SUMMARIES OF SUBSTANTIVE RATIFIED LEGISLATION

1991

1991 GENERAL ASSEMBLY
Extra Session, January 1992
and
Regular Session, 1992

RESEARCH DIVISION
N. C. GENERAL ASSEMBLY
SEPTEMBER, 1992

INTRODUCTION

This publication contains summaries of substantive legislation enacted by the General Assembly during the 1992 Regular Session of the 1991 General Assembly, 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 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, Tim Hovis, Carolyn Johnson, Robin Johnson, Linwood Jones, Sally Marshall, Lynn Marshbanks, Giles Perry, Walker Reagan, 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

Forestry/Limit Nuisance Liability (HB 978; Chapter 892): House Bill 978 provides that no forestry operation, defined as activities involved in growing, managing, and harvesting trees, but not sawmill activities, constitutes a public or private nuisance by changed conditions in the locality one year after the operation began, if the operation was not a nuisance at the time it began. This limitation does not apply whenever a nuisance results from the negligent or improper operation of the forestry operation. This limited liability also does not affect the right of any person to recover damages from the forestry operation due to pollution of, or any change in, the waters in any stream. In addition, any existing or future ordinance that would make such an operation a nuisance under these circumstances is null and void, unless the nuisance results from a forestry operation located within the corporate limits of any city at the time the ordinance is enacted. This bill becomes effective October 1, 1992.

Limit Farmer Liability (HB 1335; Chapter 868): This bill provides that a farmer, whether an owner or otherwise in control of land, who allows others to enter upon the land to glean, owes that person the same duty of care the farmer would owe a trespasser, provided that no compensation is paid to the farmer to allow the gleaning. The bill becomes effective October 1, 1992.

Roadside Signs (HB 1662; Chapter 946): House Bill 1662 exempts fruit and vegetable growers from the restrictions on placing advertising signs within 1/8 mile of the right-of-way of an interstate or primary highway. In order to qualify for the exemption, the sign must advertise only the grower's roadside fruit/vegetable stand or pick-your-own farm, be no more than two feet in width or length, be located on property owned or leased by the grower, and remain in place for no more than 30 days. In addition, the grower must also be the seller. This act became effective on ratification (July 14, 1992).

Cotton-Hauling Vehicles (SB 1063; Chapter 905): Senate Bill 1063 provides limited relief from the road weight limitations for a certain type of cotton-hauling vehicle. During the period September 1st through March 1st, a vehicle with a self-loading bed used to transport compressed cotton from the farm to the gin may exceed the 38,000 pound tandem-axle weight limitation for travel on State roads. The maximum tandem-axle weight allowed for the vehicle is 44,000 pounds. The special vehicle is also permitted on posted (light-traffic) roads from the farm to the nearest State-maintained road. However, the vehicle is not permitted on bridges posted with lower weights. This act became effective on ratification (July 9, 1992).

Standards Lab Fees (SB 863; Chapter 1018): Senate Bill 863 adds a new section to Article 1 of Chapter 81A, the Weights and Measures Act of 1975, which establishes a fee schedule for calibration services. The Standards Laboratory provides and maintains uniform measurement standards of mass, length, volume, and temperature that are traceable to the National Institute of Standards and Technology for weighing or measuring needs that are either mandated by law or necessary for product quality assurance. The bill becomes effective October 1, 1992, and applies to fees assessed on or after that date.

Seafood Awareness Changes (SB 1066; Chapter 785): Senate Bill 785 deletes "Seafood" from the title and scope of the Agriculture, Forestry, and Seafood Awareness Study Commission. The title now reads: "Agriculture and Forestry Awareness Study Commission." The act becomes effective January 1, 1993.

Guide License Change (SB 1261; Chapter 989): Senate Bill 1261 deletes the requirement that a person seeking a hunting and fishing guide license be a resident of this State provided that there is a reciprocal agreement for a North Carolina resident to obtain such a license in the nonresident's state. The bill became effective upon ratification, July 20, 1992.

COMMERCIAL LAW

(Tim Hovis, Robin Johnson, Sally Marshall, Walker Reagan, Steve Rose)

RATIFIED LEGISLATION

Business

Auctions and Auctioneers Act Amendments (HB 530; Chapter 819): House Bill 530 makes various amendments to Chapter 85B, which governs auctions and auctioneers. Among the amendments, House Bill 530 rewrites the definition of "owner," and adds definitions of "absolute auction," "estate sale," and "auction firm." It revises the provisions on "activities governed" as they pertain to an estate sale, sale of livestock, and sales on behalf of charities; it also clarifies that licensed auctioneers are required for specified sales.

A significant part of the bill is that which revises the procedures governing the maintenance of, claims to, and payment from the Auctioneer Recovery Fund. The bill provides that if payment is made from the Recovery Fund against a licensee, his license shall be automatically suspended pending repayment. The failure of an aggrieved party to comply with the procedures in Chapter 85B governing recovery from the Fund, shall constitute a waiver of any rights under Chapter 85B. The bill provides that licensees may not recover their own losses when acting as an auctioneer, nor may they recover for losses incurred in a joint business venture with another licensee. A provision is added specifically giving disciplinary authority to the Commission against any licensee. The bill revises the procedures for licensing nonresidents; revises the requirements for maintenance of accounting and auction records and provides that they must be open to reasonable inspection by the Commission; and requires that trust/escrow funds be kept in banks or savings and loan associations located in North Carolina. The bill adds new grounds for license denial, revocation, or suspension, including conviction of a felony or an act of moral turpitude, failure to make disclosures or provide required documents or information to the Commission, and a demonstrated lack of financial responsibility. The act also makes a change to G.S. 20-286(11) by clarifying that an auctioneer is not a motor vehicle dealer under Chapter 20 when he sells motor vehicles for the owners or the heirs of the owners of the vehicles as part of an auction of the personal or real property for the purpose of settling an estate or closing a business, or when he sells motor vehicles on behalf of a government entity (provided the auctioneer does not maintain a used car lot or building with one or more employed motor vehicle sales representative). The act becomes effective January 1, 1993.

Company Police Act (HB 561; Chapter 1043): House Bill 561 repeals Chapter 74A, which regulated company police, and replaces it with new Chapter 74E, the Company Police Act. The new act regulates company police programs by giving the Attorney General authority to certify company police agencies and commission company police officers. Among the requirements for certification is liability insurance in a minimum amount of $,000,000, and minimum education, experience and training standards, with provision for examination. The Attorney General has the power to deny, suspend, or revoke the certification of a company police agency or the commission of a company police officer, and the right to conduct investigations and inspect records as needed. Individuals commissioned as company police officers must take the same oath of office required of any law enforcement officer in the State. There are three categories of company police: (1) State campus police officers, (2) railroad police officers, and (3)

special police officers (all the rest). Company police have the same powers as municipal and county police when on the employer's property or in hot pursuit of a person for an offense committed on that property. Additional special powers are designated for campus police and railroad police. Constituent institutions of The University of North Carolina may elect to have officers certified under Chapter 17C or Chapter 116, rather than Chapter 74E. Company police officers must meet and maintain the same preemployment and in-service standards as required for other law enforcement officers, as well as those established by the Attorney General. A company police agency certificate and an officer's commission must be renewed annually. The act sets out fees for various items in connection with certification or commissioning.

A violation of Chapter 74E is a misdemeanor punishable by fine, imprisonment for a term not exceeding two years, or both. Also, the Company Police Program may apply for an injunction to prevent a violation.

The bill makes various conforming changes to other sections to the General Statutes. It was effective upon ratification, July 25, 1992.

Limit Student Work Hours (HB 628; Chapter 991): See Education.

Prepaid Entertainment Contract Amendments and Membership Camping Act (SB 31; Chapter 1009): Senate Bill 31 amends Article 21 of Chapter 66, **Prepaid Entertainment Contracts**, by adding clarifying definitions and modifying the bond requirements. The bill also creates a new Article 30 entitled the Membership Camping Act.

In addition to clarifying definitions of contract cost and contract duration, the bill adds bonding requirements to sellers of prepaid entertainment contracts when services are available on the day of sale. The surety bond (or letter of credit) for each service location must be the greater of $10,000 or the amount of the seller's liabilities to customers, defined as contract costs paid in advance less the prorated value of services rendered, up to a maximum of $250,000. Sellers who do not take initiation or nonrecurring fees and do not charge customers more than 31 days in advance are exempt from the bonding requirements. The amount required for the bond is reviewed by the Attorney General semiannually. When services are not available on the day of sale, the bond requirements have been modified to require a bond or escrow in the greater amount of $10,000 or the amounts paid in advance. This bond or escrow must be held until 60 days after all services of the seller are available to the buyer and subject to the buyer's three-day right of cancellation after notice that services are available, and then remain subject to the same bonding requirements applicable when services are available at the time of sale. The bill also adds provisions for record keeping and transferring records to the Attorney General's office when a facility closes.

The bill also creates the **Membership Camping Act** which establishes under the Secretary of State's office, a registration requirement for membership campground operators who sell membership camping contracts for rights to use campground facilities, for campgrounds of at least 10 campsites, for more than one year. To register, the operator is required to disclose the names and addresses of the operators and owners of the campground, a description of the property involved, the basis of the operator's right to use the land, encumbrances against the property, the location of all sales offices, the operator's background and criminal record, and a copy of the disclosure, the contract, the promotional plan, and the evidence of membership to be used by the operator.

The bill requires an initial registration fee for a campground operator of $1,500 and an annual renewal fee of $1,000. Registration of salespersons of campground memberships is also required, with a $10 annual fee.

The bill requires the operator to give the purchaser a disclosure statement, prior to signing the contract, with notice of the three-day right of cancellation. The disclosure must contain the names and addresses of the operator, what campgrounds are covered, including any rights under reciprocal agreements, a description of the facilities, the duration of the membership, the maximum number of current memberships to be sold per campsites, fees to be charged, available financing, services to be provided, copies of rules, any restrictions on transfers, availability and reservation procedures, grounds for forfeiture, and conditions of reciprocal programs. The bill requires the contract to include the names of the parties, the duration of the contract, the financial obligation, the name of the salesperson involved, and the right of cancellation. The purchaser has three business days to cancel the contract and get all payments back. All payments received by the operator must be held in escrow for 10 days after the contract is signed. The term of the contract can be for no more than 30 years, unless the purchaser has a right to terminate the contract any time after 30 years. All property put in operation after January 1, 1993, must have a nondisturbance agreement for any security instrument, subordinating the lender's rights to the purchasers' right to use the facilities. In lieu of this requirement, the operator can post a surety bond in the amount of 105% of the loan balance. The bill gives the purchaser rights of rescission, restitution, and attorney fees and makes violations of the act an unfair trade practice under G.S. 75-1.1, potentially subject to treble damages, and gives the Attorney General authority to revoke the registration and seek injunctive relief for violations of the act. This act becomes effective January 1, 1993.

Funeral and Burial Trust Act (SB 51; Chapter 901): Senate Bill 51 transfers regulatory authority over preneed funeral funds from the Commissioner of Banks to the Board of Mortuary Science. If the funeral contract is funded by a trust deposit, the funeral home must deposit the preneed funeral funds in a financial institution within five business days. If the contract is to be funded by insurance, the funeral home must apply the funds to the purchase of an insurance policy within five business days. Contracts may be standard or inflation-proof, and may be revocable or irrevocable. There are provisions for substituting a different funeral home for the original funeral home and for refunds of preneed funeral funds. A Recovery Fund, funded by a $15 fee to be paid on each preneed contract, is established to reimburse persons who suffer financial loss due to defaults by preneed licensees. The bill establishes a $150 fee for a preneed funeral establishment license, and a $50 fee for a preneed sales license. The bill was effective upon ratification, July 9, 1992.

Alarm System License (SB 340; Chapter 953): Senate Bill 340 makes numerous changes to Chapter 74D of the General Statutes, the Alarm Systems Licensing Act. Substantive changes made by the bill include an amendment to G.S. 74D-2 allowing a department or division of a firm, association, or corporation to be separately licensed if the department or division, as opposed to the firm, association, or business as a whole, engages in an alarm systems business. To be separately licensed, however, the department or division must be distinct from the parent firm and operate from other premises. The bill also amends G.S. 74D-4 to authorize members of the Alarm Systems Licensing Board who are not State employees to receive a per diem not to exceed $100 per day. Also, the Board must elect a vice-chairman and at no time may the positions of both chairman and vice-chairman be held by an industry or nonindustry representative. Senate Bill 340 also amends G.S. 74D-7 to extend the term of a license from one year to two years, increase fees chargeable by the Board, and institute a new fee for a branch office certificate. The bill adds language to G.S. 74D-8 requiring new employees of an alarm systems business to register with the Board within 20 days of employment. Finally, the bill allows the Board to suspend or revoke a license or

registration if the licensee or registrant has a lack of temperate habits or of good moral character. Senate Bill 340 became effective on ratification, July 15, 1992.

Improve Contractor Regulation (SB 719; Chapter 840): Senate Bill 719 requires that a person undertaking a construction project costing $30,000 or more be licensed as a general contractor. The bill narrows the "owner exemption" for persons constructing a building on their own land for their own use by creating a presumption that the exemption does not apply if the owner fails to occupy the building for at least 12 months following construction. This does not apply to farmers building on their own land for their own use. The bill also requires applicants for building permits to prove they have Workers' Compensation Insurance. The bill was effective upon ratification, July 6, 1992.

Motor Vehicle/Home Appliance Service Contract (SB 721; Chapter 1014): Senate Bill 721 adds G.S. 58-1-25 and G.S. 58-1-30 to provide that motor vehicle service agreement companies and home appliance service agreement companies must register with the Commissioner of Insurance and pay a registration fee of $500 before conducting business in North Carolina. The bill does not apply to performance guarantees or warranties offered at no charge by manufacturers in connection with the sale of new motor vehicles and home appliances. The bill also exempts motor vehicle dealers and home appliance dealers: (1) whose primary business is retail sale and service of motor vehicles or home appliances, (2) who make and administer their own service agreements without association with any other entity, or (3) whose service agreements cover only vehicles or appliances sold by the dealer to its retail customer. Also, insurers authorized to transact property or casualty insurance may sell motor vehicle service agreements or home appliance service agreements without any additional registration. Registrations filed pursuant to G.S. 58-1-25 and G.S. 58-1-30 must be renewed annually by payment of a $200 registration fee. The bill requires motor vehicle service agreement companies and home appliance service agreement companies to file financial statements as provided in G.S. 58-1-45 and authorizes the Commissioner to fine such companies $50 per day for late filings.

Senate Bill 721 also adds G.S. 58-1-35 to require companies entering into motor vehicle service agreements or home appliance service agreements to disclose to consumers that purchasing the service agreement is not obligatory in order to purchase or finance the product covered by the agreement. This section also provides that such agreements: (1) must comply with the laws of this State, (2) may not contain any inconsistent, ambiguous. or misleading clauses that deceptively affect the risk purported to be assumed in the agreement, (3) may not contain any misleading title, heading, or other provision, (4) may not be printed or otherwise reproduced in a manner rendering any material provisions substantially illegible. Furthermore, the service agreement shall: (1) not contain provisions allowing the company to cancel the agreement in its discretion other than for nonpayment of premiums or for a violation of the agreement (agreement must state that such a violation would subject the agreement to cancellation), (2) with respect to motor vehicle service agreements, provide for a right of assignability by the consumer to subsequent purchasers, and (3) contain a cancellation provision allowing the consumer to cancel at any time after purchase and receive a pro rata refund less any claims paid and a reasonable administrative fee not to exceed 10 percent of the pro rata refund. The bill further requires motor vehicle and home appliance service agreement companies to maintain complete records and authorizes the Commissioner to examine service agreement companies. The bill prohibits companies from acting as fronting companies for unauthorized insurers. Failure to comply with the provisions of G.S. 58-1-35 is a misdemeanor.

The bill adds G.S. 58-1-40 and G.S. 58-1-41 which require each service agreement company to file with the Commissioner an application for registration and requires each company to deposit with the Department of Insurance securities having at all times a market value of not less than $200,000 and not more than $500,000. The bill also adds G.S. 58-1-45 to require service agreement companies to file annual financial reports and, if requested by the Commissioner, unaudited quarterly financial statements.

Finally, the bill adds G.S. 58-1-50 to authorize the Commissioner to deny, revoke, or suspend service agreement companies for specified violations. The bill also authorizes the Commissioner to take corrective action and to limit a company's ability to accept new business if the company is in financial difficulty. Senate Bill 721 becomes effective January 1, 1993, and applies to service agreements written to become effective on or after that date.

Electrology Act Amend (SB 1259; Chapter 1003): See Human Resources.

Financial Institutions

Clarify Bank Commissioner's Authority (HB 277; Chapter 765): This bill amends G.S. 53-178, which limits the charges and insurance commissions that consumer finance licensees may receive, to clarify that licensees can receive income from activities specifically authorized by the Commissioner of Banks under G.S. 53-172 which governs the conduct of other business in the lender's office. The bill was effective upon ratification, June 16, 1992.

Bank Holding Company Amendments (SB 992; Chapter 783): This bill, a recommendation from the Legislative Research Commission's Committee on Financial Institutions, amended G.S. 53-229 to allow a bank holding company to acquire a trust company that does not accept demand deposits. Under former law, the general rule was that a bank holding company was not allowed to acquire or control any banking institution that had offices in this State and was not an insured bank that (1) accepted deposits that the depositor had a legal right to withdraw on demand and (2) engaged in the business of making commercial loans. The former law also exempted bank holding companies that acquired or controlled a trust company before November 1, 1987. This act permits future acquisitions to be treated the same as acquisitions before November 1, 1987. The bill was effective on June 29, 1992.

Savings Institutions Omnibus Bill (SB 997; Chapter 829): One of the recommendations of the LRC's Committee on Financial Institutions, this bill amended Chapters 54B (Savings and Loan Associations) and 54C (Savings Banks) of the General Statutes. In addition to numerous technical changes to these Chapters, the bill made the following changes:

(1) It provides a definition of "control" in G.S. 54B-4.
(2) It amends G.S. 54B-25 and G.S. 54C-26 to extend the notice period on a request to close a branch office from 30 to 90 days and to require that written notice be sent to the depositors, in addition to the Administrator.
(3) It amends G.S. 54B-33(c) and G.S. 54C-33(c) to allow up to 10% of the stock in a mutual to stock conversion to be sold to an Employee Stock Option Plan.
(4) It clarifies the definition of "savings and loan association" in G.S. 54C-4(a) to specify that Chapter 54B applies to savings and loan associations. Chapter 54C governs savings banks.

(5) It amends G.S. 54C-30(c) to require a vote of the majority of votes or shares present, in person or by proxy, rather than by a majority of the eligible votes, in a federal to State or a State to federal conversion.

(6) It adds a new section, G.S. 54C-179, to Article 8 of Chapter 54C of the General Statutes, which allows and provides a procedure for a savings bank to force the retirement of any or all of its deposit accounts.

The bill was effective upon ratification, July 2, 1992.

CRIMINAL LAW AND PROCEDURE
(Brenda Carter, Jennie Dorsett, Giles S. Perry, Walker Reagan)

RATIFIED LEGISLATION

Corrections

Drug Testing Charges (SB 885; Chapter 1000): Senate Bill 885 allows a defendant, as a condition of probation or parole, to be required by the court or the Parole Commission to reimburse the Department of Correction for the actual costs of drug testing or screening. This reimbursement may only be required if the results are positive. Senate Bill 885 was effective upon ratification, July 21, 1992.

Safekeeper Changes (SB 1105; Chapter 983): Senate Bill 1105 amends the law regarding the transfer of prisoners from county jails to the Department of Correction for safety and security. Such transfers may be made to avoid a security risk in a county where the prisoner poses a serious escape risk, exhibits violently aggressive behavior, needs to be protected from other inmates, poses an imminent danger to the staff of the jail or to other inmates, or is in custody at a time when a fire or other catastrophic event closes the jail facility. Females or persons 18 years or younger may also be transferred to the Department of Correction if the jail facility lacks adequate housing for them. The bill is expected to decrease State expenditures for safekeepers by clarifying the law regarding the medical costs of safekeepers. Counties are required to pay the Department of Correction for extraordinary medical care of safekeepers, including hospitalization, outpatient visits exceeding $35 per occurrence, and the replacement of eyeglasses and dental prosthetic devices. The bill also provides that when a prisoner held in a county jail requires medical or mental health treatment that can best be provided by the Department of Correction, a judge may order the prisoner transferred to a unit of the State prison system designated by the Secretary of Correction. In such cases the county from which the prisoner is transferred would pay DOC the same per day, per inmate rate the Department pays a local jail for maintaining a prisoner and for extraordinary medical expenses. Senate Bill 1105 became effective upon ratification on July 20, 1992.

Crimes

Stalking (HB 217; Chapter 804): House Bill 217 creates a new criminal offense of stalking. A person commits the offense of stalking if the person willfully follows or is in the presence of another person on more than one occasion with the intent to cause emotional distress by placing that person in reasonable fear of death or bodily injury. The victim must request that the stalker stop the conduct and the acts of the stalker must constitute a pattern of conduct over a period of time showing a continuity of purpose. The offense is a misdemeanor punishable by imprisonment for up to six months, a fine up to $1,000, or both. A person who commits the offense of stalking when there is a court order in effect prohibiting similar conduct is subject to up to two years imprisonment, a fine up to $2,000, or both. A second or subsequent conviction for stalking within five years of a prior conviction is punishable as a Class I felony

(maximum of five years imprisonment). House Bill 217 becomes effective October 1, 1992, and applies to offenses committed on or after that date.

Felony to Fortify a Drug House (HB 508; Chapter 1041): House Bill 508 amends the current misdemeanor offense of knowingly maintaining a structure, vehicle, boat, aircraft, or other place for controlled substance activity to make it a Class I felony for a person to violate that misdemeanor and also fortify the structure by barricading windows and doors with the intent to impede law enforcement entry. House Bill 508 becomes effective October 1, 1992, and applies to offenses committed on or after that date.

Criminal Procedure

Revisions to Procedures Regarding Commitment of Criminally Insane; Speeding Fines (HB 379; Chapter 1034): House Bill 379 changes the standard of proof in release hearings following involuntary commitment to mental institutions of defendants found not guilty by reason of insanity. The bill was enacted in response to a recent United States Supreme Court case, Foucha v. Louisiana, which held that it is unconstitutional for a state to hold a defendant who has been acquitted of a crime by reason of insanity in a mental institution once the defendant is no longer mentally ill, even though the defendant may be dangerous. The current North Carolina statute was enacted by the General Assembly last year and is similar to the Louisiana statute that was struck down. Both statutes placed the burden on the defendant to prove that he is not dangerous to others and also not mentally ill. Thus an insanity acquittee in North Carolina could possibly be continually confined when that person is not mentally ill but might be dangerous, which is now illegal under the Louisiana case. House Bill 379 rewrites the standard of proof to require that the defendant, in order to be released from the mental institution, prove that he no longer has a mental illness or is no longer dangerous to others. House Bill 379 makes two other minor changes concerning written records to ensure that the record in these hearings is properly preserved and to allow the district attorney to represent the State in rehearings and supplemental hearings on release. These provisions of House Bill 379 were effective upon ratification, July 24, 1992.

House Bill 379 also increases the fine for a person convicted of driving more than 15 miles per hour over the speed limit from a maximum of $100 to a maximum of $200. This provision of House Bill 379 becomes effective October 1, 1992, and applies to offenses committed on or after that date.

Juvenile Capital Offense Change (HB 1117; Chapter 842): House Bill 1117 amends the statute concerning transfer of jurisdiction of juveniles from juvenile court to superior court for trial as an adult to clarify that this transfer is mandatory for all offenses that are Class A felonies. House Bill 1117 becomes effective October 1, 1992, and applies to offenses committed on or after that date.

STUDIES

Marital rape may be studied by the Legislative Research Commission's Committee on Law Enforcement Issues (HB 1340).

EDUCATION
(Mary Thompson, Jim Watts)

RATIFIED LEGISLATION

Elementary and Secondary

School Tenure Changes (HB 599; Chapter 942): House Bill 599 defines an employment year for principals as 145 days; clarifies that local boards may require principals who have obtained career status in another unit to serve an additional three years as a probationary principal before gaining career status in the new system and provides that a career status employee may be dismissed or demoted based on sexual misconduct which occurred more than three years prior to the dismissal or demotion.

Limit Student Work Hours (HB 628; Chapter 991): House Bill 628 provides that youths under 18 may not be employed between 11 p.m. and 5 a.m. if there is school for the youth the next day. However, 16 and 17 year olds may work those hours with written approval of a parent or guardian and principal.

Continue Model Teacher Education Consortium (HB 1340, Sec. 56; Chapter 900): House Bill 1340, Section 56 appropriates $170,000 for the 1992-93 fiscal year for the Model Teacher Consortium. Gates and Hertford Counties were added to Granville, Halifax, Northampton, Vance, Warren Counties, Roanoke Rapids City and Weldon City as participating units.

Exceptional Children - Reallocation of Funds (HB 1340, Sec. 57; Chapter 900): House Bill 1340, Section 57 provides that the State Board may reallocate funds for exceptional children's programs collected as a result of audit exceptions, refunds, or penalties. The funds will remain available for the current and subsequent fiscal year.

Outcome-based Education (HB 1340, Sec. 58; Chapter 900): House Bill 1340, Section 58 provides that the number of pilot sites be increased from four to six to include at least one consortium. The 1991 budget provision was amended to clarify that of the $3,000,000 appropriated for the 1992-93 fiscal year to implement the program, $100,000 may be used to provide technical assistance. Implementation includes evaluation assistance.

Chapter 1044, Senate Bill 1205, Section 21 includes two consortiums, Mooresville-Madison and Granville-Johnston-Alamance, as additional OBE pilot sites.

Low-performing Units (HB 1340, Sec. 60; Chapter 900): House Bill 1340, Section 60 allows DPI to use up to $1,200,000 to provide technical assistance to identified units. If a low-performing unit receives low-wealth or small system supplemental funding, that unit is to use those funds to improve student performance. The Offices of School Services of the constituent UNC institutions are required to provide in-kind technical assistance to low-performing units.

Staff Development Funds (HB 1340, Sec. 63; Chapter 900): House Bill 1340, Section 63 provides that funds allocated for staff development by the State Board shall become available September 1 of each year and remain available through August 31 each year.

Supplemental School Funds (HB 1340, Sec. 67; Chapter 900): House Bill 1340, Section 67 clarifies that these funds may be used for textbooks and staff development.

Section 69 creates the Legislative Study Commission on Supplemental Funding to study distribution of these funds and Critical Needs funds and to report to the Speaker and President Pro Tempore by March 1, 1993.

Differentiated Pay (HB 1340, Sec. 71; Chapter 900): House Bill 1340, Section 71 appropriates $29,500,000 for differentiated pay. Special provision clarifies that differentiated pay plans shall be reviewed and subject to a vote for the 1992-93 school year and that all units shall adopt a new differentiated pay plan for the 1993-94 school year; new plans may remain in effect for no more than three years. Clarifies use of differentiated pay funds in career ladder units.

Teacher Salary Schedule (HB 1340, Sec. 72; Chapter 900): House Bill 1340, Section 72 was adopted, completing the phase in of the State salary schedule for teachers.

Public School Tuition Study (HB 1340, Sec. 74; Chapter 900): House Bill 1340, Section 74 charges the Joint Legislative Education Oversight Committee to study the issue of requiring out-of-state students who attend public schools in North Carolina to pay the full cost of their education with a report to the 1993 General Assembly.

Management Flexibility for Local Schools - Amendments to the Local School Improvement and Accountability Act of 1989 (HB 1340; Sec. 75, Chapter 900): House Bill 1340, Section 75 amends the School Improvement and Accountability Act of 1989 to focus school planning at the building level. A mission for the public school community is stated and the State Board of Education is required to develop and implement building improvement reports to be produced and disseminated by local school boards.

A mission for the public school community "to challenge with high expectations each child to learn, to achieve, and to fulfill his or her potential" is added as the purpose of the BEP, the Outcome-based Program, and the Improvement and Accountability Act.

The School Improvement and Accountability Act as amended directs the local school board to convene an advisory panel of teachers, administrators, and parents to develop systemwide performance goals. Representatives at each school building develop a plan for achieving the system goals and a differentiated pay plan for the building. Before submission to the Board, the achievement plan is subject to a vote by all building staff. The differentiated pay plan is subject to a vote by affected staff. The building plan shall identify specific waivers required to implement the plan.

The school board reviews and accepts or rejects individual building plans for achievement and differentiated pay which are to be coordinated into a single plan to be submitted to the State Superintendent and the State Board. The local board requests waivers on behalf of individual schools. There are no more systemwide waivers.

The State Board of Education is to develop and implement a system to issue improvement reports for each school building. The first report is to be based on data for the 1993-94 school year and disseminated by local boards no later than March 15, 1995.

Task Force on Site-based Management (HB 1340, Sec. 76; Chapter 900): House Bill 1340, Section 76 creates the Task Force on Site-based Management composed of 15 members including a full-time Director to monitor the implementation of the School Improvement and Accountability Act. The Task Force will provide recommendations for training and assistance to local units, review site-based management publications

developed by the Department of Public Instruction, and recommend policy changes to improve site-based management.

The legislation provides for biennial reports to the General Assembly beginning with the first week of the convening of the 1993 General Assembly.

School Transportation Penalty (HB 1340, Sec. 77; Chapter 900): House Bill 1340, Section 77 requires local boards of education to implement the Transportation Information Management System, or an equivalent system, by September 1, 1992. Salaries for the superintendent, transportation director, and other local administrative officers charged with implementing the system may be withheld if local school units are not progressing in good faith to implement the system.

Soft Drink Sales (HB 1340, Sec. 78; Chapter 900): House Bill 1340, Section 78 provides that soft drink sales may be permitted at school sites during the school day with the approval of the local board.

School Liability for School Property Use (HB 1340, Sec. 79; Chapter 900): House Bill 1340, Section 79 clarifies that local boards may adopt rules by which nonschool groups may use school property and that no liability shall attach to any board for personal injury associated with such use.

Ensure Adequate Textbook Funds (HB 1340, Sec. 81; Chapter 900): House Bill 1340, Section 81 requires the State Board to request sufficient textbook funds annually and a statement showing the State Board's request is to accompany the governor's budget request to the General Assembly. Textbook funds shall be a separate allotment and shall no longer be included in the consolidated allotment created in G.S. 115C-238.5.

Teacher Training Task Force (HB 1357; Chapter 971): House Bill 1357 establishes a 20 member task force to review the progress that has been made on the 39 objectives of the 1985 Teacher Preparation Task Force and to make recommendations for continued professional development for teachers.

The Task Force will make an interim report of its findings to the Joint Legislative Education Oversight Committee February 15, 1993, and a final report by April 1, 1994.

Educational Leadership Task Force (HB 1361; Chapter 869): House Bill 1361 establishes an 18 member Educational Leadership Task Force to identify how to best select, train, assess, and regulate persons to become competent, motivated, and trusted education leaders. The term "education leaders" includes superintendents, central office program directors, principals, and assistant principals.

Issues to be studied include: characteristics of educational leadership, recruiting and screening, strategies to restructure university preparation programs and resources, incentives, collaboration in leadership professional development, certification and licensure, practice-based evaluation methods, ongoing professional development, hiring practices, training for entry level administrators; and supply and demand trends.

Final reporting date to the Joint Legislative Education Oversight Committee is no later than February 15, 1993.

Project Genesis (SB 732; Chapter 999): Senate Bill 732 is an experiment in school management to be piloted in up to four schools in Johnston and Gaston Counties. The purpose of the program is to allow an experiment with a "restructured school approach" that includes flexibility, competitive proposals for the management of the schools, and accountability. The first school shall be a school under construction.

The abilities and experience of the leadership teams bidding on the school may include administrative and educational policy and planning skills, familiarity with technology for schools, management and classroom experience, and familiarity with the needs of diverse and special populations. One member shall be designated as the principal or leader of the team. At least 25 percent of the team shall be certificated in accordance with the regulations of the State Board or the School Improvement and Accountability Act of 1989 (SB 2).

After the fourth year of the project, and after a review of student outcome results, the local board may decide whether to continue the project in the first school and expand the project to a second school which shall be an existing school that is producing below average results in student achievement.

Waivers of State laws and State Board rules and regulations may be requested by the local board from the State Board.

Annual reports on the progress of the project, including a comprehensive financial accounting shall be made to the General Assembly. The State Board shall conduct an independent evaluation of each Genesis project to be reported to the General Assembly by January 15, 1998.

Kindergarten Students Must Attend (SB 804; Chapter 769): Senate Bill 804 provides that, once a parent, guardian, or other person in the State who has charge or control of a child under age seven (the age at which mandatory attendance begins) enrolls the child in kindergarten, first grade, or second grade, the parent, guardian, or other person must cause the child to attend unless the child is withdrawn.

Education Information Exchange (SB 1028; Chapter 880): Senate Bill 1028 codifies provisions of Chapter 500, Section 37 of the 1989 Session Laws providing for exchange of student information between secondary and higher education institutions. The legislation requires the Board of Governors, the State Board of Community Colleges, and the State Board of Education, in consultation with private higher education institutions, to establish a system to provide an exchange of information between institutions of higher education and public schools no later than June 30, 1995.

Information shall include: number of students applying, admitted, and enrolled in higher education; freshman performance; progress of students from one institution of higher education to another; and uniform transcript information.

The legislation also provides that the Department of Public Instruction shall generate and local school units shall use standardized transcripts in an automated format for applicants to higher education institutions.

A joint report of progress to the Joint Legislative Education Oversight Committee is required by February 15, 1993, and annually thereafter.

Validate School Mergers (SB 1081; Chapter 767): Senate Bill 1081 adds a new section, G.S. 115C-68.3, to validate all school mergers entered into between June 9, 1969, and May 26, 1992. Clarifies the law regarding the number and selection of school board members.

School Acquisition Bills

These bills add Franklin (SB 1126; Chapter 832), Johnston (SB 1133; Chapter 865), and Iredell and Stanly (SB 1175; Chapter 1001) Counties to the list of counties (Bladen, Columbus, Sampson, Pender, and Richmond) which may acquire the fee or any lesser interest in real or personal property for use by a school administrative unit within the county, but only upon the request of the school board and after a public hearing. These bills allow an exception to G.S. 115C-521(d) which requires school boards to own in fee simple property on which school buildings are erected.

Education Staffing Clarified (SB 1205, Sec. 22; Chapter 900): Senate Bill 1205, Section 22 clarifies that the State Superintendent of Public Instruction directs and controls staff services for the State Board including staffing of federal programs.

Charlotte-Mecklenburg Teacher Assistant Waivers (SB 1216; Chapter 986): Senate Bill 1216 authorizes a two-year pilot project in Charlotte-Mecklenburg school unit to reduce class size in kindergarten through third grade in 18 "World Class" pilot schools by using State funds appropriated for teaching assistants for certificated teachers. Parents and teachers in affected schools vote to approve a plan. The pilot project is limited to 75 State-funded teaching assistant positions and prohibits using positions filled on June 1, 1992.

A study of the impact on student performance is to be reported to the Joint Legislative Education Oversight Committee by January 1, 1995.

Community Colleges

Huskins Bill Quality Control (HB 1340, Sec. 82; Chapter 900): House Bill 1340, Section 82 provides that community college funds shall not be used to cover salary costs of local school board employees who teach college courses to qualified high school students during the regular high school day. If courses are taught after regular school hours, reimbursement shall be limited to costs plus a 15% administrative fee.

Disadvantaged Nursing Funds (HB 1340, Sec. 83; Chapter 900): House Bill 1340, Section 83 appropriates $80,000 to Community Colleges and $20,000 to The University of North Carolina to provide additional academic support services to disadvantaged nursing students.

In-plant Training (HB 1340, Sec. 84a; Chapter 900): House Bill 1340, Section 84a clarifies the purposes, procedures, and contract terms of in-plant training which may be provided to North Carolina industries by community colleges. Requires report to the General Assembly March 1, 1993, on the efficiency and role of in-plant training.

Sheltered Workshops (HB 1340, Sec. 84b; Chapter 900): House Bill 1340, Section 84b; clarifies the criteria to be considered for sheltered workshop courses. Requires report to the General Assembly March 1, 1993 on the role and policies of sheltered workshop courses.

Community College Tuition Increase (HB 1340, Sec. 86; Chapter 900): House Bill 1340, Section 86 increases tuition from $11.50 per credit hour to $13.25 per credit hour for in-State students. From $30 to $35 per occupational extension course.

Refugees State Residents for Community College Tuition Purposes (SB 1205, Sec. 25; Chapter 900): Senate Bill 1205, Section 25 establishes a one-year experiment to allow refugees to pay at the in-State community college tuition. State Board of Community Colleges to report March 15, 1993, to the General Assembly on the effect of this experiment.

Colleges and Universities

UNC Graduation Rates (HB 1340, Sec. 92; Chapter 900): House Bill 1340, Section 92 requires a report on how to improve graduation rates at the constituent universities due to the General Assembly February 1, 1993.

Appointments, School of Science and Math, Nursing Programs (SB 1026; Chapter 879): Senate Bill 1026 changes the number of appointments made by the Board of Governors to the Board of Trustees of the School of Science and Math from 11 to 12 members. Administrative changes concerning the North Carolina Center for Nursing and staggered the terms for members of the Nursing Scholars Commission.

NCSU Centennial Center Bonds (SB 1113, Chapter 1027): Senate Bill 1113 authorizes the construction of the Centennial Center at North Carolina State University in the amount of $66,000,000. The Board of Governors of the University of North Carolina may finance this project from funds available, other than monies from the General Fund. The Board may also issue revenue bonds in an amount not to exceed the authorized cost to fund the project. The act became effective upon ratification July 24, 1992.

UNC-Asheville Capital Projects (SB 1153; Chapter 967): Senate Bill 1153 authorizes additional funding for the self-liquidating capital project renovating the Highsmith Center at The University of North Carolina-Asheville.

UNC Capital Projects (SB 1154; Chapter 1012): Senate Bill 1154 authorizes the following self-liquidating projects at The University of North Carolina constituent universities: student housing and dormitory renovations at Appalachian State, renovation of Minges Coliseum at ECU; residence hall at Fayetteville State, Campus Fiber Optic Network and Health Affairs Book Store at UNC-CH, parking deck and Student Activities Center at UNC-C, renovation of Moore-Strong Residence Hall, and student housing at UNC-G.

The legislation provides, that until the debt incurred by the Student Activities Center at UNC-C has been retired, that student fees at UNC-C may not exceed the average required fees for the constituent universities of The University of North Carolina.

Student fees may not be increased at constituent universities except to retire debt incurred by capital projects approved by the General Assembly until the Board of Governors adopts rules to limit the amount of student fees as required by Section 237(b) of Chapter 689 of the 1991 Session Laws. Rules may not be adopted before April 1, 1993.

Elizabeth City State University Capital Project (SB 1155; Chapter 968): Senate Bill 1155 authorizes additional funding for the self-liquidating dormitory capital project at ECSU.

NCSU Capital Projects (SB 1200; Chapter 969): Senate Bill 1200 authorizes $18,510,400 for capital improvements on the Centennial Campus at NCSU to be financed with funds available, other than monies from the General Fund. The act became effective July 16, 1992.

UNC-CH EPA Capital Project (SB 1233; Chapter 1002): Senate Bill 1233 Authorizes additional funding for the self-liquidating EPA capital project at UNC-CH.

MAJOR DEFEATED LEGISLATION

Make Schools Safer (HB 47): House Bill 47 in its original form supported teachers in their efforts to maintain discipline. A Senate education committee substitute provided that students who carry weapons to school could be suspended for up to 180 consecutive school days including days in the next school year, created a new misdemeanor to hold parents liable if a child carries a weapon to school, and a second misdemeanor to hold any person liable who keeps a firearm in such a way that a minor could gain access to it and carry it onto school property. This version was revised in Senate Judiciary 2.

The final version of the bill amended G.S. 14-269.2 to create a misdemeanor to hold parents and guardians liable if a minor child possessed a weapon on school property.

Resident Tuition Status (HB 1358): House Bill 1358 would have amended G.S. 116-143.1 by creating two new exceptions to the twelve-month rule for resident tuition status. The 12-month durational requirement would not have applied to dependent children of State employees and local teachers and teachers employed by a local school unit and working towards North Carolina certification.

Phase Out Teacher Tenure (HB 1461): House Bill 1461 proposed to offer career status teachers a one-time payment of up to $2,500 to waive tenure rights guaranteed under G.S. 115C-325.

Governance (SB 9): Senate Bill 9 would have made the Superintendent of Public Instruction the Chairman of the State Board of Education.

Governance (SB 250): Senate Bill 250 proposed amendments to the North Carolina Constitution to restructure the State Board of Education, to make the Governor the Chairman of the State Board of Education, and to provide for appointment of the Superintendent of Public Instruction by the State Board with confirmation by the General Assembly.

EMPLOYMENT
(Bill Gilkeson, Sandra Timmons)

RATIFIED BILLS

Fringe Benefit Programs

Fireman Disability Payments (HB 31; Chapter 929): House Bill 31 permits firefighters and rescue squad workers who are injured in the line of duty to receive disability payments under the Local Governmental Employees' Retirement System (LGERS), after one year of creditable service, the same basis used currently for law enforcement officers. Receipt of the disability retirement benefits for the surviving designated beneficiaries is also provided. The bill became effective April 1, 1991.

Remove Disability Age Limit (SB 289; Chapter 766): Senate Bill 289 removes the age limitation on employees who retire on disability retirement and subsequently return to full-time service. Upon return to service, the retiree's disability benefit is suspended and he or she becomes a contributing member of the retirement system, regardless of age. The bill became effective July 1, 1992.

Disability Income Plan Changes (SB 292; Chapter 779): Senate Bill 292 makes various technical corrections to the Disability Income Plan of North Carolina. The bill became effective June 25, 1992.

Employer FICA Savings to Pay Administrative Costs of Dependent Care Program and Flexible Compensation Program (SB 1205; Chapter 1044): Section 14 of Senate Bill 1205 authorizes the Director of the Budget to use the savings, resulting from a reduction in the employer's share of Federal Insurance Contributions Act (FICA) contributions due to reduced salary for program participants, to pay some or all of the administrative expenses of the dependent care and flexible compensation programs. Authority to use FICA savings in this manner expires December 31, 1993. The bill became effective July 1, 1992.

General Employment

Employment Agency Changes (HB 519; Chapter 970): House Bill 519 establishes a procedure within the State Department of Labor whereby a person who landed a commission-paying job through an employment agency may obtain a fee refund from the agency if the employee is unable to earn the commissions as promised. The employee may file a complaint with the Commissioner of Labor if the fee to the employment agency is based on the commissions the employer represents can be earned and the employee does not earn at least 80% of that amount. The Commissioner investigates and, if he determines that the employee is entitled to a refund, he may order the employer (the one who made the representation to the employment agency) to reimburse the employee for all or part of the agency fee. In deciding whether to order a refund, the Commissioner must consider:

* whether the employment agency reasonably relied on the representation of the employer in determining its fee; or
* whether it is realistic to expect that the employee could earn the commissions the employer told the agency could be earned.

If an employment agency bases its fee on an employer's representation of how much can be earned on commission, the agency must have that representation in a written job order from the employer and that job order must be on file with the Commissioner of Labor. The act is effective January 1, 1993, and applies to all job placements on and after that date.

Equal Employment Program (HB 1006; Chapter 919): House Bill 1006 expands the Equal Employment Opportunity Program already adopted by the State Personnel Commission. The bill requires every State agency to submit an EEO plan for approval. The judicial branch and the Legislative Services Office submit to the General Assembly by June 1 of each year. All other State agencies, including The University of North Carolina, submit to the State Personnel Director by March 1 of each year. The State Personnel Commission must in turn report to the General Assembly by June 1 about the executive branch plans. The bill requires the State Personnel Director to maintain at least its current level of EEO technical assistance, monitoring, and reporting. The bill becomes effective October 1, 1992.

Off-duty Activity (SB 1032; Chapter 1023): Senate Bill 1032 prohibits an employer from firing or taking any action against an employee for lawful use of lawful products off the job. The bill also prohibits using the same reason to refuse to hire a job applicant. The protection applies only if the employee's lawful use:

* occurs during nonworking hours and off the employer's premises, and
* does not adversely affect:
  - job performance,
  - the employee's ability to properly fulfill the responsibilities of the position in question, or
  - the safety of other employees.

The employer would not be violating the act by:

* restricting the lawful use of lawful products during nonworking hours if the restriction:
  - relates to a bona fide occupational requirement and is reasonably related to the employment activities; or
  - relates to the fundamental objectives of the organization;
* taking action against an employee because the employee fails to comply with the company's substance abuse program; or
* offering or imposing a health, disability, or life insurance policy that distinguishes between employees for the type or price of coverage based on the use or nonuse of lawful products if the distinction is actuarially justified, the employer gives written notice to employees, and the employer contributes an equal amount on behalf of each employee.

If an employer violates the act, the victim may, within a year of the violation, sue the employer and obtain:

* lost wages and benefits;
* reinstatement without loss of position, seniority, or benefits; or
* a court order to the employer to hire the victim.

The court may award reasonable costs, including court costs and attorneys' fees, to whoever wins the suit. The act becomes effective October 1, 1992.

Labor

Prisoners Work for Counties (SB 1073; Chapter 841): Senate Bill 1073 allows counties to enact rules and regulations for persons imprisoned in local confinement facilities or satellite jail or work release units to work on projects that benefit State or local government entities. The bill became effective July 6, 1992.

Pensions and Retirement

Purchase Maternity Leave (HB 999; Chapter 1029): House Bill 999 provides for a member of the Teachers' and State Employees' Retirement System, with five or more years of service, to purchase time lost due to interrupted service for maternity leave, pregnancy, or childbirth, or involuntary administrative furlough due to a lack of funds to support the position, but not to exceed six months per instance. Such affected employees may make a lump sum payment equivalent to the full liability of the service credits. The bill becomes effective October 1, 1992.

Retirement Purchase Amendment (HB 1503; Chapter 1017): House Bill 1503 clarifies that the three-year window for purchasing withdrawn service, military service, and out-of-state service by members of the Teachers' and State Employees' Retirement System, the Local Governmental Employees' Retirement System, and the Consolidated Judicial Retirement System has been and continues to be in effect since its initial enactment. The bill became effective July 1, 1979.

Judge Retirement Age (HB 1512; Chapter 873): House Bill 1512 increases the mandatory retirement age from 70 to age 72 for judges of the Superior Court and District Court Divisions of the General Court of Justice. The bill became effective July 7, 1992 and applies to judges retiring on or after that date.

LGERS Employer/Employee Defined (SB 290; Chapter 762): Senate Bill 290 redefines "employer" and "employee" in the Local Governmental Employees' Retirement System (LGERS) by deleting specific references to separate authorities, boards, and commissions and thereby prohibits their participation in the local system. The bill clarifies that employers must be separate, juristic political subdivisions of the State in order to participate in LGERS. The bill became effective June 8, 1992.

Transfer Fire/Rescue Pension Fund (SB 1142; Chapter 833): Senate Bill 1142 transfers the North Carolina Firemen's and Rescue Squad Workers' Pension Fund from the Department of State Auditor to the Department of the State Treasurer. The bill also makes the State Treasurer the Chairman of the pension fund's Board of Trustees. The bill became effective July 1, 1992.

State Employees Salary Issues

All State-supported Personnel Salary Increases (HB 1340; Chapter 900): Section 49 of House Bill 1340 provides a general salary increase of $522 for each State employee. The provision became effective July 1, 1992.

Reserve for Lowest Paid Employees (HB 1340; Chapter 900): Section 50 of House Bill 1340 authorizes the Office of State Budget and Management to create a reserve fund from unused certified performance pay reserves in the 1992-93 budget to provide salary increases to lowest paid State employees in accordance with Section 37 of Chapter 1066 of the 1989 Session Laws. The provision became effective July 1, 1992.

Written Disciplinary Proceedings (SB 1205; Chapter 1044): Section 16 of Senate Bill 1205 clarifies Section 49(c) of Chapter 900 by stating specifically that employees involved in a final written disciplinary procedure are ineligible to receive salary increases awarded to all State employees. It further allows for such employees to receive the increase on a current basis when the final written disciplinary procedure is resolved. The provision became effective July 1, 1992.

Workplace Safety

NCSU Hazardous Waste Facility Funds (HB 1383; incorporated in HB 1205, Chapter 1044, Sec. 4): House Bill 1205, the Capital Improvements Budget Bill, contained a $2.7 million appropriation to The University of North Carolina for a new hazardous waste facility at North Carolina State University. The facility would be used to store hazardous waste generated by University sources. The existing facility was about to lose its permit for lack of a system to contain spills. The budget bill was made effective July 1, 1992.

OSHA Inspector Funds (HB 1384; incorporated in House Bill 1340, Chapter 900, Sec. 3): House Bill 1340, the Current Operations Budget, contained an additional $3.7 million in funding to the Department of Labor for the 1992-93 fiscal year. That allows the Department to continue the 27 new OSHA safety inspectors added by the Governor in 1991 and to hire:

* three new safety inspectors;
* four new safety supervisors;
* 31 new health inspectors;
* 3 new health supervisors; and
* related clerical and professional staff.

This appropriation will more than double the number of inspectors in place on September 3, 1991, when a fire in an uninspected food-processing plant in Hamlet, N.C., killed 25 people. The budget bill was made effective July 1, 1992.

OSHA Fines on Public Agencies (HB 1386; Chapter 1020): House Bill 1386 permits the Commissioner of Labor to impose penalties against State agencies and local governments for violations of the Occupational Safety and Health Act. Previous law specifically exempted public agencies from such penalties. The bill also requires each local government to report to its governing board and its worker's compensation insurance carrier each OSHA citation it receives. The bill was made effective upon ratification, July 23, 1992, and applies to all violations on and after that date except that fines against local governments will not be assessed for violations before January 1, 1993.

Workplace Safety Committees (HB 1388; Chapter 962): House Bill 1388 requires certain employers to establish safety programs and safety committees that include employee representatives chosen by the employees. To designate the employers who must do so, the bill uses the worker's compensation experience rate modifier, a device

the insurance industry uses to determine the extent an employer's worker's compensation losses have varied from the norm. Under the bill, any employer with a modifier of 1.5 more (significantly higher than the norm) must establish a safety program, involving written policies and training with pay for employees. If that same employer has 11 or more employees, it must also establish a safety committee. The committee must have from one to six employee representatives, depending on the size of the company's workforce, and there may not be a larger number of employer representatives on the committee. The employee representatives must be chosen by the employees or their union; the employer may choose its representatives. The law requires the safety committee to perform several duties, including inspecting the workplace in response to complaints and, in any event, every three months. The Commissioner of Labor must notify any employer who has the 1.5 modifier, and the employer has 60 days after notification to certify to the Commissioner that it has complied with the law's program and committee provisions. If the employer's modifier drops below 1.5 or its workforce drops below 11, it may discontinue its program or committee. For noncompliance, an employer may be fined a maximum ranging from $2,000 to $25,000, depending on its size. The act was made effective upon ratification, July 15, 1992, but employers need not comply with it until the Commissioner of Labor puts into effect the rules he must adopt.

State Construction Contracts Amendments (HB 1389; Chapter 893): House Bill 1389 makes several changes with regard to construction of State buildings. The changes are designed to ensure the safety and health of workers on those projects. It requires each contractor on a State capital improvement project to name a safety officer to inspect the project site for unsafe conditions and report them to the contractor. It requires the State Building Commission to study the State's provisions for worker safety/health on construction sites and to report to the General Assembly and to appropriate agencies. It requires the Governor to ensure that minorities and women are represented on the State Building Commission. The bill was made effective upon ratification, July 8, 1992.

State Employees Safety Program (HB 1390; Chapter 994): House Bill 1390 codifies the State Employees Workplace Requirements Safety Program, which already existed in the Office of State Personnel. The codification makes the program binding on all executive branch agencies, including State universities. The Program requires each State agency to establish a written safety/health program and to set up a safety committee. The State Personnel Commission is required to establish guidelines for the agencies' programs and committees, to provide technical assistance, to monitor agency compliance, and to report annually to the General Assembly. The bill was made effective upon ratification, July 20, 1992.

Special OSHA Inspections (HB 1391; Chapter 924): House Bill 1391 requires the Department of Labor to create a special-emphasis inspection program that targets for more frequent inspections those employers:

* with high rates of serious or willful OSHA violations during one year;
* with high rates of work-related deaths, serious illnesses, or injuries during one year;
* in high-risk industries; or
* with high experience-rate modifiers on their worker's compensation insurance policies.

The Commissioner of Labor is given the authority to determine the specific yardstick to use in each of the four categories, using current data from other agencies. Whenever the Commissioner targets an employer for special-emphasis inspection, he must inspect that employer's workplace at least once within the next two years. The General

Assembly made the bill effective upon ratification, July 10, 1992, and directed the Commissioner to begin developing the program at that time. It directed the Commissioner to publicize the program before its implementation.

Workplace Fatality and Injury Reports (HB 1392; Chapter 894): House Bill 1392 requires employers to report work-related deaths, injuries, and illnesses (other than minor ones) at least annually. Previously, only "periodic" reports were required. The bill also requires the Industrial Commission, the Insurance Rate Bureau, the Commissioner of Insurance, and the Chief Medical Examiner to share with the Commissioner of Labor certain information related to workplace safety and health. Where that information was required to be kept confidential, the bill extends the confidentiality after the information is reported to the Commissioner of Labor. The bill was made effective upon ratification, July 8, 1992.

Building Code Changes (HB 1393; Chapter 895): House Bill 1393 clarifies that a municipality may enforce the State Building Code within its "extraterritorial jurisdiction," that territory outside its city limits over which State law allows the city to have jurisdiction for other purposes. The bill also adds two members to the State Building Code Council and requires the Governor to fill one of those seats with a municipal elected official or city manager and the other with a county commissioner or county manager. The bill adds the requirement that the Governor must ensure minorities and women representation on the Council. The bill was made effective upon ratification, July 8, 1992.

Ban Retaliatory Discrimination (HB 1394; Chapter 1021): House Bill 1394 establishes a new retaliatory discrimination law to protect employees who are fired or discriminated against for engaging in protected activities under:

* the Occupational Safety and Health Act,
* the Mine Safety and Health Act,
* the Wage and Hour Act, or
* the Worker's Compensation Act.

The new law replaces the existing "whistle-blower" provisions in those four areas with a uniform law that contains an administrative conciliation process and enhanced remedies for employees. An aggrieved employee retains his right to sue, but must first route his complaint through the Commissioner of Labor, who has 180 days to try to conciliate the differences between employee and employer. If the Commissioner determines that the differences cannot be worked out, he may bring suit himself on the employee's behalf or issue the employee a right-to-sue letter. The employee (or Commissioner on his behalf) has 90 days to bring the suit after the Commissioner has pronounced conciliation a failure. The employee's remedies may be:

* injunctive relief,
* reinstatement,
* lost wages,
* economic-loss damages proximately caused by the violation,
* treble damages if the violation was willful, or
* attorneys' fees.

The employee's suit must be brought in good faith, and if it is judged frivolous, the court may assess the employer's attorneys' fees against the employee. An employer may win a suit under the act by proving that he would have taken the same action against the employee whether or not the employee engaged in the protected action. The act becomes effective October 1, 1992, and applies to violations occurring on or after that date.

Safety Reorganization Task Force (HB 1395; Chapter 1008): House Bill 1395 establishes the Inter-agency Task Force on State Agency Oversight of Workplace Safety and Health. It must study the regulatory responsibilities of State and local governmental agencies involved with workplace safety/health and fire safety and recommend a reorganization of that network to better serve the needs of employees and employers. The Task Force has 12 members:

* seven top officials in the executive branch,
* a community college representative,
* a local official chosen by the League of Municipalities,
* a local official chosen by the Association of County Commissioners,
* an employee selected by the Speaker of the House from a list proposed by the AFL-CIO, and
* a business owner selected by the President Pro Tem of the Senate from a list proposed by N.C. Citizens for Business and Industry.

The Task Force must submit two reports, one by October 1, 1992, to the Legislative Study Committee on Workplace Safety and another to the 1993 General Assembly by March 1, 1993. The bill was made effective upon ratification, July 21, 1992.

Workers' Compensation

Workers' Compensation Security Fund (SB 726; Chapter 802): Senate Bill 726 phases out two funds that guarantee the payment of workers' compensation claims against failed insurance companies. Instead, all such claims will be covered by the N.C. Insurance Guaranty Association, which already guarantees other kinds of insurance. The two funds being phased out are the Stock Workers' Compensation Fund (for claims against failed stockholder-owned insurance companies) and the Mutual Workers' Compensation Security Fund (for claims against failed mutual insurance companies). The Stock Fund is in the black; the Mutual Fund is in the red. To deal with current claims against the two kinds of companies, a system was worked out whereby stock companies would not be called upon to bail out mutual companies: The Guarantee Association will have two temporary accounts, a Stock Fund Account and a Mutual Fund Account. Stockholder-owned companies will get a refund from the excess of assets in the Stock Fund; mutual companies will be assessed to cover the shortage of assets in the Mutual Fund. Claims after January 1, 1993, the effective date of the act, will simply be covered by the Insurance Guaranty Association regardless of what type the failed company is.

Miscellaneous

OSP Decentralization Repeal (SB 1036; Chapter 982): See summary contained in the State Government Section.

Minimum Bid Computation Change (SB 1143; Chapter 985): When there are at least three single-prime bids, Senate Bill 1143 requires that there also be at least one full set of separate-prime bids before any separate-prime bids are opened. The bill becomes effective October 1, 1992.

Sheriffs' Commission Memberships (SB 1268; Chapter 1005): Senate Bill 1268 specifies that the congressional districts established and in effect for calendar year 1991

be used in the selection of those members of the North Carolina Sheriffs' Education and Training Standards Commission who are appointed by the North Carolina Sheriffs' Association. The bill became effective July 21, 1992, and expires September 1, 1993.

MAJOR DEFEATED BILLS

WORKPLACE SAFETY

Create Safety and Health Fund (HB 1385): House Bill 1385 would have created a special Safety and Health Fund which the General Assembly could tap to support safety and health programs enforced by various State agencies. The Fund would have been financed by the tax on Workers' Compensation premiums. The bill died in the House Appropriations Committee.

Workers' Compensation Changes (HB 1387): House Bill 1387 would have removed the statute of repose for the collection of death benefits under the Workers' Compensation Act. The statute of repose prevents anyone from bringing a Workers' Compensation claim for a death more than six years after the death or more than two years after the final determination of disability, whichever is later. The bill would also have allowed a lawsuit by a worker injured because an employer removed a safety guard from a machine, even if that worker also brought a Workers' Compensation claim. The safety-guard provision would have been an exception to the general rule that Workers' Compensation is the exclusive remedy for a workplace injury. The bill was never reported out of the House Committee on Courts, Justice, Constitutional Amendments, and Referenda.

Federal Information Sharing Resolution (HJR 1396): House Joint Resolution 1396 would have urged Congress to require all federal agencies concerned with workplace safety/health to share with other relevant federal and State agencies the safety/health violations they find in the course of their inspections. The resolution noted that hours before the disastrous fire in the food processing plant in Hamlet, N.C., a U.S. Department of Agriculture agent had noticed the locked exit door that blocked the escape of scores of workers from the fire, but the agent did not share the information with those who could have prevented the disaster. The resolution died in the House Rules Committee. (The USDA and the U.S. Department of Labor was negotiating an agreement that would address the concern of the resolution.)

State Employee Compensation (SB 1035): Senate Bill 1035 establishes a comprehensive compensation system for State employees subject to the State Personnel Act and provides for an interrelated system of compensation comprised of three components: career growth recognition, cost-of-living adjustment, and performance bonus. The most significant change requires that performance increases be awarded in a lump-sum payment rather than as part of the base salary.

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

Amend Environmental Reporting Requirements (HB 528; Chapter 990): House Bill 528: (1) requires the Environmental Management Commission (EMC) to submit quarterly written reports as to its operation, activities, programs, and progress to the Environmental Review Commission (ERC) and to provide the ERC with additional supplemental written and oral reports upon request, (2) repeals the specific requirement that the EMC make quarterly reports on the implementation of the water supply watershed protection program, (3) amends the existing requirement that the Department of Environment, Health, and Natural Resources report on the development of the State Water Supply Plan to provide for reports on an annual rather than semiannual basis beginning 1 September 1992, (4) codifies in G.S. 120-70.43 existing provisions relating to the ERC study of environmental agency consolidation and reorganization and hazardous waste management, (5) amends G.S. 143B-279.5 to change the date for the Biennial State of the Environment Report from 1 January to 15 February of each odd-numbered year, (6) amends an existing requirement that the Division of Solid Waste Management report to the ERC as to progress in developing a comprehensive hazardous waste management plan and as to the feasibility of incorporating waste reduction requirements into the existing solid and hazardous waste permitting processes to provide that the report be made annually rather than quarterly beginning 1 January 1993, (7) amends an existing requirement that DEHNR report to the Joint Legislative Commission on Governmental Operations and to the ERC as to the condition of the Solid Waste Management Trust Fund to provide for annual rather than quarterly reports beginning 1 September 1992, and (8) amends an existing requirement that DEHNR report to the Joint Legislative Commission on Governmental Operations and to the ERC on the implementation of the resident inspector's program to provide for annual rather than quarterly reports beginning 1 September 1992. This act became effective upon ratification on 20 July 1992.

Shellfish Lease Amendments (HB 1369; Chapter 788): House Bill 1369 amends G.S. 113-184(a) to allow mechanical equipment on privately held shellfish bottom leases during the regularly closed oyster season. The bill also amends G.S. 113-202(n) to require, upon final termination of a shellfish bottom lease, that the former leaseholder remove all abandoned markers denominating the area of the leasehold as a private bottom. If the former leaseholder fails to remove the markers, the State may remove them at the former leaseholder's expense. The act became effective upon ratification on June 29, 1992.

Wastewater Regulation Consolidation (HB 1545; Chapter 944): House Bill 1545 renames "Sanitary Sewage Systems" to "Wastewater Systems". The bill clarifies the authority of the Commission for Health Services in Article 11 of Chapter 130A to regulate wastewater collection, treatment, and disposal systems and specifies that only the following systems shall be regulated by the Environmental Management Commission: (1) wastewater systems designed to discharge effluents to the land surface or surface waters, (2) wastewater systems designed for groundwater remediation, groundwater injection, or landfill leachate collection and disposal, and 3) wastewater systems designed for the complete recycle or reuse of industrial process wastewater. The bill amends G.S. 130A-336(b) to provide that no improvement permit shall be required for maintenance of a wastewater system. A new G.S. 130A-336(c) provides that the Department shall review and approve plans and specifications for all wastewater systems designed for the collection, treatment, and disposal of industrial process

wastewater prior to the issuance of an improvement permit by the local health department unless the Commission adopts rules to the contrary. This act became effective upon ratification on July 14, 1992.

CAMA Clarifications (HB 1561; Chapter 839): House Bill 1561 amends the definition of "development" in G.S. 113A-103(5)a. to clarify that "placement of a floating structure in estuarine waters and public trust areas of environmental concern" is subject to CAMA permitting requirements. The bill amends G.S. 113A-124(c) to grant the Coastal Resources Commission ("CRC") authority to delegate decisions regarding granting requests for contested case hearings and declaratory rulings and to adopt rules to implement Article 7 of Chapter 113A (Coastal Area Management Act) . The bill also amends G.S. 113A-126 regarding injunctive relief to require the court to, at a minimum, issue orders to prevent or abate violations in accordance with the terms of CAMA and CRC rules. The bill also adds two new definitions, "boat" and "floating structure" to G.S. 113A-103. This act was effective upon ratification on July 2, 1992.

State Environment Policy Act Rules (HB 1583; Chapter 899): House Bill 1583 adds a new G.S. 113A-11(a) to authorize the Department of Administration to adopt rules to implement the State Environmental Policy Act (Art. 1 of Ch. 113A of the General Statutes). The bill adds a new G.S. 113A-11(b) to authorize each State agency to adopt rules that establish minimum criteria. Minimum criteria designate particular actions or classes of actions for which preparation of a detailed statement described in G.S. 113A-4(2) is not required. The State agency may include a particular action or class of actions in its minimum criteria only if the agency makes a specific finding that the action or class of actions has no significant impact on environment. Rules establishing minimum criteria must be consistent with rules adopted by the Department of Administration and are subject to approval by the Secretary of Administration. This act was effective upon ratification on July 8, 1992.

Limit Water System Connections (HB 1593; Chapter 826): House Bill 1593 amends G.S. 130A-315(b1) to clarify the authority of the Commission for Health Services to adopt rules limiting the number of service connections to a public water system based on the quantity of water available to the system. The number of service connections shall not be limited for a public water system operated in accordance with a local water supply plan that meets the requirements of G.S. 143-355(l) (plan must include present and projected population and water use within service area and present and future water supplies). This act became effective upon ratification on July 1, 1992.

State Environmental Policy Act Covers Public Lands (HB 1596; Chapter 945): House Bill 1596 expands the application of the North Carolina Environmental Policy Act of 1971 (SEPA) to cover those few instances in which State land is used for a project that does not involve an expenditure of public funds. This bill reverses an interpretation of the prior law by the Attorney General that the use of State land is not the equivalent of an expenditure of public funds and that an actual expenditure of public funds is required to trigger SEPA. The bill amends the definition section of SEPA to add definitions for "environmental assessment (EA)", "environmental document", "environmental impact statement (EIS)", "finding of no significant impact (FONSI)", "minimum criteria", "public land", and "use of public land". The bill clarifies existing law providing that compliance with the National Environmental Policy Act (NEPA) meets the requirements of SEPA. The bill specifies certain actions for which the preparation of environmental documents is not required. The bill also amends SEPA to make it clear that the preparation of environmental documents is intended to assist the agency responsible for making a decision on a proposed action in

determining the appropriate decision. Administrative and judicial review on an environmental document is incidental to, and may only be undertaken in connection with, review of the agency action. Provisions of the act relating to public lands become effective on 1 October 1992. All other provisions of the act became effective upon ratification on 14 July 1992.

Environmental Technical Corrections-2 (HB 1601; Chapter 1028): House Bill 1601 makes clarifying, conforming, and technical amendments to various laws relating to environment, health, and natural resources. The bill provides that the definition set out in G.S. 143-212 and applicable to Article 21 of Chapter 143 of the General Statutes apply also to Article 21A (Oil Pollution and Hazardous Substance Control) and Article 21B (Air Pollution Control) of Chapter 143 and amends G.S. 143-215.5 to provide that Article 4 (Judicial Review) of Chapter 150B (Administrative Procedure Act) of the General Statutes applies also to Articles 21A and 21B of Chapter 143.

Solid Waste Amendments '92 (SB 145; Chapter 932): Senate Bill 145: (1) changes the requirement that, after 1 January 1993, 25% of plastic bags provided at retail outlets to retail customers for use in carrying items purchased by the customer be recycled to a goal that 25% of such bags be recycled; (2) postpones from 1 October 1993 to 1 October 1997 the date by which 25% of polystyrene foam product used in conjunction with food for human consumption must be recycled and adds a provision that this requirement does not apply to any polystyrene foam products containing at least 25% recycled polystyrene; (3) authorizes counties to include fees for surface discharge wastewater management systems and services on property tax bills; and (4) authorizes regional solid waste management authorities to manage nonhazardous sludges on the same basis as individual units of local government. This act became effective upon ratification on 14 July 1992.

Cherokee Indians Solid Waste (SB 531; Chapter 948): Senate Bill 531 allows the Eastern Band of Cherokee Indians in North Carolina to become a member of a regional solid waste management authority. The tribe will obtain all permits necessary for conduct of solid waste management activities on the reservation as provided by federal law and responsibility of enforcement of solid waste management laws shall be as provided by federal law. This act became effective upon ratification on 14 July 1992.

Closed-loop Groundwater Remediation (SB 1156; Chapter 786): Senate Bill 1156 adds a new G.S. 143-215.1A that allows "Closed-Loop Groundwater Remediation Systems" for cleaning up contaminated groundwater and exempts such systems from the current ban in G.S. 143-214.2(b). The bill defines the system as one in which contaminated groundwater is pumped, treated, and reintroduced into the groundwater. The bill requires that a water pollution permit (G.S. 143-215.1) specifying the location at which groundwater is to be reintroduced, the design, construction, operation, and closure requirements must be obtained from the Secretary of the Department of Environment, Health, and Natural Resources. Permits granted under this new G.S. 143-215.1A constitute "prior permission" as required under the General Standards and Requirements of the Well Construction Act (G.S. 87-88). The Secretary may impose additional permit conditions or limitations to: achieve efficient, effective groundwater remediation; minimize the possibility of releases; and protect the environment or public health. This act became effective upon ratification on June 29, 1992.

Amends State Parks Laws (SB 1158; Chapter 907): Senate Bill 1158 authorizes the State of North Carolina to grant a utility easement to Carolina Power and Light Company across a tract of land within William B. Umstead State Park and provides that

the proceeds from the easement may be used only for the purpose of acquiring property at any park in the State Park System. This bill also requires the Department of Transportation to maintain parking lots in State parks and other areas administered by the Division of Parks and Recreation of the Department of Environment, Health, and Natural Resources. This act became effective upon ratification on 9 July 1992.

Local Governments Solid Waste Contracts (SB 1159; Chapter 1013): This bill amends various provisions of law relating to long-term contracts entered into by local governments for the collection or disposal of nonhazardous solid waste by: (1) repealing the requirement that such contracts be approved by the Department of Environment, Health, and Natural Resources (DEHNR) before becoming effective; (2) establishing a uniform maximum duration of 30 years for such contracts; and (3) allowing all units of local government to enter into such contracts. The bill also amends G.S. 130A-309.04, which establishes State solid waste management policy and goals, with respect to the goal of reducing the municipal solid waste stream by 40% by 30 June 2001. The bill provides that if a unit of local government is unable to meet the 40% reduction goal, but is able to demonstrate to the satisfaction of the DEHNR that it has considered all reasonably available options to reduce its municipal solid waste stream through source reduction, reuse, recycling, and composting and that it has made a good faith effort and done everything technologically and economically feasible to meet the goal, then 10% of the amount by weight of the waste stream that is converted to tire-derived fuel or refuse-derived fuel may be added to the amount that is otherwise diverted from the waste stream in calculating progress towards achieving the goal. The bill requires the governing board of a city to consider alternative sites and socioeconomic and demographic data and to hold a public hearing prior to selecting or approving a site for a sanitary landfill that receives residential solid waste that is located within one mile of an existing sanitary landfill within the State. This act became effective upon ratification on 22 July 1992.

Underground Storage Tank Amendments (SB 1169; Chapter 817): Senate Bill 1169 clarifies deductibles applicable to the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund, particularly by providing that the maximum deductible for discharges or releases reported on or after 1 January 1994 from a commercial underground storage tank that does not meet certain performance standards will be $75,000 (as originally intended) rather than $67,000. The bill also amends G.S. 143-215.94E to provide that if the owner and operator of a commercial underground storage tank cannot be identified or located or fails to proceed with cleanup, the current owner of the land in which the tank is located may conduct the cleanup and have the Commercial Fund pay for cleanup cost in excess of the applicable deductible. Eligibility for reimbursement may be transferred from a current landowner who has paid the applicable deductible to a subsequent landowner. The sum of payments from the Commercial Fund and other sources and may not exceed $1,000,000. This provision does not impose any additional obligation on a current landowner and does not alter rights or duties of any person under other provisions of law. The bill also expands the membership of the North Carolina Petroleum Underground Storage Tank Funds Council from nine to eleven members. The bill states specific qualifications for the two additional members and provides for their appointment. The provisions of the act relating to deductibles became effective on 1 January 1992. All other provisions became effective 1 July 1992.

Oxygenated Gasoline (SB 1197; Chapter 889): Senate Bill 1197 implements the oxygenated and reformulated gasoline requirements of the 1990 amendments to the federal Clean Air Act. The bill authorizes the Environmental Management Commission

(EMC) to regulate the oxygen content of gasoline, to require the use of reformulated gasoline, to implement the requirements of Title II of the 1990 amendments to the federal Clean Air Act, and to develop standards and plans to implement these requirements. The EMC may specify different standards for particular areas of the State as necessary to meet federal standards. Rules adopted by the EMC will be implemented by the Department of Agriculture and the Gasoline and Oil Inspection Board. The Commissioner of Agriculture may assess and collect civil penalties for violations of rules adopted by the EMC. The bill also requires the Department of Agriculture to study the feasibility of implementing a program to permit averaging of oxygen content, the use of marketable oxygen credits, and the feasibility of local enforcement of oxygenated gasoline standards. This act became effective 1 March 1992.

Environmental Technical Corrections-1 (SB 1206; Chapter 890): Senate Bill 1206 makes numerous clarifying, conforming, and technical amendments to various laws relating to environment, health, and natural resources.

Budget Actions

Current Operations Appropriations/1992 (HB 1340; Chapter 900): House Bill 1340 makes a net increase in appropriations to the Department of Environment, Health, and Natural Resources of $7,180,925 with a net increase of 93 positions. Among the more notable changes are an appropriation of $1,100,620 including 12 positions to provide personnel and resources to review the license application for the proposed low-level radioactive waste disposal facility; $1,447,943 including 41 positions for the North Carolina Zoological Park to provide operating support for the new Desert Pavilion and for the new North American habitat facilities; $419,902 including eight positions for the Division of Solid Waste Management to provide technical assistance to local governments to meet waste reduction goals (six positions) and to fund positions in the Septage Management Program (two positions); and $214,612 including four positions in the Office of Waste Reduction to fund additional technical assistance in pollution prevention and solid waste recycling. The bill also places $183,719 appropriated to the Department of Economic and Community Development for the North Carolina Hazardous Waste Management Commission for the 1992-93 fiscal year in a reserve in the Office of State Budget and Management. In the event the Director of the Budget determines that there is a need to site a hazardous waste facility pursuant to Chapter 130B of the General Statutes, this amount may be transferred to the Hazardous Waste Management Commission to perform only those activities that directly relate to site selection for a facility. The Hazardous Waste Management Commission may spend up to $53,000 to complete current projects, phase out its activities and satisfy contractual obligations including salaries and other encumbrances, through 31 December 1992. These provisions became effective 1 July 1992.

Capital Improvements/1992 (SB 1205; Chapter 1044): Senate Bill 1205 contains various appropriations and other provisions relating to the Department of Environment, Health, and Natural Resources including: an appropriation of $300,000 to the Governor's Waste Management Board to fund technical assistance grants of $100,000 each to the Richmond, Chatham, and Wake County site designation review committees; a provision establishing the North Carolina On-Site Wastewater Systems Institute; an appropriation of $500,000 for repair and maintenance of State parks and $500,000 to acquire critical parcels of inholdings and corridor linkages for inclusion in the State

Parks System; appropriations of $75,000 from both the Commercial Leaking Petroleum Underground Storage Tanks Cleanup Fund and the Noncommercial Leaking Petroleum Underground Cleanup Fund to establish and support four positions to inspect and monitor petroleum contaminated soil landfarming sites; a provision that allocates $250,000 of the funds appropriated to the Office of State Budget and Management to the Laurinburg-Maxton Airport Commission for preliminary engineering studies and an environmental impact statement to determine the impact of the expansion of the Laurinburg-Maxton Airport Commission Industrial Park on the environment and the Lumber River State Park; and a provision establishing a beaver damage control pilot program, a statewide beaver damage control program, and a Beaver Damage Control Advisory Board. This act became effective 1 July 1992.

Major Defeated Legislation

Disclosure of Environmental Limitations (HB 541): The Senate Committee on Environment and Natural Resources considered House Bill 541, which would have required the disclosure and recordation in the office of the Register of Deeds in each county of certain environmental permits, registrations, and notices. The Committee took no action on the bill, but requested that the Environmental Review Commission continue to study the issues raised by the bill.

Public Use of the Beach (HB 1547): This bill, which would have codified the common rights in North Carolina to public use of ocean and estuarine beaches and would have authorized legal actions to protect those rights, passed the House of Representatives but failed to emerge from committee in the Senate.

Third-Party Environmental Permit Notice and Appeal (HB 1602/SB 1201): These companion bills, which would have required notification to the public of certain mining, water, and air permit decisions, allowed third parties to appeal these decisions in contested case proceedings under the Administrative Procedure Act, and made certain new permit conditions effective during a contested case proceeding, were referred to the House Judiciary Review Committee and the Senate Committee on the Environment and Natural Resources respectively. These committees held a joint public hearing on these bills but took no further action.

FAMILY LAW
(Brenda Carter, Lynn Marshbanks)

RATIFIED LEGISLATION

Day Care

See **Human Resources** section under **Families and Children.**

Equitable Distribution

Equitable Distribution Judgments (HB 190; Chapter 910): House Bill 190 amends G.S. 50-21 to allow entry of a judgment for equitable distribution before entry of a decree of absolute divorce (which could previously be done only by a consent judgment) if the parties have been separated for at least six months and they consent, in a pleading or other writing filed with the court, to an equitable distribution trial prior to entry of the decree of absolute divorce. House Bill 190 becomes effective October 1, 1992.

Retirement Equitable Distribution (HB 397; Chapter 960): House Bill 397 clarifies the authority of the courts to equitably divide pension, retirement, and deferred compensation plan benefits. The bill amends G.S. 50-20(b)(3) governing the payment of distributive awards in equitable distribution actions, to provide that the court may not require the administrator of a retirement or pension plan to pay out under a distributive award before the party against whom the award is made actually begins to receive benefits, unless the plan, under the Employee Retirement Income Security Act, permits earlier distribution. The bill further amends that section to provide that a distributive award may call for payment in excess of 50% of benefits under a plan only if (1) other assets subject to equitable distribution are insufficient; (2) it is difficult to distribute any asset or interest in a business, corporation, or profession; (3) it is economically desirable for one party to retain an intact asset or interest that is free from any claim by the other party; (4) more than one retirement plan or fund is involved, but the benefits awarded cannot exceed 50% of total benefits of all the plans added together; or (5) both parties consent. In any event, no distributive award may exceed 50% if a plan prohibits an award in excess of 50%. House Bill 397 also provides that if the person receiving the award dies, the unpaid balance, if any, may pass, in addition to will or intestate succession, by beneficiary designation consistent with the terms of the plan unless the plan prohibits such designation. House Bill 397 becomes effective October 1, 1992, and applies to actions for equitable distribution filed on or after that date.

Miscellaneous

Parental Rights Termination (HB 192; Chapter 941): House Bill 192 amends G.S. 7A-289.32(3) to reduce from 18 months to 12 months the time period after which parental rights may be terminated if the parent has not made reasonable progress

toward correcting the conditions that led to the need for a child's foster care. House Bill 192 becomes effective October 1, 1992, and applies to cases filed on or after that date.

Domestic Violence Center Funds (SB 1256; Chapter 988): Senate Bill 1256 clarifies the issue of whether local government entities are eligible to receive grant funds for domestic violence centers by amending G.S. 50B-9 to provide that local governments as well as nonprofit corporations may receive grants for centers for victims of domestic violence. Senate Bill 1256 became effective July 1, 1992.

MAJOR DEFEATED LEGISLATION

Child Support Reform (HB 542): House Bill 542 proposed to adopt a reformed, State-supervised child support system in North Carolina. It would have combined the child support programs administered by the Department of Human Resources and the Administrative Office of the Courts.

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

Parental Leave Act (HB 930): House Bill 930 proposed that an employer provide an employee with 12 workweeks of parental leave during any 24-month period because of the birth of the employee's child 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 the employee or employer could substitute the 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.

HUMAN RESOURCES
(John Young, Lynn Marshbanks, Sally Marshall)

RATIFIED LEGISLATION

Aging

Rest Home Rate Increase (HB 1340; Chapter 900, Sec. 144): Effective July 1, 1992, the domiciliary care reimbursement rate increases from $843 to $889 for ambulatory residents and from $882 to $928 for semiambulatory residents.

Rest Home Reporting (SB 1082; Chapter 928): In 1981 the General Assembly enacted G. S. 131D-4 directing the Department of Human Resources to develop a uniform chart of accounts and cost and revenue reporting forms for the homes for the aged category of rest homes who participated in the State/County Special Assistance to Adults program. Senate Bill 1082 would require all categories of rest homes that receive State/County Special Assistance program funds to report their costs in the same manner as required of homes for the aged. This bill became effective upon ratification, July 10, 1992.

Families and Children

Child Fatality Task Force Changes (HB 1340, Sec. 169; Chapter 900). This section of House Bill 1340 extends the life of the Child Fatality Task Force by two years. The Task Force will make updated reports to the Governor and General Assembly during the first week of the convening of the 1993 General Assembly and during the first week of the 1994 Session of the 1993 General Assembly. It will make its final report during the first week of the convening of the 1995 General Assembly. This section also adds four members to the Task Force: two members of the House of Representatives and two members of the Senate. It is effective July 1, 1992.

Day Care Sex Abuse Amendments (HB 1375; Chapter 923). House Bill 1375 provides that protective services apply to child day care homes as well as child day care facilities. It requires that the director of a local social services department notify the SBI within 24 hours, or the next work day, of the director's receipt of any report of child sexual abuse in day care. The act becomes effective on August 1, 1992, and applies to investigations of allegations received by the director of a local social services department on and after that date.

Change Day Care Definition (SB 1050; Chapter 904). Senate Bill 1050 excludes drop-in care or short-term care from the day care laws. Drop-in or short-term child care is the type of care given in such places as churches, health spas, shopping malls, bowling alleys, and resort hotels. It is for parents who are not at work and who are on the premises or "easily accessible" to the care providers. The bill also requires the Department of Human Resources to study how to ensure the health and safety of children in this type of care and to report its findings to the LRC Study Committee on Child Day Care Issues by November 1, 1992. The bill became effective on July 9, 1992.

Amend Day Care Definition (SB 1265; Chapter 1024). Senate Bill 1265 changes the definition of those nonpublic schools excluded from the day care laws to the following: nonpublic schools described in Part 2 of Article 29 of Chapter 115C of the General Statutes that: (i) are accredited by the Southern Association of Colleges and Schools, (ii) regularly provide a course of grade school instruction, and (iii) do not provide child day care or operate a child day care facility for children under five for more than 6½ hours per day. The act became effective July 24, 1992.

Health

Certificate of Need/Medicaid (HB 1340; Chapter 900): House Bill 1340 requires that approvals of certificates of need involving expanded nursing care or intermediate care for the mentally retarded contain a condition specifying the earliest possible date the new institutional health service may be certified by Medicaid, and makes other technical changes. This act became effective July 1, 1992.

Patient Solicitation Forbidden (SB 740; Chapter 858): Senate Bill 740 prohibits a health care provider licensed under Chapter 90 of the General Statutes from compensating another person for recommending or securing the health care provider's employment by a patient. This does not preclude a health care provider from purchasing mass media advertising. The health care provider's licensing board may enforce this provision through disciplinary action. This act became effective July 7, 1992.

Licensing and Certification

Electrology Act Amendment (SB 1259; Chapter 1003): The 1989 General Assembly established a new licensing board to regulate electrolysis. Senate Bill 1259 extends the date of the application deadline for licensure without examination from December 31, 1991 to October 31, 1992. This act became effective January 1, 1992.

Miscellaneous

Blind Vendors at Highway Locations (SB 1111; Chapter 984): Senate Bill 1111 authorizes the Department of Human Resources to provide additional employment opportunities for the blind by awarding highway automatic vending sites to blind operators in the Business Enterprise Program directed by the Division of Services to the Blind. The bill also authorizes a sliding scale for the management service fee to the Business Enterprise Program and allows the Department to review and renew these vending contracts every two years. Senate Bill 1111 allows profits from coin operated vending machines that are operated by the mental health institutions to remain with these institutions. This bill became effective upon ratification, July 20, 1992.

MAJOR DEFEATED 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 bills 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.

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.

Rest Home Moratorium (HB 1523 and SB 1185): These two bills would have prohibited the Department of Human Resources from July 1. 1992, to July 1, 1994, from accepting applications for initial licensure of family care homes, group homes for developmentally disabled adults, homes for the aged or disabled, or domiciliary homes.

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.

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

Health

Prescription Drug Assistance Act (HB 108/HB 1606): House Bill 108 would have established 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.

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

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.

Health Care Access Act (HB 1458): This bill would have established a single payer system to provide comprehensive coverage for all necessary health services for all State residents. The bill will be studied by the Commission on Access to Health Insurance.

Pharmacy/Medicaid Requirements (HB 1465): This bill would have required pharmacists to offer to counsel patients regarding their prescriptions before dispensing those prescriptions.

Birth-Related Neurological Impairment (HB 1517): This bill would have established a no-fault system to provide services to persons born in North Carolina with a birth-related neurological impairment, e.g. cerebral palsy.

Physicians Promote Highway Safety (SB 315): Senate Bill 315 would have granted immunity from any civil or criminal liability to a physician or optometrist who reported a patient to the Division of Motor Vehicles who in their good faith opinion is unable to safely drive.

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

AIDS Testing Without Consent (SB 755): Senate Bill 755 would have permitted 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 determined that there had 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 have permitted 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 was appropriate for the treatment of the person or protection of health care workers. The bill also required the patient to receive notification that a test might be performed and information on the test results.

Licensing and Certification

Radiation Technology Practice Act (SB 738): Senate Bill 738 would have established an occupational licensing board for radiation technologists. The bill was introduced in the 1991 Session and assigned by Senate Bill 917 to the Legislative Research Commission's Committee on Public Health Systems Issues. This LRC Committee recommended that the 1992 Session pass the bill but Senate Bill 738 was not considered by any Senate committee during the 1992 Session.

Impaired Dentists (SB 1266): Senate Bill 1266 would have authorized the Board of Dental Examiners to collect a special fee from dentist. The resulting funds would have been used to pay expenses of a peer review organization that would have operated programs for impaired dentists.

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.

INSURANCE
(Linwood Jones, Sally Marshall, Lynn Marshbanks)

RATIFIED LEGISLATION

Volunteer Rescue/EMS Funds (HB 725; Chapter 943): House Bill 725 makes several amendments to the Volunteer Rescue/EMS Fund and the Rescue Squad Workers Relief Fund. The bill (1) reduces the amount of vehicle inspection tax funds going to the Volunteer Rescue/EMS Fund and increases the amount going to the Rescue Squad Workers' Relief Fund; (2) increases the allowable administrative expenses of the N.C. Association of Rescue and Emergency Medical Services, Inc., in administering the Rescue Squad Workers' Relief Fund; (3) changes the eligibility for grants under the Volunteer Rescue/EMS Fund by placing a $3,000 cap on a grant that is not required to be matched by the applicant (for applicants with liquid assets of $1,000 or less) and retaining the current $15,000 cap for matching grants; (4) appropriates $500,000 to the Rescue Squad Workers' Relief Fund to be used for disability benefits for disabled rescue squad workers and dependents' support benefits, death benefits, and scholarships for their dependents; and (5) provides for a one-time $3,000 grant to each eligible volunteer rescue unit. The act became effective on ratification (July 14, 1992), except for the change in grant eligibility, which takes effect July 1, 1993.

Insurance Amendments (HB 846; Chapter 837): House Bill 846 makes various technical and substantive amendments to the insurance laws, including the following: (1) removes an insurance premium finance company's authority to acquire a premium finance agreement from another company without recourse and deletes a premium finance company's specific authorization to, with the Commissioner's approval, sell or transfer to another finance company the ownership of a finance agreement or power of attorney to cancel an insurance contract; (2) removes a 1991 statutory requirement for mutual insurance companies to print on the front of each policy and application a bold red statement that the policyholder may be liable if there is an assessment and reinstates the former law, which required each company to print on its policies in clear and explicit language the full contingent liability of its members; (3) removes requirements for examination, prelicensing education, and continuing education for agents representing domestic farmers' mutual assessment fire insurance companies or associations; (4) amends a 1989 group health reform act, which does not apply to noncancelable disability insurance, making it nonapplicable only to disability income insurance; (5) amends the definition of group life insurance, to include policies to which the employee contributes the entire premium and to remove the prohibition against basing the amounts of insurance on a plan precluding individual selection by the employees, employer, or union -- where the policy is issued to a labor union; (6) allows an annuity to pay, when the insured dies during the term of the annuity, more than the accumulated premium payments or the value of the annuity at the time of death, upon approval by the Commissioner; (7) adds to the examples of powers of an HMO, that of contracting for the provision or arranging of point-of-service products -- i.e., allowing subscribers to select among different delivery systems (i.e. HMO, PPO, fee-for-service) when in need of medical services, rather than selecting during open enrollment at work; (8) provides that when a policyholder rejects or fails to select different coverage limits than normally provided for uninsured (UM) or underinsured (UIM) motorists' coverage, the UM coverage will equal the highest limit of bodily injury and property damage liability coverage for any one vehicle on the policy, and the UIM coverage will equal the highest limit of bodily injury coverage for any one

vehicle on the policy; and (9) provides for SDIP and Motor Vehicle Reinsurance Facility Recoupment surcharges for a conviction of driving a commercial vehicle while impaired (under G.S. 20-138.2). This act became effective on ratification, July 2, 1992, except for the provisions on UM/UIM coverage, which take effect October 1, 1992, and apply to policies and renewals written to become effective on or after that date.

Auto Insurance Amendments (HB 1621; Chapter 997): House Bill 1621 eliminates Safe Driver Incentive Plan surcharges for accidents by fire, rescue, or law enforcement personnel while driving one of these vehicles in response to an emergency. Because G.S. 20-145 provides that a person driving one of these vehicles cannot get a speeding ticket when responding to an emergency, this bill removes a provision in G.S. 58-36-75(d) that there shall be no Reinsurance Facility recoupment surcharge for speeding convictions. The act becomes effective October 1, 1992, and applies to accidents occurring on or after that date.

Housemoving Amendments (SB 682; Chapter 813): Senate Bill 682 amends certain laws governing housemovers: (1) It changes the required motor vehicle insurance from $100,000/$300,000/$50,000 to a single minimum of $350,000 total coverage. (2) It clarifies that a general liability policy is to include coverage for operations on the State's roads that are not covered by motor vehicle insurance. (3) It clarifies that workers' compensation coverage must be for all employees and that the exemptions to the Workers' Compensation Act listed in G.S. 97-13 do not apply to licensed housemovers. (4) It requires an applicant for a housemoving certificate to file with the Department of Transportation a list of motor vehicles to be covered by the certificate and to file amendments to the list within 15 days of any changes. (5) It makes the insurance company, rather than the policyholder, responsible for notifying DOT of a policy cancellation, nonrenewal, or change at least 30 days before its occurrence. (6) It requires an applicant for a housemoving certificate to file with DOT either a copy of a $25,000 bond or surety for the benefit of persons contracting with the housemover or a $50,000 policy of cargo insurance. (Formerly, the applicant could file a $50,000 cash bond or surety in lieu of the required insurance certificate). (7) It requires a $100 annual license fee for housemovers and a $20 housemoving permit fee. The act became effective August 1, 1992.

Medicare Supplement Insurance (SB 999; Chapter 815): With minor exceptions, Senate Bill 999 extends the authority of the Commissioner of Insurance to regulate sales of Medicare supplement insurance to all eligible persons, not just those eligible by reason of age. In order to conform to federal law, the bill repeals the requirement that Medicare supplement insurance cover mammograms and pap smears. The bill also clarifies that the Insurance Commissioner must approve group Medicare supplement policies sold in the State, i.e. filing alone is not sufficient to meet federal requirements. The act became effective July 1, 1992.

Beach and FAIR Plan Amendments (SB 1004; Chapter 784): Senate Bill 1004 gives the Insurance Commissioner more authority over the operations of the Beach and FAIR Plans and the rates that the plans establish. It allows the Commissioner to modify, as well as approve or disapprove, the Beach Plan's rates, rating rules, and rating plans for its windstorm and hail policies. It provides that the rates cannot be excessive, inadequate, or unfairly discriminatory. It requires that the rules, practices, and procedures of both Plans be filed with the Commissioner for approval or modification, excluding rules, practices, and procedures involving staffing and personnel matters. It amends the definition of "insurable property" under the Beach Plan to allow

manufacturing risks to be covered, and the Beach Plan is allowed to determine, with the Commissioner's approval, what classes of manufacturing risks it will insure. It provides for the recalculation of an assessment levied against Beach Plan members if a member has failed, because of insolvency, to pay its share. The act became effective June 29, 1992.

STUDIES

Independent study commission: Conference on Access to Health Insurance.

LOCAL GOVERNMENT

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

Property Taxes for Public Transportation (HB 1446; Chapter 896): This bill permits cities and counties to levy and use property taxes to provide public transportation without calling a referendum. The bill became effective July 8, 1992.

Sewerage District Expansion (SB 474; Chapter 954): Senate Bill 474 amends G.S. 162A-68 to delete the requirement that, following inclusion of an unincorporated area in a district, the new board member shall be appointed to represent the area. A newly annexed area is to be represented by incumbent members from the county in which it is located with two exceptions: (1) if including the new area extends the district into another county, new members are to be appointed immediately to represent the area in that county; and (2) if the new area changes the county in which the largest portion of the district lies, new members from the county now containing the largest area are to be appointed immediately, in accordance with G.S. 167-67(2), and the county with the lesser portion is not to replace the first member whose term expires following the change. The act became effective upon ratification, July 15, 1992.

Property Taxes for Housing Rehabilitation Programs (SB 607; Chapter 764): Senate Bill 607 allows counties with a population of 400,000 or more to use property taxes for housing rehabilitation programs authorized by G.S. 153A-376. The bill became effective upon ratification, June 15, 1992.

PROPERTY LAW
(Steve Rose, Giles Perry)

Additional Foreclosure Postponement of Foreclosure Sales (House Bill 303; Chapter 777): House Bill 303 amends G.S. 45-21.21(a). This subsection allows the person exercising the power of sale to postpone the sale date where certain specific conditions exist. The postponement may not be later than 90 days from the original date. The amendment would allow the person to postpone the sale more than once, so long as the sale is held not later than 90 days after the original date of sale. The act is effective October 1, 1992, and applies to foreclosure proceedings filed on or after that date.

Life Plan Trust Act (House Bill 1000; Chapter 768): House Bill 1000 authorizes the establishment of life plan community trusts to provide care for people with severe chronic disabilities. The trusts are to supplement services provided by public agencies and other institutions or organizations.

The trusts are nonprofit corporations with financial reporting to the Secretary of State required. In general, the services provided are:

1. Administration of funds for persons with severe disabilities;
2. "Follow along services" to meet the needs of individual people, which can include visits;
3. Guardianship services for incompetents having no family member or friend available; and
4. Advice and counsel to guardians of severely and chronically disabled persons.

Specifications and requirements for the governing of the community trusts are set out in the statute. Also, the beneficiary's interest in a community trust is not to be considered an asset for the purpose of determining income eligibility for publicly operated programs, nor may that interest be reached to satisfy any claim for support and maintenance of the beneficiary. The act was effective upon ratification, June 17, 1992.

Real Estate Appraisers Privilege Tax (HB 1455; Chapter 974): See TAX section for summary.

Registration by Initials (HB 1661; Chapter 877): House Bill 1661 amends the probate and registration laws (Chapter 47 of the General Statutes) to validate the registration of instruments signed in the name of the register of deeds by the register's assistant or deputy and initialed by the assistant or deputy. House Bill 1661 became effective upon ratification, July 7, 1992.

Subcontractor's Lien and Attorney's Fees (SB 597; Chapter 1010): Senate Bill 597 rewrites G.S. 44A-23 to make the old law of subrogation applicable only to first tier subcontractors and adds a new subsection, which giving second and third tier subcontractors the same rights of subrogation as first tier subcontractors, except when a general contractor, (1) posts a Notice of Contract, and (2) notifies second and third tier subcontractors of all subsequent payments to a first tier subcontractor, in response to a second or third tier subcontractor's Notice of Subcontract. The forms for the Notice of Contract and Notice of Subcontract are set out in the statute.

SB 597 also adds a new section to Chapter 44A to permit the Court to award reasonable attorney's fees to the prevailing party in an action to perfect a lien under Article 2, **Statutory Liens**, or to compel payment under Article 3, **Model Payment and Performance Bond**. The prevailing party is defined as either the plaintiff who obtains

a judgment for at least 50% of his claim, or a defendant against whom a judgment is entered for less than 50% of the amount claimed, or the party for whom the judgment is more favorable than the offer of judgment served under Rule 68 of the Rules of Civil Procedure.

SB 597 also directs the General Statutes Commission to study and report its recommendations for changes to the 1993 General Assembly in the areas of (1) the lien rights of contractors and subcontractors under both Articles 2 and 3 of Chapter 44A; (2) attorney's fees in these lien and bond cases, and; (3) the effect of the North Carolina Supreme Court's decision in Electric Supply Co. v. Swain Electrical Co., 328 NC 651 (1991). The act became effective upon ratification, July 22, 1992, and applies to actions filed on or after that date. The attorney's fees provision expires July 1, 1994.

Return of Condemned Property (SB 707; Chapter 980): Senate Bill 707 adds a new Article 5 to Chapter 40A. The bill provides that whenever a public condemnor listed in G.S. 40A-3(b) or (c) acquires real property by condemnation and determines that the property is no longer needed for the purpose for which it was condemned, the original owner may have the title to the property returned on payment of the full price paid to the owner, the cost of any improvements to the property, and interest at the legal rate. Unless the public condemnor acquired the entire lot, block, or tract belonging to the original owner, the original owner must own the remaining land from which the property was condemned in order to regain property under this act. The act became effective upon ratification, July 20, 1992.

REDISTRICTING

(Terry Sullivan, Linwood Jones, Bill Gilkeson, Giles Perry, 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.)

House Redistricting (HB 2; Chapter 5 of the 1991 Session Laws, 1991 Extra Session): House Bill 2 is the new redistricting plan for the State House of Representatives. The new plan was enacted early in 1992 in response to the U.S. Department of Justice's objection to the initial 1991 plan. The Department of Justice precleared the new State House plan on February 6, 1992. The plan consists of 81 single-member districts, 12 two-member districts, and 5 three-member districts. Of the 98 districts, 18 are minority districts, including the State's first predominately Native American district (District 85) and a 2-member district likely to elect two minorities (District 17).

Congressional Redistricting (HB 3; Chapter 7 of the 1991 Session Laws, 1991 Extra Session): House Bill 3 divides North Carolina into new districts for the U.S. House of Representatives based on the 1990 Census. In the federal reapportionment after the Census, North Carolina acquired an extra congressman -- 12 instead of the 11 it had had since 1961. House Bill 3 was enacted after the U.S. Justice Department denied preclearance under the Voting Rights Act to Senate Bill 16 (Chapter 601 of the 1991 Session Laws). House Bill 3 was approved by the Justice Department on February 6, 1992. The earlier bill that the Justice Department rejected would have created, for the first time in modern history, a majority Black congressional district. House Bill 3 creates two majority Black congressional districts. District 1, largely in rural eastern North Carolina, has a population that is 57.26% Black and voter registration estimated at 52.41% Black. District 12, winding through the urban Piedmont, has a population that is 56.63% Black and voter registration estimated at 54.71% Black. The bill was made effective upon ratification, January 24, 1992, and applies to the 1992 elections.

Delayed Filing Period (SB 1; Chapter 1 of the 1991 Session Laws, 1991 Extra Session): Senate Bill 1 adapted North Carolina's 1992 election-year schedule to its redistricting problems by moving the candidate-filing period forward by about a month. Instead of the regular statutory period, which in 1992 would have run from January 6 to February 3, the bill set the filing period to run from February 10 to March 2. The move affected filing for all offices, even though its rationale was to allow time for approval of new legislative and congressional districts after rejection of earlier plans by the Justice Department. The bill made a few other changes in the election-year timetable so that the party primaries could take place as scheduled on May 5. The bill was made effective upon ratification, December 30, 1991. To take care of the contingency that the Justice Department might not preclear the new redistricting plans in time for the delayed filing period, the General Assembly enacted a later bill, House Bill 1 (Chapter 9 of the 1991 Session Laws, 1991 Extra Session). But since preclearance of all three redistricting plans came on February 6, the second bill was not needed. The delayed filing period proceeded according to Senate Bill 1, except that a

federal court delayed the close of filing for congressional candidates only until a preliminary hearing could be held in the lawsuit of Pope v. Blue.

Senate Redistricting (SB 2; Chapter 4 of the 1991 Session Laws, 1991 Extra Session): Senate Bill 2 draws new State Senate districts based on the 1990 Census. This district plan was enacted after the U.S. Justice Department declined to preclear Senate Bill 17 (Chapter 676 of the 1991 Session Laws), the initial Senate redistricting plan. Senate Bill 2 was approved by the U.S. Justice Department on February 6, 1992, and applies beginning with the 1992 elections. The plan includes six districts with majority Black registration, and one district that is majority Black and Native American. The plan includes a total of 42 districts, 8 of which are two-member districts, and 34 which are single member districts.

MAJOR DEFEATED LEGISLATION

Residency Districts (HB 963): House Bill 963 would have delineated the terms "electoral district" and "residency district" in the statutory Chapters affecting the governing boards of cities and counties. "Electoral district" would have been 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 have required that electoral districts be created and revised so that they are as nearly equal as possible, but would have given 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 have permitted 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 have given them the same power that city councils now have. The bill passed the House and died in the Senate.

STATE GOVERNMENT
(Brenda Carter, Bill Gilkeson, Linwood Jones, Lynn Marshbanks, Steve Rose)

RATIFIED LEGISLATION

Alcoholic Beverage Control

ABC Law Changes (HB 1322; Chapter 920): House Bill 1322 amends the definition of "mixed beverage" to include a premixed cocktail served from a container that holds only one serving, and it lowers from 375 milliliters to 355 milliliters the size restriction on containers of spirituous liquor bought from an ABC store by a mixed beverages permit holder for resale as mixed beverages (a change of .68 ounces). The bill also changes the codification of the provisions concerning hotel guest room cabinets and makes it clear that the $20 surcharge on spirituous liquor sold for resale in a guest room cabinet is to be distributed in the same way as the $20 surcharge on spirituous liquor sold for resale as mixed beverages. House Bill 1322 amends the statute governing brewery permits, to change the limit on production to a limit on sales and to authorize minibreweries to sell up to 310,000 gallons of beer produced at the brewery each year. The bill amends the definition of a "Special ABC Area" to raise the population limit from 100 to 500 permanent residents and to lower the acreage requirement for such areas from 1000 to 500. The statute regarding the issuance of permits for Special ABC areas was amended to allow the Commission to issue off-premises wine permits, as well as other permits currently allowed, and to remove the requirement that qualifying establishments be closed to the public. (Special ABC areas may hold elections or by vote approve the sale of mixed beverages if they meet the requirements of the statute.) House Bill 1322 amends the statute providing for the issuance of permits based on existing permits, and to allow sports clubs that meet certain requirements to obtain on-premises permits. The bill also creates a new category of Special Private Club permits for private clubs located in private developments which meet certain conditions. House Bill 1322 became effective upon ratification on July 10, 1992.

Councils and Commissions

Abolish Interstate Cooperation Council (HB 1657; Chapter 912): House Bill 1657 abolishes the North Carolina Council on Interstate Cooperation. The Council was created in the early 1970s to encourage and advance cooperation between North Carolina and other states, to help the State participate as a member of the Council of State Governments, and to study interstate compacts and their impact on the State. The Council had not met since 1979. The act became effective on ratification, July 9, 1992.

Rural Electrification Authority Regulatory Fee (SB 1072; Chapter 803): Senate Bill 1072 amends G.S. 117-3.1. This statute, passed in 1991, established a regulatory fee to fund the operation of the Rural Electrification Authority. As originally written, the statute provided that the General Assembly would set the fee by law each fiscal year. The amendments provide that the fee will be 4¢ per meter or access line for each

quarter, unless the General Assembly sets a higher rate. Thus, the General Assembly will not have to specifically set the rate each year unless it is to change. The act became effective July 1, 1992.

Extend Sentencing Commission (SB 1129; Chapter 816): Senate Bill 1129 extends the North Carolina Sentencing and Policy Advisory Commission and adjusts its reporting dates and membership. The bill extends the commission until July 1, 1993, and adds four members: two each from the House and Senate appointed by the Speaker and President Pro Tempore. Current terms expire June 30, 1992, and new or reappointed members' terms expire on July 1, 1993. Legislative members may be removed by the Speaker or President Pro Tempore without cause. After July 1, 1992, a person entitled to designate someone to serve in his place may not substitute anyone else for the original designee. A successor in office, however, may make a new designation. Senate Bill 1129 provides for the commission to make a final report on criminal penalties and sentencing structure within 30 days of the opening of the 1993 Session. If the proposed structure would produce inmate populations exceeding standard operating capacity the commission is to propose an alternative structure. Standard operating capacity is defined as the total capacity expected to be available in both local confinement facilities and in the Department of Correction once all the proceeds of authorized bonds have been expended for the construction of prison facilities. Senate Bill 1129 became effective upon ratification on July 1, 1992.

Courts

Court Costs/Fees (HB 945; Chapter 811): House Bill 945 does the following: (1) raises various court fees; (2) provides that a community water system operating permit is valid for a calendar year, rather than for one year from the date of issue, and allows for the prorating of permit fees; and (3) provides for percentage rates to be used in calculating the insurance regulatory charge under G.S. 58-6-25 and the public utility regulatory fee under G.S. 62-302(b)(2). The act was effective July 1, 1992, except that the insurance regulatory charge provision was effective for taxable years beginning on or after January 1, 1992.

Judge Retirement Age (HB 1512; Chapter 873): House Bill 1512 raises the retirement age for superior court and district court judges from 70 to 72. The act was effective July 7, 1992, and applies to judges retiring on or after that date.

Elections

(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.)

Registration Deadline/Satellite Precincts/Campaign Finance Changes (HB 1408; Chapter 1032): House Bill 1408 moves the close of voter registration one week closer

to election day: three weeks rather than four. If a person registers to vote before the close of registration for an election, the person may vote in that election. After the close of registration, the person may register, but may not vote in the upcoming election. The bill also gives the State Board of Elections regulatory authority over county plans to set up satellite precincts to serve the elderly and disabled. A satellite precinct is a special voting place (such as a retirement home) within a precinct where elderly or disabled persons may vote instead of the regular polling place. The bill also makes two changes to the campaign-finance laws:

* A 30-day deadline for defeated primary candidates to file their finance reports after the primary (previous deadline was 10 days); and
* An elimination of the separate accounting requirement for money that candidates and political committees receive from their State parties out of the Political Parties Financing Fund.

The later registration deadline is effective July 1, 1993. The satellite precinct program is effective January 31, 1993. The campaign finance provisions became effective upon ratification of the bill, July 24, 1992.

Electors for Unaffiliated Candidates (HB 1649; Chapter 782): House Bill 1649 authorizes an Independent presidential candidate to designate presidential electors and a vice presidential running mate under North Carolina law. Previously, there was provision only for political parties to nominate presidential electors and vice presidential candidates for purposes of the North Carolina ballot. In 1992, supporters of H. Ross Perot collected enough petition signatures to get him on the ballot as an Independent candidate for president, but State law provided no mechanism for the selection of presidential electors on his behalf or for the designation of a running mate. Since the choice in a presidential election is technically for electors rather than for a presidential candidate, it was especially important to provide for the selection of electors. The bill lets the presidential candidate make the selections of electors and running mate. The bill became effective upon ratification, June 25, 1992.

Library Voter Registrars (HB 1663; Chapter 973): House Bill 1663 clarifies that librarians who are designated to register voters in a public library and high school employees designated to register voters in a high school are not required to reside in the county in order to register voters in that county. Most types of voter registration officials are required to live in the county where they register voters. High Point public library administrators, however, complained that the law needlessly hindered their staff-management. They were required to designate someone on their staff to register voters and to distribute the workload evenly; they wanted to assign everyone on staff to voter-registration duties. Because the library borders other counties, some of their employees live outside the county. They were told by the Board of Elections that only in-county residents could be assigned to the duty. The library officials sought the legislation so they could have more flexibility in staffing. It was decided that public high school voter registrars should be treated the same way. The bill became effective upon ratification, July 16, 1992.

Incorporation Vote/Filing Period (SB 556; Chapter 993): Senate Bill 556 allows absentee voting in a referendum on incorporation of a municipality. The bill becomes effective January 1, 1993.

Precinct Change Amendments (SB 910; Chapter 927): Senate Bill 910 extends to all 100 counties the standards for voting precincts that were already in place in 48 counties in time for the 1991 redistricting. In phased-in shifts during 1992-95, the remaining 52 county boards of elections would be sent U.S. Census Bureau maps and would be

required to re-draw their precinct lines where necessary to make them follow Census block lines, township lines, physical features, or municipal boundaries. County boards of elections would no longer be prohibited from drawing precinct lines that cross township lines. All 100 county boards will be required to send the Legislative Services Office annually an updated map of its precincts and provide the number of registered voters in each precinct by political party and race. Beginning in 1996, that annual data must include a racial breakdown of the registered voters of each party. This bill became effective July 1, 1992.

Mail Registration/Motor Voter/Mandated Registration Drive (SB 1205; Chapter 1044, Sections 18 and 19): Sections 18 and 19 of Senate Bill 1205, the Capital Appropriations Bill, contain provisions allowing voter registration by mail, amending the laws concerning voter registration at drivers license offices, and mandating a statewide voter registration drive every two years. The mail-in provision requires the boards of elections to make mail-in registration forms available to anyone. An applicant to register will fill out the form, sign it subject to a felony penalty for fraud, and mail it to the applicant's county board. The board will notify the applicant of that registration by nonforwardable mail; if two successive notices are returned for insufficient address, the registration will be cancelled. For the mail-in provision, $77,500 was appropriated to the State Board of Elections for the 1992-93 fiscal year. The "Motor Voter" provision appoints all drivers license examiners as special voter registration commissioners and makes a voter registration application a part of the drivers license application. For the "Motor Voter" provision, $55,400 was appropriated for the 1992-93 fiscal year. The registration drive provision requires the Governor to proclaim one month every even-numbered year as "Citizen Awareness Month"; it requires the State Board of Elections to initiate a statewide registration drive during that month and requires county boards to participate according to State Board rules. The mail-in and Motor Voter provisions become effective on July 1, 1993, and the mandated registration drive on January 31, 1993.

General Assembly

Limit Legislative Immunity (SB 1277; Chapter 1037): Senate Bill 1277 deletes the provision from G.S. 120-9 that granted legislators immunity from civil arrest or imprisonment or attachment of property while going to, coming from, or attending the General Assembly. The act was effective July 24, 1992.

Licensing Boards

Board of Medical Examiners/Real Property (HB 357; Chapter 787): House Bill 357 gives the Board of Medical Examiners the power to acquire and dispose of real property and interests therein to the same extent as a private person. If the transaction involves the acquisition, rental, encumbering, leasing, or sale of the property, the approval of the Governor and Council of State is required. The Board cannot pledge as collateral for a mortgage an amount greater than its assets, income, and revenues. This act became effective on ratification, June 29, 1992.

Occupational Board Members Pay (SB 790; Chapter 1011): Senate Bill 790 increases the per diem compensation for members of occupational and professional licensing

boards to $100 per day. The previous per diem compensation was $10 per day for members of the boards that regulate accountants and osteopaths, $50 per day for members of the Board of Nursing, and $35 per day for members of all other occupational and professional licensing boards. The increase takes effect October 1, 1992.

Public Utilities

Expanded Joint Agency Authority (SB 1193; Chapter 888): Senate Bill 1193 was recommended by the Joint Legislative Utility Review Committee. The primary purpose of the bill is to give joint agencies the ability to actively assist municipalities and joint municipal assistance agencies in the development and implementation of projects related to integrated resource planning and development and construction and operation of supply-side and demand-side programs. The effect of such activities is to help reduce the need to construct additional power plants, while at the same time making sure that there is an adequate supply of economical electrical energy. Under the law prior to these amendments, joint agencies were specifically empowered to develop and operate facilities for the generation and transmission of electrical power. Thus, the bill expands that authority to allow the joint agencies to engage actively in the development of integrated resource planning and development and construction and operation of supply-side and demand-side options.

In addition, the bill clarifies that joint agency funds may be invested in real estate backed securities which are guaranteed by various federal agencies.

The bill also provides for regular reporting by the joint agencies to the Joint Legislative Utility Review Committee on the activities carried out pursuant to the expanded authority granted by the bill. The act was effective upon ratification, July 8, 1992.

Public Enterprise Rules and Ordinances (SB 1202, Chapter 836): Senate Bill 1202 was recommended by the Environmental Review Commission. It clarifies the provisions under the public enterprise laws applicable to municipalities and counties with respect to the adoption of rules governing the public enterprises operated by those governmental entities. Public enterprises include such activities as electric service, water and sewer systems, and others.

The clarification provides that such rules must be adopted by ordinance, will be applicable within or without the city or county limits, and may be enforced by any remedy available by law.

It should be pointed out that the municipal and county public enterprise laws already provide for the authority to operate such public enterprise systems beyond the borders of the municipality or the county. The act is effective October 1, 1992, and applies to ordinances adopted prior to the effective date of the act.

State Property

Umstead Park Easement/Parking Lots (SB 1158; Chapter 907): Senate Bill 1158 authorizes the State to grant a utility easement to CP&L across Umstead State Park. The easement was legislatively authorized because of a constitutional requirement that the General Assembly approve by a 3/5 vote the use of State park land for other than public purposes. The bill also requires the Department of Transportation to maintain

the parking lots at State Parks. The Department is already responsible for the maintenance of the park roads. This act became effective on ratification, July 9, 1992.

Miscellaneous

Auctions and Auctioneers Act Amendments (HB 530; Chapter 819): See summary under **COMMERCIAL LAW.**

Prison Industry Funds (SB 314; Chapter 902): Senate Bill 314 authorizes the Secretary of Correction to lease buildings controlled by the Department, including buildings on prison grounds, to private corporations for commercial enterprises. The leases may not exceed 20 years and the Secretary must determine that the enterprise provides meaningful jobs and wages for inmates. The bill requires consultation with the Joint Legislative Commission on Governmental Operations before entering into a lease, and each lease must be approved by the Governor and the Council of State. The bill also provides that a lessee must adhere to the following provisions: (1) all persons employed in the enterprise must be prison inmates approved by the Secretary, except for supervisory employees and necessary training personnel; (2) the enterprise must observe specified security requirements; and (3) the enterprise is subject to all laws and rules governing the operations of similar business enterprises elsewhere, except G.S. 66-58 (which prohibits State competition with private business). Except as prohibited by federal statute, the bill provides that inmates may be employed in preparing products that will be introduced into interstate commerce as long as they are paid no less than the prevailing minimum wage. The bill amends G.S. 148-2(b) to exempt revenue from prison enterprises, except lease and rental income, from deposit in the Prison Enterprise Fund, and it amends G.S. 148-18(a) to exempt wages paid by private prison enterprises from limits on compensation for inmates. It also amends G.S. 148-33.1 to make provisions on deductions from inmate compensation apply to inmates employed by private prison enterprises and to provide that those inmates are not agents of the State and they are not entitled to any employment benefits under Chapter 96 of the General Statutes. Finally, the bill amends G.S. 148-70 to require State agencies to give preference to the Department of Correction in purchasing "products" as well as the already mandated preference for "articles and commodities." Senate Bill 314 became effective on July 2, 1992.

OSP Decentralization Repeal (SB 1036; Chapter 982): Senate Bill 1036 repeals a 1991 law that required the Office of State Personnel to decentralize the classification and salary administration functions of all State departments with more than 500 full-time employees by January 1, 1993. This act became effective on ratification, July 20, 1992.

DECD Name Change (SB 1235; Chapter 959): Senate Bill 1235 changes the name of the Department of Economic and Community Development back to the Department of Commerce and makes technical and conforming amendments to various statutes. The act becomes effective January 1, 1993.

MAJOR DEFEATED LEGISLATION

Elections

Election Amendments (HB 655): House Bill 655 would have prohibited 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.

Abolish Second Primary (SB 193): Senate Bill 193 would have abolished 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 died in the House.

Elect Governor Even-numbered Year (SB 232): Senate Bill 232 would have shifted 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.

TAXATION

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

RATIFIED LEGISLATION

Budgetary Process

Restore Local Government Earmarking (HB 916; Chapter 993): This act changes the source of funds used to reimburse local governmental units for the loss of certain local tax revenue, makes conforming changes required by the change in the source of funds, changes the time when some of the reimbursements must be made, and directs the Joint Select Commission on Fiscal Trends and Reform to refer issues affecting local governments to a subcommittee of that Commission. The act became effective July 1, 1992. The act does not affect the source of funds for appropriations to local governmental units of certain amounts of State taxes, nor does it change the 1991 "freeze" on those reimbursements and State-shared taxes that previously had built-in growth factors.

Sections 1 through 5 and Section 10 of the act change the source of the reimbursement funds from appropriations made to the Reserve for Reimbursements to Local Governments and Shared Tax Revenues to current collections of corporate income tax. This switch to an identified revenue stream as the source of the funds for the reimbursements removes the funds from the Current Operations Appropriations Act, thereby restoring the method for funding the reimbursements that was used before the creation of the Local Government Tax Reimbursement Reserve effective July 1, 1989.

Removal of the funds from the Current Operations Appropriations Act has three principal effects. First, it avoids annual legislative consideration of the amount needed to fund the reimbursements. Second, it eliminates the possibility that the Governor, acting under Article III, § 5(3) of the North Carolina Constitution, could reduce the amount distributed from the Reserve to prevent a deficit for a fiscal year. Third, because it takes the reimbursements out of the State's operating budget as contained in the Current Operations Appropriations Act, it removes the amount of the reimbursements from any formula that restricts the growth in the operating budget or otherwise ties an event to an amount in the operating budget.

Section 5 of the act, along with Section 6, also separates the reimbursement for the revision of the intangibles tax on accounts receivable from the intangibles tax-sharing provisions. The act leaves the tax-sharing provisions in G.S. 105-213 and moves the reimbursement provisions to G.S. 105-213.1.

Sections 7 and 8 change the timing of the reimbursements for repealed property taxes on inventories and on poultry, livestock, and feed for poultry and livestock. Prior law stated that the Secretary of Revenue was to make the reimbursements as soon as practicable after January 1 of each year, and the reimbursements were made in March of each year except 1992, when they were made in April because of cash-flow problems. At the request of the State Controller, this act changes the date to April 30 because the State's cash flow is generally at a low in March and improves in April.

Section 9 directs the Joint Select Commission on Fiscal Trends and Reform, created in 1991, to broaden its study of local government fiscal issues and to refer these issues to a subcommittee. The full Commission is to study the report of its subcommittee and make recommendations on these issues to the 1993 General Assembly.

Sections 11 through 14 of the act make conforming changes to various statutes that include the reimbursement funds in the Current Operations Appropriations Act. Because this act changes the source of the funds from an appropriation to an automatic deduction from corporate income tax collections, it also deletes all references to the funds as an appropriation.

The State reimburses local governmental units for the loss of the local tax revenue described below. The State reimburses local units for this lost revenue because the General Assembly's action in removing property from either the local sales and use tax base or the local property tax base is the cause of the lost revenue.

(1) **Revenue lost because of the removal of food purchased with food stamps or supplemental food instruments (WIC vouchers) from the sales and use tax base.**

The exemption, in G.S. 105-164.13(38), became effective October 1, 1985, and the reimbursement, required by G.S. 105-164.44C, began in fiscal year 1986-87. As specified by Section 1 of this act, the Department of Revenue is to make the reimbursement as soon as practicable after July 1 of each year by taking the amount needed from corporate income tax collections. For the 1992-93 fiscal year and each subsequent fiscal year, the Department plans to make the reimbursement in October, which is when counties and cites have previously received this reimbursement.

The Department of Revenue allocates to each county the amount of local sales and use tax revenue determined to be lost in the county during the 1989-90 fiscal year as a result of the exemption. The Department then distributes the allocated amount between the county and the cities in the county in accordance with the method by which local sales and use taxes are distributed in that county under G.S 105-472. At the direction of the board of county commissioners, local sales and use taxes are distributed between the county and the cites located in the county on the basis of either population or proportional property tax levies. The total amount distributed to all counties and cities each year is $6,409,140.

(2) **Revenue lost because of the removal of money on hand, money on deposit, and funds on deposit with insurance companies from the intangible personal property tax base, and the revision of the intangible personal property tax on accounts receivable.**

The exemptions, in G.S. 105-275(31), and the revision, in G.S. 105-201, became effective for taxable years beginning on or after January 1, 1985, and the reimbursement, now required by G.S. 105-213.1 and, prior to this act, required by G.S. 105-213 and G.S. 105-213.1, began in fiscal year 1986-87. As specified by Section 5 of this act, the Secretary of Revenue is to make the reimbursement on or before August 30 of each year by taking the amount needed from corporate income tax collections; August 30 is the same date by which local units receive tax-sharing revenue under G.S. 105-213 based on the amount of intangible tax revenue collected by the State. Prior law stated that the Secretary was to make the reimbursement as soon as practicable after July 1 of each year, and the reimbursement was always made during the last week of August.

The Department of Revenue allocates to each county the amount of revenue allocated to the county in August of 1990 for the lost intangible tax revenue. The 1990 allocation was based on actual collections of tax on the exempted items for the 1984-85 fiscal year, increased each year by a growth factor based on growth in State personal income, plus 40% of actual collections on accounts receivable for the 1989-90 fiscal year. The 1990 total allocation amount for the exempted items was $27,298,512.70, and the

1990 total allocation for the revision of the tax on accounts receivable was $6,342,062.76. Having determined the total amount to be allocated, the Department then distributes the allocated amount between the county and the municipalities, including any special districts, in the county in accordance with proportional property tax levies.

(3) **Revenue lost because of the removal of inventories owned by manufacturers from the personal property tax base.**

The exemption, in G.S. 105-275(33), was phased in over an eight-year period and began in 1980 as a limited income tax credit for part of the amount of property taxes paid on certain manufacturing inventories. The income tax credit was expanded to a 20% credit for all manufacturers effective for the 1986 income tax year and was again expanded to a 40% credit for all manufacturers effective for the 1987 income tax year. The income tax credit was repealed beginning with the 1988 income tax year and all inventories owned by manufacturers were exempted from property taxes beginning with the 1988-89 property tax year. The reimbursement, required by G.S. 105-275.1, began in fiscal year 1988-89; however, the State had indirectly subsidized property taxes on manufacturers' inventories since 1980 when the first income tax credit on manufacturers' inventories became effective. As specified by Sections 2 and 7 of this act, the Secretary of Revenue is to make the reimbursement on or before April 30 of each year by taking the amount needed from corporate income tax collections.

The Secretary of Revenue reimburses counties and cities for the lost property tax revenue in the amount they received for this purpose in March of 1991. The 1991 allocation for counties was based on inventories listed in the county for the 1987 tax year and adjusted by the initial one-time application of a growth factor based on growth in State personal income. The 1991 allocation for cities was based on (i) inventories listed in the city for the 1987 tax year and adjusted by the initial one-time application of a growth factor based on growth in State personal income plus (ii) inventories that would have been listed in the city for the 1987 tax year if areas annexed between September 1, 1987, and July 1, 1990, had been part of the city in January of 1987, adjusted by the one-time initial application of a growth factor based on growth in State personal income. The 1991 total allocation for the revenue lost by the exemption for manufacturers' inventories was $106,471,222.

(4) **Revenue lost because of the removal of poultry, livestock, and feed used in the production of poultry and livestock from the personal property tax base.**

The exemption, in G.S. 105-275(37), changed over an eight-year period from an income tax credit to the current exemption. An income tax credit for property taxes paid on poultry or livestock by the producer of the poultry or livestock became effective in 1981 and remained unchanged until 1989 when it was repealed and replaced by the current exemption for poultry and livestock and feed used in the production of poultry and livestock. The reimbursement, required by G.S. 105-275.1(b), began in fiscal year 1989-90; however, the State had indirectly subsidized property taxes on poultry and livestock since 1981 when the income tax credit on poultry and livestock became effective. The reimbursement for this lost property tax revenue is required by the same statute that requires a reimbursement for revenue lost because of the repeal of the property tax on manufacturers' inventories. As specified by Sections 2 and 7 of this act, the Secretary of Revenue is to make the reimbursement on or before April 30 of

each year by taking the amount needed from corporate income tax collections.

The Secretary of Revenue reimburses counties and cities for the lost property tax revenue in the amount they received for this purpose in March of 1991. The 1991 allocation for both counties and cities was based on poultry, livestock, and feed listed in each county and city for the 1987 tax year and adjusted by the initial one-time application of a growth factor based on growth in State personal income. The 1991 total allocation for revenue lost because of the exemption for poultry, livestock, and feed for poultry and livestock was $1,650,922.

(5) **Revenue lost because of the removal of inventories owned by retail and wholesale merchants from the personal property tax base.**

The exemption, in G.S. 105-275(34), was phased in over a three-year period beginning with the 1986-87 property tax year. These inventories were classified and taxed under former G.S. 105-277(i) at 90% of their assessed value for the 1986-87 tax year, were classified and taxed at 80% of their assessed value for the 1987-88 tax year, and were completely exempted from tax beginning with the 1988-89 tax year. The reimbursement, required by G.S. 105-277A, began in fiscal year 1986-87. As specified by Sections 3 and 8 of this act, the Secretary of Revenue is to make the reimbursement on or before April 30 of each year by taking the amount needed from corporate income tax collections.

The Secretary of Revenue reimburses counties and cities for the lost property tax revenue in the amount they received for this purpose in March of 1991. The 1991 allocation was based partly on an amount specified in 1989 that increased each year until 1991 by a growth factor based on growth in State personal income (the first per capita distribution in G.S. 105-277A(b)), partly on an amount specified in 1989 that did not increase each year (the second per capita distribution in G.S. 105-277A(c)), partly on inventories listed for the 1987-88 property tax year (the claims-based distribution in G.S. 105-277A(c1), and partly on a "hold-harmless" adjustment (the supplemental distribution in G.S. 105-277A(c2)). The 1991 total allocation for the lost revenue was $82,073,199.

The reimbursement is distributed among the counties and cities in accordance with several formulas. The first per capita distribution is shared by counties and cities on the basis of population, and the second per capita distribution is shared on the basis of proportional property tax levies. The claims-based distribution is made on the basis of inventory listings in each county and city. The supplemental distribution is made on the basis of the difference between other amounts received by each county and city and the amount of inventory taxes levied by each county and city for the 1987-88 property tax year.

(6) **Revenue lost because of the property tax "homestead exemption."**

The "homestead exemption," in G.S. 105-277.1, is an exclusion from property tax of the first $12,000 of the value of a residence owned by an elderly or disabled person whose annual disposable income does not exceed $11,000. As required by G.S. 105-277.1A, the State reimburses counties and cities for one-half of the property tax revenue lost by them in fiscal year 1990-91 because of the exemption. This amount is $7.8 million. As specified by Section 4 of this act, the Secretary of Revenue is to make the reimbursement by taking the amount needed from corporate income tax collections.

Budget Continuing Resolution (HB 1245; Chapter 812): Section 9 of this act provides a mechanism to either increase or decrease the amount of revenue in the Reserve for Reimbursements to Local Governments and Shared Tax Revenues when more or less revenue than was appropriated to that Reserve is needed to make the distributions from the Reserve that are required by law. If more revenue than was appropriated is required in a fiscal year, the difference is to be transferred from the General Fund to the Reserve. Conversely, if less revenue than was appropriated is required in a fiscal year, the excess in the Reserve reverts to the General Fund.

The section applies retroactively to July 1, 1991. Less revenue was appropriated to the Reserve for fiscal year 1991-92 than was required to be distributed to local governments from the Reserve for that year. To make the required distributions from the Reserve, the amount of the deficiency was taken from the General Fund. Thus, this section conforms the law to the actions taken in fiscal year 1991-92 concerning the Reserve and avoids a similar problem in the future.

The Reserve for Reimbursements to Local Governments and Shared Tax Revenues was established to be the revenue source for distributions to local units of government for reimbursements made to them by the State for various repealed local taxes and for distributions made to them based on the amount of various State tax collections. Chapter 993 of the 1991 Session Laws, which is explained in this document, changed the method for making the reimbursements from an appropriation to an automatic allocation of part of the State corporate income tax. Therefore, effective for the 1992-93 fiscal year, the Reserve contains only the revenue needed to make the distributions to local units of government based on collections of the following State taxes: the intangibles tax (G.S. 105-213); beer and wine excise taxes (G.S. 105-113.82); and the corporate franchise tax on natural gas companies, power companies, and telephone companies (G.S. 105-116 and G.S. 105-120).

Current Operations Appropriations Act (HB 1340; Chapter 900): Section 20 of this act establishes a permanent procedure for the disposition of the proceeds of the tax imposed by Article 2D of Chapter 105 of the General Statutes on illegal drugs, which the law refers to as controlled substances, and eliminates the temporary procedure that has been in effect since the tax became effective on January 1, 1990. The change became effective July 1, 1992.

Under the new procedure, the proceeds of the illegal drug tax are temporarily credited to a newly-created, nonreverting State Controlled Substances Tax Account. All of the tax proceeds that are the result of voluntary compliance with the tax rather than an assessment against a drug dealer are transferred from the Account to the General Fund. The tax proceeds that are the result of an assessment against a drug dealer are shared by the State and the State or local law enforcement agency that conducted the investigation that led to the assessment. When a drug dealer who pays an assessment no longer has the legal right to challenge the assessment, 25% of the proceeds from the assessment is transferred from the Account to the General Fund and the other 75% is transferred from the Account to the appropriate State or local law enforcement agency. Amounts transferred to the General Fund are not restricted in their use.

Under the old procedure, the proceeds of the tax were credited to the State Controlled Substances Tax Fund created by Section 6 of Chapter 772 of the 1989 Session Laws. As under the new procedure, 75% of the tax proceeds that were the result of an assessment against a drug dealer were transferred from the Fund to the State or local law enforcement agency that conducted the investigation that led to the assessment when the drug dealer who paid the assessment no longer had the legal right to challenge the assessment. Unlike under the new procedure, however, the rest of the tax proceeds remained in the Fund and, as directed by Chapter 772 of the 1989 Session

Laws, were to continue to remain in the Fund until the General Assembly transferred the proceeds to the General Fund.

Section 20 of this act makes that contemplated transfer. It transfers the accumulated tax proceeds in the State Controlled Substances Tax Fund that are not earmarked for remittance to a law enforcement agency from that Fund to the General Fund, abolishes the State Controlled Substances Tax Fund, and requires $594,158 of the amount transferred to be applied in the 1992-93 fiscal year to the cost of administering the tax.

Set revenue fee policy (HB 1568; Chapter 1039): This act resolves problems experienced by the Controller's Office, the Budget Office, and the Fiscal Staff in trying to track certain fee revenue and in determining the total amount appropriated to an agency. Because of certain words used in drafting various fee provisions, some fee revenue is being treated differently than other revenue and is getting separated in the accounting system from the expenditures to which the fees are supposed to be applied. The act resolves the problems by eliminating the problem language from the statutes. The act also deletes unnecessary reporting requirements concerning fees and corrects erroneous references to the Current Operations Appropriations Act. The act does not establish any new fees, raise or lower any fees, change fee revenue from reverting to nonreverting or vice-versa, or change whether nonreverting fees accumulate interest.

If a fee is considered a departmental receipt rather than unspecified nontax revenue, it is matched in the budget and in the accounting system against the expenditures of the program for which the fee is imposed. If a fee is considered unspecified nontax revenue, it is put in a different account within the appropriate principal fund and is not matched in the budget against program expenditures, thereby making it more difficult to determine the amount of fee revenue generated and the total needs of an agency.

The problem language that is eliminated is either a statement that fees are "subject to appropriation by the General Assembly" or that fees are to be "credited to the General Fund" with no indication of whether the fees are to be a departmental receipt within the General Fund or unspecified nontax revenue in the General Fund. Because all fee revenue is subject to the Executive Budget Act and appropriation by the General Assembly, the inclusion of the statement that they are subject to appropriation makes it appear that a different treatment other than the normal treatment applies. The different treatment that has resulted is the separation of the fee revenue from expenditures and the need for special provisions in the budget that specifically appropriate the fee revenue. Besides eliminating unnecessary language, the act also applies correct accounting terminology to pots of fee revenue and deletes descriptions on the use of fee revenue that do nothing more than repeat an agency's authority under general laws.

Capital Appropriations (SB 1205; Chapter 1044): Section 9.5 of this act modifies the amount of the manufacturers' inventory reimbursement to local governments. The manufacturers' inventory reimbursement was originally calculated based on the value of inventories within local governments as of September 1, 1987. The reimbursement was expanded several times; one of these expansions occurred in 1990 when the General Assembly allowed an additional reimbursement based on the value of inventories located as of January 1, 1987, within an area for which a municipality had instituted annexation proceedings and which later became a part of the municipality. Only one municipality, Mount Holly, qualified for this additional reimbursement.

In 1990-91, the first fiscal year the additional reimbursement was to be made, the amount of the additional reimbursement (approximately $200,000) was drawn from the funds that otherwise would have been used to reimburse local governments that year for lost property taxes on manufacturers' inventory. Each local government's share of the

total amount to be reimbursed was reduced by 0.19% to generate the funds for the additional reimbursement. The law did not provide how the additional reimbursement would be funded in later fiscal years. In the 1991-92 fiscal year, the amount of the additional reimbursement was drawn from the General Fund; the other local governments' share was not reduced. Effective beginning with the 1992-93 fiscal year, this section provides that the additional reimbursement will be funded each year as it was in 1990-91: each local government's share of the total amount to be reimbursed under the manufacturers' inventory reimbursement will be reduced by 0.19%.

Fuel Tax

Fuel Tax Changes (SB 1011; Chapter 913): This act makes several unrelated substantive changes to the fuel tax laws and also makes several technical changes to these laws. Most of the substantive changes concern the road tax imposed on motor carriers; the remaining substantive changes concern receipts for retail sales of special fuel and the income tax credit for construction of a fuel ethanol distillery.

Chapter 441 of the 1991 Session Laws had deleted the requirement in former G.S. 105-449.26 that a seller of special fuel keep a record of and give a receipt for each retail sale of the fuel and substituted a requirement that a seller of special fuel keep a record of and give a receipt for all sales of 25 gallons or more of fuel for highway use and for all sales of any amount of fuel for nonhighway use. Although this change reduced the circumstances in which a seller of special fuel had to keep a record of and give a receipt for a retail sale of fuel, sellers continued to report problems with the law to the Department of Revenue. To keep the type of record and give the type of receipt required, the seller had to know the name and address of the person buying the fuel and other information about the buyer. In some cases, buyers of fuel would refuse to give the required information and became angry. In the case of special fuel sold at marinas for use in watercraft, sellers complained that the paperwork was unnecessary because the pump was located in a place, such as the end of a marina, where it would be used only to dispense fuel for nonhighway use. Effective July 10, 1992, Section 7 of Chapter 913 makes the following changes to G.S. 105-449.26 in response to these complaints:

(1) It deletes the requirement that a seller keep a record of and give a receipt for all sales of 25 gallons or more of special fuel for highway use and substitutes a requirement that a seller keep a record of and give a receipt for any amount of special fuel sold for highway use only when the buyer asks for a receipt.

(2) It deletes the requirement that a seller give a receipt for every sale of any amount of special fuel sold for nonhighway use and, instead, requires a receipt to be given only when requested by the buyer. It retains the requirement that the seller keep a record of all of these sales, however.

(3) It requires that a record of and a receipt for a sale of special fuel for nonhighway use include the type of container or equipment into which the fuel was dispensed.

(4) It requires a seller of special fuel at a marina whose fuel pump is located at a place that makes it improbable that fuel could be dispensed from the pump into a motor vehicle to keep a record of and give a receipt for a sale of fuel only when the buyer asks for a receipt for the sale.

Sections 14 and 15 of the act extend the expiration dates of the corporate and individual income tax credits for construction of a fuel ethanol distillery from January 1, 1994, to January 1, 1996. These tax credits are designed to provide an incentive for a person to construct a distillery to make ethanol from agricultural or forestry products for use as fuel for motor vehicles or airplanes, for use as a deicer, or for use in removing pollutants from coal or other fuel sources. The expiration dates were extended because it was believed that construction of such a distillery would take place as a result of the incentives, but not until after January 1, 1994.

The rest of the substantive changes made by this act, which are contained in Sections 8 through 11, affect motor carriers and their liability for the road tax. In general, motor carriers are operators of large trucks and the road tax is a tax on the amount of fuel a motor carrier uses in its operations in this State.

Section 8 changes the definition of motor carrier to conform to proposed changes in the International Fuel Tax Agreement (IFTA). As a result of Chapter 487 of the 1991 Session Laws, North Carolina became a member of the IFTA on January 1, 1992. To join the IFTA, a state must agree to certain uniform provisions. When North Carolina joined the IFTA, the definition of motor carrier in G.S. 105-449.37(a) met the requirements of the IFTA. Because of proposed changes to the IFTA definition of motor carrier, however, the definition of motor carrier in G.S. 105-449.37 before amendment by this act would not have met the requirements of the IFTA as of January 1, 1993. Effective July 10, 1992, this act ties the definition of motor carrier in State law to the definition used by the IFTA. The immediate effect of this change is to include within the definition of motor carrier a person who operates a combination vehicle whose registered gross vehicle weight exceeds 26,000 pounds. Although the change also appears to delete the exception for recreational vehicles, this deletion has no practical effect because recreational vehicles are not qualified motor vehicles under the IFTA. Section 8 is not expected to have a noticeable impact on Highway Fund or Highway Trust Fund revenues because it does not significantly increase the number of vehicles subject to the road tax.

Section 9 of this act addresses a problem of lessee liability for compliance with the road tax and with other provisions specific to motor carriers. Under G.S. 105-449.42A(b), a person who leases a motor vehicle from an independent contractor for fewer than 30 days cannot choose to be the motor carrier; the independent contractor is always the motor carrier in that circumstance. Nevertheless, former G.S. 105-449.42A(c) made the lessee jointly liable with the independent contractor for compliance with the road tax and other motor carrier provisions. Based on a finding by the Revenue Laws Study Committee that it was not fair to hold a person liable for compliance with a law when someone else has the sole legal duty to comply with the law, Section 9 of this act relieves a lessee of a motor vehicle who legally cannot choose to be the motor carrier with respect to that vehicle from liability for compliance with the motor carrier laws. This change became effective July 10, 1992.

Sections 10 and 11 of this act change the amount of the fee charged for a temporary motor carrier permit and the amount of a civil penalty that can be imposed on a motor carrier for operating in this State without proper registration. Section 10 increases the temporary motor carrier permit fee from $25 to $50 and Section 11 increases the civil penalty from $75 to $100, thereby maintaining the current $50 difference between the fee and the penalty. Before this change, the temporary permit fee had not been increased since it was established in 1982 and the civil penalty had not been increased since 1981, when it was raised from $25 to $75. The increases in the fee and penalty became effective September 1, 1992, and are expected to increase Highway Fund revenues by approximately $650,000 each year.

A temporary permit authorizes a motor carrier to operate in the State for 20 days without reporting mileage to the Department of Revenue and paying the road tax based

on the number of miles driven. When the former $25 permit fee was set in 1982, the per gallon fuel tax was 12¢ and, consequently, each $25 of road tax liability equalled approximately 208 gallons of fuel and 1,040 miles driven. The per gallon tax is now 22.3¢ and each $25 of road tax liability equals approximately 112 gallons of fuel and 560 miles driven. To put this mileage in context, one round trip up and down I-85 within North Carolina is approximately 468 miles. Thus, the State was losing road tax revenue each time a person with a temporary permit made two round trips up and down I-85.

Section 10 also makes another change designed to avoid a revenue loss through the use of temporary permits. It gives the Secretary of Revenue the authority to refuse to issue a temporary permit to a motor carrier whose road tax registration has been withheld or revoked or who the Secretary finds is evading payment of the road tax through the use of temporary permits.

In addition to the substantive changes described above, this act makes a number of technical corrections set out in Sections 1 through 6 and Sections 12 and 13. Unless otherwise noted in this explanation, the technical corrections became effective upon ratification of the act, July 10, 1992.

Section 1 adds standard definitions of "person" and "Secretary" to the gasoline tax article, Article 36 of Chapter 105 of the General Statutes. Section 2 eliminates an unnecessary reference to a fuel tax refund for the Department of Transportation. The Department of Transportation no longer receives refunds because sales of fuel to the Department became exempt from fuel tax under G.S. 105-449A beginning August 1, 1991.

Section 3 deletes a statute, G.S. 105-442, that was no longer needed because its provisions were either repeated elsewhere in the statutes or not used. The provisions in G.S. 105-442 on suits to enforce payment of fuel taxes were repeated in G.S. 105-239, which is made applicable to the fuel tax laws by G.S. 105-269.3. The provision concerning double liability when a court finds that a person willfully failed to pay fuel tax had never been used; instead, the general penalties in G.S. 105-236 have been applied. The provision on revocation of a distributor's license was repeated in G.S. 105-441(b).

Sections 4, 5, and 6 of the act correct redlining errors that caused the word "tax" to be in the wrong place in G.S. 105-445. That statute appears in each of those sections because there are three versions of the statute with different effective dates. The effective dates of these technical corrections match the effective dates of the different versions of G.S. 105-445; Section 4 became effective upon ratification, Section 5 becomes effective January 1, 1995, and Section 6 becomes effective January 1, 1999.

Section 12 of the act deletes a cross-reference to repealed G.S. 105-436 that appeared in the statute that imposes a motor fuel inspection fee of 1/4¢ a gallon. It also inserts a reference to the statutes that impose a tax on special fuel as opposed to gasoline. Section 13 inserts the missing word "a" in the definition of "reseller" in G.S. 105-449.2(8).

The provisions of this act, other than Sections 13, 14, and 15, were recommended by the Revenue Laws Study Committee.

Income Tax

Income Tax Return Changes (HB 1324; Chapter 930): This act makes several changes in the laws concerning the filing of certain tax returns. Its principal change is to allow the Secretary of Revenue to provide certain taxpayers with the opportunity to do either

or both of the following: (i) file their tax returns electronically and (ii) obtain an extension of time to file their tax returns without filing an application requesting the extension. Under the act, the taxpayers for whom the Secretary can allow electronic filing and paperless extensions are those filing individual income tax returns, estate or trust income tax returns, gift tax returns, and any other returns for which the law does not specifically require the taxpayer to file a paper return or submit an application for an extension.

In addition to this change, the act clarifies that an extension for filing a gift tax return does not extend the time for paying any gift tax due and makes various technical changes to the affected statutes. A large part of the technical changes consists of eliminating unnecessary duplication that exists between statutes that apply to only one tax and statutes in Article 9 of Chapter 105 of the General Statutes; Article 9 contains the administrative provisions that apply to all taxes collected by the Secretary of Revenue.

The act accomplishes its principal change by removing barriers in the former law that prevented the Secretary from implementing an electronic filing program, a paperless extension program, or both. The act, however, does not require the Secretary to implement either of these programs. The act also does not apply to all taxes. Even with the enactment of this act, the Secretary cannot allow corporate income taxpayers, for example, to file their corporate income tax returns electronically or obtain an extension of time for filing their returns without submitting an application for an extension because the act does not change G.S. 105-130.17(d) or (f).

Under the prior law, a taxpayer who filed an individual income tax return or a return for an estate or trust had to "annex" to the return an affirmation that the return was correct. A taxpayer who filed an individual income tax return also had to submit the taxpayer's withholding statement with the return. Sections 3 and 9 of the act modify these requirements by providing that the affirmation and withholding statement must be furnished to the Secretary of Revenue but need not accompany or be attached to the appropriate return. In place of these requirements, the Secretary of Revenue can adopt rules providing that taxpayers who file their individual income tax or estate and trust tax returns electronically must file a separate signature card containing the affirmation and, for individual income tax returns, must include with the signature card a copy of the withholding statement.

Also under prior law, a taxpayer who wanted an extension for filing an individual income tax return or an estate or trust income tax return had to file an application requesting the extension. The Internal Revenue Service is considering implementing a new procedure to simplify the extension process for federal income taxes. If implemented, the federal program would remove the requirement that a taxpayer file an application for an extension. Instead, if the taxpayer has paid the full amount of the federal tax due by the original due date of the return, the taxpayer would be automatically allowed to file the return late without penalty.

Sections 3, 4, 7, 8, 10, and 11 of this act enable the Secretary of Revenue to implement the same extension program for State individual income taxes, estate and trust income taxes, gift taxes, and other taxes for which no contrary State provisions apply by deleting provisions in the current individual income tax laws and estate and trust laws that specifically require a taxpayer to submit an application for an extension of time for filing. In place of submitting an application for an extension of time for filing a return, Section 11 of the act requires a taxpayer to "comply with any application requirement set by the Secretary." The act does not change the law that an extension to file income taxes is not an extension of time for paying the full amount of income tax due.

The act accomplishes the gift tax clarification by the changes made in Sections 10 and 11. Section 10 adds a sentence to G.S. 105-197, the gift tax return statute, to

specifically authorize a taxpayer to request an extension of time for filing a gift tax return. Section 11 adds gift taxes to the list of taxes for which an extension of time for filing a return does not extend the time for paying the tax. Prior law was silent on this subject. The Department of Revenue's practice, however, conformed to the clarification made by the act.

Finally, the act makes numerous technical and clarifying changes to the statutes governing income tax returns, information returns, and tax filing extensions. Section 1 rewrites the statute governing income tax returns to clarify who must file, what information the taxpayer may be required to furnish, and when a couple must file a joint return. Section 2 clarifies the law regarding information returns that must be filed by employers and other payers of income and by partnerships. Section 3 clarifies the time and place of filing income tax returns and information returns in addition to deleting the specific requirements that an affirmation be attached to the income tax return and that an application for a filing extension be submitted. Section 4 eliminates redundant language in the income tax law regarding filing extensions; the applicable provisions regarding filing extensions are contained in G.S. 105-263, set out in Section 11 of the act.

Sections 5 and 6 clarify the statutes requiring taxpayers to make returns and requiring the Secretary of Revenue to provide tax filing forms. Sections 7 and 8 revise estate and trust income tax provisions to clarify where returns are to be filed and to delete redundant language regarding tax filing extensions. The applicable provisions regarding filing extensions are contained in G.S. 105-263, set out in Section 11 of the act.

Section 12 repeals a statute relating to joint income tax returns; the provisions of this statute are added to the statute regarding individual income tax returns by Section 1 of the act. Sections 15 through 23 repeal cross-references to the repealed statute.

Section 13 adds a new section to Article 9, the administrative Article of Chapter 105 of the General Statutes. This section clarifies that the provisions of Article 9 apply to all taxes collected by the Secretary of Revenue as well as motor fuel and kerosene inspection fees collected by the Secretary of Revenue. The new section also provides definitions for common terms used throughout Article 9 of Chapter 105 of the General Statutes. Section 14 removes redundant language in the corporate income tax statutes regarding tax filing extensions; the applicable provisions regarding filing extensions are contained in G.S. 105-263, set out in Section 11. Section 24 makes the act effective upon ratification.

Unrelated Business Income Changes (HB 1325; Chapter 921): Under both State and federal law, organizations that are exempt from corporate income tax must nevertheless pay tax on "unrelated business income." G.S. 105-130.11(b) is the State law governing corporate income tax on unrelated business income of exempt organizations. When G.S. 105-130.11(a) was amended in 1983 to provide that organizations exempt from federal corporate income tax are also exempt from State corporate income tax, a conforming amendment was not made to expand the scope of G.S. 105-130.11(b) to the same extent. This act makes this conforming change.

Unrelated business income is, with certain exceptions, income from a trade or business the conduct of which is not substantially related to the exercise by the exempt organization of its charitable, educational, or other function that is the basis for its exemption from corporate income tax. The tax on unrelated business income is levied because the organization is engaging in substantial commercial activities. In the absence of such a tax, nonexempt organizations would be at a competitive disadvantage compared to exempt nonprofit organizations.

When the General Assembly restructured the Corporation Income Tax Act in 1967 to use federal taxable income as a starting point for calculating State taxable income, it

retained G.S. 105-130.11(a) rather than adopt the exemptions provided in section 501 of the Internal Revenue Code because there was some question whether adopting the federal language might eliminate exemptions then being enjoyed by some corporations. In 1983, G.S. 105-130.11(a) was brought more closely into conformity with the Code by adding language stating that any corporation that is exempt from federal income tax is also exempt from State income tax. The separate State exemption categories were retained, however, because of continuing questions regarding whether the State exemptions are broader than the federal exemptions.

When the General Assembly amended G.S. 105-130.11(a) in 1983, it failed to make a conforming amendment to G.S. 105-130.11(b). Before the ratification of this act, G.S. 105-130.11(b) made no reference to those organizations exempt under the Code. This act amends G.S. 105-130.11(b) to include all organizations that are exempt from federal corporate income tax but are not specifically listed in G.S. 105-130.11(a).

In amending G.S. 105-130.11(b), the act also eliminates all but one of the exceptions to the definition of unrelated business income that were set out in the State law because they are identical to the federal exceptions that State law has already adopted by reference. The remaining exception under the act, for three types of research, is very similar to the exceptions provided in section 512(b)(7), (8), and (9) of the Code but, because there is some question whether the wording of the State exception might lend itself to a broader interpretation than that given to the Code, the act retains the separate State exceptions for these types of research. This act is effective for taxable years beginning on or after January 1, 1992. The act has no fiscal effect.

State Ports Tax Credit (SB 67; Chapter 977): This act provides a State income tax credit to any corporation or individual using the Wilmington or Morehead City ports for the export of cargo. Although the North Carolina ports have the capacity to accommodate additional vessels and cargo, 70% of North Carolina exporters and importers use ports in other states to move their cargo. To increase the use of the State's ports, the number of shipping lines and cargo sources available through the ports needs to increase. It is hoped that the tax credit will increase the volume of cargo moving through the State ports and thereby attract the shipping lines necessary to move that cargo.

The income tax credit provided by the act equals the excess of charges paid, directly or indirectly, on exported, processed cargo for the current taxable year over an amount equal to the average of charges paid for the current taxable year and the two preceding taxable years. The credit is limited to 50% of the tax imposed for the current year. Any excess credit, however, may be carried forward and applied to the taxpayer's income tax liability for the next five years. The cumulative credit may not exceed one million dollars per taxpayer.

The credit applies to wharfage, handling charges on break bulk cargo or LCL (less-than-container-load) cargo, bulk through put charges (bulk products wharfage), and the equivalent or like charges on container cargo. To receive a credit, the taxpayer must provide a statement from the State Ports Authority certifying the amount of charges paid on which the credit is based and any other information necessary to verify the amount of credit allowable.

The act also requires the State Ports Authority to make an annual report to the General Assembly on the impact of this act on shipping and economic growth.

The act becomes effective for taxable years beginning on or after March 1, 1992, and ending on or before February 28, 1996. It is estimated that the loss to the General Fund will be $13,000 for the 1992-93 fiscal year and $477,000 for fiscal year 1993-94 from this act.

Foreign Sales Corporation Tax Changes (SB 185; Chapter 857): This act establishes the portion of income attributed to a foreign sales corporation that must be included in the State taxable income of the corporation whose income was attributed to the foreign sales corporation. The portion of attributed income that must be included in State taxable income under this act is the portion of the attributed income that the foreign sales corporation was required to include in its federal taxable income. Thus, under the act, if a corporation attributes $100 in profit from export sales to a foreign sales corporation under section 925 of the Internal Revenue Code and the foreign sales corporation is required to include $30 of this $100 of attributed income in its federal taxable income, the corporation must add back to its federal taxable income the sum of $30 to derive its State taxable income.

Before the enactment of this act, the law on this topic was unclear. Without a specific add back, a corporation could argue that none of the corporation's income that was attributed to a foreign sales corporation was subject to tax by North Carolina because the income was not included in the corporation's federal taxable income, which is the starting point for computing State taxable income, and no provision in State law required an adjustment. Unlike the federal government, the State cannot tax the foreign sales corporation because, by definition, a foreign sales corporation is a kind of foreign corporation over which the State has no jurisdiction and therefore no authority to tax as a separate entity.

The Code provisions allowing for the creation of foreign sales corporations and the attribution of income to them provide a way for the federal government to indirectly subsidize export sales of goods made in the United States. A foreign sales corporation is a corporation created by a parent or other related corporation for the purpose of making export sales of the parent's or other related corporation's goods or services. The parent or other related corporation can use one of three formulas set by the Code to attribute income from the sale of exports to the foreign sales corporation and part of the attributed income is exempt from the federal taxable income of the foreign sales corporation.

In 1987, the General Assembly passed a law that, in practice, accomplished the same purpose as this act. The law expired on December 31, 1991. The changes made by this act became effective for taxable years beginning on or after January 1, 1992. Thus, there will be no gap between the original provision and the new provision.

Individual Estimated Tax Penalty Limit (SB 1248; Chapter 950): As its title indicates, this act makes the State threshold for imposition of a penalty for the underpayment of estimated individual income tax the same as the federal threshold. The change is effective for taxable years beginning on or after January 1, 1992. The change is not expected to have a significant impact on General Fund revenues.

The act accomplishes this change by deleting a specified dollar threshold from the State statute and referring to the threshold set in the federal Internal Revenue Code. By using the reference to the Code, the act ensures that the State and federal thresholds will remain the same as long as the General Assembly regularly updates the Code reference date.

The immediate effect of the act is to increase from $40 to $500 the amount of an underpayment of estimated individual income tax that triggers the imposition of the penalty for an underpayment of the tax. The current federal threshold is $500 and the State threshold before this act was $40.

The penalty for an underpayment of estimated individual income taxes is an amount that equals the interest the State lost by an individual's failure to make the required tax payment. Interest is computed at the statutory rate, which is currently 8% a year, from the date the payment should have been made.

The penalty applies to any failure to make required, estimated individual income tax payments. Individuals who receive taxable income from which no taxes are withheld must make estimated tax payments. For individuals who receive wages from which taxes are withheld, the withheld amounts are considered estimated payments of tax.

The $40 State threshold was established in 1973. Before 1973, the federal threshold was $40. For the 1973 tax year and subsequent years, the federal threshold was increased to $100. The federal threshold was again increased by $100 each year in 1982, 1983, 1984, and 1985 to reach the current $500 level. Based on this history, it is possible that the State's original $40 threshold was intended to be the same as the federal and that this act conforms the State threshold with its original intent.

License and Excise Tax

Stamp Tax Collection Costs Change (HB 1323; Chapter 1019): This act makes several changes concerning the collection and remittance of the excise tax imposed by Article 8E of Chapter 105 of the General Statutes on instruments transferring interests in real property. This excise tax, known as the deed stamp tax, is $1 on each $500 of the value of the interest in real property that is transferred. The tax is collected locally by county registers of deeds when deeds and other instruments are recorded and is shared by the State and the counties, with the State and the counties each receiving one-half of the tax proceeds.

The act makes several changes concerning this tax. It changes from an indefinite allowance for "costs" to a flat 2% the amount a county may retain when remitting to the State the State's share of the tax; it changes from monthly to quarterly the frequency with which a county must remit to the State the State's share of the tax; and it makes technical changes to the procedures to be followed by the county registers of deeds in accounting for the tax proceeds. The changes are effective for taxes collected on or after July 1, 1992.

The most important of these changes is the change in the amount a county may retain when remitting the State's share of the tax. The act repeals the authority of a county to deduct the county's cost of "collecting and administering" the tax from the total proceeds of the tax before dividing the proceeds in half and sending the State its one-half share. In place of this authority, the act allows a county to deduct and retain 2% of the State's one-half share of the total proceeds of the tax as compensation to the county for the cost of collecting the State's share of the tax and remitting that share to the State.

In making this change, the act makes it clear that the 2% allowance is compensation for the county's incremental cost in collecting and remitting the State's share of the tax rather than compensation for part or all of the county's costs in collecting the county's share of the tax. The incremental cost to a county consists of the cost to fill out a one-page form each quarter with information the county would have gathered anyway, to calculate the State's share of the tax, to write a check to the State Department of Revenue for the State's share, and to send the form and the check to the Department of Revenue.

The change in the amount a county may retain as compensation addresses a problem created by the 1991 revision of the deed stamp tax. Chapter 689 of the 1991 Session Laws changed this tax in three ways effective August 1, 1991. It doubled the tax rate from 50¢ for each $500 of value to $1 for each $500 of value, expanded the tax base by removing the deduction for the value of an assumed lien, and directed each county to remit one-half of the net proceeds of the tax to the State. G.S. 105-

228.30(b) defined "net proceeds" as gross tax proceeds less the cost to the county of "collecting and administering the tax," as determined by the county register of deeds.

The registers of deeds interpreted this direction to deduct the cost of collection and administration in various ways and, consequently, kept widely differing percentages of the gross proceeds of the tax as the cost of collection and administration. From August 1, 1991, through June 30, 1992, the percentage of gross proceeds retained varied from 0% to 91%. Seven counties, Ashe, Craven, Davidson, Gates, Pasquotank, Perquimans, and Wake, retained nothing; 33 counties retained no more than 5%; 25 counties retained from 5% to 10%; 15 counties retained from 10% to 20%; and the remaining 20 counties retained more than 20%.

The variance in these percentages reflects the different methods used by the registers of deeds in calculating the costs of collection and administration. The counties that retained nothing reasoned that the county was collecting the tax anyway and that the cost to write a check to the State and complete the one-page form that must be sent to the Department of Revenue with the check was negligible. Some counties used a flat percentage as a guess of what the costs were. Some counties calculated an average cost of all documents recorded at the register of deeds office and some calculated an average cost of only instruments that are subject to the deed stamp tax.

For a county that previously retained as compensation for its costs more than is allowed by this act, the amount of tax revenue retained by the county will decrease and the amount sent to the State will increase. For this reason, the State is expected to receive more revenue from the deed stamp tax over a 12-month period than it previously received.

In debating the amount a county should be allowed to keep as compensation for the cost of collecting and remitting the State's share of the deed stamp tax, several members of the General Assembly questioned why there was a difference in the time counties must send the State the State's share of the deed stamp tax and the State must send local governments their sales and use tax revenue that has been collected by the State. Former G.S. 105-228.30(b) required counties to send the deed stamp tax to the State on a monthly basis, and G.S. 105-472 requires the State to send local sales and use tax revenue to local governments on a quarterly basis. This act makes these periods the same by changing the period for sending the State the State's share of the deed stamp tax from monthly to quarterly.

Finally, the act conforms the accounting procedure to be followed by the registers of deeds in collecting the deed stamp tax to the requirements of The Local Government Budget and Fiscal Control Act, Article 3 of Chapter 159 of the General Statutes. G.S. 159-32 requires tax revenue to be deposited daily and requires that revenue deposited by an official other than the finance officer be immediately reported to the finance officer. Former G.S. 105-228.30(b) appeared to authorize a register of deeds to report deed stamp tax collections to the finance officer on a monthly rather than a daily basis and to authorize the register of deeds to deposit only the net proceeds of the tax rather than the total amount collected. This act rewrites the first sentence of G.S. 105-228.30(b) to make it clear that G.S. 159-32 applies to deed stamp tax revenue.

Real Estate Appraiser Privilege License (HB 1455; Chapter 974): This act adds real estate appraisers to the list of professionals subject to an annual privilege license tax of $50 under G.S. 105-41(a). Real estate brokers and salesmen are subject to this privilege license tax. Thus, the act treats real estate appraisers the same as other individuals licensed in the real estate field. The law provides that an individual who is licensed under the real estate license law as a real estate broker or salesman and as a real estate appraiser need only obtain one privilege license to cover both activities.

The act also substantially rewrites G.S. 105-41(a) to make it easier to read and understand. The act became effective July 1, 1992. Its impact upon the General Fund is expected to be negligible.

No Second Trade Show License (SB 1007; Chapter 981): Effective July 20, 1992, this act exempts specialty market vendors from any requirement of obtaining a State privilege license and paying the applicable State privilege license tax before offering goods for sale at a specialty market. As defined in G.S. 105-53(d), a "specialty market vendor" is a person who offers goods for sale at a specialty market and does not have a store in the same county as the specialty market, and a "specialty market" is a location, other than a retail store, where space is rented to others for the purpose of selling goods at retail or offering goods for sale at retail. A flea market and a trade show are examples of specialty markets.

Article 2 of Chapter 105 of the General Statutes requires a State privilege license for various types of businesses and imposes a State privilege license tax for each required license. State privilege licenses are location licenses. Therefore, if a person engages in a taxed business, such as the retail sale of motor vehicles or motor vehicle parts and accessories, at more than one location, the person generally must have a separate privilege license and pay the applicable privilege license tax for each location.

Under prior law, a person who sold goods for which a State privilege license was required both at a store located in the State and at one or more trade shows or flea markets held outside the county in which the store was located had to have one State privilege license for the store and another for each trade show or flea market. Similarly, if a person who did not have a store in this State participated in one or more trade shows or flea markets in this State and sold goods for which a State privilege license was required, the person had to obtain a State privilege license for each trade show or flea market.

This act eliminates the requirement that a person obtain any applicable State privilege license before selling goods at a trade show or flea market. Thus, an automobile parts dealer required to obtain a State privilege license under G.S. 105-89 will no longer have to obtain another State privilege license to sell automobile parts at a trade show or flea market. Similarly, a merchant who sells pianos, bicycles, home appliances, or electronic equipment for which a State privilege license is required under G.S. 105-102.5 will no longer have to obtain another State privilege license to sell these items at a trade show or flea market. Because fewer State privilege license taxes will be paid as a result of this act, the act is expected to result in a revenue loss to the General Fund of no more than $50,000 in fiscal year 1992-93 and each subsequent year.

License & Excise Tax Changes (SB 1009; Chapter 955): This act makes a number of technical and administrative changes to the license and excise tax statutes; the changes became effective upon ratification of the act, July 15, 1992.

Section 1 of the act changes the designation of the lowest bracket of the closed container soft drink dispenser tax from "5-50 dispensers" to "1-50 dispensers" to make it clear that the tax applies to all dispensers of an operator and not just the number above the first four. To be an operator of closed container soft drink dispensing machines for purposes of the tax, a person must have at least five dispensers. The operator must pay an annual privilege license tax of $100 plus an extra amount based on the number of dispensers the operator has. Despite the lowest bracket designation in the table in G.S. 105-65.1(b), the extra amount an operator pays for each dispenser has been construed to include every dispenser of the operator, not just the number above the first four.

Section 2 clarifies that the laundry privilege license tax imposed by G.S. 105-85 applies to a person who provides washing machines and dryers in an apartment building unless that person is the owner or manager of the apartment building. Chapter 479 of the 1991 Session Laws revised the laundry privilege license tax to set two uniform tax rates, one applicable to laundries that do not have vehicles that drive around and pick up laundry and one applicable to laundries that have vehicles that drive around and pick up laundry. In making the changes, a former limitation of the apartment building exemption to the owner or manager of the apartment building was inadvertently omitted. This section reinserts that limitation and brings the statute into conformity with its continued administrative interpretation.

Sections 3 through 12 of this act change the tobacco products excise taxes primarily to make certain provisions that apply to cigarette distributors and to collection of the cigarette excise tax also apply to wholesale and retail dealers of other tobacco products and to collection of the excise tax on other tobacco products. These sections also make technical changes.

Article 2A of Chapter 105 of the General Statutes contains the excise tax on cigarettes and the excise tax on tobacco products other than cigarettes. Section 3 of this act revises general provisions about issuing a license to distribute cigarettes and moves the provisions from Part 2 of Article 2A to Part 1 of Article 2A so that they apply to licenses issued to wholesale and retail dealers of tobacco products other than cigarettes as well as licenses issued to distributors of cigarettes. These provisions require licenses to be issued by the Secretary of Revenue, require payment of the license tax before a license is issued, require a license to be posted at the appropriate place of business, specify that a refund of a license tax is allowed only when the tax was collected or paid in error, and specify the procedure for obtaining a duplicate or amended license.

Sections 4 and 11 change the word "fee" in two sections of Article 2A to "tax" to make consistent the language used throughout Article 2A to refer to the payment for a license. Sections 5, 6, and 8 delete the license provisions from Part 2 of Article 2A that were moved by Section 3 to Part 1 and reformat the remaining provisions in the affected sections of Part 2. The reformatting makes the provisions more readable; it does not make substantive changes.

Sections 7 and 9 delete incorrect cross-references in the tobacco tax statutes. Section 7 deletes an incorrect reference in G.S. 105-113.16(e) to G.S. 105-84, which was repealed by Chapter 150 of the 1979 Session Laws and replaced by G.S. 105-102.5(b)(7). Section 9 deletes an incorrect cross-reference in G.S. 105-113.24(b) to G.S. 105-113.13(d), which is reformatted by Section 5 of this act as G.S. 105-113.13(b).

Section 10 extends a provision that applies to manufacturers of cigarettes to manufacturers of tobacco products other than cigarettes. Section 10 allows manufacturers of tobacco products other than cigarettes to apply to the Secretary of Revenue for permission to be exempt from paying the excise tax on sales to wholesale and retail dealers, the result being that the tax would be paid by the wholesale or retail dealer.

Section 12 deletes an unnecessary refund provision that had created confusion among some taxpayers and was contrary to the designated sale procedure in G.S. 105-113.37, which is intended to be the mechanism for avoiding payment of the tobacco products excise tax on the sale of products to which the tax does not apply. Some taxpayers had argued that the designated sale procedure was optional and that the taxpayer could simply file for a refund as provided in G.S. 105-113.37(c) rather than follow the designated sale procedure. That subsection, however, was intended merely as a cross-reference to the general refund provisions in Article 9 of Chapter 105 and not as a substitute for the designated sale procedure. Repeal of the subsection does not

change the general law in Article 9, but removes the appearance in G.S. 105-113.37 that the designated sale procedure is optional.

Sections 13 through 16 amend the soft drink excise tax statutes, which were extensively revised by Chapter 689 of the 1991 Session Laws. Section 13 slightly expands the definition of "natural" to allow a beverage to be considered natural even if it has added minerals, such as iron or calcium, or added extracted ingredients, such as essence. As amended in 1991, the law provided that beverages with added ingredients other than vitamins were not considered natural. Section 14 corrects a grammatical error. Section 15 rewrites the exemption for certain base products for domestic use to make it more understandable but to make no substantive change. Section 16 deletes a refund provision in the soft drink excise tax statutes that is similar to the provision in the tobacco excise tax statutes repealed by Section 12 of this act. The soft drink refund provision is deleted for the same reasons as the tobacco tax provision.

Sections 18 and 19 of this act revise the laws authorizing counties and municipalities to tax laundries, dry cleaners, and similar businesses. Under prior law, municipalities could tax these businesses located within their borders, and both counties and municipalities could tax businesses that were located out of State but sent trucks within the county's or municipality's borders. Sections 18 and 19 delete the authority of both counties and municipalities to tax laundries, dry cleaners, and similar businesses located out of State. The prior law created a possible constitutional violation because it taxed out-of-State businesses more heavily than in-State businesses. Under the prior law, a North Carolina laundry or dry cleaner that sent trucks into more than one county or municipality could be taxed only by a municipality in which it was located. A Virginia laundry or dry cleaner that sent trucks into more than one North Carolina county or municipality could, however, be taxed by every county and municipality into which it sent trucks. As amended by this act, the law no longer discriminates against out-of-State businesses because it does not allow local governments to tax out-of-State laundries, dry cleaners, or similar businesses.

The provisions of this act, other than Sections 18 and 19, were recommended by the Revenue Laws Study Committee.

Stock Broker Privilege License Tax (SB 1016; Chapter 965): This act repeals the current privilege license tax on companies that deal in securities and increases the annual registration fee for individuals that sell securities from $45 to $55. The fee is payable to the Secretary of State under G.S. 78A-37 when the annual registration is renewed. The registration expires on March 31 of each year. The purpose of the act is to remove the inequities in the former privilege license tax on securities dealers by converting the tax from a per office tax to an increase in a fee that applies to the number of individuals who sell securities. The act also makes technical changes in the privilege license tax on those who deal in installment paper to make it clear that the tax on installment paper dealers applies to certain secured transactions and not to securities.

The privilege license tax on security dealers taxed the entity that was registered as a securities dealer with the Secretary of State under G.S. 78A-2. The entity could be an individual, a partnership, or a corporation. The tax on a securities dealer was either $200 or $450 for each office location of the dealer -- $200 for a location that did not have a wire service that provided stock price quotes and $450 for each location that had a wire service that provided stock price quotes.

A significant inequity resulted from the imposition of the tax on the basis of the number of office locations rather than on the volume of business or number of agents. A dealer, for example, who had one agent in five offices located throughout the State paid five times as much tax as a dealer who had one office but had 25 agents working in that office. Insurance companies, in particular, were affected by this inequity

because they frequently have agents in offices throughout the State and many agents are authorized to sell mutual funds, which are a type of security. The insurance company was therefore liable for the securities dealer privilege license tax based on each office that has an agent who sells mutual funds.

The repeal of the privilege license tax on securities dealers and the technical changes became effective upon ratification, July 15, 1992. The increase in the registration fee on securities salesmen becomes effective January 1, 1993. The General Fund is expected to gain $30,000 in fiscal year 1992-93 and $90,000 each fiscal year thereafter from this act.

Property Tax

Motor Vehicle Property Tax Changes (HB 1350; Chapter 961): This act makes technical and administrative improvements to the new procedure for collecting property taxes on motor vehicles that was enacted by Chapter 624 of the 1991 Session Laws and first becomes effective January 1, 1993. The improvements were recommended by the groups that worked to develop the new procedure: the North Carolina Association of County Commissioners, the North Carolina League of Municipalities, the Division of Motor Vehicles (DMV), the North Carolina County Assessors' Association, the Department of Revenue, and the Institute of Government.

The improvements made by this act become effective January 1, 1993. They are explained in the section by section analysis below. They do not change the basic structure of the new procedure as enacted by Chapter 624 of the 1991 Session Laws.

Under the new procedure, all motor vehicles other than the few that are exempted from the procedure are classified for listing, assessment, and taxation separately from other classes of property. Those classified vehicles that are registered with DMV will be taxed on a revolving, year-round schedule. Those classified vehicles that are not registered with DMV will continue to be listed, assessed, and taxed in accordance with the system now in effect.

Every month under the new procedure, DMV will provide each county a list of 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 vehicle owners a bill for the county, city, and special district taxes due. If the owner does not pay the taxes due on a classified, registered vehicle, DMV will refuse to renew the vehicle registration the following year unless the owner obtains a receipt showing that the taxes have been paid.

Chapter 624 of the 1991 Session Laws was enacted to improve the collection rate for property taxes on motor vehicles. It was estimated that $11.1 million in property tax revenue is lost each year because of noncompliance with the requirement to list motor vehicles for property taxes. By tying the listing of most motor vehicles to the registration of the vehicles, the 1991 act eliminates most of the opportunity for noncompliance.

Section	Explanation
1	Includes passenger and service vehicles owned by a public service company within the definition of "rolling stock" so that the vehicles will be appraised by the Department of Revenue and will be exempt from the new procedure. Chapter 624 exempted rolling stock of a public service company from the new procedure because it is appraised by the Department of Revenue rather than by a local tax office and its property tax values are assigned by the Department of Revenue to local governments. By including passenger and

service vehicles in the definition of "rolling stock," this section makes uniform the property tax treatment of vehicles owned by public service companies.

2 Repeals a statute that incorrectly exempts all classified motor vehicles from the current system of property tax. Under the new procedure, a classified vehicle that is not registered with DMV will continue to be taxed under the system now in effect. Payment of tax under the new procedure is triggered by the registration of the vehicle with DMV. If a vehicle is not registered, it should nevertheless be subject to tax and it should be taxed under the system now in effect.

3 Exempts the following vehicles from the new procedure:

a. Vehicles that are not required to be registered with DMV under G.S. 20-51. These vehicles include farm tractors, farm trailers, and mopeds. Vehicles that are not registered with DMV never trigger payment under the new procedure and, therefore, should not be subject to the new procedure.

b. Mobile classrooms. Although subject to registration, most mobile classrooms are not registered and would, therefore, not trigger payment under the new procedure.

c. Mobile offices. Although subject to registration, most mobile offices are not registered and would, therefore, not trigger payment under the new procedure.

d. Semitrailers registered on a multiyear basis under G.S. 20-88. These vehicles are not registered annually and would, therefore, not trigger payment under the new procedure.

4 Makes two changes:

a. Changes the valuation date for a new vehicle that is subject to the new procedure but whose value cannot be determined as of January 1 of a year from the first day of the month in which the vehicle is registered to the date that model vehicle was first offered for sale in the State.

b. Requires an appeal concerning a vehicle that is subject to the new procedure to be filed with the assessor within 30 days after the owner is notified of the tax due.

5 Sets May 1 of each year as the due date for payment of taxes under the new procedure on classified motor vehicles that are on an annual, as opposed to a staggered, registration system with DMV. Most motor vehicles are registered under the staggered system, which provides for vehicle registrations to expire during different months of the year so that all registrations do not have to be renewed at the same time. Commercial vehicles and some private passenger vehicles, however, are registered under an annual system; their registrations are due to be renewed each year between December 1 and the following February 15.

6 Specifies the information that must be on the tax notice sent to a classified, registered vehicle owner and reverses the order of subsections (b) and (c) of the affected statute.

7 Makes two changes concerning the release or refund of taxes under the new procedure:

a. Clarifies that for the owner of a classified, registered vehicle to obtain a release or refund of taxes when the owner surrenders the vehicle's license plate to DMV, the owner must have transferred the vehicle to a new owner.

b. Gives these owners 60 days after surrendering the plates to apply for a release or refund of the taxes.

8 Clarifies that monthly lists of vehicles prepared by the county tax collector should include only classified, registered vehicles.

9 Authorizes the board of commissioners of each county to appoint a special committee to hear appeals concerning classified, registered motor vehicles.

10 Clarifies that the tax collector's relief from collecting taxes on classified motor vehicles applies only to classified vehicles that are registered.

11 Specifies when DMV is to send each county assessor a list of vehicles registered under the annual, as opposed to the staggered, registration system. The list is to be sent in March and is to include all the annual registrations made between the annual registration period of December 1 through February 15.

12 Amends the effective date of Chapter 624 of the 1991 Session Laws to provide for vehicles registered under the annual, as opposed to the staggered, registration system. The new procedure will apply to annual-system vehicles renewed in the period beginning December 1, 1992. For the 1993 tax year, taxes on annual-system vehicles will be due July 1; for subsequent years the taxes will be due May 1.

13 Makes the act effective January 1, 1993, the same date as Chapter 624 of the 1991 Session Laws.

Educational Institution Tax Exemption (SB 811; Chapter 926): Property owned by nonprofit educational institutions and used exclusively for an educational purpose is exempt from property tax. G.S. 105-278.4 provides that incidental use by the general public of an educational building or facility does not defeat the institution's property tax exemption; the building or facility is still considered to be used exclusively for an educational purpose. This act provides that golf courses, tennis courts, sports arenas, and other similar sport and sport recreational properties owned by nonprofit educational institutions for the use of students and faculty maintain their property tax exemption based on use for an educational purpose, regardless of the extent to which the property is also available to and patronized by the general public.

The county assessor in Durham County considered the general public's use of Duke University's golf course as material, rather than incidental. The assessor denied a property tax exemption for this property based on the incidental use limitation. This act overcomes the incidental use limitation for sports properties of nonprofit educational institutions.

As originally written, the act would have given property owned by private, nonprofit educational institutions the same property tax breaks as property owned by the State educational institutions. Article V, § 2(3) of the North Carolina Constitution exempts all property owned by the State and its political subdivisions from property tax. Thus, property owned by State educational institutions is exempt from property tax not by virtue of its use, but by virtue of its relationship to the State. On the other hand, property owned by nonprofit educational institutions and used for an educational purpose is exempt by statute from property tax by virtue of its use. Under prior law, sports properties owned by nonprofit educational institutions and used to a large extent by the general public were not entitled to a property tax exemption because they were used for a purpose other than the one for which the exemption was granted -- an educational purpose.

The act became effective upon ratification, July 1, 1992, and applies to taxes imposed for taxable years beginning on or after July 1, 1992. G.S. 105-282.1 provides

that an owner claiming exempt property must file an application for exemption during the listing period. G.S. 105-307 states that the listing period for a fiscal year begins on the first business day in January preceding the fiscal year and continues through the month of January. The revenue effect of this act on local governments is indeterminate.

No Tax on Contractors' Inventories (SB 1003; Chapter 975): This act is one of two enacted in 1992 that expand the property tax exemption for inventories. In 1985 and 1987, the General Assembly enacted legislation exempting from property tax inventories owned by manufacturers and retail and wholesale merchants. Inventories were defined as goods held for sale in the regular course of business by manufacturers and retail and wholesale merchants. The term included property consumed in the process of manufacturing goods for sale. The State reimburses local governments annually for part of their loss due to elimination of this part of their property tax base.

Effective beginning with the 1992-93 tax year, this act provides that contractors' inventories will also be exempt from property tax. A contractor is defined as someone in the business of building, installing, repairing, or improving real property. The act also expands the definition of inventories so it now includes not only goods held for sale by contractors but also goods held by contractors to be furnished in the course of building, installing, repairing, or improving real property. The act does not provide a State reimbursement to local governments for their revenue losses due to this elimination of part of their property tax base. The amount of local government revenue loss that will result from the act is not known. The Association of General Contractors had estimated that the total amount of property taxes that could be levied on contractors' inventories was between $2 and $4 million annually.

Modify Property Tax Appeals (SB 1262; Chapter 1016): This act makes two changes in the law concerning the Property Tax Commission, which is the five-member State board of equalization and review that decides administrative appeals by taxpayers concerning their local property taxes. The changes became effective August 1, 1992.

First, Section 1 of the act eliminates a requirement that previously hampered the Property Tax Commission in exercising its authority to delegate to one or more members of the Commission or to one or more employees of the Department of Revenue the power to act as a hearing officer and hear property tax appeals on behalf of the Commission. The requirement eliminated by the act is the prior requirement that the Commission provide, at its own expense, a transcript of any appeal heard by a hearing officer on behalf of the Commission. The cost of providing the transcript effectively prevented the Commission from delegating its authority to hear appeals and has resulted in a large backlog of appeals waiting to be heard by the Commission.

In lieu of the requirement that the Property Tax Commission provide a transcript in every appeal heard by a hearing officer, the act allows a party to an appeal heard by a hearing officer to request that a transcript of the appeal be prepared for submission to the Commission. The party requesting the transcript must pay for it unless the Commission, for good cause, finds that the Commission should pay for it. If a transcript is prepared, the Commission will consider the transcript when it reviews the findings of fact and conclusions of law received from the hearing officer in the appeal.

With the enactment of Section 1 of this act, the Property Tax Commission plans to begin exercising its authority to delegate the power to hear property tax appeals on its behalf. The Commission plans to delegate to one or more members of the Commission the power to hear simple appeals and to have the full Commission, or at least a quorum of the Commission, hear the more difficult appeals. A simple appeal is one that does not involve a significant legal issue, a question concerning the exemption of property

from tax, or a large assessment, and, conversely, a more difficult appeal is one that involves one or more of these elements.

Second, Section 2 of the act transfers from the President of the Senate to the President Pro Tempore of the Senate the power to appoint one of the members of the Property Tax Commission. The President of the Senate is the Lieutenant Governor and the President Pro Tempore of the Senate is a senator who is elected to the position of President Pro Tempore by the members of the Senate. The first appointment by the President Pro Tempore will be for a four-year term beginning July 1, 1995. Although effective August 1, 1992, the act does not affect the current term of the member appointed by the President of the Senate, which expires June 30, 1995.

No Property Tax on Software (SB 1264; Chapter 1004): This act is the second of two enacted in 1992 that expand the property tax exemption for inventories. In 1985 and 1987, the General Assembly enacted legislation exempting from property tax inventories owned by manufacturers and retail and wholesale merchants. Inventories were defined as goods held for sale in the regular course of business by manufacturers and retail and wholesale merchants. The term included property consumed in the process of manufacturing goods for sale. The State reimburses local governments annually for part of their loss due to elimination of this part of their property tax base.

Effective beginning with the 1992-93 tax year, this act expands the definition of inventory for purposes of the tax exemption to include the following three kinds of computer programs (software) owned or licensed for use by taxpayers who are manufacturers or retail or wholesale merchants:

(1) Programs developed or modified by the taxpayer for the taxpayer's own use.
(2) Programs developed or modified by someone other than the taxpayer to the special order of or to meet the particular needs of the taxpayer.
(3) Programs developed, acquired, or used to develop or enhance programs the taxpayer intends to sell to others.

A computer program is not inventory, however, if the taxpayer treats it as a capital asset for income tax purposes.

This change is inconsistent with the conceptual basis of the definition of "inventories" as goods held for sale and property consumed in manufacturing goods for sale; the new definition now includes items the taxpayer uses in operating its business. To avoid creating this logical inconsistency in the law, the act should have listed these types of computer software as specific exemptions from the property tax rather than adding them to a definition that does not properly apply.

The new law creates potential problems in that it treats similarly situated taxpayers differently and treats similar property differently. For example, a bank that has a financial program developed to its specifications must pay tax on the program, but a retail store that has a financial program developed to its specifications does not pay tax on the program. A manufacturer that uses an automated manufacturing process must pay tax on the equipment used in the process, including the computer that runs the program that controls the process, but does not pay tax on the program itself.

The act does not provide a State reimbursement to local governments for their revenue losses due to this elimination of part of their property tax base. The amount of local government revenue loss that will result from the act is not known.

Sales and Use Tax

School Lunch Tax Exemption (HB 1366; Chapter 931): Effective August 1, 1991, this act expands the State and local sales and use tax exemption for school lunches and

adds a new exemption for food sold by public school cafeterias to certain day care centers. This act is expected to reduce General Fund revenues by approximately $100,000 annually and local government revenues by approximately $50,000 annually.

The sales and use tax law has provided an exemption for nonprofit sales of lunches to school children within school buildings for more than 35 years. The Department of Revenue construed this exemption to apply to all food, not just lunches, reasoning that when it was first enacted, schools served only lunches, not the breakfasts and nutritional snacks that are also served today. Section 1 of this act clarifies that the exemption applies to all nonprofit sales of food during the regular school day, not just to lunches. Section 1 also clarifies that the school food exemption applies to sales by both private and public school cafeterias.

In addition to making clarifying changes, Section 1 expands this exemption by removing the limitation of its scope to only sales "to school children." As interpreted by the Department of Revenue, the exemption had been allowed for sales to instructional personnel supervising children in the cafeteria but not to other school employees, volunteers, or visitors. Section 1 provides that the exemption now applies to food sold by the cafeteria to anyone within the school building.

The schools included within the exemption addressed in Section 1 of this act are the elementary and secondary schools offering instruction in grades K through 12. A different sales tax exemption, G.S. 105-164.13(27), applies to food sold in dining rooms of institutions of higher learning.

Section 2 of this act creates a new sales tax exemption for food sold by a public school cafeteria to certain child day care centers. To be exempt, the food must be sold to a child day care center that participates in the Child and Adult Care Food Program operated by the Department of Public Instruction. Day care centers operating under this program must be nonprofit centers and must be federally subsidized. As of June 1992, the following school systems sold food to day care centers operating under this program: Alamance County, Burlington City, Alexander County, Beaufort County, Washington City, Cleveland County, Henderson County, High Point City, Nash County, Orange County, Chapel Hill-Carrboro City, and Pitt County.

No Sales Tax on Donated Food (SB 969; Chapter 935): This act creates a new sales and use tax exemption for certain food donated for charitable purposes and provides that the existing qualified immunity for donors and donees of food applies regardless whether the donor or donee has liability insurance. The act became effective August 1, 1992.

Section 1 of this act exempts from State and local sales and use taxes food that is purchased by a wholesale merchant or a retailer for resale and, instead of being resold, is then donated to a nonprofit organization to be used for a charitable purpose. Under prior law, a wholesale merchant (including a manufacturer) or a retailer who manufactured or bought food for resale and then gave the food to a food bank or other nonprofit organization instead of selling the food was liable for use tax on the food or the food ingredients. A wholesale merchant or retailer does not pay sales or use taxes when buying food or the ingredients to manufacture food because the food is to be resold and sales and use taxes do not apply to property purchased for resale or ingredients purchased to manufacture products for resale. If it turned out that the wholesale merchant or retailer did not resell the food, under prior law, the wholesale merchant or retailer became liable for use tax on the food or food ingredients because the resale exemption no longer applied. Section 1 eliminates this liability for use tax by providing a specific exemption for food donated by a wholesale merchant or retailer to a nonprofit organization to be used for charitable purposes. Section 1 of this act is expected to reduce General Fund revenues by $200,000 annually and local government revenues by $100,000 annually.

Under G.S. 99B-10, a person who donates food to a nonprofit organization is not liable for civil damages or criminal penalties resulting from the donated food unless the donor's gross negligence, recklessness, or intentional misconduct caused an injury. Similarly, a nonprofit organization that uses or distributes food donated to it is not liable for civil damages or criminal penalties resulting from the donated food unless the organization's gross negligence, recklessness, or intentional misconduct caused an injury. The statute formerly provided an exception to this qualified immunity: if the donor or nonprofit organization had liability insurance, the donor or organization could be liable for damages, based on negligence, to the extent of the coverage of the insurance. Section 2 of this act eliminates the exception so that the qualified immunity for donors and nonprofit organizations now applies regardless whether the donor or organization has liability insurance.

Public Transit Sales Tax Refund (SB 972; Chapter 814): This act adds two types of local public transportation authorities to the list of governmental entities that may apply for an annual refund of State and local sales and use taxes paid directly or indirectly on items purchased by the entity. The two types added are local public transportation authorities created under Article 25 of Chapter 160A of the General Statutes and regional public transportation authorities created under Article 26 of Chapter 160A of the General Statutes. The local public transportation authorities affected by the bill consist primarily of a single county authority or a multicounty authority. The only regional public transportation authority, and the only one that can be created under the statutes, is the Triangle Transit Authority, which consists of Wake, Durham, and Orange Counties.

Several local public transportation authorities that are organized other than under Article 25 of Chapter 160A currently receive sales and use tax refunds. Some transportation authorities are organized in city charters, some are created by special act, and some are organized under the public enterprise laws. Those organized in one of these ways are considered extensions of the city or county and, as part of the city or county, receive sales and use tax refunds.

In addition to all counties and incorporated cities and towns, there are 15 other, primarily local, governmental entities currently entitled to refunds of State and local sales and use taxes. In addition to this act, Chapter 917 of the 1991 Session Laws added WTVI Channel 42 in Charlotte to this list of governmental entities entitled to an annual refund of sales and use taxes.

The governmental entities must apply for the refund within six months after the end of each fiscal year. This act became effective upon ratification, July 1, 1992, so the public transportation authorities can obtain a refund for sales and use taxes paid during the 1992-93 fiscal year and subsequent years. The act is expected to reduce General Fund revenues by no more than $33,000 annually and local government revenues by approximately $17,000 annually.

Sales Tax Changes (SB 1012; Chapter 949): This act reinstates two unrelated sales tax provisions that were unintentionally deleted in prior legislation. The first provision concerns sales tax on items that are traded in or are repossessed. The second provision concerns the liability of a person who buys a business for sales taxes owed by the seller of the business. This act also codifies a Department of Revenue interpretation of the term "tangible personal property" for sales tax purposes.

Section 1 restores a pre-1989 condition on the sales tax exemption in G.S. 105-164.13(16) for property that has been traded in for another item or has been repossessed. Before 1989, property that had been traded in for another item was exempt from sales tax when it was resold only if sales tax had been collected on the sale of the item for which the property was traded in. Similarly, the sale of a

repossessed item would be exempt from sales tax only if sales tax had been paid on the original purchase of the item. This condition was inadvertently deleted by Chapter 692 of the 1989 Session Laws, the Highway Trust Fund legislation, which rewrote the exemption to remove motor vehicles.

Since October 1, 1989, the effective date of Chapter 692 of the 1989 Session Laws, G.S. 105-164.13(16) has exempted traded-in property from sales tax regardless of whether sales tax was paid on the item for which the property was traded in. Likewise, it has exempted the sale of repossessed items from sales tax regardless of whether sales tax was paid on the original sale of the item. To reverse this unintended result, Section 1 of this act puts back into the law the deleted conditions on the exemption.

The act also restores a provision that was inadvertently deleted by Chapter 690 of the 1991 Session Laws. Among other changes, that act rewrote G.S. 105-164.38 to provide an additional one-year period during which the Department of Revenue may assess unpaid sales taxes owed by a retail business against a person to whom the business was transferred. That statute requires the buyer of a business to withhold from the amount paid the seller the amount of any sales taxes the seller owes. If the buyer fails to withhold the required amount, the buyer is personally liable for the seller's taxes.

Before the enactment of Chapter 690, G.S. 105-164.38 allowed the State to assess against the buyer of the business the greater of the amount paid for the business or the fair market value of the business. As amended by Chapter 690, however, the statute limited the amount that can be assessed to the amount paid for the business. Section 2 corrects this error by amending G.S. 105-164.38 to allow the State to assess the buyer of a retail business for the fair market value of the business. This addition is important in cases in which a business is sold at a price that is less than its fair market value.

Section 3 of the act clarifies that the term "tangible personal property" does not include access to a computer program or a database when the user of the computer program or database pays a separately stated fee or other charge for the access. The Department of Revenue has always interpreted the term in this manner for sales tax purposes. This act simply codifies and reiterates an existing departmental practice.

Section 1 of this act became effective August 1, 1992. The remainder of the act became effective upon ratification, July 14, 1992. The act will have a slightly positive effect on the General Fund.

Certificate of Resale Changes (SB 1015; Chapter 914): This act eliminates the requirement that a seller who sells property under a certificate of resale make a "reasonable and prudent inquiry concerning the type and character of the tangible personal property [sold] as it relates to the principal business of the [buyer]" in order for the seller to escape the statutory presumption that the sale was taxable. All sales of tangible personal property are presumed to be taxable (G.S. 105-164.26). A sale is not taxable if the seller intends to resell the property. Under former law, a person who sold property in a wholesale sale could negate the presumption that the sale was taxable by checking the buyer's certificate of resale and asking the buyer whether the buyer intended to resell the property. A certificate of resale states that the property bought is for resale, states the buyer's sales tax license number, and indicates the type of property the buyer sells in the regular course of business. If the seller checked the buyer's certificate of resale but did not inquire about the buyer's intended use of the property, the sale was presumed taxable and the seller could be assessed for sales tax on the sale.

This act deletes the requirement that the seller ask the buyer whether the buyer intends to resell the property. In recommending this change, the Revenue Laws Study Committee had found that there were situations in which it would be impossible or

impractical for a seller to make an inquiry about the buyer's intended use of the property and keep a record of the buyer's response. Under the new law, the seller does not have the burden of proving that the sale was for resale if the seller, acting in good faith, accepts a certificate of resale from the buyer.

Although this act lessens the burden placed on a seller to ascertain whether or not each sale is for resale, it continues to protect the State's interest in preventing sales tax evasion. If the Department of Revenue proves that the buyer did not resell the property, the seller would remain jointly liable with the buyer for the applicable sales tax. In addition, to deter buyers from evading sales tax by offering a certificate of resale when the property is not going to be resold, the act adds an additional penalty of $250 to be assessed by the Secretary of Revenue against a buyer who misuses a certificate of resale. The provisions of this act became effective upon ratification, July 10, 1992.

No Sales Tax on Donated Drugs (SB 1195; Chapter 940): Effective August 1, 1992, this act exempts from State and local sales and use taxes prescription and nonprescription drugs that are donated to a nonprofit organization for a charitable purpose. Under prior law, prescription drugs were exempt from sales tax when sold at retail but not when donated. Nonprescription drugs remain subject to sales tax when sold at retail. This act is expected to reduce General Fund revenues by approximately $100,000 annually and local government revenues by approximately $50,000 annually.

Property purchased for resale and ingredients purchased to manufacture property for resale are not subject to sales and use tax. If the retailer, wholesaler, or manufacturer decides not to resell the property but instead donates it or puts it to another use, the exemption for property to be resold no longer applies. Until this act added a specific exemption for drugs donated to a nonprofit organization for a charitable purpose, retailers, wholesalers, and manufacturers who made these donations were liable for use tax. Retailers and wholesalers were liable for the amount of sales tax that should have been collected on their purchase of the drugs and manufacturers were liable for the amount of sales tax that should have been collected on their purchase of the ingredients used to manufacture the drugs.

Public TV Sales Tax Refund (SB 1245; Chapter 917): This act adds a joint agency created by interlocal agreement to operate a public broadcasting television station to the list of governmental entities 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. At this time, the only public broadcasting television station that meets this description is WTVI Channel 42 in Charlotte, North Carolina. In addition to all counties and incorporated cities and towns, there are 15 other, primarily local, governmental entities currently entitled to refunds of State and local sales and use taxes. In addition to this act, Chapter 814 of the 1991 Session Laws added public transportation authorities and regional public transportation authorities to this list of governmental entities entitled to an annual refund of sales and use taxes.

The governmental entities must apply for the refund within six months after the end of each fiscal year. This act became effective upon ratification, July 1, 1992, and applies to sales and use taxes paid on or after July 1, 1992. Thus, the act does not affect the 1992-93 General Fund revenues. It is expected to reduce General Fund revenues in subsequent fiscal years by approximately $33,000 and local government revenues by approximately $17,000 annually.

Scrap Tire Disposal Tax Change (HB 1320; Chapter 867): This act provides that new tires purchased for placement in this State on newly manufactured vehicles are exempt from the scrap tire disposal tax imposed by Article 5B of Chapter 105 of the General Statutes. The 1991 revision of the scrap tire disposal tax had inadvertently included these tires within the scope of the tax. The act became effective July 15, 1992.

The scrap tire disposal tax is a 1% tax on the price of certain tires. It was first enacted in 1989 and was revised by Chapter 221 of the 1991 Session Laws. When first enacted, the tax applied only to new motor vehicle tires sold at retail. As revised in 1991, the tax applied, with a few narrow exceptions, to all new vehicle tires sold at retail and to some new vehicle tires sold at wholesale.

The intent of the scrap tire disposal tax is to tax a tire that replaces a tire that is removed from a vehicle and is therefore in need of disposal. When a new tire is placed on a newly manufactured vehicle, no tire is being replaced and no tire is in need of disposal. Thus, imposition of the scrap tire disposal tax in this situation is not consistent with the intent of the tax. In creating the new exemption for tires purchased for placement on newly manufactured vehicles, the General Assembly accepted the finding of the Revenue Laws Study Committee that the 1991 revision of the scrap tire disposal tax did not intend to include new tires placed on newly manufactured vehicles.

This act will not affect the General Fund because the proceeds of the scrap tire disposal tax are not credited to the General Fund. Ten percent of the revenue from the tax is deposited in the Solid Waste Management Trust Fund and the other 90% is distributed to the counties on a per capita basis to be used for the disposal of scrap tires or the abatement of a nuisance caused by storing scrap tires. The act is expected to reduce the scrap tire disposal tax proceeds, but the amount of the reduction is not known.

Revenue Laws Technical Changes (HB 1321; Chapter 1007): This act made numerous technical and clarifying changes to the revenue laws and related statutes. The following table provides a section-by-section analysis of the changes.

Section	Explanation
1	Amends the new excise tax on producers of newsprint publications, imposed by G.S. 105-102.6, to make the definition of "net tonnage of newsprint consumed" easier to understand and to remove a phrase in subsection (c) that was inadvertently left in the statute because of an error in engrossing an amendment.
2	Makes clear that the 1990 revision of G.S. 105-116, which was made by Chapter 813 of the 1989 Session Laws (Reg. Sess. 1990), did not change the existing authority of certain local governments to impose local taxes on power companies and gas companies.
3	Clarifies that the individual income tax adjustments for State and local income taxes paid apply to taxes of all states.
4	Deletes a reference to the former 3% merchant's discount. The merchant's discount was repealed effective August 1, 1987, by the School Facilities Finance Act of 1987, Chapter 622 of the 1987 Session Laws.
5	Inserts the missing word "be" in the second sentence of the subsection and corrects style.
6	Adds a cross-reference to the rules for apportioning to this State income of holding companies, so that the proper taxable percentage may be calculated under the intangibles tax for shares of stock in holding companies.

7 Deletes an unnecessary word to conform the language used in the statute. However, this part of the statute was rewritten by Chapter 993 of the 1991 Session Laws so this section has no effect.

8 In 1991, certain insurance statutes were rewritten and renumbered. This section changes references to those statutes to reflect the 1991 rewrite.

9 Deletes references to the following repealed intangibles tax statutes: 105-199 (money on deposit); 105-200 (money on hand); and 105-205 (funds on deposit with insurance companies). The remaining reference is to 105-204 (beneficial interest in foreign trusts).

10 Deletes an inaccurate reference and supplies missing references to the laws governed by the penalty provisions of the Revenue Act.

11 Deletes an inaccurate reference and supplies missing references to the laws governed by the compromise provisions of the Revenue Act. Also clarifies the language of the statute.

12 Inserts a word omitted in a recent rewrite.

13 Changes a cross-reference to a recently repealed statute.

14 Deletes the requirement that financial institutions report currency transactions over $10,000. This requirement is similar to and duplicates the federal requirement, resulting in dual reporting. The State-required reports are not utilized by the Department of Revenue or the State Bureau of Investigation to any extent because of a lack of resources. In addition, the Department has access to the information it needs through its tax exchange agreement with the Internal Revenue Service. The Department of Revenue requested this repeal; the State Bureau of Investigation concurs.

15 The 1990 rewrite of the Business Corporation Act expedited the procedure for dissolving a domestic corporation. See Article 14 of Chapter 55 of the General Statutes. The new law eliminated the former requirement of a tax clearance letter from the Department of Revenue. This section conforms the Revenue Act to the Business Corporation Act by repealing the corresponding provision in Chapter 105 of the General Statutes.

16 Corrects a grammatical error; the verb "are" should be the singular "is".

17 Deletes a phrase that appears twice in the statute. Section 16 of Chapter 42 of the 1991 Session Laws rewrote this statute and contained a redlining error so that the phrase "and to inspection fees levied under Chapter 119 of the General Statutes." appears twice.

18 Eliminates a cross-reference to a repealed statute.

19 Eliminates a cross-reference to a repealed statute.

20-21 Correct incorrect diction and punctuation.

22 Changes improper upper case to lower case and corrects incorrect diction and punctuation.

23 Corrects incorrect diction and punctuation.

24 Corrects an incorrect instruction about the statute that was amended; Section 1 of Chapter 267 intended to rewrite all of G.S. 18B-1114.1, not just G.S. 18B-1114.1(a). G.S. 18B-1114.1 concerns winery special event permits.

25 Repeals a temporary provision concerning the marking of fuel storage tanks. The provision has been superseded by G.S. 105-449.17, which became effective January 1, 1992.

26 Inserts a phrase at the request of the Codifier to make it absolutely clear that the portion of G.S. 153A-292 that was not redlined by the 1991 Session Law remains part of the law.

27 Corrects capitalization and punctuation; the phrase "emergency medical service" is not capitalized elsewhere in Chapter 20 or the General Statutes.

28 Makes G.S. 20-14(4) parallel with the other subdivisions and amends the beginning phrase of the statute so it makes sense when applied to subdivision (4); a person who does not have a license because the license was revoked is not a licensee. The inconsistencies in this statute resulted from the combination of two separate amendments made by Section 2 of Chapter 682 and Section 327 of Chapter 689 of the 1991 Session Laws.

29 Inserts the missing word "one", which was inadvertently deleted by a redlining error.

30-31 Delete unnecessary cross-references to the definition of handicapped, delete obsolete references to handicapped identification cards and pavement markings designating handicapped spaces, correct grammatical errors, and apply the defined terms in G.S. 20-4.01.

32 Deletes an unnecessary and incorrect statutory cross-reference and deletes obsolete provisions concerning the transitions to First in Flight Plates that began in 1982. Personalized plates are issued under G.S. 20-79.4, not G.S. 20-81.3.

33 Corrects an incorrect statutory cross-reference and an incorrect reference to the Special Registration Plate Fund. Section 3 of Chapter 672 of the 1991 Session Laws recodified G.S. 20-81.3 as G.S 20-79.7.

34 Deletes part of a sentence that repeats the first sentence of G.S 20-127(d) and inserts the missing word "the" in the remainder of the sentence.

35 Repeals a statutory provision that duplicates another provision, G.S. 65-55(c)(2), and erroneously states the amount of the minimum deposit a cemetery operator must make to a cemetery care and maintenance fund.

36 Corrects a cross-reference to the definition of motor fuel in G.S. 105-430 and conforms both cross-references to other definitions to the standard drafting format. Chapter 441, Section 1, of the 1991 Session Laws rewrote G.S. 105-430 to, among other things, put the definitions in that statute in alphabetical order. As a result of the rearrangement, the definition of motor fuel is in G.S. 105-430(4) instead of 105-430(1). Standard drafting format, however, requires the deletion of the subdivision reference to avoid this type of problem in the future.

37 Corrects an incorrect cross-reference. The Property Tax Commission statutes were recodified by Chapter 110 of the 1991 Session Laws and no longer appear in Chapter 143B.

38 Eliminates references to assessment ratios in the sanitary district statute and eliminates unnecessary descriptions of procedures that are set out in the Machinery Act.

39 Corrects incorrect statutory cross-references in the Burial Commission statutes.

40 Corrects an incorrect cross-reference.

41 Makes the use of "assessed" and "appraised" in Chapter 159 of the General Statutes consistent. Chapter 11 of the 1991 Session Laws repealed obsolete references in the Local Government Bond Act to assessment ratios. This section is a further conforming change.

42 Corrects an incorrect cross-reference.

43 Makes clear that the restriction on the price for which bonds can be sold applies only to general obligation bonds and not to revenue bonds, thereby making this provision consistent with G.S. 159-125(a). G.S 159-125(a) was changed in 1987 to allow general obligation bonds to be sold for less than their par value but at no less than 98% of the par value. The last sentence of G.S. 159-123(c) was added at the same time and was intended to apply only to general obligation bonds. However, the sentence just says

"the bonds" and has raised questions about the section's applicability to revenue bonds.

44 Deletes an unnecessary reference in a sales tax exemption to motor vehicles. Motor vehicles are no longer subject to sales and use tax.

45-47 Corrects erroneous references to "this act" and makes other stylistic changes.

48 Provides that Section 2 of the act is effective retroactively to June 21, 1990, that Section 3 of the act applies retroactively to taxable years beginning on or after January 1, 1989, and that the rest of the act is effective upon ratification, July 21, 1992.

Update IRC Reference (HB 1326; Chapter 922): This act rewrites the definition of the Internal Revenue Code used in State tax statutes to change the reference date from January 1, 1991, to January 1, 1992. 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 constitutional 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."

Each year, in deciding whether the Internal Revenue Code reference should be updated, the General Assembly considers the changes that have been made to the Code in the past year. No changes were made in the Code in 1991 affecting individual income, inheritance, or gift taxes. A few changes were made to the Code in 1991 affecting corporate income taxes. These changes, however, are not expected to have a significant revenue impact on the State's C corporation income tax, S corporation income tax, or franchise tax.

General Statutes Technical Changes (HB 1656; Chapter 1030): This act makes technical changes to the General Statutes. Three changes relate to Chapter 105 of the

General Statutes. Section 25 of the act updates a reference to area mental health authorities in the statute that grants sales tax refunds to certain local government entities. The statute's reference to "area mental health, mental retardation, and substance abuse authorities" is updated to reflect the current terminology: "area mental health, developmental disabilities, and substance abuse authorities." Section 26 of the act changes a cross-reference in the agriculture law from a repealed license and excise tax statute to the statute that now applies. Section 30 deletes from the school law a cross-reference to a repealed sales tax statute. These changes all became effective upon ratification of the act, July 24, 1992.

NC Services Medal (HB 1677; Chapter 998): This act directs the Veterans' Affairs Commission to promulgate rules for the awarding of the North Carolina Services Medal to veterans who have served in any period of war. The term "period of war" is defined in 38 U.S.C. § 101 and includes the Spanish-American War, the Mexican border period, World War I, World War II, the Korean conflict, and the Vietnam era. It also includes the period beginning on the date of any future declaration of war by the Congress and ending on the date prescribed by Presidential proclamation or concurrent resolution of the Congress. The person wishing to be awarded the medal must pay a fee to cover the cost of producing and awarding the medal.

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 LAW
(Jennie Dorsett, Tim Hovis, Giles Perry)

RATIFIED LEGISLATION

Highways/Department of Transportation

Work Zone Traffic Offense (HB 515; Chapter 818): House Bill 515 amends G.S. 20-141 by adding a new subsection providing that exceeding the posted speed limit in a work zone is an infraction with a penalty of $100. A highway work zone is defined as the area between the first work zone sign and the sign indicating the end of the work zone. The $100 penalty can be imposed only if a sign is posted at the beginning of the work zone stating the penalty for speeding in the work zone. The act is effective October 1, 1992, and applies to offenses committed on or after that date.

Roadside Signs (HB 1662; Chapter 946): see AGRICULTURE for summary.

D.O.T. Surplus Right-of-Way Sales (SB 274; Chapter 979): Senate Bill 274 amends G.S. 136-19 to provide that for land acquired by purchase, donation, or condemnation by the Department of Transportation for highway right-of-way, the Department will give only the original owner's offer to purchase the property first consideration. Under existing law, the Department gave first consideration to the offer of the original owner and his heirs or assigns. The Department may refuse any offer that is less than current market value, as determined by the Department. Also, unless the original owner's entire lot, block, or tract of land was condemned, he or she must own the remainder of the original lot, block, or tract of land from which the Department acquired the property to receive first consideration by the Department.

Senate Bill 274 also provides that for land acquired by condemnation, the Department, in its discretion, may convey the property back to the original owner upon payment of the price paid to the original owner when the property was condemned, the cost of improvements, together with interest at the legal rate to the date when the decision was made to offer the return of the property. However, unless the original owner's entire lot, block, or tract of land was condemned, he or she must own the remainder of the original lot, block, or tract from which the property was acquired to be eligible under this subsection. Senate Bill 274 was effective upon the date of ratification, July 20, 1992.

License Plates

Permanent Plates on Semitrailers (SB 369; Chapter 947): Senate Bill 369 amends G.S. 20-88(c) to allow the Division of Motor Vehicles to issue multiyear semitrailer plates for a fee of $75. Senate Bill 369 becomes effective January 1, 1993, and applies to registrations or reregistrations occurring on or after that date.

Special Plates (SB 1229; Chapter 1042): Senate Bill 1229 adds out-of-state collegiate insignia plates and historical attraction plates to the types of special registration plates which may be issued by the Division of Motor Vehicles. Historical attraction plates must bear a phrase or insignia representing a publicly owned or nonprofit historical

attraction located in North Carolina. Ten dollars of the $25 additional fee collected for out-of-state collegiate insignia plates are credited to the Special Registration Plate Account (SRPA) while the remaining $15 are credited to the Recreation and Natural Heritage Trust Fund (RNHTF). Ten dollars of the $30 additional fee collected for historical attraction plates are credited to the SRPA while the remaining $20 are credited to the Collegiate and Historical Attraction Plate Account (CHAPA). The Division must receive 300 or more applications for an out-of-state collegiate insignia plate or historical attraction plate before the plate may be developed.

Senate Bill 1229 also provides for the Division to issue a military retiree special plate which may be issued to an individual who has retired from the armed forces of the United States. The $10 additional fee for a military retiree plate is credited to the SRPA. Senate Bill 1229 will become effective January 1, 1993.

Motor Vehicles

Mobile Equipment and Vehicle Change (SB 1014; Chapter 1015): Senate Bill 1014 amends G.S. 20-4.01(44) to revise the definition of special mobile equipment; amends G.S. 20-87(10) to set a uniform registration fee for special mobile equipment and sets the fee at the amount imposed on private passenger vehicles of not more than 15 passengers; and adds a new G.S. 20-140.5 specifying the vehicles special mobile equipment may tow. Senate Bill 1014 became effective August 1, 1992.

Trucks

Commercial Learner's Permit (SB 1115; Chapter 916): Senate Bill 1115 increases the fee for a commercial drivers license learner's (CDL) permit from $5 to the amount of the fee for a regular drivers license learner's termit, which is currently $10.

The change made by this bill corrects an inconsistency that occurred last year when Section 13 of Chapter 726 of the 1991 Session Laws set the fee for a CDL learner's permit at $5 rather than at $10. Before Chapter 726 was enacted, no fee applied to the issuance of a CDL learner's permit. Chapter 726 intended to set the CDL learner's permit fee at the same amount as the regular learner's permit fee. When Senate Bill 472 was drafted, Chapter 726, 1991 Session Laws, the regular learner's permit fee was $5. The regular learner's permit fee was increased by Section 325 of Chapter 689 of the 1991 Session Laws. The fee for a CDL learner's permit in Senate Bill 472, however, was not increased by the same amount. Thus, the two fees that were intended to be the same are now different.

To avoid this problem in the future, the bill pegs the CDL learner's permit fee at the same amount as the regular learner's permit fee and does not set a dollar amount for the CDL learner's permit in the CDL statutes. Thus, whenever the regular learner's permit fee is increased, the CDL learner's permit fee will also automatically increase. The increase in fees becomes effective October 1, 1992.

Cotton Hauling Vehicles (SB 1063; Chapter 905): See Agriculture.
Section