the amount of the purchase. Many users of special fuel find this report burdensome.

The act relieves certain bulk users of diesel fuel from the requirement of marking storage facilities for the fuel. Under current law, a bulk user of special fuel that is not used for a highway purpose must mark the facility "For Nonhighway Use." The act eliminates the marking requirement when the fuel is used only for heating, drying crops, or a manufacturing process and could not be readily extracted from the storage facility and used for a highway purpose. It also provides that a supplier of special fuel who sells or delivers fuel into a storage facility of a user-seller that is marked for nonhighway use is liable for any tax due on the fuel if the supplier knows or has reason to know that the user-seller intends to use the fuel for a highway purpose.

The act expands the presumption concerning when fuel is taxable to cover fuel that is incorrectly reported as having been purchased for a nonhighway use. Chapter 42 of the 1991 Session Laws clarified the existing presumption by stating that a user-seller who uses more fuel than the user-seller reports is presumed to have acquired the extra fuel tax-free for use in a licensed motor vehicle. Therefore, under the current law, only fuel that is not reported at all rather than falsely reported is presumed taxable.

The act relieves retail sellers of special fuel from the requirement of giving purchasers of special fuel a detailed receipt when the purchaser buys fewer than 25 gallons of fuel for highway purposes and requires a receipt for all sales for nonhighway purposes. Current law requires a user-seller to give a receipt for every retail sale of any amount of special fuel. The receipt must contain the name and address of the purchaser, among other information.

Fuel tax changes (HB 23; Chapter 487): House Bill 23 changes several provisions in the motor fuel tax statutes to enable North Carolina to enter the International Fuel Tax Agreement (IFTA). As of December 1, 1990, at least sixteen states belonged to the IFTA and four more, including North Carolina, had indicated a desire to join. The sixteen member states are primarily midwestern and western states. If North Carolina joins, several other southeastern states are expected to follow suit. The act becomes effective January 1, 1992, the date North Carolina expects to become a member of the IFTA. It is estimated that this act will increase State revenues by $137,500 in the 1991-92 fiscal year and $275,000 in the 1992-93 fiscal year. Three-fourths of the new revenue will be credited to the Highway Fund and the remainder will be credited to the Highway Trust Fund.

The IFTA is an agreement between member taxing jurisdictions to assist each other in the collection and administration of taxes paid by interstate motor carriers on their use of motor fuel. These taxes are frequently referred to as road taxes or highway use taxes and are not to be confused with the motor vehicle titling tax enacted in 1989 that is also referred to as a highway use tax. The road tax is a tax on the amount of fuel a motor carrier uses in its operations in a state. The tax is at the same rate as the state's per gallon excise tax on motor fuel and a credit is given for excise taxes paid to the state on motor fuel. Thus, the purpose of the tax is to tax motor carriers who drive in a state using fuel purchased in another state.

Under the IFTA, a motor carrier declares one member jurisdiction to be the carrier's base jurisdiction for registering the carrier's vehicles for purposes of the road taxes and reporting the taxes due to all the member jurisdictions. The base jurisdiction then collects the road taxes payable by the motor carrier to every member jurisdiction and remits the taxes collected to the appropriate jurisdictions. By centralizing the payment and collection of road taxes, the agreement greatly simplifies the payment of road taxes by motor carriers and the collection of road taxes by the member jurisdictions.

The IFTA requires a member jurisdiction to agree to certain administrative provisions to ensure uniformity among the participating jurisdictions. Some of North Carolina's statutes conflict with these provisions and must be changed in order for North Carolina to be able to enter the IFTA. This act makes the necessary changes.

Section 1 changes the law on who is a user of special fuel, which is primarily diesel fuel, for reporting fuel consumed by a leased motor vehicle. G.S. 105-449.10 requires a user of special fuel to file periodic reports of fuel use. For leased motor vehicles, the question is whether the lessor or lessee must file the report.

Under existing law, the lessee is required to file the report unless the lessor supplies the fuel, pays for the fuel, or includes the cost of fuel in the lease and elects to be the lessee. Under the act, beginning January 1, 1992, the one who is designated as the motor carrier with respect to the leased vehicle must file the report. If the leased vehicle is not subject to the road tax and, consequently, neither the lessor nor the lessee is a motor carrier with respect to the vehicle, the one who is liable for payment for the fuel consumed by the leased vehicle must file the report.

Section 2 modifies the exemptions from the road tax to ensure that the same vehicles are subject to road tax in each member jurisdiction under the IFTA. It rewrites the definitions of "motor carrier" and "motor vehicle" to delete the existing exemptions for vehicles operated by nonprofit organizations and retain the exemptions for vehicles operated by the United States, vehicles operated by the State or a political subdivision of the State, and special mobile equipment.

Section 3 modifies the refund provisions of the road tax to ensure that a motor carrier who registers under the IFTA is subject to the same refund provisions in each member jurisdiction of the IFTA. The modified provision will allow the Secretary of Revenue discretion to refund excess motor fuel excise taxes paid by a motor carrier without first auditing the motor carrier's records or requiring the motor carrier either to furnish a bond or to establish a one-year history of compliance with the motor fuel tax laws. Under existing law, the Secretary may not refund excess tax paid by a motor carrier unless the Secretary audits the carrier or the carrier either furnishes a bond or has a one-year history of compliance with the motor fuel tax laws.

Section 4 enables the Secretary of Revenue to require a motor carrier to furnish a bond in certain circumstances and raises the maximum bond from $10,000 to four times a carrier's expected liability or refund. Under existing law, a motor carrier is required to furnish a bond only if the carrier wants a refund of taxes paid and does not have a one-year history of compliance with the motor fuel tax laws. Under the act, beginning January 1, 1992, the Secretary can require a motor carrier to file a bond when the motor carrier fails to file a report or pay tax when due or if the Secretary determines after auditing the motor carrier that a bond is needed to protect the State from loss. The maximum bond required

under existing law is $10,000. Section 4 increases the maximum bond to four times the carrier's liability to North Carolina to reflect the increase in the amount of taxes that will be collected by North Carolina as the base state. For motor carriers who designate North Carolina as their base jurisdiction, North Carolina will collect road taxes payable to all the other member jurisdictions.

Section 5 is a companion change to the change made in Section 1 concerning leased motor vehicles. This section changes the law on who, between the lessor and lessee of a leased motor vehicle, is considered the motor carrier and must consequently file periodic road tax reports and pay the road tax. Under existing law, the lessee is the motor carrier unless the lessor supplies the fuel, pays for the fuel, or includes the cost of fuel in the lease and elects to be the lessee. Under the act, who between the lessor and the lessee is the motor carrier will differ depending on whether the lessor is a company that is regularly engaged in the leasing business or is an independent contractor and owner-operator of a truck or other vehicle. If the lessor is regularly engaged in the leasing business, the lessor is the motor carrier unless the lessor and lessee agree that the lessee is the motor carrier and the lessee notifies the Secretary of Revenue. If the lessor is an independent contractor, the lessee is the motor carrier unless either the motor vehicle whose operations must be reported is leased for fewer than 30 days or the motor vehicle is leased for at least 30 days, the lessor and lessee agree that the lessor is the motor carrier, and the lessor notifies the Secretary of Revenue.

Section 6 modifies the procedure for registering a motor carrier and its fleet for purposes of the road tax. The modifications are made to accommodate the registration procedures under the IFTA. The section changes current law by requiring registration of both a motor carrier and each vehicle in the carrier's fleet and by eliminating the requirement that each identification marker for a vehicle have a unique identifying number. Under existing law, each motor vehicle operated by a motor carrier is registered with the Department of Revenue and the motor carrier is not separately registered. The Department assigns a unique number to each registered motor vehicle and issues a registration card, which is carried in the cab of the motor vehicle, and an identification marker, which is placed on the vehicle. Under the IFTA, registration focuses on the motor carrier, and both the motor carrier and the vehicles in the carrier's fleet are registered. A unique number is assigned to each motor carrier but not to each motor vehicle in a carrier's fleet. An identification marker is issued for each vehicle in the carrier's fleet but the marker identifies the vehicle as part of a certain carrier's fleet. A copy of the motor carrier's registration must be carried in the cab of each motor vehicle and the vehicle's identification marker must be placed on the vehicle.

Section 7 eliminates the current credit against the road tax for any temporary permit fee paid. No other state allows this credit. Under existing law, a motor carrier may operate for no more than than 20 days in this State without registering for payment of the road tax if the carrier applies for and receives a temporary permit. The fee for a temporary permit is $25.00. Under existing law, if the motor carrier files a road tax report for its temporary operations, the carrier can receive a credit against the road tax for its temporary permit fee. If the carrier's operations were exclusively intrastate, it can obtain a refund of the temporary permit fee by filing a report. This section eliminates both the credit and the refund.

Underground storage tank amendments (HB 1222; Chapter 538): House Bill 1222 revises the law on leaking underground petroleum storage tanks in various ways to encourage the replacement of these tanks and to ensure that sufficient funds are available to clean up the environmental damage caused by them. As part of the effort to provide adequate funds for the clean-up, the act increases the per gallon excise tax on motor fuels for a limited period of time and earmarks the revenue for this purpose.

Effective January 1, 1992, the act increases the per gallon excise tax on motor fuels by 1/2¢ a gallon, dedicates one-half of the increased revenue to the Commercial Leaking

Petroleum Underground Storage Tank Fund, established under G.S. 143-215.94B, and dedicates the remaining one-half to the Groundwater Protection Loan Fund, which the act creates in new G.S. 143-215.94P. Effective January 1, 1995, the act reduces the 1/2¢ increase by 1/4¢ a gallon and eliminates the dedication of revenue to the Loan Fund. Thus, when the 1995 changes take effect, the per gallon tax will be 1/4¢ more a gallon than it is now and all the revenue from the increase will be earmarked for the Commercial Tank Fund. Effective January 1, 1999, the changes to the per gallon tax made in 1992 and 1995 are repealed.

Non-tax-paid fuel penalty (HB 544; Chapter 613): House Bill 544, requested by the Department of Revenue, imposes civil penalties for buying or selling non-tax-paid motor fuel or special fuel for use in motor vehicles. Effective October 1, 1991, a person who dispenses non-tax-paid fuel or allows non-tax-paid fuel to be dispensed into a motor vehicle is subject to a penalty. If the amount of fuel dispensed is less than 25 gallons, the penalty is $75.00. If the amount dispensed is 25 or more but less than 50 gallons, the penalty is $150.00. If the amount dispensed is 50 gallons or more, the penalty is $300.00. In addition, this act provides that failure to pay the penalty is grounds to withhold or revoke the registration plate of the motor vehicle into which the non-tax-paid fuel was dispensed. The penalties collected will be credited to the Highway Fund.

The per gallon excise taxes levied by the State on fuel apply to all fuel used to operate motor vehicles. Fuel used for other purposes is not taxable. A person who uses motor fuel for a purpose other than to propel a motor vehicle may obtain a refund of the tax paid on the fuel. A person who uses special fuel, which is primarily diesel fuel, for a purpose other than to propel a motor vehicle may either purchase non-tax-paid fuel from a supplier or, if the fuel used was tax-paid fuel, obtain a refund of the tax paid on the fuel. A recent investigation by the Department of Revenue revealed that a high percentage of supplier-resellers selling non-tax-paid special fuel were allowing individuals to evade the tax by allowing the non-tax-paid fuel to be dispensed into motor vehicles. The Department requested this act to help ensure compliance with the tax.

Highway Use Tax

Highway Use Tax Transition (HB 10; Chapter 46): House Bill 10 gives lessors and renters of motor vehicles the option of paying the highway use tax rather than the alternate gross receipts tax on motor vehicles owned on October 1, 1989, and clarifies the tax status of these motor vehicles. It became effective upon ratification, April 23, 1991.

The 1989 Highway Trust Fund legislation repealed the sales tax on motor vehicles effective October 1, 1989, imposed a titling tax on motor vehicles, and gave lessors and renters of motor vehicles an option of either paying the new 3% titling tax when purchasing a vehicle for lease or rental or waiving payment of the titling tax and collecting a tax on the gross lease or rental receipts. The gross receipts tax is 8% on short-term rentals (less than one year) and 3% on long-term rentals. The law did not give lessors and renters an option of paying titling tax on vehicles owned on the effective date of the change.

The act allows lessors and renters of motor vehicles to elect to pay the 3% highway use tax on motor vehicles owned by them on October 1, 1989, the effective date of the tax change. In doing so, it gives them the same option on their existing inventory that they have on vehicles purchased since October 1, 1989.

A lessor or renter who elects to pay the titling tax under the proposal will pay tax based on the retail value of the vehicle. The retail value for these motor vehicles is the wholesale book value of the vehicle as determined in accordance with schedules of value adopted by the Commissioner of Motor Vehicles. The retail value may be less than or

greater than the lessor's or renter's book value of the vehicle, which is based on cost less depreciation.

Taxes collected on motor vehicles owned on October 1, 1989, and leased on or after that date will be credited to the General Fund. It was estimated that this act will generate a one-time revenue increase to the General Fund of $1 million to $1.5 million for the 1991-92 fiscal year.

Because the 1989 Highway Trust Fund legislation provided that the highway use tax applied to vehicles titled on or after October 1, 1989, it was not entirely clear what tax applied to leases made or renewed on or after October 1, 1989, that involved a motor vehicle owned as of October 1. The pre-1989 law did not apply and, arguably, the new highway use tax law with its alternate gross receipts tax had not been triggered because no vehicle had been titled. This act clarifies that those motor vehicles owned on October 1, 1989, that are leased on or after that date are subject to the alternate gross receipts tax and pay tax at the applicable 3% or 8% rate.

Highway Trust Fund Technical Changes (HB 8; Chapter 193): House Bill 8 makes two administrative changes and numerous technical changes to the highway use tax statutes. The General Assembly enacted the highway use tax in 1989 as a source of revenue for the North Carolina Highway Trust Fund, the funding source for a $9.1 billion highway program. The 3%, $1,000 maximum "highway use tax" replaced the 2%, $300 maximum sales tax on motor vehicles.

The first administrative change became effective July 1, 1991, and gives the Division of Motor Vehicles the authority to revoke or suspend a motor vehicle dealer's license if the dealer submits a bad check to the Division in payment of the highway use tax. The highway use tax must be paid before a certificate of title is issued for a motor vehicle. Because many motor vehicle dealers apply for a certificate of title for vehicles bought from them, the law allows a dealer to collect the highway use tax payable on a motor vehicle and remit the tax to the Division when the dealer applies for a title on behalf of the buyer of the motor vehicle. During the first year the highway use tax was in effect, the Division received over $15,000 in bad checks from dealers in payment of the tax. Under prior law, the only remedy available to the Division was to remove the registration plate from any vehicle for which a bad check was given in payment of the highway use tax. It did not seem fair, however, to remove the plate from a vehicle when the owner of the vehicle paid the tax to a dealer and the dealer submitted a bad check to the Division.

The second administrative change clarifies that the Department of Revenue has the same authority to audit those who elect to pay the gross receipts tax on the lease or rental of motor vehicles that it has to audit those who remit sales and use taxes and gives the Division of Motor Vehicles the specific authority to request the Department of Revenue to conduct an audit of a person who pays the gross receipts tax. Prior to the highway use tax legislation, the gross receipts tax on the lease or rental of motor vehicles was part of the sales tax law and was administered by the Department of Revenue. Under current law, the gross receipts tax is an elective alternate to the highway use tax and is set out in the highway use tax statutes. Although the tax is collected by the Department of Revenue, the highway use tax statutes are administered by the Division of Motor Vehicles.

In addition to the administrative changes, the act makes the following technical changes:

(1) It deletes an inaccurate reference in G.S. 105-187.6(b)(4) to the filing of a security interest in a motor vehicle with the Secretary of State. Security interests in most motor vehicles are perfected by filing with the Division of Motor Vehicles, rather than the Secretary of State.

(2) It deletes G.S. 105-436 because it conflicts with G.S. 105-445 and is unnecessary. G.S. 105-436 states that gas tax revenue is to be credited to the Highway Fund, but G.S. 105-445 requires 75% of gas tax revenue to be credited to the Highway

Fund and 25% to be credited to the Highway Trust Fund. The provisions in G.S. 105-436 on payment of the gas tax by distributors duplicate G.S. 105-434(b).

(3) It allocates gas tax refunds made to the Cherokee Tribe between the Highway Fund and the Highway Trust Fund in accordance with the 75%/25% split for other refunds.

(4) It deletes unnecessary and inaccurate language in G.S. 20-57(b) concerning the fee imposed for issuing a copy of a registration card for a motor vehicle. G.S. 20-85 sets the fee at $10.00.

(5) It deletes unnecessary and inaccurate language in G.S. 20-85 concerning an exception to the fee schedule set in that statute. G.S. 20-68 does not contain an exception to the fee schedule in 20-85 and has not since 1975.

(6) It corrects a cross reference to the statute that required highway use tax revenue to be credited to the Highway Trust Fund.

Except as otherwise noted, the provisions of the act became effective upon ratification, June 3, 1991. The act does not have any revenue impact.

Income Tax

Tax military same as federal law (SB 697; Chapter 439): Senate Bill 697 changes North Carolina law in two ways. First, it gives armed forces personnel and support personnel serving in the Persian Gulf conflict of 1990-91, commonly referred to as Operation Desert Shield and Operation Desert Storm, the same amount of time to file a State tax return that federal law gives them to file a federal tax return. In doing so, it waives penalties and interest that might otherwise have accrued during the extension period. Second, it makes a technical change to the current State provision concerning abatement of State income taxes for persons who die in combat to ensure that the State provision tracks the federal income tax abatement provision.

The extension period for income taxes granted by this act is the number of days during the regular filing period the individual was in the combat zone plus 180 days. The length of the regular filing period, which runs from January 1 to April 15, is 105 days. The maximum 285-day extension is reduced by the number of days of the regular filing period during which the individual had left the combat zone. For example, if the individual returned on February 1, 1991, the extension equals 211 days (31 days of the regular filing period when the individual was in the combat zone plus 180 days).

The act does not give armed forces personnel and support personnel interest on their income tax refunds as does federal law for federal tax refunds. Under federal law, armed forces personnel and support personnel are paid interest on any federal income tax refund due from April 15 until the refund is paid. Under State law, no interest is paid on a refund if the refund is made within six months from the later of the date on which the annual return is filed or the date the annual return is due to be filed.

This act is effective retroactively as of August 2, 1990. The estimated loss to the General Fund for the 1991-92 fiscal year is $272,000. The loss is attributable to the interest that would otherwise be due on returns with tax liability filed after April 15. The General Assembly passed a similar act, Chapter 160, that gives military personnel deployed in Operation Desert Storm or Operation Desert Shield 90 days after the end of their deployment to pay their 1990-91 property taxes without interest and to list property for the 1991-92 tax year.

Tax credit adjustment (SB 104; Chapter 453): Senate Bill 104 makes an adjustment to two individual income tax credit laws to restore to taxpayers the benefits of the credits that were inadvertently limited by the Tax Fairness Act of 1989. It also provides that only one

credit is allowed with respect to property owned by a married couple, regardless of the nature of the ownership interest.

G.S. 105-151.12 allows a tax credit of 25% of the value of property donated for land conservation purposes. The maximum credit for a donation of property is $25,000. G.S. 105-151.14 allows a tax credit of 10% of the market price of a crop that the owner allows to be gleaned. When these tax credits were enacted in 1983 and 1984, respectively, they provided that the taxpayer could not also claim a deduction for the donation that was the basis of the credit. In effect, the taxpayer could choose between taking a credit or a deduction for State tax purposes.

Under the Tax Fairness Act of 1989, federal taxable income is the starting point for calculating State taxable income. Separate State tax deductions are therefore eliminated and the deductions taken for federal purposes apply to the State tax as well. To prohibit a double tax benefit for the same donation, the Tax Fairness Act amended these two State tax credits to provide that they could not be taken for amounts that were deducted for federal tax purposes. The effect of the revision, therefore, was to restrict inadvertently the situations in which the tax credit could be used. Under the original law, the taxpayer could choose between the State credit and the State deduction; because the credit provided a greater tax benefit, the taxpayer would normally choose the credit. Under the revised law, the taxpayer had to forgo both the State and federal deductions to receive the credit. This removed the extra incentive for making the donation in the first place.

This act amends the law to reflect its original intent: a taxpayer can choose either the State credit or the State deduction. Claiming the State credit does not affect the federal deduction. The act provides that a taxpayer who claims the State credit must forgo the benefit of the deduction for State tax purposes. If the deduction has already been claimed in determining federal taxable income, the taxpayer must add the amount of the deduction to North Carolina taxable income. The adjustments to the two individual income tax credits are effective retroactively beginning with the 1989 tax year. The average annual loss to individual income tax revenue for the seven-year period these credits have been in effect is $145,000.

Effective for taxable years beginning on or after January 1, 1991, only one credit is allowed with respect to property owned by a married couple, regardless of the nature of the ownership interest. Under prior law, a married couple that owned property by the entirety could take only one credit for a donation of the property. However, if the couple had a tenancy in common, each spouse could take a separate credit.

Redefine distressed counties (HB 1236; Chapter 517): In 1987 the General Assembly created a tax credit for individuals and corporations that hired additional full time employees in a severely distressed county. Under current law, a county is considered severely distressed if its distress factor is one of the 25 highest in the State. The Secretary of Economic and Community Development assigns a distress factor to each county in the State at the end of each calendar year. The factor is based on the sum of the county's rank by rate of unemployment, from lowest to highest, and its rank by per capita income, from highest to lowest, averaged over a three year period. As enacted, the credit would have expired for taxable years beginning on or after January 1, 1993.

House Bill 1236 increases the number of severely distressed counties from 25 to 33, removes the sunset on the credit, and adds a third criteria to be used in determining whether or not a county is severely distressed. The third criteria is the county's rank by percentage of growth in population from lowest to highest. The addition of this third criteria conforms the criteria for designation as a severely distressed county to the criteria used in determining which counties may benefit from the Industrial Development Fund under G.S. 143B-437A.

This act becomes effective for taxable years beginning on or after January 1, 1992. Through May 1991, the cost of this tax credit in fiscal year 1990-91 was approximately $300,000. This figure represents 1/4 of the total tax credits available to employers because

the $2,800 maximum credit must be taken in equal installments over a four-year period. It is estimated that increasing the number of severely distressed counties to 33 will add at least an additional $100,000 to the cost of the credit on a fiscal year basis. However, no additional cost will be incurred until fiscal year 1993 because the credit must be taken in the taxable year after the job has been created.

Amend investment credits (HB 487; Chapter 637): Effective July 11, 1991, House Bill 487 makes technical and administrative changes to the statutes concerning tax credits for qualified business investments. In general, a qualified business investment is an investment in the stock of a North Carolina business that is registered with the Secretary of State and is a small business venture, is a business that has received a grant from certain State or federal agencies, is an investment company whose primary investments are in either or both of these first two types of businesses, or is a North Carolina Enterprise Corporation.

The act changes the law as follows:

(1) It deletes references to North Carolina Capital Resource Corporations. These corporations do not exist and can no longer be created because the statutes authorizing their creation, Article 2 of Chapter 53A, have expired.

(2) It gives the Secretary of State the authority to adopt administrative rules concerning the annual registration renewal required of the types of businesses whose stock investments are eligible for a tax credit under G.S. 105-163.011, other than the North Carolina Enterprise Corporation, and requires these businesses to comply with the rules.

(3) It makes several clarifying changes concerning financial statements and revenues of a qualified business venture. First, it requires a qualified business venture to file an annual financial statement with the Secretary of State as well as an initial financial statement. Second, it requires that each financial statement show revenues for the preceding year of no more than $5,000,000 for investments in the business to continue to qualify for a tax credit. Third, it requires a qualified business venture to notify the Secretary of State when its annual revenues exceed $5,000,000.

(4) It changes the tax credit forfeiture provisions in two ways to avoid unintended results. First, it provides that a taxpayer does not forfeit a credit received for investing in a qualified business venture before the annual revenue of the business exceeded $5,000,000. Prior law required a taxpayer who received a credit in any of the three years before revenues exceeded $5,000,000 to forfeit the credit and pay tax. Second, it provides that a taxpayer does not forfeit a credit received for investing in a qualified grantee business if the business does not receive a grant at least every three years. Prior law required a taxpayer who received a credit to forfeit the credit if the business does not receive another grant in the next three years.

The act does not change the amount of an investment credit allowed. For a corporation, the credit is 25% of the amount invested or $750,000, whichever is less. A corporation may apply the credit against its income tax, franchise tax, or premiums gross receipts tax. For an individual, the credit is 25% of the amount invested or $100,000, whichever is less. A corporation may apply the credit against the individual's income tax liability. A tax credit is taken for the taxable year beginning in the calendar year following the calendar year in which an investment is made. A credit cannot exceed the amount of taxes imposed; the amount of any unused credit may be carried forward for the next five succeeding years.

Subchapter S clarification (SB 103; Chapter 752): Senate Bill 103 clarifies the intent of a 1990 act concerning net economic loss carryforwards by Subchapter S corporations. The 1990 act, Chapter 984 of the 1989 Session Laws (Reg. Sess. 1990), mitigated the effect of the 1989 transition from non-recognition of S corporations under the State income tax law to recognition of these corporations. The 1990 act allowed S corporations to carry forward part of the net economic losses incurred by them during any of the five years before

January 1, 1989. During these years, S corporations were taxed as C corporations rather than as individual shareholders.

The 1990 act allowed S corporations to carry net economic losses forward for three years, but limited the amount that could be carried forward to one-half of the amount that could have been carried forward under prior law if the S corporation were taxed as a C corporation. This act resolves questions that arose over the meaning of the one-half limitation. It clarifies that the limitation to one-half of the amount that would have been allowed if the law had not changed applies separately to each of the years to which losses may be carried forward and does not limit the aggregate amount that may be carried forward to one-half of the total pre-1989 net economic losses.

Thus, if an S corporation has a pre-1989 net economic loss of $1,000 that can be carried forward, it is not limited to deducting only $500.00 (half of $1,000), at most, of the loss. How much of the loss it can deduct depends on its income for 1989, 1990, and 1991. If the corporation has enough income in each of those three years to deduct fully the amount it would have been able to deduct if the law had not changed and to meet the separate requirement that the deduction not exceed one-half of the corporation's income for the year in which the deduction is made, the corporation can deduct $500.00 in 1989 (half of $1,000), $250.00 in 1990 (half of the $500.00 that could not be deducted in 1989), and $125.00 in 1991 (half of the $250.00 that it could not deduct in 1989 or 1990).

Inheritance Tax

Repeal inheritance tax exemptions (SB 114; Chapter 454): Senate Bill 114 revises the State inheritance tax exemptions to reflect changes made to the inheritance tax laws in 1985. It is effective for the estates of decedents dying on or after September 1, 1991.

The act repeals the separate inheritance tax exemptions for the following types of property, each of which is fully taxable under the federal estate tax:

(1) Pension, profit-sharing, and stock bonus plans qualified under section 401 of the Internal Revenue Code and retirement annuity contracts qualified under section 403 of the Internal Revenue Code.

(2) Amounts receivable under individual retirement accounts (IRAs), individual retirement annuities, and individual retirement bonds.

(3) Federal military retirement and survivor benefits.

It repeals these specific exemptions because their purpose, which is primarily to protect property passing to a spouse, children, or grandchildren from inheritance taxation, is accomplished by changes made to the inheritance tax law in 1985. In that year, the General Assembly enacted the spousal exemption and increased the Class A inheritance tax credit to an amount that exempts at least $500,000 of property that passes to lineal ancestors and descendants from tax. Under those changes, any property, including the property listed above, is exempt from inheritance tax if it passes to a spouse and is eligible for application of the Class A credit if it passes to a lineal ancestor or descendant. Repeal of these exemptions is expected to increase revenue to the General Fund by no more than $100,000 annually.

Privilege License Tax

Adjust local tax penalty (HB 343; Chapter 64): House Bill 343 makes two local changes to the penalties that apply to failure to obtain a city privilege license. First, effective July 1, 1991, it allows the City of Charlotte to reduce the amount of the penalty payable by those who engage in business in Charlotte without obtaining a required privilege license.

Second, from April 30, 1991, to October 1, 1992, it allows any city with a population of at least 380,000 to give a tax credit against the city's privilege license taxes for the amount of any penalties paid to the city for failure to obtain a required privilege license.

Although the second change would apply to any city that meets the population threshold, Charlotte is in fact the only city that meets this description. Raleigh, the next most populous city, has a population of 207,000. The second change is written to apply to any city that fits the description to avoid violating Article II, § 24(1)(i) of the North Carolina Constitution. That provision prohibits local acts that remit penalties or refund money paid into the public treasury.

Privilege license tax changes (SB 107; Chapter 479): Effective July 1, 1991, Senate Bill 107 revises the privilege license taxes payable by laundries (including linen rental businesses) and by dry cleaners. It establishes two categories of State privilege licenses for laundries and dry cleaners and changes local taxation of these businesses.

The two categories of State licenses are a location license and a soliciting license. The location license is payable by a dry cleaner or laundry with a fixed place of business in this State. The soliciting license is payable by a laundry or dry cleaner that does not have a fixed place of business in this State but enters the State to pick up clothes or other articles to be cleaned or pressed at a place outside the State.

The State privilege tax for a location license is $50.00 if the business operated at the location does not also have vehicles pick up items from outside the county where the business is located to be cleaned or pressed at the business location. The State privilege tax for a location license is $100.00 if the business operated at the location also has vehicles pick up items from outside the county where the business is located to be cleaned or pressed at the business location. The State privilege tax for a soliciting license is $100.00. The new tax rates are not expected to have a significant impact on the General Fund.

Under prior law, each dry cleaner or laundry was required to obtain one $50.00 State license for each fixed location and an additional $50.00 State license for each city or town, other than the one where it is located, to which it sent vehicles to pick up items to be cleaned or pressed, unless there was not another similar business in that city or town. In addition, a dry cleaner or laundry that had a fixed location only in another state and sent a vehicle into this State to pick up items to be cleaned or pressed was required to obtain a $200.00 State license for each vehicle. These prior provisions were apparently designed to hamper statewide competition and to inhibit competition from out-of-state businesses. The provisions were exceedingly complex and the out-of-state provision was arguably unconstitutional. The new law will simplify State administration and taxpayer compliance.

This act also changes the local privilege license taxes that can be levied on laundries and dry cleaners by counties and municipalities. The prior law was complex. Counties were not authorized to levy a tax on dry cleaners located in the State, but they could levy a tax of up to $200.00 on out-of-state dry cleaners that solicited in the county. Counties were authorized to tax laundries that entered the county to pick up items to be laundered if the actual laundering location was outside the county. If the location was outside the county but inside the State, the county could levy a tax of up to $12.50 on the business; if the location was outside the State, the county could levy a tax of up to $200.00 on each vehicle entering the county.

Under prior law, municipalities with a population of less than 10,000 could levy an annual tax of up to $25.00 on dry cleaners; municipalities with a population of 10,000 or more could levy an annual tax of up to $50.00 on dry cleaners. Municipalities had the same authority as counties to tax laundries: they could levy a tax of up to $12.50 on laundries and linen rental businesses entering the municipality to pick up items to be laundered if the actual laundering location was outside the municipality but inside the State. If the location was outside the State, the municipality could levy a tax of up to $200.00 on each vehicle entering the municipality.

This act simplifies local taxation of these businesses. It provides that municipalities may tax each dry cleaner or laundry that has a place of business in the municipality. The rate of tax may not exceed the State location rate. Both counties and municipalities may tax businesses that do not have a fixed place of business in this State but enter the county or municipality to pick up clothes or other articles to be cleaned at a place located outside the State. The rate of tax may not exceed the State soliciting rate.

Property Tax

Property tax technical changes (HB 50; Chapter 11): As the title indicates, House Bill 50 makes several technical changes to the property tax statutes and statutes that refer to property taxes. The act became effective upon ratification, March 20, 1991.

Section 1 deletes an unnecessary and inaccurate parenthetical in G.S. 105-272. The parenthetical attempts to cite the statutes included in Subchapter II of Chapter 105 of the General Statutes, but does not include all the statutes. Even if it were accurate, the parenthetical is not needed.

Sections 2 through 5 of the bill amend statutes in Chapter 159, Local Government Finance, to delete obsolete references to the assessment ratio and to change the word "appraised" to the technically correct word "assessed." With these changes, the statutes correctly reflect the tax value of property and are consistent with the definitions used in the property tax statutes.

Chapter 159 contains several references to the appraised value of property before application of the assessment ratio. For example, bonds subject to the Local Government Bond Act and certain financing agreements related to capital assets may not be adopted or executed if the local government's net debt exceeds 8% of the appraised value of property subject to taxation by the local government unit before the application of any assessment ratio.

References to the appraised value of property before application of an assessment ratio are obsolete and refer to the pre-1974 procedure for taxing property. Before 1974, local governments assessed a percentage of the property's appraised value for taxation. The value of the property on the tax books was known as the "appraised value" and the percentage was known as the "assessment ratio."

Today, local governments do not apply assessment ratios. By law, they must tax the entire value of the property as listed on the tax records. Since 1974, the appraised value has been defined as the property's true value. Assessed value is the value on the tax books. It is the value on the tax books, for example, that the Local Government Commission looks at to compute the 8% debt limitation.

Review of exempt property (SB 128; Chapter 34): Senate Bill 128 corrects an inequity in the law that allowed property that was granted a property tax exemption or exclusion in error to keep the exemption or exclusion indefinitely unless the use or ownership of the property changed and enacts procedures to require an on-going review of exempt or excluded property. The act became effective upon ratification, April 10, 1991.

Section 1 of the act explicitly requires the applicant for an exemption or exclusion to make a complete and accurate statement of the facts that qualify the property for exemption or exclusion. This addition to G.S. 105-282.1(a) will give the assessor more information on which to make a determination and will enable the assessor to make better decisions. In making this change, the section makes needed technical corrections to the statute.

Section 2 requires each assessor to annually review at least one-eighth of the property that has been exempted or excluded from taxation to verify that the property is entitled to the exemption or exclusion. The assessor may require the owner to submit any information

needed to verify that the property continues to qualify for the exemption or exclusion. This procedure parallels the procedure for review of property classified for taxation at its use-value. Each assessor must review one-eighth of the use-value property each year to verify its eligibility for the program.

Section 3 moves the definitions in G.S. 105-312(a) to the appropriate statute and corrects the inequity that existed under prior law by allowing the assessor to use the "discovery" procedures that apply to unlisted property for property that has been granted an exemption or exclusion but does not qualify for the exemption or exclusion either because the exemption or exclusion was granted in error or because the property no longer qualifies as a result of a change in use, ownership, or some other circumstance. Under these procedures, the assessor can discover property at any time during the tax year and can recover up to five years' back taxes.

Section 4 repeals G.S. 105-312(a). This subsection is no longer necessary because the relevant definitions have been incorporated into G.S. 105-273, the definition section.

The act addresses a dilemma raised by the Property Tax Commission in an appeal by the Church of the Creator, Inc. in December of 1989. In that case, the assessor decided the Church of the Creator did not qualify for the "property used for religious purposes" exemption because the Church did not appear to be using the property for religious purposes. The Commission held that the assessor did not have the authority to remove a previously granted exemption during the tax year, even if the property was not entitled to receive the exemption in the first place.

The Commission indicated that the assessor could require the Church of the Creator to complete a new application prior to the listing period for the upcoming tax year but, if the new application was denied, the assessor could not require the owner to pay taxes for the previous years in which it did not qualify for the exemption. Under prior law, however, it was not clear whether the assessor could require the Church of the Creator to file a new application, as the Commission indicated. The law required a new application only for one or more of the following reasons, none of which applied to the Church of the Creator:

(1) New or additional property was acquired.

(2) Improvements were added or removed from the property necessitating a change in value.

(3) There was a change in either the use of the property or the qualifications or the eligibility of the owner.

Property tax records secrecy (SB 347; Chapter 77): Effective May 8, 1991, Senate Bill 347 allows county assessors to share certain information about business property with the Employment Security Commission. The act applies to information about business property that is provided to an assessor at the assessor's request and is in addition to the information contained on the property tax abstract for the business. Under prior law, the Employment Security Commission could obtain information included on a property tax abstract because abstracts are public documents, but could not obtain any additional information provided at the assessor's request because the law prohibited an assessor from disclosing the additional information to anyone other than an employee of the Department of Revenue.

Revise Property Tax Commission law (HB 51; Chapter 110): Effective May 23, 1991, House Bill 51 made several clarifying changes to the property tax statutes. First, it moved the provisions governing the creation, membership, and organization of the Property Tax Commission from Chapter 143B of the General Statutes to Chapter 105 of the General Statutes. Chapter 105 contains a Subchapter on property taxes and is a more logical place for these provisions. The move does not in any way change the membership of the Property Tax Commission or compensation or duties of the members of the Commission.

Second, the act moves several provisions concerning property tax duties of the Department of Revenue into G.S. 105-289, the statute that lists the duties of the Department, and deletes the requirement that the Department report to the Governor and to the General Assembly the proceedings of the Property Tax Commission and any

recommendations to change the property tax statutes. These reporting requirements are unnecessary because the Department regularly provides information and reports to various legislative study committees and commissions.

Third, the act revises the provisions relating to oaths to delete the requirement that all employees of the Department of Revenue take the same oath as is taken by Property Tax Commission members and to replace the oath contained in several property tax statutes with a reference to the oath required of officeholders by Article VI, § 7 of the North Carolina Constitution. The statutory requirement that all employees of the Department of Revenue take an oath of office was inappropriate because most employees of the Department do not hold an office and should therefore not be required to take an oath of office. Repetition of the oath set out in the North Carolina Constitution is unnecessary.

Military tax grace period (HB 745; Chapter 160): House Bill 745 gives military personnel deployed in the Persian Gulf conflict of 1990-91, commonly referred to as Operation Desert Storm and Operation Desert Shield, 90 days after the end of their deployment to pay their 1990-91 property taxes without interest and to list property for the 1991-92 tax year. Property taxes for the 1990-91 fiscal year would otherwise be due September 1, 1990, and interest would begin to accrue on the taxes from January 6, 1991. The regular listing period for property taxes for the 1991-92 year ended on January 31, 1991.

The act is effective retroactively as of August 2, 1990. The 1991 General Assembly passed a similar act, Chapter 439, that gives personnel deployed in Operation Desert Storm or Operation Desert Shield an extension of 180 days in which to file a State income tax return.

State tax collection procedures (HB 445; Chapter 228): House Bill 445 was requested by the Department of Revenue to give the Department the same authority county tax collectors have in levying on personal property to collect delinquent taxes. Under existing law, Department of Revenue employees could collect unpaid taxes by directing the sheriff to levy upon the delinquent taxpayer's real and personal property located in the sheriff's county. By contrast, a local tax collector could levy against a delinquent taxpayer's personal property to collect unpaid property taxes. (G.S. 105-366, 105-367, and 105-368.)

Effective upon ratification, June 5, 1991, this act provides that the Secretary of Revenue may either direct the sheriff to levy upon the delinquent taxpayer's real and personal property or direct a Department of Revenue employee or officer to levy upon and sell the taxpayer's personal property. In the latter case, the property may be sold either in the county in which it was seized or in Wake County, in the Secretary's discretion. This levy by a Department of Revenue employee or officer is governed by the laws that regulate levy and sale under execution.

Lockbox/credit card tax collection (HB 308; Chapter 584): House Bill 308 expands the authority of local governments to contract with financial institutions for collection of property taxes and authorizes tax collectors to allow payment of property taxes by credit card. In 1989, the General Assembly authorized all local governments to contract with a bank or other financial institution to collect property taxes. Before 1989, several local acts authorized specific local governments to contract for this type of property tax collection, popularly known as "lockbox property tax collection." The 1989 act was limited to collection of current taxes only; the financial institution could not collect overdue taxes. Effective upon ratification, July 8, 1991, Section 1 of this act removes that limitation and authorizes local governments to contract with financial institutions for collection of delinquent property taxes and interest as well as current taxes.

Under existing law, tax collectors, and financial institutions that have contracted to collect property taxes for a local government, may accept either cash or checks in payment

of property taxes. Effective beginning with the 1991-92 tax year, Section 2 of this act authorizes tax collectors, but not financial institutions, to accept credit cards in payment of property taxes. Like acceptance of a check, acceptance of a credit card is at the tax collector's own risk; the tax collector is individually liable for any loss resulting from acceptance of a credit card. The fee charged to the tax collector by the financial institution for the credit card service will not be borne by the taxing unit; it is to be passed on to the taxpayer. The tax collector may issue a receipt at the time a credit card payment is made or may withhold the receipt until the credit card invoice is honored. Dishonor of a credit card invoice has the same consequences as dishonor of a check; if the tax collector issued a receipt and the credit card invoice is later dishonored, a purchaser for value or a lienholder who in good faith relied upon the receipt has rights superior to the taxing unit's tax lien.

Simplify motor vehicle property tax collection (HB 20; Chapter 624): House Bill 20 creates a new procedure for collecting property taxes on motor vehicles. It is the product of the combined efforts of representatives from the North Carolina County Commissioner's Association, the North Carolina League of Municipalities, the Division of Motor Vehicles, the North Carolina County Assessors Association, the Department of Revenue, and the Institute of Government. Its purpose is to improve the collection rate for property taxes on motor vehicles and thereby recover the estimated $11.1 million in property tax revenue that was lost each year under the former collection system. Its enactment culminates years of study and failed proposals.

The new collection system created by the act becomes effective January 1, 1993. Under the system, all motor vehicles, except public service company vehicles appraised by the Department of Revenue and manufactured homes, are classified for listing, assessment, and taxation separately from other classes of property. The classified motor vehicles consist of two groups: those that are registered with the Division of Motor Vehicles and those that are not registered with the Division of Motor Vehicles. A vehicle is not registered with the Division either because it is a tractor, an earthmover, or some other type of vehicle that cannot be registered with the Division or it is a car or truck and could be, but for some reason, is not registered with the Division.

Vehicles that are Registered

Year-round Procedure: The primary purpose of the act is to change the collection procedure for motor vehicles that are registered with the Division of Motor Vehicles. Under the act, registered motor vehicles are taxed on a revolving, year-round basis. To accomplish this, the act requires the Division of Motor Vehicles to give each county a monthly list of all the motor vehicles in the county for which registration was renewed or obtained two months earlier. The county will then list and appraise the vehicles and send the owners of the vehicles a bill for the county, municipal, and special district property taxes due.

How Tax Is Computed: The date the value of the vehicle is determined is the same as before, but the date that ownership, situs, and taxability of the vehicle is determined is different. The value of the motor vehicle is determined as of January 1 preceding the date a new registration is applied for or the current registration is renewed. The ownership, situs, and taxability of the motor vehicle is determined as of the day the registration is applied for or renewed.

For a vehicle whose registration is renewed, the amount of property tax due on the vehicle is the value of the vehicle multiplied by the applicable property tax rates in effect on the first day of the month in which the registration of the vehicle would have expired if it had not been renewed. For a vehicle registered for the first time by the vehicle's owner, the amount of property tax due on the vehicle is the value of the vehicle multiplied by the applicable property tax rates in effect on the first day of the month in the vehicle is registered.

Payment of Tax: Taxes on registered motor vehicles are due four months after the registration is obtained or renewed. A motor vehicle owner who does not pay the taxes is liable for interest at the rate of 3/4% per month.

If the taxes on a registered vehicle are not paid within four months after they become due, the county includes the motor vehicle on a list that is sent to the Division of Motor Vehicles. The Division then refuses to renew the vehicle's registration the following year unless the taxpayer obtains a receipt showing that the previous year's taxes have been paid. Unpaid taxes may also be collected by levying on the motor vehicle or other personal property of the owner, but, unlike under former law, they do not become a lien on the owner's real property.

For registered motor vehicles, the tax year runs from the first month after the registration is obtained or renewed. The bill provides that the forms necessary to implement this system will begin being used on January 1, 1993.

Transfer of Plates: If an owner transfers the registration plates from one registered vehicle to another, the second vehicle is not taxed until the end of the first vehicle's tax year. The taxes must be paid on the first vehicle, however, before the registration can be renewed for the second vehicle.

Registration Not Renewed: If a taxpayer does not renew a motor vehicle's registration, the taxpayer must list the vehicle for taxes by filing an abstract with the assessor of the county in which the vehicle is located on or before January 31 following the date the registration expires. The vehicle is then taxed as an unregistered vehicle.

Vehicle Tags Surrendered: If a taxpayer surrenders a vehicle's tags and registration before the end of the vehicle's tax year, the taxpayer can obtain a release or refund of the rest of that year's taxes. The amount is prorated based on the number of full months remaining the vehicle's tax year.

Vehicles That Are Not Registered

Under the system, a motor vehicle that is not registered with the Division of Motor Vehicles, either because the Division does not register that type of vehicle or the vehicle owner chooses not to register the vehicle, or a motor vehicle whose registration is not renewed when it expires will continue to be taxed in the same manner. As before, the value, ownership, situs, and taxability of the motor vehicle is determined on January 1 of the year in which the motor vehicle is required to be listed; the owner must list the motor vehicle by January 31; the assessor must prepare a tax notice by the following September 1; the county, municipal, and special district tax rates are the rates in effect on July 1 of the year in which the vehicle is required to be listed; and the taxes become due on September 1 following the January 31 listing.

The only difference for these vehicles under the system created by this act concerns liens. Under this act, the tax due on one of these vehicles is not a lien on the real property of the owner of the vehicle. Under current law, the property tax due on any motor vehicle is a lien on the real property of the owner of the vehicle.

Conforming Changes

Sections 2 through 8 of the act make conforming changes to various statutes to eliminate potential conflicts and confusion and repeal provisions that are no longer needed. Section 2 exempts classified motor vehicles from the listing, appraising, and assessing provisions of Article 22 of Chapter 105 of the General Statutes. This section is necessary to avoid a conflict between Article 22 and new Article 22A. Classified motor vehicles are listed, appraised, and assessed under new Article 22A instead of Article 22.

Section 3 gives the board of county commissioners the discretion to relieve the tax collector from the charge of taxes on classified motor vehicles that are one year or more past due when it appears the taxes are uncollectible.

Section 4 repeals G.S. 20-50.2, which requires an applicant for vehicle registration to certify that the property taxes have been paid on the vehicle and that the vehicle has been listed for property taxes. This provision is not necessary under the system established by this act.

Section 5 adds two new sections to Chapter 20 of the General Statutes. The first section requires the Division of Motor Vehicles to send a list of vehicles for which registration has been renewed or obtained to each county assessor. The second section requires the Division to refuse to renew a vehicle's registration the following year if the Division has received a list from the tax collector indicating that the taxes on the vehicle have not been paid.

When the Division is notified that taxes for a vehicle have not been paid, the Division will send a notice to the taxpayer, with the notice of registration renewal, stating that the Division will refuse registration of the vehicle unless the taxpayer obtains a receipt showing that the previous year's taxes have been paid. If the owner has transferred the tags to another vehicle, the Division will refuse registration of the second vehicle until the owner presents a paid tax receipt identifying the vehicle from which the plates were transferred. The Division, however, cannot refuse to register a vehicle for a person, not named in the list, to whom a vehicle named in the list has been transferred in good faith.

Section 6 deletes the provision in G.S. 20-66(d) that allows a person to register and purchase a license plate for a two-year period. The system established by this act could not work if registration plates were issued for two years instead of one year.

Section 7 clarifies that a taxpayer may request the Division of Motor Vehicles to consolidate the taxpayer's motor vehicle registration dates so that all the vehicles have the same due date. This will ensure that the taxpayer receives only one tax bill annually for the property taxes due on the motor vehicles.

Section 8 repeals the additional $100.00 penalty for failure to list a motor vehicle. The penalty was imposed to encourage more people to list their motor vehicles. The penalty is not necessary under the new system because registration of a vehicle is also the listing of the vehicle.

Historic site tax exclusion (SB 263; Chapter 717): Effective July 1, 1991, Senate Bill 263 adds another type of property to the list of property that is excluded from property taxes. The act excludes from taxation property that is owned by a nonprofit historic preservation corporation, is located within an historic district created under Part 3A of Article 19 of Chapter 160A of the General Statutes, and is to be the site of an historic structure that is to be moved to the property.

Unlike most exclusions, the exclusion granted by this act is of limited duration and the taxes that would otherwise by payable on the property in the absence of this exclusion are deferred and might become payable. The deferred taxes never become payable if an historic structure is moved to the property, as planned, within five years after the taxes are first deferred. The deferred taxes, plus interest, become payable if an historic structure is not moved to the property within five years after the taxes are first deferred.

Under prior law, property held by a nonprofit historic preservation corporation for use as the future site of an historic structure could not be excluded from property tax because it did not meet the requirement that the property be currently used for historic preservation. Although the property's future use was to be for historic preservation, its current use as vacant land or as property of no historical significance was not considered to be a current historic preservation use.

Vehicle sales tax amendments (HB 9; Chapter 79): House Bill 9 corrects several problems created by the 1989 Highway Trust Fund legislation. Effective July 1, 1991, it reinstates the sales tax on mopeds, tow dollies, and certain motor vehicle bodies that were subject to sales tax prior to October 1, 1989. It also eliminates the two-tiered long term leasing rate and replaces that rate with a flat rate effective July 1, 1991.

The Highway Trust Fund legislation exempted motor vehicles from the 2%, $300 maximum sales tax and made them subject to the 3%, $1,000 maximum highway use tax. The highway use tax is triggered when a certificate of title is issued by the Division of Motor Vehicles. Although mopeds and tow dollies were considered motor vehicles, they did not need to be titled. Therefore, they were not subject to either the highway use tax or the sales tax. This act excludes mopeds and tow dollies from the sales and use tax definition of motor vehicle and, consequently, subjects them to the 4% State sales tax rate and the 2% local sales tax rate.

The act also reinstates sales tax on motor vehicle bodies that are installed on motor vehicle chassis that are already titled. These motor vehicle bodies were specifically exempted from sales tax in the Highway Trust Fund legislation as a result of an erroneous assumption that a chassis receiving a new body would be retitled and would thus be subject to the highway use tax. The act makes these motor vehicle bodies subject to the 4% State sales tax rate and the 2% local sales tax rate.

In addition to closing gaps in taxation, the act changes the taxation of leases and rentals of motor vehicles. A retailer who leases or rents motor vehicles may either pay the highway use tax or elect to pay a tax on the gross receipts of the lease or rental of the vehicle. Under prior law, the rate of tax on the gross receipts was 8% for the first 90 days of a lease or rental to the same person and 3% thereafter. This two-tiered rate was costly to administer and was forcing many lessors to pay the highway use tax rather than exercise the option of paying on gross receipts. This act replaces the two-tiered rate with a flat 8% short-term lease or rental rate and a flat 3% long-term lease or rental rate. A long-term lease or rental is a written lease or rental for at least one year. A short-term rental or lease is any other rental or lease. Gross receipts taxes collected at the 8% rate are credited to the General Fund and taxes collected at the 3% rate are credited to the Highway Trust Fund.

The act is expected to generate a maximum of $50,000 annually for the General Fund. The revenue increase to the General Fund generated from the levy of sales tax on mopeds, tow dollies, and motor vehicle bodies is expected to be slightly greater than the decrease in revenues to the General Fund from changing the gross receipts tax rate for long-term leases from a two-tiered rate that includes an 8% rate for 90 days to a flat 3% rate.

Solid waste sales tax exempt (SB 234; Chapter 356): Senate Bill 234 adds regional solid waste management authorities to the list of governmental entities in G.S. 105-164.14(c) that are entitled to an annual refund of both State and local sales and use taxes paid on their direct and indirect purchases of tangible personal property. In addition to all counties and incorporated cities and towns, there are 14 other, primarily local, governmental entities currently entitled to refunds of State and local sales and use taxes. These governmental entities must apply for the refund within six months after the end of each fiscal year. This act became effective upon ratification, June 24, 1991, so regional solid waste management authorities will be able to apply for a refund of taxes paid during the 1990-91 fiscal year. The act is expected to reduce General Fund revenues by no more than $500,000 over the next three fiscal years.

In 1990, the General Assembly enacted Article 22 of Chapter 153A of the General Statutes, which allows two or more local governments to create a regional solid waste

management authority. The purpose of an authority is to provide environmentally sound, cost effective management of solid waste, including storage, collection, transportation, separation, processing, recycling, and disposal of solid waste.

Prison concession not tax exempt (HB 933; Chapter 618): Effective August 1, 1991, House Bill 933 repealed the State and local sales and use tax exemption for sales to prison inmates and to on-duty prison guards at concession stands operated by the State prison system within prison confines. These sales will now be subject to the 4¢ State sales tax and the 2¢ local sales taxes. This act is expected to increase General Fund revenues by approximately $334,000 in the 1991-92 fiscal year and $400,000 in the 1992-93 fiscal year.

Sales tax administration changes (SB 108; Chapter 690) Senate Bill 108 makes a number of changes to the sales and use tax statutes, as requested by the Department of Revenue, to simplify administration of the taxes. It also modernizes some of the language of the sales and use tax statutes and makes technical changes to reconcile two other statutes with unrelated changes enacted earlier in 1991.

Sections 1, 2, 3, and 5 increase the cost of the privilege licenses that retailers and wholesale merchants must obtain. Effective August 1, 1991, Sections 1 and 3 increase from $5.00 to $15.00 the cost of the one-time privilege license that retailers must obtain before engaging in the retail business. Effective July 1, 1992, Section 2 increases from $10.00 to $25.00 the cost of the annual privilege license that wholesale merchants must obtain. Effective August 1, 1991, Section 5 increases the cost of reissuing one of these licenses if the license is suspended or revoked. For reissuing a retailer license, the cost is increased from $5.00 to $15.00; for reissuing a wholesale merchant license, the cost is increased from $10.00 to $25.00. The purpose of these licenses is to register the merchants with the Sales and Use Tax Division of the Department of Revenue. The cost of the licenses had not been increased in twelve years and was less than the actual administrative cost of issuing and renewing the licenses.

Section 4 authorizes quarterly sales tax filing for more small retailers, effective July 1, 1992. Under existing law, all businesses that owe at least $25.00 in State and local sales taxes each month are required to file monthly returns; businesses that owe less than this amount may file quarterly. Section 4 raises the threshold from $25.00 to $50.00, so that all businesses liable for less than $50.00 a month may file quarterly. This change will simplify sales tax filing for many small businesses.

Sections 1 through 5 of this act will affect General Fund revenues differently in different fiscal years. In the 1991-92 fiscal year, an increase of approximately $360,000 is expected; in the 1992-93 fiscal year, there will be no fiscal impact because the estimated gain of $960,000 due to the increase in the licenses costs will be offset by an estimated one-time loss of the same amount due to the change in the filing threshold; in the 1993-94 fiscal year, an increase of approximately $960,000 is expected.

Effective August 1, 1991, Sections 6 and 7 provide an additional one-year period during which the Department of Revenue may assess unpaid taxes of a retail business against (i) a person to whom the business has been transferred, (ii) the business property that was transferred, or (iii) a corporate officer who has allowed corporate funds to be disbursed without paying taxes due. This change makes the period relating to retail businesses the same as the period allowed for assessing a person to whom a taxpayer's assets have been transferred.

Under existing law, if a retail business is transferred, the transferor is required to pay all sales and use taxes owed by the business. The taxes are a lien against the transferor's property, including the transferred business property. In addition, in order to protect the State's interest in these taxes, the law requires the transferee to withhold enough of the purchase price to cover the taxes until the transferor shows a receipt or certificate proving that there are no outstanding taxes due from the business. If the transferee fails to do this,

and the transferor does not pay the taxes, the transferee is personally liable under existing law for the taxes to the extent of the purchase price paid for the business or the fair market value of the property, whichever is greater.

Section 6 provides that the Department of Revenue may enforce the lien against the property or assess the liability against the transferee for an additional year after the limitations period has expired against the transferor. The Department stated that the additional year is necessary so that the Department may first pursue its remedies against the transferor before proceeding against the transferee. Section 6 also provides that the transferee is personally liable only to the extent of the consideration paid for the business; if the fair market value of the property exceeds the consideration paid, the transferee is not personally liable for the excess amount. The Department of Revenue may proceed against the property to collect the excess amount.

Under existing law, corporate officers are required to pay taxes due to the State before allowing corporate funds to be distributed. If a corporate officer allows the funds to be disbursed without paying the taxes due, the officer becomes personally liable for the taxes. Section 7 provides that the Department of Revenue may assess this liability against the officer for an additional year after the limitations period has expired against the corporation. The Department stated that the additional year is necessary so that the Department may first pursue its remedies against the corporation before proceeding against the officer.

Sections 8, 9, and 10 correct problems created by earlier 1991 legislation. Sections 8 and 9 correct problems created by amendments made in the 1991 Session to the same statute, G.S. 105-159.1. The revenue laws technical correction bill and an election law bill both amended that statute in different ways. These sections make the changes intended by those earlier amendments. Section 10 corrects a cross-reference to the scrap tire tax. A Revenue Laws Study Committee proposal enacted earlier in the 1991 Session recodified the scrap tire tax statutes.

Miscellaneous

Revenue department reports (HB 24; Chapter 10): House Bill 24 repeals obsolete reporting requirements of the Department of Revenue, gathers the remaining reporting requirements into a single statute, repeals obsolete provisions concerning the Tax Research Division of the Department of Revenue, and provides that the Secretary of Revenue may charge a fee for a copy of a report or other document. The act became effective upon ratification, March 20, 1991.

Section 1 rewrites G.S. 105-256 to combine its provisions with those of G.S. 105-453, 105-453.1, and 105-456, repealed by Section 3. It restates current law in directing the Department of Revenue to prepare and publish the Statistics of Taxation and the Biennial Tax Expenditure Report and in enabling the Department to obtain information needed for these or other reports from units of State and local government. It clarifies existing law by specifying who is to receive a free copy of any report prepared by the Department and it deletes the requirements that the Department print 2,000 copies of the Statistics of Taxation and include estimates of revenue loss in the Biennial Tax Expenditure Report. The latter requirement applied only if funds were appropriated for that purpose; funds had not been appropriated for that purpose since the provision was enacted. Should funds be appropriated for that purpose at a later time, the appropriations act would specify the purpose of the funds.

Section 2 provides that the Department may charge a fee for a copy of a report or other document. G.S. 12-3.1 grants similar authority to all agencies.

Section 3 repeals G.S. 119-24, G.S. 147-88, and the statutes on the Tax Research Division of the Department of Revenue because these statutes are obsolete or incorrect in

several respects and because the relevant portions are transferred to revised G.S. 105-256. The statutes on the Tax Research Division are left over from the days when the Tax Research Division was a separate department of State government. That separate department became a division of the Department of Revenue in the 1971 reorganization of State government.

In repealing G.S. 147-88 and the Tax Research Division statutes, two obsolete reporting requirements are repealed. The requirement in G.S. 147-88 that the Secretary report proposed revisions of the revenue laws to the General Assembly within the first 10 days of each session is repealed. Likewise, the requirement in G.S. 105-455 that the Secretary submit proposed revisions to the revenue laws to the Advisory Budget Commission is repealed. These statutes had not been followed and, with the advent of legislative study committees, were not needed. The Department of Revenue routinely reports its suggestions for changes to the revenue laws to the Revenue Laws Study Committee, the Property Tax Study Committee, or another special purpose study committee.

Revenue laws technical changes (HB 61; Chapter 45): House Bill 61 makes numerous technical and clarifying changes to the revenue laws and related statutes. The Department of Revenue requested many of the changes in the act. The act became effective upon ratification, April 22, 1991.

The act makes some noteworthy changes to the privilege license tax law. Section 1 adds a definitional statute to the privilege license tax statutes. The definitions included in the statute clarify terms currently in use and allow for consistent use of these terms in the future. Section 3 clarifies that those corporations liable for the banking institution privilege license tax are exempt from the installment paper dealer taxes. Section 4 clarifies the long-standing administrative practice that an installment paper dealer is exempt from loan agency license tax only if its activity is limited to that of an installment paper dealer taxed under G.S. 105-83. An installment paper dealer that extends its activity to that of a loan agency is subject to both installment paper dealer and loan agency license taxes.

The act also makes a couple of changes to the income tax statutes. Section 13 clarifies that a married couple filing a joint return must be liable for at least $2.00 of tax in order for each spouse to check off the box on the form indicating whether $1.00 should go to the North Carolina Political Parties Financing Fund. Sections 20 through 22 recodify the statute allowing taxpayers to donate individual income tax refunds to the North Carolina Candidates Financing Fund and combine the corporate income tax provision allowing taxpayers to donate income tax refunds to the Wildlife Fund with the individual income tax provision.

The most notable technical change is the repeal of the sales tax exemption for Bibles in section 17 of the act. The federal courts ruled this tax exemption unconstitutional in 1990. Because the exemption cannot be enforced, its repeal is not a substantive change.

The remaining sections of this act modernize the language in many of the statutes so that it reads more clearly, remove redundant language, correct incorrect cross references, or repeal unnecessary provisions relating to statutes whose purposes have been accomplished or to statutes that have been amended or repealed.

Clarify alarm license tax (HB 1047; Chapter 213): G.S. 105-51.1 imposes an annual privilege license tax on alarm system businesses licensed by the Alarm Systems Licensing Board pursuant to Chapter 74D of the General Statutes. Alarm systems businesses that must be licensed under Chapter 74D and pay the tax under G.S. 105-51.1 are those businesses whose sale, installation, or other service of alarm systems involves entry into the customer's residence or place of business. Businesses that merely sell smoke alarms or other security devices over the counter are not licensed under Chapter 74D or taxed under G.S. 105-51.1.

G.S. 105-102.5 levies a general business license on certain businesses, including a business that sells "burglar alarms, smoke alarms, or other warning devices." (G.S. 105-102.5(b)(3)). The intent of G.S. 105-102.5, enacted in 1989, was to eliminate situations in which a taxpayer was required to obtain more than one privilege license for the same business. Nonetheless, the statute could be construed to levy a duplicate license tax on alarm systems businesses already taxed under G.S. 105-51.1.

Consistent with the original intent of G.S. 105-102.5, this act provides that an alarm systems business that is required to be licensed under G.S. 105-51.1 does not have to pay the privilege license tax under G.S. 105-102.5 for the same location. Businesses that sell alarms over the counter but do not enter the customer's premises, and thus are not taxed under G.S. 105-51.1, will continue to be taxed under G.S. 105-102.5. The act became effective July 1, 1991.

Scrap tire tax amendments (HB 11; Chapter 221): House Bill 11 recodifies the scrap tire disposal "fee" as a tax under the Revenue Act and expands the scope of the levy to include certain new tire transactions that were previously exempt. The 1989 General Assembly imposed a scrap tire disposal "fee" on new motor vehicle tires sold at retail. Because the levy applied only to motor vehicle tires and only to tires sold at retail, not all new tires were subject to the fee.

The definition of motor vehicle that applied to the fee excluded farm equipment, road construction equipment, and special mobile equipment and did not include aircraft. Therefore, a new tire for an airplane or a new tire for a tractor, an earth mover, a well-drilling rig, or any other vehicle that fell in a category of vehicles excluded from the definition of motor vehicle was not subject to the fee. The definition of retail sale that applied to the fee excluded sales of tires that are placed on a motor vehicle offered for sale, lease, or rental. Therefore, new tires sold for used cars offered for sale, lease, or rental by a dealer were also excluded from the fee.

The General Assembly found that the limitation of the scrap tire disposal fee to motor vehicle tires and to tires sold at retail was not consistent with the purpose of the fee. As stated in G.S. 130A-309.54, the purpose of the fee is to provide funds for the disposal of scrap tires. By limiting the fee to motor vehicle tires and to tires sold at retail, however, many tires that contribute to the disposal problem were not subject to the fee.

Accordingly, effective July 1, 1991, this act extends the scrap tire disposal fee to new tires for the following vehicles:

(1) Farm tractors and other farm vehicles.
(2) Graders, earth movers, and other construction vehicles.
(3) Well-drilling rigs, truck cranes, and other vehicles that are included in the class of vehicles known as special mobile equipment. Vehicles in this class are registered with the Division of Motor Vehicles but drive on the road only to get to an off-road job.
(4) Used vehicles offered for sale, lease, or rental by a dealer.
(5) Aircraft.

The act does not change the current exemptions for tires for vehicles propelled by human power, such as bicycles, and for recapped tires.

Because the proceeds of the scrap tire tax go to the Solid Waste Management Trust Fund and to counties, this act does not affect the General Fund. It will generate approximately $150,000 in additional revenue for the Solid Waste Management Trust Fund each year.

In addition to these substantive changes, the act makes two technical changes: it moves the levy of the fee from Chapter 130A to Chapter 105 of the General Statutes and renames the levy a tax rather than a fee. Although originally named a "fee", the scrap tire disposal fee is, in fact, a supplemental sales tax and therefore belongs in Chapter 105 of the General Statutes, the tax chapter, rather than in Chapter 130A, the public health chapter, and should be called by its proper name. The use of the word "fee" to describe

the tax contradicts the definition of a disposal fee in G.S. 130A-309.53(2) as a charge imposed by a local unit of government or another entity for accepting a tire for disposal.

Political parties fund administration (HB 276; Chapter 347): House Bill 276 substitutes the State Board of Elections for the State Treasurer as the person or entity responsible for distributing funds in the North Carolina Political Parties Financing Fund. The act became effective June 20, 1991. The Treasurer will continue to manage the Fund as part of the State Treasury, but the State Board of Elections will determine each political party's share of the Fund and direct the disbursement of funds to each eligible political party.

In changing the responsibility for distributing revenue in the Fund, this act, in combination with Section 9 of Chapter 690 of the 1991 Session Laws, made conforming changes to G.S. 105-159.1. That statute permits a taxpayer to direct that $1.00 of the taxpayer's individual income tax liability be credited to the Fund without increasing or decreasing the amount of any tax refund the taxpayer is otherwise due. The conforming changes to G.S. 105-159.1 parallel those made to the election statutes and make the State Board of Elections, rather than the State Treasurer, responsible for administering distributions from the Fund.

Recycle paper tax incentive (HB 1224; Chapter 539): To encourage the use of recycled newsprint, House Bill 1224 imposes a privilege license tax on those who produce publications printed on newsprint and do not use a minimum amount of recycled paper. The tax becomes effective October 1, 1991, and is payable quarterly. The tax rate is $15.00 for each ton of newsprint that is consumed during a reporting period and has an average recycled content percentage that is less than the required minimum recycled content percentage. The proceeds of the tax are earmarked for the Solid Waste Management Trust Fund created under G.S. 130A-309.12. The act is expected to generate no more than $90,000 for fiscal year 1991-92 and each subsequent year.

The average minimum recycled content requirement for newsprint consumed by a producer each quarter increases over a six-year period. From 1991 to 1997, the percentage of required recycled content gradually increases from 12% to 40%. After 1997, the percentage remains at 40%.

The tax does not apply in a few circumstances. It does not apply to newsprint that is acquired by a producer and then recycled by the producer. It also does not apply if the producer of a publication could not meet the required minimum recycled content standards for one or more of several reasons. The reasons are an inability to obtain newsprint made from recycled paper at a price or quality comparable to other newsprint, in an amount needed for a publication, or in a reasonable amount of time. A producer who claims an exemption for one of these reasons must document the producer's effort to obtain newsprint that contained the required minimum percentage of recycled paper.

Assuming a producer did not recycle any newsprint acquired and had no reason for not using newsprint with the appropriate recycled content, a producer would compute the tax due under this act by the following procedure. The producer would determine the number of tons of newsprint acquired during a quarter and the recycled content percentage of the acquired newsprint. Assume the producer acquired 100 tons of virgin paper, 100 tons of paper with a recycled content of 20%, and 100 tons of paper with a recycled content of 10%. The producer under this assumption has an average recycled content percentage of 10%.

The producer then multiplies 300 (the number of tons acquired) by 12% (the required percentage for 1991) to get 36, and multiplies 300 (the number of tons acquired) by 10% (the average recycled content of the paper acquired) to get 30. As the final step, the producer subtracts 30 from 36 and multiplies the result, 6, by $15.00 to find that the producer owes a tax of $90.

Because the tax imposed by this act falls on the publication of newspapers, the question arises of whether the act impermissibly interferes with the exercise of the

fundamental right to freedom of the press. Given the clear purpose of the act, which is to address a solid waste problem and not interfere with freedom of the press, the amount of the tax, and the exemptions from the tax, the act is likely to withstand a constitutional challenge.

Solid waste fees (HB 86; Chapter 652): House Bill 86 provides uniform, Statewide authorization for counties and municipalities to levy availability fees for solid waste disposal facilities and to collect the fees in the same manner as property taxes. G.S. 160A-192, 160A-311, and 160A-314 authorize municipalities to impose fees for solid waste collection and disposal. G.S. 153A-292 authorizes counties to impose fees for solid waste collection and for the use of solid waste disposal facilities. In 1989 and 1990, a series of local laws was enacted authorizing certain counties and one municipality to bill and collect these solid waste fees in the same manner as local property taxes. Most of these laws applicable to counties were codified as G.S. 153A-293.

Effective upon ratification, July 12, 1991, this act clarifies the authority of local governments to impose fees for different types of solid waste services and authorizes all counties and municipalities to collect the fees in the same manner as property taxes. Section 1 amends G.S. 153A-292 to provide that a county may levy (i) a fee for collection of solid waste, (ii) a fee for the use of a disposal facility provided by the county, and (iii) a fee for the availability of a disposal facility provided by the county.

There are several limitations on these fees. The collection fee may not exceed the cost of collection. The facility use fee may not exceed the cost of operating the facility and may be imposed only on those who use the facility. The facility use fee may not be imposed on a municipality or its residents unless the fee is based on a schedule that applies uniformly throughout the county. The facility availability fee may not exceed the cost of providing the facility and may be imposed on all improved property that benefits from the facility. The facility availability fee may not be charged in addition to a collection fee that includes the cost of disposal in the available facility.

Section 2 authorizes counties to provide that fees imposed pursuant to G.S. 153A-292 may be billed and collected in the same manner as property taxes. The county may provide that the fees are a lien on the real property for which they are assessed. Section 3 provides a conforming technical change.

Sections 4 and 5 provide that, in addition to the solid waste collection fees and facility use fees it is already authorized to impose, a municipality may impose a fee for the availability of a disposal facility provided by the municipality. The same limitations that apply to a county facility availability fee apply to a municipal facility availability fee. Like a county, a municipality may provide that the availability fees will be billed and collected in the same manner as property taxes and that the fees will be a lien on the real property for which they are assessed. Section 6 repeals the various local acts that formerly applied to specific local governments.

Transit authority tax (HB 80; Chapter 666): House Bill 80 authorizes a Regional Public Transportation Authority to levy an annual vehicle registration tax not to exceed $5.00 per vehicle. The General Assembly enacted legislation in 1989 authorizing the creation of an Authority in any area of the State between three counties that meet certain criteria. At this time, only Wake, Durham, and Orange counties meet the specifications. In accordance with the 1989 legislation, these counties have formed an Authority to enhance mobility in and between the three counties through an efficient, economical, and environmentally sound public transportation system.

Although the 1989 legislation gave an Authority the power to collect taxes it is authorized to levy, it did not authorize an Authority to levy any kind of tax. This act gives an Authority the power to levy a vehicle registration tax. The Authority may adopt a resolution imposing the tax only after it has held a public hearing on the levy and received a resolution approving the levy from the special tax board of the Authority as well as the

board of county commissioners of each county organizing the Authority. The resolution must set the effective date of the levy, which cannot be earlier than the first day of the third calendar month after the adoption of the resolution.

The tax will be collected by the Division of Motor Vehicles at the time a person registers a motor vehicle or renews a motor vehicle's registration. The vehicles listed for property taxes in the counties organizing the Authority are subject to the tax. The Division shall credit the money collected from the vehicle registration tax to a special fund. The net proceeds in the fund will be disbursed quarterly to the Authority. The interest credited to the fund will be disbursed quarterly to the Highway Fund to reimburse the Division for the costs of collecting and administering the tax. An Authority may not spend more than 2% of the money it receives from the tax proceeds for administrative expenses.

Indemnify tax official (HB 547; Chapter 674): House Bill 547 authorizes the State to indemnify a State employee who has been held liable for damages for collecting or administering an unconstitutional tax. The act became effective upon ratification, July 13, 1991. The change, which was requested by the Department of Revenue, arose from a court case that is pending against the State and the former Secretary of Revenue, Helen Powers.

Several lawsuits were filed against the State as a result of the 1989 United States Supreme Court case, Davis v. Michigan, which held that a State cannot give its own employees or retirees more favorable tax treatment than it gives federal employees or retirees. In response to this decision, in 1989, North Carolina repealed its income tax exemption for State and local retirement benefits and enacted a law that allowed only a limited exemption for all retirees. State and local retirees filed suit challenging that new law. In addition, because of the timing of the Supreme Court case, a number of federal retirees did not receive refunds for taxes paid on their retirement benefits in 1989 and earlier years. Federal retirees filed two lawsuits seeking relief, one in State court and one in federal court. In the federal case, Swanson v. Powers, the lower court decision stated that the Secretary of Revenue could be held personally liable for damages for administering the type of law that was found unconstitutional in Davis v. Michigan. The damages could be assessed on the theory that the Secretary should have known before Davis v. Michigan was decided that North Carolina's law would be held unconstitutional; therefore, when she administered the law, she was intentionally violating the constitutional rights of some taxpayers. The State cannot be held liable for these damages because of its sovereign immunity.

The Swanson case was reversed on appeal, but its underlying theory caused concern. There are many types of taxes which raise constitutional questions that have never been resolved. As the Davis case illustrates, a new court ruling can invalidate a law that has been on the books and accepted by constitutional scholars for many years. Constitutional law is subtle and complex and is constantly evolving over time. Under the court's theory in the Swanson case, if the State chooses to enact a tax that raises an unresolved point of constitutional law, the Secretary and other tax officials are forced to choose between putting themselves at risk for damages of millions of dollars or refusing to perform their legal duty to administer the tax.

Under existing law, the State may indemnify a State employee for up to $100,000 in damages awarded in a judgment or settlement in a civil or criminal action relating to the scope and course of the employee's employment. This protection, provided in Article 31A of Chapter 143 of the General Statutes, is similar to protection under the Tort Claims Act. If the Attorney General determines that it is in the State's best interest to defend a State employee, the State will provide a defense and will pay the damages up to the $100,000 limit. In addition, the State has professional liability insurance for excess coverage of up to $1,000,000 in certain cases. This insurance is obtained by the Public Officers and Employees Liability Insurance Commission in the Department of Insurance.

The existing coverage protects State employees in many cases but, due to the $1,000,000 limit, it would not be enough to pay the potential multi-million dollar award in Swanson or another case challenging the constitutionality of a tax law. This act would protect tax officials from potential liability as a result of administering the laws that the State asks them to administer.

Section 1 provides that the State shall pay the excess amount of a judgment or settlement against a State employee for collecting or administering a tax that is held unconstitutional. The excess amount is the amount above the existing $100,000 protection and any insurance coverage over that limit. Section 2 reorganizes and clarifies the existing law that provides for payment of judgments and settlements up to the $100,000 limit. Section 3 clarifies that the new statute provides protection only for amounts in excess of the insurance coverage provided by the Public Officers and Employees Liability Insurance Commission.

The act does not provide a source of funds to pay these awards. If a multi-million dollar award were made against a State employee in a case to which the act applies, the State would be legally responsible. The State is protected, however, against having to pay damages that arise from an employee's egregious behavior. The State can decline to become responsible for a case if the Attorney General determines that it is not in the best interest of the State to do so.

Time for stamping cigarettes (SB 539; Chapter 708): Effective October 1, 1991, Senate Bill 539 repeals the requirement that a distributor must affix tax stamps to cigarettes within 48 hours after receiving the unstamped cigarettes and provides instead that the time within which the stamps must be affixed is to be set by the Secretary. The purpose of the change is to allow for situations in which a distributor purchases such a large quantity of cigarettes that it cannot stamp them all within 48 hours. The new law will enable the Secretary of Revenue to adopt a rule setting a time limit of 48 hours but providing an exception for unusually large purchases.

PENDING LEGISLATION

The following bills have passed one house and have been received by the other or they are revenue bills and therefore are eligible for consideration in the 1991 Session. Under the terms of the adjournment resolution, appropriations measures are also eligible.

State lottery referendum-1 (SB 2): Senate Bill 2 proposes a binding referendum on a State lottery; one-half of the net proceeds of the lottery would be transferred monthly to a Savings Reserve Account and the remaining one-half of the net proceeds would be transferred monthly to a Capital-Maintenance Account to be used for construction and maintenance of capital improvements and debt service retirement on General Obligation bonds.

Simplify business license tax (SB 115): Senate Bill 115 proposes to simplify license tax filing for retailers and wholesalers by expanding the current "general business" license, eliminating perceived unfairness in local taxation of businesses due to differing treatment for similar types of businesses, and providing that only one State license is needed for peddlers and itinerant merchants.

Index homestead exemption (SB 152, HB 1279, HB 1283): These bills, although not identical, propose to index the amount of the property tax homestead exemption and the amount of the income limit for eligibility for the exemption and to phase out the State reimbursement to localities for a portion of the lost tax revenue.

General obligation bonds (SB 928): Senate Bill 928 proposes the issuance of $600 million in General Obligation Bonds subject to a vote of the qualified voters in North Carolina for the following purposes: "Headstart" classrooms, computers and software for child & adult literacy training, public school facilities, community college instructional equipment, public universities, state parks and the N.C. Zoo, solid waste facilities, area mental health facilities, capital repair and renovations of State-owned buildings, housing assistance for certain income families, local public libraries, etc. If the bill is debated during the short session, the date of the referendum, the amount of the bond issuance, and the individual appropriations would need to be reviewed.

Mileage affects car value (HB 1185): House Bill 1185 proposes to required the Commissioner of Motor Vehicles to factor in high or low mileage in determining motor vehicle values for highway use tax purposes.

Electronic funds transfer (HB 1282): House Bill 1282 proposes to allow the Department of Revenue to accept payment of taxes by electronic funds transfer.

STUDIES

Independent Study Commissions: Joint Select Fiscal Trends and Reform Commission.

Legislative Research Commission: Committee on Amortization of Nonconforming Uses of Property and Committee on Revenue Laws and the Administration of these Laws.

TRANSPORTATION
(Jennie Dorsett, Tim Hovis, Giles S. Perry)

RATIFIED LEGISLATION

Aviation

Aeronautics amendments (HB 386; Chapter 430): House Bill 386 adds "planning" to the list of air transportation activities eligible for state loans and grants. The bill also adds contracts for services listed in 49 U.S.C. App. §2210(a)(16) to those contracts subject to the procedures for transportation projects in G.S. 136-28.1. House Bill 386 was effective upon ratification, June 27, 1991.

Boats

Repeal Boat Hull Anti-Copying Act (SB 660; Chapter 191): Senate Bill 660 repeals Article 3 of Chapter 75A of the General Statutes known as the Boat Hull Anti-Copying Act. The bill was effective upon ratification, June 3, 1991, but does not affect any action brought before that date.

Department of Transportation

Use of recycled goods by DOT (HB 133; Chapter 522): House Bill 133 clarifies that engineering and environmental quality standards are to be met by the Department of Transportation (and the Department of Administration and units of local government) before compost products may be substituted for soil amendment products. The bill adds highway maintenance and beautification projects to the list of projects for which compost products should be used and strikes road right-of-way projects from this list. The bill also adds a new requirement that the Department of Transportation use scrap tires, demolition debris, and untreated, stabilized, or encapsulated ash from boilers and incinerators in highway construction and maintenance projects when appropriate. House Bill 133 was effective July 1, 1991.

Bid analysis and management (SB 253; Chapter 716): Senate Bill 253 exempts the analyses, including the work papers and output of automated systems, generated by the Department of Transportation's Bid Analysis and Management System from the public records law, thus making this information confidential. Senate Bill 253 was effective upon ratification, July 16, 1991.

Private contract participation continued (HB 282; Chapter 272): House Bill 282 extends the sunset on certain construction contracts between the Department of Transportation and private parties. House Bill 282 was effective upon ratification, June 12, 1991, and extends the sunset provisions until June 30, 1993.

Highway participation sunset repealed (HB 111; Chapter 21): House Bill 111 removes the sunset on the authorization for cities with over 10,000 people to participate in the right-of-way costs of transportation projects approved by the Board of Transportation.

Cities with more than 10,000 people were allowed to participate up to a maximum specified percentage in the construction costs of State Highway System improvement projects. House Bill 111 was effective upon ratification, March 28, 1991.

DOT appraisal exemption (HB 321; Chapter 94): House Bill 321 exempts real estate appraised by personnel within the Department of Transportation at a value of less than ten thousand dollars from the requirement that legally mandated appraisals of prospective state purchases be conducted by a certified real estate appraiser. House Bill 321 was effective upon ratification, May 21, 1991, and expires July 1, 1993.

Highway Fund reimbursement (SB 269; Chapter 280): Senate Bill 269 allows the Secretary of Transportation to reimburse the Highway Fund with monies from the Highway Trust Fund for the amount of Highway Fund revenue used to match federal funds for a Highway Trust Fund project. Senate Bill 269 was effective upon ratification, June 13, 1991, and applies to federal funds received on or after July 1, 1990 and Highway Fund monies used on or after that date.

License Plates

Simplify special plates statutes (HB 64; Chapter 672): House Bill 64 consolidates and simplifies the special license plate statutes, establishes a more uniform fee structure for special license plates, establishes a simplified revenue account for special license plate fees, and provides a more uniform distribution method for the excess revenue.

Specifically, House Bill 64 provides four fee levels for special license plates; 100% Disabled Veterans, Prisoners of War, and Congressional Medal of Honor Plates will be free -- no registration fee, and no additional fee. Applicants for National Guard, Active Plates will be charged the full registration fee, and no additional fee. Applicants for personalized plates will be charged the full registration fee plus a $20 additional fee. Applicants for all other special plates will be charged the full registration fee plus a $10 additional fee.

House Bill 64[17a provides a simplified revenue account for the additional special plate fees collected. One-half of the personalized plate additional fee will be deposited directly into the Recreational and Natural Heritage Trust Fund. All other special license plate additional fees will be deposited into a single revenue account, for distribution to programs specified.

House Bill 64 (Chapter 672), as amended by Senate Bill 472 (Chapter 726) has an effective date of October 1, 1991.

College insignia license plates (HB 734; Chapter 758): House Bill 734 requires the Division of Motor Vehicles to develop and sell specialty collegiate license plates for an annual fee of twenty-five dollars plus the regular registration fee. The owner of any motor vehicle except a vehicle registered under the International Registration Plan or a commercial truck is allowed to apply for a collegiate license plate. A portion of the revenue derived from the additional fee collected for the plate will be distributed to the Board of Governors of The University of North Carolina and to independent colleges and universities in proportion to the number of plates sold representing each institution. This revenue is to be used for academic enhancement. The Division of Motor Vehicles must receive at least 300 applications from an institution before a specialized plate for that college or university may be developed. House Bill 734 was effective upon ratification, July 16, 1991.

Undercover motor vehicle information confidential (SB 209; Chapter 53): Senate Bill 209 provides that all of the private registration plates issued to the Department of Justice and

the Department of Crime Control and Public Safety under G.S. 14-250 may be fictitious plates. The bill also requires the Division of Motor Vehicles to maintain a separate, confidential registration file for vehicles bearing private tags which vehicles are owned or leased by: (1) members of federal, State, and local law enforcement agencies using the vehicles for transporting, apprehending, or arresting violators of federal or State laws; (2) Internal Revenue Agents; (3) and public officials. Individuals in these categories must provide evidence that their personal safety is at risk before their vehicles may be included in the confidential file. Senate Bill 209 was effective upon ratification, April 25, 1991.

"Desert Storm" motor vehicle license renewal (SB 90; Chapter 17): Senate Bill 90 provides a 90-day period of time for the renewal of drivers licenses, waives the civil penalty for lapsed insurance, and waives the service charge for reregistration of a vehicle of military personnel deployed in support of "Operation Desert Shield" and "Operation Desert Storm." Senate Bill 90 became effective upon ratification, March 26, 1991.

Motor Vehicle Dealers

Motor vehicle dealer definition (HB 330; Chapter 527): House Bill 330 broadly rewrites the definition of "motor vehicle dealer" found in G.S. 20-286(11), to include sale for compensation of 5 or more vehicle within 12 months; exchange, sale or display for others of 5 or more vehicles within 12 months; engaging in the business of selling vehicles and selling 5 or more within 12 months; and sale by a corporation that leases/rents vehicles. Several exceptions are added to the definition of "motor vehicle dealer," including: a person representing an organization arranging for the purchase of a vehicle for the organization's business; advertising media; persons selling off-road vehicles exclusively; any real property owner who leases property for use by a dealer; and any person acquiring a motor vehicle for a family member. House Bill 330 is effective October 1, 1991.

Motor vehicle surety bonds (HB 604; Chapter 495): House Bill 604 amends G.S. 20-288(e) to increase the surety bond submitted by an applicant for a license as a motor vehicle dealer from $15,000 to $25,000. Bond for each additional place of business would increase from $5,000 to $10,000. House Bill 604 is effective September 1, 1991.

Off-premise vehicle sales (HB 904; Chapter 662): House Bill 904 requires motor vehicle dealers to have an established salesroom in the State to be licensed and, except as provided in the bill, prohibits the retail sale of new or used vehicles at places other than the dealer's established salesroom. Parties licensed as manufacturers, factory branches, distributors, or distributor branches may operate as motor vehicle dealers without obtaining a motor vehicle dealer's license, but only if motor vehicles are offered for retail sale at an established salesroom. The bill also requires the licensure of wholesalers. Only wholesalers with an established office in the State may be licensed. Furthermore, an applicant for a license as a manufacturer, factory branch, distributor, distributor branch, wholesaler, or motor vehicle dealer must have a separate license for each established office, established salesroom, or other place of business in the State. House Bill 904 is effective October 1, 1991. Supplemental licenses issued to dealers before this date shall expire, if not sooner on their own terms, 120 days after October 1, 1991.

Motor vehicle dealers (HB 1002; Chapter 510): House Bill 1002 amends Article 12 of Chapter 20 of the General Statutes, the Motor Vehicle Dealers and Manufacturers Licensing Law. The bill (1) amends G.S 20-301(e) to allow the Commissioner of Motor Vehicles, for good cause shown, or upon consent of the parties, to extend the 60 day limit on discovery in contested administrative hearings under Article 12; (2) amends G.S. 20-

305(4) to allow a manufacturer or distributor to block the relocation of a dealership within the dealership's market area only if the manufacturer shows that the relocation is unreasonable under the circumstances, and requires objection to a proposed transfer, relocation or sale of a dealership by a properly notified manufacturer or distributor be made within 30 days, or be deemed waived, with the burden of proof on the manufacturer to show that any transfer, relocation, or sale is unreasonable under the circumstances; (3) amends G.S. 20-305(5), which governs additional or relocated dealerships, to place the burden of proof on the manufacturers to show good cause in the case of additional dealerships, and on the dealer in the case of relocating an existing dealership; (4) amends G.S. 20-305(5) to provide that if the Commissioner does not find good cause to refuse a new or relocated dealership, the new or relocated dealership must commence operations within two years, or waive the right to do so; (5) amends G.S. 20-305(6), which governs termination or cancellation by manufacturers of dealer franchises, to allow the Commissioner to extend beyond 180 days his decision on a petition for review of the termination or cancellation of a franchise, for good cause shown, or with the consent of the parties; and (6) amends G.S. 20-308.1(a) to allow parties injured under Article 12 to commence actions in court, without first going before the Commissioner, for relief which is outside the authority of the Commissioner, such as monetary damages or injunctive relief. House Bill 1002 becomes effective October 1, 1991

Motor Vehicle Law

Driver's license suspension period (HB 987; Chapter 509): House bill 987 amends the motor vehicles law to clarify that a person must be convicted of a driving offense that occurred during a period of suspension before a suspension may be lengthened because of that conviction. The bill became effective July 2, 1991.

Revise commercial and regular drivers license statutes (SB 472; Chapter 726): House Bill 402 makes numerous changes in the drivers license statutes under Chapter 20 to clarify commercial drivers licenses and their relationship to regular drivers licenses, impose certain fees, and make other technical and conforming amendments. The following are the significant substantive changes resulting from enactment of Senate Bill 402.

(1) The definitional section of Chapter 20 was amended to add definitions of classes of motor vehicles, namely Class A, Class B, and Class C, thus making the definitions the same for regular and commercial drivers licenses. A "Class A Motor Vehicle" is a combination of vehicles that (a) weighs at least 26,001 pounds with a towed unit of at least 10,001 pounds or (b) weighs less than 26,001 pounds with a towed unit of at least 10,001 pounds. A "Class B Motor Vehicle" is either a single vehicle weighing 26,001 or more pounds or a combination of vehicles weighing with a towing unit weighing at least 26,001 pounds towing a unit of less than 10,001 pounds. A "Class C Motor Vehicle" is any vehicle not included in Class A or B. (2) Under the definition for "serious offenses," the list of serious offenses for which disqualifications may be taken under the commercial license law was amended to add the offenses of improper lane changes and following too closely. (3) A definition of regular drivers license was added to distinguish it from a commercial drivers license. (4) The definition of "conviction" was moved from another section of the Chapter to the definitional section. (5) The drivers license statute, G.S. 20-7, was rewritten to apply the definitions of Class A, Class B, and Class C motor vehicles and to impose a $5 fee for a motorcycle endorsement. (6) The statute that mandates revocation by the Division of Motor Vehicles of a drivers license was modified to add certain commercial impaired driving convictions to the list of offenses that are grounds for revocation of any drivers license.

Numerous changes were made to the statutes relating to disqualification of commercial licensees and the effect of being disqualified to drive a commercial vehicle. Minimum disqualification periods, during which a person is prohibited from driving a commercial vehicle, were eliminated and were replaced with fixed disqualification periods. In general, a person who is disqualified from driving a commercial motor vehicle but whose license is not revoked may obtain a regular Class C license upon payment of as fee for a duplicate license. If a person is both disqualified and revoked, the person may get a regular Class C license at the end of the revocation period and get limited driving privileges to drive a regular motor vehicle during the revocation period to the extent the law allows other persons whose license was revoked for the same offense to get limited driving privileges. Payment of the $25 restoration fee is required for persons to get another license following a disqualification.

The offense of driving while disqualified is clarified and, the consequences of driving while disqualified are changed. Successively longer periods are imposed for second or subsequent convictions of driving while disqualified.

Waivers of the road test for commercial licenses are extended until October 1, 1992, subject to certain conditions. A $5 fee for a commercial drivers license learner's permit is imposed. Persons who have a learner's permit or who are renewing a commercial drivers license are exempted from the $20 application fee. Certain employees of the Division of Motor Vehicles are exempted from the fees.

Senate Bill 472 clarifies that a school activity bus must be driven by a person authorized to drive a school bus or have a license for the class of vehicle to which bus is assigned.

Senate Bill 472 becomes effective October 1, 1991.

Correct records regarding addresses/inspect exhaust systems (HB 402; Chapter 654): House Bill 402 allows the Commissioner of Motor Vehicles to correct addresses in the files of the Division of Motor Vehicles of drivers licensees and license plate holders based on new forwarding addresses provided by the United States Postal Service. The bill also requires the inspection of an exhaust system on a motor vehicle before a safety equipment inspection station may issue an inspection certificate. House Bill 402 becomes effective October 1, 1991.

Drivers license exemptions for emergency services workers (SB 20; Chapter 478): Senate Bill 20 amends the drivers license classification statute to allow a Class "C" licensee who is a volunteer member of a fire department, rescue squad, or Emergency Medical Services (EMS) to drive any fire-fighting vehicle, rescue vehicle, EMS vehicle, or any combination of these vehicles, regardless of gross vehicle weight, when necessary in the performance of duties. Senate Bill 20 was effective upon ratification, July 2, 1991.

Expand notice for liens on motor vehicles and vessels (SB 685; Chapter 731): Senate Bill 685 requires the Division of Motor Vehicles to give notice of a proposed sale of a motor vehicle or vessel to satisfy a lien to each secured party or other person with an interest in the motor vehicle or vessel. The person must be either actually known to the Division from the certificate of title or can be reasonably ascertained. Also the bill requires that a copy of the application and order for sale be sent to the same persons. House Bill 685 increases the fee from $4 to $10 which a lien holder must remit to the Division of Motor Vehicles when asserting a lien and proposing a sale. Senate Bill 685 becomes effective October 1, 1991, except that the increased fee and requirement to provide notice to secured parties was effective upon ratification, which was July 16, 1991, for liens arising after ratification.

Prohibit use of blue lights (SB 23; Chapter 263): Senate Bill 23 clarifies that that installation, activation, or operation of a blue light in or on any vehicle other than by law enforcement officers is unlawful. Senate Bill 23 becomes effective October 1, 1991.

Various motor vehicle procedural changes (SB 384; Chapter 682): Senate Bill 384 amends numerous motor vehicle statutes relating to nonresident compliance reports, duplicate licenses, and recordkeeping involving revocations of drivers licenses. Senate Bill 384 first requires that if a nonresident fails to comply with a motor vehicle law citation, the clerk of court shall report the noncompliance to the Division of Motor Vehicles, rather than the law enforcement officer. Second, regarding duplicate licenses, Senate Bill 384 adds an additional ground for obtaining duplicate licenses if a person proves that he has become eligible for reinstatement of his driving privilege following a period of suspension or revocation and the last license issued has not yet expired. Third, agents of the Division of Motor Vehicles are allowed to take possession of a surrendered license if a license suspension is upheld upon a hearing and the licensee requests that the suspension begin immediately. Fourth, if a person whose license has been revoked for failing to appear or to pay a fine resolves these matters before the effective date of the revocation record, all entries on his driving record relating to it shall be deleted. Fifth, if an order of forfeiture of a cash bond is sent to the Division of Motor Vehicles by mistake, the clerk's office shall withdraw the report and send notice to the Division, and the Division shall correct its records accordingly. Sixth, Senate Bill 384 amends G.S. 20-28.1, which provides that the Division of Motor Vehicles must revoke the driving privilege for an additional period of time if any moving offense is committed while the person's driving privilege is suspended or revoked, to create an exception for persons driving without a license during the immediate civil revocation period (of 10 or 30 days) under G.S. 20-16.5. Senate Bill 384 was effective upon ratification, July 13, 1991.

Repeal sunset on use of headlights when using windshield wipers (SB 119; Chapter 18): Senate Bill 119 removes the sunset on legislation enacted in 1990 requiring the use of headlights when windshield wipers are on during inclement weather. Senate Bill 119 was effective upon ratification, March 26, 1991.

Vehicle title amendments (SB 218; Chapter 183): Senate Bill 218 authorizes the Division of Motor Vehicles to rescind and cancel the registration and certificate of title of a vehicle when presented with evidence that the vehicle has been transferred to a person who has failed to get a new certificate of title for the vehicle. Evidence which the Division of Motor Vehicles may rely upon in rescinding registrations may be in the form of sworn statements, and the evidence may be submitted to the Division by mail. Senate Bill 218 was effective upon ratification, June 3, 1991.

Motor vehicle laws-handicapped persons (HB 435; Chapter 411): House Bill 435 (1) amends G.S. 20-37.5 to rewrite the definition of "handicapped," and adds definitions for "Distinguishing license plate," "International Symbol of Access," and "Removable windshield placard;" (2) amends the rules governing issuance of and display by handicapped persons of distinguishing license plates and removable windshield placards; (3) clarifies that motorized wheelchairs or similar vehicles are exempt from vehicle registration only if used for pedestrian purposes by a handicapped person; and (4) repeals G.S. 20-37.2, G.S. 20-37.3, and G.S. 20-37.4, obsolete statutes governing display of distinctive handicapped flags on motor vehicles. House Bill 435 becomes effective October 1, 1991.

Uniform traffic control devices (HB 516; Chapter 530): House Bill 516: (1) amends G.S. 136-30 to require traffic signs and devices along streets, highways, and public vehicular areas to conform to the Manual on Uniform Traffic Control Devices for Streets and Highways (issued by the United States Department of Transportation); (2) repeals G.S.

136-30.1(c), which requires State highway line markings to conform to the Uniform Manual (Section 1 of the bill makes this subsection unnecessary); (3) repeals G.S. 136-31, which gives local authorities responsibility for erecting and maintaining appropriate local traffic devices and signs; (4) amends G.S. 37.6(d) to provide that handicapped parking signs follow the Manual on Uniform Traffic Control Devices; (5) repeals G.S 37.6(d1), which allows handicapped signs of different colors and materials (this exception is contained in Section 1 of the bill); (6) amends G.S. 20-169 (governing the powers of local authorities) to eliminate the provisions requiring DOT approval for local traffic signs and devices; and (7) repeals G.S. 160A-296(b), which requires municipal street of bridge highway line markings to conform to the Uniform Manual (Section 1 of the bill makes this subsection unnecessary). House Bill 516 becomes effective January 1, 1992, but the bill provides that nonconforming signs may remain in use until January 1, 1994.

Vehicle lien perfection date (HB 708; Chapter 414): House 708 provides that if the application for notation of a security interest is delivered to the Division of Motor Vehicles within 20 days after the date of the execution of the security agreement, the security interest is perfected as of the date of the security agreement. House Bill 708 is effective September 1, 1991.

Motor vehicle warranty work (HB 895; Chapter 561): House Bill 895 provides that the schedule of compensation to be paid by motor vehicle manufacturers to motor vehicle dealers for warranty work include reasonable compensation for administrative requirements associated with diagnostic work. When determining reasonable compensation for warranty work, the retail price that dealers charge their retail customers for parts shall be considered. The bill also requires a manufacturer to pay or disapprove a dealer's claim within 30 days after receipt of the claim. House Bill 895 is effective September 1, 1991.

Seat belt amendment (HB 884; Chapter 448): House Bill 884 amends G.S. 20-135.2A(c)(2) to exempt from the seat belt law newspaper delivery persons engaged in delivery of newspapers along the person's specified route. House Bill 884 become effective upon ratification, June 28, 1991.

Motorized wheelchairs (SB 746; Chapter 206): Senate Bill 746 provides that when a person with a mobility impairment operates a motorized wheelchair or similar vehicle not exceeding 1000 pounds in order to provide that person with the mobility of a pedestrian they are subject to the rights and responsibilities that would otherwise apply to a pedestrian. Senate Bill 746 is effective October 1, 1991.

Amber lights for REACT vehicles (HB 48; Chapter 44): House Bill 48 deletes the restriction that Radio Emergency Associated Citizens Team vehicles may activate their amber-colored flashing lights only when parked. House Bill 48 was effective upon ratification, April 22, 1991.

Railroads

Operation lifesaver 1991 (railroad crossing safety) (HB 175; Chapter 368): House Bill 175 rewrites three existing railroad crossing safety statutes, and adds two new railroad crossing safety statutes. Specifically, the three rewritten statutes: describe when, where, and in what situations a person must stop at a railroad crossing; and revises the law governing when vehicles carrying hazardous materials must stop at railroad crossings so that North Carolina law matches federal law. The two new statutes added by House Bill

175 provide rules for heavy equipment using railroad crossings, and prohibit vehicles from blocking railroad crossings, intersections, and crosswalks. Violation of any provision of House Bill 175 is an infraction, with a penalty of up to $100. House Bill 175 has an effective date of October 1, 1991, and applies to offenses occurring on or after that date.

Railroad corridor interim use (HB 601; Chapter 751) House Bill 601 establishes conditions under which the Department of Transportation may lease rail corridors for interim use as public recreation trails. Before leases are granted, a sponsoring unit of local government must hold public hearings after notice to all abutting land owners, assume responsibility for all development and management costs, and provide adjacent land owners with broad voting membership in the organization responsible for development and management of the trail. Furthermore, The Department must determine that the corridor will not be used for active rail service for at least 10 years. Any lease allowing trail use must provide for the resumption of active rail use. House Bill 601 was effective upon ratification, July 16, 1991.

Rail corridor purchase (HB 281; Chapter 673): House Bill 281 allows the Department of Transportation to acquire property for new railroad corridors and to acquire active existing railroad lines by any method other than condemnation. The bill also authorizes the Department to purchase railroad lines, corridors, rights-of-way, and other rail property, both real and personal, by installment contract. However, no deficiency judgments may be rendered against the Department for breach of such contracts, nor is the State's taxing power pledged thereby. House Bill 281 was effective upon ratification, July 13, 1991.

Trucks/Buses

Exempt certain trucks from inspection (HB 406; Chapter 394): House Bill 406 amends the statute that regulates the inspection requirements of motor vehicles to exempt trucks that are required to meet federal inspection standards under the Federal Motor Carrier Safety Regulations from also having to obtain a State inspection. The bill also requires that gasoline-powered vehicles over 26,001 pounds shall be subject to emission control device and exhaust emission testing. House Bill 406 was effective upon ratification, June 25, 1991.

Two rearview mirrors on certain trucks and buses (HB 331; Chapter 113): House Bill 331 requires buses, trucks, and truck tractors with a gross vehicle weight rating of 10,001 pounds or more to be equipped with two rearview mirrors, one affixed on each side of the vehicle. Previously only one rear-vision mirror was required. If the driver also has a rearview by means of an interior mirror, only one driver's-side mirror is required. In driveaway-towaway operations, the driven vehicle must have at least one mirror furnishing a clear rear view; if the interior mirror provides the clear view, then a side mirror must be attached to the left side. House Bill 331 was effective upon ratification, May 23, 1991.

Designating truck routes (HB 299; Chapter 112): House Bill 299 amends G.S. 20-116(h),which governs designation of truck routes by the Department of Transportation, by removing the restriction on designation of truck routes to "primary" State highways. House Bill 299 became effective upon ratification, May 23, 1991.

Axle requirements for certain trucks (HB 1064; Chapter 449): House Bill 1064 would make changes in the axle requirements regarding motor homes and certain trucks. Specifically, the bill (1) amends G.S. 20-116 (Size of Vehicles and Loads) to provide that a single vehicle with two axles may not exceed 35 feet in length, a motor home with two

axles shall not exceed 40 feet, a single vehicle having three axles shall not exceed 40 feet in length, and trucks transporting unprocessed cotton from the farm to gin may not exceed 48 feet in length; (2) amends G.S. 20-4.01(27) by adding definition of "Motor home or house car," and (3) amends G.S. 20-116(f) to revise the definition of "load" under this subsection. House Bill 1064 was effective upon ratification, June 28, 1991.

Fuel truck on light duty roads (SB 447; Chapter 202): Senate Bill 447 amends G.S. 20-118(c) to exempt vehicles transporting heating fuel from the light-traffic road limitations of G.S. 20-118(b)(4), if the heating fuel is for on-premises use at a destination on the light-traffic road. Senate Bill 447 becomes effective upon ratification, June 4, 1991.

Special permit regulations (SB 642; Chapter 604): Senate Bill 642 amends G.S. 20-119(a), which governs issuance of permits by DOT for overweight vehicles. This bill specifies that DOT may issue rules regarding issuance of overweight penalties, but no rule issued by DOT on overweight permits can provide that an overweight permit may be invalidated by law enforcement personnel to allow assessment of a penalty unless the weight of the vehicle is more than the weight stated on the permit. The bill increases the maximum penalty for violation of the terms or conditions of a special permit to $500. Senate Bill 642 is effective October 1, 1991, and applies to offenses occurring on or after that date.

STUDIES

Independent Study Commissions: (1) Joint Legislative Highway Oversight Committee; (2) Motor Fuel Pricing Study Commission.

Legislative Research Commission Studies: The Legislative Research Commission may study the following topics: (1) Department of Transportation Condemnation Practices and Procedures; (2) Public Transportation; (3) Boating and Water Safety; (4) Feasibility of Toll Roads; (5) Railroads--Study Continued; (6) Motor Vehicle Towing and Storage; (7) North Carolina Air Cargo Airport Authority.