SUMMARIES OF SUBSTANTIVE RATIFIED LEGISLATION

1993

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RESEARCH DIVISION
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INTRODUCTION

This publication contains summaries of substantive legislation enacted by the General Assembly during the 1993 Session, except for local bills. Significant appropriations matters related to the subject area specified are also included. For an in-depth review of the appropriations and revenue process, please refer to Overview: Fiscal and Budgetary Actions, prepared by the Fiscal Research Division.

The document is organized alphabetically by subject areas. Where feasible, the subject area is further divided into subgroups. Each subject area also contains, as appropriate, a short summary of the significant pending bills (eligible for consideration during the 1994 Session) and a list of the independent and Legislative Research Commission studies pertinent to the area.

This document is the result of a combined effort by the following staff members of the Research Division: Cynthia Avrette, Brenda Carter, Karen Cochrane-Brown, Jennie Dorsett, Sherri Evans-Stanton, Sue Floyd, Bill Gilkeson, Judy Hartgrove, Tim Hovis, Sara Kamprath, Carolyn Johnson, Robin Johnson, Linwood Jones, Lynn Marshbanks, Giles S. Perry, Walker Reagan, Barbara Riley, Steven Rose, Terry Sullivan, Mary D. Thompson, Sandra Timmons, Jim Watts, John Young, and Kevin Yow. Also contributing were Martha H. Harris of the Bill Drafting Division and Sabra J. 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.

TABLE OF CONTENTS

I. AGRICULTURE 1
Ratified Legislation 1
Agriculture 1
Marine Resources 3
Wildlife 6
Pending Legislation 7
Studies 7

II. CHILDREN AND FAMILIES 8
Ratified Legislation 8
Adoption 8
Child Protection 8
Child Support 11
Day Care 11
Domestic Violence 13
Equitable Distribution 13
Juvenile Justice 13
Paternity 14
Miscellaneous 14
Pending Legislation 15
Studies 16

III. CIVIL LAW AND PROCEDURE 18
Ratified Legislation 18
Civil Procedure 18
Liability 19
Mediation 19
Miscellaneous 20
Studies 20

IV. COMMERCIAL LAW 21
Ratified Legislation 21
Banking 21
Business 22
Economic Development 25
Financing 26
Miscellaneous 27
Pending Legislation 27
Studies 28

V. CONSTITUTION 29
Ratified Legislation 29
North Carolina Constitution 29
Pending Legislation 29
North Carolina Constitution 29
Studies 29

VI. CRIMINAL LAW AND PROCEDURE 30
Ratified Legislation 30
Corrections 30
Crimes 31

Criminal Procedure 33
Drugs 34
Law Enforcement 34
Structured Sentencing 35
Pending Legislation 39
Studies 39

VII. EDUCATION 41
Ratified Legislation 41
Leadership Initiatives 41
Elementary and Secondary 43
School Safety Initiatives 43
General 45
Exceptional Children 49
Higher Education 51
Universities 51
Community Colleges 53
Resolutions 55
Pending Legislation 55
Studies 58

VIII. EMPLOYMENT 61
Ratified Legislation 61
Employment-Agency Regulation 61
Employment Security 61
Local Government 62
Occupational Safety and Health 62
State Government 63
Wage and Hour 64
Workers Compensation 65
Miscellaneous 66
Pending Legislation 66
Studies 66

IX. ENVIRONMENT 68
Ratified Legislation 68
Administrative 68
Solid Waste 69
Water and Air 71
Miscellaneous 74
Studies 76

X. HUMAN RESOURCES 78
Ratified Legislation 78
Health Care Reform 78
Other Health Care Reform 80
Aging 81
Emergency Medical Services 83
Facilities and Institutions 83
Health 84
Licensing and Certification 88
Mental Health 91
Miscellaneous 93
Pending Legislation 95

Aging 95
Health 96
Licensing and Certification 97
Mental Health 98
Miscellaneous 98
Studies 99

XI. INSURANCE 101
Ratified Legislation 101
Auto Insurance 101
Credit Insurance 101
Health Insurance 102
Health Professionals/Reimbursement 104
Solvency 105
Workers Compensation 108
Miscellaneous 108
Pending Legislation 110
Studies 110

XII. LOCAL GOVERNMENT 111
Ratified Legislation 111
Studies 113

XIII. PROPERTY 114
Ratified Legislation 114
Estates/Trusts/Wills 114
Real Property 115
Miscellaneous 117
Studies 118

XIV. RESOLUTIONS 119
Joint Resolutions 119
Simple Resolutions 120

XV. STATE GOVERNMENT 121
Ratified Legislation 121
Alcoholic Beverage Control 121
Councils and Commissions 122
Elections 123
Licensing Boards 124
Open Meetings and Public Records 125
Public Utilities 125
Resolutions 127
State Auditor 127
State Property 128
Waste Reduction/Recycling 129
Miscellaneous 130
Pending Legislation 133
Commissions 133
Elections 133
Ethics/Lobbying 134
Open Meetings and Public Records 135
Studies 136

XVI. TAXATION 138
Ratified Legislation 138
Bonds 138
Fuel Tax 142
Highway Use Tax 143
Income Tax 146
Inheritance Tax 154
License and Excise Tax 155
Local Taxes 157
Property Tax 162
Sales Tax 164
Scrap Tire Tax 166
Miscellaneous Tax Legislation 167
Pending Legislation 177
Studies 179

XVII. TRANSPORTATION 180
Ratified Legislation 180
Airports 180
Billboards 180
Boats/Navigation 181
Department of Transportation 181
Motorcycles 182
Motor Vehicle Law 182
Motor Vehicle Dealers 185
Public Transportation 186
Railroads 186
Roads and Highways 186
Miscellaneous 187
Pending Legislation 187
Studies 187

AGRICULTURE

(Sherri Evans-Stanton, Linwood Jones, Barbara Riley)

RATIFIED LEGISLATION

Agriculture

Disclosure of Veterinary Records (HB 33; Chapter 5): House Bill 33 creates an exception to the confidentiality requirements for certain records maintained by the North Carolina Department of Agriculture. Under Part 5, Article I of Chapter 106 of the General Statues, the Department of Agriculture is required to collect, compile, and publish statistical information relating to agriculture. G.S. 106-24.1 provides that the information collected by the Department pursuant to Part 5 shall be held confidential so as to prevent identification of information received from individual farmers. House Bill 33 provides an exception to the requirement of confidentiality where release of the information would further the Department's animal health programs. The decision to disclose the information rests in the discretion of the State Veterinarian. The act became effective upon ratification, March 10, 1993.

Farm Product Inspection and Grading (HB 446; Chapter 223): House Bill 446 authorizes the Commissioner of Agriculture to enter into agreements with the USDA where federal and State cooperation is required in performing the duties imposed by Article 17, of Chapter 106 of the General Statutes, Marketing and Branding Farm Products. The bill also adds new section G.S. 106-194.1, establishing the Farm Product Inspection Account. This account is a nonreverting fund within the Department of Agriculture into which shall be deposited fees collected under Article 17. Fees credited to the account from cooperative inspection and grading services shall be subject to any restrictions on use set out in the cooperative agreement. Section 2 of the act became effective July 1, 1993. Section 1 became effective upon ratification, June 28, 1993. Fees collected under G.S. 106-190 and not expended by July 1, 1993, shall be credited to the Inspection Account.

Alcohol in Cooking Abstracts (HB 634; Chapter 127): House Bill 634 amends G.S. 18B-103 adding a new subsection that permits the use of spirituous liquor in the manufacture of flavors or flavoring extracts that are unfit for beverage use. The act became effective upon ratification, June 7, 1993.

Organic Products Certification (HB 981; Chapter 147): House Bill 981 amends Part 3, Article 1, Chapter 106 of the General Statutes to permit the Board of Agriculture to establish rules, standards, and guidelines for the establishment of voluntary programs for the certification of organic agricultural products. It permits the Commissioner of Agriculture to enter into agreements with the USDA as necessary to comply with the requirements of the Organic Foods Production Act of 1990. The act became effective upon ratification, June 10, 1993.

Farm Produce Hauling Permits (HB 982; Chapter 470): House Bill 982 provides an additional exception to the truck weight limitations set forth in G.S. 20-118. The new exception, G.S. 20-118(c)(12), would allow vehicles to haul agricultural crops within 35 miles of the farm carrying up to the following weights:

a. Gross weight of no more than 88,000 lbs., a single axle weight of no more than 22,000 lbs., and a tandem axle weight of no more than 42,000 lbs.
b. A five-axle combination with a gross weight of no more than 88,000 lbs.
c. A four-axle combination with a tandem axle weight of no more than 42,000 lbs.

The act became effective upon ratification, July 23, 1993.

No Animal Antifreeze Poison (HB 1020; Chapter 143): House Bill 1020 amends G.S. 14-401 to add antifreeze to the list of poisonous foodstuffs and substances that may not be placed in public places. Persons placing antifreeze containing ethylene glycol in any public street or lot in town or any public road, open field, woods, or yard in the country shall be guilty of a misdemeanor and subject to fines or imprisonment at the discretion of the court. A person who violates this provision shall also be liable in damages to the person injured. The provisions do not apply to the accidental release of antifreeze. The act becomes effective December 1, 1993 and applies to offenses occurring on or after that date.

Pesticide Env. Trust Fund (HB 1102; Chapter 481): See **ENVIRONMENT.**

No Unwrapped Food Samples (HB 1122; Chapter 346): See **HUMAN RESOURCES.**

Transfer Museum of Natural Sciences (SB 26: Chapter 561): Section 116 of Senate Bill 26 changes the name of the Museum of Natural History to the North Carolina State Museum of Natural Sciences. The bill transfers the administration of the museum from the Department of Agriculture to the Department of Environment, Health, and Natural Resources by a Type I transfer . The section became effective August 1, 1993.

Farm Equip. Dealer Plate Usage (SB 27: Chapter 321): Section 169.4 of Senate Bill 27 amends G.S. 20-79(d) to provide that a dealer selling, trading, or servicing farm tractors may use a dealer license plate on a vehicle owned by the dealer used to haul farm tractors or other farm related equipment sold, traded, or serviced by the dealer.

Change Commission Membership (SB 37: Chapter 23): Senate Bill 37 amends the Agriculture and Forestry Awareness Study Commission to add the president of the North Carolina Forestry Association or his designee to its membership. The bill also provides that the Secretary of the Department of Environment, Health, and Natural Resources, who is currently a member of the Commission, is authorized to send his designee to serve on the Commission. This change would make the Secretary's membership consistent with all other members appointed to the Commission. The act became effective upon ratification, April 15, 1993.

Ostrich Meat Inspection (SB 70; Chapter 311): Senate Bill 70 requires ostrich meat to be inspected by the Department of Agriculture under the meat inspection statutes, Article 49B, Chapter 106 of the General Statutes. The bill also gives the Commissioner of Agriculture the authority to impose a fee for inspection services at an hourly rate on an establishment processing ostrich meat. The fees shall be credited to the Department as a departmental receipt and applied to the cost of inspecting ostriches and other ratites. The act became effective upon ratification, July 1, 1993.

Transfer Aquaculture Licenses (SB 99; Chapter 18): Senate Bill 99 transfers the authority to regulate the production and sale of commercially raised freshwater fish and crustaceans from the Wildlife Resources Commission to the Department of Agriculture.

The bill adds several new sections to the Aquaculture Development Act, Article 63, Chapter 106 of the General Statutes, outlining the Department's authority to regulate and license the propagation and production of certain listed species of freshwater fish and crustaceans. The Department's authority does not extend to wild fishery resources, which remain under the jurisdiction of the Wildlife Resources Commission. Written permission of the Commission will be necessary to propagate and produce a species not listed. The Department also is authorized to regulate and license commercial catchout facilities (commercial trout ponds) and to issue permits for tanks holding live food or bait species for sale (excluding lobsters). Possession of an unauthorized species will result in the revocation of the license. The Wildlife Resources Commission may also take additional regulatory action in the event of possession of unauthorized species. Both the Wildlife Resources Commission and the Department have the authority to enter and inspect facilities for unauthorized species. Violation of the act or implementing rules is a misdemeanor punishable by a fine not to exceed $500 and/or imprisonment for up to 30 days. The act becomes effective January 1, 1994.

Lime and Landplaster Enforcement (SB 519: Chapter 144): Senate Bill 519 amends the Lime and Landplaster Act, Article 8A, Chapter 106 of the General Statutes, by authorizing the Commissioner to require proof of claims made for a product, or if no specific claims are made, proof of the usefulness and value of the product. The Commissioner may also require the development of data from tests conducted under conditions closely related to those found in North Carolina. The bill makes it unlawful to make false or misleading statements about a lime or landplaster product sold or distributed in North Carolina and the Commissioner may refuse, suspend, revoke, or terminate the registration of any such product for such misrepresentation. Finally, the bill provides the Commissioner with the authority to issue a stop sale order if the manufacturer or registrant has failed to make a refund as required by G.S. 106-92.11. The act becomes effective October 1, 1993.

Fertilizer Law Amendments (SB 550; Chapter 216): Senate Bill 550 amends the North Carolina Commercial Fertilizer Law, Article 56, Chapter 106 of the General Statutes. The bill authorizes the Commissioner to issue a stop sale order in cases where commercial fertilizer is being offered for sale in violation of any provision of Article 56. Stop sale orders may also be issued for failure of a manufacturer, dealer, or agent to pay a penalty owed within 90 days after a notice of assessment is issued. The bill also amends G.S. 106-673 to allow the Board of Agriculture to make rules on standards and labeling requirements for specialty fertilizers. The act becomes effective December 1, 1993.

Marine Resources

Modify Water Column Leases (HB 31; Chapter 322): House Bill 31 modifies the annual rental charged for water column leases under G.S. 113-202.1 and G.S. 113-202.2. Water column leases provide the right of use to the vertical column of water rising above a designated area of submerged bottom land. House Bill 31 provides that the rental for an initial lease will be $100 per acre for the first four years and $500 for the fifth year. Renewal rates after the initial five years will be $500 per acre per year. Rental rates shall be prorated where a lease is for less than a 12 months. Annual rent

shall be paid at the beginning of the year. The act became effective on July 9, 1993 and applies to leases entered into on or after that date.

Marine Fisheries Endorsement to Sell (HB 297; Chapter 515): House Bill 297 establishes a new licensing requirement to sell fish.

Section 1 of the bill amends G.S. 113-152, Consolidated license for vessels, equipment and operations; fees. As rewritten, this section makes the vessel license a consolidated license. The license to sell for persons obtaining a vessel license will be an "endorsement" on the vessel license. The vessel license will be issued on a card made of hard plastic or metal capable of being used to make imprints.

The fees for an endorsement to sell on a vessel license (G.S. 113-152(h)) are as follows:

(1) vessels not over 18 feet in length, ($25.00).
(2) vessels over 18 feet but not over 38 feet ($35.00)
(3) vessels over 38 feet ($45.00)

Section 2 of the bill rewrites G.S. 113-153, Land or sell license; Vessels fishing beyond territorial waters, to clarify that a nonresident whose vessel fishes beyond the territorial waters of this State that either lands or sells fish must obtain a land or sell license for $200.00.

Section 3 creates a new G.S. 113-154.1 Endorsement to sell fish. This section establishes the new "endorsement" to sell fish.

(a) **License Requirements:** This subsection requires any person who takes or lands any species of fish under the authority of the Marine Fisheries Commission to purchase an endorsement to sell and requires that fish dealers only buy fish from a seller with a current and valid vessel license with an endorsement to sell, or from a seller with a separate endorsement if no vessel is involved.

(b) **Fees:** The fee for an endorsement to sell when no vessel is involved for residents is $15.00; and the fee for nonresidents is $100.00 or an amount equal to the nonresident fee charged by the nonresident's state, whichever is greater. Fees for the endorsement on the vessel license are set forth in G.S. 113-152(h).

(c) **Non-Vessel Endorsement Format:** This subsection specifies the format of the endorsement (name of licensee, date of birth, expiration date of license, and any other information the Division deems necessary to accomplish the purposes of this Subchapter). The endorsement shall be issued on a card capable of being used to make imprints of the sale or transaction.

(d) **Application for Non-Vessel Endorsement:** An application for an endorsement can be made with either the Division of Marine Fisheries or authorized license agents. The information contained in the application as well as the procedure for persons ineligible to hold an endorsement are described.

(e) **Application for Replacement Non-Vessel Endorsement:** Replacement endorsements may only be obtained from the Division in Morehead City upon verification that the applicant's current endorsement has not been suspended or revoked.

(f) **Sale of Fish:** A person holding an endorsement to sell may sell only to: (1) licensed fish dealers; or (2) the public, if the seller is a licensed fish dealer.

(g) **Recordkeeping Requirements:** This subsection requires the fish dealer to record each transaction on a form provided by the Department. Fish Dealers must provide a completed copy of the transaction form on or before the 10th day of the following month.

(h) **Non-Vessel Endorsement to Sell Nontransferable:** The Endorsement to Sell is nontransferable with two exceptions: 1) an individual under 16 may sell fish under the endorsement of a guardian or relative; and 2) an endorsement may be

transferred within a single fishing operation if the person to whom it is transferred is a U.S. citizen.

(i) **Penalties:** Violation of G.S. 113-154.1 is a misdemeanor. Penalties with respect to the endorsement requirements, sale of fish, or nontransferability of the endorsement are set forth in the bill. Violations of all other subsections (which are not as serious as the ones described above) are punishable under the current General Penalties Statute (G.S. 113-135(a)).

(j) **Use of Fees:** The fees collected will be applied to the costs of the fisheries data information system or to marine fisheries programs or research projects which enhance knowledge and use of marine and estuarine resources.

Section 4 of the bill reorganizes G.S. 113-156, the statute governing fish dealers, providing new subheadings for easier reference and consistency with the endorsement to sell fish. Under the statute, a fish dealer cannot buy fish from a person unless that person presents an endorsement and the dealer records the transaction.

Section 7 directs the Director of Marine Fisheries to report to the Joint Legislative Commission on Seafood and Aquaculture by December 1, 1993 on implementation of the act.

The penalties set forth in G.S. 113-154.1(i) become effective December 1, 1993 and apply to violations committed on or after that date. The remainder of the act became effective upon ratification, July 24, 1993. Fees for endorsements to sell apply to endorsements issued on or after the effective date. The act expires July 1, 1996.

No Core Sound Shellfish Leases (HB 416; Chapter 44): House Bill 416 prohibits the Marine Fisheries Commission from granting shellfish cultivation leases for defined areas in Core Sound, except for those leases for which applications are pending on the date of ratification of this bill and which cover an area lying within one statute mile of the western shore of Core Sound. The bill does not prohibit the renewal or transfer of shellfish cultivation leases existing on or before the effective date of the act. The act became effective upon ratification, May 13, 1993, and expires July 1, 1995.

Promote Maritime Activity (HB 474; Chapter 278): House Bill 474 amends G.S. 113-315.28 to expand the purposes of the North Carolina Seafood Industrial Park Authority to include the promotion of general maritime and maritime-related activities at or near the industrial park. The bill became effective upon ratification, July 5, 1993.

Seafood Park Authority Fees (HB 547; Chapter 323): House Bill 547 amends G.S. 113-315.29 to clarify that the North Carolina Seafood Industrial Park Authority may charge fees for its services and the use of its facilities. The act became effective upon ratification, July 9, 1993.

Expand/Extend Beaver Control Program (SB 26; Chapter 561): Section 111 of Senate Bill 26 expands the pilot program for beaver control, established by Section 69 of Chapter 1044 of the 1991 Session Laws, to Pender and Robinson Counties. The section became effective July 1, 1993.

Oyster Management (SB 27; Chapter 263): Section 263 of Senate Bill 27 amends G.S. 143B-289.5 adding to the qualifications for and membership of the Marine Fisheries Commission. The act became effective July 1, 1993.

Modify Marine Fisheries Commission (SB 97; Chapter 8): Senate Bill 97 amends G.S. 143B-289.5(a)(1) to allow the Governor the option of appointing the spouse of a commercial fisherman to serve on the Marine Fisheries Commission in those positions designated for commercial fishermen. The bill further provides that the spouse

appointed to the Marine Fisheries Commission need not meet the criteria for appointment as long as the other spouse is qualified. The act became effective upon ratification, March 23, 1993.

Shellfish Lease Authority (SB 100; Chapter 466): Senate Bill 100 transfers the authority of the Marine Fisheries Commission to grant shellfish cultivation leases under G.S. 113-202, and water column leases under G.S. 113-202.1 and G.S. 113-202.2, to the Secretary of DEHNR. The bill also changes the procedures for the appeal of decisions by the Secretary in order for the process to be consistent with the provisions of Chapter 150B, the Administrative Procedure Act. Under the current law, the Marine Fisheries Commission conducts hearings on disputes over the granting, modification, or termination of leases. As rewritten, the Secretary's decision becomes the final decision which may be appealed by either the applicant or other aggrieved party under G.S. 150B-23. The bill amends G.S. 113-154 to provide that is is unlawful for an individual to take shellfish or crabs from public or private grounds in the State by mechanical means or commercial use by any means without first obtaining a shellfish and crab license. The fee for the license is increased from $4 to $15 and is issued on proof of North Carolina residency. North Carolina resident is defined as one who has lived in North Carolina for 6 months immediately preceding the application for the license. The bill amends G.S. 143-214.2B to require that hazardous liquids on vessels be stored in closed containers adequate to prevent their release into the waters of the State. The bill also directs the Joint Legislative Study Commission on Seafood and Aquaculture to study and evaluate the effect of littering on water pollution. The act becomes effective January 1, 1994.

Wildlife

Adopt Navigation Rules (HB 485; Chapter 361): See **TRANSPORTATION.**

Transfer Aquaculture Licenses (SB 99; Chapter 18): See **Agriculture.**

Statewide Beaver Seasons (SB 457; Chapter 33): Senate Bill 457 amends G.S. 113-291.9 to permit the taking of beaver during any open season for the taking of wild animals throughout the State. The bill also adds a new subsection (e) to G.S. 113-291.9, allowing landowners whose property has been damaged or destroyed by beaver to take beaver on their property without obtaining a depredation permit from the Wildlife Resources Commission. The landowner may also obtain assistance from others in taking the beaver by giving them permission to do so on the landowner's property. The provisions of the bill do not apply in Buncombe, Madison, McDowell, or Yancey Counties. The bill became effective upon ratification, April 26, 1993.

Increase Boat Registration Fees (SB 590; Chapter 422): Senate Bill 590 establishes the "Boating Account" within the Wildlife Resources Fund. Monies collected for titling watercraft (Article 4 of Chapter 75A) are to be deposited to that account and are to be available to the Wildlife Resources Commission for the administration of Chapter 75A and activities relating to boating and water safety. The bill also increases the fees for numbering. Fees for a one year certificate are increased from $5.50 to $8.00. Fees for a three year certificate are increased from $13.00 to $20.00. The act becomes effective January 1, 1994.

PENDING LEGISLATION

Disabled Sportsman Program (SB 1222). Passed third reading in both houses, but not ratified.

STUDIES

Swine Farm Odor Abatement (SB 26; Chapter 561, §45); The North Carolina Agricultural Research Service of the College of Agriculture and Life Sciences, N.C. State University, is directed to study issues of swine farm odor abatement and the impact of swine farms on surface and ground water supplies.

House Bill 1319

The 1993 Studies Bill (HB 1319) was passed by both houses but was not ratified before adjournment of the 1993 Regular Session. It should be signed into law at the beginning of the 1994 Short Session. Legislative Research Commission Studies relating to the topic of Agriculture include: (1) Recycling and Composting Poultry Mortalities; (2) Tobacco Warehouse; (3) Farmland Preservation Enabling Act, including Dairy Farmer Economic Issues; (4) Development of Markets for Animal Residues. On September 13, 1993, the LRC approved the study of (2); and referred (1),(3) and (4) to the new Agriculture and Forestry Awareness Study Commission.

Referrals to Existing Commissions, Etc.

Joint Legislative Commission on Seafood and Aquaculture to study the effect of littering on water pollution. SL93-466, §6, SB 100.

CHILDREN AND FAMILIES
(Robin Johnson, Lynn Marshbanks)

(See also **EDUCATION** and **HUMAN RESOURCES** sections)

RATIFIED LEGISLATION

Adoption

Adoption Subsidy (SB 27 § 235 [HB 626]; Chapter 321 § 235): The Current Operations Appropriations Act of 1993, effective July 1, 1993, raises the monthly adoption subsidy to eligible families who adopt hard-to-place children from $200 to $265.

Child Protection

Juvenile Guardian Ad Litem (HB 230; Chapter 537): One of the recommendations of the Juvenile Law Study Commission, House Bill 230 amends G.S. 7A-586 to ensure that a guardian ad litem has standing to represent the juvenile and to allow the guardian ad litem to offer evidence and examine witnesses at adjudication. This bill also amends G.S. 7A-659(f) to provide that a county must provide information about the selection process of specific adoptive parents within five days of a guardian's request. Finally, it amends G.S. 7A-661 to provide that a voluntary foster care placement made between a juvenile's parents or guardian and a county department of social services can be for no more than 12 months unless a petition alleging abuse, neglect, or dependency is filed. The bill becomes effective January 1, 1994, and applies to petitions filed and requests for information made on or after that date.

Juvenile Law/Child Protection (HB 364; Chapter 516): House Bill 364 amends the Juvenile Code and other laws concerning child abuse and neglect, and it includes the following changes: (1) Makes changes to the definitions of "abused juvenile", "caretaker", and "dependent juvenile" in the Juvenile Code; (2) Adds to the duty to report child abuse and neglect the duty to report dependency or the death of a juvenile due to maltreatment; (3) Requires the local Department of Social Services (DSS) to notify the reporter within five days after a report is received as to whether the case was referred to law enforcement; (4) Requires that when DSS receives a report of a death from suspected maltreatment, it shall immediately determine if other juveniles are in the home and whether they need protective services or immediate removal from the home for protection; (5) Allows a DSS director to get, under certain circumstances, confidential and non-confidential information relevant to a child protective services case; (6) Requires that upon a DSS's finding that a juvenile may have been abused or may have been illegally physically harmed by another adult, the director shall report to the district attorney and local law enforcement within 48 hours after the original report is received, and requires that local law enforcement begin, within 48 hours, a criminal investigation; (7) Provides that no privilege is grounds for the failure to report that a juvenile may have been abused, neglected, or dependent, except when the information

is gained by an attorney from a client during representation in the abuse, neglect, or dependency case, and provides that no privilege except the attorney-client privilege is grounds for excluding evidence in a judicial proceeding resulting from a report of abuse, neglect, or dependency; (8) Requires the Department of Human Resources to keep a central registry of dependency cases and of child fatalities resulting from alleged maltreatment, and requires DSS directors to report these cases. The bill becomes effective on October 1, 1993, and applies to allegations of abuse, neglect, or dependency initiated on or after that date.

Neglected Juvenile Definition (HB 625; Chapter 324): House Bill 625 rewrites the part of the definition of a "neglected juvenile" that includes a juvenile "who is not provided necessary medical care or other remedial care recognized under State law," changing it to include a juvenile "who is not provided necessary medical care; or who is not provided necessary remedial care;". The rewrite clarifies the law to conform to federal mandates. The bill becomes effective on December 1, 1993, and applies to adjudications for acts or omissions on or after that date.

Child Protective Services (SB 27 §§ 234 & 237; Chapter 321 §§ 234 & 237, as amended by Chapter 561 § 14): Effective July 1, 1993, Section 234 of the Current Operations Appropriations Act of 1993, as amended by Section 14 of Chapter 561, provides that funds for Child Protective Services shall be allocated to counties based upon the number of cases in each county and the number of caseworkers required to meet a ratio of no more than 20 active cases per worker. The allocation to each county cannot be less than that county's allocation in the 1992-93 fiscal year unless the total appropriation to Child Protective Services for this biennium is less than it was in 1992-93. Any county that exceeds the ratio of 20 active cases per worker may receive a portion of the remaining funds on a proportional basis determined by the amount of funds needed by that county to enable it to achieve that caseload. Section 234 also provides that (i) allocations must be used for the direct costs of employing Child Protective Services workers and supervisors, (ii) $2 million each year of this biennium must be used to hire additional Child Protective Services workers and supervisors, and (iii) the Division of Social Services must establish criteria to ensure that allocations are used in accordance with the Section. Section 237 requires counties to provide a 25% match, from federal or county funds, for State funds for Child Protective Services.

Child Fatality Prevention System (SB 27 § 285 [HB 359, HB 367, HB 368, SB 490, SB 494]; Chapter 321 § 285): Section 285 of the Current Operations Appropriations Act of 1993 is based on several recommendations of the Child Fatality Task Force ("Task Force") and amends Article 62 of Chapter 143 of the General Statutes to establish the N.C. Child Fatality Prevention System, consisting of a State Team, the Task Force, and at least one Local Team in every county. The System is to be phased in by July 1, 1995. The purpose of this System is to conduct multidisciplinary reviews of selected cases in which children are served by Child Protective Services and all deaths of children in the State from birth to age 18 in order to (i) understand the causes of these deaths, (ii) foster accountability among public agencies, and (iii) recommend changes to laws, rules and policies to prevent future child deaths.

Currently, a Community Child Protection Team (CCPT) exists in every county as established in 1991 under an Executive Order. These teams review (i) cases in which children are being served by Child Protective Services and (ii) child fatalities due to abuse or neglect and known to Child Protective Services. There also is a State Team, the NC Child Fatality Review Team, established in G.S. 143-576, which reviews deaths of children when those deaths are attributed to child abuse or neglect or when the child was reported as abused or neglected before the death. The State Team also reports to

the Task Force on its activities and recommends changes to laws, rules, or policies that would promote the safety and well-being of children.

Section 285 does the following: (1) establishes a CCPT, by statute, in every county, with the same duties as currently possessing under the Executive Order; (2) authorizes each CCPT to review additional child fatalities; (3) allows a CCPT to determine if it is unable to conduct these additional death reviews, in which case a separate Child Fatality Prevention Team (CFPT) will be established in that county to conduct them; (4) provides that each Local Team, whether a CCPT or a CFPT, consists of (i) representatives of public and non-public agencies in the community that provide services to children and their families and (ii) individuals who represent the community; (5) directs each Local Team to meet at least quarterly; (6) specifies the duties of the Team Coordinator, a newly funded position in the Department of Environment, Health and Natural Resources, who will serve as a liaison between the State Team and the Local Teams that review cases of additional child fatalities; (7) lists the responsibilities of the director of the county department of social services in connection with reviews of (i) cases in which children are being served by Child Protective Services and (ii) child fatalities due to abuse or neglect and known to Child Protective Services; (8) lists responsibilities of the director of the county department of health in connection with reviews of additional child fatalities by Local Teams; (9) directs the Division of Social Services to provide ongoing training for members of Local Teams that review cases in which Child Protective Services is or was involved; (10) amends G.S. 143-578 to (i) add Local Teams to those entities who are granted broad access to agency records, (ii) permit a member of a Local Team to share, only in an official meeting of that Local Team, any information available to that member that the Local Team needs to carry out its duties, (iii) remove the exemption from the Open Meetings Law that is currently given to the Task Force, (iv) provide that confidential information and records acquired by the State Team, Local Teams, and Task Force will not be subject to discovery or introduction into evidence in any proceeding, (v) require members of Local Teams to sign confidentiality statements, (vi) provide that cases receiving Child Protective Services at the time of a review will have those records so noted, and (vii) direct the Social Services Commission and the Health Services Commission to adopt rules to implement the section; (11) adds a director of a county department of health to the Task Force; (12) adds a public member and the Team Coordinator to the State Team; (13) renames the State Team the "North Carolina Child Fatality Prevention Team;" and (14) repeals G.S. 143-573, 143-574, and 143-577, effective February 1, 1995, at which time the Task Force should have terminated. The rest of Section 285 took effect upon ratification, July 9, 1993. (The bill also appropriates $112,685 for the 1993-94 fiscal year and $146,987 for fiscal year 1994-95 to fund the implementation of the System in 10 counties, including the funding for the Team Coordinator.)

Child Medical/M.H. Evaluation (SB 496; Chapter 357): Senate Bill 496 was one of the recommendations of the Child Fatality Task Force and directs the Secretary of Human Resources to convene a committee, composed of representatives of various State agencies, within the Division of Social Services to develop a plan to provide medical and mental health evaluations to all children suspected of being abused or neglected, regardless of whether they are referred for evaluations by Child Protective Services programs. The interagency committee must report to the General Assembly and the Child Fatality Task Force by March 15, 1994. The act took effect on July 1, 1993.

Child Support

Child Support While In School (HB 402; Chapter 335): House Bill 402 requires that court-ordered child support continue for a child over 18 who is still in primary or secondary school. The payments are to continue until the child graduates, fails to attend school regularly, fails to make satisfactory academic progress, or turns 20 -- unless the court orders in its discretion that payments stop at 18 or before graduation. When the child graduates or turns 20, the payments will end without court order, subject to the right of the party receiving support to show that the child has not graduated or turned 20. The bill becomes effective on October 1, 1993, and applies to support orders entered on or after that date.

Non-IV-D Income Withholding (HB 538; Chapter 517): House Bill 538 does the following: (1) Requires child support orders entered or modified in IV-D cases to order immediate income withholding; (2) Requires child support orders initially entered on or after January 1, 1994, in non-IV-D cases to order immediate income withholding, except by the parties' agreement otherwise or for good cause; (3) Makes G.S. 110-136.3(a) (required contents of support orders) effective for IV-D orders and for non-IV-D orders with a withholding requirement; (4) Requires that in IV-D cases and in non-IV-D cases with a withholding requirement, the custodial party must inform the obligor of his or her disposable income and the amount and date of any substantial change in income; (5) Clarifies that in an interstate case jurisdiction is limited to the purposes of income withholding, and Chapter 52A does not apply. The act becomes effective on January 1, 1994, and applies to all orders entered on or after that date.

Day Care

Day Care Enforcement (HB 627; Chapter 185): House Bill 627 amends: (1) G.S. 110-90 to permit the Secretary of Human Resources, under policies and rules of the Child Day Care Commission, to issue a license or registration certificate to any child care arrangement that does not meet the statutory definition of child day care facility or child day care home whenever the operator of the arrangement chooses to comply with the State laws and rules governing child day care facilities and voluntarily applies for a license or registration certificate. The Commission is directed to adopt rules to issue and remove these licenses and registration certificates; (2) G.S. 110-88(6a) to require the Department of Human Resources to make unannounced visits at least every eight weeks (now, three unannounced visits) during any period that a special provisional license or registration certificate is in effect; (3) G.S. 110-90(5) to allow the revocation of the license of any child day care facility or registration certificate of any child day care home that demonstrates a pattern of noncompliance with State laws or rules governing child day care facilities; and (4) G.S. 110-91(5) to require child day care facilities to be located in buildings that meet the requirements for fire prevention and safe evacuation applicable to child day care facilities as established by the Department of Insurance, subject to adoption by the Commission. Each facility must be inspected at least annually by a local fire department or volunteer fire department for compliance with these requirements, except that a facility located on State property must be inspected by an official designated by the Department of Insurance. The act becomes effective October 1, 1993, and applies to requirements imposed on or after that date.

Expand Child Care Credit (HB 720; Chapter 432): See the summary contained in the **TAXATION** section.

Child Day Care Loan Guarantee Act of 1993 (SB 26 § 104.1 [HB 1420]; Chapter 561 § 104.1): Effective July 1, 1993, subsections (c) through (c7) of Section 104.1 of the Capital Improvements Appropriations Act of 1993 establish the Child Day Care Loan Guarantee Act of 1993 and appropriate $500,000 for fiscal year 1993-94 to the N.C. Rural Economic Development Center, Inc. ("Center") to implement the Act. The purpose of the Act is to encourage lenders to provide financing for the development and expansion of child day care centers and homes in low-income, distressed counties of the State in order to increase the quality and availability of child day care and employment opportunities in these areas. The Act directs the Center to: (1) establish a Child Day Care Loan Guarantee Fund to make loan guarantees under the Act; (2) administer the Fund; (3) develop and manage a loan approval process; (4) ensure that providers of small business technical assistance provide counseling to applicants for loan guarantees; (5) monitor projects to ensure compliance with laws and rules, (6) develop procedures for honoring defaults and enforcing the borrowers' obligations, (7) seek additional funds to leverage State dollars, (8) report quarterly to the Joint Legislative Commission on Governmental Operations; and (9) give priority (i) for loan guarantees to child day care providers that serve or intend to serve distressed counties, and (ii) to the geographic distribution of the guarantees. To be eligible for guarantees under this Act, loans may be made only for construction and capital improvement costs, the purchase or lease of equipment, start-up and expansion costs, and initial operating costs. The Act restricts loan guarantees to: (i) no more than $75,000, (ii) no more than 80% of the loan, and (iii) an aggregate amount of no more than five times the amount deposited in the Fund. Lenders, consistent with their current collections policies, must exercise reasonable diligence in their collections efforts before the Fund is liable for a default. The Act also provides that any employee, officer, or Board member of the Center must disclose the relationship and must not vote or otherwise participate in any Board decision affecting an enterprise with which that person is employed, holds any paid official relation, or has any financial interest.

County Day Care Encouragement (SB 27 § 253 [HB 206, SB 232]; Chapter 321 § 253): Section 253 of the Current Operations Appropriations Act of 1993 is based on one of the recommendations from the LRC's Study on Child Day Care Issues and encourages counties to provide the highest possible day care by: (i) using all their initial child care allocations by aggressively pursuing existing child care resources available; (ii) using creative and innovative methods of enriching existing day care; and (iii) reevaluating the practice of making payments directly to parents, rather than to providers. The Section directs the Department of Human Resources to (i) reevaluate its allocation/reversion/reallocation timetable to balance equitably the needs of counties that have had difficulty using their initial allocations in a timely fashion with the needs of counties that have used reverted allocations, and (ii) report quarterly to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office on the implementation of the Section.

Child Day Care Revolving Loan Fund (SB 27 § 256; Chapter 321 § 256): Section 256 of the Current Operations Appropriations Act of 1993, effective July 1, 1993, authorizes the investment of funds budgeted for the child day care revolving loan fund. Section 256 allows the principal and income of the fund to be used to make loans, reduce loan interest to borrowers, serve as collateral to borrowers, pay the contractor's cost of operating the fund, or pay the Department's cost of administering the program.

Day Care Home Safety-1 (SB 227; Chapter 268): Senate Bill 227 was a recommendation of the Study Committee on Day Care Issues and adds a new G.S. 110-101.1 to expand the current prohibition against the use of corporal punishment as a

form of discipline in registered day care homes (care is provided for three to eight children, under the age of 13) to apply to day care homes that receive State subsidies, but are not required to be registered (care is provided for fewer than two children), unless the care is provided to children by their parents, stepparents, grandparents, aunts, uncles, step-grandparents, or great-grandparents. Religious-sponsored homes, whether registered or nonregistered, are exempt. The act took effect upon ratification, July 5, 1993, and applies to acts of discipline imposed on or after that date.

Domestic Violence

Abolish Spousal Defense to Rape and Sexual Offense (HB 214; Chapter 274): See the summary contained in the **CRIMINAL LAW** section.

Equitable Distribution

Equitable Distribution Inventory (HB 937; Chapter 209): House Bill 937 requires that a party asserting an equitable distribution claim serve, within 90 days after the claim is served, an equitable distribution inventory affidavit. The inventory must list all property that the party claims is marital property and all property that the party claims is separate property, and it must estimate the fair market value of each item as of the separation date. The other party must serve his or her own inventory affidavit within 30 days after receipt of the first affidavit. Inventories may be amended. They are not binding at trial as to completeness or value. A court may extend, for good cause shown, the above time limits. The bill becomes effective on October 1, 1993, and applies to actions filed on or after that date.

Juvenile Justice

Undisciplined Juveniles (HB 283; Chapter 47): House Bill 283 establishes a pilot program under the Administrative Office of the Courts to expand juvenile court jurisdiction in Catawba, Bertie, and McDowell Counties to include as undisciplined juveniles 16 and 17-year-olds who are beyond the disciplinary control of their parents, guardians, or custodians. The AOC will report on the program to the General Assembly on or before the convening of the 1995 Session. The pilot program will end April 1, 1995. The bill becomes effective on October 1, 1993.

Juvenile Probation/School Protection (HB 1092; Chapter 369): House Bill 1092 amends G.S. 7A-649(8) by requiring judges to make a finding of whether a school's principal should be notified when the judge orders a juvenile to attend school as a condition of probation and the juvenile has been adjudicated of delinquency for an an offense involving a threat to the safety of the juvenile or others. If the judge orders notification of the principal, the act requires the juvenile court counselor to provide written notice to the principal within five days or before the juvenile attends school, whichever occurs first. The notice must include the nature of the offense and the probation requirements concerning school attendance. The principal is required to handle the report according to rules adopted by the State Board of Education. The act also directs the Administrative Office of the Courts to report to the Joint Legislative Education Oversight Committee by January 1, 1995, on the numbers of juveniles reported to principals under this act. House Bill 1092 becomes effective October 1,

1993, is applicable to delinquent acts committed on or after that date, and expires October 1, 1995.

Juvenile Justice Pilot Program (SB 26 § 80; Chapter 561 § 80): Section 80 of the Capital Improvements Appropriations Act of 1993, effective July 1, 1993, authorizes $30,000 of the funds appropriated to the Judicial Department in this Act for the 1993-94 fiscal year to be used by the Cumberland County Dispute Resolution Center for the development and implementation of Teen Court programs, alternative sentencing programs, school-based mediation programs, and conflict resolution curriculum supplements. The Center must file quarterly expense and statistical reports with the Administrative Office of the Courts and report at least annually to that Office and to officials of the 12th Judicial District. The Administrative Office of the Courts is to evaluate the effectiveness of the programs and report by March 15, 1995, to the Joint Legislative Commission on Governmental Operations and to the chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety.

Juvenile Probation/Passing Grade (SB 892; Chapter 462): Senate Bill 892 provides that a judge may specify as a condition of probation that a juvenile in school maintain passing grades in up to four courses during each grading period and meet with the court counselor and a school representative to plan for how to maintain the passing grades. The bill becomes effective on October 1, 1993, and applies to orders of probation for adjudications of delinquency for acts committed on or after that date.

Paternity

Paternity Establishment Changes (HB 1119; Chapter 333): House Bill 1119 does the following: (1) Provides that if the mother and father of a child were unmarried during the pregnancy, the father's name is not included on the birth certificate unless the mother and father complete an affidavit acknowledging paternity; (2) Provides that where this procedure is followed, there is a presumption of paternity, rebuttable by clear, cogent, and convincing evidence; (3) Provides for the use of genetic marker tests, as well as blood tests, upon motion by a party in a civil action where paternity is an issue; the person requesting the tests must pay their costs; (4) Provides that certified reports of test results from certain labs are admissible without testimony by the persons performing the tests; (5) Sets forth legal presumptions for certain specific test result percentages, rebuttable by clear, cogent, and convincing evidence; (6) Changes the standard of proof of paternity in a civil action from beyond a reasonable doubt to clear, cogent, and convincing evidence; (7) Provides that in a contested paternity action brought over three years after the child was born, paternity shall not be established without a blood test or genetic marker test (formerly, only blood test); (8) Provides that a party to a paternity action may request a preferential court date. The bill becomes effective on October 1, 1993, and (3)-(8) apply to civil paternity actions filed on or after that date.

Miscellaneous

Family Business/Youth Employment (HB 524; Chapter 239): See the summary under **EMPLOYMENT.**

Strict Liability/Minors' Damage (SB 431; Chapter 540): See the summary under **CIVIL LAW AND PROCEDURE.**

PENDING LEGISLATION

No Children in Pickup Beds (HB 27): House Bill 27 would prohibit the transportation of a child under 12 in the open bed or cargo area of a pickup truck, unless (i) an adult is present in the area and supervising the child, (ii) the child is wearing a seat belt, (iii) an emergency exists, or (iv) the vehicle is being operated in a parade with a valid permit.

Day Care Provider Records (HB 200; SB 336): These bills are recommendations of the LRC's Study Committee on Child Day Care Issues. They would mandate criminal record checks of employees, prospective employees, and operators directly providing day care in all child day care centers and homes, including those that are church-sponsored. The bills would also apply to spouses of persons applying or reapplying for work as day care operators after a certain date. The bills would appropriate $50,000 for each fiscal year for implementation.

Child Day Care Market Rate Change (HB 201; SB 230): These companion bills are one of the recommendations from the LRC's Study Committee on Child Day Care Issues and would direct the Social Services Commission to establish rules to: (1) change the payment structure for State child day care subsidies from county market rates to a State market rate representing the 75th percentile of all day care rates from every county, along with a provision for county market rates in those counties whose county market rates are higher than the statewide market rate; (2) provide incentives to provide quality day care by establishing payment differentials among similar kinds of care that provide different levels of quality of care (Registered homes and "A" centers would receive the basic rate, which would be the higher of the statewide or the county market rate; unregistered homes would receive 10% less than the basic rate; and "AA" centers would receive 10% more than the basic rate.); and (3) consider ensuring that the counties now using reallocated funds be helped to continue to provide that high level of care that these funds have made available in the past. The bills would suggest that, in order to further the goal of providing quality day care to all of the State's children in need of care, the payment rate structure, in the near future, should consider providing increased rates for accredited day care and rates for day care providers at cost, if the providers have their budgets approved by their county day care administrator. Finally, they would appropriate $13,000,000 for each fiscal year of the 1993-95 biennium for implementation.

Child Day Care Eligibility Funds (HB 202; SB 229): Recommended by the LRC's Study Committee on Child Day Care Issues, these bills would increase the eligibility limits for State and federal child day care subsidies in two parts. The first part would increase eligibility limits for families already receiving subsidies to 75% of median income. According to MEETING THE CHILD CARE PROMISE: How Counties are Responding to New Child Care Subsidy Programs, a report prepared by the N.C. Child Advocacy Institute that was presented to the Committee on Child Day Care Issues, the current eligibility for subsidized child care is unavailable to families whose income exceeds about 50% of the State median income. The second part would increase the entrance eligibility level for families initially needing subsidies one economic "notch" above the present eligibility limit. A notch is between one thousand and fifteen hundred dollars. The bills would appropriate $2,000,000 for each year of the 1993-95 biennium for implementation.

CPR/Day Care Homes (HB 221): House Bill 221 is one of the recommendations of the LRC's Study on Child Day Care Issues and would add a new G.S. 110-101.2 to require ALL workers in unregistered day care homes (i.e., those that care for fewer than three children under the age of 13) that receive reimbursement from the State to receive pediatric CPR training every two years. This would include care provided by grandparents, aunts, uncles, step-grandparents, or great-grandparents and religious-sponsored care. The bill also requires the Division of Social Services to direct the county department of social services in each county where access to pediatric CPR training is unavailable to provide such training. House Bill 221 would take effect upon ratification.

GPAC/Child Support Reform (HB 272; SB 314): House Bill 272 and Senate Bill 314 propose to set up a restructured child support system in six North Carolina counties on a demonstration basis, then implement the system statewide after a couple of years. The bills would combine the child support programs administered by the Department of Human Resources and the Administrative Office of the Courts into one program. Senate Bill 314 has been amended since introduction.

DWI Aggravated by Child in Car (HB 356): House Bill 356 would make the presence of a child under 16 in a vehicle driven by a person convicted of driving while impaired a grossly aggravating factor in sentencing.

Alimony Law Changes (HB 978;SB 874): House Bill 978 and Senate Bill 874 would make changes to the laws pertaining to alimony, as recommended by the Family Law Section of the North Carolina Bar Association. House Bill 978 has been amended since introduction.

Parental Consent Minor's Abortion (HB 1024): House Bill 1024 would require parental consent or judicial waiver of need to consent before a physician may legally perform an abortion on an unemancipated or unmarried minor. It would make the performance of such an abortion without consent or waiver a misdemeanor.

Adoptions Rewrite (SB 607): Senate Bill 607, proposed by the General Statutes Commission and substantially based on the Uniform Adoption Act currently being drafted, would make substantive changes to the State's adoptions laws.

STUDIES

House Bill 1319

The 1993 Studies Bill (HB 1319) was passed by both houses but was not ratified before adjournment of the 1993 Regular Session. It should be signed into law at the beginning of the 1994 Short Session. Legislative Research Commission Studies relating to the topic of Children and Families include: (1) Child Care Issues; (2) Child Support; (3) Ways to Improve Guardianship Services; (4) Family Law Reform; (5) Divorce Education Program for Couples with Children; (6) Juvenile Code; (7) Equitable Distribution; (8) Minority Males. On September 13, 1993, the LRC approved the study of (1),(2),(3),(6), and (8); and combined (4),(5) and (7) into a new Family Issues Committee.

Independent study commissions: (1) Child Fatality Task Force; (2) Commission on Children with Special Needs; (3) Commission on the Family; (4) Social Services Study Commission; (5) Joint Legislative Oversight Committee on Early Childhood Education and Development Initiatives (SB 27 §259; Chapter 321 §259, as amended by Chapter 561 §15).

CIVIL LAW AND PROCEDURE
(Jennie Dorsett, Tim Hovis, Walker Reagan, Steven Rose)

RATIFIED LEGISLATION

Civil Procedure

Suits and Appeals by Indigents (HB 908; Chapter 435): House Bill 908 amends Chapters 1, 6 and 7A, making changes in the procedures for waiving fees and costs in civil actions brought or defended by indigents. The term "pauper" is removed wherever it appears, and the word "indigent" is substituted. A person qualifying as an indigent may bring suit or file an appeal without payment of the requisite costs and may file an appeal without paying the requisite cost or posting an appeal bond. The method of determining whether a person is an indigent has been changed by adding specific criteria which may be proved by affidavit, rather than by witness as is now required. The act is effective October 1, 1993 and applies to all suits or appeals prosecuted on or after that date.

Recognition of Foreign Judgments (HB 991; Chapter 188): House Bill 991 adds a new Article 18 to **Chapter 1C - Enforcement of Judgments**, to adopt a uniform act for the recognition of foreign country judgments for enforcement in North Carolina. The bill defines a foreign judgment as a judgment for a sum of money other than a judgment for taxes, fines, penalties, or family or marital support. A foreign state is defined as a foreign country or a subdivision of the country. The act applies to any final and conclusive judgment, even when an appeal is pending. Judgments covered by this act are enforceable in the same manner and to the same extent as judgments from sister states. The grounds for not recognizing foreign judgments include lack of personal or subject matter jurisdiction, lack of notice, judgments obtained by fraud, causes of action repugnant to public policy, judgments in conflict with other judgments, and judgments contrary to an out-of-court settlement. Recognition of foreign judgments depend upon reciprocity of recognition of North Carolina judgments by the foreign country. Lack of personal jurisdiction will not be recognized where the defendant was personally served in the foreign country, voluntarily appeared, submitted to the foreign jurisdiction, was domiciled in the foreign country when the action was started, had an office or business in the country, or operated an aircraft or motor vehicle in the foreign country and the cause of action arose from this operation. The court may stay the execution pending appeal of the foreign judgment. This bill becomes effective October 1, 1993 and applies to judgments entered on or after that date.

Extend Long-Arm Statute (SB 679; Chapter 338): Senate Bill 679 amends Article 6A of Chapter 1, the North Carolina Long-Arm Statute, to provide a definition of the term "solicitation." This makes it clear that personal jurisdiction may be exercised over a party not present within the State if the injury complained of arises as a result of a solicitation by oral, written, visual, electronic or other communication, whether or not the communication originates from outside the state. The act becomes effective October 1, 1993 and applies to actions filed on or after that date.

Bid Rigging Statute Of Limitations (SB 796; Chapter 441): Senate Bill 796 extends the statute of limitations for civil actions brought by the State to enforce the laws

against bid rigging on government contracts. The bill provides that such actions must be brought within six years of the date of discovery of the conspiracy by the governmental agency which entered into the contract. The act became effective July 22, 1993, and applies to all claims not yet barred.

Liability

Wrongful Death Recovery/Limit Liability for Medical Expenses (HB 944; Chapter 299): House Bill 944 amends G.S. 28A-18-2(a), the **Wrongful Death** statute, to increase the limit on the amount of the wrongful death recovery that is liable for payment of hospital and medical expenses from the previous level of $1,500 to $4,500, provided that the amount to be paid for hospital or medical expenses cannot exceed 50% of the amount recovered after deducting attorneys' fees. Under the current law, all claims for hospital or medical expenses must be approved by the clerk of court. The bill becomes effective October 1, 1993 and applies to deaths which occur on or after that date.

Strict Liability/Minor's Damage (SB 431; Chapter 540): Senate Bill 431 was recommended by the Juvenile Law Study Commission to the 1993 General Assembly. The bill increases the maximum amount from $1,000 to $2,000 which a person may recover in strict liability from the parents of a minor who maliciously or willfully injures that person or that person's property. This bill becomes effective October 1, 1993, and applies to causes of action arising on or after that date.

State Tort Liability Regarding Civil Air Patrol (SB 652; Chapter 389): Senate Bill 652 brings activities of the North Carolina Wing-Civil Air Patrol under the State Tort Claims Act if the missions are State-approved and not covered by the Federal Tort Claims Act. The Secretary of Crime Control and Public Safety approves or denies requests for the Civil Air Patrol to assist in natural disasters or emergency situations. Senate Bill 652 also allows cadets of the North Carolina Wing-Civil Air Patrol to be eligible for Workers' Compensation benefits while they are on State-approved missions. Cadets are those members of the Civil Air Patrol who are under 18 years of age and supervised by adult members. This act was effective upon ratification, July 18, 1993.

Mediation

Office of Administrative Hearings Mediation Program (HB 657; Chapter 363): House Bill 657 establishes a pilot mediation program for contested matters before the Office of Administrative Hearings, to conduct prehearing settlement conferences with a mediator when ordered by the chief Administrative Law Judge. The mediator will be selected by the parties or by the chief judge, if the parties cannot agree. The mediation is to be conducted in accordance with the standards adopted by the Supreme Court for court-ordered mediation. All mediation discussions will be considered as settlement negotiations, and will not be admissible in contested hearings. Nothing under this program takes away the right to a contested hearing. The Attorney General is directed to evaluate the program and report to the General Assembly by May 1, 1995. This program is effective from October 1, 1993 until June 30, 1995. Section 25 of the Budget Act (SB 27) authorizes the OAH to use lapsed salaries to pay the costs arising from the mediated settlement conferences.

Miscellaneous

Small Claims Amount Increase (SB 846; Chapter 107: HB 544, Sec. 73; Chapter 553, Sec. 73): Senate Bill 846 increases the maximum amount in controversy in a small claim action from $2,000 to $3,000. Section 73 of House Bill 544 makes conforming changes for small claim counterclaims and for rent in arrears and damages claims in summary ejectment actions. Both bills make these changes effective October 1, 1993, and applicable to claims filed on or after that date.

STUDIES

House Bill 1319

The 1993 Studies Bill (HB 1319) was passed by both houses but was not ratified before adjournment of the 1993 Regular Session. It should be signed into law at the beginning of the 1994 Short Session. Legislative Research Commission Studies relating to the topic of Civil Law and Procedure include: (1) Immunity from Liability Resulting from Negligent Acts; (2) Consumer Protection Issues; (3) Advisability of Protecting Purchasers of Used Motor Vehicles and of Extending Warranties to the Sale or Lease of Used Motor Vehicles; (4) Tort Reform; (5) Medical Malpractice Compensation. On September 13, 1993, the LRC authorized the study of (1); combined (2) and (3) into a new Consumer Protection Committee; and declined to authorize the study of (4) and (5).

COMMERCIAL LAW

(Karen Cochrane-Brown, Tim Hovis, Walker Reagan, Steven Rose)

RATIFIED LEGISLATION

Banking

Savings Law Changes (HB 495; Chapter 163): House Bill 495 made certain technical and substantive changes to the law governing savings and loan associations and savings banks, including adding a new provision allowing a savings bank, state bank, or national bank to convert to a state savings and loan association upon application of the bank's board of directors and with approval of the Administrator of the Savings Institutions Divisions and the bank's stockholders. Similar provisions allowing a state savings and loan association to convert to a state or national bank were also added, as well as a new provision allowing a state savings bank to convert to a state or national bank. This act becomes effective October 1, 1993.

Trust Investment in Mutual Funds (HB 496; Chapter 126): House Bill 496 adds a new section to Article V, **Uniform Trusts Act**, of Chapter 36A, **Trusts and Trustee**, to permit a corporate trustee to invest trust funds it manages in a mutual fund also managed by the corporate trustee, when that investment is in the best interest of the beneficiary of the trust. The corporate trustee would be entitled to collect its fees for management of the mutual fund as well as its trustee's fees for management of the trust. The bill requires the trustee to disclose to all current income beneficiaries the rate, formula or other method by which remuneration for services is determined for funds invested by the corporate trustee, as well as the trustee fee charged with respect to the funds. The bill also requires that the total fees derived from trust assets held in mutual funds by the corporate trustee, both as trustee and as the mutual fund investment advisor, be reasonable. The bill becomes effective October 1, 1993.

Nationwide Interstate Banking (SB 876; Chapter 175): The Reciprocal Interstate Banking Act (Senate Bill 876) changes the law to allow a North Carolina banking company to acquire a bank in any state of the nation which has a reciprocal arrangement, and to allow banks in other states the same opportunities in North Carolina. Sections 6 and 7 of the bill change the existing Regional Reciprocal Banking Act, which for the last ten years has allowed bank holding companies within the region to acquire banks in other member states which offer reciprocal privileges, to the Reciprocal Interstate Banking Act, which will operate nationwide. This change becomes effective July 1, 1996. In addition, effective June 17, 1993, sections 1-5 of the bill modify the present law by replacing the 80% regional deposit requirement with a requirement for a simple majority of a banking company's deposits to be within the region; removing the "principal place of business" test from the definition of regional bank holding company; allowing the Commissioner to waive the requirement that a bank has been in existence and continuously operating for more than five years in the section relating to acquisitions; and permitting appeals from the Banking Commission to Wake County Superior Court rather than directly to the Court of Appeals.

Interstate Branch Banking (SB 936; Chapter 191): Senate Bill 936 permits out-of-state banks, savings and loans, and savings banks to open branches in North Carolina, and would permit North Carolina banks, savings and loans, and savings banks to open

branches in other states, under conditions included in the bill, when each state has reciprocal agreements permitting interstate branching. Thus, under this law, banks from other states may establish branches in North Carolina if, and only if, North Carolina banks may establish branches in those states. Unlike the Interstate Banking Act, entry into North Carolina or North Carolina's entry into another state can be done through a branch rather than establishing an entire bank. This act becomes effective January 1, 1995.

Business

Business Corporation Act Amendments (HB 539; Chapter 552): House Bill 539 makes a number of changes to the Business Corporation Act, many of which were recommended by the General Statutes Commission. Some changes include requiring the Secretary of State to return documents not suitable for filing by first class mail; making the knowing failure to answer interrogatories propounded by the Secretary of State grounds for administrative dissolutionment of a domestic corporation and revocation of the certificate of authority of a foreign corporation and a misdemeanor for officers and directors; oral notices permitted in the corporation's articles or bylaws are allowed except where written notice is required by statute; allowing articles of incorporation to permit limiting the personal liability of any director instead of each director; limiting preemptive rights to corporations, other than public corporations, incorporated prior to July 1, 1990, except as provided otherwise in the articles of incorporation; establishes the director's duty on change of control matters to be the same as for any other decision; permits a foreign corporation to change its registered agent or registered office in its annual report; giving a shareholder of a corporation that has the right to elect a majority of the directors of a second corporation the right to inspect the records of the second corporation; making it clear that a shareholder of a public corporation has no common law rights to inspect or copy accounting records of the corporation or any other records of the corporation restricted by G.S. 55-16-02(b). The bill becomes effective October 1, 1993.

Nonprofit Corporation Act (HB 624; Chapter 398): House Bill 624, which was recommended by the General Statutes Commission, rewrites Chapter 55A, the **Nonprofit Corporation Act**, in order to modernize the statute, in part as suggested by the Model Nonprofit Corporation Act, and to try to make the Nonprofit Act consistent with the changes make in the Business Corporation Act. The new Nonprofit Corporation Act follows the same organization and has generally the same numbering system as the Business Corporation Act. The bill makes the following significant changes to the former law: the incorporators may hold the organizational meeting when the initial directors are not named in the articles; the distinction between general powers and special powers of the corporation is eliminated; corporations are granted certain emergency powers to allow the corporation to act when a catastrophe makes it difficult or impossible to get a quorum of directors; a corporation may change its registered agent by including the change in its annual report filed with the Secretary of State; special meetings of members, court-ordered meetings and actions by written consent are now permitted; a statutory quorum of 10% applies unless the articles of incorporation or bylaws provide otherwise; expanded indemnification and immunity for directors, officers, employees and agents of nonprofit corporations similar to the protections provided under the Business Corporation Act is provided; all or substantially all of the corporate assets may be sold upon a vote of the lesser of two-thirds of the votes cast, or a majority of the votes entitled to be cast; provisions to provide for administrative dissolution, parallel to the specified provisions of the

Business Corporation Act, are included; nonprofit corporations are required to file annual reports with the Secretary of State similar to the annual reports business corporations are required to file. This bill becomes effective July 1, 1994 and applies to nonprofit corporations formed before, on, or after that date.

Liquidate Dissolved Corporation and Reinstatement from Administrative Dissolution (HB 868; Chapter 218): House Bill 868 amends G.S. 55-17-03 of the Business Corporation Act to permit a corporation dissolved by operation of law prior to July 1, 1990 to elect to wind up and liquidate its affairs under the provisions of the current law, instead of the law in effect at the time the dissolution was initiated. Under the law prior to July 1, 1990, a receiver would have to be appointed to carry out a liquidation. Under current law, directors, officers, or both, could conduct the liquidation themselves. Section 1 of the bill would not eliminate the liquidation options available to these corporations that were dissolved prior to July 1, 1990, but would extend the benefits of the current law to these old corporations. Section 2 amends G.S. 55-16-22 to allow a corporation issued a notice or certificate of either administrative dissolution or revocation of certificate of authority to satisfy the annual report filing requirement to avoid the administrative dissolution or revocation of certificate of authority, or to become reinstated after an administrative dissolution or revocation of certificate of authority by filing the most current annual report required with the Secretary of State. Section 1 is effective October 1, 1993, and Section 2 was effective on ratification on June 28, 1993 but expires July 1, 1994.

Limited Liability Company Act (HB 923; Chapter 354): House Bill 923 creates a new Chapter 57C entitled the North Carolina Limited Liability Company Act. The Act authorizes a new business entity known as the limited liability company. Under the bill, a limited liability company provides limited liability for its owners just as a corporation and allows the same tax benefits associated with a partnership. Such a company is formed when two or more persons deliver to the Secretary of State the necessary articles of organization and the Secretary files the documents pursuant to a fee structure and filing procedure outlined in the bill. The bill grants to a limited liability company the same powers as an individual to do all things necessary to carry out its business. The bill also contains procedures for the amendment of the articles of organization and for an annual report by all limited liability companies to the Secretary of State. The name of the limited liability company must contain the words "limited liability company" or an abbreviation thereof and a registered agent for the company must be filed with the Secretary of State.

The owners of a limited liability company are called "members". Unless otherwise stated in the articles of organization, all members of the company are deemed to be "managers" of the company. Management of the company is vested in its managers. The bill includes provisions for the voting of members, the cessation of membership, and the qualification designation, duties and removal of managers. As with a corporation, a member or manager of company is not personally liable for the obligations of a limited liability company solely by reason of being a member or manager. However, a member or manager may become personally liable by reason of his own acts or conduct. The bill also authorizes professional services to be provided by a limited liability company to the same extent as now permitted by a professional corporation. The bill also specifically provides that members of a professional limited liability company are not liable for the negligent acts of another professional member if the members were removed from the act and did not supervise the negligent member. The bill amends the Professional Corporation Act to provide the same liability provisions for a shareholder, director or officer of a professional corporation.

House Bill 923 includes provisions for the dissolution of a limited liability company. The bill also requires all foreign limited liability companies to meet certain requirements before transacting business in the State including obtaining a certificate of authority from the Secretary. Provisions for the merger of limited liability companies are included on the bill. The bill also makes corresponding changes to Chapter 105 of the General Statutes-Levying of Taxes. The bill becomes effective October 1, 1993.

Business License Reports (HB 1021; Chapter 289): House Bill 1021 requires that all state agencies issuing business licenses or privilege licenses report quarterly to the Business License Information Office the number of licenses issued by category on a form prescribed and furnished by the Secretary of State. This requirement applies to licenses issued on and after July 1, 1993. This act became effective upon ratification, July 6, 1993.

UCC Funds Transfers (SB 483; Chapter 157): Senate Bill 483 adds a new Article 4A, **Funds Transfers** to the **Uniform Commercial Code** as recommended by the General Statutes Commission. This uniform act now adopted in at least 45 states governs the transfers of sums of money, typically large sums, between commercial entities, generally by electronic means through the banking system. This Act is specifically not applicable to consumer transactions covered under the Electronic Funds Transfer Act of 1978 which covers matters such as direct deposits and bank drafts. Also the regulations of the Federal Reserve Board and the operating circulars of the Federal Reserve Banks supersede any inconsistencies between this Act and the those rules and regulations. The bill defines funds transfers as the series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order, including any payment order issued by the originator's bank or an intermediary bank intended to carry out the originator's payment order. A funds transfer is completed by acceptance by the beneficiary's bank of a payment order for the benefit of the beneficiary of the originator's payment order. The bill establishes methods for determining the time of receipt of payment, provisions for the issuance and acceptance of payment orders, and provisions for the execution of payment orders and payment. The Act establishes which entity is liable in the event of an error in the process, with liability generally falling to the entity responsible for the error. This includes liabilities and obligations arising from unauthorized payment orders, proper and improper (wrongful and erroneous) execution of payment orders, fraud, and insolvency of participating banks. Liability is generally limited to the loss of interest and principal, but in some circumstances may include incidental costs and reasonable attorney's fees. Consequential damages are only allowed in the event of intentional dishonor or under certain conditions after specific notice of the particular circumstances and contemplated magnitude of the consequences. The bill allows for liability to be mitigated by the establishment of commercially reasonable security systems for the benefit of the customers. The Act generally preserves the standard Uniform Commercial Code policy allowing parties to supersede the provisions of the Act by their contractual agreement. The bill becomes effective October 1, 1993.

UCC Leases and Waiver of Jury Trials in Contracts Unenforceable (SB 899; Chapter 463): Senate Bill 899 adds a new Article 2A, **Leases**, to Chapter 25, **Uniform Commercial Code**, to govern transactions that create a lease in goods, defined as all things movable or fixtures, excluding money, documents, instruments, accounts, chattel paper and general intangibles. A distinction is made between consumer leases (leases of $25,000 or less made by a person regularly engaged in the business of leasing to a person who takes the lease primarily for a personal, family or household purpose) and other leases, giving greater protection to consumers in unconscionable situations. The

bill authorizes the court to award attorneys' fees under certain circumstances in actions brought concerning the unconscionability of the lease. Under the bill, leases must be in writing to be enforceable unless 1) total payments under the lease are less than $1000; 2) the goods are specially made for the lessee; 3) the party admits the lease was made; or 4) the goods have been received and accepted by the lessee. The bill generally follows the provisions of the UCC - Sale of Goods with respect to use of seals, formation of contracts, course of performance, modification and rescission. Risk of loss is retained by the lessor except in finance leases where the lessee bears the loss. Warranty that the goods will be merchantable is implied in a lease contract. Actions for default under a lease are subject to a four-year statute of limitation, unless a shorter time period of at least one year is agreed to by the parties.

The bill also added a new provision to Chapter 22B to provide that any provision in any contract that requires a party to waive the right to a jury trial is unconscionable as a matter of law and is unenforceable. The bill becomes effective October 1, 1993 but does not apply to pending litigation.

Economic Development

Industrial Development Fund Use (HB 992; Chapter 444): House Bill 992 modifies the types of industrial development for which the Industrial Development Fund may be used, by defining "qualified industry" to mean the manufacturing of goods or the processing of foods, raw materials, chemicals and process agents, goods in process, or finished products. The law is also amended to provide that funds shall be expended at a rate of $2,400 (previously $1,200) per new job created up to a maximum of $250,000 per project. This act became effective July 1, 1993.

Economic Development Board and the Comprehensive Strategic Economic Development Plan (SB 27, Sec. 313; Chapter 321, Sec. 313): Section 313 of Senate Bill 27, the **Current Operations Appropriations Act of 1993** revises the composition, purpose and responsibilities of the Economic Development Board, spells out the requirements for the development and implementation of a comprehensive strategic economic development plan, and places advisory responsibility on the Board to recommend the allocation of responsibility and resources for the components of economic development within state government. The bill expands the former Economic Development Board in the Department of Commerce from 23 to 36 members and establishes the Board as the focal point for economic development and coordination. The new Board is expanded by adding four members of the House, four members of the Senate, the Lieutenant Governor, Secretary of State and the Presidents of the University of North Carolina and the Community College system. The bill codifies the requirement that the Board develop and annually update a comprehensive strategic economic development plan intended to provide a blueprint for the direction of the State's economic development efforts. The bill requires that the Board coordinate an "environmental scan" (detailed statistical analysis by region and county assessing population trends, business environment strength, labor force, infrastructure, educational resources, transportation resources, site and facility availability and tourist and service assets) and a "needs assessment" (economic development strengths, weaknesses, threats and opportunities by region and county with options available to address each issue) and use this information to develop long range goals (four years or more) with short term objectives (one year or less) to achieve the goals. From these goals and objectives a strategy is to be developed to achieve the objectives. The plan is to also include indices to be measured in an annual report which would be used to evaluated the implementation of the plan and the basis for changes and adjustments in

the plan in future years. State agencies involved in aspects of economic development are to provide staff assistance in the development and updating of the plan. The bill also directs the Board to recommend assignment of key responsibilities of the various aspects of economic development to various state agencies with the purpose of allowing each agency to focus on its area of primary responsibility. The Board is to recommend to the Governor and the General Assembly how future economic development would be conducted by the State and how the economic development dollars should be spent. This section of the bill was effective July 9, 1993.

Financing

Purchase Money Refinancing and First-In/First-Out Accounting in Consumer Credit Sales (SB 125; Chapter 370): Senate Bill 125 amends the Uniform Commercial Code (UCC) to permit a purchase money security interest to continue in a refinance or loan consolidation situation, and requires application of payments on consumer credit sales to be applied on a first-in/first-out basis. Section 1 amends the definition of a "purchase money security interest" under **Article 9 - Secured Transactions** of the UCC, as found in in G.S. 25-9-107, by extending the protections and benefits afforded to "purchased money security interests" when the underlying security agreement is refinanced or modified with the same creditor. Section 2 amends G.S. 25A-27 of the **Retail Installment Sales Act** to require the seller, in a subsequent consumer credit sale where the seller takes a security interest in goods previously purchased or where there is an agreement to consolidate two or more consumer credit installment sale contracts, to apply the payments first to interest, and then to principal, to be applied to the oldest purchases or obligations first and to release the security interest in those goods as the obligation for those goods is paid. The bill becomes effective October 1, 1993.

Late Fee Amendment and Amendments to Loan Broker Act (SB 681; Chapter 339): Senate Bill 681 adds a new subsection to **G.S. 24-10.1 - Late Fees** to permit a lender to cure a defective or unlawful late payment fee in excess of the maximum of 4% permitted under §24-10.1. The bill also amends the mortgage broker law to eliminate residential mortgage brokers from having to register with both the Secretary of State's office and the Banking Commissioner's Office. Additionally, the bill also prohibits loan brokers from collecting fees in advance of a loan closing. Section 1 permits a lender to correct an unlawful late payment fee and enforce the corrected rate when the lender has not charged the borrower the excessive rate and has changed the loan documents within six months of July 14, 1993 for loans made before that date, and within 90 days of loans made on or after July 14, 1993. Section 2 amends G.S. 66-106 to provide that residential mortgage brokers who must register with the Banking Commissioner, or who are exempt from the having to register with the Commissioner under Chapter 53, are exempt from the Loan Broker statute and are not required to register with the Secretary of State's office. Section 3 adds a new subsection to G.S. 66-108 to prohibit a loan broker from collecting fees in advance of a closing except for fees paid to third parties for appraisals, surveys, title exams and credit reports. This bill became effective July 14, 1993.

Layaway Contracts (SB 709; Chapter 340): Senate Bill 709 amends the Uniform Commercial Code to clarify and modify the law on layaway contracts. The bill amends G.S. 25-2-106 to provide that the definition of a contract or agreement includes a layaway contract, and defines layaway contract as a sale of goods with a down payment and with the goods held for future delivery upon payment of a specified additional amount. The bill also amends G.S. 25-2-718 which deals with limitations on damages

where there is no liquidated damage agreement. It adds a new option, in the case of layaway contracts, in the situation where the seller withholds delivery of goods because of a breech by the buyer. At the election of the seller, the buyer is entitled to receive back any amount by which the sum of his payments exceeds the aggregate payments received by the seller from the buyer under the contract, or $50.00, whichever is smaller. The act becomes effective October 1, 1993.

Miscellaneous

Forum Selection for North Carolina Contracts (HB 1027; Chapter 436): House Bill 1027 adds a new section to Chapter 22B. New G.S. 22B-10 provides that any provision of a contract entered into in North Carolina that would require prosecution of any action or arbitration of any dispute to be instituted or heard in another state is against public policy, void, and unenforceable. The prohibition does not apply to non-consumer loan transactions. The act becomes effective October 1, 1993 and applies to contracts entered into on or after that date. See also the summary for SB 914 in the **PROPERTY** section.

International Finance Corporation Investments (SB 481; Chapter 105): Senate Bill 481 amends the laws relating to permitted insurance company investments and permitted investments by the State Treasurer of the State's General Fund and Highway Fund to include obligations of the International Finance Corporation (IFC) as permitted investments. Under the prior law, obligations of the IFC were permissible investments for various State trust funds because the IFC currently has a AAA credit rating. However, the prior law governing investment of General and Highway Fund money did not allow for investment in the IFC. This bill is merely enabling legislation, and does not require that the State Treasurer consider this as an investment option. This act became effective upon ratification, June 2, 1993.

Clarify Returned Check Damages (SB 535; Chapter 374): Senate Bill 535 clarifies and expands the remedies for returned checks as recommended by the General Statutes Commission and adds service charges to the payee for processing dishonored checks to the amount that may be collected from a person who issues a check that is rejected for insufficient funds. The bill also amends the section relating to worthless checks (G.S. 14-107) to permit a sentencing judge to impose as restitution for a worthless check conviction payment of service charges for processing the dishonored check. Similarly, these fees are included in the restitution superior court clerks and magistrates are empowered to collect. This act becomes effective December 1, 1993, and applies to checks written on or after that date.

PENDING LEGISLATION

Banking Amendments (SB 513): Senate Bill 513, which would make technical and substantive changes to the banking laws, remains pending in a conference committee. Conferees have been appointed by both chambers, but a final conference report could not be agreed to prior to adjournment. Changes included in the bill approved by both bodies include allowing banks to set their own hours, allowing banks to merge with savings and loan associations and savings banks, simplification of branch closing procedures, and reduction of the publication requirements of bank financial reports.

STUDIES

House Bill 1319

The 1993 Studies Bill (HB 1319) was passed by both houses but was not ratified before adjournment of the 1993 Regular Session. It should be signed into law at the beginning of the 1994 Short Session. Legislative Research Commission Studies relating to the topic of Commercial Law include: (1) Law Regulating Mortgage Bankers and Mortgage Brokers; (2) Bid Laws and Reciprocity; (3) Public Assistance Direct Deposit; (4) Partnership for Quality Growth; (5) Certificates of Participation; (6) Regional Government and Economic Development Zones; (7) North American Free Trade Agreement Impact on North Carolina. On September 13, 1993 the LRC authorized the study of (4); referred (2) and (5) to the Joint Legislative Committee on Governmental Operations; and declined to authorize the study of (1),(3),(6) and (7).

Independent Studies, Boards, Etc., Created or Continued

Economic Development Board within the Department of Commerce (membership change, etc.). SL93-321, §313, SB 27; SL93-561, §12, SB 26; G.S. 143B-434.

Legislative Study Commission on Economic Incentives to Lure Industry. SL93-561, §103, SB 26.

Northeastern North Carolina Regional Economic Development Commission. SL93-321, SB 27; G.S. 158.8.

Southeastern North Carolina Regional Economic Development Commission. SL93-321, §313, SB 27; G.S. 158-8.3.

Western North Carolina Regional Economic Development Commission. SL93-321, §309, SB 27; SL93-561, § 17, SB 26; G.S. 158-8.1.

Referrals to Agencies

Department of Commerce shall study expansion of economic development commissions. SL-93-561, §102, SB 26.

Referrals to Existing Commissions, Etc.

Economic Development Board shall study whether the North Carolina Ports Railway Commission provides a necessary services to the State and thus should be continued or abolished. SL93-321, §314.2, SB 27.

CONSTITUTION
(Jennie Dorsett, Bill Gilkeson, Barbara Riley)

RATIFIED LEGISLATION

North Carolina Constitution

Tax Increment Bond Financing (SB 1157; Chapter 497): Senate Bill 1157 puts before the State's voters in November 1993 a proposed constitutional amendment to allow the State or a local government to borrow without a vote of the people where it has set aside the tax proceeds that result from the increase in the assessed value of property in an area. The bonds issued would be secured by the increment in the tax value of property in the area, not by the general faith and credit of the governmental unit and not by all the tax proceeds generated by the government. The bonds authorized by this amendment could be used only to finance economic development in the area where property values are being used to measure the tax increment that secures the bonds. If the voters approve the amendment November 2, 1993, it will go into effect immediately.

PENDING LEGISLATION

North Carolina Constitution

School Governance Changes (SB 28): Senate Bill 28 proposes a constitutional amendment to expand the membership of the State Board of Education and to make the Superintendent of Public Instruction (now elected) an appointee of the Board. The bill passed the Senate and is in House committee.

Require Alternative Punishments (SB 342): Senate Bill 342 proposes a constitutional amendment to add to the list of punishments that may be imposed for crime. Currently, the Constitution allows only death, imprisonment, fines, and removal and disqualification from office. The amendment would add suspension of active time, restitution, community service, restraints on liberty, and work programs. The bill passed the Senate and is in House committee.

STUDIES

House Bill 1319

The 1993 Studies Bill (HB 1319) was passed by both houses but was not ratified before adjournment of the 1993 Regular Session. It should be signed into law at the beginning of the 1994 Short Session. Legislative Research Commission Studies relating to the topic of Constitution include: (1) Constitutional Review. On September 13, 1993, the LRC declined to authorize the study of (1).

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

RATIFIED LEGISLATION

Corrections

Prison Bond Funds (HB 235; Chapter 550): House Bill 235 appropriates the remaining $87.5 million of the proceeds from the $200 million in prison construction bonds approved by the voters in the State on November 6, 1990. The original general obligation bonds authorized by the voters in 1990 were to be expended for State prison facilities and youth service facilities, including capital projects, acquiring equipment, renovating existing facilities, purchasing land, and paying contractual services. House Bill 235 identifies over 25 projects on which the bond proceeds shall be expended, resulting in an expansion of the operating capacity of correctional facilities by 3,712 beds. Procedures are specified for using alternative construction systems. The bill also authorizes the use of any unexpended bond funds. House Bill 235 allows the State to require that inmates comprise up to 20% of a contractor's work force on projects funded by the bonds. House Bill 235 became effective July 1, 1993.

Inmate Pilot Program (SB 46; Chapter 59): Senate Bill 46 directs the Department of Correction to undertake a minimum of six pilot inmate study courses designed to reduce institutional disciplinary infractions and recidivism by developing positive mental attitudes through self-esteem and self-discipline. The program is to be funded with available funds, with a report of its operation submitted to the General Assembly by May 1, 1994, and an evaluation submitted to the Chairmen of the Appropriations Committees by May 1, 1995. Senate Bill 46 became effective May 24, 1993, and expires on June 30, 1995.

Staggered Parole Commission Terms (SB 633; Chapter 337): Senate Bill 633 provides for staggered terms for members of the Parole Commission. Of the five members of the Parole Commission appointed to terms beginning July 1, 1993, three will serve three-year terms, and two will serve four-year terms. Thereafter, all terms will be for four years. The act became effective July 14, 1993.

Modify Prison Cap (SB 982; Chapter 91): Senate Bill 982 raised the prison population cap from 20,900 to 21,200 effective June 1, 1993. The cap is increased to 21,400 effective December 1, 1993, and to 21,500 effective April 1, 1994. The act became effective June 1, 1993.

Emergency Medical Costs (SB 1021; Chapter 510): Senate Bill 1021 provides that when an inmate of a local confinement facility has third-party insurance, the insurer is the initial payor for the costs of emergency medical services and the county is liable only for costs not reimbursable by the third-party insurer. The bill also provides that the county may recover the cost of non-reimbursed emergency medical services from the inmate. The act became effective July 24, 1993.

Crimes

Raffle Limit Increased (HB 97; Chapter 219): House Bill 97 raises the limit from $1,000 to $5,000 on cash prizes that may be offered or paid for any one raffle conducted by a tax-exempt nonprofit organization. House Bill 97 was effective upon ratification, June 28, 1993.

Abolish Spousal Defense to Rape and Sexual Offense (HB 214; Chapter 274): House Bill 214 was recommended by the Law Enforcement Issues Study Committee to the 1993 General Assembly. House Bill 214 abolishes the defense to a prosecution for rape or sexual offense that exists where the victim is the spouse of the person alleged to have committed the crime. Under the current statute, the prosecution of a spouse for rape or sexual offense is allowed **only** when the couple is living separate and apart at the time of commission of the alleged rape or sexual offense. House Bill 214 includes prosecutions for first and second degree rape and first and second degree sexual offense, so that married persons would be subject to these prosecutions just as unmarried persons. House Bill 214 became effective July 5, 1993, and does not affect prosecutions for offenses occurring before the effective date.

Clarify Video Devices (HB 877; Chapter 366): House Bill 877 amends G.S. 14-306 by clarifying the definition of machines and games that are exempt from the definition of illegal slot and vending machines. Under the new definition, coin-operated machines, video games, and devices used for entertainment, including those machines which use skill and dexterity, that do not allow more than eight accumulated credits or replays at one time or coupons that may be exchanged for prizes or merchandise valued at $10 or less, are exempt. House Bill 877 becomes effective December 1, 1993, and applies to offenses committed on or after that date.

Weapons at School (HB 1008; Chapter 558): See **EDUCATION**.

Legalize Some Pyrotechnics (HB 1089; Chapter 437): House Bill 1089 changes the definition of prohibited pyrotechnics to provide an exception for certain types of pyrotechnics, including snake and glow worms, smoke devices, trick noisemakers, wire sparklers, and tube sparkling devices. House Bill 1089 becomes effective December 1, 1993. Prosecutions for offenses occurring before the effective date are not abated or affected by the bill.

Breast Feeding Not Indecent (HB 1143; Chapter 301): House Bill 1143 amends the criminal law prohibiting indecent exposure to provide that breast feeding does not violate the statute. House Bill 1143 became effective July 7, 1993.

Assaulting a Sports Official (SB 30; Chapter 286): Senate Bill 30 provides that assault and battery against a sports official during or immediately after the discharge of his duties constitutes a general misdemeanor. Senate Bill 30 becomes effective December 1, 1993, and applies to offenses occurring on or after that date.

Non-Tax-Paid Fuel Criminal Penalty (SB 159; Chapter 140): Senate Bill 159 makes it a misdemeanor, punishable by up to six months in prison, a fine of up to $500, or both, to knowingly dispense non-tax-paid fuel into the supply tank of a motor vehicle or to knowingly allow allow non-tax-paid fuel to be dispensed into the supply tank of a motor vehicle. Senate Bill 159 becomes effective December 1, 1993, and applies to offenses committed on or after that date.

Selling Handicap Placards Illegal (SB 475; Chapter 373): Senate Bill 475 makes selling a handicapped license plate or placard a misdemeanor punishable by a fine of $100 or imprisonment of up to 60 days. A person may be imprisoned for a violation of this bill only if the person has been previously imprisoned in a local confinement facility for a violation of Chapter 20 (Motor Vehicles). Senate Bill 475 becomes effective October 1, 1993.

Permit for Selling Crossbow and Bolts (SB 628; Chapter 287): Senate Bill 628 makes it a misdemeanor, punishable by a $50-$200 fine, and imprisonment from 30 days to six months, to sell or transfer a crossbow without a permit. Senate Bill 628 becomes effective December 1, 1993, and applies to offenses occurring on or after that date.

No Handguns Unless 18 (SB 793; Chapter 259): Senate Bill 793 makes it a misdemeanor for a person under eighteen years of age to possess or carry a handgun. Any minor who possesses or carries a handgun is guilty of a misdemeanor punishable by imprisonment for up to six months, a fine of up to $500, or both. This prohibition does not apply to: (1) a member of the armed forces of the U.S. when in discharge of official duties; (2) a minor who possesses a handgun for educational or recreational purposes while under adult supervision; (3) an emancipated minor who possesses a handgun inside his or her residence; (4) a minor who possesses a handgun while hunting or trapping outside the limits of an incorporated municipality, with written permission from a parent or guardian. Senate Bill 793 also makes it a misdemeanor to sell or transfer any handgun to a person who is under eighteen years of age. A person charged with this offense may, as a defense to the charge, show evidence that the minor produced a driver's license or other identification card indicating he or she was of the required age for purchase, or show other evidence reasonably indicating that the minor was of the required age at the time of the sale. The act is effective September 1, 1993, and applies to offenses committed on or after that date.

No Obstruction/Health Facilities (SB 873; Chapter 412): Senate Bill 873 provides criminal penalties for obstruction of health care facilities. The bill makes it unlawful (1) for any person to obstruct or block another person's access to or egress from a health care facility or from the common areas of the real property upon which such a facility is located in a manner that deprives or delays the person from obtaining or providing health care services in the facility, or (2) to injure or attempt to injure a person who has been (a) obtaining health care services, or (b) lawfully aiding another to do so, or (c) providing health care services. A violation is a misdemeanor, punishable by a fine of up to $500, imprisonment up to 6 months, or both. A second violation within three years of the first violation is punishable by a fine, imprisonment up to two years, or both. A third or subsequent conviction within three years of the second or most recent conviction is a Class I felony. Senate Bill 873 further provides that the violation of an injunction prohibiting such behavior constitutes criminal contempt and is punishable by imprisonment for not less than thirty days and not more than twelve months. The bill specifically does not prohibit any person from engaging in lawful speech or picketing that does not interfere with a person's access to health care or the delivery of health care. Owners, officers, agents, or employees of a health care facility or law enforcement officers acting to protect real or personal property are not subject to the prohibitions of the act. The bill amends G.S. 14-277.2(a) to make it a misdemeanor to possess or have immediate access to any dangerous weapon during a demonstration upon any private health care facility. The act is effective October 1, 1993.

Teaching Hate Crimes Unlawful (SB 970; Chapter 332): Senate Bill 970 makes it unlawful to assemble for the purpose of teaching any techniques to be used for the purpose of intimidating a person because of that person's race, color, religion, nationality, or country of origin. A violation is misdemeanor punishable by imprisonment up to two years, a fine, or both. The act is effective October 1, 1993, and applies to offenses committed on or after that date.

Tear Gas for Self Defense (SB 971; Chapter 151): Senate Bill 971 increases the maximum lawful capacity of tear gas containers for use by individuals for self-defense purposes. The bill makes it lawful for an individual not convicted of a felony to possess tear gas for self-defense purposes so long as the capacity of the device or container does not exceed 150 cubic centimeters. The capacity of the tear gas cartridge or shell may not exceed 50 cubic centimeters, and the device or container cannot discharge a cartridge or shell larger than 50 cubic centimeters. Previously, the 50 cc. limit applied to containers or devices as well as to cartridges or shells. The act became effective July 1, 1993.

Regulated Metals Purchase (SB 1006; Chapter 295): Senate Bill 1006 provides for the regulation of purchases of regulated metals property by secondary metals recyclers in North Carolina. The bill provides that the failure of dealers of scrap, salvage, or surplus to keep a record of specified items is a misdemeanor, punishable by a fine up to $50. The bill sets out purchasing and record-keeping requirements for secondary metals recyclers and authorizes inspections by law enforcement officers to assure compliance. Violation of the regulated metals provisions is a misdemeanor, punishable by a fine up to $500, imprisonment up to two years, or both. The act is effective December 1, 1993, and applies to offenses committed on or after that date.

Criminal Procedure

Note Taking by Jurors (HB 115; Chapter 498): House Bill 115 makes note taking by jurors a discretionary decision of the presiding judge. Under current law jurors are permitted to make notes and take them into the jury room during their deliberations, unless any party objects. Upon objection, the judge is required to instruct the jury that notes shall not be taken. Under House Bill 115 the judge, on the judge's own motion, or any party may object to note taking by jurors, and then the judge may direct that jurors refrain from note taking. House Bill 115 becomes effective October 1, 1993, and applies to trials that begin on or after that date.

Extradition/Technical Amendment (HB 617; Chapter 83): House Bill 617 deletes the requirement that a duplicate copy of an application for extradition be filed in the office of the Secretary of State. House Bill 617 was effective upon ratification, May 26, 1993.

Probation Extension Notification (HB 696; Chapter 84): House Bill 696 provides for notification to a defendant on supervised probation that his probation period may be extended for up to three years for the purpose of allowing the defendant to complete a program of restitution or to allow the defendant to continue medical or psychiatric treatment ordered as a condition of the probation. House Bill 696 becomes effective March 1, 1994, and applies to persons placed on probation on or after that date.

Pretrial Hearings by Video (SB 221; Chapter 30): Senate Bill 221 authorizes a judge or magistrate to conduct bail proceedings, first appearances, and arraignments by an

audio and video transmission (with the parties being able to see and hear each other) between the judicial official and the defendant. The defendant's attorney and the prosecutor may be present at proceeding, and the defendant must be allowed to communicate fully with his attorney during the proceeding. These proceedings are restricted only to noncapital cases. Prior to use, the procedures and equipment for audio and video transmission must be submitted to the Administrative Office of the Courts for approval. Senate Bill 221 became effective April 22, 1993, and applies to proceedings occurring on or after that date.

PIN Access for Infractions (SB 714; Chapter 39): Senate Bill 714 provides statutory authority for defense attorneys representing persons charged with infractions to have access to the PIN (Police Information Network) in order to obtain the person's driving record or criminal history. Senate Bill 714 was effective upon ratification, May 4, 1993.

STD Test/Sex Offenders (SB 799; Chapter 489): Senate Bill 799 provides that after a finding of probable cause or indictment for an offense involving nonconsensual vaginal, anal, or oral intercourse or that involves intercourse with a child 12 years old or less, the victim or the parent or guardian of a minor victim may request that the defendant be tested for the following sexually transmitted infections: chlamydia, gonorrhea, hepatitis B, HIV, and syphilis. When a request for testing has been made, the district attorney must petition the court on behalf of the victim for an order requiring the defendant to be tested, and upon finding probable cause that the alleged sexual contact would pose a significant threat of transmitting one of the listed infections, the court shall order the defendant to submit to testing. The Department of Correction shall test any defendant in its custody; otherwise, testing is to be done by the local health department. The bill provides for both the victim and the defendant to be informed of test results and counseled accordingly. Test results are not admissible as evidence in any criminal proceeding. The act is effective October 1, 1993, and applies to offenses occurring on or after that date.

Drugs

Drug Schedule Additions (HB 630; Chapter 319): House Bill 630 updates and adds to the list of controlled substances in the State's drug schedules to conform with the federal list of controlled substances. House Bill 630 was effective upon ratification, July 9, 1993.

Law Enforcement

DNA Database and Databank (HB 1050; Chapter 401): House Bill 1050 adds a new Article 13 to Chapter 15A of the General Statutes entitled "DNA Database and Databank." This new Article requires that on or after July 1, 1994, a person convicted of any listed crime must have a DNA sample taken. The bill provides procedures for taking and testing blood samples for DNA data, for storage and exchange of samples by the SBI, compatibility of the system with the FBI's, expungement of DNA records for persons whose convictions are overturned, penalties for unauthorized use of the DNA databank, and confidentiality of DNA records. House Bill 1050 becomes effective December 1, 1993, if the General Assembly appropriates funds to implement the purpose of the act.

Criminal Investigative Records (SB 860; Chapter 461): Senate Bill 860 provides that records of criminal investigations conducted by public law enforcement agencies or records of criminal intelligence information compiled by such agencies are not public records. This status applies to records or information pertaining to a person or group of persons that may be compiled by public law enforcement agencies in attempting to solve, monitor, or prevent violations of the law. Senate Bill 860 specifies that the following information is public record: (1) the time, date, location, and nature of a violation or apparent violation of law reported to a public law enforcement agency; (2) the name, sex, age, address, employment, and alleged violation of law of the person arrested, charged, or indicted; (3) the circumstances surrounding an arrest; (4) the contents of 911 or similar emergency telephone calls, except as they reveal the name, address, telephone number, or other information that may identify the caller, victim, or witness; (5) the contents of communications among employees of public law enforcement agencies broadcast over public airwaves; and (6) the name, sex, age, and address of a victim or other person who reports a violation or apparent violation of law to public law enforcement agency. The bill permits the agency to temporarily withhold information about a witness from public inspection, if the release is reasonably likely to pose a threat to such witness or materially compromise a continuing or future criminal investigation, and provides a procedure for challenge to the withholding of a record. Senate Bill 860 also permits a law enforcement agency to seek a court order to prevent disclosure of other information, if the agency can prove the release will jeopardize the right of the State to prosecute or jeopardize the right of the defendant to a fair trial. Arrest and search warrants that have been returned by law enforcement agencies, indictments, criminal summons, and nontestimonial identification orders are public and may be withheld from public inspection only when sealed by court order. The act is effective October 1, 1993.

Structured Sentencing

Structured Sentencing (HB 277; Chapter 538): House Bill 277 was a recommendation of the North Carolina Sentencing and Policy Advisory Commission to the 1993 General Assembly and enacts a comprehensive sentencing structure for the criminal justice system in North Carolina.

The Sentencing and Policy Advisory Commission was charged by the General Assembly with recommending modifications to sentencing laws and policies to confront the overwhelmed criminal justice system in North Carolina. The Commission found that felons are serving less than one-fifth of their sentence, and misdemeanants are serving less than one-tenth of their sentence. Increasingly, offenders are choosing to serve their suspended sentences rather than complete alternative programs. The Commission also found a lack of balance between sentencing policies and correctional resources. Many other states have adopted "structured sentencing" in response to problems similar to North Carolina. Structured sentencing increases the certainty and predictability of punishment, thus providing a mechanism to connect correctional resources with sentencing law and policy.

Effective January 1, 1995, House Bill 277 enacts structured sentencing in North Carolina (with the exception of Driving While Impaired which is untouched). Below are the highlights of the new provisions:

Felony sentencing. Felonies are divided into nine classes (A through I) with six prior record levels (I through VI). Before sentencing a defendant, the judge shall determine both the prior record level of the defendant and the class of the offense. Each class and prior record level is set out in a chart. Each "cell" on the chart (composed of the prior record level and class of offense) contains one or more

authorized sentence dispositions. The judge must impose one of those authorized dispositions.

Felony dispositions. The authorized felony dispositions (other than Class A and drug trafficking) are (1) **Active**, which means a jail or prison sentence; (2) **Intermediate**, which requires a suspended sentence and at least one of the following: electronic monitoring; intensive or special probation including IMPACT; residential or day reporting center assignment; or acceptance of a community penalties plan; and (3) **Community**, which requires a suspended sentence to supervised or unsupervised probation and may include outpatient treatment, TASC, community service, restitution, or a fine.

Prior record level. The prior record level is based primarily on prior convictions, with point values based on the severity of the prior offense. Points range from 10 points for a prior Class A felony to one point for each misdemeanor. Points are assigned for each level, with Level I having no prior record to Level VI, which requires 19 points. Procedures are set out for proof of prior convictions and the process for contesting the record.

Duration of felony punishment. Any term of imprisonment, whether suspended or activated, must be for a duration that is authorized by the appropriate cell on the chart. Each cell contains three ranges of minimum punishment: standard, mitigated, or aggravated. The maximum term is 120% of the minimum term, rounded up to next full month. **A defendant must serve the minimum term of imprisonment** and may, by earning credit under the Department of Correction rules, earn sufficient credit to be released after serving the minimum. This is the "truth in sentencing" component to structured sentencing and means that a defendant will actually serve the time sentenced by the presiding judge.

Mitigating and aggravating factors. The mitigated range may be used only if judge finds specified mitigating factors to justify departure from the standard. The aggravated range may be used only if judge finds specified aggravating factors. The aggravating and mitigating factors are the same as in the current Fair Sentencing Act with a few exceptions.

Misdemeanor sentencing. House Bill 277 classifies misdemeanors in North Carolina as either Class 1, Class 2, or Class 3 misdemeanors. Under the bill, misdemeanors that under current law are punished by a term of over six months would be classified as Class 1 misdemeanors. Current misdemeanors that are punished by over 30 days but not exceeding 6 months would be classified as Class 2 misdemeanors. Misdemeanors imposing 30 or fewer days would be classified as Class 3 misdemeanors. The bill does not apply to driving while impaired. There are no aggravating or mitigating factors. The judge may impose any sentence length from the sentence range. Misdemeanants with active sentences may earn up to four days of "earned time credit" off their sentence for each month of incarceration.

Other changes. The Fair Sentencing Act is repealed, effective January 1, 1995.

Unless otherwise provided, a conspiracy is classified as one class lower than the principal felony or misdemeanor. An attempt to commit a felony or misdemeanor is treated as one class lower as the completed felony or misdemeanor, unless otherwise provided. Unless a different classification is stated, a solicitation to commit a felony is two classes lower than the felony.

An Article within Chapter 15A (Criminal Procedure) entitled "Post-Release Supervision and Parole" is created, and various statutes are amended to change the name of the Parole Commission to the Post-Release Supervision and Parole Commission. This Commission will monitor and supervise inmates released from correctional facilities for a mandatory nine-month period once structured sentencing goes into effect. The Commission will continue to perform "parole" functions for those inmates currently incarcerated.

Provisions are included to specify when an appeal will be allowed.

For drug trafficking under G.S. 90-95, the specific minimum punishment for each category by drug and amount is set, ranging from 25 to 175 months. The "substantial assistance" provision of the drug trafficking statute is retained.

Life sentences are retained, except that parole eligibility will be in 25 years. House Bill 277 adds a requirement that judges inform juries that a life sentence means a sentence of life with eligibility for parole consideration after 25 years.

House Bill 277 would take effect January 1, 1995, and apply to offenses committed on or after that date. House Bill 277 does not affect sentencing for offenses committed before that date.

Classify Misdemeanors and Reclassify Some Felonies (HB 278; Chapter 539): House Bill 278 was a recommendation of the Sentencing and Policy Advisory Commission to the 1993 General Assembly and would make certain substantive and technical changes to felony and misdemeanor offenses in North Carolina.

Felonies. The Sentencing Commission developed criteria for classifying offenses based on the actual or potential harm to the victim caused by the criminal conduct. Harms include those directed at the person, those against the property, and those against society. The Commission then assigned each felony offense to one of nine classes (Class A through Class I with Class J being deleted in the new scheme). The net effect of the Commission's new scheme is to generally raise the seriousness of crimes against the person relative to crimes against property and society. Currently, a felony in North Carolina is classified as a Class A, Class B, Class C, Class D, Class E, Class F, Class G, Class H, Class I, or a Class J felony according to the gravity of the offense (with Class A felony being the death penalty). Each felony offense currently has a maximum and presumptive term of imprisonment that is assigned by statute. The goal of structured sentencing is to classify offenses based on as assessment of harm to the victim which is actual or threatened.

House Bill 278 revises the felony classes of approximately two hundred criminal offenses scattered throughout the General Statutes to place these offenses appropriately under the new structure. The felony amount for the possession of cocaine is raised to one gram (it was any amount of cocaine).

Misdemeanors. Persons who commit misdemeanors in North Carolina make up the bulk of cases processed through the criminal justice system, account for significant admissions to the Department of Correction, and comprise almost all active admissions to jails.

The Sentencing Commission was required to recommend sentencing classifications and ranges of punishments for misdemeanants. Under the Commission's misdemeanor structure, a smaller percentage of misdemeanants will receive active sentences. Prison and jail resources will be allocated for repeat offenders who commit more serious crimes. Misdemeanants receiving active sentences will, on the average, serve significantly longer terms than they have in recent years. North Carolina law contains over one thousand crimes classified as misdemeanors. Many of these are general misdemeanors carrying a penalty of up to two years imprisonment and an unlimited fine. Many other misdemeanors have lesser penalties, and the specific period of imprisonment and fine are defined in the statute creating the misdemeanor. If a statute creates a misdemeanor and does not specify a penalty, then it is presently a general misdemeanor.

House Bill 278 classifies the misdemeanors in the State as either a Class 1, Class 2, or Class 3 misdemeanor.

House Bill 278 becomes effective January 1, 1995, and applies to offenses occurring on or after that date. House Bill 278 would not affect prosecutions for offenses committed before that date.

Criminal Justice Partnership Act (HB 281; Chapter 534): House Bill 281 was a recommendation of the Sentencing and Policy Advisory Commission to the 1993 General Assembly and would establish a strategy for community-based punishments for certain categories of offenders and would define the State and county responsibilities for community corrections programs.

Although North Carolina has used community-based punishments since the 1980's, the State has lacked a comprehensive strategy for program coordination and has not clearly defined the State and county roles. Recognizing this gap, the General Assembly required the Sentencing Commission to recommend a plan. The purposes of community corrections are to punish offenders in the community, provide rehabilitation services, facilitate victim restitution, perform community service, and reduce the use of costly prison resources. Community corrections includes (1) monitoring of pretrial offenders, (2) community-based sanctions for sentenced offenders, and (3) services for offenders released from jail or prison. Community corrections programs in the State are administered in various ways. Some are State-funded and administered statewide or locally. Some are locally funded and locally administered. Seventeen states have enacted legislation to create a State-county criminal justice partnership that formalizes the funding and administration responsibilities.

House Bill 281 adds a new article to Chapter 143B of the General Statutes to be entitled the "North Carolina State-County Criminal Justice Partnership Act of 1993."

The counties. House Bill 281 authorizes a county or multicounties to apply for funding upon approval of the board of county commissioners and appointment of a county criminal justice partnership advisory board. The bill directs that county commissioners appoint members to this advisory board consisting of no fewer than 10 members representing specified categories. The county criminal justice partnership advisory board would develop a community-based corrections plan to be submitted for approval to the county commissioners within a year after board is appointed. The Department of Correction is to provide technical assistance for plan development, either in kind or with financial assistance. If a county receives planning funds, the county must provide 25% of the grant amount.

Department of Corrections. The Department of Corrections is to (1) provide technical assistance to counties; (2) contract with county boards to operate programs; (3) develop policies for disbursement of grant funds and then disburse funds; (4) establish rules and policies for programs; and (5) suspend, in certain circumstances, grant funds if a county does not substantially comply with the program requirements.

The State Criminal Justice Partnership Advisory Board. House Bill 281 establishes a 21-member board appointed from specified categories. The Board is to review the application process, funding procedures, program policies, and evaluation criteria. Following the review, the Board would make recommendations concerning funding.

Program funding. The Secretary of Correction would review local plans within 90 days of submission; failure to act on a plan within 90 days constitutes approval. Funds are to be used for program operation or construction, renovation, or acquisition of community facilities (excluding jails). A nonreverting State-County Criminal Justice Partnership Account within the DOC is created.

Counties would be eligible for funds according to the following formula: (1) 20% of the funds would be distributed within the discretion of the Secretary of DOC to encourage innovation and collaboration; (2) remaining 80% of the funds would be distributed as follows: 20% based on fixed equal dollar amount, 60% on the county share of the State's population, and 20% based on the county's supervised probation admissions rate. Program funds may not be used to supplant funds from other sources for existing community-based corrections programs.

House Bill 281 would take effect January 1, 1994, except that grants administered under the act would become effective July 1, 1995. The Department of Correction may

use funds available to support the administration of this Program, effective January 1, 1994.

Sentencing Commission Study Restitution (HB 1035; Chapter 535): House Bill 1035 directs the Sentencing and Policy Advisory Commission to study restitution and report its findings to the 1994 General Assembly. The bill also expands the Commission from 27 to 28 members by adding a representative from the Justice Fellowship Task Force. House Bill 1035 became effective July 1, 1993.

PENDING LEGISLATION

Uniform Roadside Hunting (HB 827): House Bill 827 would establish statewide uniformity in roadside hunting.

No Death Penalty for Mentally Retarded (HB 1062): House Bill 1062 would prohibit the death penalty for mentally retarded persons convicted of first degree murder.

State Lottery (SB 11; HB 59; HB 178): These bills would amend the gambling laws in the State to permit a State lottery.

Charitable Solicitations Rewrite (SB 940): Senate Bill 940 would enact a comprehensive rewrite of the Charitable Solicitations Act in North Carolina.

Use of Deadly Force Against Intruder (SB 945): Senate Bill 945 would clarify the use of deadly force against an intruder in a person's place of residence.

STUDIES

House Bill 1319

The 1993 Studies Bill (HB 1319) was passed by both houses but was not ratified before adjournment of the 1993 Regular Session. It should be signed into law at the beginning of the 1994 Short Session. Legislative Research Commission Studies relating to the topic of Criminal Law and Procedure include: (1) Criminal Case Disposition; (2) Reducing the Legal Limit of Blood Alcohol from 0.10 to 0.02 for 18 to 20 Year Olds While Driving a Motor Vehicle; (3) Forfeitures and Fines Clear Proceeds Allocation. On September 13, 1993, the LRC referred (1) to the Criminal Law Committee; referred (3) to the Revenue Laws Committee; and declined to authorize the study of (2).

Independent Studies, Boards, Etc., Created or Continued

North Carolina Sentencing and Policy Advisory Commission extended to August 1, 1993. SL93-253, §5.1, HB 1216; and extended to July 1, 1994. SL93-321, §200.1, SB 27; G.S. 164-38.

State Criminal Justice Partnership Advisory Board. SL93-534, HB 281; G.S. 143B-262.6

Referrals to Agencies

Administrative Office of the Courts shall study the effectiveness of the Child Custody and Visitation Mediation Programs, the Court-Ordered Non-Binding Arbitration Programs, and the Dispute Mediation Programs. SL93-321, §200, SB 27.

Administration Office of the Courts and Department of Human Resources shall study the issue of secure custody facilities. SL93-561, §87, SB 26.

Referrals to Existing Commissions, Etc.

North Carolina Sentencing and Policy Advisory Commission to study restitution policy as a part of North Carolina's Criminal Justice System. SL93-535, HB 1035.

EDUCATION
(Robin Johnson, Mary D. Thompson, Jim Watts)

RATIFIED LEGISLATION

Leadership Initiatives

School Administrative Programs (HB 257; Chapter 199): The bill implements the recommendations of the Educational Leadership Task Force and the Joint Legislative Education Oversight Committee to improve the quality of preservice training for school administrators at the constituent University of North Carolina institutions. The legislation mandates that the Board of Governors develop and implement a competitive proposal process for those universities that wish to offer school administrative training programs. No more than seven school administrator programs shall be established under the selection process. The legislation specifies certain considerations in the selection process including: timelines for phasing out existing programs; review of laws and rules to identify necessary changes to facilitate the process; resource comparisons with other professional schools; and candidate recruitment. It also specifies that proposals shall reflect: professional standards; campus commitment of resources; high entrance standards; interdisciplinary and interprofessional approaches; collaboration with local units; and certain curriculum considerations, including clinical experience. The Board of Governors must report to the Joint Legislative Education Oversight Committee on program design and proposal process by December 1, 1993. The Board of Governors also must study the supply and demand of school administrators and report annually, no later than March 1, to the Joint Legislative Education Oversight Committee. The bill also establishes the Quality Candidate Committee convened by the Board of Governors to create admissions criteria for School Administrator Training Programs, and to assist local school units in developing procedures to hire the best qualified candidates. Both the State Board of Education and the Board of Governors shall provide informational reports to the Joint Legislative Education Oversight Committee on actions taken in response to the recommendations of the Quality Candidate Committee. The bill took effect upon ratification, June 23, 1993.

School Administration Standards Board (HB 284; Chapter 392): House Bill 284, recommended by the Educational Leadership Task Force and the Joint Legislative Education Oversight Committee, establishes the N.C. Standards Board for School Administration. After January 1, 1997, all persons who wish to be certified by the State Board of Education as public school superintendents or principals are required to become qualified by taking and passing an exam developed and administered by the Board. Administrators who are engaged in the practice of public school administration in the State's public schools or in schools operated by the United States government in North Carolina on and before January 1, 1997 are exempt from the Article, unless they apply for qualification. The Board is created within the Office of the Governor for administrative purposes only and is composed of two local superintendents, three principals, one dean of a school of education or a designee, and one public member, to be appointed by the Governor for staggered 3 year terms. Each member shall reside in a different congressional district. The Board shall: (1) Develop and implement a N.C. School Administrator Exam; (2) Establish an application fee not to exceed $50.00; (3) Establish an exam fee not to exceed $150.00; (4) Review qualifications of applicants; (5) Notify the State Board of the names of all who pass the exam; (6) Maintain budgets

and records in accordance with the law; and (7) Submit an annual report to the Education Oversight Committee. The bill was ratified July 19, 1993, and provisions of the act establishing the Board and its duties became effective on that date. Remaining provisions become effective January, 1, 1997.

GPAC/Education Continuum (HB 292; Chapter 393): One of the recommendations of the Government Performance Audit Committee, House Bill 292 adds a new Chapter 116C to the General Statutes, entitled "Continuum of Education Programs." This new Chapter creates an Education Cabinet, a nonvoting body made up of the Governor, who would be the chair, the President of The University of North Carolina, the Superintendent of Public Instruction, the President of the North Carolina Community College System, and invited representatives of private education, to resolve issues among existing education providers and to plan for a continuum of education programs. The act also creates a State Education Commission, made up of the Board of Governors of The University of North Carolina, the State Community College Board, and State Board of Education, to meet at the Governor's call and to be a forum for discussing issues and proposals the Cabinet is considering. House Bill 292 directs the Cabinet to develop a "strategic design" to (i) examine all programs delivered by the State to learners at all levels and (ii) compare existing structures, funding levels, and the responsibilities of each system. The Cabinet must report this plan to the Joint Legislative Education Oversight Committee by January 1, 1995. The bill took effect upon ratification, July 19, 1993.

Principal Fellows Program (SB 27, § 85; Chapter 321 § 85): Section 85 of Senate Bill 27, effective July 1, 1993, establishes scholarships at $20,000 per year for prospective principals and assistant principals. The scholarship recipients will devote a year in residence and a year in a practicum experience to earn a masters degree. Scholarship recipients are obligated to serve four years as a school administrator in North Carolina Public Schools. The section also establishes a Principal Fellows Commission that will be responsible for the awarding of scholarships, and, in conjunction with the State Education Assistance Authority, will be responsible for the administration of the program.

School Leadership Academy (SB 27, § 86; Chapter 321 § 86): Section 86 of the Current Operations Appropriations Act of 1993, effective July 1, 1993, establishes a joint committee of the State Board of Education and the Board of Governors of the University of North Carolina to study how to establish a School Leadership Academy and to report to the Joint Legislative Education Oversight Committee by March 1, 1994. In its planning, the Joint Committee will consider how to: (i) incorporate the Principal's Executive Program into the Academy, (ii) design a governing board for the Academy, (iii) ensure coordination between the Academy and initial training programs, (iv) ensure that at least one third of continuing education units be in Academy programs or in programs endorsed by the governing board, (v) coordinate geographically disperse professional development opportunities for school administrators, and (vi) project costs for resources for its recommendations.

GPAC/Review of Lateral Entry Process for School Administrators (SB 385; Chapter 166): Senate Bill 385 directs the State Board of Education to consider a lateral entry program for school administrators, and to report the results of this study to the Joint Legislative Education Oversight Committee by March 31, 1994. The bill took effect upon ratification, June 16, 1993.

School Administrator Job Protection (Tenure) (SB 386; Chapter 386): One of the recommendations of the Government Performance Audit Committee, Senate Bill 386 begins to phase out principal tenure in North Carolina. The legislation provides that individuals promoted or employed as administrators after July 1, 1995, shall not be eligible for career status (tenure) as an administrator. Those individuals retain tenure as teachers. Principals, assistant principals, supervisors and directors employed as school administrators after July 1, 1995, shall be eligible for a two to four year contract. During the period of the contract, the administrator is protected from dismissal under the terms of the Fair Employment and Dismissal Act. Termination at the end of the contract term can only be for cause. The bill also directs local superintendents to consider school and administrator performance when assigning principals. Effective July 1, 1993.

ELEMENTARY AND SECONDARY

School Safety Initiatives

Weapons at School (HB 1008; Chapter 558): A recommendation of the Governor's Task Force on School Violence, House Bill 1008 increases the penalty for carrying a firearm or powerful explosive on public or private, K-12 or college property, from a misdemeanor to a felony; creates a felony to cause, encourage or aid a minor under 18 to carry or possess a firearm or powerful explosive on educational property; creates a misdemeanor to cause, encourage or aid a minor under 18 to carry a switchblade knife or other non-firearm weapon on educational property; creates a misdemeanor to fail to store firearms in a reasonable manner and to fail to warn a person of this law upon the sale or transfer of a firearm. The act requires the storage of firearms to protect minors. It is a misdemeanor if a person (i) who resides with a minor, (ii) owns or possesses a firearm, (iii) stores or leaves the firearm in a condition in which it can be discharged, (iv) knew or should have known that an unsupervised minor could have gained access to firearm without permission of the minor's parent or a person having charge of the minor AND the minor (i) possesses the gun on educational property, (ii) exhibits it in a public place in a careless, angry manner, (iii) causes personal injury, or (iv) uses the gun in the commission of a crime. The act does not prohibit a person from carrying a firearm on his or her body or in close proximity to the body so that it can be used easily and quickly. It also does not apply if the minor obtained the firearm as a result of an unlawful entry by any person. The act becomes effective December 1, 1993, and applies to offenses or acts of delinquency committed on or after that date.

School Crime Reports Required (HB 1009; Chapter 327): A recommendation of the Governor's Task Force on School Violence, House Bill 1009 requires a school principal who "has a reasonable belief that an act has occurred on school property involving assault resulting in serious personal injury, sexual assault, sexual offense, rape, kidnapping, indecent liberties with a minor, assault involving the use of a weapon, possession of a firearm in violation of the law, possession of a weapon in violation of the law, or possession of a controlled substance in violation of the law," to report the act immediately to the appropriate local law enforcement agency. The act becomes effective December 1, 1993, and applies to acts committed on or after that date.

Juvenile Probation/School Protection (HB 1092; Chapter 369): A recommendation of the Governor's Task Force on School Violence, House Bill 1092 amends G.S. 7A-

649(8) by requiring, when a juvenile is charged with an offense that threatens the safety of others and is required to attend school as a condition of probation, the judge to make a finding of whether the principal of the school the juvenile is to attend should be notified of the adjudication of delinquency. If the judge makes such a finding, the juvenile counselor shall notify the school principal in accordance with rules established by the State Board of Education. The Administrative Office of the Courts shall report to the Education Oversight Committee by January 1, 1995, on the number of juveniles reported to principals as a result of the act. The act becomes effective October 1, 1993, is applicable to delinquent acts committed on or after that date, and expires October 1, 1995.

Safe Schools (SB 27, § 139; Chapter 321 § 139): Section 139 of the Current Operations Appropriations Act of 1993 allocates $2,500,000 for the 1993-94 fiscal year, and $2,500,000 for the 1994-95 fiscal year, to provide grants for local school units to design innovative local plans to make schools safe for students and school employees. The funds are to be used for grants between $50,000 and $100,000 per year to local school administrative units. Applications for the grants will include an assessment of local problems, a plan for addressing local problems, statement of plans for funds and a process for assessing success annually. This Section also amends G.S. 115C-12 by adding a new subdivision that requires (1) the State Board of Education to (i) monitor and compile an annual report on school violence and (ii) adopt standard definitions; and (2) local boards of education to report school violence in a standard format adopted by the State Board of Education. Finally, this Section adds a new subsection to G.S. 115C-81 to require the State Board of Education to develop lists of recommended conflict resolution and mediation materials and curriculum, and to make the lists available to local school units by the beginning of the 1994-95 school year.

Assaulting a Sports Official (SB 30; Chapter 286): See the summary under **CRIMINAL LAW**.

No Handguns Unless 18 (SB 793; Chapter 259): See the summary under **CRIMINAL LAW**.

Juveniles to maintain passing grades (SB 892; Chapter 462): A recommendation of the Governor's Task Force on School Violence, Senate Bill 892 allows a juvenile court judge to order that when a juvenile is ordered to attend school regularly as a condition of probation that "the juvenile maintain passing grades in up to four courses during each grading period and meet with the court counselor and a representative of the school to make a plan for how to maintain those passing grades." The act becomes effective October 1, 1993, and applies to orders of probation for adjudications of delinquency for acts committed on or after that date.

Safe Schools Partnership Act (SB 989; Chapter 509): Senate Bill 989 adds a new section to Article 3 of Chapter 95 (Labor Regulations) directing employers to grant four hours per year unpaid leave at a mutually agreed upon time to any employee who is a parent, guardian, or person standing in loco parentis of a school-aged child so that the employee may be involved in that child's school. Employers may require 48 hours notice and verification that the leave is spent attending or otherwise involved at the employee's child's school; however, employers are prohibited from taking an adverse employment action against an employee who requests or takes this leave, and employees may bring a civil action against an employer who violates the section. The bill also encourages schools, beginning with the 1994-95 school year and as part of their building-level plans, to include a parent involvement program and to review their

need for a comprehensive conflict resolution program, which may be based on the list of strategies developed by the State Board as required by Section 139 of the Current Operations Appropriations Act of 1993. Finally, the act directs local school boards to reevaluate and update their policies related to school safety, particularly those governing student conduct, so they reflect changes authorized by 1993 legislation. The bill become effective upon ratification, July 24, 1993, except that the section dealing with the parental leave becomes effective December 1, 1993, and applies to acts committed on or after that date.

General

Local Sales Tax For Schools (HB 136; Chapter 255): See **TAXATION**.

Extended School Services (HB 256; Chapter 132): House Bill 256 amends Article 16 of Chapter 115C by adding a new Part 7 - "Extended Services Programs." The new Part encourages local school units to implement extended services programs that expand students' opportunities for educational success through access to instructional programming during nonschool hours. The targeted student population are those students performing significantly below their age-level peers; however, these programs may be established for those students performing at or above grade level. The bill requires the State Board of Education to develop model plans which show how to deliver comprehensive extended services, effectively use fiscal resources and maintain program evaluation. These model plans are to be communicated to local units and building-level committees. The State Board is required to report on the plans no later than December 15, 1993, to the Joint Legislative Education Oversight Committee. The bill took effect upon ratification, June 8, 1993.

School Health Screening (HB 365; Chapter 124): House Bill 365 requires entering kindergartners to have completed a health screening upon entering school. The act decreases the grace period from approximately four months to 30 days for completion of the screening. If the required forms are not presented within the first 30 calendar days of the school year, the child will not be permitted to attend school without some other proof that the health assessment has been completed. The act applies to children entering kindergarten in the 1994-95 school year. Effective June 7, 1993.

Redefine School Fund Availability (HB 400; Chapter 179): House Bill 400 amends G.S. 115C-425(a) by requiring local school units to make calculations for fund balance available for appropriations the same as calculations for other local governments by including revenues arising from cash receipts. This act became effective June 30, 1993, and applies to budget resolutions adopted for fiscal years beginning with the 1993-94 fiscal year.

Vocational Education Technical Changes (HB 471; Chapter 180): House Bill 471 makes technical changes to Article 10 of Chapter 115C of the General Statutes to comply with federal law. The act also includes parents of students enrolled in vocational and technical education courses on advisory committees, and deletes G.S. 115C-156.1, which required specific State matching of federal funds. The bill becomes effective December 1, 1993.

Drug Education School Fees (HB 499; Chapter 395): House Bill 499 increases the fee from $100.00 to $150.00 for persons convicted of drug offenses and ordered to attend drug education schools.

Youth Services Teacher Certification (HB 514; Chapter 397): House Bill 514 repeals G.S. 126-6.1, which exempts the Division of Youth Services' Vocational teachers from the educational requirements of criminal justice certification. This act became effective August 1, 1993, and applies to teachers employed on or after that date.

Differentiated Pay (HB 581; Chapter 260): House Bill 581 provides that local school unit differentiated pay plans shall include all of the staff assigned to school buildings and all classes of staff assigned to the central office that the local boards determine are participants in the development or implementation of school improvement plans. All staff assigned to the school building shall vote on proposed differentiated pay plans and local boards shall develop a differentiated pay plan for any personnel in the central office involved in the development or implementation of local school improvement plans. The bill clarifies that State differentiated pay monies are to be used for State-funded employees. Differentiated pay monies may be combined to implement a differentiated pay plan at the building level only in so far as a pro rata share of dollars per employee is contributed from each salary source. The bill took effect upon ratification, July 1, 1993, and applies to all differentiated pay plans after July 1, 1994.

Facilitate Year-Round Schools (HB 616; Chapter 98): House Bill 616 amends G.S. 115C-302 and 115C-316 to allow local school units flexibility when establishing alternative employment calendars for local school personnel. The legislation also allows for school employees working in year-round schools equivalent annual leave, sick leave, workdays, holidays, salary and longevity to ten consecutive month employees. The bill was effective July 1, 1993.

Teacher Assistant Leave Flexibility (HB 639; Chapter 475): Effective August 1, 1993, House Bill 639 amends G.S. 115C-302(a)(1) and G.S. 115C-316(a)(3) to authorize local boards of education and principals or immediate supervisors to allow teacher assistants and other instructional personnel who do not require a substitute to take their vacation leave when students are in attendance. Instructional personnel who do require a substitute still have this leave restricted to days when students are not scheduled to be in regular attendance. The act became effective August 1, 1993.

Department of Public Education Deleted (HB 935; Chapter 522): House Bill 935 repeals laws that established the Department of Public Education, an agency created in the State Government Reorganization Act of 1971. The Department of Public Education included the State Board of Education, the Office of the State Superintendent, the Department of Public Instruction and the Department of Community Colleges. The act amends G.S. 143A-11 to place all executive and administrative powers, duties and functions, not including those of the General Assembly and the Judiciary, in the Department of Public Instruction instead of the Department of Public Education. Effective July 24, 1993.

Teaching Standards Progress Report (HB 938; Chapter 231): House Bill 938 requires the State Board of Education to (i) report to the Joint Legislative Education Oversight Committee and the General Assembly by the 1995 Session on the potential for North Carolina's participation in the National Board for Professional Teaching Standards program, and (ii) report a recommended plan for providing monetary incentives for teachers to participate in the program. The bill took effect upon ratification, June 28, 1993.

Local School Improvement Reports (HB 971; Chapter 142): House Bill 971 adds additional requirements to local school improvement reports that will be published

annually, beginning March 15, 1995. Modifications include: performance data disaggregated by race and by gender; progress on individual school qualitative goals; and a requirement that reports be sent to the Department of Public Instruction, and be made available to the public. The bill was effective upon ratification, June 9, 1993.

Encourage School Building Renovation (HB 1001; Chapter 416): House Bill 1001 encourages local school boards to consider the costs and feasibility of renovating old school buildings instead of replacing them, and prohibits local school units from investing any construction money in a new school building unless they submit to the State Superintendent an analysis comparing the costs and feasibility of constructing a new building and renovating the existing building under consideration for replacement. The act became effective July 1, 1993, and applies to all plans developed and submitted after July 1, 1993.

Low Wealth School Systems Formula (SB 27, § 138; Chapter 321 § 138): Section 138 of the Current Operations Appropriations Act of 1993 appropriates $18,000,000 to fund the newly devised formula for distribution of supplemental funds to low wealth school systems. The new formula computes county wealth as a percentage of State average wealth by considering county per capita income, county revenue and the county adjusted property tax base per square mile. The new formula maintains a minimum effort requirement but allows some percentage of funds to flow to counties that do not meet the minimum effort requirements.

Local School Improvement Plans (SB 27, § 144.2; Chapter 321 § 144.2): Section 144.2 of Senate Bill 27 amends the School Improvement and Accountability Act of 1989. Significant changes include the following: (1) the State Board must develop guidelines for school performance indicators including how to gauge community involvement, the professional development of teachers and the school climate; (2) local school improvement plans are to include a systemwide staff development plan; (3) parents on systemwide advisory committees and school-based committees are not to be school unit employees; (4) the allocation and disbursement of funds for differentiated pay shall be reported to all affected staff; (5) the allocation and disbursement of funds for staff development shall be reported to all affected staff; and (6) five additional members are added to the Site-Based Management Task Force.

Teacher Academy Plan/Task Force on Teacher Staff Development (SB 27, § 141; Chapter 321 § 141): Section 141 of the Current Operations Appropriations Act of 1993 creates a 20-member Task Force on Teacher Staff Development to develop a plan for a statewide network of high quality, integrated, comprehensive, collaborative, and sustained professional development for teachers in school committee leadership and the core content areas. The plan shall address: efficient and effective use of existing resources; plans for the professional development needs of teachers including site-based decision making, core content areas, instruction. and technology; effective use of the NC Center for the Advancement of Teaching; training schedules that minimize teacher time away from classrooms; use of technologies for professional development; effective use of the University of North Carolina constituent institutions; professional development that meets the needs of both individual schools and state initiatives; coordination among professional development service providers; needs assessment; and a proposal for the training of an initial cadre of teacher trainers to implement training beginning in the summer of 1994. The Section appropriates $300,000 for the work of the Task Force and the development of training modules.

Freshman Performance Reports Made Available to Parents of High School Students (SB 27, § 125; Chapter 321 § 120): Section 125 of Senate Bill 27 rewrites G.S. 115-12(18)c to require the State Board of Education to direct local boards of education to provide all information, except for confidential information, regarding freshman performance and other information received under G.S. 116-11(10a) to parents of children at that school and the public.

Allow Local Boards of Education to Establish Sick Leave Banks for Public School Employees (SB 27, § 72; Chapter 321 § 72): Section 72 of Senate Bill 27 requires the State Board of Education to adopt rules for the establishment by local school boards of voluntary sick leave banks, from which an employee may withdraw sick leave days in the event of an emergency or catastrophic illness. The Section also requires local school boards to report the use of sick leave banks to the Department of Public Instruction. This section takes effect January 1, 1994.

Allow Public School Employees and State Employees to Convert Excess Annual Leave Days to Sick Leave (SB 27, § 73; Chapter 321 § 73): Section 73 of the Current Operations Appropriations Act of 1993 allows public school employees with more than 30 days of accumulated annual leave on June 30th of each year to have the excess days transferred to sick leave. This section became effective June 30, 1993.

Central Office Staff Waivers (SB 110; Chapter 38): A recommendation of the Joint Legislative Education Oversight Committee, Senate Bill 110 amends G.S. 115C-238.3 to allow a local school board to request waivers of State laws and rules affecting central office staff only without obtaining the approval of each building in the system. (An example of this type of waiver is a request to transfer months of employment among central office staff.) As amended in 1992, the law stated that waivers "shall be granted only for the specific schools for which they are requested in building-level plans." Effective May 3, 1993.

Delete School Budget Report (SB 545; Chapter 57): Effective October 1, 1993, Senate Bill 545 deletes the requirement that local boards of education file their budget resolutions with the State Board of Education.

Activity Bus Inspection (SB 577; Chapter 114): Senate Bill 577 deletes the requirement that the State Board of Education inspect each activity bus owned by local school units. The bill took effect upon ratification, June 3, 1993.

Increase School Bus Speed to 45 mph (SB 578; Chapter 217): Senate Bill 578 increases the maximum school bus speed from 35 to 45 m.p.h. Effective December 1, 1993.

Teaching Fellows Loan Commitment (SB 630; Chapter 330): Senate Bill 630 allows Teaching Fellows who teach in a local school unit identified as low performing or on warning status to fulfill their commitment to the State by teaching for three consecutive years in the identified unit rather than the four years generally required to fulfill the commitment. Effective August 1, 1993, and applies to loan notes created or amended on or after that date.

Education Standards Commission (SB 878; Chapter 117, as amended by Chapter 321 § 39.3): Located administratively within the Office of the Governor, the purpose of the 25 member Commission is to develop education standards that specify the skills and knowledge that high school graduates should possess in order to be competitive in a

modern economy, and assessments to assure that high school graduates meet these standards. The Commission is to coordinate the end-of-course assessments with the standards, consider how the standards can serve the needs of exceptional children, recommend refinements to the Standard Course of Study and the Testing program and recommend how to compare NC students with other students. The Commission reports to the State Board of Education July 1, 1994, to make an initial report on the progress being made on the development of the standards. Final recommendations of standards and a system of assessments are expected to be presented to the State Board for approval prior to the 1994-95 school year. If the Board adopts the standards and system of assessments a timetable for implementation is outlined in the act. Also, Senate Bill 27 appropriates $500,000 to the Commission for each year of the biennium.

Teachers' Personnel Files (SB 884; Chapter 169): Senate Bill 884 allows local school superintendents to choose not to place in a teachers' personnel file letters of complaint that contain invalid, irrelevant, outdated or false information, or when there is no documentation of an attempt to resolve the issue. The bill took effect upon ratification, June 16, 1993.

Exceptional Children

Exceptional Children Study (HB 40; Chapter 61): One of the recommendations from the Commission on Children with Special Needs, House Bill 40 directs the Department of Public Instruction to: (1) study the need to improve and increase in-service materials, programs, and opportunities for regular classroom and exceptional children's teachers; (2) study the need for and develop a scholarship program for prospective exceptional children's teachers; (3) propose a plan to identify and evaluate what schools expect of exceptional children, with a particular focus on the types and severity of exceptionalities, special placements, end-of-course tests, the standard course of study, the School Improvement and Accountability Act of 1989, graduation requirements, and transition programs; and (4) identify the needs of small groups of exceptional children, such as the visually impaired, and evaluate whether resources to serve them can be centralized. The act directs the Department to make an interim report to the Commission on Children with Special Needs by January 15, 1994, and a final report by October 15, 1994. The bill took effect upon ratification, May 24, 1993.

Exceptional Children Funds (SB 27, § 134; Chapter 321 § 134): In the best year for exceptional children since 1987, the Current Operations Appropriations Act of 1993, effective July 1, 1993, appropriates more than $10,000,000 to be used by local units for these children. For the first time, the legislators projected an increase in the numbers of children and built in over $4,000,000 in the continuation budget. Section 134 of the act specifies the following dollar amounts in each of the following categories:

1. Gifted -- $641.26 per child for 3.9% of the unit's ADM.
2. Other Handicapped -- $1,923.79 per child. up to 12.5% of the unit's ADM.
3. Other Handicapped -- $418.76 per child in excess of 12.5% of the unit's ADM.

In addition, units will receive an additional increase in accordance with the legislative salary increments for personnel who serve these children. Section 134 also directs the State Board of Education to: (i) study the methods of identifying students as needing special education; (ii) develop and test funding formulas that take into account the severity of the exceptionality and the wealth of the local unit; and (iii) reexamine the State's laws, rules and policies concerning the identification and education of children

who are academically gifted. The results from these studies must be reported to the General Assembly by March 15, 1994.

MHDDSAS Early Intervention (SB 544; Chapter 487): Senate Bill 544 amends G.S. 143B-179.5 by (1) changing the name of the "Interagency Coordinating Council for Handicapped Children from Birth to Five Years of Age" to the "Interagency Coordinating Council for Children from Birth to Five with Disabilities and their Families"; (2) effective July 1, 1994, requiring the Governor to appoint members of the Council for staggered terms of two years; and (3) changing the composition of the Council and the designation of the chair. Senate Bill 544 also amends G.S. 122C-112(a) to require the Secretary of Human Resources to ensure, in cooperation with appropriate agencies, that all types of early intervention services specified in the federal Individuals with Disabilities Education Act are available to all eligible infants and toddlers and their families to the extent funded by the General Assembly. Also, the bill amends G.S. 122C-146 to provide that area mental health authorities may not charge individuals, and may not bill insurers or third-party payors without the individual's permission, for free services as required by the federal law regarding education of infants and toddlers with disabilities. The act became effective upon ratification, July 23, 1993.

Special Education Commission Change (SB 546; Chapter 58): Senate Bill 546 adds the Superintendent of Public Instruction or the Superintendent's designee to the Commission on Children with Special Needs. The bill took effect upon ratification, May 20, 1993.

Special Education Civil Action (SB 559; Chapter 270): In order to resolve a conflict between State and federal special education law concerning the procedure for filing a civil action, Senate Bill 559 amends G.S. 115C-116(k) to provide that an action appealing the decision of a review officer under the special education statutes is to be instituted in State court within 30 days after receipt of the notice of the decision and in federal court under the procedures established in 20 U.S.C. § 1415. The act took effect upon ratification, July 5, 1993, and applies to actions filed on or after that date.

Exceptional Child Graduation Requirements (SB 863; Chapter 359): Senate Bill 863 amends G.S. 115C-81(b) to direct the State Board of Education to consider children with special needs and to include appropriate modifications when it sets standards for student performance and promotion, including standards for graduation, as part of its implementation of the Basic Education Program. The bill also directs the newly created North Carolina Standards and Accountability Commission, in consultation with experts, to study graduation standards for children with special needs and to include its findings and any recommendations in its first report to the State Board of Education by July 1, 1994. Also, in response to parents' concerns over a State Board of Education rule, effective with the 1992-93 freshman class, which requires passing grades in Algebra I, World Studies, and Biology as prerequisites for receiving a high school diploma, this act suspends the effective date of the Algebra I graduation requirement for children who are identified as learning disabled on the April, 1993, headcount of exceptional children and whose IEPs state that their learning disabilities require course substitutions or other modifications in mathematics. Upon its receipt of the report by the N.C. Standards and Accountability Commission, Senate Bill 863 directs the State Board to reevaluate its Algebra I graduation rule and to establish any modifications to this rule by October 15, 1994. After the Board's reevaluation is completed, it may set a new effective date for the rule. Finally, the Board must report to the Commission on

Children with Special Needs and the Joint Legislative Education Oversight Committee by January 1, 1995. The act took effect upon ratification, July 16, 1993.

HIGHER EDUCATION

Universities

Study Cytotech Salaries (HB 106; Chapter 427): See the summary under **STATE GOVERNMENT**. Also, Section 101.4 of the Current Appropriations Act of 1993, effective July 1, 1993, provides that students in programs leading to employment in the field of cytotechnology may apply for scholarship loans under the Health, Science, and Mathematics Student Loan Program.

NCCU Retain Property Sale Money (HB 401; Chapter 430): House Bill 401 authorizes The University of North Carolina to retain the net proceeds from the sale of the former residence of the Chancellor of North Carolina Central University. The act took effect upon ratification, July 22, 1993.

Teacher Scholarship Loan Changes (HB 494; Chapter 260): House Bill 494 amends G.S. 115C-468 and 115C-471 to permit the Superintendent of Public Instruction to earmark up to 20% of the available funds under the Scholarship Loan Fund for Prospective Teachers for awards of scholarship loans of up to $1,200 per academic year to persons who currently are employed as teacher assistants and who have been so employed for at least one year. (High school seniors who are awarded these loans are eligible to receive a maximum of $2,000 per academic year.) Preference is to be given to applicants who already hold a baccalaureate degree or who have already been formally admitted to an approved teacher education program in North Carolina. The act also amends G.S. 115C-471(7) by adding a requirement that the Superintendent of Public Instruction, in awarding all scholarship loans, consider, along with other listed factors, the need of particular geographic areas for teachers. The act became effective July 1, 1993.

Education, Clean Water, and Parks Bond Act of 1993 (SB 14; Chapter 542): See **TAXATION**.

Freshmen Scholars Program (SB 27, § 46; Chapter 561 § 46): Section 46 of the Capital Improvements Appropriations Act of 1993, effective July 1, 1993, directs the Board of Governors of The University of North Carolina to allocate $200,000 each to Fayetteville State University, North Carolina Agricultural and Technical State University, North Carolina Central University, Pembroke State University, and Winston-Salem State University for a pilot Freshmen Scholars Program to guarantee tuition, fees and books for the freshman year in order to recruit new students who otherwise may not be able to enroll without this incentive. Students will be required to meet standards, which must include minimum admissions standards, minimum grade points, required coursework, and behavioral guidelines, set by each campus. The institutions must establish their standards for student eligibility by September 30, 1993, recruit from regional high schools, and report to the General Assembly by February 1, 1995. The Board of Governors shall evaluate the success of this program in recruiting students who otherwise would not enroll at an institution of higher education and report to the Joint Legislative Education Oversight Committee by May 15, 1996.

UNC Graduation Rates/Undergraduate Education (SB 27, § 89; Chapter 321 § 89): Section 89 of the Current Operations Appropriations Act of 1993, effective July 1, 1993, directs the Board of Governors of the University of North Carolina to: (1) require constituent institutions, by December 1997, to set a goal of increasing the average number of credit hours per term taken by full-time undergraduate students to 15 hours, and to report annually by April 1 to the Joint Legislative Education Oversight Committee on the progress in meeting this goal; (2) establish procedures to impose a 25% tuition surcharge on students who take more than 140 degree credit hours (except for those earned through Advanced Placement, CLEP, summer school, or extension programs) to complete a baccalaureate degree in any officially-designated five-year program, and to report to the Joint Legislative Education Oversight Committee by April 1, 1994; (3) allocate $250,000 from overhead receipts each fiscal year of this biennium to establish faculty awards for excellent teaching, emphasizing campuses that do not have such a recognition system; (4) use specified funds allocated to the Distinguished Professors Endowment Trust for only the establishment of endowed chairs that recognize excellence in undergraduate teaching as the primary criterion for selection; and (5) prohibit funds for increases in enrollment to be used to increase overall time available for teaching faculty to perform research or service activities, and to report to the Joint Legislative Education Oversight Committee on the impact of these funds on faculty teaching workloads at each institution by May 1, 1994. This Section also directs the State Education Assistance Authority to determine (i) the number of cumulative academic terms for which students receive Legislative Tuition Grants and (ii) each private institution's requirements for satisfactory academic progress towards a degree.

UNC Educational Consortia (SB 27, § 101.2; Chapter 321 § 101.2, as amended by Chapter 561 §§ 42 & 44): The Current Operations Appropriations Act of 1993, as amended by Section 44 of Chapter 561, directs the Board of Governors of The University of North Carolina to establish four new cooperative educational consortia at Appalachian State University, East Carolina University, North Carolina Central University, and the University of North Carolina at Charlotte to link elementary and secondary education, higher education, and leadership in the business community to improve education practices and enhance economic development. Section 43 of Chapter 561 also makes a one-time appropriation of $150,000 for the establishment of a new cooperative educational consortia at the University of North Carolina at Chapel Hill. Each of these five institutions must report to the Joint Legislative Education Oversight Committee by May 15, 1994, with copies of the report to the Fiscal Research Division of the Legislative Services Office. The acts became effective July 1, 1993.

Delete UNC Vending Report (SB 219; Chapter 406): Senate Bill 219 amends G.S. 116-36.4 to (i) delete the requirement that the Board of Governors of The University of North Carolina report on vending operations to the Joint Legislative Commission on Governmental Operations, and (ii) direct the Board of Governors to review an annual report from the UNC Hospitals, a copy of which must be provided to the Fiscal Research Division of the Legislative Services Office. The act became effective August 1, 1993.

GPAC/UNC Board of Governors Review/Plan (SB 393; Chapter 407): Senate Bill 393, one of the recommendations of the Government Performance Audit Committee, directs the UNC Board of Governors to review, by December 31, 1995, all academic programs, research activities, extension activities, public service activities, and administration and support functions that are of low productivity or low priority, or are unnecessarily redundant, and to report to the General Assembly and the Joint Education

Oversight Committee by February 1, 1996. The report must include plans for program improvement, elimination, consolidation, or other modification, and for proposed reallocations of savings. Senate Bill 393 also amends G.S. 116-11(3) to require the Board to review the productivity of programs every two years. Third, the bill directs the Board to develop a plan to expand the availability of higher education for all citizens by using (1) video and audio distance learning technology, (2) graduate centers to avoid program duplication, (3) the potential for expanded funding of extension instruction; and (4) cooperative programs with the Community College System and the public school system. The Board must present its schedule for development and submission of this plan to the General Assembly by February 1994. The bill took effect upon ratification, July 20, 1993.

Community Colleges

Clarify Community College Staff Status (HB 558; Chapter 145): Effective upon ratification, June 10, 1993, House Bill 558 clarifies G.S. 126-5(c2) to provide that the President of the North Carolina System of Community Colleges and the President's professional staff whose salaries are set by the State Board of Community Colleges are exempt from the State Personnel System (Chapter 126).

Community College Trustee Regions (HB 559; Chapter 69): House Bill 559 modifies the six Trustee Association Regions for the Community College System by amending G.S. 115D-62 to move Cabarrus from Region 4 to Region 2, Chatham from Region 3 to Region 4, Davie from Region 2 to Region 3, and Madison from Region 2 to Region 1. The bill also amends G.S. 115D-2.1(f) to allow ex officio members of the State Board of Community Colleges to be elected chair or any other officer of the Board. The act was effective upon ratification, May 24, 1993.

Education, Clean Water, and Parks Bond Act of 1993 (SB 14; Chapter 542): See TAXATION.

Certain Refugees State Residents for Community College Tuition Purposes, Continued (SB 26, § 50; Chapter 561 § 50): Section 50 of the Capital Improvements Appropriations Act of 1993, effective June 30, 1993, makes permanent the provision in G.S. 115D-39 that allows refugees who lawfully enter the United States and who live in this State to qualify as a State resident for community college tuition purposes. This particular provision was added in 1992 and would have expired June 30, 1993.

Course Repetition Policy (SB 27, § 102; Chapter 321 § 102): Section 102 of the Current Appropriations Act of 1993, effective July 1, 1993, provides that no full-time equivalent students (FTEs) shall be generated for occupational extension students after the first repetition of an occupational extension class, unless a community college determines that this repetition is required by the program in which the student is enrolled. All other students who take an occupational extension course more than twice must pay the full amount of the per student cost for the class, and the community college will not earn budget FTEs for them. The Section also directs the State Board of Community Colleges to study these courses to ensure they are properly classified as occupational extension courses, rather than as community services courses.

Prison Education (SB 27, § 105; Chapter 321 § 105): This Section, effective July 1, 1993, directs Correction education programs to report full-time equivalent student hours on the basis of contact hours rather than student membership hours and directs

the State Board of Community Colleges to develop a plan for the delivery of appropriate education in correctional facilities. The State Board must report its plan to the General Assembly by May 1, 1994.

Huskins Program (SB 27, § 106; Chapter 321 § 106): Section 106 of the Current Operations Appropriations Act of 1993, effective July 1, 1993, directs the State Board of Community Colleges to: (1) ensure that all courses offered to high school students under Huskins Bill programs are limited to college level courses that are unavailable or that could not be offered by local high schools; (2) study all courses offered through each community college's Huskins Bill programs; (3) and report its findings to the General Assembly by May 1, 1994. The Section also directs local education agencies and the State Board of Education to cooperate by providing necessary information.

Remediation Measures (SB 27, § 108; Chapter 321 § 108): Section 108 of Senate Bill 27 requires the State Board of Community Colleges to study the tests used to place students in developmental courses and to report to the General Assembly by May 1, 1994. This Section became effective July 1, 1993.

Community College Accountability Measures (SB 27, § 109; Chapter 321 § 109): Effective July 1, 1993, Section 109 of Senate Bill 27 directs the State Board of Community Colleges to: (1) establish institutional performance standards; (2) study models for measuring institutional effectiveness; (3) require community colleges to provide specific information and to use similar models in providing accountability information to the State Board; (4) require colleges to investigate the reasons for students' early withdrawals from programs; and (5) report to the General Assembly by May 1, 1994.

GPAC/Community Colleges (SB 27, § 117; Chapter 321 § 117): Section 117 of the Current Operations Appropriations Act of 1993 is based on one of the recommendations of the Government Performance Audit Committee. The Section requires the State Board of Community Colleges to develop a tuition and fee policy consistent with law that limits tuition and required fees to a specific percentage of less than one-fifth of the per capita student funding for resident students attending community colleges and to present this plan to the General Assembly by April 1, 1994. The Section also amends G.S. 115D-5(a) to specify that the Board's power to establish and regulate student tuition and fees must be carried out within policies for tuition and fees established by the General Assembly. This section took effect July 1, 1993.

Community College System Funding Goal (SB 27, § 118; Chapter 321 § 118): Based on one of the recommendations of the Government Performance Audit Committee, Section 118 of the Current Operations Appropriations Act of 1993 states that the goal of the General Assembly is to increase per student funding to a level comparable to national averages for similar institutions as soon as fiscal conditions permit. The Section took effect July 1, 1993.

Community College Study (SB 27, § 119; Chapter 321 § 119): Section 119 of Senate Bill 27 directs the State Board of Community Colleges and the Monitoring Committee of the Commission on the Future of the North Carolina Community College System to conduct a comprehensive review of the mission of the Community College System in order to ensure that it is well-prepared to meet future educational and economic needs. The State Board and the Monitoring Committee shall (i) examine the mission and structure of the System based upon a regional review of program needs, (ii) assess how the System can most effectively meet current and future needs of business and industry

and the adult population of the State, (iii) develop a regional program structure based on enumerated criteria, (iv) establish guidelines for multicampus colleges and off-campus centers (no new colleges or satellites could be established until the State Board of Community Colleges adopts these guidelines), (v) develop a program-based funding system, (vi) establish program review standards, (vii) develop an articulation policy, (viii) design world-class model Programs for Excellence in each curriculum area, and (ix) study any other issue it considers appropriate. This Section directs the State Board to report to the Joint Legislative Education Oversight Committee by April 15, 1994 and by January 15, 1995. Thereafter, the Board must report annually until the Monitoring Committee terminates, at which time the Board must file a final report. This Section became effective July 1, 1993, and remains in effect until terminated by the General Assembly.

Community College Scholarships (SB 27, § 120; Chapter 321 § 120): Section 120 of the Current Operations Appropriations Act of 1993 directs the State Board of Community Colleges to : (1) develop a plan to establish a Community College System Challenge Grant Scholarship Fund to benefit students with demonstrated financial need in the North Carolina Community College System; (2) report the plan to the 1994 Session of the General Assembly; and (3) administer the Fund. The Section was effective upon ratification, July 9, 1993.

Proration of FTE Reimbursements/Minimum Class Size Study (SB 27, § 124; Chapter 321 § 124): Effective July 1, 1993, Section 124 of the Current Operations Appropriations Act of 1993 requires the State Board of Community Colleges to: (1) develop a plan for the proration of FTE reimbursements between two community colleges when they operate a joint program or when one operates a program on the other's campus; (2) study the issue of minimum class sizes for community college classes; and (3) report to the General Assembly by May 1, 1994.

RESOLUTIONS

Governor's Appointments to the State Board of Education - Joint Session (HJR 1247, Resolution 14): Allowed the Speaker and the President Pro Tempore to call a joint session to consider action on the Governor's appointments to the State Board of Education.

Governor's Appointments to the State Board of Education (HJR 1248, Resolution 15): Confirmed the appointments of Eddie Davis, Robert R. Douglas and Margaret B. Harvey to the State Board of Education.

Community College Board Members Election (HJR 1209, Resolution 13): Set the date of the election of the members to the State Board of Community Colleges on May 27, 1993.

PENDING LEGISLATION

Strengthening Family Resources (HB 10; SB 12): Recommended by the LRC's Study Committee on Students at Risk, these bills would establish a Family Resources Grant Program to provide grants (i) to establish family resource centers at or near schools with at least 25% of their population eligible for free lunch and (ii) to initiate or

develop innovative models for effective, comprehensive, and collaborative service delivery to students at risk of not attaining academic and social success.

Warrantless Arrest/School Grounds (HB 448): House Bill 448 would amend G.S. 15A-401 to allow the warrantless arrest of any person the officer has probable cause to believe has committed a misdemeanor creating a risk of violence on school grounds or on a school bus.

Governance (SB 28): The third edition of the bill received by the House from the Senate would have changed the appointed membership of the State Board from eleven members appointed by the Governor to nine members appointed by the Governor and eight members appointed by the General Assembly, eliminated the Superintendent as an elected official, and, instead, would have made the Superintendent an appointee of the State Board. Terms of State Board members would be reduced from eight to four years.

A proposed House committee substitute, would make the State Board of Education an advisory board and vest in the Superintendent of Public Instruction the power and duty to administer the free public school system. The Committee Substitute provides that members of the State Board be appointed from each of the congressional districts for terms of four years.

K-12 Residence Clarification (HB 49): Is a recommendation of the Joint Legislative Education Oversight Committee based on its study of whether to require out-of-state students to pay the full cost of their education. The study found that there were several groups of "out-of-state" students including those residing in the State with a nonlegal guardian, those actually residing in a border state, students whose parents are federal employees, including military employees, and migrant children.

House Bill 49 would clarify who shall be entitled to attend North Carolina public schools free of charge and who may attend only in the discretion of the local boards of education, and subject to tuition fees. The bill does not change current law concerning interdistrict transfer within North Carolina. The bill would strengthen language concerning compliance with athletic eligibility rules and clarify that a domiciliary of a school unit who is not the legal guardian of a child may only enroll a child who has no domicile in the State if the domiciliary assumes responsibility for the child and accepts the possibility of liability should the child damage school property.

Current law provides that persons domiciled in a North Carolina school unit may attend school in that unit free of local tuition charges. The following groups are excepted from the domicile rule: children in foster homes, homeless children, children living on federal military installations which trigger federal impact aid to the local unit, and children of the employees and students of colleges, universities, and the National Humanities Center. Local boards may admit anyone else, and may charge up to the amount of the local supplement. The State pays the State portion for any child admitted by a local unit.

The bill adds four new exceptions to the domicile rule to qualify children for a tuition-free education:

"(c) The following persons under the age of 21 years who actually live in a school administrative unit for reasons other than to attend school or to participate in school athletics, and who have neither been removed from school for cause, nor obtained a high school diploma, shall be entitled to attend public schools on the same basis as children who are domiciled in this State:"

1. Institutionalized and foster children; (current law)
2. Children of students and employees of colleges, universities or the National Humanities Center; (current law)

3. Children residing on Indian lands; (new, conforms to practice)
4. Children of migrant workers; (new, varied practice throughout state on admission of these children)
5. Children actually living with a non-legal guardian who provides substantial support, is willing to be responsible for education decisions, and accept the possibility of liability for damages caused by the child to school property. Children in this category have no domicile in the State and are required to provide a local board an education power of attorney or an affidavit stating who is responsible for the child. (new)

The bill rewrites G.S. 115C-366.1 concerning who may be admitted to North Carolina schools in the discretion of the local unit. Local boards may admit and may charge tuition to:

1. Nondomiciliaries of the State who are not otherwise exempt from the domicile rule. Both the State and local portion may be charged. These persons shall not be included in the average daily membership of the local unit for the purpose of allocating State funds. Provided: persons who live in a household in a state bordering North Carolina in which at least fifty-one percent of the gross household income is derived from a North Carolina business, trade, profession, or occupation may be admitted by the local board of education, and, if admitted, shall be included in the average daily membership of the local unit for the purpose of allocating State funds.

2. Persons of school age who are domiciliaries of the State but who do not reside within the unit. The tuition charge for these students shall not exceed the amount of per pupil local funding.

The bill would clarify that students whose attendance in a district results in federal impact aid to the district may be admitted, and if admitted shall not be charged tuition.

The bill would add a new Article to Chapter 32A which creates an **Education Power of Attorney**, the form to be used by the legal guardian of the student to designate a North Carolina domiciliary as the education agent for the student for purposes of enrolling the student in school.

School Expulsion Modified (SB 880): Current law only allows expulsion for "students fourteen years of age or older who have been convicted of a felony and whose continued presence in school constitutes a clear threat to the safety and health of other students or employees." The law implies that expulsion may be a permanent exclusion from school as there is no right to apply for readmission. Current law does not provide for assistance to the student at an expulsion hearing.

The bill in its fifth edition (i) removes the felony requirement for expulsion and would allow students 14 years of age or older to be expelled from school when a student's intentional acts are a clear threat to the safety of others at the school, (ii) enumerates certain due process rights concerning notice and representation at the expulsion hearing, and (iii) provides that the student may request a reconsideration of the expulsion decision and that the student shall be readmitted if the student can demonstrate that he or she no longer constitutes a clear threat to the safety of others at the school.

Increase Flexibility/School Funds (SB 882): Senate Bill 882 proposes to provide greater fiscal flexibility to local school boards through consolidation of allotments, granting authority to enter into interlocal cooperative agreements and also to contract for certain services with private business.

Teaching Standards Board Created (SB 883): The legislation would create the North Carolina Teaching Standards Board, which would be located administratively under the Department of Public Instruction, but exercise powers and duties independently of the

State Board of Education and the Department of Public Instruction. The new board is charged to develop a plan for the board to set standards and fees for licensure, monitor issuance of licenses and professional practices and approve reciprocal licensure agreements with other states.

STUDIES

House Bill 1319

The 1993 Studies Bill (HB 1319) was passed by both houses but was not ratified before adjournment of the 1993 Regular Session. It should be signed into law at the beginning of the 1994 Short Session. Legislative Research Commission Studies relating to the topic of Education include: (1) Education Support Services; (2) Literacy; (3) East Carolina University School of Medicine's Potential Scope and Focus for the Next Decade; (4) UNC Board of Governors Appointment Process; (5) Physical Fitness Among Youth; (6) Alternative Schools; (7) Minority Males; (8) Wastewater Discharge Requirements at Public Schools; (9) Need to Establish a College of Chiropractic in North Carolina; (10) Historic Preservation Crafts Training in North Carolina. On September 13, 1993, the LRC referred (1) to the Joint Legislative Education Oversight Committee; referred (2) to the Governor's Commission on Workforce Preparedness; referred (3) to the UNC Board of Governors; authorized the study of (4),(5),(6),and (7); referred (8) to the Environmental Review Commission; referred (10) to the Cultural Resources Committee; and declined to authorize the study of (9).

Other relevant studies contained in HB 1319 include: (1) the study of educational neglect to be conducted by the Joint Legislative Education Oversight Committee; (2) the study of a proposal for a North Carolina Institute of Gerontology to be conducted by the Board of Governors of the University of North Carolina; (3) the study of all Marine Sciences Programs to be conducted by the Board of Governors of the University of North Carolina; (4) the study of constituent status of School of Science and Mathematics to be conducted by the Board of Governors of the University of North Carolina.

Independent Studies, Boards, Etc., Created or Continued

Commission on School Technology within Department of Public Instruction. SL93-321, §135, SB 27; G.S. 115C-102.5.

Joint Legislative Oversight Committee on Early Childhood Education and Development Initiatives. SL93-321, §259, SB 27; SL93-561, §15, SB 26; G.S. 120-70.90.

Education Cabinet within the Office of Governor. SL93-393, HB 292; G.S. 116C-1.

Legislative Study Commission on Community College Capital Needs. SL93-542, §11, SB 14.

Legislative Study Commission on Status of Education at the University of North Carolina. SL93-321, §101.5, SB 27.

North Carolina Education Standards and Accountability Commission. SL93-117, §1, SB 878; SL93-321, §39.3, SB 27; SL93-359, §2, SB 863; G.S. 115C-105.4(a) (See Part IV. Referrals, also.).

North Carolina Standards Board for Public School Administration. SL93-392, HB 284; G.S. 115C-290.4.

Principal Fellows Program. SL-321, §85, SB 27.

State Education Commission. SL93-393, HB 292; G.S. 116C-2.

Task Force on Teacher Staff Development within DPI. SL93-321, §141, SB 27.

Referrals to Agencies

Department of Public Instruction to study the education and delivery of services to exceptional children. SL93-61, HB 40.

Governor's Commission on Work Force Preparedness to study the efficacy of volunteer based community literacy programs and need for establishing State-funded grant program to fund such organizations. SL93-526, §1, HB 1131.

NCSU, North Carolina Agricultural Research Service (NCARS) of the College of Agriculture and Life Sciences, to study swine farm odor abatement. SL93-561, §45, SB 26.

State Board of Community Colleges shall study the mission of the Community College System. SL93-321, §119, SB 27.

State Board of Education to study CPR and Heimlich maneuver instruction. SL93-561, §55, SB 26.

State Board of Education to conduct independent evaluation to study the impact of Charlotte-Mecklenburg school funding pilot project on student performance (clarification of previous study). SL93-103, SB 123.

State Board of Education to study lateral entry process for school administrators. SL93-166, §1, SB 385; G.S. 115C-296(c).

UNC Board of Governors to review academic degree programs and research and public service activities. SL93-407, §2 and 3, SB 393.

UNC Board of Governors to convene Quality Candidate Committee. SL93-199, §5, HB 257.

UNC Board of Governors to study how to establish a School Leadership Academy. SL93-321, §86, SB 27.

UNC School of Public Health at Chapel Hill to study childhood hunger in North Carolina. SL93-321,§94, SB 27.

Referrals to Existing Commissions, Etc.

Joint Legislative Education Oversight Committee may study noncertified school employees. SL93-561, §57, SB 26.

North Carolina Education Standards and Accountability Commission shall study graduation standards for children with special needs. SL93-359, §2, SB 863.

EMPLOYMENT
(Bill Gilkeson, Sandra Timmons)

RATIFIED LEGISLATION

Employment-Agency Regulation

Private Personnel Service/Reimburse (HB 533; Chapter 202): House Bill 533 gives an employment agency an additional option when it places a client in a job that pays by commission. The bill allows the employment agency to agree to directly reimburse its fee to the client if the client cannot earn enough commissions and the Commissioner of Labor determines that the compensation advertised for the job was so unrealistic that the client is due a fee reimbursement under State law. Before the bill, the law looked solely to the employer with whom the client was placed to reimburse the client for the employment agency's fee. Before the bill, an employment agency was allowed to place a client in a commission-paying job only if the prospective employer was willing to provide a written job order committing itself to cover the agency's fee if the Commissioner ruled that the fee must be paid. Many commission-paying employers reportedly declined to provide such written job orders, so employment agencies found their placements into commission-paying jobs were drying up. To address the agencies' concerns, the Department proposed the bill. The bill was made effective when it was ratified, June 23, 1993.

Job Listing Service Bond (SB 657; Chapter 172): Senate Bill 657 raises from $10,000 to $25,000 the bond that job-listing services must put up to do business. For employment agencies, the bond amount is left at $10,000. Job-listing services differ from employment agencies in that job-listing services provide a list of jobs available, but do not attempt to place a client with an employer. The bill was made effective October 1, 1993.

Employment Security

Unemployment Insurance Tax Cut (HB 920; Chapter 85): House Bill 920 provides employers who have a credit balance in their unemployment insurance tax account with a 30% reduction in their contribution rate for the remainder of the 1993 calendar year. It also provides these employers with a 30% reduction in their contribution rate for any calendar year in which the balance in the Unemployment Insurance Fund equals or exceeds $800,000,000 as of the preceding August 1. The bill would reportedly benefit about 80% of N.C. employers. The contributions (or taxes) paid by employers go into the Unemployment Insurance Fund. After certain deductions, the money is deposited with the U.S. Treasury Department to the credit of this State's account in the Unemployment Trust Fund. As the money is needed to pay benefits, it is transferred to the State and credited to the benefits account of the State's Unemployment Insurance Fund to be used to pay benefits. The bill was made effective when it was ratified, May 26, 1993, and applies to quarters beginning on or after April 1, 1993.

Employment Security Technical Changes (SB 802; Chapter 343): Senate Bill 802 makes several changes to the Employment Security Laws concerning disqualifications from receiving unemployment benefits:

* limiting to five weeks the disqualification a person receives if that person leaves a job to relocate with a spouse. Before, the Employment Security Commission had discretion in the matter and set the disqualification at eight weeks.
* disqualifying a laid-off person who was recalled from the layoff within four weeks after the layoff and refused to go back to work.

Among other changes, the bill allows part-time appeals referees to practice law privately on the side, gives the employer two additional days to protest a claim, and lets anyone (not just parties to the case) obtain records of ESC hearings. The bill was made effective when it was ratified, July 14, 1993.

ESC Conforming Changes (SB 811; Chapter 122): Senate Bill 811 repeals the requirement that any Social Security benefits a person receives be deducted from that person's unemployment benefits. A new federal law permits States to repeal such setoffs. The bill also extends to January 1, 1995 the exemption from unemployment insurance taxes wages paid to alien agricultural workers. The bill was made effective when it was ratified, June 7, 1993.

Local Government

Local Government Employee Politicking (HB 818; Chapter 298): House Bill 818 makes clear that city and county governments may not restrict the off-duty political activities of local government employees. It eliminates the previous authority of local governments to adopt and enforce personnel policies not in conflict with federal or state law. The act becomes effective October 1, 1993.

Water Authority Personnel Records (SB 611; Chapter 505): Senate Bill 611 extends the same confidentiality for personnel records of employees with water and sewer authorities as is currently provided for other units of local government. The bill specifies what personal information is a matter of public record, outlines the instances in which an employee's personnel file may be open to inspection, and states what information need not be disclosed to anyone. Willful infractions are classified as misdemeanors with designated penalties of not more than $500. The act becomes effective on October 1, 1993.

Occupational Safety and Health

Health and Safety Training (HB 186; Chapter 170): House Bill 186 requires that all publicly funded job training programs include training in worker safety and health standards and practices. The bill was made effective October 1, 1993.

OSHA Review Board Decisions (HB 187; Chapter 474): House Bill 187 requires OSHA hearing examiners and the OSHA Review Board to state the reasons for their rulings, and requires uniform standards for determining penalties. The bill was made effective when it was ratified, July 23, 1993.

OSHA Record Protection (HB 504; Chapter 317): House Bill 504 exempts from the Public Records Act documents about pending OSHA investigations and enforcement proceedings. The bill directs the Commissioner of Labor, within certain limits, to protect the identity of witnesses and complainants in OSHA cases. The bill was made effective when it was ratified, July 9, 1993.

OSHA Appeal Changes (HB 1047; Chapter 300): House Bill 1047 removes appeals by agricultural employers from OSHA citations from the contested-case provisions of the Administrative Procedure Act (Chapter 150B) and puts them under the separate rules governing other OSHA appeals (Article 16 of Chapter 95). The bill also builds into the standard OSHA appeal procedure an informal conference before the employer's deadline for contesting the citation. The bill was made effective October 1, 1993.

Occupational Health/Reporting (SB 533; Chapter 486): Senate Bill 533 directs The Commission for Health Services to establish a statewide reporting system for occupational diseases, illnesses, and injuries. Senate Bill 533 becomes effective January 1, 1994.

State Government

Disaster Leave Law (HB 87; Chapter 13): House Bill 87 creates the Disaster Service Volunteer Leave Act. It allows State employees who are certified disaster volunteers of the American Red Cross to receive leave with pay for not more than 15 work days during any 12-month period. In order for leave to be granted, the bill specifies that the disaster must have occurred within the State of North Carolina and the American Red Cross must request the services of the employee. The final decision to grant the leave time remains at the discretion of the employing State agency based on that agency's work needs. The act was effective upon ratification, April 1, 1993.

State FICA Savings Use Extension (SB 26; Chapter 561): Section 42 of Senate Bill 26, the 1993-1995 Capital Budget, extends to December 31, 1994, the sunset on the provision which allows the Director of the Budget to pay program administrative expenses, with the savings resulting from a reduction in the employer's share of contributions of FICA taxes.

Restoration of the June 30 Paydate (SB 27; Chapter 321): Section 21.1 of Senate Bill 27, the Current Operations Budget, authorizes the funds to restore the June 30 payday for State employees, University employees, and Community College employees. Employees are to be paid on June 30, 1994, instead of July 1, 1994 for work done during the month of June.

Most State Employees/Salary Increases 1993-94 (SB 27; Chapter 321): Section 63 of Senate Bill 27, the Current Operations Act, increases salaries for all permanent full-time employees subject to the State Personnel Act by two percent for fiscal year 1992-93.

Set a Wage Floor for the Lowest Paid State Employees (SB 27; Chapter 321): Section 68 of Senate Bill 27, the Current Operations Act, establishes $12,877, $12,977, and $13,079 as the minimum annual salary rate for employees at Salary Grades 50, 51 and 53, respectively. No employee assigned to classifications in those salary grades are to be paid less than the amount as stated.

Compensation Bonus (SB 27; Chapter 321): Section 69 of Senate Bill 27, the Current Operations Act, awards a compensation bonus of one percent of annual salary for employees and principals who were in the employment of the State during fiscal year 1993-94. Employees will receive the compensation bonus in December, 1993, or June, 1994, based on their employment status with the State during the first half of the 1993-94 fiscal year.

Allow Public School Employees and State Employees to Convert Excess Annual Leave Days to Sick Leave (SB 27; Chapter 321, Section 73) and **Sick Leave Conversion Technical Correction** (SB 26; Chapter 561, Section 18): Section 73 of Senate Bill 27, the Current Operations Budget, provides that any superintendent, supervisor or principal, teacher, school employee, or State employee subject to the State Personnel Act, with more than 30 days of accumulated annual vacation leave as of June 30, shall have the excess accumulation converted to sick leave so that only 30 days are carried forward to the next year. Section 18 of Senate Bill 26, the 1993-1995 Capital Budget, clarifies that the conversion date for State employees subject to the State Personnel Act will be December 31 of each year rather than June 30.

State Comprehensive Pay Plan (SB 84; Chapter 388): Senate Bill 84 establishes a structured program to award salary increases of two percent to employees subject to the State Personnel Act. This Comprehensive Compensation System consists of three components: the career growth recognition award, cost of living adjustment, and performance bonus. An employee may receive all three adjustments within a 12-month period, if the employee's performance evaluation equals or exceeds the level of performance required for each component. Available monies to fully fund and implement the components of the plan will be assigned first to the growth recognition award. The cost-of-living adjustment component is next in line to receive additional appropriation to the extent that expansion funds are available. Any remaining available funds would be allocated for performance bonuses, but not to exceed two percent of the total employee payroll.

The bill creates an 11-member Task Force on the Implementation of a Comprehensive Compensation System for State Employees in the Office of the Governor. Its purpose is to develop a plan for moving State employees into the System. The task force is to report to the Governor and the General Assembly on the developed plan before March 1, 1994.

Senate Bill 84 further requires the Office of State Personnel to study the State Personnel System, including employee classifications, salary schedules, pay equity, pay inequities, and the placement of employees under the Comprehensive compensation system in accordance with their years of experience. The act was effective upon ratification, July 18, 1993, with the portions concerning salary issues applying to compensation earned on or after July 1, 1994.

State Employee Preferred Provider (SB 1148: Chapter 547): Senate Bill 1148 clarifies the legislative intent regarding the Teachers' and State Employees Comprehensive Major Medical Plan contracts with preferred providers. The bill states specifically that the Executive Administrator and Board of Trustees of the Plan may contract with providers of medical care and services to established preferred provider networks. Such contracts and networks are not subject to the requirements of Chapter 143 of the General Statutes, the Executive Budget Act. The act was effective on July 1, 1993, and does not apply to any litigation or administrative proceedings pending prior to that date.

Wage and Hour

Family Business/Youth Employment (HB 524; Chapter 239): House Bill 524 allows children under 16 to be employed by their parents on the premises of a business holding an ABC permit, provided that another employee who is at least 21 is present and in charge of the premises while the under-16 employee is working there. The bill

was made effective when it was ratified, June 29, 1993. It was written so as not to affect any pending litigation.

Wage Clarifications (HB 561; Chapter 214): House Bill 561 makes clear that severed employees must be paid through regular pay channels or, if the employee requests, by mail. The bill also makes clear that employers or employees exempt from provisions of the U.S. Fair Labor Standards Act do not have a general exemptions from the State Wage and Hour Act. The bill was made effective when it was ratified, June 24, 1993.

Wage & Hour Notice (HB 599; Chapter 203): House Bill 599 standardizes the requirement of what employers are required to notify their employees concerning compensation: It uses the defined term "wages," which encompasses sick pay and vacation time, rather than using the latter terms. The bill was made effective October 1, 1993.

Wage & Hour/Civil Penalties (HB 659; Chapter 225): House Bill 659 allows the Commissioner of Labor to use a streamlined procedure to collect civil penalties for violation of child labor rules and record-keeping rules. The Commissioner may file an uncontested or upheld assessment against an employer with the clerk of superior, and that document would be treated for collection as if it were a judgment rendered by a court in a lawsuit. The bill was made effective when it was ratified, June 28, 1993.

Workers Compensation

Industrial Commission Mediation Program (HB 658; Chapter 399): House Bill 658 authorizes a mediation program to be used by the Industrial Commission in workers' compensation cases and cases under the State Tort Claims Act. The Commission may require parties to participate in mediation, under rules similar to those approved by the Supreme Court for use by superior courts. The bill also gives the Chair of the Industrial Commission power to hire, fire, and transfer personnel without the assent of another member of the three-member Commission. The new power for the Chair was made effective upon ratification, July 19, 1993. The mediation program was given an effective date of October 1, 1993, and an expiration date ("sunset") of June 30, 1995. Although the ratified House Bill 658 makes the mediation program contingent upon the General Assembly appropriating money for it, Section 25 of Senate Bill 27, the Budget Bill, appears to override that provision by allowing agencies involved in mediation under the Industrial Commission to use funds from lapsed salaries to finance their participation.

Workers Comp Carrier Safety Services (SB 163; Chapter 40): See INSURANCE.

Workers Compensation Solvency (SB 579; Chapter 120): Senate Bill 579 brings employer groups who self-fund their workers compensation programs under some of the same solvency safeguards that apply to insurers. The law applies only to self-funded groups of 2 or more employers, although there are existing Insurance Department solvency regulations already applicable to both the self-funded single employers as well as the self-funded groups. This act becomes effective January 1, 1994.

Miscellaneous

Amend Boiler Pressure Vessel Act (HB 556; Chapter 351): House Bill 556 exempts "steam jennies" and low-temperature water vessels from the Boiler and Pressure Vessel Act. The bill changes some of the deadlines of the regulatory procedure so that they more closely follow the Administrative Procedure Act. The bill also makes numerous changes to the Act that are purely technical. The bill was made effective when it was ratified, July 15, 1993.

Repeal Toilet Requirement (HB 668; Chapter 204): House Bill 668 repeals the statutes, dating back to 1913, requiring separate toilets in public places for each gender. The bill states that the statute, found in Chapter 95, addresses a problem that is adequately taken care of in other law. The bill was made effective when it was ratified, June 23, 1993.

Retaliatory Discharge Changes (SB 643; Chapter 423): Senate Bill 643 gives the Commissioner of Labor subpoena power when conducting inspections and investigations under the Retaliatory Employment Discrimination Act. The bill exempts documents related to those investigations from the Public Records Act. The bill was made effective when it was ratified, July 21, 1993.

PENDING LEGISLATION

Family and Medical Leave Act (HB 53): House Bill 53 would establish under State law a set of rights to family and medical leave similar to that enacted by Congress and signed by President Clinton in early 1993. The bill is in the House Appropriations Committee.

High Voltage Line Safety Act (SB 987) Senate Bill 987 would require that safety precautions be taken to protect workers and others from high-voltage overhead lines. The Commissioner of Labor would have enforcement powers over employers. The bill passed the Senate and is in House committee.

Workers Compensation Reform (SB 906): **See INSURANCE.**

STUDIES

House Bill 1319

The 1993 Studies Bill (HB 1319) was passed by both houses but was not ratified before adjournment of the 1993 Regular Session. It should be signed into law at the beginning of the 1994 Short Session. Legislative Research Commission Studies relating to the topic of Employment include: (1) Alternative Approaches to Deal with Discrimination in Employment; (2) Fire and Occupational Safety Issues; (3) State Personnel; (4) Model Employment Termination Act; (5) Professional Firefighters Early Retirement Incentives; (6) Temporary Employment in the State; (7) Workers' Compensation; (8) Law Officer Conduct Review System; (9) Early Retirement Penalty Reduction for Members of the Teachers' and State Employees' Retirement System; (10) Fire Fighter Benefits. On September 13, 1993, the LRC referred (1) and (4) to a new

Employment Procedures Committee; referred (2) and (7) to a new Workers' Compensation Committee; referred (3) and (6) to a new Public Employees Personnel Committee; referred (5),(9) and (10) to a new Public Employees Retirement Committee; and declined to authorize the study of (8).

Independent Studies, Boards, Etc., Created or Continued

Task Force on Implementation of a Comprehensive Compensation System for State Employees within the Office of Governor. SL93-388, §3, SB 84.

Referrals to Agencies

Office of State Personnel to study state cytotechnologist salaries. SL93-427, HB 106.

Office of State Personnel to study State Personnel System. SL93-388, §4, SB 84

ENVIRONMENT
(Sherri Evans-Stanton, Barbara Riley)

RATIFIED LEGISLATION

Administrative

Delete Environmental Reports (HB 179; Chapter 513): House Bill 179 deletes the requirement that certain reports on environmental issues be made to the Joint Legislative Commission on Governmental Operations. The bill requires that the Department of Environment, Health, and Natural Resources report annually on or before September 1 to the Environmental Review Commission on the use of funds allocated from the Solid Waste Management Trust Fund, the implementation of the resident inspectors program, and the cost of implementing the Mining Act. House Bill 179 also requires that each unit of local government that provides public water services or that plans to provide such services shall, either individually or together with other such units of local government, prepare a local water supply plan and submit that plan to the Department on or before January 1, 1995. The bill makes other clarifying, conforming, and technical changes to various laws pertaining to environment, health, and natural resources. The bill became effective upon ratification, on July 24, 1993.

Reorganize Governor's Waste Management Board (HB 976; Chapter 501): House Bill 976 abolishes the Governor's Waste Management Board, establishes the Office of Environmental Education by statute (previously created under executive order), transfers the Board's responsibility to that Office, and creates the Pollution Prevention Advisory Council. The Office of Environmental Education responsibilities include (1) serving as a clearing house for environmental information; (2) planning for the Department's future needs for environmental education materials and programs; (3) maintaining a computerized database of existing education materials and programs; (4) evaluating opportunities for establishing Regional Environmental Education Centers; (5) administering the Project Tomorrow Award program to encourage school children to discover and explore ways to protect the environment; and (6) developing and implementing a grants and award program for environmental education programs. The bill also creates the Pollution Prevention Advisory Council comprised of fifteen members representing a number of interest. The council serves in an advisory capacity to the Governor, the Secretary of DEHNR, the Secretary of Commerce, and the General Assembly on issues relating to hazardous waste management. The Council makes an interim report on or before March 1, 1994 and a final report on or before October 1, 1994. Upon making its final report, the Council terminates. The bill became effective upon ratification, on July 23, 1993.

Pesticide Env. Trust Fund (HB 1102; Chapter 481): House Bill 1102 requires each applicant registering a pesticide to pay an additional annual assessment per brand or grade of pesticide registered. The proceeds of the additional assessment shall be credited to the Pesticide Environmental Trust Fund, a nonreverting account established within the Department of Agriculture. The amount of the assessment is $50 per brand or grade for those applicants whose gross sales of the pesticide for the preceeding 12 months were in excess of $5,000 and $25 for applicants whose gross sales were less than $5,000.

The money credited to the fund shall be distributed as follows:

1. 2.5% to NCSU Cooperative Extension Service to enhance agromedicine efforts.
2. 2.5% to East Carolina University School of Medicine to enhance it agromedicine efforts in cooperation with the NCSU efforts.
3. 20% to NCSU Department of Toxicology to establish and maintain an extension agromedicine specialist position.
4. 75% to the Department of Agriculture for environmental programs as directed by the Pesticide Board.

The act became effective upon ratification, on July 23, 1993 and applies to all applications for registration filed under G.S. 143-442 on or after that date.

Solid Waste

Increase Scrap Tire Disposal Tax (HB 83; Chapter 548): House Bill 83 temporarily increases the scrap tire disposal tax, provides for the distribution of the additional tax proceeds, temporarily revokes the general authority of a unit of local government or a contracting party to impose a separate scrap tire disposal fee, and authorizes the Department of Environment, Health, and Natural Resources to develop and implement alternate, market-based pilot programs for scrap tire collection and recycling. The tax increase is effective until June 30, 1997.

Agency Duties/Recycling Industry (HB 663; Chapter 250): House Bill 663 requires that the Department of Environment, Health, and Natural Resources prepare a report accessing the recycling industry and recyclable materials market in the State by March 1, 1994 and every year thereafter. This report was previously done by the Department of Commerce. The Department of Commerce shall assist the Department with respect to assessing components of the States's recycling industry and with respect to present and potential markets for recyclable materials in this State, other states, and foreign countries. The bill became effective upon ratification, on June 30, 1993.

Permits/Waste Management Plans (HB 787; Chapter 365): House Bill 787 authorizes the Department of Environment, Health, and Natural Resources to deny a permit for a sanitary landfill or a solid waste incinerator to an applicant that is a local government if that applicant has not submitted an approved Solid Waste Management Plan required under G.S. 130A-309.09(A)(b). The Department must first adopt rules for local solid waste management plans. The bill became effective upon ratification, on July 17, 1993.

Recyclable Weight Penalty (HB 802; Chapter 426): House Bill 802 amends G.S. 20-118(c), to provide that penalties for violations of the weight of trucks carrying recyclable material for processing from a point of origin to a scrap-processing facility, be reduced to ½ the normal weight penalty for such vehicles. The bill became effective upon ratification, on July 21, 1993.

Define Septage (HB 1077; Chapter 173): House Bill 1077 amends G.S. 130A-290(a)(32) defining septage to include (a) domestic septage, which is either liquid or solid material removed from a septic tank, cesspool, portable toilet, Type III marine sanitation device, or similar treatment works receiving only domestic sewage; (b) domestic treatment plant septage, which is solid, semisolid, or liquid residue generated during the treatment of domestic sewage in a treatment works where the designed disposal is subsurface; (c) grease septage, which is material pumped from grease traps, etc., for the purpose of removing cooking oils, grease, and food debris from the waste

flow generated from food handling; (d) industrial or commercial septage, which is material pumped from septic tanks or other devices used in the collection, pretreatment, or treatment of any water-carried waste resulting from any process of industry where the designed disposal of the wastewater is subsurface; or (e) industrial or commercial treatment plant septage, which is solid, semisolid, or liquid residue generated during the treatment of sewage that contains any waste resulting from industrial processes in a treatment works where the design disposal is subsurface.

House Bill 1077 also adds a definition of "chemical or portable toilet" to G.S. 130A-290. That term is defined to mean a self-contained mobile toilet and holding tank and includes toilet facilities in recreational vehicles.

The bill further amends G.S. 130A-335(h) to provide that chemical or portable toilets may be placed at any location where the toilet can be operated and maintained under sanitary conditions. Such a toilet shall not be used as a replacement or substitute for a water closet or urinal where a water closet or urinal connected to a permanent wastewater treatment system is required by the N.C. State Building Code. Chemical or portable toilets may not be used as an alternative for repair of a water closet or urinal.

Finally, House Bill 1077 amends G.S. 130A-291.1 regarding fees assessed to septage management firms to provide that the fees shall be applied only to the costs of the septage management program. The act became effective July 1, 1993.

Local Ordinances That Require Recycling (SB 53; Chapter 165): Senate Bill 53 clarifies the authority that a county or city has with respect to participation in a recycling program. The bill authorizes a local government to require separation of designated materials by the owner or occupant of property prior to disposal. An owner of recovered materials retains ownership of those materials until the owner conveys, sells, donates, or otherwise transfers the recovered materials to a person, firm, company, corporation, or unit of local government. A city or county may not require an owner to convey, sell, donate, or otherwise transfer recovered materials. If the owner places the recovered materials in receptacles or delivers the materials to specific locations, receptacles, and facilities, then ownership of those materials is transferred to the local government or its designee. The bill became effective upon ratification, on June 16, 1993.

Clarify Incinerator Operator Training (SB 55; Chapter 29): Senate Bill 55 amends the Solid Waste Management Act to require that operators of incinerators be added to the list of officials subject to training programs administered by DEHNR. In developing training programs for incinerator operators, the Department shall establish and consult with ad hoc advisory groups to help coordinate the requirements and other training programs for incinerator operators. The bill became effective upon ratification, on April 21, 1993.

Landfill/Incinerator Bans (SB 59; Chapter 290): G.S. 130A-309.10 prohibits the disposal of certain solid waste in landfills. Senate Bill 59 amends subsection (f) to prohibit the disposal of antifreeze and to prohibit the disposal of aluminum cans after July 1, 1994. In addition, the bill adds a new subsection (f1) that prohibits the disposal of the following solid waste by incineration after July 1, 1994: antifreeze used solely in motor vehicles, aluminum cans, steel cans unless the steel is recoverable at the end of the incineration process, and white goods. The prohibition against incineration of these materials does not apply to solid waste incinerated in an incinerator solely owned and operated by the generator of the solid waste; and does not apply to antifreeze which cannot be recycled or reclaimed. Finally a new subsection (h) was added which specifies that the accidental or occasional disposal of small amounts of

prohibited solid waste by landfill or incineration shall not be a violation of the ban on landfills or incineration. The bill became effective July 1, 1993.

Advance Disposal Tax on White Goods (SB 60; Chapter 471): Senate Bill 60 imposes an advance disposal tax of $10.00 on new white goods if the white good contains chlorofluorcarbons, and $5.00 if it does not. In addition the bill requires that each county provide for the management of discarded white goods and provide for the removal of chlorofluorcarbon refrigerants from white goods. See summary under **TAXATION**.

State Waste Reduction (SB 90; Chapter 197): Senate Bill 90 directs the Department of Administration and the Department of Transportation to review and revise their bid procedures and specifications to encourage the purchase and use of reuseable, refillable, repairable, more durable, and less toxic supplies and products. When practicable and cost effective, both departments shall require the procurement and purchase of supplies and products including the purchase of remanufactered toner cartridges for laser printers and the use of such supplies and products in construction and maintenance of highways and bridges. The Department of Administration and the Department of Transportation shall each prepare an annual report by October 1 of each year to the Environmental Review Commission concerning the review and revision of its bid procedures and purchasing use of these products. The bill becomes effective January 1, 1994. The first annual report to the Environmental Review Commission shall be on October 1, 1994.

Landfill Permit Amendments (SB 1003; Chapter 473): Senate Bill 1003 requires that a public hearing be held prior to the approval of an application for a new permit, the renewal of a permit, or a substantial amendment to a permit for a sanitary landfill. The bill defines a substantial amendment as either (a) an increase of 10% or more in the population of the geographic area to be served, the quantity of solid waste to be disposed of, or the geographic area to be served; or (b) a change in the categories of solid waste to be disposed of in the sanitary landfill or any other change to the application for a permit that the Commission or Department determines to be substantial. The bill became effective upon ratification, on July 23, 1993.

Solid Waste Financial Responsibility (SB 1164; Chapter 273): G.S. 130A-294 relates to the Solid Waste Management Program. Subsection (b) makes solid waste facilities operated by local governments subject to financial responsibility rules adopted by the Commission for Health Services. The bill became effective upon ratification, on July 5, 1993.

Water and Air

Dam Safety Law Improvements (HB 483; Chapter 394): House Bill 483 amends the Dam Safety Law of 1967 to make it more effective. The bill reorganizes definitions and sets forth a separate section on "exempt dams." The bill defines dam as a structure and appertenant works erected to impound or divert water. The bill defines "minimum stream flow" as a quantity and quality sufficient in the judgment of the Department to meet and maintain stream classifications and water quality standards established by the Department, and is adequate to maintain aquatic habitat in the length of the stream that is effected. The Dam Safety Act does not apply to specific types of dams set forth in the bill, including dams that are less than 15 feet high or with impoundment capacity of less than 10 acre-feet, unless the Department determines that

failure of the dam could result in loss of human life or significant damage to property below the dam. The bill requires that orders and written approval issued by the Department concerning stream classifications, water quality standards, and aquatic habitat requirements be consistent with rules of the Environmental Management Commission. The bill also requires that the Commission adopt rules specifying minimum stream flow in length of the stream affected by the dam and set specific parameters for minimum stream flow for dams operated by small power producers that divert water from 4,000 feet or less of a natural stream bed and return the water to the same stream. A civil penalty of not less than $100.00 nor more than $500.00 (previously $100-$250) may be assessed to a person who violates the Dam Safety Act. If the action or the failure to act is willful, a penalty not to exceed $500 (previously $250) per day for each day of violation may be assessed. The Department shall not enforce minimum stream flow requirements to protect aquatic habitat until the Environmental Management Commission has adopted rules. Those rules must be adopted by October 1, 1994. The bill becomes effective October 1, 1993.

Clean Air Act (HB 681; Chapter 400): House Bill 681 makes numerous changes to the General Statutes to implement the requirement of the 1990 amendments to the Federal Clean Air Act. The bill directs the Environmental Management Commission ("EMC") to develop and adopt standards and plans necessary to implement requirements of the Federal Clean Air Act and regulations adopted by the Environmental Protection Agency, and to establish procedures for public notice, comment, and hearings for permits under Title V of the 1990 amendments to the Clean Air Act. The bill establishes civil and criminal penalties applicable to persons subject to Title V.

The bill authorizes the EMC to establish procedures allowing minor modifications to permitted facilities if the modifications comply with federal EPA regulations, provided that while the application for minor modification is under review, a permittee shall not make any changes. House Bill 681 provides that the EMC adopt rules specifying time limits for approval of applications for permits required by Title V, requires the EMC to not issue a permit until valid objections by EPA are resolved, and provides that failure of the EMC or a local air pollution control program to act on a permit application within the specified time is deemed to be a denial of the application which is subject to judicial review. The bill prohibits a local air pollution control program from issuing a permit for a solid waste incineration unit combusting municipal waste when the program is administered by a local governing body that is responsible for the design construction or operation of the unit. The bill provides that local pollution programs shall require fees from owners or operators of air contaminate sources that are required to obtain a permit under Title V. The bill repealed a provision that prohibited the preemption of any local air pollution control program in operation on June 22, 1967.

Finally, the bill amends G.S. 105-455 concerning the application of proceeds of the gasoline tax to provide that each one-half cent of excise tax revenue collected be distributed as follows: 19/32 to the Commercial Leaking Petroleum Underground Storage Fund, 3/32 to the Non-Commercial Leaking Petroleum Underground Storage Tank Clean-Up Fund, and 5/16 to the Water and Air Quality Account. The remainder of the revenue is to be allocated as now provided. The bill establishes an I & M Air Pollution Control Account as a non-reverting account within the Department. Fees transferred to the Division of Environmental Management shall be credited to the I & M Pollution Control Account and applied to the cost of developing and implementing an air pollution control program for mobile air sources. Sections 1 through 12 and Sections 15 through 17 became effective upon ratification, on July 19, 1993. Section

13, relating to the application of proceeds of the gasoline tax, becomes effective January 1, 1995.

Water Withdraw Registration (SB 821; Chapter 344): G.S. 143-215.22H currently requires registration of water withdraws and any transfers for any person who withdraws one million gallons per day or more of water from the surface waters of the State. Senate Bill 821 amends that section to include groundwater. In addition, the bill requires that monthly average withdrawals, transfers and discharges be expressed in millions of gallons per day. A local government that has completed a local water supply plan and that has periodically revised and updated that plan, is not required to separately register or update the registration. No additional fee may be charged to update the registration, but a late fee of $5.00 per day, not to exceed $500, may be assessed for failure to timely update the registration. A late registration fee is not to be charged to a farmer who submits a registration that pertains to farming operations. The bill directs persons with existing withdrawals or transfers of one million gallons per day on or after October 1, 1993, to register by January 1, 1994. A person who has complied with this section at the time the act becomes effective is not subject to file an additional water withdrawal or transfer registration with the Environmental Management Commission. The bill becomes effective October 1, 1993.

Regulate Interbasin Transfers (SB 875; Chapter 348): Senate Bill 875 amends Part 2A of Article 21 of Chapter 143 of the General Statutes (Registration of Water Withdrawal and Transfers) to add surface water transfers. The bill requires that a person obtain a certificate from the Environmental Management Commission before they may: (1) Construct a facility that has a capacity to transfer two million gallons or more of water from one river basin to another; (2) Increase the capacity of an existing facility to transfer water from one river basin to another by 25% or more above the capacity of the facility on July 1, 1993 if the capacity of the expanded facility is two million gallons or more per day; or (3) Increase an existing transfer above the amount approved by the Commission in a certificate issued under G.S. 162A-7 prior to July 1, 1993. The bill sets out the requirements for applying for a certificate, extensive requirements of notice for hearing before the Commission on the petition, and specific findings that must be made by the Commission. A certificate shall be granted for a water transfer only if the Commission concludes by a preponderance of the evidence that the benefits of the transfer outweigh the detriments. The Commission may grant the certificate in whole or in part, or deny the certificate. The Commission may grant a certificate with conditions, including mitigation measures to minimize any detrimental effects of the proposed transfer in measures to protect the availability of water in the source river basin during a drought or other emergency. The bill also amends the provision providing for a $10,000 civil penalty for violation of various statutes. The bill becomes effective January 1, 1994 and provides that a certificate shall not be required for any project that the Department of Administration has determined to have completed the review process under the North Carolina Environment Policy Act of 1971 prior to that date.

Clean Water Loan Amends (SB 1112; Chapter 496): Senate Bill 1112 amends G.S. 159G-18(a) to allow local government units to execute debt instruments to the State for clean water loans secured by user fee revenues, other sources of revenue, full faith in credit, or any combination thereof. The bill requires applicants for clean water loans to adopt a schedule of fees, charges, and other funds, that will adequately provide for proper operation, maintenance, and administration of funded projects, and for repayment of loans. The bill provides that a summary for the preceding five years of the total number of revolving loans and grants must be made by the Department. The

bill also requires that a laboratory facility that performs water and air quality monitoring must be certified annually by the Department and that the Environmental Management Commission shall establish standards that a laboratory facility and its employees must meet and maintain in order for the laboratory facility to be certified, and to charge a laboratory facility a fee for certification. Fees collected under this section shall be credited to the Water and Air Account. The bill became effective upon ratification, on July 23, 1993.

Miscellaneous

Energy Policy For State Government (HB 101; Chapter 334): House Bill 101 expands the current energy policy for State government to apply to the construction, operation, and renovation of State facilities and to the purchase, operation, and maintenance of equipment for such facilities. The bill amends G.S. 143-64.12, to authorize and direct that State agencies carry out the construction and renovation of State facilities and to provide that life-cycle cost analysis and energy-conservation practices are considered and are employed wherever feasible and practicable. The life-cycle cost analysis must be performed for any State facility and the General Assembly encourages any entity to conduct a life-cycle cost analysis for the construction of any State-assisted facility or the renovation of any State-assisted facility of 40,000 or more gross square feet. The bill became effective upon ratification, on July 13, 1993, and applies to all construction and renovation projects that start the design process on or after that date.

Outdoor Advertising Limited (HB 1053; Chapter 524): House Bill 1053 amends Article 10 of Chapter 136, concerning the preservation of scenic beauty of areas along highways. The bill provides that no outdoor advertising sign shall be erected adjacent to any highway which is either (1) a scenic highway or scenic byway; (2) within 1,200 feet on the same side of the highway of a State park, national park, or State or national wildlife refugee or a designated wild and scenic river; (3) within 500 feet on the same side of the highway of any historic district and others properties listed in the national register of historic places or State rest areas; or (4) on the opposite side of the road 1/3 of the applicable distance specified above. The bill became effective upon ratification, on July 24, 1993.

Underground Tank Amendments (HB 1061; Chapter 402): House Bill 1061 amends the Commercial Leaking Petroleum Underground Storage Tank Cleanup Act of 1988 in Chapter 143 of the General Statutes. The bill extends the deductible for discharges or release discovered and reported on or after January 1, 1994 and prior to January 1, 1995 for tank owners and operators to excelerate the upgrade or closure of their tanks prior to the 1998 deadline. The bill allows for the use of the Commercial Fund to pay costs in excess of the cost for which the owner/operator is responsible and not to exceed $1,000,000, beyond the 120 day period for the cleanup of discharges from tanks which are (a) removed between December 22, 1988 and July 1, 1994; (b) are removed in compliance with all applicable federal and state laws and regulations; (c) the discharge was not discovered at the time of removal; and (d) the discharge was discovered and reported more than 120 days after the tank was removed. The bill limits tank fees to the equivalent of twelve months in a one-year period for owners/operators switching out old tanks with the new tank system and clarifies that specific commercial cleanups are to be paid by the Noncommercial Fund. The bill also provides a civil penalty for a tank owner or operator who notifies the Department of an intention to permanently close or upgrade a tank in order to take advantage of the one-year extension of the $20,000 deductible and then does not close or upgrade the tank.

The bill authorizes the Department to pay for alternative water sources for third parties affected by contamination from a leaking underground storage tank. The bill clarifies language regarding the Groundwater Protection Loan Fund to facilitate loans to owners of commercial underground storage tanks who have been rejected by commercial banks. House Bill 1061 clarifies reporting requirements relating to the program to the Environmental Review Commission and deletes the requirement to report to the Joint Legislative Commission on Governmental Operations. The bill changes the term motor fuel inspection "fees" to "tax" and removes the $15 million cap on the Commercial Fund. The bill further directs that all monies from the kerosene and motor fuel inspection tax be credited to the Noncommercial Fund unless the Noncommercial Fund exceeds $5 million, at which time the revenue should be divided equally between the Noncommercial Fund and the Commercial Fund. In the event that the Noncommercial Fund falls below $5 million, all funds shall revert to the Noncommercial Fund. The Motor Fuel Inspection tax is payable when excise taxes are due, while the kerosene inspection tax is payable monthly.

The bill amends G.S. 143-215.87 to allow the Oil or Other Hazardous Substances for Pollution Protection Fund to be used to both plan and implement (current law provides for implementation only) the restoration of environment damage resulting from a major oil spill. This change is needed to allow the Hazardous Substances Pollution Protection Fund to receive federal funds that may be available following federal legislation passed in 1990 resulting from the Exxon Valdez spill. In addition, the bill provides that the Secretary of the Department of Environment, Health and Natural Resources may waive all reimbursement costs of developing and implementing a cleanup plan for discharge or release of a leaking underground storage tank owned by a public hospital, if the Secretary determines that the hospital has cooperated fully in developing and implementing cleanup and that the reimbursement costs would render the hospital insolvent or otherwise result in extreme hardship. Sections 1 through 7 and Section 10 became effective upon ratification, on July 19, 1993. Sections 8 and 9 of the Act became effective July 1, 1993. Section 11, relating to waiving reimbursement for public hospitals, became effective upon ratification and expires June 30, 1995.

Education/Clean Water/Parks Bonds (SB 14; Chapter 542): Senate Bill 14 authorizes the issuance of general obligation bonds of the state, subject to voter approval, for a number of purposes, including grants, loans, and revolving loans to local government units for water supply systems, wastewater collection systems, wastewater treatment works, and water conservation projects. Of the proceeds raised, $45,000,000 shall be used to provide State matching funds required to receive federal wastewater or water supply assistance funds and to provide additional funding for the Clean Water Revolving Loan and Grant Fund; $100,000,000 shall be allocated to provide loans to local government units to finance projects referenced above. The bill became effective upon ratification, on July 24, 1993.

Soil Conservation Law Changes (SB 1121; Chapter 391): Senate Bill 1121 makes a number of technical corrections to and deletes obsolete references in Chapter 139, Soil and Water Conservation Districts. G.S. 139-16 through G.S. 139-38 are repealed, except for G.S. 139-37, recodified as G.S. 139-48, and G.S. 139-37.1, recodified as G.S. 139-49. G.S. 139-41 is amended to provide for the selection of a chair and other officers of a Watershed Improvement Commission, meetings, quorum, employment of personnel to assist a Commission, and the per diem and other expenses of the Commissioners. The bill became effective upon ratification, on July 19, 1993.

Multicounty Pollution Facilities Financing (SB 1163; Chapter 130): Prior to this Legislative Session, G.S. 159C-10 restricted financing by revenue bonds issued under the Industrial and Pollution Control Facilities Financing Act to the county wherein the facility was located. Senate Bill 1163 amends G.S. 159C-10 to allow financing by revenue bonds of any eligible part of the project outside of the boundaries of the county provided that the additional portion or portions are a necessary part for construction and operation of the project and the governing body of each county in which the additional portion or portions of the project is or are located approves the project. The bill became effective upon ratification, on June 8, 1993.

Resident Inspector Program Amendments (SB 1165; Chapter 511): Senate Bill 1165 amends G.S. 130A-295.02(i) concerning the resident inspector's program required at commercial hazardous waste facilities. The bill directs the Department of Environment, Health and Natural Resources to establish a program for assigning resident inspectors to commercial hazardous waste facilities so that scheduled rotation of the inspectors or equivalent oversight procedures will maintain objectivity of the inspectors. The current statute specifies maximum time periods for which inspectors may be assigned to a facility. The Department currently has authority to determine the full cost of the program. Senate Bill 1165 amends the fee section to provide that fees shall be credited to the General Fund as nontax revenue. The bill became effective on June, 30, 1993, except the change relating to crediting fees to the General Fund becomes effective July 1, 1994.

STUDIES

House Bill 1319

The 1993 Studies Bill (HB 1319) was passed by both houses but was not ratified before adjournment of the 1993 Regular Session. It should be signed into law at the beginning of the 1994 Short Session. Legislative Research Commission Studies relating to the topic of Environment include: (1) Water Issues-Surface Water and Groundwater; (2) Solid Waste Management; (3) Emergency Management Issues; (4) Ways to Promote Energy Conservation and the Use of Renewable Sources of Energy in North Carolina; (5) Business Tax Credits for Purchases of Recycled Products; (6) Recreational Hook-and-Line Fishing License in Coastal Fishing Waters and Use of Commercial Nets; (7) Effect of the Use of Commercial Nets on Fish and Shellfish Stocks and their Estuarine Habitats; (8) Wastewater Discharge Requirements at Public Schools. On September 13, 1993, the LRC authorized the study of (1) and (4); referred (2) and (8) to the Environmental Review Commission; referred (3) to the Emergency Management Committee; referred (7) to the Joint Legislative Commission on Seafood and Aquaculture; referred (6) to the Marine Fisheries Commission; and referred (5) to the Fiscal Trends and Reform Committee.

Other relevant studies contained in HB 1319 include: (1) the study of Shellfish Leasing Program to be conducted by the Joint Legislative Commission on Seafood and Aquaculture; (2) the study of Environmental Justice to be conducted by the Environmental Review Commission; (3) the study to evaluate all Marine Sciences Programs to be conducted by the Board of Governors of the University of North Carolina.

Independent Studies, Boards, Etc., Created or Continued

Pollution Prevention Advisory Council. SL93-501, §30, HB 976.

Referrals to Agencies

Department of Administration to conduct an environmental study of North Carolina Indian Cultural Center in Robeson County. SL93-561, §33, SB 26.

Department of Environment, Health, and Natural Resources shall review Falls Lake Watershed Study to be agreed upon by Wake and Durham Counties and the Cities of Durham and Raleigh. SL93-561, §107.1, SB 26.

Department of Environment, Health, and Natural Resources to study State parks capital improvements and land acquisitions. SL93-542, §11(b), SB 14.

Department of Environment, Health and Natural Resources to study options, including alternative fuels and transportation programs, for reducing air pollution from mobile sources. SL93-400, §16, HB 681.

HUMAN RESOURCES

(John Young, Kevin Yow, Walker Reagan, Sue Floyd)

(Note: HB 729, summarized below, was the major health care reform legislation of the session. Various portions of other bills, particularly SB 2 and SB 554, were incorporated into the final version of HB 729. For this reason, under "Pending Legislation" we have summarized only those portions of other health care reform bills that were not incorporated into HB 729.)

RATIFIED LEGISLATION

Health Care Reform

Jeralds-Ezzell-Fletcher Health Care Reform Act (HB 729; Chapter 529): House Bill 729 is a compilation of various health care reform proposals. The bill is divided into seven substantive parts. Part I, entitled "Health Care Reform Planning", establishes a Commission to study, plan and develop a universal health care program for the State. The Commission membership includes the Governor, Lt. Governor, Speaker of the House and President Pro Tempore of the Senate. The Commission is to submit its proposal to the General Assembly for approval, with its first interim progress report due April 1, 1994. The proposal is to include elements of managed competition and local control over distribution of health care resources. Part I also includes a provision setting specific goals for production of primary care physicians by both public and private medical schools in the State. Private medical schools are to submit plans by April 15, 1994 to ensure that fifty percent of their graduating classes enter into primary care disciplines. The public medical school goal is set at sixty percent. Primary care disciplines include: family medicine, general pediatric medicine, general internal medicine, and obstetrics-gynecology.

Part II of the bill, entitled "Department of Health and Community Health Districts", requires the Governor to recommend to the General Assembly by April 1, 1994 a plan to consolidate all State health functions under one Department of Health. This plan is required to focus on local control of health resources through the establishment of "community Health Districts". The plan is also to stress the improvement of health status and encourage cooperative and collaborative arrangements between providers.

Part III of the bill, entitled "Small Employer Purchasing Groups", establishes a health insurance purchasing pool for small employers. Initially, the pool will be available to employers having between one and 49 employees, with later expansion to one to 99 employees. Under the plan, the State is to be divided into 4-12 markets. Within each market will be established a State sponsored "Alliance" which would be the purchasing agent for health insurance. Insurers who agree to comply with plan requirements regarding such things as no preexisting conditions and guaranteed renewability will be certified as "Accountable Health Carriers" and would offer "Qualified Health Care Plans" under the program. The program is to utilize adjusted community rating and is to be administered by the State Health Plan Purchasing Alliance Board. The program is funded at $4.5 million for start up and $500,000 for first year operations.

Part IV of the bill, entitled "Uniform Claim Forms", contains two provisions. First, the Commissioner of Insurance is mandated to develop a single uniform claim

form to be used by all insurance carriers and providers. Second, health care providers are given the specific authority to charge a reasonable fee for copying and/or handling medical records, not to exceed fifty cents a page.

Part V of the bill, entitled "Hospital Cooperation", establishes a program within the Department of Human Resources whereby hospitals may apply for certificates of public advantage to allow them to collaborate with other health care providers in ways that otherwise might subject them to antitrust actions. The certificates would be granted only for specific arrangements, only after a showing that the arrangement would benefit cost effective health care, and would provide the entity with "state action" immunity from federal antitrust action. The State's Attorney General could object to the issuance of any certificate. Approved arrangements would be subject to continuing review.

Part VI, entitled "Hospital Authority Territory", expands the area in which a hospital authority can operate health care facilities. Under the bill, an authority can now operate in any county of the State, as long as the authority does so through a contract with a health care entity in that county.

Part VII, entitled "Health Delivery Improvements", contains a number of miscellaneous provisions. One provision frees the State to utilize the preferred provider concept in the deliver of mental health services for certain medicaid recipients. Another requires that all prescription drug labels include a discard date beyond which the drug should be dispose of. Another makes it legal for public hospitals to dispose of surplus property by donating it to charitable organizations or needy countries. A final provision, deems hospitals, under certain circumstances, to be in compliance with state pharmacy board regulations requiring patients to be counseled regarding their prescription drugs. (A more complete analysis of these miscellaneous provisions is included later in this section.)

No Self-Referrals/Health (SB 8; Chapter 482): Senate Bill 8 prohibits any health care provider licensed under Chapter 90 of the General Statutes from referring any patient to any entity in which the health care provider (or group practice or any member of the group practice) is an investor. The prohibition is broad in scope as "investment interest" is defined to include stock, lease interest, bonds, etc. Any violation of the prohibition subjects the provider to disciplinary action by the applicable licensure board and to a civil penalty of up to $20,000, unless the violation involves a cross-referral arrangement for which the civil penalty is up to $75,000. The bill does contain an exception for referral arrangements in underserved areas that have been approved by the Department of Human Resources. This act became effective upon ratification, July 23, 1993.

CON Modifications (SB 10; Chapter 7): Senate Bill 10 expands the scope of the certificate of need review to include all high technology services and equipment. In addition, amounts triggering review are set at $750,000 for major medical equipment, $2,000,000 for new institutional health services, and $500,000 for freestanding diagnostic centers. The bill also expands the law to apply to individuals rather than only health care entities such as hospitals. The bill also provides for expedited review with regard to CON applications wherein: (a) the review is not a competitive review, (b) the proposed capital expenditure is less than five million dollars ($5,000,000), a request for a public hearing is not received, and the agency has not determined that a public hearing is in the public interest.

Rural/Primary Care Initiatives (SB 27; Chapter 321): Senate Bill 27 provides a system for certification of "primary care hospitals". These are hospitals which agree to abide by certain rules regarding networking with other hospitals to provide care on a

collaborative basic. The bill also includes funding for financial incentives to be used to recruit and retain physicians to practice in underserved rural areas. Funding is also included to expand the Rural Obstetrical Care Incentive Program and to expand Area Health Education Center programs to train primary care medical students, residents, and other health professionals in community settings.

Other Health Care Reform Legislation Introduced - 1993 Session

Health Care Access (HB 4): House Bill 4 would have established the 21 member North Carolina Health Care Access and Control Commission within the Department of Insurance. One of the duties of the Commission would have been the establishment and operation of a plan for basic health services to be offered to all residents. Beginning in 1995-96 a trust fund would have been established for the plan. The Commission would have negotiated an annual reimbursement rate in advance of care.

Family Health Care Program (HB 572): House Bill 572 would have established a commission and would have combined elements of managed competition and single payor.

Health Care Reform Act (HB 821): House Bill 821 would have established a ten member North Carolina Health Plan Commission. The Commission was to design the North Carolina Managed Competition Health Plan to become effective in 1996. The plan would have implemented through regional health plan purchasing cooperatives.

Managed Competition Act (SB 2): Major portions of Senate Bill 2 were incorporated into House Bill 729 as ratified. Senate Bill 2 would have established a managed competition plan whereby all citizens of the State would have been assured of health care coverage through a guaranteed package of benefits by July 1, 1998. The plan would have been administered thorough Health Plan Purchasing Cooperatives -- a number of regional health care purchasing pools. The plan would have been administered by a Commission and funded through special tax assessments and other funding sources held in a designated trust fund.

Fletcher-Jeralds Health Reform Act (SB 554): All but two major sections of Senate Bill 554 were incorporated in some form into the ratified version of House Bill 729. The excluded portions included a rewrite of the State's health insurance laws to phase-in a system of pure community rating by January 1, 2000. Complete phase-in of the plan would have been dependent upon securing federal waivers to cover 80% of the State's insureds under the plan. Also excluded from HB 729 was a program to provide incentives to insureds to participate in health education wellness programs in exchange for a credit which could be applied to an insureds insurance premium.

North Carolina Health Right Program (SB 722): Senate Bill 722 would have established the North Carolina Health Right Program in DHR to provide covered health care services for eligible State residents who cannot get coverage for health care services through another source. The Secretary of DHR would have established schedules for paying providers on a fee-for-service, capitated payment, or negotiated budget basis; apply for federal waivers or approval necessary to implement the program; and develop and present a plan to the 1995 General Assembly for providing all medicaid services and program services through managed care or other cost containment arrangements and for phasing out the State medicaid program and

covering medicaid eligible persons under the program. The Secretary would have, by January 1, 1994, developed a plan to implement the program and report to the General Assembly on implementation, including recommendations for legislation and appropriations necessary to carry out the program.

RATIFIED LEGISLATION

Aging

Raise Homestead Exemption (HB 105; Chapter 360): House Bill 105 increases the homestead exemption amount from $12,000 to $15,000 and makes numerous technical changes to the homestead exemption statutes. See **TAXATION**.

Medical Care Commission Authority (HB 587; Chapter 499): House Bill 587 was recommended to the 1993 General Assembly by the Department of Human Resources upon the advice of the Attorney General's Office. The Department has been challenged on its lack of authority to cite nursing home patients' rights violations in the administrative penalty determination and enforcement process. The bill clarifies the Medical Care Commission's rule-making authority and enforcement authority of Nursing Home Patients' Bill of Rights. G.S. 131E sets out a statement of policy and requirements imposed on licensed nursing homes guaranteeing every patient's civil and religious liberties and includes provisions for remedial enforcement allowing for injunctive relief and/or license revocation and administrative penalties. These technical changes prevent the possibility of the dismissal of cases on the basis of lack of authority.

1993-95 Capital Budget (SB 26; Chapter 561):
§ 6 - Provides $300,000 for 93-94 for the purpose of maintenance, renovation, and upkeep of Senior Citizen Centers. Funds shall be allocated based on need and no center shall receive more than $10,000.
§ 31 - Provides $3 million for the State's share of construction of the State Veterans Home in Fayetteville and stipulated that funds shall be used to construct at least 150 beds at the facility. Specifies the GA's intent that this appropriation be the complete appropriation for this facility and that no additional State capital funds be appropriated, and further that no State funds be appropriated in future years to support operational costs.

Current Operations Budget (SB 27; Chapter 321):
§ 147 - Renames the North Carolina Elderly and Handicapped Transportation Assistance Program the North Carolina Elderly and Disabled Transportation Assistance Program.
§ 239 - Rest home reimbursement rate increases as follows--ambulatory residents from $889 to $938 per month and semi-ambulatory residents from $928 to $979 per month.
§ 240 - Directs DHR to develop a payment methodology for domiciliary care. There have been several attempts to improve the rest home reimbursement process and methodology. Most recently, in 1991 the GA authorized DHR to study the issue of how the Special Assistance Program reimbursement process could be improved. When the report was issued, it did not contain any recommendations related to reimbursement. After hearing testimony in 1992, the NC Study Commission on Aging determined that there may be a different method of rate setting that would be more

beneficial to the State and to care providers and that would also more directly reflect costs incurred and services provided. Hence, the Commission recommended DHR develop a payment plan.

§ 243 - Designates that each year of the biennium, $1,008,000 of the Division of Aging's funds is to be used for services that support family caregivers of elderly persons with functional disabilities who want to stay in their homes rather than be institutionalized, but who need assistance.

§ in Expansion Budget, page 30 of Conference Report - Increases funds to improve the provision of in-home aide services and caregiver support services by an additional $1 million for each year of the biennium. This increase will enable some individuals to remain in their communities who might otherwise need institutional care. Some of the services provided are respite care, home-delivered meals, adult day care, medical transportation, senior companion, and mental health counseling.

§ 244 - Designates $403,800 of funds appropriated to DHR's Division of Aging for each fiscal year of the biennium to be used to enhance senior center programs--to test satellite services provided by existing senior centers to unserved or underserved areas and to provide start-up funds for new senior centers.

§ in Expansion Budget, page 30 of Conference Report - Increases state funds for the Long Term Care Ombudsman Program by $256,493 for 93-94 and $318,275 for 94-95 which provides for additional staffing to resolve complaints made by or on behalf of residents in long-term care facilities--skilled nursing homes, intermediate care homes, homes for the aged, family care homes, and group homes for developmentally disabled adults. Ombudsmen are located with the local Council of Governments throughout the state and are administered under the Division of Aging.

Senior Tarheel Legislature (SB 479; Chapter 503): Senate Bill 479 creates the Senior Tarheel Legislature within the Department of Human Resources' Division of Aging. The purpose of the Senior Tarheel Legislature is to provide information and education to senior citizens on the legislative process and matters being considered by the General Assembly; to promote citizen involvement and advocacy concerning aging issues before the General Assembly; and to assess the legislative needs of older citizens by convening a forum modeled after the General Assembly. The body is to meet annually beginning in March of 1994, but is to hold its first session no later than August 1993. Delegates are to be age 60 or over and are to be selected locally under the organization and coordination of the Division of Aging and the Area Agencies on Aging with the Division of Aging providing staffing.

Rest Homes Pay Fines (SB 575; Chapter 530): Senate Bill 575 amends G.S. 131E-102(c) to prohibit a nursing home license from being renewed if outstanding fees and penalties imposed by the State against the home have not been paid. Fines and penalties under appeal are exempt. The bill also amends G.S. 131D-2(b) to add a similar provision for annual renewal of license for domiciliary homes and to require that license renewal application must contain all necessary information that the Department of Human Resources may require by rule. Applies to renewals on or after October 1, 1993.

Long-Term Care/Domiciliary Home Managers (SB 842; Chapter 390): Senate Bill 842 creates a new G.S. 131E, Article 13, which provides for temporary management of nursing homes and domiciliary homes. The bill permits DHR to petition superior court to appoint a temporary manager of any such facility upon showing that existing conditions create substantial risk of death or serious physical harm, that death has already resulted, that the facility is unlicensed or the license has been revoked, or that the facility is closed or about to be closed and either there are no arrangements for

relocating residents, quick relocation would not be in the best interest of residents, or the facility has failed to comply with previous court order. Temporary managers are required to be DHR employees or to come from list of qualified persons maintained by DHR. Court is required to review the need for a temporary manager every 30 days and to approve projects to eliminate or correct deficiencies when costs exceed $1,000. The bill gives the temporary manager full power to operate facility, to void leases, mortgages, and other contracts of facility if costs are unreasonable. DHR is directed to establish temporary management contingency fund of up to $500,000 from penalties collected for violations. The court is permitted to order DHR to use moneys to operate homes under temporary management if operating costs exceed revenues and to review costs of temporary management. Regular operator is to reimburse contingency fund if funds are available or liens on property and funds of facility are directed to DHR for cost of temporary management.

Emergency Medical Services

EMS Certification Period (HB 508; Chapter 135): To serve as an emergency medical technician one must be certified by the Department of Human Resources. Including the ambulance attendant, there are six levels of certification. The regulations for the ambulance attendant and basic emergency medical technician (EMT) are developed by the Medical Care Commission under the authority of GS 131E-159. The regulations for the advanced life support (ALS) certification are developed by the Board of Medical Examiners. The Board recently lengthened the certification period for ALS personnel from the current two years to four years. There was no statutory change required. To bring the certification time period for EMTs in line with the certification time period for ALSs, House Bill 508 amends GS 131E-159 to change the certification period of EMTs from two years to four years. The act is effective upon ratification.

Trauma System Act of 1993 (HB 602; Chapter 336): House Bill 602 authorizes the Department of Human Resources to establish and maintain a program for the development of a statewide trauma system to include: (1) a statewide trauma registry; (2) establishment of educational requirements related to trauma centers; and (3) guidelines for monitoring and evaluation the system. All State systems relating to trauma systems are to be consolidated. The North Carolina Medical Care Commission with the advice of the State Emergency Medical Services Advisory Council is authorized to adopt rules. The act is effective upon ratification.

Facilities and Institutions

Parent/Child Hospital Responsibility (HB 552; Chapter 386): A child admitted to a medical institution may be eligible for Medicaid without considering the income of the child's parent if it is anticipated that the child will need inpatient care for at least a year. Currently, all that is required to receive this benefit is for the child's physician to certify the need for inpatient care for at least a year. House Bill 552 adds the additional requirement that the physician's determination of length of stay may be verified by the Division of Medical Assistance. The act does not affect children who qualify for Medicaid on the basis of the family's financial need. The act is effective October 1, 1993 and applies to determinations of eligibility made on or after that date.

Prescription Drug Label (HB 729; Chapter 529; Section 7.5): Section 7.5 of House Bill 729 requires that the prescription drug label of every drug product must: (1)

contain the "discard date" when dispensed in a container other than the manufacturer's original container; and (2) not obscure the expiration and storage statement when the product is dispensed in the manufacturer's original container. The "discard date" is defined as the earlier of one year from date dispensed or from the manufacturer's expiration date, whichever is earlier. This section of the act is effective January 1, 1994.

Hospital Surplus to Charities (HB 729; Chapter 529; Section 7.6): Section 7.6 of House Bill 729 allows disposal of surplus property form State and public hospitals to aid hospitals and medical facilities in other countries if the receiving entity is: (1) a 501(c) corporation; (2) a U.S. agency; (3) a government or political subdivision of another country; (4) a United Nations agency; and (5) any other eleemosynary institution or group. This section of the act is effective upon ratification.

Patient Counseling about Medication (HB 729; Chapter 529; Section 7.7): The Board of Pharmacy has promulgated rules that require patients to be counselled on prescriptions when medicine is dispensed. Section 7.7 of House Bill 729 provides an exemption from the Board's rules to health care providers other than pharmacists who dispense medication directly to patients. Such patient counseling by physicians, registered nurses, or other appropriately trained health care professional in a hospital, health maintenance organization, local health department, community health department, medical office or facility operated by a health care provider are deemed to be in compliance with the Board's rules. This section of House Bill 729 becomes effective July 1, 1994.

GPAC/Certificate of Need Self-Funded (SB 204; Chapter 383): Senate Bill 204 increases the minimum and maximum fees that may be imposed for certificate of need (CON) application fees. The purpose of the increase is to make the program fully receipt supported. Currently, the application fees generated by the CON process cover only 75% of the program's expense. Also the statutory requirement that the fee be based on the cost of the project is removed. The fee schedule will be adopted by rule. The bill becomes effective July 1, 1993 and applies to applications submitted on or after that date.

No Obstruction/Health Facilities (SB 873; Chapter 412): See **CRIMINAL LAW AND PROCEDURE.**

Hospice Certificate of Need Change (SB 950; Chapter 376): Senate Bill 950 requires that all new hospice programs obtain a certificate of need and makes the following changes in the statute: (1) adds definitions for "hospice residential care facility" and "hospice inpatient facility"; (2) clarifies that there are three levels of hospice care--hospice care provided in the patient's home, in a hospice residential facility, or in a hospice inpatient facility for short-term acute care; and (3) a hospital using licensed acute care beds and grouping them into a designated unit to provide care for hospice patients will not be required to go through the CON process as long as they have a contractual agreement with a licensed hospice. The act does not apply to hospice inpatient units currently in operation and does not apply to requests for hospice CON that were submitted to the Department of Human Resources prior to July 9, 1993. The act is effective upon ratification.

Health

Note: For health reform legislation see separate heading.

Health and Safety Training (HB 186; Chapter 170): See **EMPLOYMENT**.

School Health Screening (HB 365; Chapter 124): House Bill 365 amends G.S. 130A-440 to provide that the health assessment, which is required from each child who enters kindergarten in the public schools, must be submitted within 30 calendar days from the child's first day of attendance, at which time the principal shall not allow the child to attend school until the assessment is presented. Under former law, the child was allowed to stay in school until the 31st of December after school entry. The bill also adds dental screening as one of the things that may be included as part of the health assessment. House Bill 365 also amends G.S. 130A-441 to require the principal to file a health assessment status report with the Department of Health, Environment and Natural Resources within 60 calendar days after the beginning of each school year. Formerly, the principal was required to file this report with the Department of Public Instruction within 90 days after the beginning of each school year. The act took effect upon ratification, June 7, 1993, and applies to children entering kindergarten in the 1994-95 school year.

Clarify Immunization Law (HB 452; Chapter 134): House Bill 452 is aimed at increasing the immunization rate of children at the appropriate age by making some additions to the immunization statutes. GS 120A-153(c) is added to allow, upon request, the sharing of immunization information between State and local health departments, the patient's attending physician, and insurance companies. This would make easier the establishment of an immunization registry. Also GS 130A-153(d) is added to allow a physician or local health department to immunize a minor who is presented for immunization by an adult who signs a statement that he or she is authorized by a parent, guardian, or person standing in loco parentis to consent to immunization. The act is effective upon ratification

Advanced Practice Nurses Reimbursement (HB 457; Chapter 347): See **INSURANCE**.

Amend Vital Records Law (HB 569; Chapter 146): House Bill 569 changes the vital records statutes to avoid unlawful duplication by: (1) amending GS 130A-26 to add misdemeanor offense of unlawful manufacture or possession of a vital records seal or a reproduction or counterfeit copy of a vital record, (2) amending 130A-92(a) with regard to the State Registrar's authority with respect to approval of forms used to file vital records, and (3) by amending GS 130A-93(a) to provide that only the State Registrar, county officials specifically authorized by the State Registrar, and the North Carolina State Archives, shall have access to indices to the original vital records. The act is effective October 1, 1993.

Clarify Sanitation Laws (HB 570; Chapter 262): House Bill 570 makes the following technical and substantive changes to the food and lodging sanitation laws: (1) adds definitions for establishments that serve food, drinks or provide lodging and clarifies that to be exempted a "private club" must be incorporated as a nonprofit corporation or must be exempt from federal income tax; (2) clarifies that "caterers" are a regulated food service business and deletes "sandwich manufacturers" since they are inspected by the Department of Agriculture; (3) deletes the exemption from inspection bars serving only wine and beer; (4)clarifies that it is the business which provides lodging that is being regulated and not the property owner; (5) allows for the issuance of a transitional permit to the leasee of an establishment and clarifies that if the establishment moves a

new permit must be obtained; (6) clarifies that if a establishment is leased, the leasee must apply for a new permit and may also apply for a transitional permit and clarifies that the issuance of a new permit voids older permits; (7) requires the Commission for Health Services to adopt rules governing the sanitation of pushcarts and mobile food units; and (8) changes the term "facility" to "establishment". The act is effective upon ratification.

Chiropractor Insurance Equality (HB 873; Chapter 554): See **INSURANCE.**

Public Swimming Pool Regulation (HB 922; Chapter 215): House Bill 922 provides that rules adopted by the Commission for Health Services that became effective May 1, 1991 pertaining to the construction, remodeling, and fencing of public swimming pools shall apply only to those public pools constructed or remodeled on or after January 1, 1993.

State Contracts/Handicapped (HB 946; Chapter 252): See **STATE GOVERNMENT.**

Regulate Smoking in Public (HB 957; Chapter 367): See **STATE GOVERNMENT.**

Health Care Power of Attorney (HB 1043; Chapter 523): House Bill 1043 amends Article 3 of Chapter 32A of the General Statutes (Health Care Powers of Attorney) to permit a health care agent who has been given a specific authorization to withhold or discontinue life-sustaining procedures under a health care power of attorney to exercise that power in the absence of a declaration made under Article 23 Chapter 90 of the General statutes (Right to Natural Death: Brain Death). In that instance, GS 90-322 which establishes the procedures for natural death in absence of a declaration would not apply.

Before the passage of HB 1043 a health care power of attorney was revoked by the death of the principal, but the bill allows it to be effective after death if and to the extent that the health care agent was authorized in the power of attorney to exercise the rights of the principal with respect to anatomical gifts, the authorization of any autopsy, or the disposal of remains. Also the statutory form for a health care power of attorney is amended by eliminating the portion of the form where the agent acknowledges by signature his agreement to act as health care agent. The act is effective October 1, 1993. The powers of attorney made before this date remain in full force and effect.

No Unwrapped Food Samples (HB 1122; Chapter 346): House Bill 1122 requires the Commission for Health Services to adopt rules prohibiting offering unwrapped food samples to the general public unless the offering and acceptance of samples is continuously supervised by an agent of the preparer or an agent of the establishment on whose premises the sample is offered. The bill exempts unwrapped food samples prepared and offered in buffet, cafeteria, or other style in exchange for payment nor to open air produce markets or farmers markets. The act is effective January 1, 1994.

Qualified Limited Immunity to Health Care Providers Providing Volunteer Services at Their Place of Employment (HB 1172; Chapter 439): House Bill 1172 amends G.S. 90-21.14, which provides immunity to volunteer health care providers who provide services at local health departments or nonprofit community health centers, by extending qualified immunity from liability to health care providers who render medical services in their offices to patients referred to them by the local health department or a nonprofit community health center, and who neither charge nor receive a fee for the medical services provided under these circumstances. The health care provider would

still be liable for injuries or death that result from the provider's gross negligence, wanton conduct, or intentional wrongdoing. The bill became effective July 22, 1993.

Regulate Portable Toilets (HB 1492; Chapter 528): House Bill 1492 requires the Building Code Council to establish standards that: (1) require suitable toilet facilities be provided and maintained in a sanitary condition during construction with at least one facility for every two contiguous construction sites which may be portable, enclosed, chemically treated, tank-tight units; and (2) ensure portable toilets be enclosed, screened, and weatherproofed with internal latches. Toilet facilities need not be provided for a work crew on a job site for no more than one working day and having transportation to readily available nearby toilet facilities The requirements established by the Board must be consistent with OSHA. The act is effective August 1, 1993 if and only if funds are made available to implement it.

Advisory Committee on Cancer Coordination and Control (SB 27; Chapter 321; Section 288): Section 288 of Senate Bill 27 creates a 24 member Advisory Committee on Cancer Coordination and Control within the Department of Environment, Health and Natural Resources to be appointed by various health professions and medical schools, with six members from the General Assembly. The Committee is to advise the Secretary on various issues related to establishing a statewide interagency comprehensive coordinated cancer control program. $75,000 was appropriated each year of the biennium to support the Committee. $100,000 was appropriated for each year of the biennium to fully cover the diagnosis and treatment component of the current cancer control program. Also $1,450,000 for FY 1993-94 and $1,664,000 FY 1994-95 was appropriated to expand eligibility for diagnosis and treatment of people at or below 100% of the federal poverty level. The act is effective upon ratification.

Immunization (SB 27; Chapter 321): There is appropriated $3,200,00 for FY 1993-94 and $7,200,000 for FY 1995 for positions, pharmaceuticals, and support to fully immunize all children in North Carolina. The act is effective upon ratification.

Communicable Disease (SB 27; Chapter 321): There is appropriated $250,000 for each year of the biennium to expand HIV/aids, TB, and STD services and programs.

Health Insurance Direct Payment (SB 181; Chapter 41): SEE INSURANCE.

Selling Handicap Placards Illegal (SB 475; Chapter 373): See **CRIMINAL LAW AND PROCEDURE.**

Insurance Coverage for Prostate Cancer Tests (SB 500; Chapter 269): See **INSURANCE.**

Occupational Health/Reporting (SB 533; Chapter 486): See **EMPLOYMENT.**

County Rabies Vaccination Information Not To Be Used For Commercial Purposes (SB 865; Chapter 245): Senate Bill 865 amends G.S. 130A-189 to prohibit information provided on cat and dog rabies vaccination certificates collected by county animal control agencies from being used for commercial purposes. The bill becomes effective October 1, 1993.

Child Medical/M.H. Evaluation (SB 496; Chapter 357): Senate Bill 496 was one of the recommendations of the Child Fatality Task Force and directs the Secretary of Human Resources to convene a committee, composed of representatives of various State

agencies, within the Division of Social Services to develop a plan to provide medical and mental health evaluations to all children suspected of being abused or neglected, regardless of whether they are referred for evaluations by Child Protective Services programs. The interagency committee must report to the General Assembly and the Child Fatality Task Force by March 15, 1994. The act took effect on July 1, 1993.

STD Test/Sex Offenders (SB 799; Chapter 489): See **CRIMINAL LAW AND PROCEDURE.**

Health Care Consent/Minor (SB 955; Chapter 150): Senate Bill 955 adds a new Article 4 to Chapter 32A that allows custodial parents of minor children, who are defined as unemancipated individuals under the age of 18, to authorize others to consent to health care for these children. The act (i) requires the consent to be in writing and notarized, (ii) sets out the conditions under which a consent is revoked, (iii) provides for settling disagreements between two or more persons authorized to consent to health care for the same minor child, (iv) prohibits custodial parents from authorizing another to consent to the withholding or withdrawal of sustaining procedures, (v) protects health care providers who rely upon consent given under the Article, and (vi) provides a statutory form that may be used to meet the requirements of the Article. The act becomes effective January 1, 1994.

Licensing and Certification

Physician Assistant Peer Review (HB 56; Chapter 176): House Bill 56 authorizes the Board of Medical Examiners, which approves physician assistants, to enter into an agreement with the North Carolina Academy of Physician Assistants for the purpose of conducting peer review activities. After the Academy enters into a peer review agreement with the Board, the Academy must either enter into an agreement with the North Carolina Medical Society to include physician assistants into the Society's program for impaired physicians, or the Academy must establish its own program for impaired physician assistants. The act is effective October 1, 1993.

Fees for Impaired Dentist Programs (HB 914; Chapter 420): House Bill 914 authorizes the Board of Dental Examiners to collect a new $50 annual fee for renewal of dentistry licenses to be used for peer review programs for impaired dentists. The impaired dentist program would contain the following elements: (1) agreements between the Board and special impaired dentist peer review organizations formed by the Dental Society; (2) investigation, review and evaluation of records, complaints, litigation and other information about impaired dentist by the peer review organizations; and (3) programs for treatment and rehabilitation. The peer review organizations must report to the Board if it has information that a dentist constitutes an imminent danger to the public or himself and refuses to cooperate, or if there appears to be other grounds for disciplinary action. The act is effective upon ratification.

Oral Surgery Change (HB 1149; Chapter 190): House Bill 1149 amends the Medical Practice Act as it relates to oral surgery. The amendment provides that a medical school graduate who is also a North Carolina-licensed dentist certified by the American Board of Oral and Maxillofacial Surgery, after completing an oral and maxillofacial residency, may be examined and licensed by the Board or Medical Examiners without having completed one year of post-medical school medical education that is required of one not so certified. The act applies to licensure applications made on or after the ratification of the act.

Home Care Licensing (SB 27; Chapter 321) Senate Bill 27 appropriates $121,000 for each year of the biennium to continue the Home Care Licensing Act of 1991.

Complementary Medical Practice (SB 341; Chapter 241): Senate Bill 341 amends the statutes regulating the practice of medicine to provide that the Board of Medical Examiners shall not revoke or deny a license solely because a person practices a therapy that is experimental, nontraditional, or that departs from acceptable and prevailing medical practices, unless the board can establish by competent evidence that the treatment has a safety risk greater than the prevailing treatment or that the treatment is generally not effective. the Board of Medical Examiners is increased from eight to twelve with at least three members to be members of the public and at least one member to be a physician assistant or a nurse practitioner. The act is effective upon ratification.

Acupuncture License Required (SB 422; Chapter 303) Senate Bill 422 makes it unlawful to practice acupuncture in North Carolina without a license. The only exceptions are a physician, a chiropractor, and a student practicing acupuncture under the direct supervision of a licensed acupuncurist as part of a course of study. Acupuncture is defined as "a form of health care developed from traditional and modern Chinese medical concepts that employ acupuncture diagnosis and treatment, and adjunctive therapies and diagnostic techniques, for the promotion, maintenance, and restoration of health and prevention of health". A person may apply to the Board to be licensed after successfully completing a license examination, a three year postgraduate acupuncture training program, and The Clean Needle Technique Course. The license is renewable every two years. To be eligible for renewal, the practitioner must complete 40 hours of continuing education. Of the six Board members, two are appointed by the Governor and four by the General Assembly. The four members appointed by the General Assembly shall be licensed to practice acupuncture and shall not be licensed physicians. Of the Governor's two appointments, one shall be a layperson and one shall be licensed to practice medicine who has successfully completed 200 hours of Category I American Medical Association credit in medical acupuncture training. The act is effective upon ratification.

Cosmetology Rental Booths (SB 463; Chapter 22): Chapter 88 of the General Statutes regulates the practice of cosmetic art (which includes beauty parlors, cosmetic art shops, and hairdressing establishments). These establishments are required to comply with certain space, structural, and sanitation mandates. Senate Bill 463 amends GS 88-4 to state that booth space rented by an independent contractor within a cosmetic art shop, beauty parlor, or hairdressing establishment is not a separate cosmetic art shop, beauty parlor, or hairdressing establishment, and amends GS 88-1 to require in a applying for a permit or having a permit renewed a person, firm, or corporation must list all registered cosmetologists and identify each as an employee or booth renter. The act is effective upon ratification.

Sanitarian Education Requirements (SB 595; Chapter 233): Senate Bill 595 increases the number of semester hours of study required for registration as a sanitarian. Currently, one of the requirements to be a Registered Sanitarian is that the sanitarian has received a baccalaureate degree from a post-secondary educational institution rated as acceptable by the board with a minimum of 15 semester hours or its equivalent in the physical and/or biological sciences. For those persons that apply for registration on or after January 1, 1994 the semester hours will be raised to 20, 25 such hours for persons who apply on or after January 1, 1996, and 30 such hours for persons who apply on or after January 1, 1998. The act is effective upon ratification.

Psychology Practice Act (SB 631; Chapter 375): Senate Bill 631 rewrites the Practicing Psychologist Licensing Act found in Article 18A of Chapter 90, renaming the Act as the Psychology Practice Act and by modernizing the law regulating the licensing of psychologists. The following substantive changes to the former law are made in the bill: 1) definition of the practice of psychology is redefined by referring to types of practices and their purposes, and includes a nonexhaustive list of specific practices; 2) exemption from the Act is permitted for people who teach, research or consult in the area of psychology but who are not involved in the delivery of direct psychological services, and for school psychologists who are regular salaried employees of the Department of Public Instruction or local school boards; 3) elimination of the provision allowing State or local governments to temporarily hire nonlicensed applicants for psychology positions who qualify, apply for and take the examination; 4) deletion of the provision allowing a State employee with five consecutive years of experience in the practice of psychology and with graduate training and experience equivalent to a masters degree in psychology to take the exam for a psychology associate without a masters degree; 5) license renewal period extended from one year to two years; 6) adds the requirement that future members of the North Carolina Psychology Board be from different congressional districts. The bill also clarifies that the psychologist-patient privilege is not grounds for failing to report suspected child abuse or neglect. The bill requires that all licenses in effect on October 1, 1993 must be renewed on or before January 1, 1994, and all renewals thereafter shall be on or before October 1 of even numbered years. The bill becomes effective October 1, 1993.

Mandatory Continuing Education for Dentists and Dental Hygienists (SB 889; Chapter 307): Senate Bill 889 adds two sections to Article 2, Chapter 90 (Dentistry) to provide for mandatory continuing education for dentists and dental hygienists in courses approved by the Board of Dental Examiners. The Board determines the number of hours of study and the nature of the course work required. The Board may provided exemptions and waivers from the continuing education requirements for dentists involved in dental education or training pursuits when they gain experience equivalent to formal continuing education courses and when dentists of advanced age are semiretired or otherwise have restricted their practices in volume and scope. Failure to comply with the continuing education requirements will be grounds for the Board to decline to renew a dental license or dental hygienist certificate. The bill becomes effective October 1, 1993 and applies to requirements imposed on or after that date.

Nursing Technical Amendments (SB 1007; Chapter 198): Senate Bill 1007 makes the following technical amendments to the Nurse Practice Act: (1) removes the requirement that the Board of Nursing give exams for licensure twice a year, but the Board must still offer the examination and must adopt rules identifying criteria which must be met for licensure; (2) removes the requirement that a person graduating from a nursing program after July 1, 1981 must pass the exam within three years of graduation; (3) upon implementation of a computer-adaptive system by the Board, no temporary licenses shall be issued for those receiving their license by exam pursuant to GS 90-171.30; (4) requires that a license be renewed before its expiration rather than the current 30 days after expiration; (5) provides that a person who has been placed on inactive status may within five years submit a form and fee for license renewal and the Board may require evidence of competency, but if the person has been on the inactive list for more than five years the applicant must satisfactorily complete a refresher course or provide proof of active licensure within the past five years in another jurisdiction; (6) clarifies that the clinical practice by unlicensed students enrolled in continuing education or refresher programs under the supervision of qualified faculty is

not prohibited; and (7) clarifies the actions that make the licensee subject to suspension or revocation of license. The act is effective upon ratification.

Mental Health

Adopt Youth Substance Abuse Plan (HB 249; Resolution 27): The Mental Health Study Commission was charged by the General Assembly with developing long range plans for five disability populations. House Bill 249 adopts the Youth Substance Abuse Plan as recommended by the Mental Health Study Commission as policy guidance for the development of services. The resolution is effective upon ratification.

Mental Health Quality Improvement (HB 250; Resolution 28): The Mental Health Study Commission was charged by the General Assembly with developing long range plans for five disability populations. House Bill 250 endorses the quality improvement report for mental health, developmental disabilities and substance abuse services as recommended by the Mental Health Study Commission in December 1992, but solely to provide policy guidance. The resolution is effective upon ratification.

Developmental Disabilities Plan (HB 251; Resolution 29): The Mental Health Study Commission was charged by the General Assembly with developing long range plans for five disability populations. House Bill 251 adopts the comprehensive plan for services and supports for persons with developmental disabilities as recommended by the Mental Health Study Commission in December 1992. It is solely for the purpose of providing policy guidance. The resolution is effective upon ratification.

Clarify Control Substance Exam Act (HB 476; Chapter 213): House Bill 476 adds the following new or clarifying provisions to workplace drug testing: (1) adds new definitional terms of "approved laboratory" (clinical chemistry laboratory that performs controlled substances testing and demonstrates satisfactory performance in forensic urine testing services of Health and Human services or the College of American Pathologists), "controlled substance examination" (drug testing to determine controlled substance use), and "screening" (an initial controlled substance exam); (2) provides that an examinee has the right for a retest following a positive test result at the same or another approved laboratory and the examiner, through the approved lab, must make confirmed positive samples available to the affected examinee; (3) provides that the Commissioner of Labor may adopt, modify, or revoke rules that are necessary to enforce the provisions; and (4) makes clear that Article 20 of Chapter 95 of the General Statutes does not apply to a controlled substance examination required by the U.S. Department of Transportation or the U.S. Nuclear Regulatory Commission. The act is effective upon ratification.

Developmental Disabilities-Single Portal (HB 513; Chapter 396): House Bill 513 amends GS 122C-3(11a) and (34), GS 122C-101, GS 122C-132, and GS 143B-147. The effect is to mandate that coordination of day/night and residential (24 hour) services for individuals with developmental disabilities be part of a single portal of entry and exit plan that is developed by the Secretary of the Department of Human Resources and upon approval becomes the single portal of entry and exit policy for the area authority's catchment area. At the present time, becoming a single portal area is optional. Because of expansion of services to this group of clients, it is felt by mental health planners that this change would facilitate the referral of each client to the services that best meet the client's needs. The act is effective January 1, 1994.

Drug Schedule Additions (HB 630; Chapter 319): See **CRIMINAL LAW AND PROCEDURE.**

Area Mental Health/Managed Care (HB 729; Chapter 529; Sections 7.1, 7.2. and 7.3): To slow the rise in costs of mental health services to Medicaid covered children under 18, the Division of Mental Health, Developmental Disabilities, and Substance Abuse wish to participate in a Medicaid waiver that would allow a managed care alternative in certain area programs. Managed care is a general term for organized networks of health-care providers whose purpose is to enhance cost effectiveness such as an HMO. The above listed three sections of House Bill 729 provide the authority for the area authority to function as a managed care provider for the purpose of Medicaid waiver and clarifies the purchase and contract and the insurance statutes so that Medicaid may work directly with the area authorities without going to bid. These three sections of House Bill 729 are effective upon ratification.

Area Authority Plans (HB 729; Chapter 529; Section 7.8): The 1992 General Assembly required the area mental health programs to submit local service implementation plans to the Department of Human Resources and the Mental Health Study Commission. This would be a total of 246 plans to be reviewed. This section would extend and stagger the reporting dates to allow a more thorough development and review of the required plans.

DHR Nurse's Pay Adjustment (SB 27; Chapter 321): Appropriates $892,196 for each year of the biennium to implement salary adjustments for nurses employed at DHR institutions based on revised entry rates and special minimum rates which became effective August 1, 1991. The act is effective upon ratification.

MHDDSAS Early Intervention (SB 544; Chapter 487): Senate Bill 544 revises the statutes concerning early intervention services for children with, or at risk for disabilities by: (1) changing the name of the "Interagency Coordinating Council for Handicapped Children from Birth to Five Years of Age" to the "Interagency Coordinating Council For Children from Birth to Five with Disabilities and their Families"; (2) requiring the terms of the Council Members be staggered, effective July 1, 1994; (3) changing the provisions for composition and leadership of the Council to conform to P. L. 102-119, the federal early intervention legislation; (4) codifying a current special provision from the 1991 Appropriations Bill that requires the Secretary of DHR to assure the availability of early intervention services; and (5) providing that area mental health authorities may not charge an individual, and may not bill insurers or third party payors without the individual's permission, for free services--as required by federal law. The act is effective upon ratification.

Criminal Record Checks (SB 549; Chapter 403): Senate Bill 549 allows the Department of Justice to provide to hospitals, nursing homes, area mental health authorities or their contract agencies criminal record checks on persons who are employed by or who apply for employment with the agencies if the applicant or employee consents to the record check. The information must be kept confidential and if the agency disclosed the information, the Department may refuse to provide further criminal checks to the agency. The Department may charge a fee of $10 for the check. The act is effective upon ratification.

Pioneer Mental Health Plan (SB 27; Chapter 321; Section 220): Section 220 of Senate Bill 27 codifies the budgeting, funding and management policies that were developed as pilot programs under the Pioneer Funding System for the mental health

system as adopted by the general Assembly in 1987. The Mental Health, Developmental Disabilities, and Substance Abuse Act of 1985 is amended in the following ways: (1) the General Assembly shall endorse and the Secretary of DHR shall develop a payment policy for the use of State resources that is consistent with long range plans that designate the types of service to be provided and the persons to be served and the payment policy shall provide incentives to equalize services among catchment areas; (2) a Memorandum of Agreement between the Secretary of DHR and each area authority shall be written to establish the services to be paid for by the State; (3) the General Assembly shall appropriate funds in broad categories and the Secretary shall allocate funds to provide the area authority flexibility to respond to local needs; (4) for purchase of service funds, reimbursement rates for specific types of service shall be negotiated between the Secretary and area authorities utilizing cost-finding and rate-setting conducted by the area authority; and (5) an area authority appeals panel is established to hear appeals from clients, contractors, etc. The act is effective upon ratification.

Controlled Substance Registration Fees (SB 621; Chapter 384): Every person who manufactures, distributes, dispenses, or conducts research with any controlled substance in North Carolina must register annually with the Department of Human Resources. Controlled substances are those drugs and precursor chemicals that are included in Schedules I through VI in the Controlled Substance Act (Article 5 of Chapter 90 of the General Statutes). Senate Bill 621 amends the rulemaking power of the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services to permit this Commission to adopt rules setting registration fees which are to be applied to the costs of administration of the Act. The required fees are to be submitted with the application in the following amounts: (1) clinic, $150; (2) hospital, $350; (3) nursing home, $150; (4) teaching institution, $150; (5) researcher. $150; (6) analytical laboratory, $150; (7) distributor, $600; and (8) manufacturer, $700. The act is effective January 1, 1994.

Miscellaneous

Council for the Deaf Membership (HB 505; Chapter 551): House Bill 505 increases the membership of the North Carolina Council for the Deaf and Hard of Hearing located within the Department of Human Resources from fifteen to twenty-three members. Of the eight new members, one shall be appointed from the House of Representatives by the Speaker and one shall be appointed from the Senate by the President Pro Tempore. The remaining six shall be appointed by the Secretary of the Department of Human Resources as follows: one from the Division of Vocational Rehabilitation, one from the Division of Aging, one from the Division of Mental Health, One from the Division of Social Services, one from a North Carolina Chapter of Self Help for the Hard of Hearing, and one from Statewide Parents' Education and Advocacy for Kids. The act is effective July 1, 1993 and applies to appointments made on or after that date.

DHR School Employee Records (HB 554; Chapter 350): House Bill 554 adds a new GS 114-19.2(c1) which permits the Department of Justice to provide a criminal record check of employees, applicants for employment and volunteers in the schools of the Department of Human Resources provided the subject consents. The act is effective October 1, 1993.

Vocational Rehabilitation Council Changes (HB 611; Chapter 248): House Bill 611 changes the name of the Business and Consumer Council and amends the composition and duties of this advisory council for the Division of Vocational Rehabilitation in the following ways: (1) provides the the Council will consist of 15 voting members plus the Director of the Division and one vocational rehabilitation counselor; (2) provides that five members will be appointed by the President Pro Tempore including one member recommended by N. C. Citizens for Business and Industry, one member representing community rehabilitation services, one vocational rehabilitation counselor, and two persons representing disability groups (three of the five appointees must be persons with disabilities; (3) provides that five will be appointed by the Speaker including one member representing business and industry, one member representing labor, one member representing representing a parent training and information center, and two members representing disability advocacy groups (three of the five must be persons with disabilities; and provides five members will be appointed by the Governor, including a member representing business and industry, one member representing a regional rehabilitation center, one member representing the Statewide Independent Living Council, one member representing the Client Assistance Program and one current or former applicant or recipient of vocational rehabilitation services (three of the five must be persons with disabilities.

Newly assigned duties include: (1) review, analyze, and advise the Division on the performance of its responsibilities under specified federal laws; (2) advise DHR and the Division, at the Division's discretion, assist in preparing applications, State Plan, etc. required by specific federal laws; and review and analyze effectiveness of, and consumer satisfaction with specified agencies and vocational rehabilitation services. The act is effective upon ratification.

Mail-Order Pharmacy Registration (HB 862; Chapter 455): Under current law, pharmacies in North Carolina are required to register annually and are subject to the rules and regulations of the Board of Pharmacy. House Bill 862 requires the same standards for out-of-state pharmacies doing business in North Carolina that dispenses legend drugs. In addition to the requirements for North Carolina pharmacies, the out-of-state pharmacies must be licensed in its home state and only dispense drugs in North Carolina that it could legally dispense in its home state. The bill would allow the Board to deny registration when it is found that the pharmacy had a record of being formally disciplined in its home state. The registration can also be denied or revoked for failure of the pharmacy to comply with North Carolina laws, rules and regulations. The act is effective October 1, 1993.

Health Insurance/Pharmacy of Choice (SB 885; Chapter 293): Senate Bill 885 adds a new provision to the insurance laws to prohibit health benefit plans providing pharmaceutical services benefits from prohibiting or limiting an insured beneficiary from selecting a pharmacy of his or her choice when the pharmacy has agreed to participate in the health benefit plan according to the terms offered by the insurer. Exempt from the provisions of this act are entities that dispense drugs from their own pharmacies to their own employees or enrollees (except when the entity contracts with an outside pharmacy or pharmacies to provide prescription drugs and services) and federal programs, clinical trial programs, and hospitals that dispense to their patients. A health benefit plan also cannot deny a pharmacy the opportunity to participate under the same terms and conditions as other pharmacies, cannot apply unequal co-payment requirements based on the pharmacy chosen, cannot provide any monetary incentive or disincentive to affect the beneficiary's choice of pharmacy, cannot reduce the amount of reimbursement based on the pharmacy chosen, nor require the purchase of prescription drugs exclusively through a mail-order pharmacy. A participating pharmacy cannot

give a discount to any particular enrollee without offering the same discount to all enrollees. The health benefit plan is required to give notice to all pharmacies in the region of the opportunity to participate in the plan. The health benefit plan is also required to notify its enrollees of the names and locations of all participating pharmacies. All rebates and marketing incentives must be offered on an equal basis to all participating pharmacies. Violations of this law may be grounds for actions by the North Carolina Board of Pharmacy and the North Carolina Department of Insurance, grounds for civil damages and relief, and grounds for voiding conflicting contract provisions. This act is effective October 1, 1993.

PENDING LEGISLATION

Aging

Index Homestead Exemption (HB 165): House Bill 165 increases the amount of the homestead exemption from $12,000 to $15,000 effective for tax year 1993. Starting with the 1994 tax year, it links the amount of the homestead exemption to the proportionate increase or decrease in the appraised value of property in a county resulting from either a horizontal adjustment of residential property or a reappraisal, thereby increasing or decreasing the amount of the exemption above or below $15,000 and links the amount of the income threshold an owner must meet to qualify for the homestead exemption to federal cost-of-living increases given to recipients of social security, thereby increasing the income threshold by the same percentage increase as the federal cost-of-living increase. It changes the definition of income used in determining whether the income threshold is met by excluding from the definition all social security benefits and other income that is not part of adjusted gross income. (See the section on "TAXATION" for full explanation.)

Medicaid Eligibility/Disabled, Aged (HB 243): House Bill 243 appropriates $369,841 for the 1993-94 fiscal year and $95,618,662 for the 1994-95 fiscal year to DHR's Division of Medical Assistance to provide Medicaid coverage to all elderly, blind, and disabled individuals receiving assistance under the Supplemental Security Income Program, to provide Medicaid coverage to aged, blind, and disabled persons whose countable income does not exceed one hundred percent of the federal poverty level, and to implement recommendations of the Medicaid Resources Study.

RSVP Program Funds (HB 387): House Bill 387 appropriates a total of $300,000 to DHR's Division of Aging for the 1993-94 fiscal year to fund Retired Senior Volunteer Programs. $200,000 is to fund new Retired Senior Volunteer Programs and $100,000 is to fund existing Retired Senior Volunteer Programs.

Nursing Home Penalty Committee Change (HB 740): House Bill 740 designates that of the nine members of the Nursing Home Penalty Review Committee one member shall be a near relative of a nursing home patient and one shall be a near relative of a rest home patient. These two members shall be appointed by the Secretary of DHR from recommendations made by the Office of State Long-Term Care Ombudsman.

Domiciliary Care Licensing Act (HB 1113): House Bill 1113 amends G.S. 131D-2 which defines terms used under Article 1, Licensing of Facilities. The bill adds the following definition: assisted living means community-based living arrangements where

residents live in individual or multi-unit housing. The bill also amends the definition of "domiciliary home" to include provision of medical care as a function such a facility can provide and deletes the phrase that restricts the type of medical care appropriately provided. The effective date is October 1, 1993, and applies to licensure requirements on or after that date.

Medicaid Eligibility/Disabled, Aged (SB 5): Senate Bill 5 appropriates $369,841 for the 1993-94 fiscal year and $111,496,616 for the 1994-95 fiscal year to DHR's Division of Medical Assistance. Of these funds, $16,681,016 is allocated in the 1994-95 fiscal year to counties as a grant-in-aid to offset the cost of benefits to newly eligible persons. The bill provides Medicaid coverage to all elderly, blind, and disabled individuals receiving assistance under the Supplemental Security Income Program, provides Medicaid coverage to aged, blind, and disabled persons whose countable income does not exceed one hundred percent of the federal poverty level, and implements recommendations of the Medicaid Resources Study.

Alzheimer's Association/Funds (SB 18): Senate Bill 18 appropriates $200,000 for fiscal year 1993-94 and $200,000 for fiscal year 1994-95 to be divided equally among the four chapters of the Alzheimer's Association of North Carolina.

In-Home Funds (SB 32): Senate Bill 32 appropriates $7,506,338 for the 1993-94 fiscal year and $8,535,072 for the 1994-95 fiscal year to fund in-home aide services and caregiver supports services. These funds are to be used only for direct services. In the past two bienniums funding has remained constant while costs of services have increased. This appropriation would make up for lost units of service, increase services to new clients, and increase the level of service to existing clients. (See SB 27, Chapter 321, under this section for increased appropriations to in-home services.)

Senior Centers/Funds (SB 34): Senate Bill 34 appropriates $1,200,000 for the 1993-94 fiscal year and $1,900,000 for the 1994-95 fiscal year to fund Senior Centers. The funds are to be used to strengthen and expand provision of direct services. (See SB 26, Chapter 561, under this section which appropriates $300,000 for the 1993-94 fiscal year for the purpose of maintenance, renovation, and upkeep of Senior Citizen Centers--not for the provision of services.)

Age 65 Hunting/Fishing License (SB 126): Senate Bill 126 provides for free annual hunting and fishing licenses for persons age 65 and older.

State Veterans Home (SB 888): Senate Bill 888 provides for the State to construct, maintain, and operate a State veterans home and to assign the Division of Veterans Affairs to coordinate construction and administration of the State Veterans Home Program and appropriates $6,230,000 for the 1993-94 fiscal year to provide the State's participation in the cost of the construction. (Please note that SB 26, Chapter 561, appropriates $3 million for the State's share of construction and specifies that no additional State funds be appropriated for capital needs or for operational costs.)

Adult Day Care Funds (SB 990): Senate Bill 990 appropriates $750,000 for the 1993-94 fiscal year and $750,000 for the 1994-95 fiscal year for adult day care services in counties currently without these services.

Health

Note: For health care reform legislation see separate heading.

Tattooing Regulated (HB 203): House Bill 203 would regulate persons who engage in tattooing by requiring them to obtain an annual permit from the Department of Environment, Health, and Natural Resources, to comply with sanitation rules to be adopted by the Commission for Health Services, and to pay a fee set by the local board of health for the local board's services concerning tattooing.

Physical Fitness Pilot Program (HB 247): House Bill 247 would appropriate $250,000 to the Department of Public Instruction to provide one year grants for planning and implementation of pilot programs to encourage community/school linked physical fitness and healthful living programs.

Food Inspection in Private Clubs (HB 555): House Bill 555 would extend the local health department's inspection of food to include private clubs.

Patient Records/EHNR Investigation (HB 613): The Senate Committee substitute for House Bill 613 would amend G.S. 130A-5(2) which in part spells out the authority of the Secretary of EHNR to carry out the Public Health law in North Carolina, by enabling public health physicians to more easily gain access to pertinent parts of privileged medical information necessary for public health investigations. The bill would also grant qualified immunity from civil liability to anyone who assists in the investigation by the State Health Director of the risk of transmission of HIV or Hepatitis B by an infected health care worker.

Marriage License/Health Certificate (SB 453): Under current statutory requirements, before a marriage license is issued by the county register of deeds, the applicant must present a health certificate executed within the last 30 days by a physician that shows no evidence of communicable disease or infectious TB, no evidence of venereal disease, and the applicant is mentally competent. Senate Bill 453 would repeal the requirement for a health certificate.

Licensing and Certification

Licensure of Marriage and Family Therapists (HB 233): Currently, North Carolina has a voluntary certification process for marriage and family therapists. House Bill 233 would change the voluntary certification language to a required licensing process for all those persons using the title of "marriage and family therapist".

Optometry Law Changes (HB 987): House Bill 987 would authorize the Board of Examiners in Optometry to enter into agreements with the State Optometric Society for the purpose of conducting peer review activities and to establish a program for impaired optometrists. There is also created an optometrist/patient privilege protecting any information acquired.

Speech Assistant Program (HB 988): House Bill 988 would permit the Board of Examiners for Speech and Language Pathologists and Audiologists to develop and implement a paraprofessional speech and language assistant program.

Regulate Medical Equipment (HB 1082; SB 848): House Bill 1082 would make it unlawful to own or manage a place of business from which medical equipment is delivered without a permit from the Board of Pharmacy. Medical equipment is defined

as a device, ambulation assistance equipment, rehabilitation environmental control equipment, diagnostic equipment, and a bed prescribed by a physician to treat or alleviate a medical condition, but does not include medical equipment dispensed by hospitals or professionals, upper and lower extremity prosthetics and related orthotic, or canes, crutches, walkers, and bathtub grab bars.

Substance Abuse Certification Act (HB 1142): House Bill 1142 would establish the North Carolina Substance Abuse Professionals Certification Board to certify substance abuse counselors and substance abuse prevention consultants.

Medical Examiners Fees (SB 719 and HB 721): This bill would raise the registration fee from $100 to $200 and the per diem of Board members from $100 per day to $200 per day.

Board of Electrolysis Changes (SB 1249): Senate Bill 1249 would make the following changes concerning the Board of Electrolysis Examiners: (1) move the date after which it is unlawful to practice electrolysis without a license from November 1, 1992 to July 1, 1995; (2) require fees paid to the board to be deposited with the State Treasurer; and (3) provide licenses without examination to those practicing electrolysis in this or another state before July 1, 1993 and who apply for a license by June 30, 1995.

Mental Health

Area Authority Property (HB 536): House Bill 536 would add area mental health, developmental disabilities, and substance abuse authorities to the list of local governmental units that are authorized to buy real or personal property by an installment contract that creates in the property purchased a security interest to secure payment of part or all of the purchase price.

Substance Abuse Rehabilitation (HB 551): In 1991 over 24,000 DWI offenders failed to follow through with court ordered substance abuse assessment and either an educational or treatment program. House Bill 551 would incorporate into the statutes policies and procedures to increase compliance with substance abuse rehabilitation sanctions and increase penalties willful refusal to comply. The focus and authority would be changed from probation to a driver license sanction.

Family Care Home/Residential Use (SB 872): GS 168-20 thru GS 168-23 declares that a "family care home" is a residential use and is permitted as of right in any residential zoning district. Senate Bill 872 amends GS 168-22 to provide that family care homes also be deemed a residential use of property in determining various other governmental assessments such as water, sewer, power, telephone service, garbage and trash collection, and other services and charges and for classification for insurance.

Miscellaneous

Social Worker Maximum Load (HB 361; SB 1102): These companion bills would require the Department of Human Resources to establish maximum case loads for county departments of social services for certain specified functions.

Commission for the Blind Changes (HB 635; SB 561): These two companion bills would amend the statutes regarding the duties of the Commission for the Blind in the

following ways: (1) advise DHR about State performance and evaluation under federal rehabilitation program; (2) review and analyze effectiveness of DHR programs for the blind and vocational rehabilitation services for the blind; (3) submit an annual report to the Governor and others; (4) coordinate with various other councils within the State; and (5) prepare a resource plan for carrying out its responsibilities.

Social Workers Loan Fund (HB 1327; SB 1059): These companion bills would place within the Department of Human Resources a loan fund for the education of social workers who agree to accept employment in public child welfare in exchange for the loan.

STUDIES

House Bill 1319

The 1993 Studies Bill (HB 1319) was passed by both houses but was not ratified before adjournment of the 1993 Regular Session. It should be signed into law at the beginning of the 1994 Short Session. Legislative Research Commission Studies relating to the topic of Human Resources include: (1) Need to Establish a College of Chiropractic in North Carolina; (2) Public Health Programs Organization; (3) Ways to Improve Guardianship Services; (4) Development of a Lead Hazard Management Program in the State; (5) Health and Fitness Club Issues; (6) Emergency Cardiac Care; (7) Public Assistance Direct Deposit; (8) Insurance Coverage for Biologically Based Brain Diseases; (9) Application of Chiropractic Care for the Cost-Effective Delivery of Health Care; (10) Health Care Insurance Coverage for Chemical Dependency; (11) Medicaid; (12) Recovery Care Centers and Their Role in Developing a System of Affordable, Quality Health Care; (13) Long-Term Care Issues; (14) Barrier to Meeting Human Services Needs Because of Confidentiality Requirements Set Out in State and Federal Laws and Regulations; (15) Physical Fitness Among Youth; (16) Fletcher-Jeralds Omnibus Health Reform Act of 1993; (17) Medicaid Eligibility Requirements; (18) Health Care Reform. On September 13, 1993, the LRC authorized the study of (2) and (4) by the Public Health Committee; authorized the study of (3),(9), and (15); referred (5) to a new Consumer Protection Committee; referred (6) and (12) to the Medical Care Commission; authorized the study of (8) and (10) by the Mental Health Committee; authorized the study of (11) and (17) by the Medicaid Committee; referred (13) to the NC Commission on Aging; referred (16) and (18) to the NC Health Planning Commission; and declined to authorize the study of (1),(7), and (14).

Other relevant studies contained in HB 1319 include: (1) the Mental Health Study Commission; (2) the Public Health Study Commission; (3) the study to develop a proposal for a North Carolina Institute of Gerontology to be conducted by the Board of Governors of the University of North Carolina.

Independent Studies, Boards, Etc., Created or Continued

Advisory Committee on Cancer Coordination and Control within Department of Environment, Health, and Natural Resources. SL93-321, §288, SB 27.

Interagency Committee (under Department of Human Resources) to develop a child medical and mental health evaluation plan. SL93-357, SB 496.

North Carolina Child Fatality Prevention Team (name changed from NC Child Fatality Review Team and membership change). SL93-321, §285, SB 27; G.S. 143-575.

North Carolina Health Planning Commission. SL93-529, HB 729; G.S. 143-611.

North Carolina Partnership for Children, Inc. SL93-321, §254, SB 27; G.S. 143B-168.11.

Senior Tarheel Legislature within DHR's Division of Aging. SL93-503, SB 479.

State Health Plan Purchasing Alliance Board. SL93-529, HB 729; G.S. 143-611.

Referrals to Agencies

Department of Human Resources to develop a plan concerning rest home payment methodology. SL93-321, §240, SB 27.

Department of Human Resources to develop and implement a performance-based evaluation system to evaluate the Early Childhood Education and Development Initiatives. SL93-321, §257, SB 27.

INSURANCE
(Tim Hovis, Linwood Jones, Lynn Marshbanks)

RATIFIED LEGISLATION

Auto Insurance

MV Insurance Repair Referrals (HB 1095; Chapter 525): House Bill 1095 prohibits insurers and their agents from recommending a particular repair service to a claimant without also informing the claimant that he or she is under no obligation to use the recommended repair service. The bill also prohibits insurers and their agents from accepting any gratuity or other remuneration from a repair service for recommending the service. The bill requires all policies covering motor vehicles to allow the claimant to select the repair service for the repair of damage and creates a civil penalty not to exceed $2000 for violating this provision. In addition to the civil penalty, a violation of this provision may also result in the payment of restitution to the claimant and suspension, denial, revocation, or nonrenewal of the violator's license. House Bill 1095 was effective upon ratification, July 24th, 1993, and applies to policies with a renewal, inception, or anniversary date on or after that October 1, 1993.

Credit Insurance

Credit Insurance: Credit Insurance Changes (HB 665; Chapter 226): House Bill 665 provides for the gradual reduction of the premium rates on credit insurance and makes the following changes: (1) Adds credit property insurance and credit unemployment insurance to the laws regulating credit insurance; (2) Provides that the amount of credit life insurance cannot exceed the amount of unpaid indebtedness less unearned interest or finance charges, plus, if the amount of credit insurance is based on a predetermined schedule, three monthly installments; (3) Provides that credit insurance on seasonal and educational loans will be written up to the loan amount; (4) Provides that insurance coverage must begin within 30 days after the insurer receives the debtor's request for insurance; (5) Allows truncated insurance coverage on loans with initial terms of 60 months or more; (6) Requires the credit insurance premium on open-end credit transactions to be shown as a monthly amount per $100 or per $1000 of indebtedness; (7) Provides that if a credit insurer charges higher credit life or credit accident and health rates than those provided by statute, the Commissioner may disapprove the rates unless the insurer shows that the policy benefits are reasonable in relation to the rates; (8) Provides for the gradual reduction of the maximum premium rates that can be charged on credit life insurance; (9) Raises the origination fees from $2 to $3 for credit life and credit accident and health insurance on a debt of $500 or more and for credit property insurance where $500 or more is insured; (10) Provides that the maximum allowable premium rate for joint credit accident and health insurance or joint life insurance is 1 2/3 times the allowable single rate; (11) Provides that credit card facilities may be used for the solicitation, negotiation, or payment of premiums for credit insurance on the balance of any credit card account; (12) Provides that the maximum allowable premium that can be charged through a credit card facility or that is payable on the outstanding balance on a revolving charge account is 74 cents per $1000 of insured indebtedness per month; (13) Prohibits any insurer, insurer's representative, or insurance broker from entering into any arrangement involving the

sale of insurance or the pledging of existing insurance as guaranty or collateral for the issuance of any credit card; (14) Requires the Commissioner to prescribe a minimum incurred loss ratio standard requirement to develop a premium rate reasonable in relation to the benefits provided under a credit unemployment insurance policy; (15) Allows credit insurance claims to be paid by electronic funds transfer; (16) Allows lenders to collect premiums for credit accident and health and credit unemployment insurance on loans of $300,000 or less; (17) Authorizes lenders on loans secured by secondary mortgages to offer credit life, credit accident and health, and/or credit unemployment insurance; (18) Rewrites references in the Consumer Finance Act to credit insurance and adds credit unemployment insurance; (19) Provides that credit life, credit accident and health, and credit unemployment insurance may be written in connection with revolving charge accounts if the seller makes clear to the buyer that the insurance is not required; (20) Provides that a limited license will be issued for the sale of credit unemployment insurance. The act will become effective January 1, 1994, except that (7) and (13) were effective June 28, 1993.

Health Insurance

Health Reform Act (HB 729; Chapter 529): On the final day of the 1993 legislative session, the General Assembly passed the Jeralds-Ezzell-Fletcher Health Care Reform Act of 1993 (HB 729). The act creates a North Carolina Health Planning Commission, consisting of the Governor, Lieutenant Governor, Senate President Pro Tempore, the Speaker, 5 Senators, and 5 Representatives. The Secretaries of DEHNR and DHR will also serve as nonvoting, ex officio members on the Commission. The Commission will work on a plan for health care coverage for all North Carolinians and will submit the plan to the General Assembly for approval. The Commission was given substantial flexibility in its planning efforts so that it might respond as needed to health policy developments at the federal level. Any plan developed by the Commission becomes effective only if enacted by the General Assembly.

The Jeralds-Ezzell-Fletcher Act also incorporates the Health Purchasing Alliance Act, which allows small employers to voluntarily organize into "alliances" for the purpose of buying health insurance for their employees. The use of these alliances will result in administrative savings and will allow participating employers to take advantage of the contracting expertise of the alliance.

There are several other insurance-related items in the Jeralds-Ezzell-Fletcher Act. Health care providers must begin using uniform health care claim forms next year; the use of a uniform claim form is intended to reduce administrative costs in health insurance. In addition, the Act calls for the development of a timetable for insurance reforms, including the use of adjusted community rating, rating bands, and expansion of the Small Employer Group Health Coverage Reform Act to more employers. The North Carolina Health Planning Commission will recommend a schedule to the General Assembly for phasing in these reforms.

The new Act also contemplates a reorganization of State health functions under a new State Health Department. The Governor is directed to submit a plan for reorganization to the General Assembly for the short session. Local community health districts will serve as the focal point of the delivery of health services to the community under the plan if approved. The Act also contains new laws to enhance the ability of hospitals to enter into cooperative agreements with other hospitals or health care facilities. These agreements, which are valid only if approved by the State, may

provide for the sharing of resources, patients, etc. in a manner that might otherwise violate state and federal antitrust laws. Such agreements may particularly benefit rural areas that are currently medically underserved.

The remaining portions of the Act impose limits on fees charged for copies of medical records in personal injury cases, allow hospital authorities to operate outside their current territorial limits in certain instances, exempt DHR-approved prepaid health plans for Medicaid from various restrictive laws, require discard dates on prescription drug labels, require patient counseling on prescriptions, and authorize the donation of surplus medical equipment.

The health reform planning portions of the bill became effective on the date of ratification, July 24, 1993. Please see the bill for the effective dates of other items in the act.

Government Agencies (SB 181; Chapter 41): Senate Bill 181 requires insurers to directly reimburse government agencies (such as public hospitals, ambulance services, etc.) that provide health care services covered under the insured's policy. Direct reimbursement is not required if the insurer uses a preferred provider plan and the government agency is not one of the preferred providers; nor if the insurer is an HMO and the agency is not a member of the HMO; nor if the insurer offers contractual rates and the agency has failed or refused to accept such rates. This act applies to policies issued or renewed on or after October 1, 1993.

Insurance Coverage for Prostate Cancer Tests (SB 500; Chapter 269): Senate Bill 500 requires that health insurers cover the costs of PSA (prostate specific antigen) tests or equivalent tests for men if the test is recommended by a physician. These tests are used to determine the presence of prostate cancer. The insurance coverage is subject to the same deductibles, copayments, and other limitations that generally apply to other illnesses under the policy. The coverage requirement applies to commercial insurers, HMOs, medical and hospital and service corporations, and to the standard health plan under the Small Employer Group Health Reform Act of 1991. The coverage requirement applies to policies issued or renewed on or after January 1, 1994.

Small Employers (SB 602; Chapter 408): Senate Bill 602 extends the coverage of the Small Employer Group Health Coverage Reform Act of 1991. The 1991 Act covered employers with up to 25 employees. Senate Bill 602 extends coverage to employers with up to 49 employees. The bill also does the following: (1) requires that maternity coverage, if offered by a health insurer, be covered like other physical illnesses generally -- i.e., the deductibles, copayments, and other limitations can be no more restrictive for maternity benefits than they are for other physical illnesses covered under the policy; (2) defines "employee" consistently throughout the health insurance statutes to make clear that it refers to an employee working on a full-time basis (30 or more hours per week); (3) extends the portability clause from 30 days to 60 days so that time spent by the employee satisfying the preexisting condition waiting period under one group health plan will be credited towards the waiting period for the next group health plan if no more than 60 days elapse between the end of the first plan and the start of the second; (4) requires carriers in the small employer group health insurance market to offer coverage to all of the small employer's employees and their dependents; and (5) defines "preexisting condition" for purposes of the Small Employer Group Health Carrier Reform Act of 1991.

Miscellaneous Health Insurance Changes (SB 622; Chapter 506): Senate Bill 622 makes the following miscellaneous health insurance changes: (1) extends the filing requirements for group policies delivered out-of-state to annuities; (2) requires insurers who provide maternity coverage to cover it as least as favorably as it covers physical illnesses generally under the policy; (3) redefines "annuitant": (4) increases from $1,000 to $3,000 the amount of indemnity benefits for loss of life an insurer can (at its option) pay to a relative or beneficiary of the insured when the benefits are payable to the estate of the insured or a minor beneficiary; (5) requires insurers who provide coverage for drugs approved by the FDA for cancer treatment to cover all drugs for cancer treatment that meet the following conditions: (i) the FDA has approved the drug, although not for treatment of the particular cancer, (ii) the drug has been proven effective and accepted for treatment of the particular cancer by one of three specified reference compendia, (iii) the drug is not experimental, and (iv) the FDA has not determined the drug to be contraindicated for treatment of the particular cancer. This applies to policies issued or renewed on or after January 1, 1994.

Health Insurance Pharmacy of Choice (SB 885; Chapter 293): Senate Bill 885 provides that a health benefit plan shall not prohibit or limit an insured who is eligible for reimbursement for pharmacy services from selecting a pharmacy of his or her choice when the pharmacy has agreed to participate in the health benefit plan. The bill further provides that a health benefit plan shall not: (1) deny a pharmacy the opportunity to participate in the plan; (2) impose upon a beneficiary of pharmacy services any copayment, fee or condition that is not equally imposed upon all beneficiaries; (3) impose a monetary advantage or penalty that would affect a beneficiary's choice of pharmacy; (4) reduce a beneficiary's reimbursement for pharmacy services because of the beneficiary's selection of pharmacy; or (5) require a beneficiary to purchase pharmacy services exclusively through a mail-order pharmacy. A violation of this section may result in the revocation, suspension, or refusal to renew the license of the entity offering the plan, in the discretion of the Commissioner. A violation also creates a civil cause of action for damages or injunctive relief. The bill becomes effective October 1, 1993.

Jail Medical Emergencies (SB 1021; Chapter 510): Senate Bill 1021 requires an inmate's third-party health insurance to pay for the inmate's medical bills in an emergency; the county jail will be responsible for the remaining bills. The previous law made the county jail responsible for all inmate emergency medical costs. This act became effective July 24, 1993.

Health Professionals/Reimbursement

Advanced Practice Nurses Reimbursement (HB 457; Chapter 347): House Bill 457 requires direct reimbursement of advanced practice nurses by insurers and medical and hospital service corporations. Direct reimbursement is required only if the service performed by the nurse is covered by the policy when performed by other providers and the service is within the scope of practice of the advanced practice nurse. An advanced practice nurse includes only nurse midwives, nurse practitioners, and clinical specialists in psychiatric and mental health nursing. Direct reimbursement of the nurse is not required if the nurse is the regular employee of a physician or is employed in a nursing facility (including hospitals, nursing homes, and home health agencies). The act also provides that it should not be construed as authorizing payment to more than one provider for the same service. The act takes effect with policies issued or renewed

on or after October 1, 1993, and expires October 1, 1998. (See SB 954 also for additional changes concerning advanced practice nurses' reimbursement).

Chiropractor Insurance Equality Act (HB 873; Chapter 554): House Bill 873 provides that insurers treat chiropractors the same as physicians for purposes of insurance coverage. When an insurer provides coverage for medically necessary treatment and the treatment is provided by a chiropractor, the insurer cannot limit the chiropractor's treatment or the level of insurance coverage unless comparable limitations are imposed on a physician who provides this treatment. The act was effective on July 24, 1993.

Clinical Social Worker Reimbursement (SB 954; Chapter 464): Senate Bill 954 requires direct reimbursement of clinical social workers by insurers and hospital and medical service corporations. The clinical social worker must be certified by the North Carolina Certification Board for Social Workers. In addition, certified clinical social workers are made eligible for payment under the Teachers and State Employees Health Plan for their care and treatment of chemical dependency and mental illness under the Plan; other social workers under the supervision of physicians may also be eligible for reimbursement under the State Health Plan for mental illness services. This act takes effect with policies issued on or after October 1, 1993.

Senate Bill 954 also further amends HB 457 to provide that the Teachers and State Employees Health Plan will reimburse services performed by advanced practice nurses, provided that the services are covered when performed by other providers under the Plan. The same conditions for reimbursement that are outlined in HB 457 are also applicable to reimbursement under the State Health Plan.

Solvency

Solvency Regulation (HB 622; Chapter 452): House Bill 622 makes several changes to the insurer solvency and financial regulation laws, many of which are to comply with recommendations and model legislation of the National Association of Insurance Commissioners ("NAIC"), and establishes a fee for the accreditation and renewal of accreditation of reinsurance companies. The bill makes the following solvency changes: (1) rewrites the law requiring insurers other than life and title insurers to maintain unearned premium reserves; (2) provides that fire and casualty insurers must calculate loss and loss expense reserves in accordance with NAIC methods unless the Commissioner has approved a more conservative method; (3) rewrites the law concerning the loss and loss expense reserves of casualty insurance and surety companies; (4) rewrites the law that governs when a life and health insurer can reflect reduced liabilities or increased assets on its financial statements because of ceded reinsurance; (5) provides that domestic insurers whose home or principal offices are outside North Carolina must petition the Commissioner for approval to keep the office outside North Carolina; in determining whether to grant or deny approval, the Commissioner is to look at, among other things, factors that might affect the Commissioner's ability to regulate the insurer and the insurer's ability to serve its policyholders; (6) allows insurers to issue certificates of earned surplus and, with the approval of the Commissioner and subject to the minimum surplus requirements, certificates of paid-in and contributed surplus; (7) eliminates references to "mergers" of insurers; (8) provides that for purposes of figuring allowable assets, an insurer can count life insurance premiums other than for nonsingle premium life insurance; (9) provides that for purposes of figuring allowable assets, an insurer cannot count any

asset that is encumbered except for authorized real estate holdings and except for assets which the Commissioner determines should be counted; (10) provides that the percentage limits on the costs of investments by insurers in mortgage loans is applicable to loans with "any one person;" (11) adds medium and low-grade state and Canadian debt obligations to the list of investments that are limited to specified percentages (without prior approval of the Commissioner) and repeals two of the limitations); (12) requires mortgage pass-through securities to have been rated as investment grade by the NAIC and "nonhigh risk" by the FFIEC; (13) requires insurers to use NAIC methods to determine value of bonds with stated terms and interest rates, unless the Commissioner approves a more conservative method; (14) requires prior approval of the Commissioner for a mutual insurer to substitute a guaranty capital fund in lieu of contributed surplus; the required amount of the fund also doubles under the bill from $25,000 to $50,000; if the mutual insurer ceases to exist, merges with another company, or becomes a stock company, only the portion of the guaranty capital contributed by the certificate holders (plus allowable interest) will be returned to the certificate holders; the remainder is for the benefit of the policyholders; (15) adopts the NAIC Reinsurance Intermediary Model Act; these provisions require licensure of reinsurance intermediaries and regulate the relationship between insurers and the brokers and managers acting as reinsurance intermediaries on their behalf; (16) provides that the Asset Protection Act, which requires insurers to maintain certain levels of unencumbered assets for the benefit of policyholders, does not apply to statutory deposits that are required to be maintained by insurance regulator agencies; (17) rewrites a provision of the Insurance Holding Company System Regulatory Act requiring information on mergers and other acquisitions of control to be provided to the Commissioner; (18) provides that when an entity obtains a loan to finance a merger or acquisition of control, the name of the lender remains confidential and is not required to be reported to the Commissioner; (19) changes one of the standards for the Commissioner to reject a proposed merger from "detrimental" to insurance consumers to "hazardous" to insurance consumers; (20) provides that mergers of domestic insurers are now covered by the Insurance Holding Company System Regulatory Act; (21) requires more frequent reporting of registration statement changes to the Commissioner by insurers who are registered as members of insurance holding company systems; (22) eliminates the requirement for insurers who are registered as members of insurance holding company systems to report current and recent transactions with third parties (other than the insurer's affiliates); (23) changes the reference to "registered" to "domestic"; (24) requires the Commissioner to approve all management agreements, service contracts, and cost-sharing agreements between an insurer and one of its affiliates under a holding company; current law requires approval only if the cost of the agreement to the insurer exceeds certain percentage thresholds; (25) requires additional information to be provided to the Commissioner by a risk retention group in its plan of operation, and it requires the Commissioner to forward the information to the NAIC; (26) requires revisions by risk retention groups to their plans of operation in their charter states to be filed with the Commissioner, and requires brokers and agents for risk retention groups to maintain records indicating liability limits, premiums, and other matters; risk retention groups are also subjected to the civil penalty and restitution laws generally applicable to insurers; (27) requires purchasing groups to inform the Commissioner of all states in which they do business and to provide additional information to allow the Commissioner to determine their qualifications as purchasing groups and their appropriate tax treatment; changes in the information provided by purchasing groups are to be reported promptly to the Commissioner; (28) rewrites the requirements concerning the audit and actuarial evaluations of local government risk pools; the pools are made subject to additional insurance laws; (29) grants immunity to receivers (and certain employees involved with the receivership) for ordinary negligence

in administering the receivership of an insurance company; the immunity does not protect wilful or wanton misconduct nor does it extend to independent contractors hired by the receiver; the receiver and other immune employees can be indemnified out of the insurer's assets; (30) provides that when an insurer is in rehabilitation and the rehabilitator petitions to liquidate the insurer, the directors of the insurer can seek reimbursement for their legal costs in contesting the liquidation petition only if they have a good faith belief that the company is actually solvent and its continued operation is in the best interests of policyholders, stockholders, and creditors; (31) rewrites the law governing the priority of distribution of an insurer's assets when the insurer has been liquidated; (32) alters the definition of "managing general agent;" (33) requires than when a managing general agent has been given authority to settle claims, the claims must be promptly reported to the insurer; (34) requires insurers, in notifying the Commissioner of appointments of managing general agents, to include NAIC biographical information on each officer and director of the managing general agent and each person owning 10% or more of the agent's stock; (35) rewrites the provisions governing civil penalties against managing general agents and adds a provision allowing the Commissioner to bring a civil action for compensatory damages on behalf of an insurer; (36) allows the receiver to sue a managing general agent who caused or contributed to losses of the insurer; (37) strengthens the information reporting requirements by insurers who contract with managing general agents; (38) eliminates references to "service agreements" in the statute governing disapproval of management contracts by the Commissioner; (39) extends eligibility for coverage under the Insurance Guaranty Fund to nonresident claimants who were NC residents at the time the policy was issued or renewed, the term of the policy had not expired at the time of the insured event, and no other state's guaranty fund provides protection; (40) amends the Standard Valuation Law governing life insurance reserves to require life insurers to submit annual opinions by qualified actuaries whether the reserves are sufficient to cover obligations, are computed correctly, and comply with existing laws and requires the Commissioner to adopt rules applicable to the minimum standards for valuation of the health plans; (41) provides for a 5.5% interest rate substitution in valuing certain annuity and endowment contracts; (42) changes a reference involving an effective date; (43) requires life insurer's reserves to be even higher than the statutory requirements if the actuarial opinion required in section 52 of this bill requires a higher reserve; (44) provides that the holding of additional reserves in accordance with the actuarial opinion is not deemed the adoption of a higher valuation standard; (45) rewrites the law governing the disclosure that a life insurer must make to the policyholder concerning the cash surrender value and paid-up nonforfeiture benefits of a policy; (46) requires that any plan of life insurance involving future premium determination of for which minimum cash surrender and paid-up nonforfeiture values cannot be computed must be affirmatively approved by the Commissioner before being marketed; (47) provides for the use of a 6.5% interest rate on certain single premium whole life or endowment insurance policies; (48) amends the Life and Health Insurance Guaranty Fund to include as covered policies those policies that are transferred through reinsurance, merger, or consolidation to an unlicensed insurer that becomes insolvent, and for which no protection is available under the guaranty fund of the insolvent insurer's domiciliary state; (49) extends protection under the Life and Health Guaranty Fund to nonresidents on the same basis and conditions applicable to property and casualty guaranty claims under the bill; (50) prohibits an insurer from showing assessments paid out on behalf of the Life and Health Insurance Guaranty Fund as assets on the financial statement; (51) requires continuing care facilities to disclose to applicants how much of the fees will be refunded if either party cancels the contract, and makes clear that escrow account and operating reserve provisions must be disclosed; and (52) requires continuing care

facilities to fund their operating reserves with cash or investment grade securities. The act becomes effective October 1, 1993.

Workers Compensation

Industrial Commission Mediation Program (HB 658; Chapter 399): See EMPLOYMENT.

Workers Comp. Carrier Safety Services (SB 163; Chapter 40): Senate Bill 163 requires all workers compensation insurers and all self-insureds to file with the Commissioner of Insurance, by October 1, 1993, loss control and accident prevention consultation services plans. After giving due consideration to these plans, the North Carolina Rate Bureau and the Commissioner of Insurance shall, by February 1, 1994, develop a plan for loss control and accident prevention consultation services which requires all insurers writing workers compensation insurance to provide or make available services to their insureds regarding workplace safety, loss control, and accident prevention. The plan shall be filed with the Legislative Research Commission's committee on fire and occupational safety issues. If this committee is not in existence, the plan shall be filed with the Joint Legislative Commission on Governmental Operations. The plan is to be developed and filed for review only; provided, however, that the bill shall not be construed as impairing the Rate Bureau's and Commissioner's authority to make the plan effective pursuant to Chapter 58 of the General Statutes. This act became effective on ratification, May 5, 1993.

Workers Compensation Solvency (SB 579; Chapter 120): See EMPLOYMENT.

Miscellaneous

Unemployment Insurance Tax Cut (HB 920; Chapter 85): See TAXATION.

Insurance Technical Amendments/Service Agreements (SB 586; Chapter 504): Senate Bill 586 made numerous, minor technical amendments and grammatical corrections to the insurance laws. They are not discussed herein. Senate Bill 586 also amended the service agreements laws to exempt (1) manufacturers, distributors, and certain subsidiaries; (2) builders who warrant home appliances as part of the sale of a home; and (3) credit card and charge card issuers who market service agreements as an ancillary part of their business (provided they have contractual liability insurance). The bill also extends the time in which service agreement companies have to register, file deposits with, and make reports to the Department of Insurance to January 1, 1995.

Insurance Substantive Amendments (SB 603; Chapter 409): Senate Bill 603 makes various changes to the insurance laws and insurance-related laws as follows: (1) allows the Commissioner of Insurance to impose a civil penalty against an insurer for failing to acknowledge a claim within 30 days of written notice of the claim (provided that the claim contains sufficient information); (2) eliminates the accident and health insurance agent license; (3) removes the licensure examination exemption for agents who previously held the same license within the past 24 months; (4) repeals the 2-hour continuing education requirement for the sale of Medicare supplement insurance; (5) extends the expiration date on voluntary and mandatory risk-sharing plans an additional 2 years so that the law will not expire until July 1, 1995; (6) rewrites provisions concerning the refund rights of a manufactured home sale cancelled by the purchaser

within 3 days and the damages available to the seller of the manufactured home if the buyer cancels after three days; (7) repeals the provision that automatically terminates the agent's license for failing to have an appointment with a company within a one-year period; (8) adds the extending reporting period conditions on liability limits, cancellation, and loss information to professional liability insurance policies; (9) requires an unlimited extended reporting period on a professional liability insurance policy if the insured dies, retires after age 65 with 5 or more years of claims made coverage, or becomes permanently disabled and is unable to continue practicing; (10) provides a 30-day period after cancellation or nonrenewal of a professional liability policy in which the insured can opt to obtain an endorsement that provides an extended reporting period of unlimited duration covering liability claims first reported during the extended period and arising from acts, errors, or omissions committed during the policy period; (11) advances the date for the Rate Bureau to file its auto rates from July 1 to February 1 of each year; (12) extends the time in which the Commissioner has to act on the workers compensation rate filing from 120 days to 150 days; (13) authorizes the Commissioner, with the approval of the Council of State, to adopt insurance forms for coverages provided by the State Property Fire Insurance Fund and allows the Commissioner to advise State agencies on limiting use of an unsafe State building; (14) allows group health policies to be issued to associations and trusts that meet criteria such as having been in existence for 5 years, having 500 members or employees, holding annual meetings, and collecting dues from its members; (15) gives the Commissioner of Insurance authority to specify what types of activities by insurers (in addition to those already designated by statute) constitute unfair or deceptive practices under the Unfair Trade Practices insurance law; (16) authorizes the Commissioner to revoke or suspend the license of a bail bondsman for entering into any business association or agreement with a person who has been disqualified under North Carolina's bail bond laws if the agreement or association gives the person a financial interest in the bondsman's bond business; previous law only looked at out-of-state disqualifications; (17) requires a bail bondsman filing for bankruptcy or being put into receivership to notify the Commissioner within 3 business days thereafter; (18) extends the law prohibiting bondsmen from accepting anything of value from a defendant (other than a premium of up to 15% of the bond) to persons acting on behalf of the defendant; (19) eliminates the earlier hearing by the Commissioner on disputes by policyholders who have had their insurance contracts cancelled, although a hearing is still required before the Commissioner can find the insurer willfully violated the insurance cancellation law or cancelled the contract without a reasonable investigation; (20) raises from $300 to $1,000 the amount that the Commissioner may levy against an insurance company for wrongfully cancelling a policy; (21) requires 20 hours of pre-licensing education for bail bondsmen applicants (unless licensed prior to January 1, 1994) and 10 hours annually of continuing education for bail bondsmen (except for bondsmen 65 or older who have been licensed 15 years or more); (22) revises the hearing process for various appeals to the Commissioner of Insurance; (23) revises the eligibility standard for dependent coverage under a medical or hospital service corporation subscriber contract to allow dependents residing in the household to be covered regardless of whether they are members of the immediate family; (24) provides that deviations filed by insurers with the commissioner for specific risks are confidential; (25) exempts a particular prepaid legal services plan from the unauthorized insurer law; (27) provides for multiple coordinated policies for workers compensation risks under employee leasing arrangements. The following were effective July 1, 1993: (2), (3), (4), (11). The following are effective October 1, 1993: (1), (8), (9), and (10). The following are effective January 1, 1994: (6) and (21). The remaining provisions were effective on ratification (July 20, 1993).

Farmers Mutuals Incorporated (SB 1111; Chapter 495): Senate Bill 1111 dissolves the statewide Farmers Mutual Association, thus allowing the local branches of the Association to become independently chartered. Each branch, once independently chartered, will continue to sell the same insurance (fire and extended coverage) that it has been selling, unless it obtains approval from the Department and meets the requirements for selling other lines of insurance. The reorganization becomes effective January 1, 1994.

Title Insurance Premium Errors (SB 1113; Chapter 129): See **PROPERTY**.

PENDING LEGISLATION

HMO/PPO Regulation (SB 623): Senate Bill 623 codifies regulations affecting the operation of HMOs and adds similar provisions for the operation of preferred provider organizations (PPOs) and exclusive provider panels (EPPs). The bill is pending in the House.

Workers Compensation Reform (SB 906): Senate Bill 906 is a major rewrite of the workers compensation laws of North Carolina. The bill is pending in the House.

STUDIES

House Bill 1319

The 1993 Studies Bill (HB 1319) was passed by both houses but was not ratified before adjournment of the 1993 Regular Session. It should be signed into law at the beginning of the 1994 Short Session. Legislative Research Commission Studies relating to the topic of Insurance include: (1) Rental Vehicle Insurance; (2) Insurance Coverage for Biologically Based Brain Diseases; (3) Tort Reform; (4) Medical Malpractice Compensation; (5) Health Care Coverage for Chemical Dependency. On September 13, 1993, the LRC authorized the study of (1) by a new Consumer Protection Committee; referred (2) and (5) to the Mental Health Committee; and declined to authorize the study of (3) and (4).

Referrals to Agencies

Commissioner of Insurance and NC Rate Bureau to develop plan for Workers' Compensation carriers loss control services. SL93-40, SB 163.

Department of Insurance shall study the need to develop program to provide surety bonds to minority contractors. SL93-561, §39; SB 26.

LOCAL GOVERNMENT
(Sherri Evans-Stanton, Carolyn Johnson, Barbara Riley)

RATIFIED LEGISLATION

Fire/Rescue Board Change (HB 58; Chapter 9): House Bill 58 deletes the provision from G.S. 58-86-5 that made the State Auditor a member of the North Carolina Firemen's and Rescue Squad Workers' Pension Fund. The act became effective March 23, 1993.

Counties Rename All Roads (HB 160; Chapter 62): House Bill 160 amends G.S. 153A-238 and 153A-239.1 to allow all counties to name roads and assign street numbers in unincorporated areas of the county. These sections originally only applied to named counties and the General Assembly extended that authority to all counties to assist them in implementing Emergency-911 programs which require named roads and street numbers. The bill became effective upon ratification, on May 24, 1993.

Resolution Honoring Delegates To 1868 Constitutional Convention (HJR 181; Resolution 4): House Joint Resolution 181 honors the memory of the members of the Constitutional Convention of 1868 and the first county commissioners in the State upon the 125th anniversary of the Constitution of 1868 which established the county commissioner form of government. The act became effective March 25, 1993.

County Commissioners/Organizational Meeting (HB 407; Chapter 95): House Bill 407 amended G.S. 153A-39 to provide that County Commissioners shall meet to choose a chairman and vice-chairman on the first Monday in December in even-numbered years and at its first regular meeting in December in odd-numbered years. The act became effective June 1, 1993.

EMS Certification Period (HB 508; Chapter 135): See **HUMAN RESOURCES**.

Zoning Notice Exemptions (HB 799; Chapter 469): House Bill 799 attempts to clarify and make zoning notice requirements for all cities and counties uniform. The bill amends G.S. 160A relating to cities and G.S. 153A relating to counties. Prior to HB 799 the law provided when there is a zoning classification involving a parcel of land, owners of all parcels of land abutting that parcel shall be mailed a notice of the proposed classification by first class mail. There have been numerous local modifications with respect to the zoning notice requirements since 1985. House Bill 799 provides five situations under which a city or county is not required to mail notice to individual property owners. Those situations are as followed: (1) the total rezoning of all property within the corporate boundaries of a municipality or county unless rezoning involves zoning of parcels of land to less intense or more restrictive uses; (2) the zoning is an initial zoning of the entire zoning jurisdiction areas; (3) the zoning reclassification directly affects more than 50 properties owned by a total of at least 50 different property owners; (4) the reclassification is an amendment to the zoning text; or (5) the city is adopting a water supply watershed program. In lieu of mailed notice, notice must be given in a newspaper having general circulation and a map of the area must be published in that newspaper. The bill repeals all prior local zoning modifications effective January 1, 1994. However, with respect to Forsyth County and municipalities located in that county, that local modification is repealed effective

January 1, 1995. The remainder of the bill became effective upon ratification, on July 23, 1993.

Local Government Employee Politicking (HB 818; Chapter 298): See **EMPLOYMENT.**

Non-Employee Inspectors (HB 1045; Chapter 232): House Bill 1045 allows a city or county to contract with an individual who is not a city or county employee to serve as a member of a city or county inspection department provided they have the proper certificate. The bill requires that such individuals have errors and omissions and other insurance coverage acceptable to the city or county and provides that the city or county has the same potential liability for inspections conducted by a non-employee as it does for an employee. The bill became effective upon ratification, on June 28, 1993.

Municipal Power Agency Investments (HB 1167; Chapter 445): See **STATE GOVERNMENT.**

Local Ordinances Require Recycling (SB 53; Chapter 165): See **ENVIRONMENT.**

Exempt Municipal Power Agency Projects (SB 470; Chapter 182): See **STATE GOVERNMENT.**

County Housing Authority Jurisdiction (SB 516; Chapter 458): Senate Bill 516 amended G.S. 157-39.1(a) to provide that a county housing authority may operate within the boundaries of any city located within the county if the governing body of such city makes the request by resolution. The act became effective July 23, 1993.

Water Authority Personnel Records (SB 611; Chapter 505): See **EMPLOYMENT.**

City Street Closings (SB 772; Chapter 149): Senate Bill 772 clarifies the procedure for permanently closing streets and alleys under G.S. 160A-299, and establishes procedures for appeals of street closings. Upon the appeals process, a court must determine whether procedural requirements were complied with, and whether the record reflects that the councils decision to close the street was in accordance with the statutory standards under subsection (a) of G.S. 160A-299 and any other applicable requirements of local law or ordinance. The bill also provides that the division of right-of-way in street or alleys closings may be altered as to a particular street or ally closing by the assent of all property owners taking title by the filing of a plat which shows the closing in the portion of the closed street or alley to be taken by each such owner. The bill also clarifies the retention of utility easements. This act applies to any street closing order adopted on or after July 1, 1993, but does not apply to pending litigation. Further the act does not affect any local modifications to G.S. 160A-299 which are not in conflict with the amendments made by this act. To the extent of any conflict in a local modification, the amendments made by the act prevail. This bill became effective upon ratification, on June 14, 1993.

City/County Conveyance Vote (SB 897; Chapter 491): Senate Bill 897 repealed G.S. 160A-279(c) eliminating the requirement of an unanimous vote of the governing board of a city or county to convey property by private sale to nonprofit entities carrying out public purposes. The act also repealed any modification of the subsection as it applied locally under any local act. The act became effective July 23, 1993.

Junkyard Regulation (SB 961; Chapter 493): Senate Bill 961 amended G.S. 136-142, 136-144, 136-147 and 136-149 to provide that the existing location, screening and permit regulations for junkyards located in the vicinity of interstate and primary highways become applicable to State routes in counties that have no interstate or federal aid primary highways. This act became effective on July 23, 1993.

Tax Increment Bond Financing (SB 1157; Chapter 497): See **CONSTITUTION.**

Open Meetings and Public Records See **STATE GOVERNMENT.**

STUDIES

House Bill 1319

The 1993 Studies Bill (HB 1319) was passed by both houses but was not ratified before adjournment of the 1993 Regular Session. It should be signed into law at the beginning of the 1994 Short Session. Legislative Research Commission Studies relating to the topic of Local Government include: (1) Mountain Area Study; (2) Unfunded Mandates to Counties and Cities; (3) Representation of Extraterritorially Zoned Areas; (4) Exactions; (5) Regional Government and Economic Development Zones. On September 13, 1993, the LRC authorized the study of (1) and (4); referred (2) to the Fiscal Trends and Reform Committee; and declined to authorize the study of (3) and (5).

PROPERTY
(Giles S. Perry, Steven Rose)

RATIFIED LEGISLATION

Estates/Trusts/Wills

Trustee Powers Act-1 (HB 437; Chapter 377): House Bill 437 adds a new section to Chapter 36A (Trusts and Trustees) defining the powers of trustees under express trusts, including testamentary trusts. The bill applies to a trustee appointed under an express trust or by the clerk of superior court. It also specifically spells out eleven types of trusts and trust situations that this section does not apply to. The bill imposes the prudent man standard on the trustee, specifically delineates twenty-three statutory powers, and provides that to the extent that the listed statutory powers do not conflict with specific powers set forth in the trust, the listed powers apply. It also states the the specific powers in a trust control or override the listed statutory powers. The bill also allows the trustee to sell real or personal property with or without a court order, and provides that sales of personal property pursuant to court order and sales of real property with or without court order must be in accordance with the Judicial Sales statutes. House Bill 437 will become effective December 1, 1993 and apply to trusts in existence on that date or created thereafter.

Trust Invest in Mutual Funds (HB 496; Chapter 126): House Bill 496 amends Chapter 36A (Trusts and Trustees) by adding a new section permitting a corporate trustee to invest in a mutual fund, even if the trustee provides services to the mutual fund and receives remuneration for such services. Any arrangement allowed by this section must be disclosed, and any compensation for services shall be reasonable. House Bill 496 will become effective October 1, 1993.

Renunciation Amendments (HB 545; Chapter 308): House Bill 545 would make a technical change to G.S. 31B-3(b) and would add a new section (c) to G.S. 31B-3 to provide that the issue of a person who renounces the share of an interstate's estate would take the renouncer's share instead of possibly having to share the renouncer's portion with other members of the same class. House Bill 545 became effective July 8, 1993.

Amendments to Principal and Income Act (HB 841; Chapter 284): House Bill 841 makes various changes to Chapter 37, the Principal and Income Act of 1973. The bill adds definitions for the terms "pecuniary requests" and "living trusts." It amends the section dealing with disposition of income earned and expenses incurred during administration of an estate to add provisions governing living trusts. It adds a new section governing the disposition of interest on pecuniary requests by providing that, with certain exceptions, it shall be computed as provided in G.S. 24-1. It adds a provision that 1/2 of ad valorum and intangibles taxes should be charged against income and 1/2 against principal, and a provision providing for similar disposition of management expenses and premiums for surety bonds. Finally, it amends G.S. 37-31(b) to provide that a trustee's compensation. other than regular compensation, shall be charged to principal. The act is effective January 1, 1994 and applies to trusts in existence on that date or established on or after that date and to tax years of decedents' estates beginning on or after that date, except that the sections providing for the

charging of ad valorum taxes, trustee's fees, management fees and surety bonds apply only to trusts established on or after January 1, 1994.

Real Property

Extend Deed Curative (HB 131; Chapter 80): House Bill 131 amends the curative statute G.S. 47-50 by validating the registration of instruments filed for recording in a register of deeds of any county on which the correctness of the acknowledgement (notarization of the parties' signatures) was omitted at the time of recording, for documents filed prior to December 1, 1992. House Bill become effective May 25, 1993, but does not affect pending litigation.

Record Certified Copy (HB 395; Chapter 288): House Bill 395 repeals G.S. 8-20 and amends G.S. 47-31 to clarify that certification is not required of a "duly certified copy." of a any deed or writing required of allowed to be registered with a county register of deeds The bill also validates instruments recorded prior to the effective date of the bill which were not further certified. House Bill 395 also provides that an assignment of a note secured by a deed of trust on real property effects an assignment of the deed of trust without the assignment being recorded, and grants to the holder all of the rights of the assignor, including the right to substitute the trustee and exercise the power of sale. The bill would not prohibit the assignment from being recorded. House Bill 395 became effective July 6, 1993 and applies to assignments made on or after that date.

Stating Names on Reg. Instruments (HB 396; Chapter 178): House Bill 396 postpones until January 1, 1995 the effective date for minimum indexing standards to be adopted and applied by registers of deeds. In the meantime, this bill allows registers of deeds to adopt local indexing rules that would be in effect until the uniform minimum standards become effective January 1, 1995. Sections 1 and 2 of the bill, which allow registers of deeds to adopt local indexing rules, and Section 3, which changes the effective date of the minimum indexing rules to January 1, 1995, became effective June 17, 1993. Sections 4 and 5, which repeal the local indexing rules and make the minimum indexing rules effective, become effective January 1, 1995.

Separate NC Appraisal Board (HB 473; Chapter 419): House Bill 473 amends the law related to real estate appraiser licensing and certification by removing the Appraisal Board and the related responsibilities from the North Carolina Real Estate Commission, and establishes the North Carolina Appraisal Board as an independent board under a new Chapter 93E. The bill also makes amendments to various related statutes.

Specifically, the bill: (1) authorizes the Real Estate Commission to collect additional fees for competency tests administered by a private testing service; (2) raises the maximum license and certificate renewal fee from $100 to $200; (3) authorizes the Real Estate Commission to establish a procedure for granting temporary licenses or certificates and to charge a fee of $50; (4) provides beginning on April 1, 1994, the Commission is to segregate into a separate account the fees attributable to the Appraisal Board's 1994-95 fiscal year, which will be transferred to the Board on July 1, 1994. The Commission will continue to support the Board until Chapter 93E becomes effective on July 1, 1994; (5) authorizes the Commission to collect additional fees for administrative costs associated with collecting and remitting fees on behalf of the federal government; (6) creates new Chapter 93E to be known as the "North Carolina Appraiser Act", effective July 1, 1994; (7) effective July 1, 1994, repeals Article 5 of Chapter 93A which currently authorizes the Real Estate Commission to supervise

appraisers; (8) provides for the transition of the membership of the Appraisal Board from its present status set forth in G.S. 93A-78 to that set forth in the new G.S. 93E-1-5 and provides the mechanism for staggering the terms; and (9) repeals the rules of the Commission relating to appraisers from the Administrative Code, effective July 1, 1994. The bill makes Sections 1 - 5 and section 8 effective October 1, 1993, and makes Sections 6,7, and 9 - 14 effective July 1, 1994.

Certification of Local Government Property Mappers (HB 924; Chapter 326): See the summary under **STATE GOVERNMENT.**

Map Filings (SB 455; Chapter 119): Senate Bill 455 makes amendments to Chapter 47 governing the filing of maps in the office of the Register of Deeds. The amendments require that any map filed in the public record, whether alone or attached to any instrument, must be prepared by a registered land surveyor, and have an original signature and an original surveyor's seal, or if it is a copy of a map already on file in the public record, it must be certified as a true copy by the custodian of the public record. The act further provides that a map not meeting these requirement may be attached to an instrument for inclusion in the public record for illustrative purposes only if it has a conspicuous legend stating that it is not certified and may not be relied on for accuracy. The act makes conforming amendments to G.S. 89C-26, which governs the duties of the Register of Deeds. The act becomes effective October 1, 1993.

Land Records Management Changes (SB 748; Chapter 258): Senate Bill 748 amends G.S. 147-54.3(f) to change the power to appoint members of the land records management program committee from the Governor to the Secretary of State, and to provide that one of those appointed must be nominated by the North Carolina Property Mappers' Association, eliminating the nomination by the North Carolina Tax Collectors' Association. The act was effective upon ratification, July 1, 1993 and applies to appointments made on or after that date.

Foreclosure Statute Amendments (SB 834; Chapter 305): Senate Bill 834 makes amendments to the statutes dealing with foreclosure under power of sale and establishes a new upset bid procedure. The bill recognizes a power of sale authorized by statute in addition to powers of sale expressed in instruments. It provides that when property is sold in parts, those individual sales are subject to separate upset bids. The bill makes provision for cash deposits at the time of sale where the instrument does not so provide and provides for a trustee's fee where the instrument does not provide for compensation for services when no sale is actually held. The bills amends G.S. 45-21.16 to require the mortgagee or trustee exercising power of sale to file a notice of hearing with the Clerk of Court and allows the sheriff to post a notice of the hearing upon the property in lieu of notice to parties by publication. The notice of hearing must be served upon each party entitled to notice, which parties are specified in the statute. Only one hearing is necessary where there are separate tracts of land situated in different counties or a single tract in more than one county, but notice of hearing must be filed in each county where property is located. The bill redefines "upset bid" as an offer to purchase for an amount exceeding the reported sale price by a minimum of 5%, but in any event with a minimum increase of $750.00. Where an upset bid is made, the clerk must notify the trustee or mortgagee, who is required to mail a written notice of upset bid by first class mail to the last known address of the last prior bidder and the current record owners of the property. The act becomes effective October 1, 1993 and applies to instruments recorded prior to, on, or after that date.

Contract to Improve Real Property (SB 914; Chapter 294): Senate Bill 914 amends Chapter 22B by adding a new section, G.S. 22B-2, which provides that provisions in contracts for the improvement of real property in North Carolina, or for the provision of materials for such improvement, may not contain provisions making them subject to the laws of another state or provide that the exclusive forum for litigation, arbitration, or other dispute resolution is located in another state. The act becomes effective October 1, 1993 and applies to contracts entered into on or after that date. See also the summary for HB 1027 in the **COMMERCIAL LAW** section.

Change Register of Deeds Fees (SB 924; Chapter 425): Senate Bill 924 changes certain fees charged by the Register of Deeds. The general filing fee is changed from $5.00 to $6.00 for the first page. A specific fee is established for deeds of trust and mortgages. The fee is $10.00 for the first page and $2.00 for each additional page. If that instrument contains additional instruments, the fee is $10.00 for each additional instrument. No fee is charged to record a satisfaction or cancellation of the deed of trust or mortgage. The bill also amends G.S. 45-16 to provide that whenever a substituted trustee is appointed it is the duty of the Register of Deeds to index the substitution of trustee. The act becomes effective October 1, 1993 and applies to fees collected and entries made on or after that date.

Title Insurance Premium Errors (SB 1113; Chapter 129): Senate Bill 1113 adds a new subsection to G.S. 58-26-1 which provides that if the premium stated on a title insurance policy is incorrect due to inadvertence, mistake, or miscalculation of the closing attorney, and the incident is not deliberate or part of a pattern, the Commissioner of Insurance is not required to impose a civil penalty or sanction for that incident. The act was effective upon ratification, June 8, 1993.

Miscellaneous

General Contractors' Fees (HB 564; Chapter 112): House Bill 564 increases the general contractor examination fee from $25 to $50, effective June 2, 1993. Effective June 2, 1993, the annual renewal fee for an unlimited license is increased from $75 to $95, the annual fee for an intermediate license from $50 to $65, and the annual fee for a limited license from $25 to $35. Effective October 1, 1995, the annual renewal fee for an unlimited license shall not exceed $100, for an intermediate license, $75, and for a limited license, $50. The Board is required to mail written notice of the amount of the renewal fees for the upcoming year to licensed general contractors.

Escheats/Retention of Molds (HB 765; Chapter 541): House Bill 765 shortens certain time periods abandoned property has to be held before being escheated to the State Treasurer, gives North Carolina jurisdiction over unclaimed stock benefits issued by companies in North Carolina, and establishes a procedure for persons who hold unclaimed dies, molds and patterns to dispose of them. Changes to the escheats laws become effective December 1, 1993. Changes to the law regarding molds became effective July 24, 1993.

Health Care Power of Attorney (HB 1043; Chapter 523): See the summary under **HUMAN RESOURCES**.

Contractor Roster Publication (SB 536; Chapter 148): Senate Bill 536 amends G.S. 87-8 which governs the publication of the roster of licensed general contractors. Presently the State Licensing Board for General Contractors must publish the roster of

general contractors during the month of January of each year. The act changes the publication month to March. The Board is required to submit an annual report to the Governor on the first day of March each year. The act changes it to the last day of March. The act became effective upon ratification, June 14, 1993.

STUDIES

House Bill 1319

The 1993 Studies Bill (HB 1319) was passed by both houses but was not ratified before adjournment of the 1993 Regular Session. It should be signed into law at the beginning of the 1994 Short Session. Legislative Research Commission Studies relating to the topic of Property include: (1) Residential Property Disclosure Act; (2) Need for a Property Owners' Association Act. On September 13, 1993, the LRC referred (1) to the Consumer Protection Committee; and declined to authorize the study of (2).

RESOLUTIONS

Joint Resolutions

Memorializing Luther R. Jeralds (HJR 18; Res. 3).

Resolution Honoring Delegates To 1868 Constitutional Convention (HJR 181; Res. 4): See LOCAL GOVERNMENT.

Inviting Vice President Gore (HJR 199; Res. 2).

Honoring Aberdeen (HJR 246; Res. 21).

Adopt Youth Substance Abuse Plan (HJR 249; Res. 27): See HUMAN RESOURCES.

Mental Health Quality Improvement (HJR 250; Res. 28): See HUMAN RESOURCES.

Developmental Disabilities Plan (HJR 251; Res. 29): See HUMAN RESOURCES.

Pinehurst is Golf Capital (HJR 296; Res. 26): See STATE GOVERNMENT.

Honor Campbell Folk School (HJR 393; Res. 23): See STATE GOVERNMENT.

Inviting Chief Justice Exum (HJR 440; Res. 6).

Memorializing Willie C. Lovett (HJR 522; Res. 12).

Honoring Town of Elon College (HJR 591; Res. 7).

Honoring Textile Tech. Center (HJR 680; Res. 9).

Community College Board Election (HJR 1209; Res. 13): See EDUCATION.

Joint Session/Confirm State Bd. (HJR 1247; Res. 14): See EDUCATION.

Confirm State Bd. of Educ. Appts. (HJR 1248; Res. 15): See EDUCATION.

Recognize City of Washington (HJR 1496; Res. 19).

Memorializing Henry M. Tyson (HJR 1497; Res. 22).

Memorializing Raymond M. Thompson (HJR 1498; Res. 24).

Informing Governor (SJR 1; Res. 1).

Memorializing Thurgood Marshall (SJR 68; Res. 5).

Memorializing John C. Kesler (SJR 522; Res. 8).

Support Center for the Book (SJR 594; Res. 25): See STATE GOVERNMENT.

UNC-CH 1993 NCAA Champs-2 (SJR 919; Res. 10).

Memorializing Dwight W. Quinn (SJR 976; Res. 11).

Oppose Federal License Req.-2 (SJR 1017; Res. 30): See TRANSPORTATION.

Thomas on Utilities Comm'n (SJR 1160; Res. 16): See STATE GOVERNMENT.

J. Hunt on Utilities Comm'n (SJR 1161; Res. 17): See STATE GOVERNMENT.

R. Hunt on Utilities Comm'n (SJR 1162; Res. 18): See STATE GOVERNMENT.

Memorializing Warmouth T. Gibbs (SJR 1252; Res. 20).

1993 Adjournment Resolution-3 (SJR 1299; Res. 31).

Simple Resolutions

1993 House Rules (HR 29).

Board Of Governors Election (HR 135).

Board Of Governors Election (SR 102).

Honoring Bessemer City-2 (SR 468).

1993 Senate Rules (SR 823).

Enhance Fiscal Stability (SR 951).

Senate Introduction Deadline (SR 1243).

STATE GOVERNMENT

(Brenda Carter, Bill Gilkeson, Linwood Jones, Lynn Marshbanks, Steven Rose, Terry Sullivan)

RATIFIED LEGISLATION

Alcoholic Beverage Control

Multicounty ABC Elections (HB 346; Chapter 193): See **Elections** under this section.

ABC Technical Amendments (HB 502; Chapter 415): House Bill 502 makes numerous technical and substantive changes to the alcoholic beverage laws.

The bill increases the fees for all commercial ABC permits except the permit for a salesman, a vendor representative, and a winery special event. Fees for the following commercial permits are increased from $100 to $150: unfortified winery, fortified winery, limited winery, brewery, distillery, wine importer, wine wholesaler, malt beverage importer, malt beverage wholesaler, and bottler. The fee for a fuel alcohol permit is increased from $10 to $50, and the fee for a nonresident malt beverage vendor permit and a nonresident wine vendor permit is increased from $25 to $50.

The bill makes the following changes in the places where alcoholic beverages can be sold or the kinds of alcoholic beverages that can be sold:

(1) Blue Ridge Parkway Restaurant or Hotel -- The bill authorizes these establishments to obtain on-premises malt beverage and on-premises unfortified wine permits. The authorization applies to restaurants and hotels located within 1.5. miles of a junction of the Blue Ridge Parkway, which currently affects the following counties: Alleghany, Avery, Henderson, Haywood, Jackson, McDowell, Transylvania, Watauga, Wilkes, and possibly Burke.

(2) Tennis Clubs in Areas Where Golf Clubs Can Obtain ABC Permits -- The bill authorizes tennis clubs in Brunswick, Pender, and Rockingham Counties to obtain beer, wine, and mixed beverages permits. Existing law allowed golf clubs in these areas to obtain these permits.

(3) Sports Clubs in Columbus County -- A sports club is an establishment with a golf course or a tennis court. The bill authorizes clubs located in unincorporated areas of Columbus County to obtain beer, wine, and mixed beverages permits.

(4) Sports Clubs in Areas Where Residential Private Clubs Can Obtain ABC Permits -- The bill authorizes sports clubs in Montgomery and Randolph Counties to obtain any retail ABC permit. Existing law allowed residential private clubs in these counties to obtain these permits.

(5) Residential Private Clubs and Sports Clubs in Richmond County, Jackson County, and Anson County -- The bill authorizes these clubs in these counties to obtain any retail ABC permit.

(6) Charlotte Motor Speedway and Nearby Establishments -- The bill authorizes these establishments, which comprise the State's only "recreation district," to obtain a fortified wine permit and a mixed beverages permit. Existing law authorized them to obtain beer and unfortified wine permits.

Other substantive changes made by the bill create an exception to the "new evidence" prohibition that applies to agencies in making the final decision in a contested case; authorize a small brewery to have a malt beverage wholesaler permit; expand the number of family members included in the financial interest restrictions that apply to members and employees of the Commission, a local board, or the ALE Division; prohibit persons who are authorized to sell beer and wine from buying the beer or wine directly from an importer; and require all beer and wine sold in the State to pass through a warehouse of a beer or wine wholesaler, as appropriate. The technical changes clarify that the area within a "Special ABC area" must be contiguous; delete obsolete references to hearing officers and Chapter 150A; clarify that congressionally chartered veterans organizations are eligible for brown-bagging permits; clarify the right of local government officials to testify at contested case hearings on the suitability of a person or location for an ABC permit; and clarify that beer and wine can be delivered at any time for certain special occasion fund-raising events.

Except for fee increases, the act became effective July 20, 1993. The fee increases are effective September 1, 1993.

Regulate Sunday Sales and Consumption of Alcoholic Beverages (SB 726; Chapter 243): Senate Bill 726 amends G.S. 18B-1004(c) and (d) which govern Sunday sales and consumption of alcoholic beverages. Present law requires that alcoholic beverages may not be sold or consumed on licensed premises from 2:30 A.M. Sunday morning until 1:00 P.M. Sunday afternoon. The amendment pushes the consumption hour back from 1:00 P.M. to Noon on Sunday. It makes a conforming change in the local option provision of that section. The act was effective upon ratification, June 30, 1993.

Councils and Commissions

State Auditor off Fire Commission (HB 817; Chapter 155): House Bill 817 removes the State Auditor as a nonvoting, ex officio member of the State Fire and Rescue Commission. The removal follows the recent transfer of the firemen's and rescue squad pension fund from the Auditor's Office to the State Treasurer's Office. This act became effective on ratification, June 14, 1993.

Courts Commission Chair (HB 1157; Chapter 438): House Bill 1157 transfers from the Governor to the Chief Justice of the Supreme Court the power to appoint the chair of the Courts Commission. The Governor must consult with the Chief Justice before making the appointment. The bill also eliminates former legislators from filling legislative positions on the Commission (although they could still be appointed to fill other positions on the Commission). This act became effective July 1, 1993, and applies to appointments made on or after that date.

Martin Luther King Commission (HB 1260; Chapter 502): House Bill 1260 establishes the Martin Luther King, Jr. Commission within the Department of Administration to encourage appropriate ceremonies and activities relating to the observance of Martin Luther King, Jr.'s birthday. The bill was effective on July 23, 1993.

Tryon Palace Commission Members (SB 994; Chapter 109): Senate Bill 994 revises the membership of the Tryon Palace Commission to consist of 25 voting members appointed by the Governor, nonvoting members emeriti appointed by the Governor, and five voting ex officio members. The bill provides for the staggering of terms of

voting members, and includes the Dean of Arts and Sciences at East Carolina University as an ex officio member of the Commission. The Governor will designate the chair of the Commission, and other officers will be elected by the Commission. The act became effective upon ratification on June 2, 1993; the terms of members serving on the Commission on the date of ratification are deemed to have expired on May 15, 1993.

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 HER.)

Multicounty ABC Elections (HB 346; Chapter 193): House Bill 346 permits an election for beer, wine, or mixed-drink sales in a city that straddles more than one county--in certain circumstances that reportedly apply only to the City of Kannapolis. The bill was made effective when it was ratified, June 22, 1993.

Precinct Boundary Cleanup (HB 563, Chapter 352): House Bill 563 makes changes in the Precinct Boundary Program, whose goal is to gibe all the State's voting precinct lines with U.S. Census block lines in time for the 2001 Redistricting. The main change is to permit county boards of elections to use as precinct boundaries several additional visible features, such as ridgelines, if shown on official maps. Even though such features are not now recognized as Census block boundaries, it is hoped that they will be by the end of the decade. The bill was made effective when it was ratified, July 15, 1993.

Postpone Voter Changes (HB 780, Chapter 74): House Bill 780 postpones until January 1, 1995 the State's implementation of voter registration by mail and the single-form approach to voter registration at driver's license offices. The 1991 General Assembly had originally made the mail-in change effective July 1, 1993, and the driver's-license change effective January 1, 1994. In "whereas" clauses, the bill states that a major reason for the change is that the National Voter Registration Act will require the same things effective January 1, 1995, to be done to its own specifications, the details of which are not yet clear. The bill to postpone was made effective when it was ratified, May 24, 1993, but in July the Civil Rights Division of the U.S. Justice Department raised questions about the postponement of mail-in under the Voting Rights Act and as of the publication of this summary the U.S. Attorney General had not precleared the bill under Section 5. If preclearance is denied to the postponement bill, then the Board of Elections will be required to implement mail-in registration before January 1, 1995.

Kids Voting Project (SB 684, Chapter 236): Senate Bill 684 modifies the prohibitions against loitering and electioning in the voting place to allow county boards to conduct simulated elections among children and youths at the same place their parents vote. The bill was made effective when it was ratified, June 29, 1993.

Fees

Auctioneer Fees (HB 1212; Chapter 421): House Bill 1212 changes certain fees charged by auctioneers, and it requires a reinstatement fee upon application for renewal of a license after the license has lapsed for failure to renew before expiration. The bill also requires records of the disbursement of funds on auction day to include a copy of each receipt or settlement statement issued when funds were disbursed. The bill was effective on July 21, 1993, and applies to fees due on or after that date.

Increase Court Fees (HB 1355; Chapter 320): House Bill 1355 does the following: (1) Provides that the percentage rate to be used in calculating the public utility regulatory fee is .085% of each public utility's North Carolina jurisdictional revenues earned during each quarter beginning on or after July 1, 1993; (2) Provides that the percentage rate to be used in calculating the insurance regulatory charge is 7.25% for 1993; (3) Sets fees for the inspection of amusement devices under certain circumstances and authorizes the Labor Commissioner to adopt rules to implement the inspection fee provisions; (4) Increases inspection fees for elevators, escalators, dumbwaiters, and special equipment; (5) Repeals October 1, 1993, expiration date for motorcycle safety instruction program and related provisions (1989 N.C. Sess. Laws 755). The bill was effective on July 9, 1993, except that the provision concerning the insurance regulatory charge was effective on July 1, 1993.

Fees On 20-Day Failures (SB 1139; Chapter 313): Senate Bill 1139 adds a $50 processing fee for each report by the courts to the Division of Motor Vehicles of the name of a person who is charged with a motor vehicle offense and who fails to appear in court or to pay a fine, penalty, or costs. The fee is paid by the defendant. It is waived upon a showing that the defendant failed to appear due to an error or omission of a judicial official, prosecutor, or law enforcement officer. The bill also states that a defendant must be given the opportunity for a trial or hearing within a reasonable time of the defendant's appearance on a motor vehicle charge. The bill was effective on July 15, 1993, and applies to reports issued on or after that date.

Licensing Boards

Counselor Licensing (HB 218; Chapter 514): House Bill 218 does the following: (1) Provides for licensure and regulation of licensed professional counselors (LPCs) through a Board of Licensed Professional Counselors; (2) Changes the title "registered practicing counselor" (a certified counselor) to "licensed professional counselor" in Article 24 of Chapter 90; (3) Provides that people registered, certified, or licensed to practice other occupations or professions (including medicine and law) are not subject to Article 24 with respect to counseling rendered in the performance of those occupations or professions; (4) Exempts from the Article certain counselors and counselor interns; (5) Raises the ceiling for certain fees; (6) States the educational and experience requirements for an LPC; (7) Requires an LPC to give clients a professional disclosure statement listing credentials, services offered, and a fee schedule; (8) Adds the LPC-client privilege to the list of privileges that are not grounds for excluding evidence of abuse or neglect in judicial proceedings. The bill becomes effective on July 1, 1994, except that the Board's rule-making authority was effective on July 24, 1993.

Board of Mortuary Science Inspections (HB 519; Chapter 164): House Bill 519 amends various sections of Article 13A of Chapter 90, which governs the practice of funeral service. The amendments clarify that inspections of establishments and records shall occur during normal hours of operation and periods shortly before or after normal hours of operation. The act becomes effective October 1, 1993.

Veterinary Practice Act Amendments (HB 747; Chapter 500): House Bill 747 requires a veterinary practice facility to use in its name one of the following terms (defined in the bill) to reflect accurately the level of services being offered to the public: animal health/medical center, emergency facility, mobile facility, office, on-call emergency service, veterinary/animal clinic, veterinary/animal hospital. The bill makes several changes concerning the N.C. Veterinary Medical Board. The number of members appointed by the Governor is increased from four to five, and each must reside in a different congressional district. The Speaker of the House will no longer have an appointment to the Board; the Lt. Governor and the Commissioner of Agriculture will each continue to appoint one member. The minimum number of Board meetings is increased from one each year to four, and the Board is authorized to purchase liability insurance to cover its members and employees. The Board is authorized to issue limited veterinary licenses as defined in the bill; and the Board may prohibit the operation of a veterinary facility that is endangering the safety of the public or animals, and suspend the license of the veterinarian operating the facility. The bill raises and alters maximum fees the Board may impose for the issuance or renewal of licenses and certificates and other services.

The Board is authorized to hold at least one examination each year; to require application for an exam at least 60 (was 30) days in advance; and is required to set the passing score for the exam. Applicants licensed in other states will be required to pass the written N.C. license exam before issuance of a license to practice in this State. The bill allows an employee (other than a technician, intern, or preceptee) to perform certain tasks under the supervision of a licensed veterinarian--for example, collection of specimens, testing for parasites, collecting blood. In the disciplining of licensees, House Bill 747 authorizes the Board to impose a civil monetary penalty up to $5,000 for each violation; adds as grounds for disciplinary action (1) alcohol or drug abuse; (2) violating sanitary standards; (3) conviction of cruelty to animals, including every act or omission causing unjustifiable pain, suffering, or death of animal; (4) violation of drug laws; (5) fraud or dishonesty in dealing with the Board.

A consulting veterinarian licensed in another state must be supervised directly by a N.C.-licensed veterinarian. The Board may adopt rules and procedures for the issuance of veterinary faculty certificates or zoo veterinary certificates in lieu of a license. The act is effective October 1, 1993, and does not affect the term of any member serving on the N.C. Veterinary Board on that date.

Real Estate Continuing Education (SB 913; Chapter 492): Senate Bill 913 requires the Real Estate Commission to establish a continuing education program for real estate brokers and salespersons as a condition of license renewal. The program would require eight hours of instruction per year in approved real estate courses, and it would allow deferral for persons not actively engaged in real estate brokerage. The bill authorizes the Commission to adopt rules to implement the program. The bill was effective on July 23, 1993, and applies to the renewal of real estate broker and salesperson licenses during and after 1995.

Open Meetings and Public Records

Criminal Investigations Records (SB 860; Chapter 461): See **CRIMINAL LAW AND PROCEDURE.**

Public Utilities

Campgrounds and Marinas Resell Electricity (HB 26; Chapter 349): House Bill 26 amends G.S. 62-3 to permit campgrounds and marinas to resell electricity to transient occupants of campsites and occupants of marina slips without being a public utility. The amount of electricity must be metered, the applicable rates prominently displayed, and the charge must not exceed the actual cost of the electricity. The act was effective upon ratification, July 15, 1993.

Abolish Energy Development Authority (HB 94; Chapter 16): House Bill 94 abolishes the North Carolina Energy Development Authority and transfers all of its records and any remaining assets to the Director of the Energy Division of the Department of Commerce. The Authority was created in 1983 for the purpose of promoting and developing facilities to process solid waste for energy production purposes and to develop resource recovery programs. The Authority has been inactive because other programs have taken over its functions. The act became effective July 1, 1993.

LP-Gas Tanks Fees and Civil Penalties (HB 567; Chapter 356): House Bill 567 amends various statutes governing liquified petroleum gas tanks. A new section is added to Article 5 of Chapter 119 to require that LP-Gas tanks must have a data plate indicating that they were built in accordance with the ASME Code. The Commissioner of Agriculture is authorized to replace damaged plates and charge a fee of $20.00 for this. Article 5 is also amended to provide for the assessment of civil penalties by the Commissioner of Agriculture for violations of the Article. The bill also amends Chapter 143 by adding a new section providing that where a qualified code enforcement official does not perform the required test for a liquified petroleum gas piping system in a one- or two-family residence, the contractor who installed the system must verify in writing that it has been tested and meets the requirements. The portions of the bill relating to Article 5 of Chapter 119 become effective December 1, 1993. The portion regarding inspection of gas piping systems becomes effective October 1, 1993.

Conform Pipeline Standards (HB 1083; Chapter 189): House Bill 1083 amends G.S. 62-50(10) to change state penalties for violation of natural gas pipeline safety regulations by providing that they shall not exceed the maximum penalties that could be imposed under the federal pipeline safety statutes. The North Carolina Utilities Commission enforces natural gas pipeline safety standards within the state under an agreement with the United States Department of Transportation. The act was effective upon ratification, June 21, 1993.

Municipal Power Agency Investments (HB 1167; Chapter 445): House Bill 1167 amends G.S. 159B-18(b) to expand the opportunities for investment of idle funds by joint municipal power agencies. The amendment lists a wide variety of permitted investments, but they all have in common that they are with agencies or instrumentalities of, or corporations owned by, the United States. The act was effective upon ratification, July 22, 1993.

Exempt Municipal Power Agency Projects (SB 470; Chapter 182): Senate Bill 470 amends G.S. 159B-11(10) by adding a provision that exempts joint municipal power agency projects from the bidding laws that are applicable to state agencies. "Project" is a defined term in Chapter 159B and refers specifically to electric generation and transmission facilities. Thus the exemption is limited to those types of facilities. The act was effective upon ratification, June 21, 1993, and applies to all contracts entered into prior to or after the effective date.

Thomas on Utilities Commission (SJR 1160): Senate Joint Resolution 1160 provides for the confirmation of the appointment of John Thomas made by the Governor to membership on the North Carolina Utilities Commission for a term to begin July 1, 1993, and to expire June 30, 2001.

J. Hunt on Utilities Commission (SJR 1161): Senate Joint Resolution 1161 provides for the confirmation of the appointment of Judy Frances Hunt made by the Governor to membership on the North Carolina Utilities Commission for a term to begin July 1, 1993, and to expire June 30, 2001.

R. Hunt on Utilities Commission (SJR 1162): Senate Joint Resolution 1162 provides for the confirmation of the appointment of Ralph A. Hunt made by the Governor to membership on the North Carolina Utilities Commission for a term to begin July 1, 1993, and to expire June 30, 2001.

Resolutions

Pinehurst--Golf Capital of the World (HJR 296; Joint Resolution 26): House Joint Resolution 296 honors Donald Ross for his life, accomplishments, and service to the Village of Pinehurst, Moore County and North Carolina and recognizes Pinehurst as the Golf Capital of the World.

Campbell Folk and Penland Schools Honored (HJR 393; Joint Resolution 23): House Joint Resolution 393 honors the John C. Campbell Folk School and the Penland School of Crafts declaring them as State arts and crafts resources, and encourages their use.

Support Center for the Book (SJR 594; Joint Resolution 25): Senate Joint Resolution 594 honors the memory of Paul Green, Dramatist Laureate of North Carolina, and supports efforts to create the North Carolina Center for the Book and the North Carolina Literary Hall of Fame to be located at the old Southern Pines Library building.

Thomas on Utilities Commission (SJR 1160): **See Public Utilities** under this section.

J. Hunt on Utilities Commission (SJR 1161): **See Public Utilities** under this section.

R. Hunt on Utilities Commission (SJR 1162): **See Public Utilities** under this section.

State Auditor

Hotline Complaints Confidential (HB 210; Chapter 152): G.S. 147-64.12 (b) prohibits the State Auditor from auditing a program in which the Auditor has been employed within the preceding two years. House Bill 210 provides that if the Auditor's hotline receives a report of improper governmental activity that the Auditor is prohibited from auditing, the Hotline Manager must transmit the report to the Legislative Administrative Officer. Any such report shall have the same confidentiality with the General Assembly that it has with the Auditor. The act became effective June 14, 1993.

State Auditor off Fire Commission (HB 817; Chapter 155): See **Councils and Commissions** under this section.

Auditor/Technical Corrections (SB 744; Chapter 257): Senate Bill 744 makes various technical amendments concerning the duties and responsibilities of the State Auditor, as follows: (1) eliminates the State Auditor's role in payment of judgments against the State Treasurer in land registration cases; (2) eliminates the State Auditor's role in payment of counsel employed by the Commissioner of Banks to prosecute banking offenses; (3) updates and standardizes statutory language describing the power of the Auditor with respect to the Rescue Squad Workers' Relief Fund (GS 58-88-15); (4) eliminates the requirement that the State Auditor conduct an annual audit of the Board of Nursing; (5) eliminates the requirement that the State Auditor supervise an annual audit of the financial records of the State Board of Examiners of Practicing Psychologists; (6) eliminates the requirement that the State Auditor conduct an annual audit of the Board of Therapeutic Recreation Certification; (7) eliminates the role of the State Auditor in the refund of sales and use tax overpayments; (8) eliminates the role of the State Auditor in the award of aid to blind persons; (9) updates and standardizes statutory language describing the power of the Auditor with respect to the Department of Human Resources business enterprises for the blind; (10) repeals Chapter 112 of the General Statutes (concerning Confederate widow pensions); (11) eliminates the role of the State Auditor in county payments for certain Governor Morehead School students; (12) eliminates the role of the State Auditor in payment of the militia; (13) eliminates the role of the State Auditor in the collection of employer's contributions to the Teachers' and State Employees' Retirement System; (14) updates and standardizes statutory language describing the power of the Auditor with respect to the special wildlife conservation fund; (15) updates and standardizes statutory language describing the power of the Auditor with respect to the Wildlife Endowment Fund; (16) updates and standardizes statutory language describing the power of the Auditor with respect to the Marine Fisheries Endowment Fund; (17) updates and standardizes statutory language describing the power of the Auditor with respect to the Marine Fisheries special conservation fund; (18) eliminates the State Auditor's role in the certification of expenses of sheriffs in transporting prisoners to Central Prison; and (19) authorizes the State Auditor to receive one copy of reports of the appellate division from the Administrative Officer of the courts. This act became effective on ratification, July 1, 1993.

State Property

Underwater Artifacts/DCR Rules (HB 636, Chapter 249): House Bill 636 eliminates the requirement that the Governor and Council of State approve the rules adopted by the Department of Cultural Resources for the preservation, protection, and salvage of shipwrecks and other underwater artifacts belonging to the State. This act became effective on ratification, June 30, 1993.

State Games Cars (HB 793; Chapter 87): House Bill 793 authorizes the Department of Administration to allow N.C. Amateur Sports to have uncompensated use of State trucks and vans for the 1993 and 1994 State Games, during the month of June in each year. The State disclaims liability for any damages resulting from the use of the vehicles, and N.C. Amateur Sports is required to carry no less than $1 million liability insurance for each vehicle in use. The act became effective May 27, 1993.

Indian Cultural Center Lease (SB 152; Chapter 88): Senate Bill 152 extends the date from June 30, 1993, to December 31, 1993, for the N.C. Indian Cultural Center to enter a lease with the State for real property acquired for the Indian Cultural Center. The act also allows the receipt of pledges to satisfy the fund-raising condition in the

lease. The lease agreement terminates if funds or pledges of $4,160,000 or more are not obtained within 3 years of the date the lease is executed. The bill became effective on ratification, June 1, 1993.

Waste Reduction/Recycling

Energy Policy for State Government (HB 101; Chapter 334): House Bill 101 expands the current energy policy for State government to apply to the construction, operation, and renovation of State facilities and the purchase, operation, and maintenance of equipment. The Department of Administration, in consultation with the Energy Division, is directed to develop and implement policies to ensure that State purchasing practices improve energy efficiency and take the cost of the product over the economic life of the product into consideration. The Department is also directed to adopt and implement Building Energy Design Guidelines, and to identify and recommend energy conservation maintenance and operating procedures that are designed to reduce energy consumption within State facilities. The Energy Division is directed to develop a comprehensive energy management program for State government, and each State agency is to develop and implement an energy management plan consistent with the State's program. The act became effective July 13, 1993.

Agency Duties/Recycling Industry (HB 663; Chapter 250): House Bill 663 delineates the responsibilities of the Department of Commerce and the Department of Environment, Health, and Natural Resources regarding the development of the State's recycling industry and markets for recyclable materials. The Department of Environment Health, & Natural Resources is authorized, with assistance from the Department of Commerce, to identify and analyze components of the State's recycling industry and present and potential markets for recyclable materials in this State, other states, and foreign countries. DEHNR, by March 1, 1994 and every other year thereafter, is to prepare a report assessing the recycling industry and recyclable materials markets in the State; the requirement that the Department of Commerce prepare an annual report assessing the recycling industry and recyclable materials markets in the State is eliminated. The act became effective June 30, 1993.

State Purchase Recycled Goods (SB 58; Chapter 256): Senate Bill 58 establishes goals for State agencies to gradually increase their use of recycled goods. Each State agency will use the 1993-94 fiscal year as a benchmark. Whatever amount of recycled products the agency uses in the 1993-94 fiscal year, the goal is increased by 10% the second year, 20% the third year, 35% the fourth year, and 50% the fifth year. The Secretary of Administration and State agencies must review their product specifications to ensure that recycled goods meeting appropriate standards will be acceptable. Information on recycled products available under State term contracts will be circulated. Agencies are to report annually to DEHNR on the amount and types of recycled products they have purchased. DEHNR will report this information in summary fashion to Governmental Operations.

The Department of Administration and DEHNR are to develop written guidelines specifying the minimum content to qualify a product as "recycled". The bill also requires DOT to use, where practicable, recycled ground rubber in road resurfacing and other recycled materials for guard rail posts, fence posts, and sign supports. The agency reporting requirement takes effect October 1, 1994; the bid specification review requirements must be completed by January 1, 1995. The remainder of the act became effective July 1, 1993.

State Waste Reduction (SB 90; Chapter 197): Senate Bill 90 requires the Department of Administration and the Department of Transportation to review and revise its bid procedures and specifications to encourage the purchase or use of reusable, refillable, repairable, more durable, and less toxic supplies and products, to the extent that purchase or use is practicable and cost-effective. The Department of Administration must require the purchase or use of remanufactured toner cartridges for laser printers to the extent practicable. Each of the departments must prepare an annual report concerning waste reduction efforts by October 1 to the Environmental Review Commission. The act becomes effective January 1, 1994; the first annual reports are required on October 1, 1994.

Waste Reduction/State Reports (SB 572; Chapter 448): Senate Bill 572 requires each State agency, including the General Assembly, the General Court of Justice, and The University of North Carolina, to the extent practicable, (1) to prepare any written report on recycled paper that can be further recycled; (2) to make the other constituent elements of the report from recycled products that can be recycled or reused; and (3) to print each report on both sides of the paper. Community colleges and any nonprofit corporations receiving State funds are encouraged to comply with these provisions. The bill also requires State agencies, in lieu of a mass distribution of written reports, to (1) notify persons to whom the agency is required to report and other appropriate persons that a report has been published, its subject and title, and the locations and State libraries where it is available; (2) deliver any report only to those State libraries likely to receive requests for a particular report; and (3) distribute a report only to those who request the report. In addition, every publication published at State expense must be prepared in accordance with the State's recycling and reuse requirements that are set out in statute. The act also exempts public university alumni mailing lists from existing requirements for the purging of State agency mailing lists. The act becomes effective January 1, 1994.

Miscellaneous

Need-Based Cytotechnologist Salaries (HB 106; Chapter 427): House Bill 106 directs the Office of State Personnel to review State cytotechnologist pay scales and report its findings to the Joint Legislative Commission on Governmental Operations and to the Secretary of the Department of Environment, Health, and Natural Resources by December 1, 1993. The act was effective on August 1, 1993.

Firemen's Pension Fund Change (HB 225; Chapter 429): House Bill 225 establishes a means by which a current or former firefighter or rescue squad worker who applied for retroactive membership in the Firemen's and Rescue Squad Workers' Pension Fund under G.S. §58-86-45 may purchase credit for any periods of service not otherwise creditable. The bill was effective on July 1, 1993.

Indian Housing Authority Name (HB 240; Chapter 201): House Bill 240 changes the name of the State Indian Housing Authority to the Indian Housing Authority effective June 23, 1993.

CPA Technical Amendments (HB 541; Chapter 518): House Bill 541 deletes the obsolete term of "public accountant" from Chapter 93 of the General Statutes, which governs the licensing of certified public accountants. No license for "public accountant" has been issued since 1925. The bill also repeals the United States

citizenship and North Carolina residency requirements for licensure as an accountant or certified public accountant. The bill was effective on July 24, 1993.

Certification of Local Government Property Mappers (HB 924; Chapter 326): House Bill 924 amends Article 4 of Chapter 147 to provide for the certification of local government property mappers. The certification program is to be established by the Department of the Secretary of State and regulates persons employed by local governments who are responsible for creating and maintaining large-scaled cadastral maps. Minimum requirements for certification are established but the Department is to establish additional requirements. Renewal occurs every two years and requires 24 hours of continuing education. The fee for certification or renewal is $20.00. Persons certified by the North Carolina Property Mappers' Association as of January 1, 1994 may apply to the Secretary of State before July 1, 1994 for certification without meeting the other requirements of the act except for the fee. The act becomes effective January 1, 1994.

State Contracts/Handicapped (HB 946; Chapter 252): House Bill 946 includes "disabled business enterprises" under the state policy promoting the use of minority, physically handicapped, and women contractors for state contracts. A "disabled business enterprise" is a nonprofit entity whose main purpose is to provide habilitation, rehabilitation, independent living, and competitive employment for handicapped persons. It must assure the Secretary of Administration that payments from the State under a contract would be used to train, employ, and pay competitive wages to handicapped employees. The bill was effective on June 30, 1993.

Regulate Smoking in Public (HB 957; Chapter 367): House Bill 957 adds Article 64 to Chapter 143, for the purpose of regulating smoking in public places and providing for designated smoking and nonsmoking areas. The bill provides that certain specified state buildings may be completely smoke free. These include public libraries, public museums, auditoriums and similar spaces (except that they must have designated smoking areas in the lobby), and educational buildings primarily involved in health care instruction. Other state controlled buildings may have designated nonsmoking areas, if at least 20% of the interior space is designated as a smoking area. Smoking in a nonsmoking area is an infraction punishable by a fine not exceeding $25.00. Certain areas are completely exempt from the provisions of this Article. These include primary or secondary schools and day care centers, except for a teacher's lounge; an enclosed elevator; a public school bus; hospitals, nursing homes and rest homes; and certain other state facilities such as facilities for the mentally ill or mentally retarded. The Article may not be interpreted to permit smoking where it would be unsafe to do so because of fire hazard. The Article also permits local governments to enact local laws, rules or ordinances before October 15, 1993 without complying with the provisions of this Article. The act was effective upon ratification, July 17, 1993.

Education/Clean Water/Parks Bonds (SB 14; Chapter 542): See the summary contained in the **TAXATION** section.

Emergency Special Superior Court Judges (SB 27; Chapter 321, Section 199): This section of the appropriations bill sets out the qualifications for emergency special superior court judges. It also provides for their appointment, removal, compensation, powers, and duties, setting those out in new language or referencing other statutes. This section was effective on July 1, 1993.

Cancer Coordination and Control (SB 27; Chapter 321, Section 288): This section of the appropriations bill establishes the Advisory Committee on Cancer Coordination and Control within the Department of Environment, Health, and Natural Resources to recommend to the Secretary of the Department a plan for the statewide implementation of an interagency comprehensive coordinated cancer control program and to advise the Secretary on other issues concerning cancer control. The section was effective on July 1, 1993.

State Comprehensive Pay Plan (SB 84; Chapter 388): Senate Bill 84 creates the Comprehensive Compensation System ("CCS") for State employees, consisting of three pay components: career growth recognition awards, cost-of-living adjustments, and performance bonuses. Once the system is in place and funded, the employee's eligibility for these various pay components is contingent on the employee's meeting or exceeding various performance levels. When funding the CCS, the General Assembly is to fund first the career growth recognition award component; remaining funds would go toward cost-of living adjustments; any remaining funds would go toward performance bonuses. This act does not obligate the General Assembly to fund the CCS now or in the future.

The State Personnel Director is to report annually to the General Assembly on the CCS and must recommend to the General Assembly sanctions to be levied against departments and supervisors that have deficient performance appraisal systems or that fail to link salary increases and awards to employee job performance. In addition, the Office of State Personnel is to study the CCS, its impact on the top and bottom of each pay scale, and related classification and compensation matters. The Office is to develop a plan for realigning the classification system. The CCS takes effect July 1, 1994, provided that the General Assembly is not obligated as a result of this act to fund the CCS.

Building Code/Local Civil Penalties (SB 164; Chapter 329): Senate Bill 164 clarifies that local governments may impose civil penalties for violations of the fire prevention code of the State Building Code. However, a local government may not bring a civil enforcement action if the Insurance Commissioner or other state official has brought an enforcement action for that violation. Appeals of civil penalties shall be as provided by G.S. §160A-434. The bill was effective on July 13, 1993, and applies to violations committed on or after that date.

Delete Business License Report (SB 216; Chapter 446): Senate Bill 216 repeals the requirement that the Department of the Secretary of State report to the Joint Legislative Commission on Governmental Operations on the Business License Information Office. The act became effective upon ratification on July 22, 1993.

Delete Library System Report (SB 217; Chapter 447): Senate Bill 217 repeals the requirement that the Department of Cultural Resources report to the Joint Legislative Commission on Governmental Operations on the operation of the State Depository Library System. The act became effective upon ratification on July 22, 1993.

Burial Trust Funds (SB 466; Chapter 242): Senate Bill 466 clarifies that a licensed funeral establishment may keep up to 10% of trust deposit funds under an irrevocable preneed funeral contract when a different funeral establishment is designated, before or after the death of the preneed funeral contract beneficiary, to furnish funeral services and supplies. The bill was effective on June 30, 1993.

Senior Tar Heel Legislature (SB 479; Chapter 503): Senate Bill 479 establishes the Senior Tar Heel Legislature to provide information to and educate senior citizens on the legislative process and issues before the General Assembly, promote citizen involvement and advocacy concerning aging issues before the General Assembly, and convene an annual forum to assess the legislative needs of senior citizens. The delegates to the annual meeting would be from every county and be at least 60 years old. The delegates would be selected under procedures developed by the Secretary of Human Resources and the Division of Aging, and, after consultation with senior citizens advocacy groups, be approved by the Secretary. The annual session is to be organized and coordinated by the Division of Aging and the Area Agencies on Aging. The Senior Tar Heel Legislature is to report its recommendations to the General Assembly. The act became effective upon ratification (July 24, 1993).

Office of Administrative Hearings Agency for Americans With Disabilities Act (SB 604; Chapter 234): Senate Bill 604 amends G.S. 7A-759(a) to specify that the Office of Administrative Hearings is the State's deferral agency for cases deferred under the Americans With Disabilities Act. This applies only to charges filed by State or local government employees. The State is already the deferral agency for such cases under Section 706 of the Civil Rights Act of 1964. The act is effective October 1, 1993.

Clarify State Trails System (SB 918; Chapter 184): Senate Bill 918 provides that the State trails system includes trails added under the State Parks Act as well as those added under the Trails System Act. It defines trail to include any trail open to the public, where the owner, lessee, occupant, or person otherwise in control of the land that the trail is on allows use of the trail without compensation. The bill authorizes the Secretary of the Department of Environment, Health, and Natural Resources to give technical assistance to cities, counties, or private, nonprofit corporations that develop, construct, or maintain trails complementing the State trails system. The bill was effective on June 21, 1993.

PENDING LEGISLATION

Commissions

Sheriff's Commission Members (SB 785): Passed third reading in both houses, but not ratified.

Elections

Agency-Based Registration (HB 126): House Bill 126 would require that voter registration be available in certain public agencies. That and certain other voter-registration reforms will be required by the National Voter Registration Act for federal elections beginning in 1995. Without HB 126, the State would have to have separate registration systems for State and federal elections. The bill is in the House Appropriations Committee.

Statewide Voter Registration (HB 445): House Bill 445 would require the State Board of Elections to design and implement a statewide computerized system for registering voters. As introduced, the bill would have given the task to the Secretary of State, but that office was removed from the bill in House Judiciary I Committee before the bill

was re-referred to House Appropriations. (Another bill, House Bill 1012, would have shifted the entire election system to the Secretary of State, but that bill never got out of the House State Government Committee.)

Unopposed Candidates Elected (HB 453): House Bill 453 would take the names of unopposed candidates off the general-election ballot, unless they are running for constitutional offices. The bill passed the House and is in Senate committee.

Primary Date Changed (SB 78): Senate Bill 78 would change the primary date from May to the ninth Tuesday before the general election (which usually falls in early September). The bill passed the Senate and is in House committee.

Faxing Military/Overseas Ballots (SB 921): Senate Bill 921 would allow military and overseas voters to vote by fax machine. The bill passed the Senate and is in House committee.

Early Voting/Preregistration (SB 1066): Senate Bill 1066 would allow 16- and 17-year-olds to preregister to vote when they are issued their drivers licenses. Those preregistrations would be stored until they are old enough to vote. The Senate passed the bill containing preregistration only. The House passed the bill, but added provisions that would establish Early Voting--in-person, no-excuse absentee voting that all counties may (and some counties must) allow at multiple sites. Early Voting had passed the House in a different form in House Bill 772, which had stalled in a Senate committee. Conferees negotiated over the two versions of SB 1066 on the final day of the session, but came to no agreement.

Ethics/Lobbying

State Ethics Commission Established (SB 399 (in Senate J II Committee) and HB 282, (in House Ethics Committee)): The bills originated from a 1991-92 LRC study on Governmental Ethics and Lobbying. For State officers and employees (except judicial officers) and those of certain local governments, the bill would:

1. Specify ethical standards in conducting governmental business.
2. Establish an independent, bipartisan, nine-member State Ethics Commission to conduct a continuing study of governmental ethics; to establish ethical standards and guidelines for public servants; to investigate ethical violations; to advise public servants on ethics; to receive and review statements of economic interest.
3. Provide for public disclosure of economic interests by certain specific public servants and members of their immediate family.
4. Provide that violation of the new Act would be grounds for disciplinary action.
5. Appropriate funds to implement the act.

Gifts to Purchasing (Public Contracting) Officials Prohibited (HB 21 (in House Ethics Committee) and SB 760 (in House Finance Committee)). The bills were proposed first by the Fiscal Trends Study Commission. As introduced, the bills would have made the offer to or receipt by a State purchasing officer or employee of any gift or other thing of value with intent to influence the officer's or employee's official act a misdemeanor.

The Senate version was amended in the Senate to prohibit the gift or receipt of gifts in excess of $25 in value and would increase the penalty to a Class J felony (up to 3 years imprisonment or fine, or both).

The House Committee on Ethics reported an amended version of SB 760 (4th Edition), which would transfer the provisions of G.S.133-23, prohibiting gifts to public works contracting officials, to Chapter 14 of the General Statutes, the Criminal Law, and make the prohibition applicable to all employees and officers charged with preparing, awarding, and supervising public contracts. Like the Senate Committee Substitute the prohibition would apply to gifts in excess of $25, but a violation would remain a misdemeanor.

Registration of Executive Branch Lobbyists (SB 398 (in Senate Appropriations Committee) and HB 262 (in House Appropriations General Government Subcommittee)). This is other legislation coming from the 1991-92 LRC study on Governmental Ethics and Lobbying.

As introduced, the bills would make various technical and other amendments and would extend the lobbyist registration system to anyone who, for compensation, seeks to influence executive branch official actions, that is, any change to a rule, license, contract, order, determination or other quasi-judicial action or proceeding by a State agency or a State officer or employee. The present legislator exemption from regulation as lobbyist would be limited to when legislators are in discharge of their legislative duties. Therefore, if a legislator were hired to influence executive branch actions, he or she would be subject to regulation as a lobbyist. Monies would be appropriated to fund the new requirements.

The Senate version was amended to require reporting of "goodwill" lobbying expenses, that is, any expenditures by a lobbyist to or on behalf of a covered governmental official, even if legislation is not discussed.

The House version was rewritten to extend only the reporting requirements to those registered as lobbyists of the legislative branch when lobbying the executive branch. The House version also restricts what constitutes lobbying executive action to lobbying for administrative rules, and changes thereto, for executive agency support or opposition to legislation, and for executive orders of the governor.

Open Meetings and Public Records

Open Meetings (HB 120 and SB 417): House Bill 120 and Senate Bill 417 were almost identical when introduced. The changes focused on the instances when public bodies may close their meetings to the public. Each bill passed its house of origin, but not before being amended so that the two bills are more different than when they were introduced.

Public Records (HB 121 and SB 418): House Bill 121 and Senate Bill 418 were identical as introduced. They would amend the Public Records Act to make more specific the rights of persons requesting access to public records, particularly computer records. Neither bill passed its house of origin, but House Bill 121 was re-referred to the House Finance Committee because of its revenue implications, which may preserve its eligibility in the 1994 short session.

STUDIES

House Bill 1319

The 1993 Studies Bill (HB 1319) was passed by both houses but was not ratified before adjournment of the 1993 Regular Session. It should be signed into law at the beginning of the 1994 Short Session. Legislative Research Commission Studies relating to the topic of State Government include: (1) Emergency Management Issues; (2) State Real Property Transfers; (3) Mountain Area Study; (4) State Parks and Recreation Areas; (5) Information Technology; (6) Bid Laws and Reciprocity; (7) Voter Registration; (8) Alcoholic Beverage Control Laws; (9) Bingo; (10) Liabilities of Registers of Deeds under the Torrens Land Registration System; (11) Disaster Relief Volunteer Protection; (12) Representation of Extraterritorially Zoned Areas; (13) Issues Relating to Pilot Programs; (14) Cemetery Commission and the Regulation of Cemeteries in the State; (15) Alternate Election Systems; (16) Historic Preservation Crafts Training in North Carolina; (17) Disposition of Public Historic Structures; (18) UNC Board of Governors Appointment Process; (19) Legislative Compliance Review; (20) Partnership for Quality Growth; (21) Certificates of Participation; (22) Legal Research; (23) Forfeitures and Fines Clear Proceeds Allocation; (24) State Purchasing; (25) Economic Impact of Rules; (26) Regional Government and Economic Development Zones; (27) African-American Cultural Center. On September 13, 1993, the LRC authorized the study of (3),(4),(8),(18),(20),(24), and (25); referred (1) and (11) to the Emergency Management Committee; referred (5),(6),(19), and (21) to the Joint Legislative Committee on Governmental Operation; referred (7) and (15) to the Election Laws Committee; referred (10) to the Courts Commission; referred (13) to the Fiscal Trends and Reform Committee; referred (16) and (17) to the Cultural Resources Committee; referred (22) to the General Statutes Commission; referred (23) to the Revenue Laws Committee; and declined to authorize the study of (2),(9),(12),(14),(26), and (27).

Other relevant studies contained in HB 1319 include: (1) the study of election laws, policies, and procedures of the State to be conducted by the Election Laws Review Commission; (2) the study of recent rulings by Utilities Commission on the regulatory treatment of the gain on sale of water and sewer facilities and to study municipal electric utility systems to be conducted by the Joint Legislative Utility Review Committee.

Independent Studies, Boards, Etc., Created or Continued

Budget Practices Study Commission created and directed to study the effectiveness of the Executive Budget Act. SL93-321, §22, SB 27.

Martin Luther King, Jr. Commission. SL93-502, HB 1260.

Referrals to Agencies

Attorney General and Director of Budget shall conduct a review of the proliferation of legal publications used by State agencies, departments, and institutions. SL93-561, §81, SB 26.

1993 General Assembly shall further evaluate the advantages and disadvantages of GPAC's recommendation to transfer the Community Service Work Program from the Department of Crime Control and Public Safety to the Department of Correction and to consolidate all community corrections programs under a single administrative structure. SL93-321-§178.1, SB 27.

Referrals to Existing Commissions, Etc.

Joint Legislative Commission on Governmental Operations may review implementation of GPAC recommendations concerning the reorganization of State education agencies. SL93-321, §144.1, SB 27.

North Carolina Courts Commission (membership change, etc.). SL93-438, HB 1157; G.S. 7A-506.

TAXATION

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

RATIFIED LEGISLATION

Bonds

Economic Development Financing Bonds (SB 1157; Chapter 497): Senate Bill 1157 gives counties and cities two different tools to enhance their ability to recruit and retain economic development. The first part of the act permits voters to vote on a constitutional amendment that will allow the General Assembly to enact general laws authorizing counties and cities to borrow money, without voter approval, to finance public activities associated with private economic development projects within a defined territorial area. This development tool, known as economic development financing, will allow local governments to set aside the additional property taxes that are generated by a new investment to pay for public facilities that support that new investment. The second part of the act authorizes counties and cities to accept as consideration for a conveyance or lease of property to a private party the amount of increased tax revenue expected to be generated by the improvements to be constructed on the property. This part of the act became effective upon ratification, July 23, 1993.

The economic development financing bonds issue will be placed before the voters on Tuesday, November 2, 1993. The issue has been defeated by the voters once, on November 2, 1982. If the amendment is approved, counties and cities may create a development financing district and adopt a development financing plan for that district. The total land area of the district may not exceed 5% of the total land area of the unit creating the district. The development financing plan describes the projects the unit of local government desires to finance and how the tax proceeds from the economic development financing bonds will be used. The plan must also include a description of how the proposed development, both public and private, will benefit the residents and business owners of the district in terms of jobs, affordable housing, and services. The plan must pass an environmental review and it must contain a requirement that initial users of a new manufacturing facility located in the district pay employees of the facility an average weekly manufacturing wage that is either above the average weekly manufacturing wage paid in the county where the district is located or is at least 10% above the average weekly manufacturing wage paid in the State. A plan may be exempt from the wage requirement if the Secretary of Commerce finds that unemployment in the county in which the district is located is especially severe.

If a county or city wants to issue economic development financing bonds to finance public activities associated with private economic development projects within a development financing district, it must have the approval of the Local Government Commission. The Commission cannot approve the application until the development financing district is created and the development financing plan is adopted. The bonds may be issued to finance parking facilities, sewer systems, solid waste disposal systems, storm sewers and flood control facilities, water systems, public transportation facilities, land development for industrial or commercial purposes, and redevelopment. Redevelopment includes purchasing and improving property to help local redevelopment commissions. Before approving the bond issuance, the Commission must find, among other things, that the proposed economic development financing bond issue is necessary to secure significant new economic development for a

development financing district and that the private development forecast in the development financing plan would not be likely to occur without the public projects to be financed by the bonds.

To secure the bonds, the county or city issuing the bonds must establish a separate fund to account for the proceeds paid to it from taxes levied on the incremental valuation of the development financing district. The incremental valuation is the excess of the assessed value of taxable property in the district at the time the taxes are levied over the assessed value of property in the district at the time it was created. The Local Government Commission must find that the taxes on the incremental valuation, together with any proceeds that may be realized from the sale of property in the district and any revenues that may be realized from a public facility in the district, will be sufficient to service the economic development financing bonds. The district may remain in effect for 30 years or until the bonds are retired. The bonds must be retired within 30 years or within the useful life of the projects financed, whichever is shorter. After that, all taxes are paid into the local general fund.

To provide additional security for the bonds, the county or city issuing the bonds may pledge the proceeds from the sale of property in the development financing district and the net revenues from public facilities in the development financing district constructed or improved under the development financing plan. The city or county may also pledge any other available sources of revenue as long as the agreement to use the sources to make payment does not constitute a pledge of the county's or city's taxing power. Other available sources of revenues that do not constitute a pledge of a county's or city's taxing power include taxes levied by the State that are transferred to a county or city, such as beer and wine tax revenues, utilities franchise tax revenues, and intangibles tax revenues.

The second part of the act authorizes counties and cities to estimate the amount of increased tax revenue that would accrue during the succeeding 10 years from economic development of a piece of property by the purchaser and to accept the estimated amount as consideration for a conveyance of the property from the county or city to a purchaser that will bring the anticipated economic development. This same provision is contained in House Bill 1109, ratified as Chapter 536 of the 1993 Session Laws. Several cities and counties currently have this authority under local acts ratified over the past several years.

The county or city must determine that the conveyance of the property will result in the creation of a substantial number of jobs in the county or city that pay at or above the median average wage in the county or, for a city, in the county where the city is located. The median average wage is defined as the median average wage for all insured industries in the county as computed by the Employment Security Commission for the most recent period for which data is available. In accepting the consideration, the governing board of the county or city must contractually bind the purchaser of the property to construct, within five years, improvements on the property that will generate the tax revenue taken into account in arriving at the consideration. Upon failure to construct the improvements specified in the contract, the purchaser must reconvey the property back to the county or city.

Education, Clean Water, and Parks Bond Act of 1993 (SB 14; Chapter 542): Senate Bill 14 authorizes the issuance of $740 million in general obligation bonds of the State, if approved by the voters in a referendum to be held on Tuesday, November 2, 1993. The bonds are:

$310 million	--	University of North Carolina Improvements
$250 million	--	Community Colleges Improvements
$ 45 million	--	Deposit in Clean Water Revolving Fund
$100 million	--	Local Government Loans for Water and Sewer

$ 35 million -- State Parks

$740 million -- Total

The net cost to the General Fund of annual debt service on the above bonds should be about $59 million; this amount is lower than one might expect because the repayments of the $100 million in Water and Sewer loans can be applied toward debt service on the bonds.

The list of projects for the University of North Carolina provides at least one project for each constituent institution. The list is the same as that requested by the Board of Governors, with three exceptions: (i) the project for Fayetteville State University has been changed from a fine arts building to residence hall renovations at the request of the chancellor; (ii) the building for the N.C. School of the Arts Filmmaking School is specified as a production facility; and (iii) one of the projects for UNC-Asheville has been changed from Ramsey Library renovations to a conference center. The act also provides an additional $12 million for "other critical needs" of the University system, as determined by the Board of Governors.

If approved by the voters, the University Improvement bonds can be issued for the specified projects without further action by the General Assembly. If a project or an allocation later needs to be changed, due to a change of circumstances or another reason, the General Assembly has the power to make the change.

The Community Colleges Bond proceeds would be distributed in the form of grants to individual community colleges for building projects plus any related equipment and land acquisition. Like other appropriations to community colleges for capital projects, these grants would have to be matched with local funds on a dollar-for-dollar basis. Many of the colleges are "overmatched" to some extent, however; these colleges could use the overmatch to meet the matching requirement.

The act lists $226.1 million in specific projects for individual colleges and satellite campuses. Each community college has at least one project on the list. If approved by the voters, this part of the Community College bonds can be issued for the specified projects without further action by the General Assembly. If a project or an allocation later needs to be changed, due to a change of circumstances or another reason, the General Assembly has the power to make the change.

The act provides that the remaining $23.9 million in Community College bonds will be used for grants to be specified by the General Assembly in 1994 or later. This part of the bonds cannot be issued until the General Assembly allocates the funds for specific projects. It is intended that the allocations will be based on the recommendations of the Legislative Study Commission on Community College Capital Needs created in Section 11(a) of the act.

The Legislative Study Commission on Community College Capital Needs will consist of 10 voting members: 5 appointed by the Speaker of the House of Representatives and 5 appointed by the President Pro Tempore of the Senate. In addition, the President of the Community College System and the Chair of the State Board of Community Colleges will serve as ex officio, nonvoting members. The Study Commission is to study the issue of present and future capital needs of the Community College System and report its findings and recommendations to the General Assembly by April 1, 1994.

Of the $145 million Clean Water Bonds, $45 million is allocated to the existing Clean Water Revolving Loan and Grant Fund and $100 million is allocated for nonrevolving loans. This allocation is similar to that recommended to the 1993 General Assembly by the Legislative Research Commission's Water Issues Study Committee. If approved by the voters, the Clean Water bonds can be issued without further action by the General Assembly.

The $45 million will be used in the same way as funds in the Clean Water Revolving Loan and Grant Fund are used: to match federal funds for the 1993-95 biennium and to provide grants and low-interest loans. The sum of $45 million should be sufficient to provide the match for two years and to capitalize the revolving fund.

The act amends the Clean Water Revolving Loan and Grant Fund to increase the percentages of funds that will be used for grants to local governments without resources to repay loans, and to increase from $500,000 to $1,000,000 the maximum annual amount of a grant that can be made. Both of these changes are designed to help smaller, poorer communities obtain funding.

The other $100 million would all go out in loans to local government units for water supply systems, water conservation projects, wastewater collection systems, and wastewater treatment works. The funds would be allocated 69% for wastewater projects and 31% for water supply systems and water conservation projects. These percentages are based on the allocations in the existing revolving fund.

Local government units that may apply for loans include counties, cities, towns, sanitary districts, and water and sewer districts, as well as two or more of these units acting jointly. Priorities for the loans would be determined by the Department of Environment, Health, and Natural Resources, based on the priority factors for the existing revolving fund and on the need to create efficient regional systems. In addition, to qualify for a loan, a unit must have a water supply facility plan or a wastewater facility plan, as appropriate. The plan must be approved by the Department of Environment, Health, and Natural Resources.

The Department of Environment, Health, and Natural Resources will administer the making of loans, and the State Treasurer will determine the interest rate and maturity of the loans. The interest rates must reflect the self-supporting nature of the loan program: repayments must be sufficient to cover the State's debt service and costs of issuing and administering the bonds. The Department of Environment, Health, and Natural Resources is required to report annually in detail on this loan program to the Joint Legislative Commission on Governmental Operations.

Section 10 of the act provides the details of how the loan program will be administered. Local government units may submit applications on a semiannual basis but, before submitting an application, the unit must hold a public hearing. The Department of Environment, Health, and Natural Resources may hold additional public hearing and, if requested by affected members of the public, a referendum must be held on whether the unit will apply for a loan.

To be eligible for a loan, a local government unit must demonstrate that it has the financial capacity to repay the loan. In addition, in its loan agreement, the unit must authorize the State Treasurer to intercept any of its State funds distributions if it fails to make timely payments on a loan. This intercept provision will protect the State against default by a local government unit.

The act provides that $35 million of bonds would be used for the State Parks System for repairs, renovations, new construction, and land acquisition. However, no more than 30% of the bond proceeds may be used for land acquisition. If approved by the voters, the bonds could not be issued immediately; further action by the General Assembly is required in 1993 or later. It is intended that the General Assembly would appropriate the proceeds of the bonds in 1994 for specific projects based on a plan developed by the Department of Environment, Health, and Natural Resources. Section 11(b) of the act requires the Department of Environment, Health, and Natural Resources to develop a State parks capital improvement and land acquisition plan, which will include a priority list of needed land acquisitions and a priority list of needed repairs, renovations, and new construction. The priority lists are to be based on objective criteria. The Department of Environment, Health, and Natural Resources is to report this plan to the General Assembly by the first day of the 1994 Session.

Section 13 of the act modifies the law regarding refunding obligations. The former law, G.S. 142-29.5, authorized the State Treasurer, with the consent of the Council of State, to issue obligations to refund outstanding obligations. The law restricted the principal amount of the refunding obligations to the principal amount of the obligations being refunded. Section 13 provides an exception to this limitation: the principal amount of the refunding obligations may exceed the principal amount of the obligations being refunded if the refunding results in an aggregate debt service savings and the increase in the principal amount does not create cash-in-hand available for new capital improvements. This change will enable the State Treasurer to save money for the State through refinancing of outstanding debt.

Section 14 of the act states that the minority business participation goals set in G.S. 143-128 apply to projects undertaken with bond proceeds. The affected State agencies are required to monitor compliance and report annually to the General Assembly on the participation by minority businesses in the bond projects.

Fuel Tax

Non-Tax-Paid Fuel Criminal Penalty (SB 159; Chapter 140): Senate Bill 159 creates two related misdemeanor offenses involving the purchase of nontaxpaid special fuel. Special fuel is diesel fuel and other kinds of motor fuel except gasoline. Nontaxpaid special fuel is special fuel on which the per gallon excise tax has not been paid. The offenses are knowingly dispensing nontaxpaid special fuel into a motor vehicle and knowingly allowing someone to dispense nontaxpaid special fuel into a vehicle. Both offenses are punishable by imprisonment for up to six months, a fine of up to five hundred dollars, or both. The act becomes effective December 1, 1993.

In addition to creating two misdemeanor offenses, the act makes two technical changes. First, it deletes the word "penalties" in the catchline to G.S. 105-449.34 because the statute contains no penalties other than misdemeanors. Second, it deletes the words "of Revenue" following "Secretary" in two places to apply the definition of Secretary in G.S. 105-449.2. That definition was added in 1991 and a conforming change was not made to this statute.

The misdemeanor offenses created by the act apply only to special fuel rather than to both special fuel and gasoline because of the difference in the application of the per gallon excise tax to these fuels. The per gallon excise tax on special fuel applies to the first sale of the fuel in this State for a highway use; the per gallon excise tax on gasoline applies to the first sale of the gasoline in this State for any use. This difference reflects the difference in the uses of these fuels. Over half of special fuel sold in this State is used for a purpose other than to propel a motor vehicle, but almost all gasoline sold is used to propel a motor vehicle. The result of these differences is that much special fuel is sold without the per gallon excise tax being collected on the sale. The availability of this nontaxpaid special fuel creates opportunities for tax evasion, a prime example of which is the purchase of nontaxpaid special fuel from nonhighway pumps at service stations.

This act is designed to address the problem of persons buying special fuel from service station pumps marked "Nonhighway Use Only," either with or without the complicity of the service station attendant. The Department discovered this problem during the course of a "sting" operation it conducted in which many retail service stations were caught allowing customers to dispense diesel fuel into motor vehicles from pumps marked "Nonhighway Use Only." In attempting to prosecute those caught, the Department found that although those caught could be assessed a civil penalty under G.S. 105-449.24 or be charged with felony tax evasion, they could not be charged with any misdemeanor offenses. The Department felt that the civil penalty alone was not a

sufficient deterrent and that the chance of obtaining felony convictions in these circumstances was unlikely. The Department therefore recommended the creation of these misdemeanor offenses.

Clean Air Act Implementation (HB 681; Chapter 400): House Bill 681 changes various procedures concerning the issuance and enforcement of air quality permits to conform State law on this subject to the 1990 amendments to the federal Clean Air Act, repeals the 1995 scheduled reduction in and the 1999 repeal of the additional 1/2¢ per gallon motor fuel tax that became effective January 1, 1992, and changes the distribution of this additional 1/2¢ motor fuel tax. The conforming air quality permit changes and the repeal of the scheduled reduction in and the repeal of the additional 1/2¢ motor fuel tax became effective July 19, 1995. The change in the distribution of the additional 1/2¢ a gallon motor fuel tax becomes effective January 1, 1995.

The 1991 General Assembly increased the motor fuel per gallon excise tax by 1/2¢ a gallon effective January 1, 1992. The increase applies to the tax on gasoline imposed by Article 36 of Chapter 105 of the General Statutes, to the tax on diesel fuel and other special motor fuel imposed by Article 36A of that Chapter, and to the road tax imposed by Article 36B of that Chapter on motor carriers who purchase fuel outside the State for use inside the State.

The purpose of the additional 1/2¢ a gallon tax increase was to provide funds to clean up the environmental damage caused by leaking underground petroleum storage tanks. One-half of the revenue from this additional tax is therefore credited to the Commercial Leaking Underground Petroleum Storage Tank Fund, established under G.S. 143-219.94B, and the remaining half is credited to the Groundwater Protection Loan Fund, established under G.S. 143-215.94P.

In the act that imposed the additional 1/2¢ a gallon tax, the 1991 General Assembly reduced the tax to an additional 1/4¢ tax effective January 1, 1995, and then repealed it effective January 1, 1999. Sections 11 and 12 of this act repeal the scheduled 1995 reduction in and the scheduled 1999 repeal of the additional 1/2¢ tax, thereby making the 1992 increase a permanent increase.

Section 13 of this act changes the distribution of the now permanent additional 1/2¢ a gallon motor fuel tax. Effective January 1, 1995, the proceeds of the additional tax will be distributed as follows: 19/32 to the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund, 3/32 to the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund, and 5/16 to the Water and Air Quality Account within the Department of Environment, Health, and Natural Resources. Thus, the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund will receive slightly more of the 1/2¢ tax than it is currently receiving, the Groundwater Protection Loan Fund will no longer receive revenue from the additional tax, and the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund and the Air and Water Quality Account will begin to receive revenue from the additional tax.

The proceeds credited to the Water and Air Quality Account must be used for the air quality program. This restriction ensures that the additional tax proceeds will continue to be used for environmental programs that address problems created by the use of motor fuels. Air quality programs are related to problems created by the use of motor fuels because motor vehicle emissions contribute significantly to air pollution.

Highway Use Tax

Highway Use Tax Exemption (SB 128, Chapter 467): During the legislative process, this act grew from a one-section proposal concerning highway use tax exemptions to its current conglomeration of highway use tax changes and off-setting revenue increases. It changes the highway use tax by exempting three kinds of transfers from the tax, by modifying the exemption for transfers between certain family members, by reducing from $1,500 to $1,000 the maximum highway use tax payable on the transfer of a Class A or Class B commercial motor vehicle, and by allowing those who paid more than $1,000 on the transfer of one of these commercial motor vehicles to obtain a refund of the amount paid. Sections 1, 3, and 6 of the act make these changes; they became effective August 1, 1992.

The other changes the act makes are designed to provide revenue to off-set the revenue lost to the Highway Trust Fund as a result of the changes made to the highway use tax. The act authorizes the Division of Motor Vehicles of the Department of Transportation to use registration stickers to renew the registration of vehicles registered under the International Registration Plan, increases by 5¢ per hundred pounds the annual registration fee paid by certain property-hauling vehicles, and transfers revenue that is raised by the act in the Highway Fund to the Highway Trust Fund. Sections 2, 4, and 5 of the act make these "off-setting" changes. The authorization concerning the use of registration renewal stickers became effective August 1, 1992. The remaining off-setting changes become effective October 1, 1993.

In addition to these substantive changes the act makes numerous technical changes to the affected statutes. For example, it deletes several obsolete and inaccurate provisions in G.S. 20-66 concerning the annual renewal of motor vehicle registrations, and it changes the property-hauling vehicle registration weight categories, set out in G.S. 20-88(b), to conform to those that are used by the Division of Motor Vehicles.

Highway Use Tax Changes

The highway use tax is the tax that was enacted in 1989 to replace the sales tax on motor vehicles and provide a source of revenue for the Highway Trust Fund. The tax is 3% of the retail value of a motor vehicle, subject to a minimum tax of $40.00 and a maximum tax of either $1,000 or $1,500. Before July 1, 1993, the maximum tax for all vehicles was $1,000. Unlike the former sales tax on motor vehicles, which was payable only when a motor vehicle was sold, the highway use tax is payable every time a certificate of title is issued for a motor vehicle. A title is issued every time a motor vehicle is transferred to a new owner or the owner changes names, regardless of whether any cash changes hands in the transfer or how many times the vehicle has previously been transferred.

The three transfers the act exempts are gifts between stepparents and stepchildren, transfers of handicapped vans from the Department of Human Resources to the handicapped, and transfers to local boards of education of driver education vehicles that are either "on loan" from a dealer or are owned by another local board of education. Before August 1, 1993, the effective date of these exemptions, these three types of transfers were subject to highway use tax at the full 3%, $1,500 maximum rate.

The exemption for vehicles transferred as the result of a gift between stepparents and stepchildren is a logical extension of the current exemption for transfers between parents and children and a clarification of that exemption. When the General Assembly exempted transfers between parents and children in 1991, it assumed that stepparents and stepchildren were included in the exemption. After the exemption became effective, however, the Attorney General's Office issued an opinion stating that the exemption for parents and children did not include stepparents and stepchildren. This act corrects this problem by specifically including transfers between stepparents and stepchildren in the list of exemptions.

The other two transfers the act exempts apply only in limited circumstances. One of them applies to vehicles that are transferred to a handicapped person from the Department of Human Resources after the Department has equipped the vehicle for use by the handicapped. The other applies to certain driver education vehicles.

The purpose of the exemption for vehicles transferred to the handicapped by the Department of Human Resources is to prevent two payments of highway use tax on the same vehicle within a short period of time. The Department of Human Resources pays highway use tax when it acquires a vehicle to be equipped for use by the handicapped. Before this exemption became effective, the handicapped person to whom the Department of Human Resources transferred the vehicle also paid highway use tax on the vehicle upon the transfer. This exemption eliminates the second payment of highway use tax in this circumstance by exempting the transfer to the handicapped person from the tax.

The purpose of the driver education exemption is to avoid increasing the cost of the driver education program in the public schools. This goal is accomplished by exempting from the tax the transfer of driver education vehicles that either are "on loan" from a motor vehicle dealer or were transferred between local boards of education. A vehicle is considered to be "on loan" from a dealer when it is transferred by the dealer to a local board of education and the dealer and the local board agree that the local board will transfer the vehicle back to the dealer within 300 days.

The act further changes the highway use tax exemptions by limiting the exemption for transfers between husbands and wives or parents and children to transfers that are the result of gifts. This same limitation applies to the new exemption for transfers between stepparents and stepchildren. Under prior law, all sales and other transfers of motor vehicles between spouses or between parents and children were exempt from the tax.

In addition to changing the highway use tax exemptions, the act lowers from $1,500 to $1,000 the maximum highway use tax payable on the transfer of a Class A or Class B commercial motor vehicle and allows a person who paid more than this new maximum on one of these vehicles to obtain a refund of the amount paid. It does not change the maximum tax on a non-commercial motor vehicle.

A Class A or Class B commercial motor vehicle is a vehicle that weighs at least 26,001 pounds, either alone or in combination with a towed unit that weighs at least 10,001 pounds. In general, these vehicles are truck tractors and large trucks and, to drive them, a person must have the appropriate class of commercial drivers license. The fact that a vehicle is used commercially or has a registration plate bearing the word "commercial" does not determine whether the vehicle is a Class A or Class B commercial motor vehicle. Many vehicles that are used in a business and that have commercial plates are not Class A or Class B commercial motor vehicles because they do not meet the statutory definition of those vehicles.

For the period July 1, 1993, until August 1, 1993, the maximum tax on Class A and Class B commercial motor vehicles was $1,500 instead of $1,000. This is because the maximum tax increased from $1,000 to $1,500 effective July 1, 1993, and the reduction made by this act did not become effective until August 1, 1993. This act therefore allows a person who transferred a Class A or Class B commercial motor vehicle during the month of July and who paid more than $1,000 tax on the transfer to obtain a refund for the amount that exceeds $1,000. To obtain a refund, a person must submit a claim to the Division of Motor Vehicles by January 1, 1994.

The act transfers to the Highway Trust Fund revenue generated in the Highway Fund by the offsetting changes described below. The result is that the neither the Highway Trust Fund nor the Highway Fund lose money as the result of the changes.

Offsetting Revenue Changes

The highway use tax changes the act makes result in a loss of highway use tax revenue. To avoid a loss of revenue, the act increases Highway Fund revenue and then transfers the increased Highway Fund revenue to the Highway Trust Fund. The act increases revenue in the Highway Fund by increasing the annual vehicle registration fee on certain property-hauling vehicles and by authorizing the Division of Motor Vehicles to renew by means of a renewal sticker the registration of a vehicle that is registered under the International Registration Plan. Raising the annual registration fee generates most of the increase in Highway Fund revenue expected to occur as a result of the changes. The change in the renewal method results in a reduction in costs rather than an increase in a stream of revenue.

The act increases by 5¢ per hundred pounds the annual vehicle registration fee payable by property-hauling vehicles that are registered for 5,000 pounds or more and are in the private hauler, contract carrier, flat rate common carrier, and exempt for-hire carrier category. It therefore does not increase the annual registration fee for the average pick-up truck because most pick-up trucks are registered at 4,000 pounds, nor does it increase the annual vehicle registration fee for vehicles in the farmer category.

The act increases the annual registration fee on certain property-hauling vehicles rather than raise other fees because some of the property-hauling vehicles whose annual registration fee is increased are in the group of commercial motor vehicles that will benefit from the reduction in the maximum highway use tax. To some extent, therefore, the same people who benefit from the tax reduction will provide revenue through the increased fees to cover the loss. The group whose fees are increased, however, is much larger than the group that will enjoy the reduction in the maximum highway use tax because the fee increases start at 5,000 pounds rather than 26,000 pounds.

The new property-hauling registration fee structure also abandons the historical relationship between the rate for the farmer category and the other category. Traditionally, the farmer rate has been one-half the regular rate. With the increase made by this act, the farm rate will be less than one-half the regular rate for every weight category except 4,000 pounds.

The other way the act increases revenue in the Highway Fund is by authorizing the Division of Motor Vehicles to renew the registration of vehicles registered under the International Registration Plan by means of a sticker. That Division currently renews the registration of these vehicles by issuing a new plate each year. The new plates are all issued on a calendar year basis.

Before this act changed the law on this subject, the Division could not renew these plates by means of a sticker. Switching to renewal by sticker will allow the Division to stagger the renewals and to avoid the cost of the new plates. This change was recommended by an audit of the Division of Motor Vehicles performed by the State Auditor.

After it increases revenue in the Highway Fund, the act transfers revenue from the Highway Fund to the Highway Trust Fund. The transfer compensates the Highway Trust Fund for revenue that is lost to it by the highway use tax changes the act makes. The transfer is made by putting into the Highway Trust Fund part of the title fee that currently goes to the Highway Fund. Effective October 1, 1993, the Highway Trust Fund will receive $31.50 of every $35 title fee instead of $30 of every $35 title fee.

Income Tax

Expand Jobs Tax Credit (HB 654; Chapter 45): House Bill 654 makes the following changes in the law:

(1) It expands the existing income tax credit for creating jobs in severely distressed counties by increasing from 33 to 50 the number of counties that are considered severely distressed.

(2) It increases from 33 to 50 the number of counties that can use program income, as well as the number of counties whose cities can use program income, from certain federal block grants to establish revolving loan funds (G.S. 153A-376(f) and G.S. 160A-456(e1)).

The first of these changes is set out in the act. The second change occurs automatically when the class of "severely distressed counties" changes for purposes of the tax credit because the cited statutes are tied to that class. The act is effective for taxable years beginning on or after January 1, 1993.

This act also broadens the number of counties in which local governments are eligible for funds from the Industrial Development Fund, G.S. 143B-437A, to be used for utilities for new or proposed industrial buildings. Any county that is designated as depressed or distressed under the Industrial Development Fund is eligible for funds for utilities for existing industrial buildings; to be eligible for funds for utilities for new or proposed industrial buildings, the county must also be designated as distressed for the purpose of the tax credit. A county that is experiencing major economic dislocation, however, is eligible for funds for utilities for existing, new, or proposed industrial buildings even if it has not been designated as depressed or distressed under either the Industrial Development Fund or the tax credit.

The tax credit is available to businesses that create full-time manufacturing or industrial jobs in a severely distressed county. The credit is $2,800 for each new job. The credit must be taken in four equal installments beginning the year after the new job was created. If the new job does not continue for this four-year period, the part of the credit not yet taken is forfeited. The credit may not exceed 50% of the tax due for a year; the part of a credit that cannot be used because of this limitation can be carried forward for five years.

The fiscal impact of this act will be phased in over four years because the credit is taken in four installments. The Department of Revenue has estimated the annual loss to the General Fund to be as follows:

Fiscal Year	**General Fund Loss**
1994-95	$0.5 to 1 million
1995-96	$1 to 2 million
1996-97	$1.5 to 3 million
1997-98 & later:	$2 to 4 million

When the tax credit was first enacted in 1987, the number of severely distressed counties was limited to 20. That number was increased in 1989 to 25 and was increased again in 1991 to the present 33.

Because the list of severely distressed counties the Secretary of Commerce gave the Secretary of Revenue for 1993 included only 33 counties, the act directs the Secretary of Commerce to give the Secretary of Revenue by July 15, 1993, a list of the additional 17 counties that will qualify under this act and to determine those counties based on the criteria available when the 33 counties were determined.

As more and more counties qualify for the designation "severely distressed," the the name of the designation describes the broader category less accurately. Also, as the credit is expanded to more and more counties, the public purpose of the credit becomes more tenuous.

Send K-1 Form to Partners (HB 57; Chapter 314): House Bill 57 requires a partnership that is doing business in North Carolina to send to each partner enough information about that partner's share of partnership income or loss to enable the

partner to file a North Carolina income tax return. The requirement is effective for taxable years beginning on or after January 1, 1993.

Current law requires a partnership that is doing business in North Carolina and is required to file an information return with the Internal Revenue Service to file an information return with the Department of Revenue. Section 6031 of the Internal Revenue Code requires all partnerships except certain nonprofits and partnerships that have gross annual receipts of less than $5,000 to file federal information returns. In addition to requiring an information return, federal law requires a partnership that is required to file an information return to send a statement, known as a K-1, to each partner. The statement sets out the partner's share of the partnership's income or loss. Current State law does not require a partnership to send each partner a similar statement. This act imposes that requirement.

Because each partner gets a federal K-1, the effect of this act is to help nonresident partners file a North Carolina income tax return. A resident partner's partnership income would be included in the partner's federal taxable income that is used as the starting point for computing State taxable income. A nonresident partner, however, who would not normally file a North Carolina income tax return, may not realize that a North Carolina return is required because of the partnership income. Receiving a State K-1 will alert the nonresident partner to the tax liability in this State.

Interest on Income Tax Refunds (HB 173; Chapter 315): House Bill 173 establishes a new rule for determining when the State will pay interest on an overpayment of either corporate or individual income tax and reorganizes and clarifies G.S. 105-266, which governs refunds of all tax overpayments. The new rule became effective upon ratification, July 9, 1993, and applies to overpayments reflected in final returns filed on or after that date. By making this change, the act accomplishes three goals: it establishes the same rule for all overpayments of individual income tax, it establishes the same rule for both corporate and individual income tax, and it makes the State rule for overpayments of income tax the same as the federal rule.

The general rule under G.S. 105-266 that applies to overpayments of any State tax is that interest accrues starting 90 days after the date of an overpayment until a refund is made. Under prior law, two different interest rules applied to overpayments of individual income tax. Overpayments of individual income tax that were not the result of advance payments, made through amounts withheld from wages or from estimated payments, followed the general 90-day rule. Overpayments of individual income tax that were the result of advance payments accrued interest from six months after the later of the date the final return was due or the date the final return was filed. Under prior law, overpayments of corporate income tax followed the general 90-day rule, which makes no distinction between advance payments and other payments for purposes of determining when interest begins to accrue. Therefore, overpayments of corporate income tax made through quarterly estimated payments accrued interest for a large part of the year. This resulted in substantial interest payments each year from the State to corporations who overpaid their estimated income tax.

Under the new rule, interest is payable by the State on an overpayment of corporate or individual income tax 45 days after the latest of the following:

(1.) The date the final income tax return was filed.
(2.) The date the final income tax return was due.
(3.) The date the income tax overpayment was made.

Thus, for overpayments that are the result of advance payments of individual income tax, the bill shortens from 6 months to 45 days the period of time that must elapse before interest begins to accrue. For corporate overpayments made through estimated taxes, the act reduces the length of time that interest will accrue. For excess payments

of individual and corporate income tax made with a final return, the act shortens from 90 days to 45 days the period that must elapse before interest begins to accrue.

The federal rule for the accrual of interest on income tax overpayments is the same as the rule established by this act for overpayments of State income tax. Several special rules account for the inevitable delay in processing millions of refunds, for returns that are not processible, and for retroactive application of deductions that create an overpayment for an earlier tax year. Federal law provides that if an overpayment is created by retroactive application of a deduction, the overpayment is considered to have been made on the filing date of the tax year the deduction was created. Federal law also provides that a return is not considered filed until it is in processible form. The State rule established by this act incorporates these special rules.

Expand Child Care Credit (HB 720; Chapter 432): House Bill 720 increases the income tax credit for child and dependent care expenses for families with income below $40,000 a year. Under current law, the credit is based on a flat percentage of the child and dependent care expenses claimed on the taxpayer's federal tax return. Effective for taxable years beginning on or after January 1, 1994, the credit will be based upon income and filing status. The act will lower General Fund revenues by $3.7 million in fiscal year 1994-95 and by $4 million in fiscal year 1995-96.

Under current law, a taxpayer may claim a tax credit equal to 7% of the federal employment-related expenses for dependents who are seven years old or older and 10% for dependents who are either under the age of seven or who are physically or mentally incapable of caring for themselves. Under this act, the applicable percentages will range from 7% to 9% for dependents who are seven years old or older and 10% to 13% for dependents who are either under the age of seven or are physically or mentally incapable of caring for themselves. The act also equalizes the value of the credit among the taxpayers with a different filing status. The act does not increase the maximum credit amount allowed. The credit may not exceed $2,400 if the taxpayer's household includes one qualifying individual and it may not exceed $4,800 if the taxpayer's household includes more than one qualifying individual.

The actual percentages allowed under this act are as follows:

Filing Status	Adjusted Gross Income	Dependents age 7 or older, not disabled	Other dependents
Head of Household	Up to $20,000	9%	13%
	Over $20,000 up to $32,000	8%	11.5%
	Over $32,000	7%	10%
Surviving Spouse or Joint Return	Up to $25,000	9%	13%
	Over $25,000 up to $40,000	8%	11.5%
	Over $40,000	7%	10%
Single	Up to $15,000	9%	13%

	Over $15,000 up to $24,000	8%	11.5%
	Over $24,000	7%	10%
Married Filing Separately	Up to $12,500	9%	13%
	Over $12,500 up to $20,000	8%	11.5%
	Over $20,000	7%	10%

Expand Business Tax Credit (SB 1141; Chapter 443):

Introduction

Chapter 443 of the 1993 Session Laws makes a number of changes to the Qualified Business Investments Tax Credits, effective beginning with the 1994 tax year. Some of the changes, such as allowing partnerships to qualify for the credits and allowing investors to participate in the businesses, are designed to expand the credit. Other changes, such as reducing the maximum annual investment for individuals and prohibiting certain types of businesses from qualifying for the credit, narrow the credit. Other changes are designed to clarify the law and make it easier to administer. It is not known what effect these changes will have on General Fund revenues. The law as in effect until 1994 is summarized below as "former law." The changes made by the act are outlined following the summary of former law.

Former Law

Division V of Article 4 of Chapter 105 of the General Statutes, Tax Credits for Qualified Business Investments, was enacted in 1988 to allow tax credits to individuals and corporations that invest in qualified North Carolina businesses or the North Carolina Enterprise Corporation. For individuals, the credit is allowed against individual income taxes. For corporations, the credit is allowed against corporate income taxes, franchise taxes, and insurance premiums taxes.

Until the 1994 effective date of Chapter 443, the amount of the credit allowed is 25% of the amount invested, up to a maximum credit of $100,000 for individuals and $750,000 for corporations. If the allowable credit exceeds the taxpayer's tax liability, the excess may be carried forward for up to five years. The total amount of tax credits that can be granted to individuals or corporations in any tax year is capped at $12 million. The investors apply for the credit through an application filed with the Department of Revenue by April 15; the Department then determines whether the $12 million cap has been exceeded and, if so, proportionally reduces the amount of each credit applied for.

Until the 1994 tax year, individuals are allowed credits for investments in the equity securities or subordinated debt of the North Carolina Enterprise Corporation and of three types of qualified businesses: qualified business ventures, qualified grantee businesses, and qualified investment organizations. Corporations are allowed credits only for investments in the equity securities of the North Carolina Enterprise Corporation and of one type of qualified business: qualified investment organizations.

A qualified business venture is a company that is headquartered and has most of its operations in North Carolina, had less than $5 million in sales in the prior year, and engages primarily in manufacturing, processing, warehousing, wholesaling, research

and development, or a service-related industry. A qualified business venture may not engage primarily in construction, contracting, retailing, or investing.

A qualified grantee business is a company that is headquartered and has most of its operations in North Carolina and has received funding during the past three years from the North Carolina Biotechnology Center, the North Carolina Microelectronics Center, the Technological Development Authority, or the federal Small Business Innovation Research program.

A qualified investment organization is a firm engaged primarily in the business of investing in qualified business ventures and qualified grantee businesses. Since the enactment of the qualified business investment tax credits, no tax credits have been claimed for investments made in qualified investment organizations.

The North Carolina Enterprise Corporation is an entity formed under Article 3 of Chapter 53A of the General Statutes to make investments in small North Carolina businesses. The Corporation focuses on investments that have significant potential to create jobs and diversify and stabilize the economy of rural areas of the State.

Qualified businesses must register with the Secretary of State and renew their registrations annually. There is a $100.00 fee for registration and a $50.00 fee for renewal. Since 1988, the Secretary of State has registered 121 qualified business ventures and qualified grantee businesses but no qualified investment organizations. Individuals and corporations have applied for approximately $14 million in tax credits, which represents $56 million in investment in small North Carolina companies.

Under the law in effect until 1994, an investor in a qualified business venture or a qualified grantee business forfeits the tax credit if one of the following occurs within three years after the investment was made:

(1) The investor or the investor's family participates in the operation of the business.

(2) The business fails to renew its registration, other than solely because its revenues have grown above $5 million per year.

(3) The business has its registration revoked by the Secretary of State.

Changes Made by Chapter 443

ONLY DIRECT INVESTMENTS QUALIFY

The act provides that the tax credit applies only to investments made in securities purchased directly from the qualified business. Under former law, a credit would potentially be available to both the original purchaser of the securities from the business and a person to whom the original purchaser sold the securities.

PASS-THROUGH ENTITIES MAY TAKE CREDIT

The act provides that a pass-through entity may qualify for the credit and pass it on to the entity's owners. Under former law, only corporations and individuals could qualify for the credit. A pass-through entity is an entity, such as a partnership or a Subchapter S corporation, that is treated as owned by individuals or other entities under federal tax law and whose income, losses, and credits are reported by the owners on their State income tax returns. The pass-through entity may qualify for up to $750,000 of the credit per year. Investments in the equity securities or subordinated debt of any type of qualified business may be passed through to individuals; only investments in the equity securities of the North Carolina Enterprise Corporation may be passed through to corporations. This treatment parallels the types of investments for which credits are available to individuals and corporations.

LIMIT ON INDIVIDUALS' CREDITS REDUCED

The act reduces from $100,000 to $50,000 the amount of credit an individual may claim each tax year for investments in qualified businesses.

TYPES OF QUALIFIED BUSINESS VENTURES RESTRICTED

The act provides that a business formed for the primary purpose of acquiring one or more other businesses does not qualify for the tax credit. In response to concerns that the credit was being used for inappropriate businesses such as law firms and golf courses, the act also provides that the credit does not apply to firms engaged primarily in the following types of businesses:

(1) A real estate-related business. A real estate-related business is a business involved in or related to the brokerage, selling, purchasing, leasing, operating, or managing of hotels, motels, nursing homes or other lodging facilities, sports or social clubs, restaurants, storage facilities, or commercial or residential lots or buildings.

(2) Providing a professional service. This category includes accountants, architects, attorneys, medical professionals, psychologists, occupational therapists, geologists, and foresters.

(3) Providing personal grooming or cosmetics services.

(4) Offering any form of entertainment, amusement, recreation, or athletic or fitness activity for which an admission or membership is charged.

RULES FOR INVESTOR PARTICIPATION IN BUSINESS MODIFIED

Under former law, an investor would forfeit the tax credit if the investor or the investor's family participates in the business. This act will allow investors and their families to participate actively in the business as long as they receive no financial compensation for their services aside from reimbursement for expenses and/or participation in a stock option or stock bonus plan. The act also adds siblings to the types of family members who may not participate in the business for compensation.

MONITORING OF BUSINESSES REQUIRED

This act requires an application for renewal of registration as a qualified business to indicate whether the business is a minority business and to report the number of jobs created in the previous year that are attributable to the tax credit as well as the average wages paid by each job. In addition, it requires the Secretary of State to report to the Legislative Research Commission annually the following information about each qualified business registered for the investment tax credit: name and address, types of business in which it engages, whether it is a minority- or women-owned business, the number of jobs created by the business, and the average wages paid by these jobs.

FIVE-YEAR SUNSET PLACED ON TAX CREDIT

Section 7 of this act repeals the entire tax credit for qualified business tax credits effective for investments made on or after January 1, 1999. This repeal will not affect carryforwards and credits for investments made before January 1, 1999.

FORFEITURE REQUIRED FOR TRANSFER OR REDEMPTION OF SECURITIES

This act provides that an investor forfeits the tax credit for an investment in the North Carolina Enterprise Corporation or in a qualified business in the following cases:

(1) Within one year after making the investment, the investor transfers the securities, other than as a result of an individual investor's death, a corporate investor's liquidation, or a corporate investor's merger or consolidation approved by the North Carolina Enterprise Corporation or the qualified business.

(2) Within five years after the investment, the North Carolina Enterprise Corporation or the qualified business redeems the securities.

LIMITATIONS PERIOD EXTENDED FOR ASSESSMENTS BASED ON FORFEITURES

The statute of limitations for assessing taxes is, in most cases, three years after the tax return was filed or was required to be filed, whichever is later. Because forfeitures of qualified business investment tax credits may occur years after the credit was allowed, Section 6 of this act provides that the Department of Revenue may assess the tax due as a result of a forfeiture within three years after the date of the forfeiture.

NO FORFEITURE REQUIRED FOR FAILURE TO RENEW REGISTRATION

The act provides that an investor does not forfeit the tax credit if the qualified business fails to renew its registration with the Secretary of State, unless the business was unable to renew its registration because it has moved out of North Carolina or failed to relocate into North Carolina. If a qualified business venture fails to renew its registration, its registration is revoked, but it may apply to have its registration reinstated upon payment of a late filing penalty of $1,000. Under former law, an investor in a qualified business venture forfeited the credit for the investment if, within three years, the business failed to renew its registration, unless the failure to renew was solely because the business' revenues had grown beyond $5 million per year.

RESTRICTIONS ON REGISTRATION EFFECTIVE DATE AND TRANSFER CLARIFIED

The act provides that the effective date of a qualified business's registration is the date the application is filed, rather than the date the application is approved. This provision allows investors a credit for investments made in a qualified business while waiting for its application to be approved. If the application is not approved, however, the investments will not qualify for the credit. The act also provides that registration as a qualified business may not be transferred from one business to another; however, if a qualified business is involved in a merger or consolidation and the surviving company qualifies for the registration, the surviving company may retain the registration.

OTHER CHANGES

This act makes the following additional changes:

(1) Repeals the provisions of the former law allowing tax credits for investments in qualified investment organizations. Because no tax credits have ever been claimed for these investments, it appears that this part of the law is serving no purpose.

(2) Clarifies the definition of "selling or leasing at retail."

(3) Allows the Department of Revenue to extend until September 15 the April 15 deadline for applying for the tax credit.

(4) Clarifies that the $50,000 and $750,000 annual limits on tax credits for individuals and corporations, respectively, do not apply to amounts carried forward from a previous tax year.

(5) Provides that the investor's basis in the securities representing the investment for which a credit is allowable will be reduced by the amount of the allowable credit, and adds a conforming change to the individual income tax law to allow taxation of the resulting gain when the securities are disposed of.

(6) Provides that if an investment is paid for other than in money, the taxpayer must include with the application for the credit a certified appraisal of the property used to pay for the investment.

(7) Clarifies that the Secretary of State will not revoke the registration of a qualified business solely because the business has ceased business operations.

(8) Provides that a person who submits a false application for registration as a qualified business is guilty of a general misdemeanor.

Historic Preservation Tax Credit (HB 1359; Chapter 527): House Bill 1359 allows a corporate and an individual income tax credit for qualifying rehabilitation expenditures, as defined under section 47 of the Internal Revenue Code, with respect to a certified historic structure located in North Carolina. The amount of the credit is equal to one-fourth of the federal income tax credit for qualifying rehabilitation expenditures. The federal credit is 20% of the qualifying rehabilitation expenditures. Therefore, for State tax purposes, the credit would equal 5% of the qualifying rehabilitation expenditures. However, the amount of the State tax credit cannot exceed the amount of tax due and any excess credit cannot be carried forward. The credit will be available for taxable years beginning on or after January 1, 1994.

A certified historic structure is a building that is listed in the National Register or that is located in a registered historic district and is certified by the Secretary of the Interior as being of historic significance to the district. A qualifying expenditure is one that can be chargeable to a capital account and for which a straight line depreciation is allowable. The expenditure must be in connection with the rehabilitation of a building and it must be consistent with the historic character of the property or the district in which the property is located. Qualifying expenditures do not include the cost of buying a structure or any expenditure attributable to the enlargement of an existing structure.

Inheritance Tax

Inheritance Tax Filing Threshold (HB 509; Chapter 362): House Bill 509 provides that an inheritance tax return does not need to be filed for an estate whose beneficiaries are all Class A beneficiaries, the surviving spouse, or both, if the gross value of the estate is less than $450,000. The act applies to estates of decedents dying on or after July 1, 1993. Under prior law, a return had to be filed in these circumstances if the gross value of the estate was $250,000 or more. This act is not expected to have any impact on State revenues.

Property passing to a surviving spouse is exempt from inheritance tax. Property passing to Class A beneficiaries (lineal ancestors and descendents) is entitled to an inheritance tax credit of $26,150; this credit amount effectively exempts approximately $500,000 in value of an estate that passes to Class A beneficiaries. Under former law, an estate that passed to the spouse, Class A beneficiaries, or both was required to file an inheritance tax return with the Secretary of Revenue if the value of the estate was $250,000 or more, even though no tax would be required if the value of the estate was under $500,000. This act will relieve more beneficiaries from this filing requirement by increasing the threshold to $450,000. The filing threshold remains below $500,000, however, to allow the Department of Revenue to review inheritance tax returns of larger estates to determine whether the value placed on the estate's assets is understated.

Inheritance Tax Penalty Procedure (SB 158; Chapter 371): Senate Bill 158 makes the procedure for collecting the existing penalty for failure to file an inheritance tax return the same as the procedure for collecting the penalty for failure to pay inheritance taxes or other taxes, specifies that the penalty for failure to file does not apply if there is no inheritance tax due on the estate, and makes several technical changes to the affected statute. The act is effective for the estates of decedents dying on or after October 1, 1993. The act is expected to result in a minimal increase in General Fund revenues.

The penalty for failure to file an inheritance tax return is $500. The penalty is payable by the personal representative. This act changes the collection procedure for this penalty by deleting the sentence in former law that required the penalty to be

collected by filing a suit in the Wake County Superior Court. By deleting this sentence, the penalty will become subject to the general administrative provisions of Article 9 of the Revenue Act and become collectible in accordance with those provisions. Under Article 9, penalties are collectible in the same manner as taxes: the Department of Revenue proposes an assessment and the taxpayer has the right to contest the assessment through standard administrative procedures before appealing to the court system.

The requirement that the inheritance tax penalty be recovered in an action brought in the superior court of Wake County is unique to that penalty and is an historical anachronism. The general collection provisions in Article 9 were enacted in 1949 but the inheritance tax law was enacted before that date. The procedure for collecting the inheritance tax penalty was not changed to conform to the general provisions in 1949.

This act also makes several technical changes. It substitutes the general term "personal representative" for the terms "administrator" and "executor" that appear in G.S. 105-23. It deletes an incorrect cross-reference to G.S. 105-2(a)(3), and it deletes obsolete provisions. One of the obsolete provisions deleted is the requirement that the inheritance tax return state the ages of any minor children of the decedent. That requirement dates back to the time exemptions were allowed against the taxable estate; some of the exemptions were based upon the ages of any beneficiaries who were children of the decedent. This exemption provision was replaced with the current inheritance tax credit in 1977.

License and Excise Tax

No Cigarette Tax Stamps (SB 1025; Chapter 442): Senate Bill 1025 changes the method of collecting the State excise tax on cigarettes from a stamp method to a reporting method and reduces the discount allowed when paying the tax from 7/24¢ per stamp to 4% of the amount of tax payable. The per stamp discount amounts to $1.75 for each case of 60 cartons of cigarettes, which is approximately 6.28%. The changes become effective January 1, 1994.

Under current law, the State cigarette excise tax is paid through the use of tax stamps that are bought from the Department of Revenue by the distributor of the cigarettes and placed on each pack of cigarettes. The stamp indicates that the State excise tax has been paid. Effective January 1, 1994, the tax will be submitted with a monthly return filed with the Department of Revenue.

With the change in collection method, North Carolina becomes the fifth state that does not require tax stamps on cigarettes. The other four states are Alaska, Hawaii, Michigan, and North Dakota. These changes also make collection of the State cigarette excise tax like collection of the State excise tax on other tobacco products, soft drinks, and alcoholic beverages. All of these other excise taxes are paid by means of a monthly report and those who file the reports are allowed a 4% discount.

The current per stamp discount is allowed as compensation for the expense of handling the stamps. Similarly, the 4% discount will be allowed as compensation for the expense of preparing the records and reports associated with payment of the cigarette excise tax and for the expense of furnishing a bond to the State. Unlike the other excise tax discounts, however, the 4% cigarette excise tax discount is not intended to cover the expense of paying the tax on products that subsequently cannot be sold because they become stale or otherwise become unsuitable for sale. Distributors of cigarettes will be allowed a refund of tax paid on packages of unsalable cigarettes that are returned to the manufacturer of the cigarettes. A refund of tax paid on these cigarettes, less the discount allowed, can be obtained by filing a refund claim with the Department of Revenue.

North Carolina levies an excise tax on cigarettes at the rate of two and one-half mills per individual cigarette. This translates to 5¢ per pack of cigarettes. The tax does not apply to free samples of cigarettes either given in packages of five or fewer cigarettes or given to cigarette factory workers.

Under current law, only licensed distributors may obtain unstamped cigarettes. If a person other than a distributor comes into possession of cigarettes upon which the excise tax has not been paid, that person must pay a use tax at the same rate as the excise tax.

It is unlawful to transport, sell, or offer to sell unstamped cigarettes, except that tourists and others travelling to this State may possess up to 600 unstamped cigarettes (three cartons) for personal use. Possession of more than 600 unstamped cigarettes by anyone other than a licensed distributor is prima facie evidence that the cigarettes are possessed in violation of the tax law. Unstamped cigarettes, their container, and any vehicle or vessel in which they may be transported are contraband goods subject to seizure and confiscation.

Effective January 1, 1994, it will still be unlawful to transport, sell, or offer to sell non-tax-paid cigarettes, and non-tax-paid cigarettes, their container, and any vehicle or vessel in which they were transported will still be contraband goods. Unless the cigarettes bear the stamp of another state or country, however, law enforcement officers will not know by looking at them whether the North Carolina tax has been paid and, consequently, whether or not they are non-tax-paid cigarettes.

Advance Disposal Tax on White Goods (SB 60; Chapter 471): Senate Bill 60 imposes a temporary tax on white goods and provides for the removal of chlorofluorocarbon refrigerants from discarded white goods. The tax becomes effective January 1, 1994, and expires July 1, 1998. A white good is a domestic or commercial large appliance, such as a refrigerator, a water heater, an air conditioner unit, or a dishwasher. Chlorofluorocarbon refrigerant is a type of gas that must be removed from a white good under federal law. Chlorofluorocarbon refrigerants are currently being phased out and will be banned as of January 1, 1996, by the Environmental Protection Agency (EPA). The EPA contends that chlorofluorocarbon refrigerants, if improperly removed, may pose a serious threat to the environment. The cost to properly remove the gas is between $5 and $17 per white good.

The act imposes a flat rate tax on each new white good sold in this State of $5 if the new white good does not contain chlorofluorocarbon refrigerants and $10 if the new white good does contain chlorofluorocarbon refrigerants. The tax is collected and administered, to the extent practical, as if it were an additional State sales tax. A person who buys 50 new white goods of any kind may obtain a refund of 60% of the amount of tax imposed when all of the white goods purchased are to be placed in new or remodeled dwelling units that are located in the State and do not already contain the kind of white good purchased. Neither a local government unit nor a contracting party can charge a person an additional fee for the disposal of white goods until July 1, 1998, which is the date the white goods disposal tax expires.

For the first year of the tax, the Department of Revenue may deduct its cost of collection, not to exceed $225,000, from the proceeds of the tax. Each quarter the Secretary shall distribute the proceeds of the tax as follows:

(1) 5% to the Solid Waste Management Trust Fund. The money in this Fund is used to fund activities of the Department of Environment, Health, and Natural Resources (DEHNR) to promote waste reduction and recycling, to fund research on the solid waste stream in North Carolina, to fund activities related to the development of secondary materials markets, to fund demonstration projects, and to fund research by in-State colleges and universities.

(2) 20% to the White Goods Management Account. The money in this Account will be used to make grants to local governmental units to assist them in managing discarded white goods.

(3) 75% to the 100 counties on a per capita basis to be used only for the management of discarded white goods.

Each county must provide at least one site for the collection of discarded white goods. The act also requires each county to provide for the disposal of discarded white goods and for the removal of chlorofluorocarbon refrigerants from white goods. A county may contract with another unit of local government or with a private entity for the management of discarded white goods or for the removal of chlorofluorocarbon refrigerants from white goods. A county must establish written procedures for the management of white goods and must include these procedures in any solid waste management plan required by DEHNR.

If a county's costs of managing white goods for a six-month period exceeds the amount the unit receives from the per capita distribution of the white goods disposal tax, the county is eligible to apply for a grant from the White Goods Management Account. A grant to a unit may not exceed the unit's unreimbursed cost of managing white goods for the six-month period. The grant program will be administered by the DEHNR and will remain in effect until July 1, 1999.

Under the act, DEHNR may assess a civil penalty of not more than $100 against a person who, knowing it is unlawful, disposes of a discarded white good in a landfill, an incinerator, or a waste-to-energy facility. The Department may also assess a civil penalty of up to $100 against a person who, knowing it is required, fails to remove chlorofluorocarbon refrigerants from a discarded white good. These penalties may be assessed for each day the violation occurs. The civil penalties collected will be credited to the General Fund as nontax revenue.

Local Taxes

Local Financial Security (SB 48 & HB 134; Section 26 of Chapter 321): Section 26 makes significant changes concerning the distribution of State tax revenue to local governmental units. Most importantly, it converts the distribution to local units of State-shared tax revenue from an annual appropriation to an earmarking of current tax collections and removes the current "growth-freeze" on State-shared tax revenue. It also changes the timing of the distribution of State-shared intangible tax revenue and beer and wine tax revenue, changes the timing of the State reimbursements to local units for the repeal of local property taxes on inventories and on poultry and livestock, and changes the source of funds for the State reimbursement to local units for the repeal of the intangible tax on money on deposit and the modification of the intangible tax on accounts receivable. The change in the source of funds for the intangible tax reimbursement became effective July 9, 1993. The remaining changes become effective July 1, 1995.

State-shared tax revenue is tax revenue distributed by the State to local units based on collections of the State tax on intangible personal property, the State excise taxes on beer and wine, and the State corporate franchise tax on electric power companies, natural gas companies, and telephone companies. These revenues are sometimes referred to by local units as "State-collected local revenues" even though they are a part of State tax revenues because the State has traditionally shared its revenues from the intangible tax, the beer and wine taxes, and the utility franchise tax with local units.

State-shared tax revenue is sometimes confused with State reimbursements to local units, but the two are distinct. State reimbursements are amounts distributed to local units to compensate them for revenue lost as a result of the removal by the General

Assembly of property from the local sales and use tax base, the local property tax base, or the intangible tax base. State reimbursements consist of reimbursements for the repeal of the property tax on inventories, the repeal of the intangible tax on money on deposit, the modification of the intangible tax on accounts receivable, the repeal of the property tax on poultry and livestock, the "homestead exemption" from property tax, and the repeal of local sales and use taxes on food purchased with food stamps. This act changes the timing and source of two of the reimbursements but does not restore growth in any State reimbursement or otherwise change the amount of any State reimbursement.

Earmarking of State-shared Revenue

Before fiscal year 1989-90, State-shared tax revenue was earmarked rather than appropriated annually. Earmarking refers to the accrual method of accounting for the amount of State-shared tax revenue to be distributed by which the amount is put in a liability reserve account of the State and then automatically disbursed on the specified date. In 1990, the General Assembly changed the accounting treatment of State-shared tax revenue from an earmarking, which is an accrual accounting method, to an annual appropriation, which is a cash accounting method. The reason for the change was to balance the 1989-90 State budget on a financial basis by removing approximately $140 million from liability reserves. Consequently, the State appropriation act for fiscal year 1990-91 and each subsequent year has included an appropriation to local units of the State-shared tax revenue.

Effective with the 1995-96 fiscal year, paragraphs (a), (g), (h), and (i) of section 26 restore the earmarking method of accounting for distributions of State-shared tax revenue, once again making the distribution an automatic "off-budget" transfer. As an "off-budget" transfer, the distribution will not appear in the appropriations act for fiscal year 1995-96 and subsequent years and is thereby removed from annual legislative scrutiny during the budget process and from the possibility of reduction by the Governor, acting under Article III, § 5(3) of the North Carolina Constitution, to prevent a deficit for a fiscal year.

Removal of Growth Freeze in State-shared Revenue

In addition to restoring the prior accounting method used for State-shared tax revenue, Section 26 also restores the prior method for determining how much revenue is to be shared, with one important difference. That difference is a deduction for the growth freeze in this revenue in effect for distributions made from July 1, 1991, up to July 1, 1995.

Under Section 26, the State-shared tax revenue base consists of the following: (i) the amount of intangible tax collected, less the four-year growth freeze for the tax and the State's cost in collecting the tax, in hearing property tax appeals, in providing a few property-tax related courses at the Institute of Government in Chapel Hill, and in operating the Local Government Commission; (ii) 23 3/4% of the State excise tax on beer; (iii) 62% of the State excise tax on unfortified wine; (iv) 22% of the State excise tax on fortified wine; and (v) the amount of the State franchise tax on electric power companies, natural gas companies, and telephone companies that equals 3.09% of the taxable gross receipts derived by these companies from sales of electricity, natural gas, and telephone service within cities, less the four-year growth freeze for the tax. Except for the growth-freeze deduction, this base is almost identical to the pre-growth freeze base. That previous base, however, did not deduct the cost of the Local Government Commission from intangible tax collections; that deduction was first made in fiscal year 1991-92.

As did the pre-growth freeze State-shared revenue base, the base in Section 26 will vary from year to year as total collections of the specified taxes change. Consequently,

if total collections of the specified taxes increase, the amount distributed to local units will increase and if total collections decrease, the amount distributed to local units will decrease.

Under current law, State shared-tax revenue is a fixed $237 million. This amount is based on fiscal year 1989-90 intangible tax collections, collections of beer and wine taxes from October 1, 1989, through September 30, 1990, and collections of the utility franchise tax from April 1, 1990, through March 31, 1991. Although the benchmark period for each tax differs, the result is that all distributions of these taxes made in fiscal years 1991-92 through 1994-95 are frozen and distributions of taxes made in other fiscal years are not frozen.

The General Assembly froze the amount of State-shared tax revenue to be distributed to local units beginning in fiscal year 1991-92. For that year and subsequent fiscal years, the frozen amount was $237 million. This amount was the same amount of State-shared tax revenue the General Assembly appropriated to local units in fiscal year 1990-91, which was the first year State-shared revenue was appropriated rather than earmarked, and included the growth in the revenue. Local units received 6.2% less in fiscal year 1990-91 than the General Assembly appropriated, however, because the Governor reduced the appropriation as part of the effort to balance the State budget for that year. For the 1991-93 fiscal biennium, the total growth freeze was $35.2 million. By the time the growth freeze ends on July 1, 1995, the total growth freeze amount is expected to grow to between $55 and $60 million.

Effective for the 1995-96 fiscal year, paragraphs (a), (g), (h), and (i) of Section 26 remove the growth freeze but require distributions of intangible tax collections and utility franchise tax collections to be reduced by the growth freeze amount for these taxes. The section does not require a growth freeze deduction from the distribution based on beer and wine tax collections because those collections have not grown significantly since the freeze went into effect.

The growth freeze amount for the intangible tax is the difference between the amount of intangible tax collected during the 1993-94 fiscal year and the 1989-90 fiscal year. State-shared intangible tax is distributed to local units once a year. Therefore, the growth freeze amount for this tax will be deducted annually from intangible tax collections in calculating the amount to be distributed to local units.

The growth freeze amount for the utility franchise tax is the difference between the amount of utility franchise tax collected for the period April 1, 1994, to March 31, 1995, and the period April 1, 1990, to March 31, 1991. State-shared utility franchise tax is distributed to local units in four quarterly payments. Therefore, one-fourth of the annual growth freeze amount for this tax will be deducted from utility franchise tax collections in calculating the quarterly amount to be distributed to local units.

The amount of State-shared tax revenue estimated to be distributed to local units in fiscal year 1995-96 is $255 million. The growth freeze deduction for that year is expected to be between $55 and $60 million.

Timing Changes in Distributions of State-shared Revenue and Reimbursements

When the switch from appropriating State-shared revenue to earmarking it becomes effective in fiscal year 1995-96, the State will once again put the revenue in a liability reserve account as it is collected and hold it for subsequent distribution to local units. The amount put in a reserve account will no longer be available for appropriation and will be a liability on the State's balance sheet rather than an asset. Therefore, to the extent State-shared tax revenue is collected in one fiscal year for distribution in the next fiscal year, the State must carry the reserve over from one fiscal year to the next.

To avoid having to suddenly reserve over $120 million in the 1994-95 fiscal year to make the distribution of State-shared intangible tax revenue in August of the 1995-96 fiscal year, which would put the State's balance sheet for fiscal year 1994-95 out of balance, paragraph (a) of the section changes the timing of the intangible tax distribution from August of one calendar year to June 25 of the following calendar year and changes the collection period used for making the distribution from the previous fiscal year to July 1 through April 30 of the same fiscal year. This change in distribution date and collection period puts the collection and distribution of the intangible tax within the same fiscal year and means that the June 25 distribution of State-shared intangible tax revenue will be made from intangible tax revenue collected in the same fiscal year the distribution is made. To ensure that local units receive an amount equivalent to what they would receive if the collection period were 12 months instead of 10 months, paragraph (a) raises the starting amount to be used in calculating the distribution at 103% of collections rather than 100%.

The distribution date and collection period established by paragraph (a) for State-shared intangible tax revenue differs from the distribution date and collection period used for the tax before fiscal year 1990-91, when the tax was also earmarked rather than appropriated. In the pre-1990-91 system, intangible tax revenue collected in one fiscal year, largely in April of each year, was put in a reserve and distributed in August or September of the next fiscal year.

Paragraph (g) of this section makes a similar change to the distribution date and collection period for State-shared beer and wine tax revenue. It changes the distribution date from within 60 days after September 30 of one calendar year to within 60 days after March 31 of the next calendar year, and changes the collection period on which the distribution is based from the 12-month period ending September 30 to the 12-month period ending March 31. This change reduces the amount of beer and wine taxes the State must reserve from one fiscal year to the next but delays the distribution to local units.

Delaying the distribution date for State-shared intangible tax revenue delays the receipt of these funds by local units by almost 10 months, and delaying the distribution date for State-shared beer and wine taxes delays the receipt of these funds by local units by 6 months. To mitigate the cash-flow impact on local units from these delays, paragraphs (b) through (f) of this section move the distribution of 60% of the reimbursement for the repeal of property taxes on inventories and on poultry and livestock from April of one calendar year to August of the preceding calendar year. There is no accounting impact from splitting this reimbursement distribution into two distributions because the reimbursements are currently earmarked out of current-year revenues and both reimbursements stay within the same fiscal year. Under current law, local units receive 100% of the inventory tax reimbursement and of the poultry and livestock reimbursement in April of each year. Beginning in fiscal year 1995-96, local units will receive 60% of the money in August of a fiscal year and the remaining 40% in April of the same fiscal year.

Source of Funds For Reimbursement For Modification

and Partial Repeal of Intangible Tax

Paragraph (k) of Section 26 changes the source of tax revenue used to reimburse local units for the repeal of the intangible tax on money on deposit and the revision of the intangible tax on accounts receivable. The source is changed from corporate income tax collections to individual income tax collections. The change was made at the request of the Office of State Controller. That Office requested the change because this reimbursement distribution is made in August and during that month the State typically has enough individual income tax collections to cover the distribution but does not have enough corporate income tax collections to cover the distribution.

Recommended by the Joint Select Fiscal Trends and Reform Study Commission.

Local Economic Development (HB 1109; Chapter 536): House Bill 1109 makes several changes in the law concerning local economic development. It authorizes counties and cities to spend public money for "site preparation" for industrial properties and facilities that are privately owned and to extend or finance the extension of water and sewer lines to industrial properties and facilities that are privately owned. It also authorizes counties and cities to estimate the amount of increased tax revenue that would accrue during the succeeding 10 years from improvements made to a piece of property by the purchaser and to accept the estimated amount as consideration for a conveyance of the property from the county or city to a purchaser that will bring the anticipated economic development. Several local bills making these changes have been enacted since 1987 for individual cities and counties. This act makes the changes for all counties and cities in the State effective January 1, 1994.

Before a county or city may accept anticipated tax revenues as consideration for a conveyance of property, it must determine that the conveyance of the property will result in the creation of a substantial number of jobs in the county or city that pay at or above the median average wage in the county or, for a city, in the county where the city is located. Wage is defined as the median average wage for all insured industries in the county as computed by the Employment Security Commission for the most recent period for which data is available. In accepting the consideration, the governing board of the county or city must contractually bind the purchaser of the property to construct, within five years, improvements on the property that will generate the tax revenue taken into account in arriving at the consideration. Upon failure to construct the improvements specified in the contract, the purchaser must reconvey the property back to the county or city. The change made by this act to the local economic development law was also made by Senate Bill 1157, ratified as Chapter 497 of the 1993 Session Laws. The change in Chapter 497 became effective upon ratification.

Global Transpark Development Zone (SB 853; Chapter 544): Senate Bill 853 authorizes the following counties that would derive economic benefits from the North Carolina Global TransPark to join together to create an economic development district: Carteret, Craven, Duplin, Edgecombe, Greene, Jones, Lenoir, Nash, New Hanover, Onslow, Pamlico, Pitt, Wayne, and Wilson. The district will be known as the Global TransPark Development Zone. The North Carolina Global TransPark is a large industrial area planned to surround an air cargo and air transportation complex in Lenoir County, to be called the North Carolina Global TransPark Complex.

A minimum of three counties are required to create the Zone. To create the Zone, the counties that wish to participate must, after July 24, 1993, but before October 2, 1993, adopt resolutions stating their intent to create the Zone. Each participating county must hold a public hearing before adopting the resolution. The resolutions must be forwarded to the Secretary of State by October 15, 1993; the Secretary of State will then issue a certificate of incorporation that will constitute the Zone as a public body.

The governing body of the Zone will be the Global TransPark Development Commission, with the following membership:

-- Each county that creates the Zone will appoint three voting members, at least one of whom must be a woman or a member of a racial minority and one of whom may be a member of the board of commissioners of the county.
-- The Global TransPark Authority will appoint between three and seven voting members, the minimum number necessary to assure that the voting membership of the Commission includes at least seven women and seven members of a racial minority.
-- Four additional nonvoting members will be appointed, one by the chancellor of East Carolina University, one by the presidents of the community colleges in the Zone, one by the State Ports Authority, and one by the Global TransPark Foundation, Inc.

The Zone is authorized to levy a temporary $5 registration tax on motor vehicles with a situs within the Zone. The Zone must hold a public hearing before adopting a resolution levying the tax. The tax may not become effective before July 1, 1994, and expires five years after the effective date of the first tax levied by the Zone. The amount of revenue generated by the tax depends on how many counties join the Zone, but is not expected to exceed $3.7 million a year in any case.

The proceeds of the tax, and any other funds of the Zone, would be used to carry out the Zone's purpose:

> To promote the development of the North Carolina Global TransPark and to promote and encourage economic development within the territorial jurisdiction of the Zone by fostering or sponsoring development projects to provide land, buildings, facilities, programs, information and data systems, and infrastructure requirements for business and industry in the North Carolina Global TransPark outside of the Global TransPark Complex, or elsewhere in the Zone.

The funds could not be used for projects carried out within the actual four to six thousand acre site of the Global TransPark Complex. Eighty-five percent of the tax proceeds must be kept in a trust account of which the participating counties are the beneficial owners. The principal of the account may be used only for loans. If the Zone is terminated or is otherwise unable to expend the tax proceeds, the tax proceeds and the other assets of the Zone will go back to the participating counties in proportion to the amount of tax collected in each county, except that any funds attributable to a State appropriation will revert to the State.

Chapter 561 of the 1993 Session Laws, the Capital Improvements Appropriations Act of 1993, appropriates $7.5 million to the Global TransPark Development Zone to be used in the same way as the proceeds of the motor vehicle registration tax: for economic development projects and infrastructure construction projects within the Zone. Section 72 of that act places a number of restrictions on these funds. First, the appropriation will be placed in the same interest-bearing trust account as 85% of the tax and will be subject to the same restrictions. Second, the funds must be matched with non-State funds or property contributed, on or after July 1, 1993, to the Global TransPark Foundation, Inc. Third, the funds may not be distributed until after the effective date of the motor vehicle registration tax. Thus, the Zone must be created and the tax must be levied and become effective before the appropriation can be distributed. Finally, if the Zone terminates, the funds will revert to the General Fund.

Property Tax

Habitat for Humanity Tax Exempt (HB 936; Chapter 230): G.S. 105-278.6 exempts from local property taxes real and personal property belonging to nonprofit organizations that provide housing for people with low or moderate incomes, as long as the property is used exclusively for charitable purposes. House Bill 936 expands the exemption beginning with the 1994-95 tax year to provide that property belonging to such an organization is considered to be held for a charitable purpose if it is held for no more than five years as a future site for housing for people with low or moderate incomes.

The act provides that the taxes that would otherwise be due on this property become a lien on the property and are deferred. If housing for people with low or moderate incomes is not built on the property within five years after the tax year the exemption is first claimed, the deferred taxes become due, along with interest. The act does not affect State revenues; any revenue loss would be of local government property taxes.

Raise Homestead Exemption (HB 105; Chapter 360): House Bill 105 increases the homestead exemption amount from $12,000 to $15,000 and makes numerous technical changes to the homestead exemption statutes. The act becomes effective for taxable years beginning on or after July 1, 1994.

The homestead exemption is a partial exemption from property taxes for the residence of a person who has an income of less than $11,000 and is either age 65 or older or totally disabled. The current exemption amount is $12,000. The exemption was last increased in 1987, when it was increased from $10,000 to $12,000.

The revenue loss associated with this act will be a loss to the general funds of local governments. Prior to 1991, the State reimbursed counties and cities for 50% of their losses from the homestead exemption. In 1991, the General Assembly froze the amount of reimbursements made to local governments to the amount each city and county was entitled to receive in 1991.

Computer Software Not Taxable (SB 658; Chapter 459): Senate Bill 658 is the result of a compromise between the North Carolina Association of County Commissioners and a taxpayer group called the North Carolina Software Coalition. It replaces the current property tax exemption for certain computer software used by manufacturers, wholesalers, and retailers with an across-the-board property tax exemption for all computer software, and its related documentation, other than embedded software and software that the taxpayer buys or licenses from an unrelated seller and that is required by generally accepted accounting principles to be treated as a capital asset. The new exemption is effective for property taxes imposed for taxable years beginning on or after July 1, 1994. By exempting certain computer software from the property tax, this act reduces the local property tax base.

The original purpose of the Software Coalition was to expand the current property tax exemption for certain computer software to include all computer software. As introduced, therefore, this legislation exempted all computer software from property taxes. The North Carolina Association of County Commissioners pointed out that a blanket exemption for computer software would seriously erode the local property tax base and, as as result, would reduce local property tax revenues by over $10 million each year. To reduce the Association's opposition to the proposal, the Coalition agreed to the compromise reflected in this act.

The act first "undoes" the 1992 computer software exemption. That exemption, which was enacted at the request of some of the members of the Software Coalition, distorted the definition of inventories and thereby exempted certain computer software from property tax as part of the exemption for inventories. The 1992 exemption applied only to the following three kinds of software that were held by a manufacturer, a wholesaler, or a retailer and were not treated as a capital asset:

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

The 1992 exemption was effective for two years only. It became effective for the 1992-93 tax year and is repealed by this act effective with the 1994-95 tax year. Thus, it applied only in 1992-93 and 1993-94.

After "undoing" the 1992 computer software exemption, the act establishes a new exemption for computer software effective for the 1994-95 tax year. It provides that software is exempt unless it is either embedded software or is treated as a capital asset. Thus, the new exemption applies uniformly to all taxpayers, abandons the requirement that the software be specially made to suit the taxpayer or be used by the taxpayer to develop other software, and preserves the requirement that to be exempt the software must not be considered a capital asset.

Software is another name for a computer program or computer instructions. Embedded software is software that is stored on a microchip or circuit board, is an integral part of a piece of equipment such as a dish washer, a cash register, or an automobile, and is the reason the equipment can perform the functions it can. A seller is unrelated to a taxpayer if the seller and the taxpayer are not subject to any common ownership, either directly or indirectly, and neither the seller nor the taxpayer has a direct or an indirect ownership interest in the other.

Sales Tax

Local Sales Tax for Schools (HB 136; Chapter 255): There are three Articles of the Revenue Act that authorize counties to levy local sales and use taxes. Article 39 authorizes a one-cent tax, Article 40 authorizes a half-cent tax, and Article 42 authorizes an additional half-cent tax. Article 40, enacted in 1983, and Article 42, enacted in 1986, each provide that for the first ten fiscal years in which the tax is in effect in a county, the county is required to use a percentage of the tax revenue for public school capital outlay purposes (including retirement of outstanding debt). The first ten fiscal years under Article 40 would have ended for most counties in July 1993. This act extends the ten-year periods under both Article 40 and Article 42 for an additional five years. For these five additional years, counties will be required to use 30% of the tax revenue from the first half-cent local sales tax (Article 40) and 60% of the tax revenue from the second half-cent local sales tax (Article 42) only for public school capital outlay purposes. The amount of tax revenue affected by the extension of this requirement is $52.7 million a year. Any local legislation that had already been enacted exempting a county from the restrictions of Article 40 or 42 will remain in effect during the additional five-year period. An example of this type of legislation is Chapter 326 of the 1985 Session Laws, which applies to Burke County.

Articles 40 and 42 also require municipalities to use a percentage of the tax revenue they receive under those articles for water and sewer purposes. A county or a municipality can petition the Local Government Commission for a waiver of the applicable use restrictions. The Local Government Commission may waive part or all of the restrictions if the county or city demonstrated that its public school capital needs or water and sewer needs, respectively, can be met without the use of the restricted sales tax revenue. This act clarifies the procedure for obtaining a waiver, effective July 1, 1993. First, the petition for a waiver must be in the form of a resolution adopted by the governing body of the county or city. Second, in evaluating the petition, the Local Government Commission is authorized to consider not only the county's public school

capital needs or the city's water and sewer needs, but also the other capital needs of the county or city. The act apparently intends to allow the Local Government Commission to weigh these competing needs and possibly grant a waiver if the other needs are greater than the county's school needs or the city's water and sewer needs. On the other hand, the law still requires the county or city to demonstrate that its school needs or water and sewer needs, respectively, can be provided for without restricting the local sales tax revenue for those purposes.

Sales Tax License Duration (SB 183; Chapter 372): Senate Bill 183 provides that a sales tax license becomes void if the licensed retailer reports no sales for a period of 18 months. The act became effective August 1, 1993.

All sales of tangible personal property are presumed to be taxable (G.S. 105-164.26). A sale is not taxable if the buyer intends to resell the property. A person who sells property in a wholesale sale can negate the presumption that the sale is taxable by checking the buyer's certificate of resale. 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.

In 1992, the Revenue Laws Study Committee received complaints from taxpayers about individuals who acquire a sales tax license and then fraudulently give a certificate of resale when purchasing property they have no intention of reselling. The Committee found no hard data indicating the extent to which this type of tax evasion occurs. The Committee felt that tax evaders would be deterred by a new penalty enacted in 1992 upon the recommendation of the Revenue Laws Study Committee. Chapter 914 of the 1991 Session Laws (1992 Session) added an additional penalty of $250 to be assessed by the Secretary of Revenue against a buyer who misuses a certificate of resale, effective July 10, 1992.

A sales tax license is required of every person who engages in the retail or wholesale business. The license costs $15 and, once issued, remains valid unless the license holder remains continuously out of business for five years. The Committee noted that increasing the $15 license fee or requiring periodic renewal of licenses would place a burden on the many legitimate small retailers and have only a small impact on potential tax evaders. The Committee decided that the State could limit the number of non-retailers who obtain licenses for fraudulent purposes by providing that a license becomes void if the license holder makes no sales for an 18-month period. The Committee felt that all legitimate merchants would make at least some sales every 18 months. This act implements the Committee's recommendation. The act provides an exception for wholesalers and for license holders who make only exempt sales. The latter group includes civic organizations and other nonprofit associations who occasionally sell items to raise funds; these license holders may go for long periods between fund-raising sales.

Mobile Classroom & Office Change (SB 154; Chapter 484): Senate Bill 154 act makes mobile offices and mobile classrooms subject to sales tax rather than highway use tax. The act then exempts from sales tax mobile classrooms sold to a local board of education or a local board of trustees of a community college. The exemption relieves these local boards from an additional tax burden because they frequently are not paying the highway use tax when they buy a mobile classroom. The act becomes effective October 1, 1993.

The act changes the taxation of mobile offices and mobile classrooms to avoid the potential revenue loss that occurs when these vehicles are not titled. Although the law requires mobile classrooms and mobile offices to be titled, the Division of Motor Vehicles estimates that as many as 80% are not. Since the highway use tax is collected when a vehicle is titled, no highway use tax is being collected on many mobile

classrooms and mobile offices. In contrast, the sales tax is collected at the time of sale. The sales tax rate on these items will be 3% of the retail value of the vehicle, subject to a maximum tax of $1,500. As with manufactured homes, each segment of a double-wide office or mobile classroom will be considered a separate item and the maximum tax will apply to each of the segments.

Before the enactment of the highway use tax in 1989, manufactured homes, mobile offices, and mobile classrooms were all subject to sales tax at the rate of 2% with a $300 cap on each segment. The highway use tax legislation distinguished between manufactured homes, mobile offices, and mobile classrooms, leaving the first of these three subject to sales tax and making the last two of these subject to highway use tax.

Conform Aircraft Sales Tax (SB 659; Chapter 507): State and local sales taxes are calculated as a percentage of the sales price of an item sold at retail. G.S. 105-164.3(16) defines sales price as the total amount for which an item is sold, with certain exceptions. Part e. of G.S. 105-164.3(16) provides that the sales price does not include refundable deposits paid by buyers on automotive, industrial, marine, and farm replacement parts that can be returned to the seller for rebuilding. Replacement parts do not include tires and batteries.

Effective August 1, 1993, Senate Bill 659 extends this exception to provide that the sales price for sales tax purposes will not include refundable deposits paid by buyers on aeronautic replacement parts that can be returned to the seller for rebuilding.

Scrap Tire Tax

Scrap Tire Tax Correction (HB 1274; Chapter 364): House Bill 1274 grants a retroactive scrap tire tax exemption to new tires placed on newly manufactured vehicles, gives anyone who paid tax on tires that are exempted by the act additional time to claim a refund for the tax paid, and restricts the amount of interest payable by the State on a refund. The act became effective July 16, 1993.

The exemption granted by the act applies to the period beginning January 1, 1990, and ending July 15, 1992. This is the period from the effective date of the tax to the date these tires were exempted from the tax by Chapter 867 of the 1991 Session Laws (Reg. Sess. 1992).

A refund for taxes paid during this period may be claimed at any time before July 1, 1994. Interest payable on a refund accrues at the rate of 5% a year instead of at the rates that would otherwise apply. The rates that would otherwise apply are 9% for calendar years 1990 and 1991, 8% for calendar year 1992, and 7% for calendar year 1993 and subsequent calendar years. Interest accrues on a refund of the scrap tire tax starting 90 days after an overpayment of the tax until the refund is made.

Proponents of this act argued that the scrap tire tax was never intended to apply to new tires placed on newly manufactured vehicles. Whether or not this was the intent, however, the tax by its terms did apply to new tires purchased for placement on newly manufactured vehicles from its effective date of January 1, 1990, until the exemption became effective on July 15, 1992.

Currently, the scrap tire disposal tax is a 1% tax on the price of certain tires. Effective October 1, 1993, the tax rate will increase to 2% on tires having a bead diameter of less than 20 inches and will remain at 1% for all other tires. Most of the revenue from the tax is used to pay for the disposal of scrap tires or the abatement of a nuisance caused by storing scrap tires.

The scrap tire tax was first enacted in 1989 and was revised by Chapter 221 of the 1991 Session Laws. When first enacted, the tax applied to new motor vehicle tires sold at retail and the regular exemptions from sales tax did not apply to sales of the tires.

Thus, the exemption for items that are component parts of a manufactured product did not apply and tires purchased for placement on newly manufactured vehicles were subject to the tax. The 1991 revision did not change the taxation of new tires placed on newly manufactured vehicles.

After the 1991 Session, several manufacturers of vehicles, including Freightliner and Caterpillar, asked the Revenue Laws Study Committee to study the issue of the taxation of new tires purchased for placement on newly manufactured vehicles. The Committee concluded that taxation of these tires was contrary to the intent of the tax and placed North Carolina-made vehicles at a competitive disadvantage to vehicles made in other states. The Committee therefore recommended that new tires placed on newly manufactured vehicles be exempted from the tax and that the exemption apply retroactively.

In its 1992 regular session, the General Assembly enacted the recommendation of the Revenue Laws Study Committee to exempt from the scrap tire tax new tires placed on newly manufactured vehicles. It did not enact that Committee's recommendation to make the exemption retroactive. This act, however, makes the exemption retroactive.

The Revenue Laws Study Committee found that 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. Obviously, when a new tire is placed on a newly manufactured vehicle, no tire is being replaced and no tire is in need of disposal.

Increase Scrap Tire Disposal Tax (HB 83; Chapter 548): See **ENVIRONMENT.**

Miscellaneous Tax Legislation

Update I.R.C. Reference (HB 81; Chapter 12): House Bill 81 rewrites the definition of the Internal Revenue Code used in various State tax statutes to change the reference date from January 1, 1992, to January 1, 1993, and it corrects an incomplete cross reference to a section of the Internal Revenue Code. Sections 1 through 7 and Sections 9 through 11 change the definition of Code, and Section 8 makes the technical correction. The act is effective for taxable years beginning on or after January 1, 1993.

Updating the reference to the Internal Revenue Code 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 franchise tax, gift tax, highway use tax, inheritance tax, insurance company gross premiums tax, and the intangibles tax also determine some exemptions based on the provisions of the Code.

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

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

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

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 1992 that affect a tax other than the individual income tax, and the changes that affect the individual income tax are minor and are not expected to have a significant revenue impact on the State.

The minor changes to the Code were made in the federal Unemployment Compensation Amendments of 1992 and the federal Comprehensive National Energy Policy Act of 1992; no major federal revenue bill was enacted in 1992. Among other changes, these acts extended from December 31, 1995, to December 31, 1996, the date when the federal phaseout of personal exemptions for certain high-income taxpayers was to expire, allow the tax-free roll-over of certain partial distributions from qualified pension plans or qualified annuity plans, modified the monthly amount of employer-provided transportation benefits that is excludable from gross income, and simplified the payment by employers of withheld income taxes.

Unemployment Insurance Tax Cut (HB 920; Chapter 85): House Bill 920 provides employers who have a credit balance in their unemployment insurance tax account with a 30% reduction in their contribution rate for the remainder of the 1993 calendar year. It also provides these employers with a 30% reduction in their contribution rate for any calendar year in which the balance in the Unemployment Insurance Fund equals or exceeds $800,000,000 as of the preceding August 1. Roughly 80% of the more than 144,000 employers in North Carolina have a credit balance in their account.

The contributions paid by employers go into the Unemployment Insurance Fund. After deducting any refunds payable from the Fund pursuant to G.S. 96-10, the money is deposited with the secretary of the treasury of the United States to the credit of this State's account in the Unemployment Trust Fund. As the money is needed to pay benefits, it is transferred to the State and credited to the benefits account of the State's Unemployment Insurance Fund to be used to pay benefits to people who lose their job through no fault of their own.

North Carolina's account is one of the most solvent accounts of any state in the country. In 1992, the General Assembly was able to suspend the additional unemployment tax collected from employers and credited to the Employment Security Commission Reserve Fund. This Reserve Fund bolsters the Unemployment Insurance Fund. This act goes a step further by lowering the unemployment contribution tax rate for employers with a credit balance in their unemployment insurance tax account.

Repeal RTA Tax Restriction (SB 63; Chapter 382): See **TRANSPORTATION**.

ESC Tax Changes (SB 787; Chapter 424): Senate Bill 787 imposes two new penalties for failure to comply with certain reporting requirements of the Employment Security Commission. It imposes a penalty on an employer with 250 or more employees who does not file on magnetic tapes or diskettes that portion of the "Employer's Quarterly Tax and Wage Report" that contains the name, social security number, and gross wages

of the employees. The penalty will be $25. It also imposes a penalty on an agent of employers who does not file the required information on magnetic tape or diskette if the agent files the report for 250 or more employees of one or more employers. In this case, the penalty is not monetary. Instead, the law will prohibit that agent from reporting wages and filing reports with the Employment Security Commission on behalf of the subject employees for a period of one year. The Commission may reduce or waive a penalty against either an employer or an agent for good cause shown. The act becomes effective September 30, 1995, and applies to Employer's Quarterly Tax and Wage Reports required to be filed on or after the quarter ending September 30, 1995.

The Commission began requiring the filing of this report on magnetic tape or diskette in 1992 because of an act passed by the General Assembly in 1991. The large employers subject to this requirement are currently required to file this information on tape with the federal government. The purpose of the requirement is to speed up reporting and make it more efficient. Current law does not contain an appropriate penalty to impose on an employer or an agent who does not file the report in the correct manner. At the present time, the Commission considers a report that is not filed correctly as not being filed. The penalty for failure to file is 5% of the tax for each month that the report is not filed, not to exceed 25% of the aggregate or $5 per month, whichever is greater. The majority of the more than 152,000 employers subject to this requirement have complied. In the approximately 400 cases where the requirement has not been met, the Commission has waived the failure to file penalty that it believes it could impose.

Tax Expenditure Report (HB 843; Chapter 433): House Bill 843 requires the Secretary of Revenue to include in the biennial tax expenditure report prepared by the Department of Revenue an estimate of the amount by which revenue is reduced by each tax expenditure. A tax expenditure is an exemption, an exclusion, a deduction, an allowance, a credit, a refund, a preferential tax rate, or another device that reduces the amount of tax revenue that would otherwise be available to the State. Under prior law, an estimate of the revenue loss was not required if making the estimate would impair other duties of the Secretary or the Department. The availability of the actual tax costs of the tax expenditures will better enable the General Assembly to scrutinize and evaluate the costs and benefits of these expenditures. The act also requires the Secretary to give each member of the General Assembly a copy of the tax expenditure report. Under prior law, members received copies of the report only upon request.

The Department of State Treasurer has suggested that, for the tax expenditure report to be an effective tool, "it needs to be carried further, and upgraded to include the actual tax costs of the many preferences; and it needs both legislative and public scrutiny." This act seeks to enhance the effectiveness of the biennial tax expenditure report by making it more complete and by making it more accessible to the members of the General Assembly.

Electronic Funds Transfer (HB 174; Chapter 450): House Bill 174 authorizes the Department of Revenue to require a taxpayer who owes an average of $20,000 a month of a type of tax to pay that tax by electronic funds transfer. An electronic funds transfer is a transfer of funds that is initiated through an electronic terminal, a telephone, or a computer to authorize a financial institution to debit or credit a taxpayer's account. The processing of certain tax payments electronically will enable the State Treasurer to invest tax receipts sooner due to the reduced float time in receiving mail through the postal service and clearing checks through the banking system. The Department of Revenue estimates that the increased earnings on this decreased float will be approximately $1 million in fiscal year 1993-94 and $2 million in fiscal year 1994-95. The General Assembly appropriated $400,000 in fiscal year

1993-94 and $310,000 in fiscal year 1994-95 to the Department of Revenue in the expansion budget to enable the Department to implement an electronic funds transfer program.

The act became effective August 1, 1993. However, because of the time needed by the Department of Revenue to implement the program, the earliest date that electronic payments would actually be required is January 1, 1994. The act prohibits the Department from requiring the payment of motor fuels taxes or inspection fees by electronic funds transfer earlier than July 1, 1995. The Department of Revenue plans to phase the electronic funds transfer program in over several years. As planned, the program will be limited to the largest taxpayers and to taxes that are paid quarterly or more frequently. The first phase of the program, planned to begin January 1, 1994, involves withholding tax and corporate income tax. Later in 1994, utilities sales tax, utilities franchise tax, alcoholic beverages excise tax, and sales and use tax will be added. Initially, taxpayers with average payments of a single tax of $100,000 a month will be required to pay electronically. This threshold will be lowered as the program is developed, with full implementation for all targeted business taxes expected by the end of 1996.

The act enables the Department of Revenue to implement tax payments by electronic funds transfer by eliminating provisions in the former law that prohibit these payments. Some of these provisions require a tax to be paid at an office of the Department of Revenue and some require a tax to be paid by cash or check. This act deletes these conflicting provisions and substitutes a requirement that a tax be paid at the place and in the form required by the Secretary.

The monthly threshold applies separately to each tax. The Secretary will notify taxpayers who must pay taxes electronically and will educate them about the procedures to be followed. After the Secretary requires a taxpayer to pay a tax by electronic funds transfer, the Secretary must review the taxpayer's average payments at least annually. If the average amount of the payments falls below the $20,000 threshold, the Secretary must suspend the electronic funds payment requirement and so notify the taxpayer.

The act adds two new tax penalties related to electronic funds transfers. The first is a penalty for making an electronic funds transfer that is not honored due to insufficient funds or nonexistence of an account. Like the penalty for a bad check, this penalty is equal to 10% of the amount of the payment, with a maximum of $1,000. Like all other penalties except the bad check penalty, this penalty may be compromised or forgiven by the Secretary of Revenue for good cause. The second is a penalty for paying a tax in a form other than the form required by the Secretary. The penalty is equal to 5% of the amount of the tax, with a maximum of $1,000. This penalty will provide an incentive for taxpayers to comply with the electronic funds transfer requirements imposed by the Secretary.

Tax Laws Technical Changes/Secrecy (SB 155; Chapter 485): Sections 1 through 30 of Senate Bill 155 makes numerous technical and clarifying changes to the revenue laws and related statutes. The remaining sections of this act clarify, reorganize, and modify the statutes governing secrecy of government tax records. These sections were introduced by Representative Gamble in House Bill 74. The act became effective upon ratification, July 23, 1993.

Technical Changes

The following table provides an analysis of the technical changes made by the first 30 sections of the act:

Section	Explanation

1 Repeals a Session Law that is ineffective because the language it amended had already been deleted by an earlier Session Law.

2 Makes a conforming change to reflect the fact that official population estimates that were formerly certified by the State Budget Officer are now certified by the State Planning Officer.

3 Removes stray language from a statute; the language resulted because the changes made to a statute by two different acts enacted in 1993 were in conflicting forms. This is not a substantive change (see the summaries for Chapters 362 and 371, above).

4 Removes inaccurate provisions regarding the scope of G.S. 105-122 contained in the franchise tax exemptions statute and reorganizes and clarifies the language of the statute. The removed provisions are corrected and placed in the appropriate statute in Section 5.

5 Corrects inaccurate provisions regarding the scope of G.S. 105-122 and places the provisions in the appropriate introductory statute applicable to franchise taxes.

6 G.S. 55-14-05(c) of the Business Corporation Act provides that a corporation that dissolves does not owe franchise tax unless it engages in business activities during the tax year. This section adds the same provision to the franchise tax law. The Department of Revenue is currently administering the law in accordance with this provision. This change was requested by the Department of Revenue.

7 Makes a conforming change to reflect the fact that official population estimates that were formerly certified by the State Budget Officer are now certified by the State Planning Officer.

8 Makes a conforming change to a cross-reference to G.S. 105-134.6, which is rewritten by Section 9 of this act.

9 The federal courts have held that North Carolina cannot tax income earned by a member of a federally recognized Indian tribe from activities on the reservation. This section adds to the individual income tax statutes a provision explicitly recognizing that rule of law. This change was requested by the Department of Revenue.

This section also makes technical changes in the wording of the individual income tax adjustments and in the location in the statutes of some of these adjustments, as follows: it changes the word "gross" to "taxable" in a few places because some items that are to be added to or subtracted from federal taxable income are not specifically identifiable under the Code as deductions subtracted from gross income. It also creates a new subsection (d) in G.S. 105-134.6 to provide for deduction of amounts that are not specifically identified as income items included in gross income under the Code.

10 Clarifies ambiguous language in accordance with the correct interpretation by the Department of Revenue.

11 Makes a conforming change to reflect the fact that official population estimates that were formerly certified by the State Budget Officer are now certified by the State Planning Officer.

12 Substitutes the correct term "minority business" for "minority business enterprise" in the statutes requiring a business to provide background information when renewing its registration as a qualified business. Tax credits are allowed for investments in certain businesses that have registered as qualified businesses. For more information, see the summary of Chapter 443, above.

13	Makes a conforming change to reflect the fact that official population estimates that were formerly certified by the State Budget Officer are now certified by the State Planning Officer.
14	Corrects an incorrect cross-reference and simplifies some awkward statutory language. This change was requested by the Department of Revenue.
15	Removes redundant language regarding the scope of Article 9 of Chapter 105 of the General Statutes. The scope of Article 9 is set out in G.S. 105-228.90.
16	Makes a conforming change to reflect the fact that official population estimates that were formerly certified by the State Budget Officer are now certified by the State Planning Officer.
17	Deletes a reference to a repealed subsection.
18	Excludes short term rental vehicles from the new system for collecting property taxes on motor vehicles. The old system of taxation, in which the vehicles will be listed by the company, is more appropriate for these vehicles. This change was requested by the Department of Revenue and the Association of County Commissioners.
19	Removes incorrect and unnecessary cross-references.
20 - 21	Clarify that the penalty for failure to file an additional bond for motor fuel tax purposes also applies to failure to file a replacement bond. This change was requested by the Department of Revenue.
22	Removes a reference to a provision, repealed in Section 23, allowing counties to collect their own local sales and use taxes.
23	Repeals a provision allowing counties to collect their own local sales and use taxes.
24	Makes a conforming change to reflect the fact that official population estimates that were formerly certified by the State Budget Officer are now certified by the State Planning Officer. Simplifies and clarifies awkward statutory language.
25 - 27	Remove references to a provision, repealed in Section 23, allowing counties to collect their own local sales and use taxes.
28	Deletes a reference to a repealed statute and substitutes the applicable provisions of that statute.
29	Conforms the catchline of G.S. 105-449.15 to reflect its true content. The exemption from the special fuels tax for nonanhydrous ethanol expired on January 1, 1993.
30	Repeals the exemption for nonanhydrous ethanol from the gasoline tax statute so that it conforms with the special fuels tax statute. The exemption in the special fuels tax statute expired on January 1, 1993. The expiration language for the exemption was inadvertently omitted from the gasoline tax statute when it was revised in 1985. To the knowledge of the Department of Revenue, this exemption has never been used. (Nonanhydrous ethanol is not used to make gasohol; it has a water content and, by its nature, cannot be mixed with gasoline.)

Tax Secrecy Changes

Sections 31 through 40 of this act reorganize and make both clarifying and substantive changes to the statutes governing confidentiality of government tax records. The substantive changes delete the authority of the Governor and of members of the General Assembly to have access to confidential tax information, expand two existing exceptions to the prohibition against disclosing information (G.S. 105-259(b)(11) and (12)), add six narrow exceptions to the list of information that can be disclosed (G.S. 105-259(b)(13) through (18)), and remove information that is contained on a master

application form submitted to the Business License Information Office of the Secretary of State from the definition of confidential tax information. The changes are described in more detail below.

Governor and General Assembly Members

This act deletes the authority of the Governor to have access to confidential tax information and deletes any right of access the members of the General Assembly may have to confidential tax information. Both former Governor Jim Martin and current Governor Jim Hunt concur with the change in the Governor's access.

Under former law, it was not clear whether members of the General Assembly had access to confidential tax information. G.S. 120-19, enacted in 1937, required all State agencies to furnish the General Assembly upon request "all information and data within their possession." The Revenue Act's secrecy provision, however, which was enacted in 1939, made no exception for members of the General Assembly. This act resolves this conflict by making it clear that members of the General Assembly do not have access to confidential tax information. The act therefore puts members of the General Assembly in the same position concerning this matter as the Governor.

Expanded Exceptions

The act expands the former exceptions to the prohibition against disclosure found in G.S. 105-259(b)(11) and (12). It expands the authorization to give one spouse information about the other spouse's income taxes when the spouses file a joint income tax return to include any joint return the couple files. In addition to filing joint income tax returns, spouses frequently file joint intangibles tax returns. Under former law, the Department could not give a copy of the intangibles tax return to a spouse who signed the return but did not have a copy of the return because the return discloses information about the other spouse.

The act expands the current exception for a financial institution to receive payments of withheld individual income taxes to include the transmittal of payments by electronic funds transfer. Chapter 450 of the 1993 Session Laws, summarized above, authorizes the Department of Revenue to initiate an electronic funds transfer payment program. That program cannot be initiated without this exception to the secrecy law.

New Exceptions

This act adds to the exceptions to the tax secrecy provisions the limited disclosures listed in G.S. 105-259(b)(13) through (18). Those disclosures are as follows:

(b)(13): Fiscal Research: Authorizes the Department of Revenue to give to the Fiscal Research Division of the General Assembly a sample of returns from which taxpayer identifying information has been removed so that the Division can prepare estimates of the effects of proposed changes in the law and conduct other research.

(b)(14): Department of Agriculture: Authorizes the Department of Revenue to share motor fuel tax information with the Department of Agriculture; the two agencies work together in administering motor fuel taxes and the Gasoline and Oil Inspection Act.

(b)(15): Excise Tax Information: Authorizes the Department of Revenue to exchange information on tobacco, soft drink, alcoholic beverage, or controlled substance excise taxes with the North Carolina Alcoholic Beverage Control Commission, the Alcohol Law Enforcement Division of the Department of Crime Control and Public Safety, and the federal Bureau of Alcohol, Tobacco, and Firearms. Under former law, the Department of Revenue could not exchange information, other than lists of licensees, with these agencies.

(b)(16): Corporate Existence: Authorizes the Department of Revenue to give the Secretary of State names and identifying information of corporations to enable the Secretary of State to locate a corporation and notify the corporation that it is required to file an annual report.

(b)(17): License Application Status: Authorizes the Department of Revenue to give to the Business License Information Office of the Secretary of State information on the status of a license application for which the applicant has asked the License Office for assistance in coordinating. The License Office has the duty to assist and coordinate license applications but former law prohibited the Department of Revenue from disclosing information the Office needed to carry out this duty.

(b)(18): Vendor Location: Authorizes the Department of Revenue to give the State Controller names and identifying information of taxpayers to enable the State Controller to locate vendors who do business with the State and to track debtors of the State.

Master Business License Application Information

The act excludes information submitted to the Business License Information Office on a master application form from the definition of tax information. This change makes the information submitted on a master application form accessible to the various agencies that need to see the form to be able to process the applications included on the form and makes the information available to the public.

Clarifying Changes

In addition to making the substantive changes described above, the act makes several clarifying changes. It clarifies that local tax records containing information relating to a taxpayer's income or receipts are confidential and that other tax records, such as property tax records, are not confidential. It also makes conforming changes to various statutes and moves provisions that are unrelated to the disclosure of tax information from G.S. 105-259 (the secrecy provision of the Revenue Act) to more appropriate statutes.

Mortgage Investment Conduit (SB 1018; Chapter 494): Senate Bill 1018 brings the State law into conformity with the federal tax law by exempting real estate mortgage investment conduits (REMICs) from corporate income taxes, franchise taxes, and the intangibles tax. A REMIC is an entity, usually a trust, that holds a pool of real estate mortgages for the benefit of investors who have invested in the entity. In concept, it is similar to a mutual fund that holds securities for the benefit of its investors. Current law already exempts similar entities, regulated investment companies (RICs) and real estate investment trusts (REITs), from these taxes.

Federal law authorizes the creation of REMICs in order to facilitate investment in real estate mortgages. Since 1986, federal tax law has provided that a REMIC is not subject to federal income tax as an entity; instead, income from its mortgages is taxed directly as income of the investors. This makes a REMIC a pass-through entity: the income is "passed through" to the individual investors, rather than being taxed to the entity. A partnership, a mutual fund, a REIT, and a Subchapter S corporation are other types of pass-through entities.

North Carolina law does not specifically recognize REMICs as pass-through entities, although it does recognize other pass-through entities. The Department of Revenue interprets the current income tax law as allowing pass-through status for REMICs. It is not clear, however, whether the franchise tax law and the intangibles tax law would be interpreted in the same way. This act establishes with certainty the tax treatment of

REMICs in North Carolina. This act becomes effective beginning with the 1993 tax year.

Revenue Hearings/Taxpayer Rights (SB 832; Chapter 532): Senate Bill 832 makes numerous substantive and technical changes relating to administrative review in tax disputes and other tax enforcement and administration matters. Many of the changes were introduced by Representative Hackney in House Bill 1028, AN ACT TO PROVIDE FOR STATE TAXPAYERS' RIGHTS. The act is not expected to have any impact on State revenues. The act becomes effective January 1, 1994.

Timetable for Administrative Hearings

Sections 2, 3, and 10 through 12 of this act establish the timetable for administrative hearings by the Secretary of Revenue and the Tax Review Board on proposed and final tax assessments, requests for refunds, and allocation and apportionment of corporate income to this State for franchise tax and income tax purposes. If a taxpayer makes a timely, written request for a hearing, the Secretary or the Tax Review Board must schedule the hearing for a date within 90 days after the request and must notify the taxpayer within 60 days after the request and at least 10 days before the hearing. The hearing may be postponed at least once for up to 90 days, and longer upon the mutual agreement of the parties. The Secretary or the Tax Review Board is required to notify the taxpayer of the decision on the hearing within 90 days after the hearing. Under current law, there are no time limits within which a requested hearing must be scheduled or, after it is held, within which a decision must be made.

Notice of Final Assessment

Section 2 of this act requires the Secretary of Revenue to notify a taxpayer when a proposed assessment becomes final. The notice must include a statement outlining the procedure for levy on and sale of the taxpayer's property, administrative appeals and other options that are available to the taxpayer, and procedures to redeem the property and obtain release of a lien on the property. Under current law, a notice of a proposed assessment is required but, unless the taxpayer disputes the proposed assessment, there is no additional notice required when the assessment becomes final.

Jeopardy Actions

Sections 2, 3, and 4 of this act provide for special administrative and judicial review of jeopardy assessments and jeopardy levies. A jeopardy assessment is an immediate assessment of tax without the otherwise required 30 days' advance notice and opportunity for a pre-assessment hearing. The Secretary of Revenue is authorized to make a jeopardy assessment only if the Secretary finds that collection of the tax is in jeopardy and immediate assessment is necessary to protect the interest of the State. A jeopardy levy is an immediate filing of a lien against a taxpayer's property or an immediate execution against a taxpayer's personal property for an assessed tax without the required 30 days' advance notice and opportunity for a pre-levy hearing. After a taxpayer has requested a pre-levy hearing, the Secretary of Revenue is authorized to file a jeopardy lien upon determining that immediate action is necessary to protect the interest of the State and is authorized to cause a jeopardy execution against the taxpayer's personal property upon Secretary determining that collection of the tax would be jeopardized by delay. The taxpayer may prevent the execution by filing a bond for the amount of the assessed tax.

Sections 2 and 3 of this act provide that within five days after a jeopardy assessment or levy has been made, the Secretary of Revenue must provide the taxpayer a written statement of the information upon which the Secretary relied in making the assessment or levy. This statement is not required, however, if the jeopardy assessment or levy is

of the controlled substances excise tax or is the result of a criminal investigation. These sections also provide that, upon request of a taxpayer against whom a jeopardy assessment or levy has been made, the Secretary must review the assessment or levy within 30 days to determine whether it was reasonable under all the circumstances. Section 4 of this act adds a new G.S. 105-241.5 to provide for special judicial review of jeopardy assessments and jeopardy levies made by the Department of Revenue. The taxpayer may bring an action in superior court, either in Wake County or in the county in which the taxpayer resides, for review of the reasonableness of the assessment or the levy. The court must make a determination within 20 days and may order appropriate relief.

Tax Collection Mechanisms

Section 5 of this act makes several changes to G.S. 105-242, which governs the collection of taxes by levy against and attachment and garnishment of taxpayers' property. First, this section provides that if the Department of Revenue has seized tangible property, the owner of the property may request the Secretary to sell the property within 60 or more days. Unless the Secretary determines that the requested sale would not be in the best interest of the State, the Secretary must authorize the sale. The Department of Revenue will retain the administrative expenses of selling property at the request of the property's owner.

Second, Section 5 requires the Secretary of Revenue to release a State tax lien if the liability for which the lien attached has been satisfied. Third, Section 5 authorizes the Secretary to release a State tax lien if (i) the underlying liability is unenforceable due to lapse of time, (ii) the lien is creating an economic hardship due to the taxpayer's financial condition, (iii) release of the lien on the value of property that exceeds the value of the underlying liability would not hinder collection of that liability, or (iv) release of the lien would probably facilitate, expedite, or enhance the State's chances of collecting a tax. Fourth, Section 5 exempts from levy, attachment, and garnishment the taxpayer's principal residence (unless the Secretary approves the levy in writing or finds that collection of the tax is in jeopardy) and the taxpayer's personal property that is exempt from levy under the federal tax code. It does not change the existing exemption for 90% of a taxpayer's monthly pay.

Fifth, Section 5 prohibits the Secretary of Revenue from levying against property if the Secretary estimates that the cost of the levy would exceed the fair market value of the property. Finally, Section 5 requires the Secretary to review a tax lien if the taxpayer alleges that it was filed in error.

Installment Payments

Section 1 of this act authorizes the Secretary of Revenue to enter into an agreement with a taxpayer for payment in installments of a tax that has been assessed. The Secretary may enter into the agreement if the Secretary determines that the agreement will facilitate collection of the tax. As part of the agreement, the Secretary may waive tax penalties but may not waive any tax or interest due. The Secretary is authorized to modify or terminate the agreement if circumstances change or if the taxpayer has not provided accurate or complete information. Although current law does not speak to installment agreements, the Department Revenue already uses installment agreements under its general authority to facilitate tax collection.

Taxpayer Interviews

Section 7 of this act establishes the following rules governing taxpayer interviews with Department of Revenue personnel, other than interviews concerning a criminal investigation, the controlled substance excise tax, or a jeopardy assessment or levy. The taxpayer and the Department have the right to record an interview. If the

Department records an interview, it must provide the taxpayer a transcript upon the taxpayer's request. The Department must provide the taxpayer, at or before the initial audit or collection interview, a written explanation of the audit process or the collection process, as appropriate, and of the taxpayer's rights during the process. The taxpayer may authorize another person to represent the taxpayer during the interview process by executing a power of attorney; the representative may appear instead of the taxpayer at the interview unless the Department has summoned the taxpayer. If, during an interview, the taxpayer wishes to consult with a representative, the Department must suspend the interview. Current law is silent on taxpayer interviews.

Taxpayer Bill of Rights

Section 6 of this act requires the Secretary of Revenue to publish annually and make available to taxpayers a statement of the taxpayer's bill of rights. This statement must set forth (i) the confidentiality of tax information; (ii) rights and obligations during an audit; (iii) procedures for appealing an adverse decision of the Department at each level, for claiming a refund, for requesting information, assistance, and interpretations, and for making complaints; (iv) penalties and interest that may apply and the basis for requesting waiver of a penalty; and (v) procedures the State may use to collect a tax, including assessment, jeopardy assessment, liens, and garnishment and attachment.

Evaluation of Tax Personnel

Section 8 of this act prohibits the Department of Revenue from using records of tax enforcement results, or production goals based on these records, as the sole criteria in evaluating Department personnel. Section 8 also requires the Department to consider records of taxpayer complaints naming a Department employee when evaluating that employee.

Reliance Upon Department's Tax Advice

Section 9 of this act provides that if a taxpayer requests in writing specific advice and receives from the Department erroneous written advice, the taxpayer is not liable for any penalty or additional tax assessment attributable to the taxpayer's reasonable reliance on the erroneous advice. This provision does not apply to the extent the penalty or additional tax assessment resulted from the taxpayer's failure to supply the Department adequate or accurate information. Under current law, taxpayers are entitled to rely upon interpretations and rules issued by the Department and currently in effect.

Annual Reporting on Taxpayer Services

Section 13 of this act requires the Department of Revenue to report annually to the Joint Legislative Commission on Governmental Operations regarding the quality of services provided to taxpayers.

PENDING LEGISLATION

The following bills have passed one house and have been received by the other or they are revenue bills and therefore are eligible for consideration in the 1994 Session.

Federal Determination/Withholding (HB 80): House Bill 80 would reduce the time allowed the Department of Revenue to make assessments of taxes following a federal

determination from an additional three- or five-year period to an additional one- or three-year period.

State Budget & Fiscal Control Act (HB 268): House Bill 268 would recodify many of the provisions of the Executive Budget Act into a State Budget and Fiscal control Act that revises and clarifies the procedures for adopting a State budget, for accounting for State resources, and for reporting State financial information.

Merchants' Sales Tax Discount (HB 645; SB 153): These bills would allow a discount against State sales and use tax collections of 3% of the first $1,000 of tax collected each month and 7/10 of 1% of the remaining tax collected each month.

Out-of-State Printers Tax Nexus (HB 933; SB 715): These bills would provide that an out-of-state entity who contracts with a North Carolina printer is not doing business in this State for tax purposes incident to printing.

Tax Cut Package (HB 1181): House bill 1181 would phase out the State sales tax on food, provide a universal child care credit for the parents of children under age six, and lower the corporate income tax to 7%.

Exempt Developer's Real Property (HB 1204): House Bill 1204 would exempt from property tax the increase in value of real property held for sale by a builder to the extent the increase is attributable to subdivision or improvements made by the builder.

Tax Law Changes/State Investments (HB 1467): House Bill 1467 would make three different changes: it would require the tax collector to send a property tax bill to each taxpayer; it would change the property tax valuation date for motor vehicles registered under the annual system; and it would increase from $30,000,000 to $60,000,000 the amount of money the Treasurer could invest in a limited partnership interest in a partnership whose primary purpose is to invest in venture capital or corporate buyout transactions.

Repeal Privilege License Taxes (SB 661): Senate Bill 661 would repeal the State privilege license tax on most businesses subject to sales tax and on other trades and businesses and it would increase the tax on entertainment from 3% to 4%.

Property Tax Liens Priority (SB 941): Senate Bill 941 would provide that local government property tax liens have priority over State tax liens.

Photovoltaic Equipment Tax Credit (SB 1045): Senate Bill 1045 would broaden the existing tax credits for the production and installation of solar and photovoltaic equipment by increasing the amounts of the credits and by extending the solar equipment credits to include equipment that generates electricity.

Diesel Fuel Payment Method (SB 1088): Senate Bill 1088 would provide that the tax on diesel fuel would be paid partly at the pump and partly by either an annual registration tax or a surtax payable with a road tax report.

Historic Properties Grant Program (SB 1179): Senate Bill 1179 would provide that $1 million of the additional revenue generated by allowing payment of the cigarette tax by reporting rather than by tax stamps (Chapter 442 of the 1993 Session Laws) would be earmarked for an historic properties grant program.

Use Value/Donated Land (SB 1195): Senate Bill 1195 would provide that there would be no rollback of deferred tax if land taxed at its present use is donated to a county or city.

Closely-Held Stock Exempt (SB 1245): Senate Bill 1245 would exempt from intangibles tax shares of corporate stock that are not publicly traded.

STUDIES

House Bill 1319

The 1993 Studies Bill (HB 1319) was passed by both houses but was not ratified before adjournment of the 1993 Regular Session. It should be signed into law at the beginning of the 1994 Short Session. Legislative Research Commission Studies relating to the topic of Taxation include: (1) Revenue Laws; (2) Fiscal Trends and Reform; (3) Business Tax Credits for Purchases of Recycled Products; (4) Comprehensive Transportation Funding; (5) Alternative Revenue Sources for State Government. On September 13, 1993, the LRC referred (1) to the Revenue Laws Committee; referred (2),(3), and (5) to the Fiscal Trends and Reform Committee; and referred (4) to the Joint Legislative Transportation Oversight Committee.

TRANSPORTATION
(Jennie Dorsett, Tim Hovis, Giles S. Perry)

RATIFIED LEGISLATION

Airports

Public Airport Signs (HB 1004; Chapter 51): House Bill 1004 exempts publicly-owned airports from the requirement that informational and directional highway signs conform to the Manual on Uniform Traffic Control Devices for Streets and Highways. The bill retains the requirement, however, that regulatory traffic signs conform to the Manual. House Bill 1004 became effective on ratification, May 18, 1993.

Global Transport Development Zone (SB 853; Chapter 544): Senate Bill 853 authorizes the counties of Carteret, Craven, Duplin, Edgecombe, Greene, Jones, Lenoir, Nash, New Hanover, Onslow, Pamlico, Pitt, Wayne and Wilson to establish a special economic district known as the "Global Transpark Development Zone" to promote the development of the North Carolina Global Transpark. Any three or more of the listed counties may create the Zone by adopting a resolution to do so prior to October 1, 1993. If created, the Zone will be governed by the Global Transpark Development Commission which will consist of members appointed by the board of commissioners of each participating county, the Global Transpark Authority, and nonvoting members appointed by the Chancellor of East Carolina University, the presidents of the community colleges located in the Zone, the chair of the State Ports Authority, and the Global TransPark Foundation, Inc. Senate Bill 853 lists the general powers and economic development powers of the Zone which include the power to levy a temporary annual motor vehicle registration tax on vehicles with a tax situs within the Zone. The effective date of the tax shall be no earlier than July 1, 1994 and the tax expires five years after the effective date. Proceeds from the tax may only be used for economic development projects and infrastructure projects within the Zone and outside of the Global TransPark Complex. The bill requires that 85% of the tax proceeds be placed in an interest bearing trust account, the principal of which may not be disbursed except pursuant to a contract providing for the recovery of the amount disbursed within twenty years. The bill exempts from taxation all property owned by the Zone. Procedures for a participating county to withdraw from the Zone and for termination of the Zone are also included in the bill. Senate Bill 853 became effective upon ratification, July 24, 1993.

Billboards

Scenic Highways/Outdoor Ads Limited (HB 1053; Chapter 524): House Bill 1053 adds a new section to Article 11 (the Outdoor Advertising Control Act) of Chapter 136 (Roads and Highways) to further restrict the erection of outdoor advertising signs along highways designated as scenic by the Department of Transportation and along interstate or federal aid primary highways within certain distances of State and federal parks, wildlife refuges, wild and scenic rivers, State rest areas, historic districts, and properties on the National Register of Historic Places, in order to further the purposes of Article 10 of this Chapter, preservation of scenic beauty of areas along highways. House Bill 1053 became effective July 24, 1993.

Boats/Navigation

Adopt Navigation Rules (HB 485; Chapter 361): House Bill 485 requires all vessels which have an identification number under State or federal law and which are operated on State waters to comply with federal navigational rules contained in the Inland Navigational Rules Act of 1980. The Wildlife Resources Commission and all peace officers with general subject matter jurisdiction are responsible for enforcement of the rules. Violation of the rules constitutes a misdemeanor punishable by a fine not to exceed $100.00. The bill also deletes existing statutory provisions concerning required lights and equipment. House Bill 485 becomes effective December 1, 1993 and applies to offenses committed on or after that date.

Increase Boat Registration Fees (SB 590; Chapter 422): See **AGRICULTURE**.

Department of Transportation

DOT Use of Licensed Appraisers (HB 618; Chapter 519): House Bill 618 extends the expiration date of Section 2 of Chapter 94 of the 1991 Session Laws from July 1, 1993 to July 1, 1994. Chapter 94 of the 1991 Session Laws permitted DOT to appraise with "in-house" appraisers property it is acquiring that DOT anticipates will appraise at less than $10,000, without their appraisers having to be licensed or certified. House Bill 618 became effective July 24, 1993.

ISTEA Amendments (HB 625; Chapter 488): House Bill 625 amends G.S. 136-18, the powers of the Department of Transportation, to clarify that the Department has powers as are necessary to fully comply with the federal Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), and all other federal aid acts and programs the Department is authorized to administer. In addition, the bill amends G.S. 136-44.20(d) to allow the $5 million in State funds authorized by this section for transit alternatives to highway construction to be used as the matching share of federal grants for transit alternatives to highway construction. House Bill 625 became effective July 23, 1993.

Demolition Asphalt Sunset Off (HB 969; Chapter 86): House Bill 969 removes the July 1, 1993 sunset on Chapter 537 of the 1991 Session Laws. The effect of this bill is to allow the continued use of nonhazardous demolition debris, including used asphalt, for fill during highway construction. House Bill 969 become effective May 26, 1993.

Pilot Mountain Park Right-of-Way (HB 1127; Chapter 457): House Bill 1127 adds new G.S. 143-260.10F authorizing the State of North Carolina to convey a road right-of-way to DOT across lands within Pilot Mountain State Park, notwithstanding G.S. 143-260.10's provisions. The bill describes the right-of-way, and specifies that the described property is removed from the State Nature and Historic Preserve and deleted from the State Parks System. The State is only to use the proceeds from this right-of-way to acquire lands for the expansion of Pilot Mountain State Park. House Bill 1127 became effective July 23, 1993.

DOT Private Contract Participation (SB 563; Chapter 183): Senate Bill 563 extends the expiration date to June 30, 1995 for G.S. 136-28.6, which authorizes DOT to participate in private engineering and construction contracts for State highways. Senate Bill 563 became effective June 21, 1993.

Motorcycles

Motorcycle Safety (HB 1355 §5; Chapter 320): Section 5 of House Bill 1355 removes the sunset from Chapter 755 of the 1984 Session Laws, which established a motorcycle safety instruction program.

Motor Vehicle Law

Driving While Impaired Amendments (HB 385; Chapter 285): House Bill 385 makes various changes to the impaired driving statutes under Chapter 20 of the General Statutes.

Blood Alcohol Concentration. The most notable change relates to the decrease in the blood alcohol concentration level. House Bill 385 lowers the concentration of alcohol **from 0.10 to 0.08** in the blood necessary for a conviction under the driving while impaired statute. Other statutes related to the blood alcohol concentration level are conformed to the new standard of 0.08, including the impaired instruction statute, the 10-day civil revocation statute, the chemical analyses statutes, and certain revocation statutes.

Other changes. Another change made by House Bill 385 concerns the willful refusal to give a second or subsequent breath sample when necessary to meet the requirements of the breath testing statute. The bill provides that a person's willful refusal to give the second or subsequent sample shall make the first sample (or the sample with the lowest alcohol concentration) admissible in any judicial or administrative hearing for any relevant purpose. Regarding a licensee under the age of 18, House Bill 385 amends the statute to provide that the revocation period for these persons for impaired driving shall be equal to the number of days from the date of the charge (rather than conviction) to the person's eighteenth birthday, or 45 days, whichever is longer. House Bill 385 adds two new grossly aggravating factors that may result in enhanced punishment: (1) having a child under the age of 16 in the car at the time of the offense, and (2) conviction of one or more impaired driving offenses after the date of a present offense for which a defendant is to be sentenced. House Bill 385 adds **commercial** driving while impaired to the felony death by vehicle statute. Finally, House Bill 385 adds a provision to the insurance statutes to provide that there shall be no insurance consequences for a license revocation under the immediate 10-day civil revocation statute when there is ultimately a dismissal or acquittal of the underlying driving while impaired offense.

House Bill 385 becomes effective October 1, 1993, and applies to offenses committed on or after that date.

Trailer Couplings (HB 621; Chapter 71): House Bill 621 adds a requirement that towed vehicles be attached to the towing unit by means of safety chains or cables with sufficient strength to hold the gross weight of the towed vehicle should the primary towing device fail or disconnect. House Bill 621 allows exceptions for (1) trailers and semitrailers that are connected to the towing vehicle by locking pins or bolts that are of sufficient strength to hold the gross weight of the towed vehicle, and (2) semitrailers equipped with fifth wheel assemblies that include locking devices. House Bill 621 becomes effective October 1, 1993.

State Games Cars (HB 793; Chapter 87): See STATE GOVERNMENT.

Recyclable Weight Penalty (HB 802; Chapter 426): See ENVIRONMENT.

Farm Produce Hauling Permits (HB 982; Chapter 470): See AGRICULTURE.

Five Year Drivers License Renewal (HB 1016; Chapter 368): House Bill 1016 amends the driver license renewal system to move from a four-year cycle to a five-year cycle. Under current law a drivers license expires on the birthday of the licensee in the fourth year following the year of issuance. House Bill 1016 establishes a five-year renewal cycle that will fall on a person's birthdays that are divisible by five (i.e. 20, 25, 30, 35, etc.), except for persons that are over 62 years of age. In moving to this system, the first renewal cycle for each person will vary from three years to eight years depending on the age of the person. For example, persons 17 years old will first renew in three years, persons 18 years old will first renew in seven years, and persons 19 years old will first renew in six years. The bill creates a special rule for persons over 62 years of age and specifies that they will renew their licenses on their birthdays in the fifth year after issuance and every five years thereafter. In addition to the new five-year renewal cycle, House Bill 1016 eliminates some exceptions to testing requirements for drivers licenses regarding road tests of certain employees and parallel parking by older persons. House Bill 1016 becomes effective January 1, 1995.

Special/Multiyear Plate Changes (SB 161; Chapter 543): Senate Bill 161 makes changes to multiyear trailer plates, creates several new special license plates, sets the fees for the new plates, and directs how the fees are to be distributed. Senate Bill 161 provides that a person may obtain multiyear plates for all trailers. (The Division of Motor Vehicles is currently allowing all trailers to obtain multiyear plates even though the statute states that a multiyear plate can be obtained only for a semitrailer.) Senate Bill 161 makes a conforming change to the statute that specifies which motor vehicles are to be listed with the county tax assessor for purposes of local property taxes and which are not. It adds trailers that receive multiyear plates to the list of vehicles that must be listed annually with the local assessor.

Senate Bill 161 adds several new special license plate authorizations. Some of the new plates authorized are designed as "fundraisers" and are subject to a higher additional fee. Except for new plates authorized for groups that do not and never will include 300 members, the bill requires at least 300 applications for each new plate before the plate may be issued. The two plates added that cannot and likely never will include 300 members are the Legion of Valor plates and the Register of Deeds plate. The new plates authorized by the bill are: American Legion, Civic Club, County Commissioner, Future Farmer of America, Legion of Valor, Register of Deeds, Special Olympics, State Attraction, Veterans of Foreign Wars, and Wildlife Resources. Senate Bill 161 also makes several technical and clarifying changes to other statutes concerning special license plates.

Senate Bill 161 was effective on ratification, July 24, 1993.

Dealer License Plate Changes (SB 162; Chapter 440): Senate Bill 162 was recommended by the Revenue Laws Study Committee to the 1993 General Assembly to address the misuse of motor vehicle dealer license plates. First, Senate Bill 162 restricts the number of dealer plates that may be issued to the same dealer by limiting the number of plates to the number of vehicles sold by that dealer over the previous twelve-month period and to the number of sales representatives. Second, Senate Bill 162 modifies the sanctions for misuse of a dealer plate. The bill clarifies when a dealer plate must be surrendered to the Division of Motor Vehicles. Display of a dealer plate on a vehicle is permitted only under certain specified criteria listed in the bill. Senate Bill 162 provides for infractions, civil penalties, and rescission of dealer plates following violations of any requirements related to dealer plates. Third, Senate Bill 162 expands the use of transporter plates to allow for the limited operation of a motor vehicle for a greater number of specific purposes and thus result in the need for less dealer plates. Fourth, Senate Bill 162 establishes a special sports event temporary plate

for dealers who loan vehicles for use at special sports events. Finally, Senate Bill 162 changes the fees for dealer and transporter plates and establishes a new fee for the special sports event plate. The sections of Senate Bill 162 related to transporter plates become effective January 1, 1994. The remainder of the Senate Bill 162 becomes effective October 1, 1993.

Increase School Bus Speed to 45 mph (SB 578; Chapter 217): See **EDUCATION**.

Free Special ID Cards for Homeless (SB 836; Chapter 490): Senate Bill 836 waives the fee for special identification cards for homeless persons who are residents of the State. In order to obtain the card without paying the fee, a homeless person must present a letter from the facility serving the person verifying that the person is homeless. Senate Bill 836 also abolishes the reserve fund for fees collected for the issuance of special identification cards. Senate Bill 836 was effective on ratification, July 23, 1993.

Oppose Federal License Requirement-2 (SJR 1017; R30): Senate Joint Resolution 1017 express opposition to a federal requirement withholding a percentage of federal-aid highway funds to any state which fails to enact legislation requiring the revocation or suspension of an individual's drivers license upon conviction of a drug-related offense. Senate Joint Resolution 30 became effective upon ratification, July 24, 1993.

Drivers License Compact (SB 1074; Chapter 533): Senate Bill 1074 makes North Carolina a member of the Drivers License Compact. Members of the Compact must report to another member state a conviction for: (1) manslaughter or negligent homicide resulting from the operation of motor vehicle; (2) driving a motor vehicle while impaired; (3) a felony in the commission of which a motor vehicle was used; and (4) failure to stop and render aid in the event of a motor vehicle accident resulting in death or personal injury of another. A member of the Compact must also report to another member state a conviction for any other offenses that the member states agree to report. Reports of convictions listed above and any other convictions agreed to by the Compact are given the same effect as if the conviction had occurred in the state receiving the report.

Senate Bill 1074 also provides that the Division of Motor Vehicles may require an applicant for a driver's license to present at least two forms of identification. Effective January 1, 1995, the Division must enforce this requirement. The bill also makes the following amendments: (1) deletes the nonresident military personnel exemption to provision in G.S.20-9(h) requiring the surrender of a drivers license issued by another state when applying for a North Carolina license; (2) disqualifies a person from driving a commercial motor vehicle when that person's regular or commercial license is revoked; (3) allows for the electronic transmittal of driving offense information from the clerk of court to the Division; (4) repeals G.S. 20-62 concerning the sale of motor vehicles as scrap; (5) changes from 22 to 30 the number of inches that a rear underride guard on semitrailers must be from the surface; and (6) effective January 1, 1995, repeals G.S. 20-7(b) which requires every application for drivers license to be made upon a form approved by the Commission.

Effective December 1, 1993, Senate Bill 1074 makes it a Class J felony for employees and agents of the Division to (1) accept anything of value other than the required fee for the issuance of a driver's license or special identification card; (2) knowing it is false, accept false proof of identification; or (3) knowing it is false, enter false information concerning a drivers license or special identification card in the records of the Division. A violation by employees will result in the employee's

dismissal from employment and a bar to public office or public employment for five years. Violation by an employee of an agent of the Division results in cancellation of the agent's contract unless the agent dismisses the employee.

The bill also allows a municipality to keep open and assume responsibility for maintenance of a road within one mile of its corporate limits once the road is abandoned from the State highway system. Unless otherwise noted, Senate Bill 1074 became effective upon ratification, July 24, 1993.

Vehicle Inspection Fees Upped (SB 1248; Chapter 385): Senate Bill 1248 increases from $6.25 to $8.25 the fee for inspecting a vehicle to determine compliance with safety inspection requirements. The bill also increases from $13.00 to to $17.00 the fee for inspecting a vehicle to determine compliance with safety inspection requirements and exhaust emission standards. Senate Bill becomes effective October 1, 1993.

Motor Vehicle Dealers

Delivery of Motor Vehicles (HB 1094; Chapter 328): House Bill 1094 allows a motor vehicle dealer to enter into a sales contract with a purchaser and deliver the vehicle to the purchaser on the condition that the purchaser will obtain financing for the vehicle. The dealer is under no obligation to execute the certificate of origin or certificate of title until financing is obtained by the purchaser. Liability, collision, and comprehensive insurance is covered by the dealer's policy until financing is obtained and the certificate of origin or certificate of title is executed. Upon execution of the certificate of origin or certificate of title, and upon the purchaser having liability insurance on another vehicle, the delivered vehicle is covered by the purchaser's insurance policy from the time of financial approval and execution. House Bill 1094 becomes effective October 1, 1993.

Exempt MV Sales From 3-Day Sale Rule (SB 839; Chapter 141): Senate Bill 839 exempts the off-premises sale of motor vehicles by licensed dealers from the statutory provision allowing buyers to cancel the sale within three days of the transaction. Senate Bill 839 becomes effective December 1, 1993, and applies to acts committed on or after that date.

Franchise Termination Decision (SB 840; Chapter 123): Senate Bill 840 extends from 60 days to 90 days the time in which the Commissioner of Motor Vehicles must render a decision on the termination, cancellation or nonrenewal of a motor vehicle franchise when the termination, cancellation, or nonrenewal results from the dealer's bankruptcy, failure to stay open, loss of necessary licenses, or conviction of a felony involving moral turpitude. Senate Bill 840 becomes effective October 1, 1993, and applies to petitions filed on or after that date.

Motor Vehicle Warranty Reimbursement Rights (SB 841; Chapter 116): Senate Bill 841 requires that manufacturers of motor vehicles pay reasonable compensation to their motor vehicle dealers for warranty work and service on their products. The bill specifies that "reasonable compensation" shall not be less than the dealer's current retail labor rate and the amount charged to retail customers for nonwarranty work that is similar. Senate Bill 841 also provides that any audit for warranty compensation, rebates, or other forms of sales incentive compensation shall only be for the 24-month period following the date of the claim. Senate Bill 841 does not apply to mobile or manufactured housing or recreational vehicles. Senate Bill 841 became effective July 1, 1993.

Combined Auto Franchises (SB 939; Chapter 331): Senate Bill 939 provides that the "reasonable facilities requirements" in G.S. 20-305 may not include a requirement that the dealer establish or maintain exclusive facilities, personnel, or display space when such requirements (1) would be unreasonable in light of current economic conditions, and (2) would not otherwise be justified by reasonable business considerations. The bill also adds to the list of definitions contained in G.S. 20-286 a definition of "franchised motor vehicle dealer" and "independent motor vehicle dealer." A franchised motor vehicle dealer is defined as one "who holds a currently valid franchise...with a manufacturer or distributor of new motor vehicles, trailer, or semitrailers." An independent motor vehicle dealer is defined as a "dealer in used motor vehicles." The bill makes it unlawful for any person to, for a fee or other valuable consideration, arrange or offer a transaction involving the sale of a new motor vehicle except for: (1) a licensed, franchised motor vehicle dealer when acting on behalf of the dealer; (2) a licensed manufacturer; (3) a licensed distributor; or (4) a bona fide owner of the vehicle. Senate Bill 939 becomes effective October 1, 1993.

Public Transportation

Repeal RTA Tax Restriction (SB 63; Chapter 382): Senate Bill 63 repealed G.S. 160A-623(i1), the two percent restriction on the use of the proceeds of the regional transportation authority registration tax for administrative purposes. The bill also added a new section requiring regional public transportation authorities to annually submit to the General Assembly an annual operating report (including a report of administrative expenses), and an audited financial report. Senate Bill 63 became effective July 18, 1993

Railroads

NC Rail Council (SB 64; Chapter 483): Senate Bill 64 (1) creates a Rail Council within the Department of Transportation to advise the Governor, the Secretary of Transportation, the Board of Transportation, and the General Assembly on policy concerning the preservation and enhancement of the State's rail system; (2) changes two statutory references from "highway" to "transportation;" (3) provides that the chairman of the Rail Council shall be an ex officio member of the Board of Transportation, and (4) provides that at least one at-large member of the Board shall posses broad knowledge of public transportation matters. Senate Bill 64 became effective July 1, 1993.

Roads and Highways

Counties Road Renaming (HB 160; Chapter 62): House Bill 160 amends Chapter 153A (Counties) to allow all counties to name or rename roads within unincorporated areas of the county, subject to the procedures specified in G.S. 153A-239.1. House Bill 160 became effective May 24, 1993.

Mountain County Road Districts (HB 604; Chapter 378): House Bill 604 amends G.S. 153A-301 by adding a new subsection (d) authorizing the board of county commissioners in a county with a protected mountain ridge to establish a service district for the maintenance of roads not maintained by DOT and recorded by plat before October 1, 1975 in the county register of deeds. The bill also amends G.S. 153A-

149(c) to add maintenance of county roads as authorized by new G.S. 153A-301(d) to the list of purposes for which property taxes may be levied without voter approval (within the overall $1.50 rate limit). House Bill 604 became effective July 18, 1993.

City Street Closings (SB 772; Chapter 149): Senate Bill 772 makes several changes to G.S. 160A-299 which governs street and alley closings by municipalities. The bill provides that appeals of a decision to close a street or alley shall be heard by a judge sitting without a jury. Under prior law, appeals were heard **de novo** by the court. The bill also provides that the judge shall determine whether the decision was made in accordance with procedural requirements, statutory standards, and local law or ordinances. Senate Bill 772 also amends the provisions of G.S. 160A-299(c) which vests title to the right-of-way of a closed street or alley to those persons owning lots adjacent to the street or alley. Under the bill, this procedure may be altered by the assent of all property owners by filing a plat which shows the portion of the closed street to be taken by each owner. The plat must be signed by all property owners with an ownership right in the closed street. The bill also clarifies that the provisions of this section apply to unopened streets that are shown on plats but that have not been accepted or maintained by the city. Under prior G.S. 160A-299, a city could reserve title in any utility interest or easement within a closed street. Senate Bill 772 extends this reservation to utility improvements or easements owned by private utilities which at the time of the closing have an agreement or franchise with the city. In addition, the bill allows a city to retain both public and private utility easements in cases of streets withdrawn under G.S. 136-96. G.S. 136-96 provides that a piece of land dedicated to public use as a road which is not actually opened within 15 years of dedication is presumed abandoned. (The presumption is not effective until the dedicator files a declaration of abandonment with the register of deeds.) To retain the easements, the city must hold a public hearing, approve a "declaration of retention of utility easements", and provide notice to the party withdrawing the street from dedication. Senate Bill 772 does not affect any local modification to G.S. 160A-229 that is not in conflict with the bill. Senate Bill 772 became effective June 14, 1993 and applies to any street closing order adopted on or after July 1, 1993 but does not apply to pending litigation.

Miscellaneous

Highway Use Tax Exemption (SB 128; Chapter 467): See **TAXATION.**

PENDING LEGISLATION

No Billboards Near Pilot Mountain (HB 1158): Passed third reading in both houses, but not ratified.

STUDIES

House Bill 1319

The 1993 Studies Bill (HB 1319) was passed by both houses but was not ratified before adjournment of the 1993 Regular Session. It should be signed into law at the beginning of the 1994 Short Session. Legislative Research Commission Studies relating

to the topic of Transportation include: (1) All-Terrain Vehicles Licensing and Regulation; (2) Public Transportation and Railroads; (3) Advisability of Protecting Purchasers of Used Motor Vehicles and of Extending Warranties to the Sale or Lease of Used Motor Vehicles; (4) Comprehensive Transportation Funding. On September 13, 1993, the LRC referred (1),(2), and (4) to the Joint Legislative Transportation Oversight Committee; and referred (3) to the Consumer Protection Committee.

Legislative Research Commission Studies

LRC shall study **Driver Education Program** offered by the public schools. SL93-321, §144.3, SB 27.

LRC may study, Fiscal Trends shall study, **Highway Fund Expenditures to Agencies Other Than DOT.** SL93-321, §169, SB 27.

Independent Studies, Boards, Etc., Created or Continued

Global TransPark Development Commission. SL93-544, SB 853; G.S. 158-35.

North Carolina Rail Council. SL93-483, SB 64; G.S. 143B-362.

Referrals to Agencies

Department of Transportation shall study nonbetterment contributions. SL93-561, §64, SB 26.

Referrals to Existing Commissions, Etc.

Joint Legislative Transportation Oversight Committee (name changed from Joint Legislative Highway Oversight Committee. SL93-321, §169.2, SB 27.

Joint Legislative Transportation Oversight Committee shall study diesel fuel consumption. SL93-561, §71, SB 26.