SUMMARIES OF SUBSTANTIVE RATIFIED LEGISLATION

1994

1993 GENERAL ASSEMBLY
1994 REGULAR SESSION

RESEARCH DIVISION
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INTRODUCTION

This publication contains summaries of substantive legislation enacted by the General Assembly during the 1994 Regular 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. A separate listing of agency, legislative, and independent studies is included.

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, Sherri Evans-Stanton, Sue Floyd, Bill Gilkeson, Judy Hartgrove, Tim Hovis, Carolyn Johnson, Robin Johnson, Linwood Jones, Lynn Marshbanks, Giles S. Perry, Walker Reagan, Barbara Riley, Steven Rose, Steve Schanz, Susan Seahorn, Terry Sullivan, Mary D. Thompson, Sandra Timmons, Jim Watts, and John Young. Giles S. Perry of the Research Division served as editor of this document. 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.

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AGRICULTURE

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

Crab License/Fisheries Moratorium (HB 1540, Chapter 576; SB 1436, Chapter 675; and HB 589, Chapter 770): House Bill 1540 separates the "Crab" license from the "Shellfish and Crab" license to remove the unconstitutional residency requirement for crab licenses. Senate Bill 1436 and HB 589 make technical changes to HB 1540. The bill establishes a two-year moratorium effective July 1, 1994 through June 30, 1996 on new vessel, crab and shellfish licenses, and non-vessel endorsements to sell fish. During the moratorium, persons licensed during the 1993-94 fiscal year may renew their licenses. The bill creates an Appeals Panel and authorizes them to grant license applications if it finds that the denial would create a hardship or emergency.

Section 17.7 of Senate Bill 1505 appropriated $225,000 for the 1994-95 fiscal year to the UNC Board of Governors for the Sea Grant College Program, assisted by a Steering Committee, to study the fisheries industry. Section 9.1 of Senate Bill 1505 appropriated $25,000 to the Joint Legislative Commission on Seafood and Aquaculture for expenses.

Chapter 576 (which created the moratorium) became effective July 1, 1994. Chapters 675 and 770 (which made technical changes) became effective on ratification, July 5, 1994 and July 16, 1994, respectively.

Non Resident Special Device License (HB 1940; Chapter 778): House Bill 1940 establishes a new "commercial" special device license under the State's fishing laws and distinguishes between a commercial and a noncommercial license. A resident commercial special device license ($100) authorizes the taking of nongame fish with 4 or more special devices (all devices used for taking fish other than a hook and line). The cost of a nonresident commercial special device license is $100 or the amount charged by the nonresident's state of residence.

The bill became effective August 1, 1994.

Allow Taking Red Wolves (HB 2006; Chapter 635): House Bill 2006 is a local bill, applicable in Hyde and Washington Counties only, making it lawful under State law for a private landowner to trap and kill red wolves (an endangered species) on the landowner's property. There must be a reasonable belief that the wolf or wolves are a threat to human life or to the life of livestock on the property. The landowner must have previously requested the U.S. Fish and Wildlife Service to remove the wolves and he must report the killing to USF&W within 48 hours.

The act becomes effective January 1, 1995.

Wildlife License Restructuring (SB 591; Chapter 684): Senate Bill 591 restructures and recodifies the hunting and fishing license laws of the State contained in Article 21 of Chapter 113 of the General Statutes. Among the revised licenses available are a "combination hunting and fishing license," G.S. 113-270.1C, entitling licensee to take (except on game lands) all wild birds and wild animals (other than big game and waterfowl) and to fish with hook and line, except in public mountain trout waters and an "annual sportsman license," G.S. 113-270.1D, entitling the holder to take all wild animals and wild birds (other than waterfowl) wherever lawful (including on game lands) and to fish with hook and line in all waters, including public mountain trout waters. "Lifetime sportsman license" will be available for infants (under one year of age); youths (under 12 years of age); adult residents; nonresidents; and Age 70 and over. G.S. 113-271, hook and line fishing licenses, is amended to entitle the holder of

the license to fish in all inland and joint waters, excluding public mountain trout waters. The amendments also provide for a resident annual comprehensive fishing license and three types of short-term fishing licenses. New G.S. 113-272(m) declares the Fourth of July a free fishing day with no hook and line license required.

The bill also increases the membership on the Wildlife Resources Commission from 13 to 17. The General Assembly appoints the four additional members, one additional member upon the recommendation of the President Pro Tempore of the Senate and three upon the recommendation of the Speaker of the House.

The provisions of the act providing for the 4th of July free fishing day and the expansion of the Wildlife Resources Commission became effective upon the ratification of the act, July 5, 1994. The remainder of the act dealing with licensing restructuring becomes effective July 1, 1995.

Disabled Sportsman Program (SB 1222; Chapter 557): Senate Bill 1222 establishes the Disabled Sportsman Program to be administered by the Wildlife Resources Commission. The program consists of special hunting and fishing activities adapted for persons with certain disabilities.

To be eligible, one must be certified through competent medical evidence to have one of a number of listed disabilities including amputation of a limb, dysfunction of one or more limbs, confinement to a wheelchair, crutches, or a walker, deafness, paralysis, or legal blindness (for fishing only). Persons qualifying may participate by completing an application, providing the necessary medical certification, and paying an annual fee of $10. When participating, a disabled person may be accompanied by an able-bodied companion. Both the disabled person and companion must obtain any applicable hunting or fishing licenses required for the activities.

The Commission shall establish special seasons and bag limits for the program, may permit the use of vehicles in areas normally closed to such traffic, and alter other established rules of the Commission for the purpose of providing access to disabled persons participating in the program. There shall be at least 4 special hunting activities per year; two during the season for hunting deer with bow and arrow, and two during the season for taking deer with guns. Locations of these activities shall be varied to provide access to disabled persons in all regions of the State.

The act became effective May 24, 1994.

Unlawful to Remove Collars (SB 1362; Chapter 699): Senate Bill 1362 makes it a Class 3 misdemeanor to remove an electronic collar from a dog. The act applies only in Haywood, Henderson, Jackson, Macon, Swain, and Transylvania Counties. Subsequent convictions are punishable as a Class 2 misdemeanor.

The act becomes effective October 1, 1994 and applies to offenses committed on or after that date.

Submerged Lands Claims Extension (SB 1437; Chapter 717): Senate Bill 1437 extends the time to resolve claims of title to submerged lands filed under G.S. 113-205. The time for resolving claims pending is extended from December 31, 1994 to December 31, 1998. The time for contesting a claim resolution is extended by 4 years to December 1, 2001. The deadline for donating claimed marshland to the State is extended from December 31, 1994 to December 31, 1998.

The bill became effective July 7, 1994.

Cotton Gin Funds (SB 1505; Chapter 769, §26): Section 26 of Senate Bill 1505 amends the North Carolina Agricultural Warehouse Act to provide that the fund created in G.S. 106-435 may be used for loans to cotton gin owners to bring the gins into compliance with federal and State air quality regulations.

This section became effective July 1, 1994.

Blue Ribbon Advisory Council on Oysters (SB 1505; Chapter 769, §27.16): Section 27.16 creates a 19-member Blue Ribbon Advisory Council on Oysters to assist the Marine Fisheries Commission and the Joint Legislative Commission on Seafood and Aquaculture on making recommendations relating to the oyster resource. Issues to be studied include, restoration of oyster production, aquaculture, zoning and protective measures, marketing and economic development, leasing program, and development of a management plan. The bill appropriates $100,000 for the 1994-95 fiscal year to the Dept. of Environment, Health, and Natural Resources for administrative and other expenses incurred by the Advisory Council.

The bill became effective July 1, 1994.

Fishery Resource Grant Program (SB 1505; Chapter 769, §27.17): Section 27.17 establishes a Fishery Resource Grant Program to enhance the State's coastal fishery resources through individual grants to test new equipment, research industry trends, perform environmental pilot studies and study other fishery issues. The bill appropriates $1,000,000 for the 1994-95 fiscal year to the Dept. of Environment, Health, and Natural Resources for the Program.

The bill became effective July 1, 1994.

CHILDREN AND FAMILIES
(Robin Johnson, Lynn Marshbanks)

Adoption and Foster Care

Foster Care and Adoptions Training (SB 1505; Chapter 769, §§25.11 & 25.12): Section 25.11 of the Current Operations and Capital Improvements Appropriations Act of 1994, effective July 1, 1994, appropriates $181,270 to the Department of Human Resource to establish in-house preservice training and continuing education for foster care parents, foster care workers, and adoption care workers. Section 25.12 appropriates $15,167 to the Department of Human Resources to purchase an ongoing assessment tool to be used to study, develop, and implement a statewide recruitment and retention plan for foster and adoptive parents.

HIV Foster Care Board Payment Funds (SB 1505; Chapter 769, §25.42): Section 25.42 of Chapter 769, effective July 1, 1994, appropriates $499,500 to the Department of Human Resources to be used for monthly foster care payments, ranging from $800 to $1600 (depending on the severity of a child's illness) for children with HIV.

Medicaid Coverage for Adoptive Children with Special Needs (SB 1505; Chapter 769, §25.46): Effective October 1, 1994, Section 25.46 of Chapter 769 directs the Department of Human Resources to provide Medicaid coverage for adoptive children with special or rehabilitative needs, regardless of the adoptive family's income.

Child Protection

No Children in Pickup Beds (HB 27; Chapter 723): House Bill 27 adds a new G.S. 20-135.2B to prohibit drivers from transporting children under the age of 12 in the open bed or open cargo area of a vehicle. This does not apply when: (i) an adult is

present in the bed or cargo area and is supervising the child; (ii) the child is wearing a seat belt; (iii) an emergency exists; (iv) the vehicle is in a parade under a valid permit; or (v) the vehicle is being operated in an agricultural enterprise. In addition, the act does not apply when the vehicle is being operated in the 32 counties having no incorporated area with a population greater than 3,500: Alexander, Alleghany, Ashe, Avery, Bertie, Camden, Caswell, Cherokee, Clay, Currituck, Duplin, Franklin, Gates, Graham, Green, Hyde, Jackson, Jones, Macon, Madison, Mitchell, Montgomery, Northampton, Pamlico, Pender, Perquimans, Polk, Swain, Tyrrell, Warren, Yadkin, and Yancey. Violation of this section is an infraction punishable by a fine of $25.00. An infraction is not a crime, and conviction of an infraction has no consequence other than payment of the fine. No court costs, drivers license points, or insurance surcharges may be assessed because of a violation of this section. The act directs the Commissioner of the Division of Motor Vehicles and the Department of Public Instruction to incorporate in driver education and driver licensing programs information to inform the public about the act and to encourage compliance. The act also directs the Governor's Highway Safety Program to evaluate the effectiveness of the act and to include the results in its report on highway safety by January 1, 1998. The act takes effect on January 1, 1995.

Child Protection Initiatives (HB 358; Chapter 723): A recommendation of the Child Fatality Task Force, House Bill 358 directs the Administrative Officer of the Courts to encourage district attorneys to develop and disseminate information on creating "child friendly" courtroom environments, preparing child witnesses, and using videotaped and closed circuit testimony in the courtroom. The bill also encourages (i) the North Carolina Conference of District Attorneys to determine interest in setting up a special section for child abuse prosecutors and, if there is enough interest, to set up such a section; (ii) the Conference and the Department of Justice to develop protocols and training for various personnel involved in child abuse investigations and prosecutions and for information-sharing; and (iii) the Department of Justice and the Administrative Officer of the Courts to develop and disseminate job descriptions and working procedures for law enforcement officers specializing in child abuse criminal investigations and for assistant district attorneys who handle child abuse and neglect cases. The act also adds a new G.S. 15A-534.4 to clarify that judicial officials may impose certain specific conditions on pretrial release in all sex offense cases and cases involving violent crimes against a minor. The act became effective July 7, 1994.

Felony/Sell Handguns to Minors (HB 1770; Chapter 597): See the summary under **CRIMINAL LAW AND PROCEDURE**.

Strengthen Child Restraint Law (SB 1467; Chapter 748): This act amends G.S. 20-137.1 to require drivers to secure children under the age of 12 (currently under the age of six) with their seatbelts. It also requires drivers to secure children under the age of four (currently under the age of three) in an approved car safety seat. The act becomes effective July 1, 1995.

Extend Child Fatality Task Force/Expand Membership (SB 1505; Chapter 769, §27.8): Section 27.8 of Chapter 769, effective July 1, 1994, changes the current termination date of February 1, 1995, for the Child Fatality Task Force to February 1, 1997. The section also adds three members to be appointed by the Speaker of the House of Representatives and three members to be appointed by the President Pro Tempore of the Senate to the Task Force.

Pool Safety (SB 1517; Chapter 732): Senate Bill 1517 directs the Commission for Health Services, effective January 1, 1995, to adopt rules concerning the materials, depth, dimensions, and standards for the abatement of suction hazards in public swimming pools in order to minimize the risk of injury to children. The Commission also is directed to adopt any necessary temporary rules to minimize suction-related injuries during the 1994 season. The act allows the Secretary of Environment, Health and Natural Resources to suspend or revoke immediately a permit to operate a public swimming pool if the pool fails to maintain standards related to the abatement of suction hazards, which result in an unsafe condition. The act provides, effective 30 days after ratification, that no single drain, single suction outlet public swimming pool less than 18 inches deep shall be allowed to operate. Within 15 days after ratification, the Department of Environment, Health and Natural Resources must disseminate to local health departments, public swimming pool operators, and the general public information concerning the avoidance of suction-related hazards in wading pools. Except as provided, the act was effective upon ratification, July 11, 1994.

Day Care

Day Care Rate Clarification (SB 1505; Chapter 769, §25.35(b)): Subsection (b) of Section 25.35 of Chapter 769, effective July 1, 1994, provides that county departments of social services shall not use a provider's failure to comply with additional requirements as a condition for reducing the provider's subsidized child day care rate.

Paternity

Resumption of Surname (HB 1133; Chapter 565): House Bill 1133 allows a man who is divorced or widowed to resume use of the surname that he used before marriage. To do this, the man must file an application, stating his intention to resume using his name, with the clerk of court in the county where he resides. The bill becomes effective on October 1, 1994.

Conform Paternity Establishment (SB 1712; Chapter 733): Senate Bill 1712 amends the N.C. Rules of Evidence (G.S. § 8-50.1(b1)) relating to the procedure for contesting blood or genetic marker tests in civil trials in which the question of parentage arises. In order to object to or contest these tests, a party must file with the court written objections setting forth the basis for those objections and must serve these on all other parties no less than 10 days before any hearing at which the results may be introduced. This party also may subpoena the testing expert. If objections are not filed within this time and manner, the test results will be admissible as evidence of paternity without the need for proof of authenticity. The bill also adds a new G.S. 110-132.1 to give full faith and credit to out-of-state paternity determinations, and amends Rule 55(b) of the Rules of Civil Procedure to allow for the entry of judgment by default in paternity actions when the defendant fails to appear. The act becomes effective August 1, 1994, and applies to civil actions commenced on or after that date.

Smart Start

Amend Early Childhood Initiatives (SB 1384; Chapter 766): Senate Bill 1384, a recommendation of the Joint Legislative Oversight Committee on Early Childhood Education and Development Initiatives, makes the following substantive changes to Part

10B of Article 3 of Chapter 143B of the General Statutes: "Early Childhood Initiatives" ("Smart Start"): (1) beginning with the 1994-95 selections, local projects will be geographically distributed, rather than distributed one per congressional district; (2) DHR must provide technical and administrative assistance to local partnerships; (3) DHR may delegate contracting authority to local partnerships after the first year and to the NC Partnership or a public entity at any time; (4) DHR may adopt rules to limit the categories of direct services for which funds are made available during a local project's first year; (5) existing nonprofits, other than those formed on or after July 1, 1993, and that meet Smart Start guidelines, shall no longer be eligible to serve as local partnerships; (6) local partnerships must adopt procedures so that people who provide services know and understand their duty to report suspected child abuse or neglect; (7) local partnerships are encouraged to devote an "appropriate" amount of their allocations, considering these needs and other available resources, to meet the needs of young children below poverty who either remain in the home or require services beyond those offered in child care settings; (8) local partnerships must use at least 75% of their allocations designated for direct services for any of the enumerated activities and services; (9) the list of child day care services for which partnerships may use their allocations is expanded to include (a) child day care subsidies to reduce waiting lists, (b) raising the county child day care subsidy rate to the State market rate, if applicable, in exchange for improvements in quality of care, (c) raising the income eligibility for child care subsidies up to 75% of the State median family income, (d) Head Start services, (e) activities to reduce staff turnover, (f) transportation services, (g) expanded services or enhanced rates for children with special needs, and (h) development of comprehensive services including child health and family support; (10) local partnerships that are not fully funded during the first year, other than those selected in 1993, are encouraged to develop long-term plans that (a) consider how to meet the assessed needs of low-income children and their families within their neighborhoods or communities, and (b) reflect a process to meet these needs as additional allocations and resources are received; (11) funds designated to support activities and services for children and families shall not be used for major capital expenditures unless the Secretary approves this use based on his finding that the local partnership has established that this use is a priority need for the local plan, it is necessary to provide services to underserved children and families, and the local partnership cannot otherwise meet this need by using available State or federal funds; (12) local allocations shall not supplant current county expenditures for children and their families, and shall maintain current efforts; (13) absent the Secretary's approval, the use of State funds is prohibited where other State or federal funding sources, such as Head Start, exist; and (14) parents must give their written, informed consent for home-centered services and must have access to any records that may be kept on home-centered services. The act took effect July 16, 1994.

Early Childhood Education and Development Initiatives Application Clarification (SB 1505; Chapter 769, §25.33): Section 25.33 of the Current Operations and Capital Improvements Appropriations Act of 1994, effective July 1, 1994, directs DHR, in its selection of the next 12 Smart Start projects, to accept applications from counties that have not yet applied, accept additional information from counties that have already applied, and consider each county's needs and resources assessment.

Miscellaneous

Medicaid Compliance (HB 1563; Chapter 644): House Bill 1563 does the following:

(1) Adds a new G.S. 58-51-115 to prohibit any health insurer (as defined in act) from considering the availability of or eligibility for Medicaid when considering coverage or making payments under its health benefit plan;
(2) Adds a new G.S. 58-51-120 to:
   a. prohibit health insurers from denying coverage to a child under a parent's plan because the child is born out of wedlock, is not claimed as a dependent for federal taxes, or does not reside with the parent or in the insurer's service area.
   b. provide that, if a court or administrative order requires a parent to provide health coverage for a child and the parent is eligible for family health benefit plan coverage, then the insurer must (i) allow the parent to enroll without regard to enrollment seasons; (ii) enroll the child based on an application from the other parent or DHR if the enrolled parent does not enroll the child; and (iii) not disenroll the child unless the order is no longer in effect or the child is or will have comparable coverage through another insurer.
   c. requires insurers covering children through the health benefit plan of a noncustodial parent to provide information to the custodial parent that will: (i) allow the parent to obtain benefits for the child; (ii) permit the custodial parent to submit claims without consent of the noncustodial parent; (iii) permit the child's provider to submit claims with the noncustodial parent's consent; and (iv) pay claims directly to the custodial parent, the provider, or DHR.
(3) Adds a new G.S. 58-51-125 to require health benefit plans that cover dependent children to provide benefits for children placed for adoption without regard to whether the adoption is final or to the existence of a pre-existing condition.
(4) Amends G.S. 58-51-30 to require insurers to provide benefits to foster children on the same terms as those for other children.
(5) Amends Chapter 108A of the General Statutes to:
   a. extend similar obligations to employers;
   b. require employers to withhold the employee's share of premiums for the benefit plan from wages, consistent with any federal rules;
   c. allow DHR to garnish wages;
   d. allow the Secretary of Revenue to withhold tax refunds of any person who is required to provide health coverage to a child eligible for benefits under Medicaid, and who has received payments from a third party for the costs of health services, but has not used the payments to reimburse the other parent or provider for those services; and
   e. subrogates DHR to the position of the recipients of benefits under G.S. 108A-55 when the benefits pay for health care items or services that a third party is obligated to pay for;

The act becomes effective October 1, 1994.

Willie M. Rules (SB 1505; Chapter 769, §25.17): See summary under **HUMAN RESOURCES**.

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

Remove Attorney Fees Sunset and Arbitration/Mediation Not Prohibited as Waiver of Right to Jury Trial (HB 619; Chapter 763): House Bill 619 removes the sunset provision from G.S. 44A-35 which permits the award of attorney fees in actions brought to enforce statutory liens and payments under the Model Payment and Performance Bond statute. The bill also amends G.S. 22B-10 which prohibits the contractual waiver of the right to a jury trial, to make this provision not applicable to arbitration agreements or other alternative dispute resolution agreements. The removal of the sunset provision for attorney fees was effective June 30, 1994. The exception to the prohibition on waiving the right to a jury trial was retroactive back to October 1, 1993, the effective date of the original enactment of G.S. 22B-10, and was made applicable to any pending litigation filed on or after October 1, 1993.

Entry of Judgment Rule (HB 977; Chapter 594): House Bill 977 amends Rule 58 of the Rules of Civil Procedure to specify that a judgment in a civil case is entered at the time the judgment is reduced to writing, signed by a judge and filed with the clerk of court. A copy of the judgment must be served by the designated or preparing party within three days of filing. If service is by mail three additional days are added to the time within which a party can act under Rule 50(b) (judgment notwithstanding the verdict), Rule 52(b) (to amend judgment), and Rule 59 (for a new trial). If the service requirement is not complied with, the time periods to act under these same three rules is tolled until compliance, up to 90 days. Consent to signing a judgment out of term, session, county, and district is presumed given unless timely objected to. Magistrates' judgments need not be served when the judgment is announced and signed in open court at the conclusion of the trial. Otherwise, the magistrate is required to serve the judgment on the parties within three days. If service is by mail, three days is added to the time within which to appeal the magistrate's decision for a trial **de novo** in district court. Failure of the magistrate to timely serve the judgment tolls the time to appeal for up to 90 days. The bill becomes effective October 1, 1994 and applies to judgments subject to entry on or after that date.

Clerks May Invest Government Notes (HB 2126; Chapter 656): House Bill 2126 amends G.S. 7A-112, which regulates investments by the clerks of courts of the funds which they are holding. G.S. 7A-112(a)(4) permits investment in deposits in financial institutions, but requires that the deposits be secured by specified types of collateral, if the deposit exceeds the available deposit insurance. This section also provides that bonds issued by the United States government or state and local governments may serve as collateral, but it does not state that notes are acceptable. As a result, clerks may invest directly in notes issued by the federal, state and local governments. They may not deposit funds in a financial institution if that deposit is secured by such notes. This bill would permit the use of government obligations both notes and bonds as collateral. House Bill 2126 became effective upon ratification, July 1, 1994.

Limit Liability of Immigration and Naturalization Service Officers (SB 508; Chapter 571): Senate Bill 508 amends G.S. 15A-406(a) by adding Immigration and Naturalization Service officers to the list of federal law enforcement officers who, when asked to assist state or local law enforcement agencies, acting within the scope of their subject matter and territorial jurisdiction, are empowered with the same authority and the same personal civil immunity as is given to North Carolina law enforcement officers. Under this section, the federal agent would not be considered an employee of

any state or local agency, would still be acting within the scope of his duties under the Federal Tort Claims Act, and would not be given authority to conduct independent investigations of violations of state law. Senate Bill 508 became effective June 23, 1994.

Conform Paternity Establishment (SB 1712; Chapter 733): See summary under **CHILDREN AND FAMILIES.**

COMMERCIAL LAW

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

Banking Application Fees/Effective Date (HB 1917; Chapter 599): Chapter 175 of the Laws of 1993, amended the North Carolina Regional Reciprocal Banking Act to move from regional reciprocal banking to nationwide reciprocal banking, effective July 1, 1996. House Bill 1917 advances the effective date of nationwide interstate banking to July 1, 1994. The bill also adds a provision requiring an applicant seeking approval to acquire a North Carolina bank holding company or a North Carolina bank to submit an application fee of five thousand dollars ($5,000) for the applicant and two thousand dollars ($2,000) for each bank or bank holding company being acquired. House Bill 1917 became effective July 1, 1994.

Regional Economic Development Commissions (SB 1505; Chapter 769, §28.8) Section 28.8 of Senate Bill 1505 adds identical provisions to those existing statutes creating the following regional economic development commissions: (1) the Western North Carolina Regional Economic Development Commission (G.S. 158-8.1); (2) the Northeastern Regional Economic Development Commission (G.S. 158-8.2); and (3) the Southeastern North Carolina Regional Economic Development Commission (G.S. 158-8.3). This provision provides that funds appropriated for each Commission by the General Assembly shall be disbursed directly to the Commission at the beginning of each fiscal year. The section also provides that members of each Commission shall receive per diem of one hundred dollars per day. Prior to the bill, each member received per diem as provided in G.S. 138-5. This provision became effective July 1, 1994.

TRAC Lease Clarified (SB 1628; Chapter 756): Senate Bill 1628 amends the Uniform Commercial Code to clarify that a motor vehicle operating lease that contains a terminal rental adjustment clause is legally considered to be a lease and not a sale nor a security interest. A terminal rental adjustment clause permits an adjustment of rent either upwards or downwards at the end of the lease based on the difference at the end of the lease between the expected value of the vehicle and its actual value. The bill amends the definition of a lease under G.S. 25-2A-103(1)(j) by including in the definition a motor vehicle operation agreement that is considered a lease under Section 7701(h) of the Internal Revenue Code. Senate Bill 1628 became effective upon ratification, July 15, 1994.

Credit Property Insurance Definition (SB 1719; Chapter 720): See the summary under **INSURANCE.**

CRIMINAL LAW AND PROCEDURE
(Brenda Carter, Giles S. Perry, Susan Seahorn)

Assault Company Police Officers (HB 1049; Chapter 687): House Bill 1049 amends the law regarding assault with a firearm upon government officers or employees to provide that a person who commits an assault with a firearm or other deadly weapon upon a company police officer or campus police officer in the performance of his duties is guilty of a Class I felony. The bill also makes simple assault on a company police officer or campus police officer a Class 1 misdemeanor. The Act becomes effective October 1, 1994.

Sentencing Commission Extended (HB 1605; Chapter 591, §6): The N.C. Sentencing and Policy Advisory Commission was extended for an additional year, and is now scheduled to expire on July 1, 1995.

Felony/Sell Handguns to Minors (HB 1770; Chapter 597): House Bill 1770 is a recommendation by the Child Fatality Task Force which makes it a Class I felony to sell, offer for sale, or give any handgun to a minor. There are three exceptions to a violation: 1) the handgun is loaned to a minor and the minor's temporary possession complies with G.S. 14-269.7 and 14-316 (establishing conditions on a minor's use of handguns - armed forces, educational/recreational purposes under supervision, inside the minor's residence, hunting with parental permission); 2) the handgun is transferred to an adult custodian and the minor's temporary possession complies with G.S. 14-269.7 and 14-316; or 3) the handgun is inherited by the minor and the minor takes temporary possession in compliance with G.S. 14-269.7 and 14-316.

The bill allows a defense to the unlawful sale or transfer of handgun to a minor only if all of the following conditions are met: 1) the minor produced an apparently valid permit for the weapon when such a permit is required; 2) the person charged with the offense reasonably believed that the minor was not a minor; and 3) the person charged shows that the minor produced identification showing that the minor was of the required age or shows other facts that reasonably indicated that at time of sale the minor was of the required age. The act becomes effective January 1, 1995, and will apply to offenses committed on or after that date.

Amend Computer Crime Act (HB 822; Chapter 764): House Bill 822 amends several provisions of the computer-related crime statutes in Chapter 14 (Criminal Law). Specifically, the bill amends:

G.S. 14-553 (definitions) by revising the definition of "access," "computer," "computer network," "computer software," "computer system," "financial instrument," "property," and "services;" and by adding a new definition of "authorization," "data," and "resource;"

G.S. 14-454 (accessing computers) to include introducing a computer program into a computer system within the meaning of felony computer accessing, and to increase the penalty for violation of this section from a Class H to a Class G felony;

G.S. 14-455 (damaging computers) to clarify that the destruction of software and data, as well as damage caused by a computer program, come within the meaning of felony damage to a computer, and to increase the penalty for violation of this section from Class H to a Class G felony. Commission of these acts for the purpose of extortion would also constitute a felony under 14-457; and

G.S. 14-456 (denial of computer services) to clarify that misdemeanor unauthorized denial of access to a computer system includes denial of access by means of a computer program.

House Bill 822 provides that it will become effective December 1, 1994 and apply to offenses committed on or after that date.

Sheriffs' Education and Training Standards Commission (SB 785; Chapter 562): Senate Bill 785 extends the sunset for the method of selecting members of the North Carolina Sheriffs' Education and Training Standards Commission, which are appointed by the North Carolina Sheriffs' Association, from September 1, 1993, to September 1, 1994. The bill was effective upon ratification, May 24, 1994. Section 13 of the Criminal Technical Corrections act, below, (SB 1630; Chapter 767): further delays the sunset to September 1, 1995.

Charitable Solicitations Rewrite (SB 940; Chapter 759): Senate Bill 940 repeals existing Chapter 131C and replaces it with a new Chapter 131F regulating the solicitation of contributions by charities. Charitable organizations, as defined in §501(c)(3) of the Internal Revenue Code, must be licensed (unless exempted), submit the specified fees, and comply with disclosure requirements of the new Chapter. Charitable solicitors and coventurers must also comply with license and disclosure requirements as specified. Prohibited solicitation practices, punishable as a Class 1 misdemeanor, as well as by lose of license, are listed in the new Chapter. The Department of Human Resources is directed to publish an annual report on charitable solicitors. Senate Bill 940 becomes effective January 1, 1995.

Use of Deadly Physical Force Against An Intruder (SB 945; Chapter 673): Senate Bill 945 adds new G.S. 14-51.1 regarding the right of an occupant to use deadly force to prevent a person from entering in to the home or dwelling or to terminate an unlawful entry. Use of deadly force is authorized if the occupant reasonably apprehends that the intruder may kill or inflict serious bodily harm to someone in the home or if the occupant reasonably believes that the intruder intends to commit a felony in the dwelling or home. The bill establishes that the occupant has no duty to retreat from the intruder under these circumstances. The bill becomes effective October 1, 1994.

Flea Market Records (SB 1146; Chapter 731): Senate Bill 1146 adds to the existing statute, G.S. 105-53, a requirement that all peddlers, itinerant merchants, and specialty market operators or vendors covered by the section be required to keep a record which establishes the source of new merchandise that that person offers for sale. Such records must be maintained for a period of three years after the merchandise is sold. The new section establishes that such records will be subject to inspection upon request of law enforcement and that law enforcement may impound merchandise for which no such record exists if there is probable cause to believe that the merchant's possession of such merchandise is unlawful. The Bill further amends the statute to add failure to comply with these requirements to the list of violations which constitute misdemeanor violations. Senate Bill 1146 becomes effective January 1, 1995.

Criminal Technical Corrections (SB 1630; Chapter 767): This bill amends certain criminal statutes to make them conform to other provisions of the Structured Sentencing Act as well as other provisions of criminal law in general. This bill also classifies offenses which had not been classified under structured sentencing and repeals various criminal offenses that are no longer charged or are charged under a different statute. Specifically, the bill amends statutes relating to:

- Earned Time for Misdemeanor Offenders;
- Lengths of Probation Periods;
- Length of Confinement on Special Probation for Sentences to IMPACT;
- The Method for Counting Multiple Prior Convictions;
- Classification of Prior Misdemeanor Convictions from Other Jurisdictions;
- Continuance of Sentencing Hearings;
- Community Penalties Eligibility Criteria;
- Habitual Felon Law;
- Punishment for Failure to Comply with Control Conditions by Persons with Communicable Diseases;
- Classification of Certain Offenses;
- N.C. Sheriffs' Education and Training Standards Commission; and
- Correction of Effective Date and Applicability of a Local Third Degree Amendments.

In addition, the bill classifies and repeals certain listed offenses.
Most sections of the bill become effective October 1, 1994.

EDUCATION

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

Elementary and Secondary

North Carolina Professional Teaching Standards Commission (SB 883; Chapter 740): establishes the 18 - member North Carolina Professional Teaching Standards Commission. The Commission is to prepare a plan for establishing high standards for teachers. In developing the plan the Commission shall:

(1) Recommend how to set high standards for the teaching profession;
(2) Recommend how to improve the qualification of persons for licensure as public school teachers and other public school employees paid on the teacher salary schedules;
(3) Consider current methods to assess teachers and teaching candidates including the National Teacher Exam, the assessments of the National Board for Professional Teaching Standards as well as alternative methods to assess teachers;
(4) Identify how the Commission could work with the State Board of Education to issue, renew, and revoke these licenses;
(5) Propose how to monitor the ethics and professional practices of teachers;
(6) Consider whether there is a need to revise the method for the approval of reciprocity agreements between North Carolina and other states with regard to teacher licensure;
(7) Make recommendations concerning statutory changes, staffing and budgeting to implement the plan; and
(8) Make recommendations concerning the role of the Professional Practices Commission.

The State Board of Education will review the final plan and submit its comments on the plan to the Joint Legislative Education Oversight Committee no later than the first Friday in February 1995.

Noncertified Public School Employees Salaries (SB 1505; Chapter 769, §19): requires that by the end of the third payroll of the 1995-96 fiscal year local boards of education pay noncertified school employees, including office support personnel, teacher assistants and custodial personnel, an average salary within 95% of the allotted amount

for the category and 98% of the allotted amount for the category in subsequent years. The section allots $1209.00 per month plus any salary increment authorized for the custodian allotment.

Limited English Proficient Students (SB 1505; Chapter 769, §19.5): amends G.S. 115C-81(c) to allow local boards to authorize teaching in a foreign language to comply with federal law; requires the State Board of Education to study issues concerning the educational needs of Limited English Proficient (LEP) students; and authorizes the State Board to allocate up to $1,000,000 to local school administrative units to assist them in educating these students when extenuating circumstances require additional funds. The State Board is to report to the Education Oversight Committee no later than December 1, 1994 on issues concerning these students.

Report on Teachers Leaving the Teaching Profession (SB 1505; Chapter 769, §19.9): amends G.S. 115C-12 by adding a new subdivision (22) that requires the State Board of Education to monitor and compile an annual report on the decisions of teachers to leave the teaching profession. The State Board of Education will adopt standard procedures for requesting the information and shall require each local school board to report the information.

Task Force on Vocational and Technical Education (SB 1505; Chapter 769, §19.10): establishes the Task Force on Vocational and Technical Education located administratively in the Department of Public Instruction consisting of sixteen members including: the State Superintendent; the State Auditor; the Commissioner of Labor; one representative of the University of North Carolina; one representative of the Community College System; two members of the Senate; two members of the House; two businesspersons; one local school unit director of vocational education; one vocational and technical education teacher and the Chair of the Governor's Commission on Workforce Preparedness.

The Task Force is charged to study issues related to vocational and technical education in secondary schools including: the quality, focus, standards and future goals of vocational and technical education; funding issues; quality of equipment and materials; accountability efforts; relevance to the workforce; articulation; efficiency and effectiveness of organizational and delivery aspects of existing programs; and professional development.

The Task Force is required to make an interim report to the Joint Legislative Education Oversight Committee and the Governor's Workforce Preparedness Commission prior to January 15, 1995 and a final report prior to March 1, 1996.

Teacher Academy Funds (SB 1505; Chapter 769, §19.11): appropriates $375,000 of nonrecurring funds to be used for the Teacher Academy training sessions in the first fiscal year of program implementation. This section directs the Task Force on Teacher Staff Development and the State Board of Education to evaluate the Teacher Academy Plan.

The Task Force shall also develop a comprehensive approach to teacher professional development with emphasis on: efficient and effective use of existing resources; short and long range plans; effective use of the North Carolina Center for the Advancement of Teaching; development of teacher networks; effective use of telecommunications; and coordination of activities among existing service providers.

The provision requires an interim report on progress of the plan, expenditures and evaluation of the summer 1994 Teacher Academy programs, and projected expenditures for the summer 1995 programs. A final report is to be made to the Joint Legislative Education Oversight Committee no later than January 15, 1995.

Allocations of Basic Education Program Funds for Small City School Systems (SB 1505; Chapter 769, §19.24): requires the State Board of Education to modify the position allocation formulas under the Basic Education Program by rounding all fractions of positions to the next whole position for each city school administrative unit of less than 3,000 students.

School Administrator Allotment Formulas (SB 1505; Chapter 769, §19.25): requires the State Board of Education to modify the allotment formula for school administrators so that the base allotment is the same for all school units regardless of membership and that the remainder of the fund is allotted on the basis of average daily membership.

School Technology Plans/Funds (SB 1505; Chapter 769, §19.26): rewrites and adds several new sections to Part 3A of Article 8 of Chapter 115C. G.S. 115C-102.6A lists the elements that are to be included in the State School technology plan to be proposed by the Commission on School Technology. G.S. 115C-102.6B states that the proposed plan shall be reviewed by the Joint Legislative Committees on Governmental Operations and Education Oversight and submitted for approval to the Information Management Resources Commission (IRMC) and the State Board of Education. The plan is to be submitted to the IRMC for a review of the technical components of the plan and to the State Board of Education for approval of the overall plan. G.S. 115C-102.6C outlines the procedure for the development and approval of local school system technology plans. G.S. 115C-102.6D establishes the State School Technology Fund, a nonreverting special revenue fund to be used to implement local plans. G.S. 115C-102.7 as rewritten provides for evaluation of the effectiveness of the plans and annual reports to the State Board of Education and the Joint Committees on Governmental Operations and Education Oversight. $42,000,000 is appropriated to the School Technology Reserve Fund. The section appropriates funds for three additional professional positions at the IRMC and six additional positions at the Department of Public Instruction.

Funds for National Board for Professional Teaching Standards (SB 1505; Chapter 769, §19.28): appropriates $500,000 for the 1994-95 fiscal year to the Department of Public Instruction to pay for registration fees and for up to three days of leave for teachers participating in the NBPTS certification process. The appropriation also provides for an annual salary increase of 4% for those teachers that successfully complete the certification process. The provision requires reports on the process in December of 1994 to the Joint Legislative Education Oversight Committee and a report of the impact of certification on student performance by January of 1997.

Low Wealth and Small School System Supplemental Funding Changes (SB 1505; Chapter 769, §19.32): amends Sections 138 and 138.1 of Chapter 321 of the 1993 Session Laws by adding two definitions to the supplemental funding formulas for low wealth and small school units:

> "**Local current expense funds**" means the most recent county current expense appropriations to public schools, as reported by counties in the annual county financial information report to the State Treasurer.
>
> "**Supplant**" means to decrease local per student current expense appropriations from one fiscal year to the next fiscal year.

The sections also clarify the nonsupplant requirement by directing the State Board of Education, beginning with the 1995-96 fiscal year, to withhold funds appropriated under the sections from counties found to have used these funds to supplant local per student current expense appropriations. The Board shall make a finding that a county has supplanted funds in the year for which the most recent data are available if the average of the local per student current expense appropriation for the three most recent

years is less than 95% of the greater of (i) the local per student current expense appropriation for the 1991-92 fiscal year; or (ii) the average local per student current expense appropriation of the county for the three fiscal years immediately prior to the current year; and a county cannot show either (i) that extraordinary circumstances caused the county to supplant funds; or (ii) that it has remedied any deficiency.

North Carolina High School Athletic Association Under the State Tort Claims Act (SB 1505; Chapter 769, §19.33): The North Carolina High School Athletic Association is a State Agency under G.S. 143-291 and its liability in tort is thereby limited to $150,000 "cumulatively to all claimants on account of injury and damage to any one person."

Reporting Changes - Education (SB 1418; Chapter 677): makes technical corrections to several education laws, deletes three education reports, and coordinates or simplifies reporting dates for several education reports. Significant changes include:

G.S. 115C-105.3 and 115C-105.5, the Standards and Accountability Commission, are amended to delete certain schedule requirements, but continues to require the Commission to complete the same tasks required in the original 1993 legislation, including developing standards and assessments, field testing and training. The Commission is to recommend to the State Board of Education standards and a system of assessments no later than July 1, 1996. No later than the Spring of the year 2000, or as soon as the State Board of Education adopts the standards and system of assessments, every graduating senior shall be required to achieve these standards as a condition of receiving a diploma.

G.S. 115C-325(i)(1) is amended to correct the number of members of the Professional Review Committee.

G.S. 116-74.43.b is amended to clarify the terms of the scholarship loan under the Principal Fellows Program by providing that (i) the State Education Assistance Authority is to forgive the loan and any interest accrued on the loan if within six years after graduation, the recipient serves four years in a qualifying position, and (ii) repayment in cash shall begin no later than 27 months after the completion of the program. The cash repay period is increased from 10 to 12 years. The amendments allow the State Education Assistance Authority to allow deferment of service for extenuating circumstances and to extend the period of cash repay for up to fifteen years in extenuating circumstances.

The effective date of Chapter 210 of the 1993 Session Laws, School Administrator Contracts, is amended to clarify that G.S. 115C-287.1 concerning contract employment for school administrators, do not become effective until July 1, 1995.

The definition of "textbook" is expanded in an amendment to G.S. 115C-85. "Textbook" means "systematically organized material comprehensive enough to cover the primary objectives outlined in the standard course of study for a grade or course. Formats for textbooks may be print or nonprint, including hardbound books, softbound books, activity-oriented programs, classroom kits, and technology-based programs that require the use of electronic equipment in order to be used in the learning process."

School Textbook Law Changes (SB 1504: Chapter 777, §3): makes conforming and technical changes to G.S. 115C-88, including how textbooks will be reviewed.

Open Meetings Law Changes (HB 120; Chapter 570): See the summary under **STATE GOVERNMENT**.

Felony/Sell Handguns to Minors (HB 1770; Chapter 597): See the summary under **CRIMINAL LAW**.

School Group Health Insurance (SB 854; Chapter 716): See the summary under **INSURANCE.**

Universities

University of North Carolina Management Flexibility (HB 1605, Chapter 591, §10; and SB 1505, Chapter 769, §17.6): Section 10 of House Bill 1605 and Section 17.6 of Senate Bill 1505 were recommended by the Joint Legislative Education Oversight Committee. Effective June 30, 1994, Section 10 of House Bill 1605 removes the sunset of June 30, 1994, and makes permanent the UNC Fiscal Accountability and Flexibility Act. Section 17.6 of Senate Bill 1505 establishes a new G.S. 116-30.6 (replacing a former Session Law) directing the Board of Governors to report annually, rather than quarterly, to the Joint Legislative Education Oversight Committee. Section 17.6 also increases the present on-campus purchasing benchmark from $25,000 to $35,000 on all purchases, makes a conforming change to G.S. 116-30.2 (effective July 16, 1994), and directs the Director of the Budget to adjust each institution's historic reversion percentage to account for 50% of the funds reduced as part of the $10 million reduction in vacant positions in the 1994 Appropriations Act. Section 17.6 of Senate Bill 1505 became effective July 1, 1994.

UNC Self-Liquidating Projects (SB 1378; Chapter 665): Senate Bill 1378 authorizes the construction and financing of the following capital improvements projects: (i) Partners Building ($9,658,000) and Research IV Building ($8,945,000) at North Carolina State University; (ii) Sonja Haynes Stone Black Cultural Center ($7,505,500) and Carolina Inn additions and renovations ($13,499,900) at the University of North Carolina at Chapel Hill; and (iii) North Carolina Children's Hospital, North Carolina Women's Hospital, and Support Space ($173,900,000) at the University of North Carolina Hospitals at Chapel Hill. The act also authorizes the construction and financing of the following capital improvements projects that were partially financed through the proceeds from the Education, Clean Water, and Parks Bond Act of 1993 and through prior appropriations: (i) Chidley Hall Complex ($4,690,200) at North Carolina Central University; (ii) School of Dentistry addition ($8,430,500), Lineberger Cancer Research Center addition ($8,000,000), and School of Business Administration Building ($14,653,600) at the University of North Carolina at Chapel Hill; and (iii) Student Services/Cafeteria/Student Union Complex ($6,378,350) at Winston-Salem State University. The act specifies that the funding is to be from gifts, grants, receipts, self-liquidating indebtedness, or any other available funds or combination of funds, but not funds appropriated from the General Fund. The act permits the Director of the Board, upon request of the Board of Governors, to change the scope or method of funding for any of these projects or project supplements. Finally, the act allows the University of North Carolina at Charlotte to set fees at a rate sufficient to finance the Student Activities Center. The act became effective July 5, 1994.

Incentive Scholarship Program for Native Americans (SB 1505; Chapter 769, §17.3): Section 17.3 of Senate Bill 1505, effective July 1, 1994, directs the Board of Governors to establish the Incentive Scholarship Program for Native Americans. Scholarships will be a maximum of $3,000 per recipient per academic year, less any amount of need-based aid that a student may receive. Students at the constituent institutions who are residents of the State and who maintain cultural identification as Native Americans through membership in an Indian tribe recognized by the United States, North Carolina, or other tribal affiliation or community recognition are eligible for these scholarships. The Board of Governors is directed to incorporate the American Indian

Legislative Scholarship Program into this Program. Finally, the Section appropriates $390,000 for the 1994-95 fiscal year to underwrite these scholarships.

Minority Presence Grants Eligibility (SB 1505; Chapter 769, §17.3A): Section 17.3A of the 1994 Budget Bill directs the Board of Governors to adopt policies to broaden the number of underrepresented groups eligible for Minority Presence Grants at each of the constituent institutions, and appropriates $150,000 for the 1994-95 fiscal year for this purpose. The Section took effect July 1, 1994.

UNC Tuition Surcharge Exception (SB 1505; Chapter 769, §17.10): Recommended by the Joint Legislative Education Oversight Committee, Section 17.10 of the 1994 Appropriations Act exempts from the UNC tuition surcharge any students who exceed the degree credit hour limits within the equivalent of four academic years of regular term enrollment, or within five academic years of regular term enrollment in a degree program officially designated as a five-year program. (The 1993 Appropriations Act directed the Board to establish procedures, including specific exemptions, that are necessary to impose a 25% tuition surcharge on students who take more than 140 degree credit hours to complete a baccalaureate degree in a four-year program or more than 110% of the credit hours necessary to complete a baccalaureate program in an officially designated five-year program.) Section 17.10 became effective July 1, 1994.

UNC/Legislative College Opportunity Act Pilot Program (SB 1505; Chapter 769, §17.14): Section 17.14 of the 1994 Current Appropriations Act appropriates $800,000 to be allocated equally to each of the 16 constituent institutions and to be placed in nonreverting trust fund accounts. The funds are to be used to establish a pilot Legislative College Opportunity Program to recruit new students for future enrollment who otherwise may not be able to attend college. Section 17.14 directs the Board of Governors to (i) establish program guidelines; (ii) consider the needs of disadvantaged youth with a primary goal of improving academic performance, high school graduation rates, college-going rates, and college graduation rates of youth currently underperforming in these areas; (iii) consider academic standards and financial need; (iv) charge the campuses with implementation by January 31, 1995; (v) report to the Joint Legislative Education Oversight Committee by May 15, 1995, with copies to members of the Education Appropriation Subcommittees, and annually thereafter until the year 2001; and (vi) monitor the success of the program and the progress of students who otherwise might not have enrolled in higher education. Section 17.14 became effective July 1, 1994.

Nursing Scholars Program (SB 1505; Chapter 769, §17.11): See the summary under **HUMAN RESOURCES**.

Social Workers' Education Loan Fund (SB 1505; Chapter 769, §17.16): See the summary under **HUMAN RESOURCES**.

Community Colleges

Mayland Community College Contract (HB 2048; Chapter 575): House Bill 2048, which only applies to Mayland Community College, amends G.S. 115D-59, effective July 1, 1994, to provide that the contract between Mitchell, Avery and Yancey Counties, which form the administrative area for the college, and the Board of Community Colleges regarding the establishment of that college shall provide for selection of trustees in a manner agreed to by the three boards of commissioners and

approved by the Board. G.S. 115D-59 currently provides that the contract must provide, in terms consistent with Chapter 115D, for selection of the trustees. The act also cancels the existing contract for Mayland Community College, effective June 30, 1994, and authorizes a new contract to be adopted under Section 1 of the act.

Program Regionalism (SB 1505; Chapter 769, §18): Section 18 of Senate Bill 1505 directs the State Board of Community Colleges to develop its approved new programs using a regional approach unless a college documents (i) extreme extenuating circumstances showing that this is not feasible, (ii) its efforts to develop a regional program, and (iii) existing barriers. Section 18 encourages the State Board's GPAC Task Force on Regionalism to provide more substantive recommendations on how programs, new and existing, can be offered regionally in its report due in January, 1995. Finally, the State Board is directed to report quarterly to the Joint Legislative Education Oversight Committee on the progress made on regional programs. The section became effective July 1, 1994.

Continuing Budget Concept (SB 1505; Chapter 769, §18.1): With the intent of implementing GPAC's recommendation to change the community college funding formula to one that is a combination of a base funding source with an FTE component, Section 18.1 of the 1994 Current Appropriations Act directs the State Board of Community Colleges to (i) implement the new continuing budget concept beginning with the 1995-97 biennium, (ii) develop a program-based FTE cost model to fund future FTEs in excess of the 4% growth on the basis of actual program cost, and (iii) report this model to the 1995 General Assembly. Section 18.1 also provides that colleges that experience either an enrollment decrease or increase shall not receive decreased or increased FTE enrollment funds unless the decrease or increase is more than four percent. Section 18.1 became effective July 1, 1994.

Prison Classes (SB 1505; Chapter 769, §18.4): Section 18.4 of Senate Bill 1505, effective July 1, 1994, amends G.S. 115D-5 to: (i) require community colleges to report FTE student hours for correction education programs based on contact hours rather than student membership hours; (ii) prohibit colleges from operating a multi-entry/multi-exit class or program in a prison facility; and (iii) require the State Board of Community Colleges to work with the Department of Correction on program offerings that match inmates' average length of stay in a prison facility.

Competitive Salary Levels for Curriculum Faculty (SB 1505; Chapter 769, §18.6): Section 18.6 of the 1994 Current Appropriations Act directs the State Board of Community Colleges to (i) use the competitive salary funds plus the funds appropriated in the Act for a four percent across-the-board salary increase for curriculum faculty in order to increase the unit value for curriculum faculty by eight percent to $37,000 for the 1994-95 fiscal year; (ii) not use the competitive salary funds to change the faculty/student ratio in the funding formula; (iii) develop policies for the use of the competitive salary funds to provide for a system-wide community college curriculum faculty salary of 102% of the curriculum faculty salary unit value in 1994-95; and (iv) submit salary schedules for faculty at each college to the General Assembly. This section also directs each community college to (i) increase the average salary of full-time curriculum faculty by at least 8% for the 1994-95 fiscal year, unless its average salary is at or above the 1994-95 unit value for curriculum faculty, and (ii) not use curriculum faculty salary funds for administrative costs unless its average full-time curriculum faculty salary is at or above the 1994-95 unit value for curriculum faculty. Section 18.6 became effective July 1, 1994.

EMPLOYMENT
(Bill Gilkeson, Linwood Jones, Sandra Timmons)

Firemen/Rescue Squad Benefits (HB 1683; Chapter 653): House Bill 1683 increases the monthly benefit from the North Carolina Firemen's and Rescue Squad Workers' Pension Fund from $100.00 per month to $110.00 per month. All eligibility requirements remain unchanged, only the monthly benefit amount has been increased. House Bill 1683 became effective July 1, 1994.

Unemployment Benefits Up (HB 1889; Chapter 680): House Bill 1889 restores the level and duration of unemployment benefits that were in existence before 1983. During the recession of 1982, the solvency of North Carolina's Unemployment Insurance Trust Fund in Washington was jeopardized. To avoid the bankruptcy that occurred in the UI trust funds of several other states, the 1983 General Assembly increased employers' UI taxes and reduced employees' UI benefits. N.C.'s trust fund recovered strength over the years and the 1993 General Assembly reduced the employers' tax twice before the 1994 Short Session.

HB 1889, introduced during the Short Session restore to pre-1983 levels the following:

* Weekly Benefit Amounts. Before 1983, the unemployed person's weekly benefit amount was calculated by taking half of the average weekly wage during the highest quarter of earnings in the person's base period. In 1983 the General Assembly began substituting the average weekly wage in the two highest quarters, which necessarily made the benefits smaller. The two highest quarters formula was used for benefits for the partially unemployed as well as the totally unemployed. The bill returns to the use of the highest quarter for benefits for both kinds of unemployed.
* Total Benefit Amount/Number of Weeks. Before 1983, the total amount of benefits an unemployed person could receive was calculated by dividing the person's total base period earnings by the earnings in the highest quarter and multiplying the quotient by 8 2/3. The person could receive the weekly benefit amount for however many weeks it took to reach the total amount of benefits set by that formula, to a maximum of 26 weeks. In 1983 the General Assembly reduced the multiplier to 8. The bill returns it to 8 2/3. Another part of the bill conforms North Carolina to federal law by requiring the Employment Security Commission to maintain a worker profiling system to identify workers who need Reemployment Services (job search assistance, counseling, and similar services). The restoration-of-benefits part of the bill becomes effective August 1, 1994. The rest of the bill was made effective upon ratification, July 5, 1994.

State Personnel Appeals Changes (SB 118; Chapter 572): Senate Bill 118 requires a local government appointing authority to issue, within 90 days of receipt of the State Personnel Commission's advisory decision, a written, final decision either accepting, rejecting, or modifying the Commission's decision. The local appointing authority must serve a copy of its final decision on each party and each party's attorney of record. The bill provides that if the local appointing authority is other than a board of county commissioners, the appointing authority must give the county notice of the employee's appeal to the State Personnel Commission. Currently, the employee must notify the county. Senate Bill 118 becomes effective January 1, 1995, and applies to cases filed on or after that date.

TSERS/LGERS Refund Deadline Off (SB 764; Chapter 734): Senate Bill 764 removed the July 1, 1994, deadline by which Cooperative Agricultural Extension Service employees were permitted to submit applications for refunds from the Teachers' and State Employees Retirement System and the Local Government Employees' Retirement System. The bill became effective upon ratification, July 12, 1994.

Workers' Compensation Reform (SB 906; Chapter 679): Senate Bill 906 is designed to achieve cost savings in the workers' compensation system by, among other things, controlling medical fees, medical utilization and the time period for claiming additional medical compensation, reducing the costs incurred by employers, insurance carriers, and the Industrial Commission in administering the system, and reducing fraud in the system.

Senate Bill 906 is known as the Workers' Compensation Reform Act of 1994 and is divided into the following Parts:

Part I. Title

The Act is known as the Workers' Compensation Reform Act of 1994 and is referred to in this summary as "the Act."

Part II. Medical

The Act gives the Commission the clear statutory authority to regulate medical fees for physicians and all other providers other than hospitals. Each hospital's reimbursement will be the same as its reimbursement under the State Health Plan. Additional savings on hospital costs through more efficient treatment utilization are anticipated when the hospital reimbursement system for workers' compensation follows the State Health Plan's upcoming move to a DRG (diagnostic-related groups) system.

To further contain medical costs, the Act allows the Commission to adopt utilization guidelines for medical treatment, expressly authorizes the use of managed care organizations such as health maintenance organizations (HMOs) and preferred provider organizations (PPOs) for the delivery of medical care to injured workers, and permits employers to require employees to obtain prior authorization for inpatient admissions and surgeries. In addition, the Commission is encouraged to adopt guidelines on the appropriate use of palliative care. Providers rendering palliative care may be required to provide employers with specific treatment plans indicating the anticipated length and cost of treatment; they may also be required to obtain prior authorization for these treatments. The Commission has been vested with the power and duty to ensure that these medical cost containment features are used in a manner consistent with the rights of employees to prompt medical care for workplace injuries.

The Act also makes two changes concerning medical compensation. One of these changes addresses last year's Supreme Court decision in ***Hyler v. GTE Products,*** §333 NC 258, 425 SE2d 698 (1993). The ***Hyler*** decision eliminated what had historically been interpreted as a 2-year statute of limitations on an employee's ability to apply for additional medical compensation. The insurance industry has stated that the ***Hyler*** decision alone could increase workers' compensation costs an additional 15 to 25 percent. The Act re-imposes the 2-year statute of limitations on claims for additional medical compensation. Once an employee receives his or her last payment workers' compensation benefit, whether medical or indemnity, the employee has 2 years in which to file for additional medical compensation. The Commission can order additional medical compensation for the employee only if it finds that there is a "substantial risk" of the need for such compensation. The Commission can also order

additional medical compensation on its own motion, but only if it does so within the same 2-year limitations period.

The other change regarding medical compensation allows employees to have their prosthesis replaced if ordinary wear and tear on the prosthesis or a change in the employee's medical circumstances necessitates replacement.

Part III. Compensation

Part III of the Act provides for two fundamental changes in the payment system for indemnity compensation benefits. The two changes are generally referred to as "direct pay" and "pay without prejudice." "Direct pay" allows the employer to pay benefits to the employee without requiring the signing of a memorandum of agreement between the employer and employee and without Commission approval, both of which are mandated under current law. Direct pay streamlines the system for paying compensation to employees, thereby allowing employees to be paid quicker and potentially reducing some of the paperwork and costs incurred by employers, insurers, and the Commission in administering the current system. The Act limits the use of direct pay, however, and makes clear that the absence of a memorandum of agreement in the situations in which direct pay is used will not impair the Commission's jurisdiction over the claim in the event of a dispute.

If an employer is uncertain whether an employee's claim is compensable, it can "pay without prejudice" to the employee while it investigates to determine whether the claim is in fact a compensable workplace injury, and if so, whether it or another employer (or insurer) is liable for the injury. The "payment without prejudice" feature allows the employee to receive compensation for a claim that, under the current law, might be denied by the employer because of the employer's reluctance to bind itself to payment of a claim that it is uncertain about. The employer making these payments retains its rights, within a specified time period, to terminate payments made without prejudice if it determines either that the claim is not compensable or that it is not liable. As with direct pay, several safeguards have been added to the bill to prevent the misuse of payment without prejudice. For example, the period specified for payment without prejudice is 90 days (plus 30 additional days if granted by the Commission). During this period, the employer must decide whether it is going to admit or deny liability for the employee's injury.

The Act also spells out when and how an employee's temporary total disability benefits (in essence, those received while out of work and healing from the injury) can be terminated. The Act goes into considerable detail on this matter because of a recent Court of Appeals opinion prohibiting termination until the Commission can hold a full hearing in the case. (The decision has been stayed while the Supreme Court reviews the appeal on this matter). Under the Act, if the employee has returned to work, the employer can terminate the benefits as under the current law (subject to a new provision in the law concerning trial return to work). If the employer is paying the employee without prejudice, it can also terminate the employee's benefits when it decides, timely, to deny the claim. If an employer proposes termination on other grounds, and the employee objects, the matter must be decided by the Commission. The gist of the procedural detail in the Act is that an employer's termination request will be addressed promptly, but only after both the employer and employee have had an opportunity to state their positions. Specific provisions have been made for the Commission to schedule hearings on termination matters on a priority basis.

The Act does not disturb recent appellate decisions that allow employees, in appropriate cases, to (1) obtain lifetime benefits when their injuries, combined with their age and lack of education, skills, and training, effectively rule out future meaningful employment ***(Whitley, Gupton) (Whitley v. Columbia Lumber Mfg. Co.,*** 318 NC 89,

348 SE2d 336 (1986); ***Gupton v. Bldrs. Transport***, 320 N.C. 38, 357 SE2d 674 (1987)) and (2) sue their employers for injuries resulting from conditions which the employers knew or should have known were substantially certain to cause serious injury or death ***Woodson v. Rowland***, 329 NC 330, 407 SE2d 222 (1991).

In an effort to clarify an area of recent litigation, the Act also provides that an employer is to be credited for payments on a week-by-week basis for any compensation it paid out under an employer-funded salary continuation, disability, or other income-replacement plan.

Part IV. Trial Return to Work

Concern has been expressed about the increase in the average number of days that workers' compensation claimants remain out-of-work. The current presumption in the law that employees are no longer disabled when they return to work discourages employees who fear their injuries might worsen from returning to work. If they return to work and their injury disables them again, they could face several months, perhaps longer, in re-establishing their disability and getting their benefits restored. To encourage these employees to return to work, the Act provides for a nine month "trial return to work period," a concept already used for Social Security disability claimants. Under the trial return to work period, if the employee returns to work but is forced to stop again during the nine-month period because of the injury or illness, the employee's rights to compensation benefits are not impaired.

Part V. Administrative

Several changes are set out in Part V to enhance the operation of the Industrial Commission and the administration of the workers' compensation system. First, the Act creates an ombudsman program. The ombudsman will assist unrepresented employees in understanding their rights under the Workers' Compensation Act. Although the ombudsman cannot represent these employees, he or she can contact an employer or insurer on behalf of the employee to help with the claim. Second, the Act provides for the creation of an Advisory Council. The Advisory Council, to be appointed by the Commission Chairman, will assist the Chairman in evaluating and shaping Commission policy, developing rules and forms to carry out the provisions of the Workers Compensation Act, and proposing legislative recommendations.

Other administrative provisions include a clarification of the Commission's contempt powers, the retention of the mediation provisions enacted by the General Assembly last year (subject to the 1995 expiration date enacted last year), and the imposition of maximum fees on medical record copies, medical reports, and the presentation of expert testimony. Additionally, discovery procedures are modernized for Commission proceedings. These changes are designed to reduce litigation, curb costs, and help the Commission continue its long-standing statutory duty to ensure that claims are handled as promptly as possible.

Part VI. Second Injury Fund

The Second Injury Fund provides a financial incentive for employers to hire workers who have suffered previous workplace injuries by transferring the risk of a subsequent, and potentially permanently and totally disabling, injury from the employer to the Fund. The Fund is delinquent in its obligations to claimants, and the increased

assessment will allow the Fund to cover its current obligations and begin addressing additional claims for compensation under the Fund.

Part VII. Penalties for Fraud and Misrepresentation

Fraud in the workers' compensation system can be committed in any number of ways -- by employees fraudulently obtaining benefits, by employers fraudulently denying benefits, or by providers fraudulently submitting medical bills. Part VII of the Act provides criminal penalties for employees who fraudulently obtain benefits and for employers and insurers who fraudulently deny benefits. Health care providers are also subject to criminal penalties for filing fraudulent medical bills, plus civil penalties for fraudulently rendering unnecessary medical treatment and violating the physician self-referral prohibitions enacted last year.

Part VIII. Workers Compensation Insurance

With a few exceptions, every employer with 3 or more employees must carry the insurance or qualify as a self-insurer.

Although there are existing fines for employers who fail to insure or self-insure and although these employers can be sued by their employees for workplace injuries, the Act provides additional resources for tackling the uninsured problem. The North Carolina Department of Revenue is required to solicit from employers the names of their workers' compensation insurance carriers and the number and expiration dates of their policies. If self-insured, the employers will report the name of their self-insurance group, if applicable, and the names of the third parties that administer their self-insurance programs.

In addition, two other measures have been adopted to help curb the uninsured problem. First, the Act authorizes the Commission to levy a civil penalty against any person who had the authority and ability to insure or self-insure the employer, but intentionally failed to do so. The civil penalty can be in an amount sufficient to cover the medical and indemnity costs of any employees who are injured while the employer is without insurance. Second, the bill codifies into law the Industrial Commission's rule that each employer must post a notice in the workplace that it is insured or qualifies as a self-insurer and adds that if the employer allows coverage to lapse or no longer qualifies as a self-insurer, the notice must be removed.

A separate issue concerning insurance is the rising percentage of businesses whose workers' compensation coverage is provided through the assigned-risk pool. Employers in the pool, many of whom are small businesses, face additional surcharges and fees. Under Part VIII of the Act, an employer unable to find coverage in the voluntary market can request that its name and relevant information, such as its type of business and loss experience, be listed on an "electronic bulletin board" operated by the North Carolina Rate Bureau. The Rate Bureau can circulate the information to its member carriers to assist the employer in obtaining coverage in the voluntary market. In addition, the Commissioner of Insurance is directed to study the assigned risk pool and to report back to the General Assembly early next year with any recommended legislation. The Commissioner may also study the current rate-making system for workers' compensation insurance.

Part IX. Attorneys' Fees

Part IX of the Act deals with attorneys' fees. In determining the reasonableness of an attorney's fees, the Commission must look at the record to determine the services rendered. The Commission can look at, among other things, the time invested by the attorney, the attorney's experience, whether the fee is fixed or contingent, and the customary fee involved. If the Commission finds the attorney's fees unreasonable and the attorney appeals to the senior resident superior court judge, both the Commission and the employee must be notified, and they have the right to appear and contest the attorney's appeal for higher fees.

In addition, the Commission can deny an attorney his or her fees if it finds that the attorney solicited the client for employment in violation of the Rules of Professional Conduct of the State Bar.

Part X. Miscellaneous

Part X of the Act involves technical and conforming changes including the following: authorizing the Commission to allow the use of electronic submission of forms, requiring the State Health Plan to provide information needed by the Commission to develop fee schedules and determine appropriate reimbursement to providers, making clear that the Department of Insurance's regulatory authority over PPOs is applicable in workers' compensation PPOs, extending to members and deputies of the Commission the authority to allow paupers to appeal without security, defining the terms "health care provider" and "managed care organization," and codifying the Commission's rule concerning employers' reports of injuries to the Commission.

Part XI. Effective Date

Part XI sets out the effective dates of various provisions in the Act, ranging from July 1, 1994 until January 1, 1995.

Budget Modification 2 -- Tort Claims Award Increase (SB 1504; Chapter 777, §5): See summary under **STATE GOVERNMENT**.

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

Mining Act Improvements (HB 550; Chapter 568): House Bill 550 makes numerous substantive and technical amendments to the Mining Act of 1971. The substantive amendments:

1. Clarify that the Mining Act applies to the surface area of land associated with the mining activity, including the control of surface erosion. Mining operations are exempt from the Sedimentation Pollution Control Act.
2. Modify the mining operations notice requirement. G.S. 74-50 previously required the operator of a proposed mining operation to make a reasonable effort, satisfactory to the Department, to notify all adjoining landowners of record prior to the issuance of a new mining permit. House Bill 550 modifies this requirement so that notification is to be given at the time of the permit application. The notice requirement now also applies to an application for a permit modification that would result in an increase in the number of adjoining landowners of record,

provides that landowners of record and local government chief administrative officers may submit written comment and request a public hearing regarding the proposed mining operation, and provides that a request for a public hearing shall be made within 30 days of the issuance of the notice. If the Department determines, based on public comment, to hold a public hearing, the public hearing shall be held within 60 days following the end of the 30-day period within which a public hearing may be requested.

3. Modify the list of reasons for which the Department may deny a mining permit. The Department may deny a permit if the mining operation will have an undue adverse effect on potable groundwater supplies. The Department may deny mining permit if the operation will constitute a direct and substantial physical hazard to public health and safety or to a neighboring dwelling house, school, church, hospital, commercial or industrial building, public road or other public property, excluding matters relating to the use of a public road. (new language underlined) The Department may deny a mining permit if the applicant or any parent, subsidiary, or other affiliate has not been in substantial compliance with the Mining Act, rules adopted under the Mining Act or other laws or rules of this State for the protection of the environment.
4. Modify the existing bonding requirement to provide that when a bond is filed with the Department, the operator loses all right, title, and interest to the bond while the bond is held by the Department. This is to protect the Department should the operator initiate bankruptcy proceedings. House Bill 550 also deletes negotiable securities and a mortgage of real property acceptable to the Department from the list of alternatives to a surety bond and adds irrevocable letter of credit, guaranty of payment from an acceptable bank, or other security acceptable to the Department.
5. Establish the Mining Account as a nonreverting account into which permit fees are to be paid.
6. Provide that the Department may inspect a mining operation at any reasonable time and that no person may refuse access to or obstruct or hamper any representative of the Department who presents appropriate credentials.
7. Shorten the time frame for an informal conference concerning a suspended or revoked permit for not less than 30 nor more than 60 days after written notice of an apparent violation to not less than 15 nor more than 30 days after written notice.
8. Shorten from 60 to 30 days the time in which an applicant, permitee, or affected person may contest a decision by the Department under the Mining Act. The bill also eliminates the automatic stay of a decision by the Mining Commission pending an appeal of that decision to the Superior Court.
9. Increase the maximum civil penalty that may be imposed on a permitted operator for a violation under the Mining Act from $100 to $500 per day. Civil penalties that are collected are to be placed in the General Fund rather than into a special fund within the Department, as was previously the case.
10. Provide that the Department may request the Attorney General to seek an injunction to restrain an obstruction or interference with an authorized representative of the Department who is carrying out official duties under the Mining Act.

House Bill 550 became effective 1 July 1994.

Improve Sedimentation Control (HB 644; Chapter 776): House Bill 644 makes numerous substantive and technical amendments to the Sedimentation Pollution Control Act of 1973. The substantive changes:

1. Allow the Sedimentation Control Commission to approve erosion control plans with modifications in addition to approving or disapproving plans, which were the only options under prior law.
2. Allow the Sedimentation Control Commission to establish expiration dates for approved erosion control plans.
3. Allow the Sedimentation Control Commission and local governments, in considering whether to approve or disapprove an erosion control plan, to consider the compliance history under the Sedimentation Pollution Control Act of not only the applicant or parent or subsidiary corporation but all parents, subsidiaries, and other affiliates.
4. Establish the Sedimentation Account as a nonreverting account within the Department of Environment, Health, and Natural Resources. Fees collected by the Department under the Sedimentation Pollution Control Act are to be credited to this account.
5. Provide that the Secretary of Environment, Health, and Natural Resources will make the final agency decision in contested cases that arise from civil penalty assessments.
6. Provide that a sedimentation pollution control ordinance adopted by local government shall at least meet and may exceed the minimum requirements of the Sedimentation Pollution Control Act and rules adopted under the Act.
7. Delete the requirement that a local government that administers an erosion and sediment control program must submit an erosion control plan for which prior approval is required to the appropriate soil and water conservation district and, in lieu thereof, provide that the Sedimentation Control Commission may require such submission.
8. Provide that the Commission, a local government that administers an erosion and sediment control program, or other approving authority shall inspect land disturbing activities to ensure compliance with the Sedimentation Pollution Control Act (previously only approved erosion control plans were subject to compliance inspection) and provide that no person shall willfully resist, delay, or obstruct an authorized governmental representative who is inspecting or attempting to inspect a land disturbing activity.
9. Provide that a notice of violation may be served by any means authorized under the Rules of Civil Procedure and provides that a civil penalty may be accessed from the date the notice of violation is served. (Note that, as was the case prior to HB 644, a notice of violation must inform the violator of what actions are necessary to come into compliance and specify a date by which the violator must come into compliance. No civil penalty is accessed if the violator comes into compliance within the time specified.)
10. Add, as alternative venues for an action to collect a civil penalty, any county in which the violator has a residence or principle place of business. Provide that a civil penalty assessment that is not contested is due when the notice of violation is served and that a civil penalty assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment.
11. Provide that civil penalties collected by state agencies shall be credited to the General Fund as nontax revenue and that civil penalties collected by local governments shall be credited to the general fund of the local government as nontax revenue.
12. Authorize the Secretary of Environment, Health, and Natural Resources or a local government that administers an erosion and sediment control program to require a person who engages in land-disturbing activity and fails to retain sediment generated by the activity to restore the water and land, and provide that a court shall order restoration.

House Bill 644 also amends the definition of "public water system" under the North Carolina Drinking Water Act to delete the provision that two or more water systems that are adjacent, that are owned or operated by the same supplier of water, and that together serve 15 or more service connections or 25 or more persons is a public water system. However those systems are required to meet the standards applicable to public water systems for coliform bacteria, nitrates, nitrites, lead, copper, and other inorganic chemicals for which testing and monitoring was required for public water systems on 1 July 1994. The standards applicable to these contaminants shall be enforced by the Commission for Health Services as though these small water systems were public water systems.

The provisions of House Bill 644 that relate to the Sedimentation Account and to water systems became effective 1 July 1994. The provision of HB 644 that requires that civil penalties be placed in the General Fund becomes effective 1 July 1995. All other provisions of HB 644 become effective 1 October 1994.

Asbestos Program Penalties (HB 650; Chapter 686): House Bill 650 provides for an administrative penalty of up to $1,000 per day for violations under the asbestos hazardous management statutes, specifies factors to be considered by the Secretary of Environment, Health, and Natural Resources in determining the amount of a penalty, and provides that administrative penalties shall be credited to the General Fund as nontax revenue. The bill also provides for a penalty of up to $10,000 per day for violations of the National Emission Standards for Hazardous Air Pollutants (NESHAP) for asbestos that governs demolition and renovation. Until the Department of Environment, Health, and Natural Resources has given written notice to a violator, a continuing violation shall be treated as one violation. After notice has been given, each day of a continuing violation shall be treated as a separate violation. House Bill 650 directs the Commission for Health Services to adopt rules for the accreditation of asbestos related training courses, substitutes "supervising air monitors" for "management consultants" in the list of separate accreditation categories, and provides that no person shall provide an asbestos related training courses until the course has been approved by the Department of Environment, Health, and Natural Resources. The bill also directs the Department to establish and collect annual fees for approving asbestos management training courses. Each category of a training course is subject to a separate fee, the fee for an initial course approval shall not exceed $1,500, and the annual course renewal fee shall shall not exceed $500. The bill also amends the accreditation requirement exemptions so that building owners and operators are not exempt when performing asbestos management activities in nonpublic areas of the building but are exempt for small-scale, short duration activities, as defined in the Code of Federal Regulations; and to provide that certain occupational licensees, including general contractors, plumbers, electricians, and refrigeration technicians, are exempt for jobs that fall under the small-scale, short duration rules rather than on the basis of whether a specific job involves asbestos in an amount less that the spatial measurements previously specified in the statute. House Bill 650 provides that the Commission for Health Services, rather than the Environmental Management Commission, will adopt rules to implement the asbestos NESHAP for demolitions and renovations, including rules regarding the authorization of local air pollution control programs to enforce these standards. House Bill 650 authorizes the Department of Environment, Health, and Natural Resources to authorize any local air pollution control program certified by the Environmental Management Commission to enforce the asbestos NESHAP for demolitions and renovations and provides that the Department shall authorize any local air pollution control program that was certified prior to 1 October 1994. A local air pollution control program shall retain its authorization so

long as it continues to be certified and complies with rules adopted by the Commission of Health Services. House Bill 650 becomes effective 1 October 1994.

Crab License/Fisheries Moratorium (HB 1540, Chapter 576; SB 1436, Chapter 675; and HB 589, Chapter 770): House Bill 1540 separates the "Crab" license from the "Shellfish and Crab" and establishes a two-year moratorium on certain new licenses. Senate Bill 1436 and HB 589 make technical changes to HB 1540. (See summary under **AGRICULTURE.**)

Emissions Inspections Changes (HB 1843; Chapter 754): See summary under **TRANSPORTATION.**

Encourage Voluntary Remediation (HB 1961; Chapter 598): House Bill 1961 amends G.S. 130A-310.9 to authorize the Department of Environment, Health, and Natural Resources to select and hire private environmental consulting and engineering firms to implement and oversee voluntary remedial actions by owners, operators, or other responsible parties at inactive hazardous sites. A party that chooses to use a private firm shall reimburse the Department for the cost of all work performed by the firm. The bill provides that a voluntary remedial action and all documents that relate to the voluntary remedial action are subject to inspection and audit by the Department. The bill directs the Commission for Health Services to adopt rules governing the selection and use of private environmental engineering and consulting firms to implement and oversee voluntary remedial actions.

House Bill 1961 adds a new G.S. 130A-26.2, which makes it a Class 2 misdemeanor with a maximum fine of $10,000 to make a false report under the solid waste management statutes. Offenses include knowingly making any false statement, representation, or certification in any application or other document that is filed or required to be maintained; knowingly making a false statement of a material fact in a rule-making proceeding or contested case; or falsifying tampering with or knowingly rendering inaccurate any recording or monitoring device.

House Bill 1961 provides that the Environmental Review Commission, in cooperation with the Department of Environment, Health, and Natural Resources, may study the possibility of implementing a program that would use licensed site professionals to oversee voluntary and other remedial actions.

The provisions of House Bill 1961 that authorize the use of private environmental consulting and engineering firms and that establish the penalty for false reporting become effective 1 January 1995. The provision of the bill that authorizes the Commission for Health Services to adopt rules (which may not become effective prior to 1 January 1995) and that provide for a study of the use of licensed site professionals became effective when the bill was ratified on 1 July 1994.

Protect Trade Secret Environmental Data (HB 1972; Chapter 694): House Bill 1972 amends G.S. 143-215.3(a)(2) and adds G.S. 143-215.3C to clarify that information obtained under the water quality, oil pollution control, and air pollution control statutes is public information except that the Environmental Management Commission shall consider such information confidential upon a showing by any person that disclosure of the information would divulge methods or processes entitled to protection as a trade secret under G.S. 132-1.2. Effluent data and emission data, as defined in the Code of Federal Regulations, is not entitled to confidential treatment, and confidential information may be disclosed to government employees if necessary to carry out a proper function of the agency. The Environmental Management Commission is required to give adequate notice to any person who submits information if the Commission determines that the information is not entitled to confidential treatment.

Any person who is dissatisfied with a decision of the Commission to withhold or release information may request a declaratory ruling under G.S. 150B-4 within ten days after the Commission makes its decision, in which case information may not be released until a final administrative or judicial determination is made. House Bill 1972 became effective when it was ratified on 6 July 1994.

Landfill Permit Local Review (HB 1973; Chapter 722): House Bill 1973 sets forth standards for local governments to use in the review of sanitary landfill applications for permits. The bill amends G.S. 130A-294 to provides that an applicant must obtain a franchise for the operation of the sanitary landfill from each local government having jurisdiction prior to applying for the permit. The franchise must include: (a) a statement of the population to be served, including a description of the geographic area; (b) a description of the volume and characteristics of the waste stream; and (c) a projection on the useful life of the landfill. The applicant must request each local government having jurisdiction to issue a determination as to whether the local government has in effect a franchise, zoning, subdivision, or land-use planning ordinance applicable to the sanitary landfill and whether the permit would be consistent with the applicable ordinances. If the local government has not submitted a determination within 15 days after receipt of the request, the Dept. of Environment, Health, and Natural Resources must proceed to consider the application. Unless the local government makes a subsequent determination of consistency, the Dept. must attach as a condition of the permit, that the applicant comply with all lawfully adopted local ordinances prior to construction or operation of the sanitary landfill.

The bill became effective upon ratification on July 7, 1994, and applies to applications submitted on or after that date.

Land Clearing/Debris Landfills (SB 898; Chapter 580): Senate Bill 898 exempts on-site land clearing and inert debris landfills with a disposal area of 1/2 acre or less from permit requirements of G.S. 130A-294(a)(4) and establishes a new G.S. 130A-301.1 to regulate such landfills. The new section requires that: (a) the landfill not be sited 50 feet or less from a boundary of an adjacent property; (b) the owner file a certified copy of a survey of the landfill property with the register of deeds; (c) the owner of a lot or tract of land that abuts or is directly contiguous to the disposal area to prepare a document disclosing that the property has been used as a disposal area or has been used to meet minimum buffer requirements (prior to the lease or conveyance). The disclosure must be filed in the office of the register of deeds, and include a legal description of the property that would be sufficient in an instrument of conveyance; (d) no construction of a public, commercial, or residential building may be commenced on a landfill site (with the exception of site preparation and foundation work) until after the closure on the landfill; and (e) directs that source reduction methods must be used on the site used for a landfill. The bill exempts the Dept. of Transportation from subsections (b) and (c) on highway rights-of-way. Commission rules adopted prior to the effective date of the act concerning siting and operational requirements remain in effect to the extent they are consistent with the act.

The bill became effective upon ratification on June 30, 1994, and applies to all land clearing and inert debris landfills sited on or after that date.

Submerged Lands Claims Extension (SB 1437; Chapter 717): Senate Bill 1437 extends the time to resolve claims of title to submerged lands filed under G.S. 113-205. The time for resolving claims pending is extended from December 31, 1994 to December 31, 1998. The time for contesting a claim resolution is extended by 4 years to December 1, 2001. The deadline for donating claimed marshland to the State is extended from December 31, 1994 to December 31, 1998.

The bill became effective July 7, 1994.

Deceleration of Downdrift Beach Erosion (SB 1504; Chapter 777, §6): Section 6 of Senate Bill 1504, AN ACT TO MAKE VARIOUS CHANGES IN THE BUDGET OPERATION OF THE STATE AND OTHER STATUTORY CHANGES, provides that construction and maintenance dredgings of beach-quality sand may be placed on the downdrift beaches or, if placed elsewhere, an equivalent quality and quantity of sand from another location shall be placed on the downdrift beaches. This section became effective when it was ratified on 17 July 1994.

Blue Ribbon Advisory Council on Oysters (SB 1505; Chapter 769, §27.16): Section 27.16 creates a 19-member Blue Ribbon Advisory Council on Oysters to assist the Marine Fisheries Commission and the Joint Legislative Commission on Seafood and Aquaculture on making recommendations relating to the oyster resource. (See summary under **AGRICULTURE**.)

HUMAN RESOURCES

(John Young, Walker Reagan, Sue Floyd, Steve Schanz)

Aging

DHR to Report (SB 31; Chapter 743): Senate Bill 31 requires the Secretary of the Department of Human Resources to report the findings and recommendations from the Department of Human Resources's Steering Team for Domiciliary Care that relate to assisted living issues. This report shall be made to the North Carolina Health Planning Commission and the North Carolina Study Commission on Aging. The bill became effective July 14, 1994.

Center for Gerontology (SB 1505; Chapter 769): There was appropriated to the UNC Board of Governors $50,000 to provide program planning funds for an inter-institutional Center for Gerontology. This provision became effective July 1, 1994.

Senior Center Funds (SB 1505; Chapter 769): There was appropriated $100,000 of nonrecurring funds to the Division of Aging for senior center repairs, renovation, and construction of facilities. This provision became effective July 1, 1994.

In-home Funds (SB 1505; Chapter 769): There was appropriated an additional $500,000 to the Division of Aging for in-home services. This is in addition to $10.8 million continuing funding for the 1994-95 fiscal year. This provision became effective July 1, 1994.

Alzheimer's Funds (SB 1505; Chapter 769, §25.50): Section 25.50 of Senate Bill 1505 appropriates $100,000 to the Division of Aging to be used to support services delivered to Alzheimer's patients and their families. These funds are to be allocated to each of the four Alzheimer's association chapters in North Carolina in grants of $25,000 each. This provision became effective July 1, 1994.

Facilities and Institutions

Nursing Home Penalty Committee Change (HB 740; Chapter 698): G. S. 131D-34(h) requires the Secretary of the Department of Human Resources to establish a Penalty Review Committee. This Committee has the responsibility to review administrative penalties assessed against nursing and rest homes who violate applicable State and federal laws and regulations. The Committee is composed of nine members appointed by the Secretary. Four are designated by statute to include a licensed pharmacist, a registered nurse experienced in long term care, a representative of a nursing home and a representative of a rest home. Before the passage of House Bill 740, five of the members were undesignated to be chosen by the Secretary. House Bill 740 changes two of the formerly undesignated slots. One slot is now designated for a near relative of a nursing home patient and one slot is now designated for a near relative of a domiciliary home patient. The Secretary would choose these two near relatives from a list prepared by the Office of the State Long Term Care Ombudsman. A near relative is defined as a spouse, sibling, parent, child, grandparent, or grandchild of a resident or patient. The act became effective July 7, 1994.

Family Care Home/Residential Use (SB 872; Chapter 619): G. S. 168-20 thru G. S. 168-23 declares that a "family care home" is a residential use and is to be permitted in any residential zoning district. No local government may prohibit such a home in a residential district or require that it obtain a conditional or special-use permit or a variance or special exception. Senate Bill 872 amends G. S. 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. The act is effective October 1, 1994.

Hospital Branch Facilities Change (SB 952; Chapter 676): Senate Bill 952 modifies G.S. 131E-14.1 by making the branch facility statute applicable to municipalities organized under the Municipal Hospital Act and District Hospital Act and to nonprofit corporations which lease or operate a hospital facility pursuant to an agreement with a municipality. The bill removes the prohibition that the branch facility powers cannot be exercised in any county that has four or more incorporated municipalities within its boundaries. The act became effective upon ratification, July 5, 1994.

Domiciliary Facilities Residents Personal Needs Allowance (SB 1505; Chapter 769): There was appropriated $469,876 to increase the personal needs allowance for residents of domiciliary facilities from the current $27 to $31 per month. This provision became effective July 1, 1994.

State Veterans Home (SB 1505; Chapter 769, §11.4): Section 31 of Chapter 561 of the 1993 Session Laws appropriated funds for the construction of 105 beds to be designated as the State Veterans Home. This provision also stated that no State funds shall be appropriated in future years to support operational costs. Section 11.4 of Senate Bill 1505 modified this language to say that the State Veterans Home shall receive its primary income from fees, charges, and reimbursements, and that State appropriated funds be made available only in the event that other sources are insufficient to cover essential operating costs. This provision became effective July 1, 1994.

Domiciliary Homes/Staffing Issues (SB 1505; Chapter 769, §25.6): Section 25.6 of Senate Bill 1505 requires the Department of Human Resources to study the fiscal

impact for all Homes for the Aged and Family Care Homes for appropriate staffing, staff turnover ratios, wages and benefits, staff training, and abilities for facilities to operate within existing State and federal law and regulations, according to size and type of facility. This provision became effective July 1, 1994.

Determination of Budgetary Impact of Additional Beds in Domiciliary Care Facilities (SB 1505; Chapter 769, §25.22): In order for the General Assembly to determine the budgetary impact of additional beds in domiciliary care facilities the Department of Human Resources is required by January 1, 1996, to develop policy criteria and standards for planning, conduct inventories, and make determinations of need for health services facilities, domiciliary care facilities and other assisted living arrangements subject to any State licensing requirements. The plans and need determinations shall not be included in the State Medical Facilities Plan. This provision became effective July 1, 1994.

Development of Rate-Setting Methodology for Domiciliary Care Facilities Continued (SB 1505; Chapter 769, §25.24): Section 25.24 requires that DHR continue the development of the rate-setting methodology of domiciliary care facilities proposed in an interim report by the Department to the 1993 General Assembly, Regular Session 1994. The final plan shall include the recommended maximum payment rate for each category of facility and any recommendations regarding needed changes in standards or monitoring. The final plan shall be submitted to the General Assembly by February 1, 1995. This provision became effective July 1, 1994.

Domiciliary Care Reimbursement Rate Increase (SB 1505; Chapter 769, §25.25): Effective July 1, 1994, the maximum monthly rate for residents in domiciliary care facilities shall be $975 per month for ambulatory residents and 1,017 per month for semiambulatory residents. This is an increase from $938 per month for ambulatory residents and $979 per month for semiambulatory residents.

Health

Tattooing Regulated (HB 203; Chapter 670): House Bill 203 regulates persons who engage in tattooing by requiring them to obtain an annual permit from the Department of Environment, Health, and Natural Resources. The licensees must comply with sanitation rules to be adopted by the Commission of Health Services, and pay a fee set by the local board of health for the local board's services concerning tattooing. The Department acts through the local health departments. The bill defines tattooing and exempts from the requirements any of the following individuals who perform tattooing within the normal course of their professional practice: a licensed physician, and either a physician assistant or a nurse practitioner who is working under the supervision of a licensed physician. Receiving a license to tattoo does not permit a person to remove tattoos. The permit requirements of the bill are effective January 1, 1995, but the rule making authority of the Commission is effective upon ratification.

Patient Records/EHNR Investigations (HB 613; Chapter 715): House Bill 613 amends G.S. 130A-5(2), which in part spells out the authority enabling public health physicians to gain access to pertinent parts of privileged medical information necessary for public health investigations by permitting the authorization to release privileged medical information to be given by the chief-of-staff of a health care facility, or the chief administrator of a facility that does not have a chief-of-staff, when the patient's attending physician cannot be reasonably contacted. The bill extends civil and criminal

immunity from invasion of privacy or breach of physician-patient confidentiality claims to those persons who furnish and handle medical information under this provision. The act was effective upon ratification on July 7, 1994.

Prohibition of Certain Solicitations by Health Care Providers (HB 795; Chapter 689): House Bill 795 amends the law which prohibits a health care provider from financially compensating another person for the referral or solicitation of a patient. The bill amends G.S. 90-401 to not only prohibit a health care provider from compensating another for a referral but also prohibits a health care provider from receiving compensation for a referral. The bill adds a new section to prohibit health care providers, or their employees or agents, from directly contacting a potential patient through either direct personal contact or telephone contact, within 90 days of the onset of the patient's injury, disease or infirmity, for the purpose of inducing or persuading the person to become a patient of the health care provider. The bill specifically authorizes solicitation by advertising or other means so long as the solicitation does not involve direct personal or telephone contact. The act becomes effective October 1, 1994.

HIV, Sexually Transmitted Diseases, and T.B. Prevention Services (SB 1505; Chapter 769): $500,000 of State funds were appropriated to support community-based organizations in activities related to these diseases.

HIV/AIDS Training and Education (SB 1505; Chapter 769): $49,679 was appropriated to train Probation and Parole personnel and provide brochures to inmates.

North Carolina Health Planning Commission Reporting Deadline Extension (SB 1505; Chapter 769, §25.51 and HB 1319; Chapter 771, Part VI): The Jeralds-Ezzell-Fletcher Health Care Reform Act of 1993 required the Governor to present a plan for consolidating all of the State's health functions into one department of health. This plan was to be reported to the General Assembly by April 1, 1994. Part VI of House Bill 1319 changes the reporting date to February 1, 1995.

Pool Safety (SB 1517; Chapter 732): See summary under **CHILDREN AND FAMILIES.**

Licensing and Certification

Marriage and Family Therapists (HB 233; Chapter 564): House Bill 233 would require the mandatory licensure of persons practicing marriage and family therapy. Currently North Carolina has a voluntary certification process for marriage and family therapists. This bill allows those practitioners who want to call themselves "certified" marriage and family therapists to do so by meeting specified educational and experience requirements and by passing a Board examination. The bill converts the certification board, which has been operational since 1979, into a licensing board. The bill requires the same educational and experience requirements for licensure as are currently required for certification. Anyone certified by the Board by January 1, 1995, will automatically be licensed. Continuing education shall be required of all licensees. The maximum fees the Board may impose are $50 license examination fee, $150 license application fee, and $100 license renewal fee. The act is effective January 1, 1995.

Registered Speech and Language Pathologist and Audiologist Assistant (HB 988; Chapter 688): House Bill 988 permits a licensed speech and language pathologist or

licensed audiologist to register an assistant to work under the licensee's supervision provided the assistant meets the qualifications for registered assistants adopted by the Board and the registration fee is paid by the licensee. The bill provides that the registration be renewed annually by the licensee. The act becomes effective July 1, 1995.

Regulate Medical Equipment (HB 1082; Chapter 692): House Bill 1082 makes it unlawful to own or manage a place of business from which medical equipment is delivered to a consumer for the consumer's use in the home without registering the business with the Board of Pharmacy and obtaining a medical equipment permit. However, a business that has a current pharmacy permit or a current device permit would not need a medical equipment permit. The bill defines medical equipment as the following equipment that is intended for use by the consumer in the consumer's home: a device as defined in G. S. 90-85.3, ambulation assistance equipment, mobility equipment, rehabilitation seating, oxygen and respiratory care equipment, rehabilitation environmental control equipment, diagnostic equipment, or a bed prescribed by a physician to treat or alleviate a medical condition. The term does not include: medical equipment dispensed by hospitals, home care agencies, or nursing facilities, medical equipment used or dispensed by professionals licensed under Chapter 90 or Chapter 93D, upper and lower extremity prosthetics and related orthotics, or canes, crutches, walkers, and bathtub grab bars. The act is effective January 1, 1995.

Substance Abuse Professionals Certification Act and Amend Licensed Professional Counselors Act (HB 1142; Chapter 685): House Bill 1142 establishes a procedure for certifying the qualifications of persons to perform certified substance abuse counseling or certified substance abuse prevention consulting, and makes it illegal to use the title "certified substance abuse counselor" or "certified substance abuse prevention consultant" without first being certified under this law. Certification will be administered by the North Carolina Substance Abuse Professionals Certification Board, which will be initially composed primarily of the members of the current board of the North Carolina Substance Abuse Professionals Certification Board, Inc. Subsequent boards will be chosen primarily by certified professionals and the existing Board. Board members are limited to serving two consecutive three-year terms. Persons will be certified under this law who have, among other requirements, good moral character, a high school diploma, completed 270 hours of Board-approved education, completed 300 hours of Supervised Practical Training, either 3 years of supervised field experience or a Board-approved masters degree and 18 months of supervised field experience, and who have successfully completed a written and oral examination administered by the Board. Certification must be renewed every two years and is subject to the completion of 60 hours of continuing education approved by the Board. Violation of the act is a criminal offense punished as a Class 1 misdemeanor. The Board may also seek injunctive relief for violations of the act.

The bill also amends the Licensed Professional Counselors law to change the requirement for licensure for those applicants exempt from the academic qualifications of the law, to either pass the Board examination or (was and) meet the experience requirements. This would apply to persons who were engaged in the practice of counseling before July 1, 1993 or who have a masters degree from an approved college or university, having enrolled in the masters program prior to July 1, 1994.

The bill became effective July 1, 1994 and applies to requirements imposed after that date and to causes of action arising on or after that date.

Further Changes to the Licensed Professional Counselors Act (HB 1605; Chapter 591, §§12 and 16): Section 12 amends G.S. 90-332.1(a) by adding two new

subdivisions, one designating a person counseling within their employment at a community college and the other a person counseling within their employment at an institution of higher education. Both new designations are exempt from the act.

Section 16 amends G.S. 90-332.1(a)(8) (dealing with the registration of licensed professional counselors) by exempting those who perform counseling as an employee of an area facility as defined by statute if: (1) the services are provided by a qualified professional or by an employee supervised by a qualified professional and (2) the area facility has verified from the appropriate licensing board that the person's license has not been revoked, rescinded, or suspended.

The provisions also add two new exemptions from licensure as a professional counselor. One is an employee of a hospital or health facility who performs counseling under the supervision of a qualified individual. The other is an employee assistance program (EAP). The act became effective July 1, 1994.

Marriage License Health Certificate/Home Quilters (SB 453; Chapter 647): Under current statutory requirement, 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 to show: no evidence of communicable of infectious T.B.; no evidence of venereal disease disease; and the applicant is mentally competent. Senate Bill 453 repeals this requirement for a health certificate.

Senate Bill 453 also changes the definition of "bedding" to specify that the term does not include quilts and conforters made principally by hand sewing or stitching in a home or community workshop. This provision is effective upon ratification. The provision relating to health certificates is effective October 1, 1995.

Board of Medical Examiners Fees (SB 719; Chapter 566): Senate Bill amends G.S. 90-15.1 by increasing the registration fee for the Board of Medical Examiners from $100.00 to $200.00. Registration is required during January in every odd-numbered year. G.S. 90-15 is also amended by raising the per diem compensation of the Board of Medical Examiners from $100.00 per day to $200.00 per day. The bill became effective June 16, 1994.

Charitable Solicitations Rewrite (SB 940; Chapter 759): See summary under **CRIMINAL LAW AND PROCEDURE.**

Electrolysis Board Changes (SB 1249; Chapter 755): Senate Bill 1249 makes the following changes concerning the Board of Electrolysis Examiners: (1) requires electrologists to provide proof of graduation from a certified school or proof of having worked for one year prior to application in electrolysis in a state that does not license electrologists, applicable to those whose residence began on or after January 31, 1994; (2) authorizes temporary licenses; (3) exempts from licensure an employee of a hospital working under the supervision of a physician licensed under Chapter 90 who is certified by the American Board of Dermatology; and (4) takes away the Board's authority to maintain funds in financial institutions and requires that the funds be deposited with the State Treasurer and that the funds must be expended under the supervision of the Director of the Budget and that the Executive Budget Act applies to the Board and the Board is subject to the oversight of the State Auditor. This act became effective July 15, 1994.

Medicaid

Medicaid Compliance (HB 1563; Chapter 644): See summary under **CHILDREN AND FAMILIES.**

Medicaid Inpatient Hospital Reimbursement Change (HB 1605; Chapter 591; Section 8): Section 227 of Chapter 321 of the 1993 Session Laws required that effective July 1, 1994, Medicaid should implement a budget-neutral Diagnostic-Related Group reimbursement methodology for inpatient hospital services. In addition, Medicaid should study the feasibility of implementing selective contracts for hospital inpatient services. Section 8 of House Bill 1605 changes the reporting date from July 1, 1994 to October 1, 1994. It also deletes the feasibility study portion of the provision. This provision became effective July 1, 1994.

Coverage for Elderly, Blind, and Disabled (SB 1505; Chapter 769, §25.13): Effective January 1, 1995, the Department of Human Resources, Department of Medical Assistance shall provide Medicaid coverage to all elderly, Blind, and Disabled people who receive Supplemental Security Income. This provision became effective July 1, 1994.

Medicaid Estate Recovery Plan, As Required by Federal Law (SB 1505; Chapter 769): Sec. 25.47 adds a a new section to Chapter 108A, Article 2 of the General Statutes which addresses the recovery of Medicaid monies from estates of decedents by the state to bring it into conformity with the Omnibus Budget Reconciliation Act of 1993. Administration of the plan is placed with the Department of Human Resources. New G.S. 108-70.55 limits the amount the state can recover from decedents' estates to the amount of medical assistance made on behalf of the Medicaid recipient. It also designates the Department as a fifth-class creditor for purposes of determining the priority of claims, although judgments of other fifth-class creditors docketed and in force before the Department seeks recovery shall be paid first. The Department of Human Resources is to adopt rules to implement this plan, including rules aimed at waiving total or partial recovery where it would be equitable to do so because of hardship. Part of the act is effective October 1, 1994, and is applicable to persons applying for benefits on or after that date. The rest of the act became effective July 1, 1994.

Mental Health

Area Authority Property (HB 536; Chapter 592): House Bill 536 adds mental health, developmental disabilities, and substance abuse authorities to the list of local government units that are authorized to finance the acquisition of real or personal property by an installment contract that creates in the property purchased a security interest to secure payment of part of all of the purchase price. The local governmental units that are currently authorized to purchase property by this method are cities, counties, water and sewer authorities, certain airport authorities, and certain school administrative units. The bill became effective July 1, 1994.

Pioneer Testing Rule Waiver Extension (HB 1605; Chapter 591, §7): The 1987 General Assembly created major changes in the manner in which community mental health programs were to be funded. These changes, designated as "pioneer testing," were to be phased in over a period of years. Session Laws 1993, Chapter 321,

§220(n), provided that this program be repealed July 1, 1994. House Bill 1605, Section 7 extends the repeal date to July 1, 1995.

Mental Health Services (SB 1505; Chapter 769): Senate Bill 1505 places $1.875 in reserve to match Medicaid funds for the provision of mental health services to residents in domiciliary care facilities. This provision became effective July 1, 1994.

Thomas S. (SB 1505; Chapter 769, §25.3): Section 25.2 of Senate Bill 1505 rewrites Section 209 of Chapter 321 of the 1993 Session Laws to add another category of persons eligible to have monies expended for Thomas S. Class members. This new, additional category includes adults who are included on the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services' official list of prospective class members and have yet to be confirmed as class members, who currently reside in the community, and who have a good probability of being admitted to a facility licensed as a "home for the aged and disabled". This provision became effective July 1, 1994.

Willie M. Rules (SB 1505; Chapter 769, §25.17): Section 25.17 of Senate Bill 1505 requires the Secretary of the Department of Human Resources to make rules concerning the Willie M Class and when this group of disabled, violent, and assaultive children terminate from the program. The rules shall allow for the continuation of services of any child the Secretary determines is being appropriately served until the end of the fiscal year in which the child reaches the age of 18 or until six months after the child reaches the age of 18, whichever period is longer. This provision became effective July 1, 1994.

Pilot Subsidy for Domiciliary Homes for Services to Developmentally Disabled Residents Reporting Extended (SB 1505; Chapter 769, §25.23): Section 241 of Chapter 321 of the 1993 Session Laws authorized the Division of Mental Health, Developmentally Disabled and Substance Abuse to conduct a pilot of subsidies to homes for the aged and disabled and family care homes to support the provision of habilitative and related services needed by the developmentally disabled persons who reside in such facilities. A report on the pilot was to be made to the General Assembly by July 1, 1994. Section 25.23 of Senate Bill extended the date to April 15, 1995.

Miscellaneous

Amend Early Childhood Init. (SB 1384; Chapter 766): See summary under **CHILDREN AND FAMILIES.**

Nursing Scholars Program (SB 1505; Chapter 769, §17.11): Section 17.11 of Senate Bill 1505 expands the categories of persons eligible for the Nursing Scholars Program. Under this new authority the North Carolina Nursing Scholars Commission may award pro rata scholarship loans to recipients enrolled at least half-time in study leading to a masters of science in nursing who already hold a baccalaureate degree in nursing. The Commission may also set aside slots for scholarship loans to enable licensed practical nurses to become registered nurses. The State Education Assistance Authority may provide for accelerated repayment and for less than full-time employment options to encourage the practice of nursing in either geographic or nursing speciality shortage areas. This section became effective July 1, 1994.

Social Workers' Education Loan Fund (SB 1505; Chapter 769, §17.16): Section 17.16 of Senate Bill 1505 establishes a Social Workers' Educational Loan Fund to be administered by the State Education Assistance Authority. The purpose is to attract trained social workers into public child welfare positions in all county departments of social services in the State. To be eligible the student must be: a North Carolina resident; enrolled in a BA or MA social work program; and enter into an agreement with the State to accept employment in public child welfare. The loan limits are $4000 per year for a maximum of four years for a BA student and $5000 per year for a maximum of two years for a MA student. There are penalties for those students who do not fulfill the terms of the agreement. This section is effective July 1, 1994

INSURANCE

(Tim Hovis, Linwood Jones, Lynn Marshbanks)

Liability Insurance Proof Change (HB 1551; Chapter 595): See summary under **TRANSPORTATION.**

Single State Insurance Registration (HB 1619; Chapter 621): See summary under **TRANSPORTATION.**

Standards for Funding Agreements (HB 1663; Chapter 600): House Bill 1663 specifically authorizes licensed life insurance companies in North Carolina to issue funding agreements. The use of these agreements, which are similar to annuities, will be regulated by the Commissioner of Insurance. The act also removes the distinction in the current insolvency distribution law between claims under policies for $300,000 or less and claims for $300,000 or more. This provision also applies to claims under funding agreements and annuities. The act also amends the premium tax law to extend the premium tax exemption for annuities qualified under the Internal Revenue Code to nonqualified annuities and funding agreements. The premium tax exemption takes effect January 1, 1995, with the remainder of the bill effective on July 1, 1994.

Insurer Risk-Based Capital/Technical Changes (SB 626; Chapter 678): Senate Bill 626 requires domestic life and health insurance companies to file reports annually with the Commissioner and the NAIC on their risk-based capital levels as of the end of the preceding year. The Commissioner may also require reports to be filed by foreign life and health insurers and may take the actions discussed below for domestic companies if the foreign company's domiciliary state has taken no action.

The insurer's risk-based capital is to be determined in accordance with a formula that reflects risks such as the risks with respect to the insurer's assets, the risk of adverse insurance experience on the insurer's liabilities and obligations, and the interest rate risk with respect to the insurer's business.

The act provides for 4 different levels of action, depending on the amount of the insurer's total adjusted capital: (1) company action level, (2) regulatory action level, (3) authorized control level, and (4) mandatory control level. As the level of the insurer's risk-based capital falls, it triggers more stringent requirements. At company action level, the insurer must prepare a financial plan (for review and approval by the Commissioner) that identifies the company's problems and how it intends to correct them. At the regulatory level, the company must file the financial plan and the Commissioner may issue a corrective order requiring certain actions to be taken. At the authorized control level, the Commissioner may place the company under

supervision or other regulatory controls under Article 30. At the mandatory control level, the Commissioner must place the insurer under the regulatory controls of Article 30.

The act provides for hearings before the Commissioner for insurance companies who want to contest specified actions. Information on risk-based capital levels, corrective orders, and analytical results is confidential (except to the extent the information is required to be published in an annual statement schedule). The risk-based capital changes become effective January 1, 1995.

In addition to the risk-based capital changes, the act also extends eligibility for scholarships under the Firemen's Relief Fund to members of the Firemen's Association and makes numerous technical changes to the Insurance Code and insurance-related statutes. Most of these changes were effective on July 5, 1994.

Insurance Department Jurisdiction (SB 803; Chapter 569): Sections 1 through 5 of Senate Bill 803 clarify the Department of Insurance's jurisdiction over health benefit providers. The act makes clear that a health benefits provider falls under the jurisdiction of North Carolina insurance laws and regulations and is subject to examination by the Commissioner unless it can show that it is under the exclusive jurisdiction of another governmental agency.

A health benefits provider ordinarily shows that another agency has jurisdiction by providing a copy of the license, certificate, or other documentation issued by the agency. The act provides that if the agency does not issue such documentation, the health benefits provider may provide other certification from an official of the agency stating that the provider is under the exclusive jurisdiction of that agency.

Sections 6 through 11 of the act make various technical amendments to provisions in the 1993 Health Care Reform Act that relate to small employer purchasing groups and small employer group health reform. Section 12 provides for immunity for members, employees, and agents of the State Health Purchasing Alliance Board when they are acting in good faith in the scope of their official duties.

Sections 13 through 15 of the act make minor technical changes to the Psychology Practice Act. The small employer group amendments become effective January 1, 1995. The remainder of the bill became effective on June 22, 1994.

School Group Health Insurance (SB 854; Chapter 716): Senate Bill 854 allows insurers (as well as HMOs and medical, hospital, and dental service corporations) to offer group accident and health coverage through the local boards of education or the local schools for school students. The premium can be paid by the board of education, the students (or someone on their behalf), or both. Local boards of education can also establish fees for the payment of the premiums by or on behalf of the covered students. The act took effect on July 7, 1994.

Service Agreement Changes (SB 1084; Chapter 730): Senate Bill 1084 repeals provisions requiring Department of Insurance registration and oversight of businesses providing service agreement warranties for motor vehicles and home appliances. However, these businesses, unless otherwise exempt, must still comply with the statutory requirements for insurance coverage. The insurance coverage ensures that the insurer will step in and fulfill the terms of the service agreement if the business becomes insolvent or is otherwise financially unable to fulfill the terms. The act becomes effective October 1, 1994, except for certain provisions that took effect July 11, 1994.

Health Maintenance Organization Insurance Requirement (SB 1505; Chapter 769, §25.48): Section 25.48 of Senate Bill 1505 provides that to the extent Article 67 of the

General Statutes, the Health Maintenance Organization Act, applies to any person acting as a subcontractor to a licensed Health Maintenance Organization (HMO), that person shall be considered a single service HMO for the purposes of complying with working capital, minimum deposits, and minimum net worth requirements contained in Article 67. This section became effective July 1, 1994.

Insurance/Utility Regulatory Fee (SB 1700; Chapter 664): Senate Bill 1700 sets the percentage rate for the insurance regulatory charge at 7.25% for 1994, effective July 5, 1994. It also sets the percentage rate for the public utility regulatory fee at .085%, effective July 1, 1994.

Credit Property Insurance Definition (SB 1719; Chapter 720): Senate Bill 1719 amends G.S. 58-57-100 to add a statement that automobile physical damage insurance is a form of credit property insurance, as referred to in G.S. 53-189. G.S. 53-189, part of the Consumer Finance Act ("CFA"), provides that credit property insurance may be written in accordance with Chapter 58 without the Commissioner of Banks' authorization. G.S. 58-57-100 allows the sale of automobile physical damage insurance on vehicles that are used as collateral for loans made under the CFA. This bill allows a licensee under the CFA to sell automobile physical damage insurance on nonfleet private passenger motor vehicles on the same premises where the licensee makes consumer finance loans, without the Commissioner of Banks' authorization. The bill became effective on July 7, 1994.

LOCAL GOVERNMENT

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

Sewer District Amendments/Storm Water Ordinances (HB 1628; Chapter 696): House Bill 1628, recommended by the Joint Legislative Utility Review Committee, is intended to allow county water and sewer districts to be created more expeditiously and less expensively where critical situations involving low pressure pipe sewer systems exist. It allows for the orderly annexation of those districts by the cities providing the actual sewer service when annexation is warranted, and it allows for an expedited procedure for the application by water and sewer districts for certain funds available under Chapter 159G of the General Statutes, the North Carolina Clean Water Revolving Loan and Grant Act of 1987. The bill also authorizes water and sewer authorities to adopt ordinances to regulate stormwater and drainage systems.

Section 1 of the bill adds a new subsection to G.S. 162A-86. The new subsection applies to the formation of county water and sewer districts where the purpose is to alleviate a serious public health hazard caused by the failure of a low pressure pipe sewer system. It reduces the number of advertisements for the public hearing from three advertisements to one, and allows the advertisement to include notification for more than one such district.

Section 2 of the bill amends G.S. 162A-87(b) to allow a single resolution to cover the creation of more than one district, to reduce the requirement for advertising the resolution from two insertions to one, and it reduces the time in which the creation of a district may be challenged from thirty days after publication of the resolution to twenty-one days.

Section 3 of the bill adds a new G.S. 162A-87.1 which clarifies that the boundaries of a water and sewer district may exclude areas contained solely within the external boundaries of the district, and the district may include noncontiguous portions provided the separation does not exceed one mile. The purpose of this provision is to

allow the districts to be tailored to include only the property within a subdivision which is being served by the low pressure pipe system. Thus, people with ordinary septic systems which are not malfunctioning will not be included within the district.

Section 4 of the bill amends G.S. 162A-87.2 by adding a new subsection (b) which is applicable only to districts created to alleviate low pressure pipe system emergencies. It allows a contract between the district and the city actually providing the service to the district to provide for the eventual abolition of the district in the event the city takes over the providing of sewer service directly to the affected properties. In that event, the property of the district is conveyed to the city. The city would also take over any outstanding debt and acquire the right to collect previously implemented assessments. This section also creates a new subsection (c) which contains similar provisions but is applicable to the situation where the district has contracted with a private company for the operation of the district. In this situation, the private company would be required to be certified as a public utility in order to take over the system directly. Finally, this section adds a new subsection (d) which requires that a resolution abolishing any water and sewer district must be filed with the Secretary of State.

Section 5 of the bill adds a new G.S. 162A-88.1 which specifically authorizes any county water and sewer district to contract with a private entity for the operation of the district. It applies to all county water and sewer districts.

Section 6 of the bill amends G.S. 160A-36, which is applicable to annexation by cities of less than 5,000 population. The new language only applies to water and sewer districts created to alleviate low pressure pipe sewer system emergencies, and it allows the entire district to be annexed even though there may be some parts which are not contiguous to the municipality. Furthermore, the requirement that the area to be annexed be developed for urban purposes is altered for those special water and sewer districts. They may be less than 60% urban developed, provided this has been set out in a contract between the municipality and the district and the municipality is to operate the sewer system. However, this special category is applicable only if the municipality is annexing the entire territory of the district in one proceeding. This statute is further amended to allow the annexation boundaries to be the boundaries of the county water and sewer district being annexed.

Section 7 of the bill amends G.S. 160A-48 by adding the same provisions as Section 6 of the bill, but applicable to cities of 5,000 or more population.

Section 8 of the bill amends G.S. 159G-10 to allow for special procedures for applications for wastewater funds under the Clean Water Revolving Loan and Grant Act where the State Health Director has certified that there is a public health hazard due to the failure of a low pressure pipe sewer system. Specifically, in that situation, the Environmental Management Commission may establish a special period for consideration of such applications. Ordinarily they are considered during two specific semi-annual periods. This subsection also permits the Environmental Management Commission to adopt temporary rules for the processing of such emergency applications and to adjust the priorities for such loans and grants as required by the emergency situation. In these emergency situations, an environmental assessment is not required to be made with the application for the funds provided the project is not considered a major project as defined in G.S. 113A-9(6) (the Environmental Policy Act).

Section 8.1 of the bill amends G.S. 162A-6(14c) to provide authority for water and sewer authorities to adopt ordinances to regulate stormwater and drainage systems.

House Bill 1628 became effective July 6, 1994. Section 8, which relates to the Clean Water Funds, is effective with respect to applications received on or before December 31, 1994, and expires January 1, 1995.

Powell Funds/Sidewalks (HB 1661; Chapter 690): See summary under TRANSPORTATION.

Highway Utility Costs/Sanitary District Boards (HB 1983; Chapter 736): House Bill 1983 amends G.S. 136-27.1 to provide that the Department of Transportation shall pay the nonbetterment cost for the relocation of water and sewer lines, located within the existing State highway right-of-way, that are necessary to be relocated for highway improvement project and owned by a rural water and sewer district operated by a county as an enterprise system. House Bill 1983 also amends G.S. 130A-50(b) to provide that the county commissioners may increase at any time a three member sanitary district board to a five member board. The increase shall become effective with respect to any election where the filing period for candidacy opens at least 30 days after approval of the expansion. The amendment also provides procedures for staggering the terms of board members. The bill became effective upon ratification, July 12, 1994.

Residential Plan Approval Optional (HB 2015; Chapter 741): House Bill 2015 clarifies the General Statutes to provide that cities and counties are not required to review and approve residential plans submitted pursuant to the North Carolina State Building Code. The city or county may review and approve residential building plans as it deems necessary. The bill repealed Chapter 387 of the 1993 Session Laws which gave only Mecklenburg County this authority.

The bill became effective upon ratification, July 13, 1994.

Local Condemnation Restrictions (SB 87; Chapter 624): Senate Bill 87 amends G.S. 153A-15(c) by adding Catawba, Cumberland, Duplin, Durham, Gaston, Graham, Hoke, Iredell, Lincoln, McDowell, Mecklenburg, Robeson, Scotland and Wake Counties to those counties in which the consent of the board of commissioners is required before property may be condemned or acquired by a unit of local government outside of the county. The amendment further provides that the consent of the board is not required for the condemnation or acquisition of property by a city that is within the corporate limits of that city. The act became effective upon ratification, July 1, 1994.

Local Energy Savings Contracts (SB 94; Chapter 775): Senate Bill 94 authorizes units of local government, local school boards, and community colleges to enter into guaranteed energy savings contracts in order to finance energy conservation measures in local public facilities. A local governmental unit may enter into a guaranteed energy savings contract if all of the following apply: (1) the term of the contract may not exceed eight years; (2) the energy savings will equal or exceed the total cost of the contract; and (3) the measures to be installed are on an existing building. A qualified provider must post a bond equal to 100% of the total cost of the contract. The contract may not require the purchase of a maintenance contract from the qualified provider if the local governmental unit uses its own forces for maintenance or can purchase maintenance services at a lower cost from another provider or contractor.

The bill became effective upon ratification, July 16, 1994.

Sewer District Amendments (SB 1471; Chapter 714): Senate Bill 1471 is identical to House Bill 1628, which is summarized in this section, except that Senate Bill 1471 does not contain the amendment to G.S. 162A-6(14c). In addition, Senate Bill 1471 became effective July 7, 1994, rather than July 6, 1994, the date House Bill 1628 became effective.

PROPERTY
(Giles S. Perry, Steven Rose)

Remove Attorney Fees Sunset and Arbitration/Mediation Not Prohibited as Waiver of Right to Jury Trial (HB 619; Chapter 763): See summary under **CIVIL LAW AND PROCEDURE.**

Residential Plan Approval Optional (HB 2015; Chapter 741): See summary under **LOCAL GOVERNMENT.**

Home Inspectors (SB 617; Chapter 724): See summary under **STATE GOVERNMENT.**

RESOLUTIONS
(Susan Seahorn, Steve Schanz)

House Joint Resolution 1559 (Resolution 32): Honors the life and memory of former state senator Joe Max Thomas. Effective June 16, 1994.

House Joint Resolution 1975 (Resolution 38): Allows the General Assembly to consider a bill authorizing the Department of Transportation to lease a designated part of the right-of-way of N.C. 147 to the City of Durham for parking purposes. Ratified July 1, 1994.

House Joint Resolution 2131 (Resolution 36): Honors the life and memory of former House of Representatives member Ray Charles Fletcher. Effective June 27, 1994.

House Joint Resolution 2134 (Resolution 41): Adjourns the House of Representatives and Senate sine die on Sunday, July 17, 1994 at 1:00 a.m.

Senate Simple Resolution 1625. Memorializes U.S. Congress to propose an amendment to the U.S. Constitution giving states the power to prohibit the physical desecration of the American flag. The House passed a similar simple resolution (HR 230) on March 18 during the Extra Crime Session.

Senate Joint Resolution 1709 (Resolution 37): House of Representatives and Senate confirm the Governor's appointment of Hugh Wells to the North Carolina Utilities Commission for a term to expire June 30, 2001. Effective July 1, 1994.

Senate Joint Resolution 1717 (Resolution 35): Authorized the General Assembly to consider a resolution honoring the City of Mount Airy on being named an All American City. Ratified June 22, 1994.

Senate Joint Resolution 1720 (Resolution 40): Recognizes the City of Mount Airy on receiving the National Civic League's All America City Award and congratulates the members of the Mount Airy All America City Award Committee and Mount Airy citizens. Ratified July 16, 1994.

Senate Joint Resolution 1725 (Resolution 39): Repeals Section 3 of Resolution 31 of the 1993 Session Laws (re: concerning adjournment sine die). Ratified July 1, 1994.

Senate Joint Resolution 1616 (Resolution 34): Permits the General Assembly to consider "A BILL TO BE ENTITLED AN ACT TO MAKE TECHNICAL CHANGES IN G.S. 58-57-100 TO FURTHER DEFINE AUTOMOBILE PHYSICAL DAMAGE INSURANCE AND TO MAKE A CONFORMING CHANGE." Ratified June 20, 1994.

STATE GOVERNMENT

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

Alcoholic Beverage Control

Zoning Denial/ABC Permit (SB 61; Chapter 749): Senate Bill 61 makes changes in the laws governing the issuance of alcoholic beverage control permits. The bill amends G.S. 18B-901(c) by requiring the Alcoholic Beverage Commission to consider certain specific factors prior to issuing an ABC permit. Prior to this amendment, the consideration of the listed factors was discretionary with the Commission. These factors include reputation, character, and criminal record of the applicants; other ABC permits in the neighborhood; parking and traffic; kinds of businesses in the neighborhood; proximity to a church or public school; zoning laws; recommendations of the local government; and other evidence concerning the applicant's operation of the establishment and whether it would be detrimental to the neighborhood. The bill also amends G.S. 18B-901(b). Prior to the amendment, the Commission was required to notify the local government of an application for an ABC permit and allow the local government 10 days to file written objections to the issuance of the permit. The amendments change the types of permits which require such notice so that the statute will now specifically apply to retail permits other than special occasion permits, limited special occasion permits, temporary permits, and special one time permits. In addition, the local government will now be allowed 15 days within which to file its written objections. Senate Bill 61 became effective July 15, 1994, but applies to permits applied for on or after that date.

Restaurant ABC Permits (SB 725; Chapter 579): Senate Bill 725 modifies the percentage of sales that must be attributable to food and nonalcoholic beverages by restaurant permittees. To qualify as a restaurant under alcoholic beverage regulations, an establishment's gross receipts from food and nonalcoholic beverages must be at least 40% of the total gross receipts from food, nonalcoholic beverages, and alcoholic beverages. The bill became effective upon ratification, June 29, 1994.

Councils and Commissions

Gas Report Time (HB 1642; Chapter 560): House Bill 1642 amends G.S. 62-36A by changing the time by which the North Carolina Utilities Commission and the Public Staff provide biennial natural gas service reports to the Joint Legislative Utility Review Committee from 120 days after all local distribution companies have filed their natural gas planning biennial update reports with the Utilities Commission, to 180 days after the local distribution companies file their reports with the Utilities Commission. The bill was recommended by the Joint Legislative Utility Review Committee. House Bill 1642 became effective June 13, 1994.

Capitol Preservation Commission and Fund (HB 1774; Chapter 682): House Bill 1774 establishes a Capitol Preservation Commission and a Capitol Preservation Fund to maintain the State Capitol and the grounds of Union Square, on which the Capitol sits. The Commission will have 17 members:

* Six appointed by the General Assembly (half each designated by the Speaker of the House and the President Pro Tem of the Senate);
* Six appointed by the Governor; and
* Five ex officio members: the Governor, the Lieutenant Governor, the Secretary of State, the Secretary of Cultural Resources, and the Secretary of Administration, or their designees.

Members have four-year terms. The Commission may hire an Executive Director and a secretary. The Commission has broad duties, including planning, contracting, and rulemaking, to preserve and improve the Capitol and Union Square. The Fund will be the repository of money raised for the Capitol (excluding legislative appropriations), and the money in it may be spend by the Commission with the advice and consent of the Secretary of Cultural Resources. The bill requires the Governor to have an office in the Capitol. It gives the Governor power to assign other space in the Capitol, except that it says "The Lieutenant Governor and the Secretary of State shall retain space in the Capitol as assigned by the Governor." The bill was made effective July 1, 1994, except that some of the Commission's duties are phased in July 1, 1995.

First Flight Commission Established (SB 1504; Chapter 777, §7): Section 7 of Senate Bill 1504 establishes the First Flight Centennial Commission to develop and plan activities to commemorate the centennial of the Wright Brothers' First Flight and other historical events related to the development of powered flight. The Commission shall report first to the General Assembly, with specific recommendations for commemoration, before July 1, 1995, and shall make a final report by June 30, 2004. The Department of Cultural Resources shall use $75,000 from its 1994-95 budget to establish and operate the Commission. This section was effective July 17, 1994.

Tryon Palace Artifacts (SB 1505; Chapter 769, §12.2): Section 12.2 of Senate Bill 1505 allows the Tryon Palace Commission to acquire artifacts for Tryon Palace. The Commission may also sell, trade, or transfer artifacts with no further administrative, research, or interpretation value. Money received from the sale of artifacts is to be used to acquire artifacts for research and interpretation at Tryon Palace and Gardens. This section became effective July 1, 1994.

Elections

(NOTE: REGARDLESS OF THE DATE ON WHICH THE GENERAL ASSEMBLY MAKES STATEWIDE 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.)

Voter Registration Rewrite (HB 1776; Chapter 762): House Bill 1776 rewrites North Carolina's voter-registration laws to create a new system that will comply with the National Voter Registration Act of 1993 (NVRA).

The NVRA requires that by January 1, 1995, states must meet certain requirements for the registration of voters in Presidential and Congressional elections. Unless states change their entire voter-registration systems, they would have to go to the expense and confusion of keeping two sets of registration books. The basic NVRA requirements are:

* registration by mail;
* registration at driver's license offices;
* registration at public-assistance offices, at disabled-assistance offices, and at some other kind of public office;
* a uniform system of updated and cleaning the registration rolls. No one may be purged simply for nonvoting. Once notified that the purging process has begun, a registrant must be kept on stand-by for two congressional elections before being removed entirely from the rolls.

HB 1776 attempts to bring North Carolina into compliance by a complete rewrite of the voter-registration laws, rather than by piecemeal changes. Among the choices made in the bill are:

* To abolish the in-person, oath-taking method of voter registration that was the exclusive method until this year and to rely exclusively on "do-it-yourself" registration forms, plus registration at the designated agencies whose principal role is some other kind of public service (drivers licenses, public assistance, etc.). As a corollary to this choice, the bill abolishes the office of special registration commissioner and changes the name of precinct "registrar" to precinct "chief judge" to emphasize the change in the system.
* To set a uniform deadline for voter registration in an election at 25 days before that election.
* To designate unemployment offices as the optional voter registration agency mentioned in the NVRA.
* To designate the Executive Secretary-Director of the State Board of Elections as the "Chief State Election Official" required by the NVRA to coordinate State responsibilities under the NVRA.

HB 1776 also makes some changes to the Precinct Boundary Program, allowing major footpaths as precinct boundaries and requiring county boards of elections to participate in the U.S. Census Bureau's Block Boundary Suggestion Program.

The voter-registration rewrite portion of the bill was made effective January 1, 1995. The bill sunsets on January 1, 1996 the designation of unemployment offices as voter registration agencies. The Precinct Boundary portion was made effective when it was ratified, July 16, 1994, as was a section of the bill that permitted mail-in registration forms to be submitted by means other than mail before January 1, 1995.

Electoral College Conformance (SB 20; Chapter 738): Senate Bill 20 designates the Secretary of State as the officer to make arrangements for the meeting of North Carolina's presidential electors that must take place at the State Capitol on the first Monday after the second Wednesday in December. That is the meeting at which the electors formally make the State's choice for President and Vice President. The bill also requires the parties to choose two alternate electors at the convention at which they choose electors. The bill became effective upon ratification, July 13, 1994.

Budget Modification 1 -- Election Provisions (SB 1505; Chapter 769, §§3, 16, 16.1, and 16.2): Senate Bill 1505, the main appropriations bill for the 1994 session, contained the following election-related provisions:

* About $2 million in appropriations for the State Board of Elections for new positions, salary increases, etc. (Section 3 of SB 1505).
* $1 million for a Voter Registration Reserve (Sec. 3). This Reserve would be distributed by the State Board of Elections to county boards of elections for

compliance with the NVRA and HB 1776. The counties could in turn distribute the money to local public-assistance offices that are being required to conduct voter registration (Sec. 16.2).

* A provision to allow the Employment Security Commission to use some of the monies in the Worker Training Trust Fund to defray the costs of voter registration, but only to the extent recognized as needed according to a workload analysis conducted by the State Budget Officer (Sec. 16.1).
* A $1.5 million reserve for statewide computerized voter registration. The State Board of Elections could spend the money only to the extent it was found to be needed by a "needs assessment and requirements analysis" conducted under the supervision of the Division of Purchase and Contract (Sec. 16).

No Anonymous PAC Gifts (SB 1612; Chapter 744): Senate Bill 1612 changes the campaign reporting law so that the donee of a campaign contribution from a political committee (as opposed to from an individual) must report the name of the PAC contributor even if the contribution was $100 or less. The bill was made effective January 1, 1995.

Licensing Boards

Professional Engineers Amendments (HB 382; Chapter 671): House Bill 382, effective October 1, 1994, provides for the registration of corporations and other noncorporate business firms as professional engineering firms and land surveying firms, provided that all professional design work is still supervised by individuals who are registered. The bill also provides, effective July 5, 1994, that the investigation of a registrant by the Board of Registration for Professional Engineers and Land Surveyors remains confidential until the Board issues a citation to the registrant.

Home Inspectors (SB 617; Chapter 724): Senate Bill 617 requires persons performing residential home inspections for compensation on or after October 1, 1996, to be licensed. To become licensed, a home inspector applicant must pass the Board exam and either meet one of the educational/experience requirements or be licensed as a general contractor, architect, or professional engineer. The bill also creates a licensing board within the Department of Insurance to license applicants and to regulate the home inspection trade. The Board will be comprised of the Commissioner of Insurance or his designee and seven appointed members (4 home inspectors, 1 general contractor, 1 real estate broker, and 1 public member). The bill also regulates associate home inspectors that serve under the supervision of licensed home inspectors.

A home inspector will be required to deliver a written report of the inspection to the person who requested the inspection. Only residential inspections are covered by the bill. The bill became effective upon ratification, July 11, 1994.

Board of Electrolysis Changes (SB 1249; Chapter 755): Senate Bill 1249: (1) allows a person practicing electrology in a state that does not license electrologists to apply for licensure in N.C., even if that person did not graduate from a school certified by the N.C. Board of Electrolysis Examiners; (2) allows the Board to issue a temporary license to practice electrology to applicants who meet licensure requirements; (3) exempts from licensure employees of licensed hospitals who work under licensed physicians who are certified by the American Board of Dermatology; and (4) provides that the Executive Budget Act applies to the Electrolysis Practice Act. The bill became effective July 15, 1994.

Open Meetings/Public Records

Open Meetings Law Changes (HB 120; Chapter 570): House Bill 120 makes major changes to the part of the Open Meetings Law (Article 33C of Chapter 143) that allows public bodies to hold "executive sessions." For one thing, the bill changes the term "executive session" to "closed session." It also replaces the current 20-item list of reasons for holding an executive session with a 7-item list of reasons for closing a meeting. The seven new reasons will be:

1. To prevent the disclosure of information that is privileged or confidential according to other law or that is not a public record (By amending laws other than the Open Meetings Law, the bill details what is confidential and what is not a public record with regard to hospitals and joint municipal electric power agencies.)
2. To prevent the premature disclosure of an honorary degree, prize, award;
3. To consult with an attorney in order to protect the attorney-client privilege;
4. To discuss matters related to location or expansion of industries in the area the public body serves;
5. To establish the public body's position in negotiating to acquire real estate or in negotiating an employment contract, or to communicate that position to staff or bargaining agents;
6. To consider the appointment or initial employment of staff, or to hear or investigate complaints against staff (although general personnel policy must be discussed in public meetings and all final hiring/firing decisions must be made in public meetings);
7. To plan, conduct, or hear reports about criminal investigations.

Gone from the list are such activities as hearings on election contests and irregularities, discussions of school reassignments, and planning for riot prevention. Under current law, those justify an "executive session." The bill allows a court to make a member of a public body personally liable for the attorney's fees of a successful plaintiff in an Open Meetings Law action. The bill became effective October 1, 1994.

Utilities

Cogenerating Power Tax Credit (SB 716; Chapter 674): See summary under **TAXATION**.

Sewer District Amendments (SB 1471; Chapter 714): See summary under **LOCAL GOVERNMENT**.

Switched Broadband Telecommunications (SB 1504; Chapter 777, §1): Section 1 of Senate Bill 1504 allows the State Controller to establish switched broadband telecommunications services and to permit certain organizations that are not state or local governmental agencies, including nonprofit educational institutions, the Microelectronics Center of North Carolina, and certain health facilities and U.S. government agencies, to share on a not-for-profit basis. This authority to share will end a year after the effective date of a tariff making the broadband services available to any customer. This section was effective July 17, 1994.

Senate Joint Resolution 1709 (Resolution 37): See summary under **RESOLUTIONS**.

Miscellaneous

Appointment of persons recommended by Speaker of the House of Representatives, technical changes (HB 291; Chapter 774): House Bill 291 appoints various individuals recommended, under G.S. 120-121, by the Speaker of the House of Representatives to specified offices. General Assembly members of the Commission for a Competitive North Carolina are to be reimbursed for subsistence and travel expenses at legislative rates. The membership of the North Carolina Veterinary Medical Board is increased by one temporarily during the remainder of the term of office of the member appointed by the Speaker of the House of Representatives. This act became effective upon ratification, July 16, 1994.

Sewer District Amendments/Stormwater Ordinances (HB 1628; Chapter 696): See summary under **LOCAL GOVERNMENT**.

Art in State Buildings (SB 605; Chapter 739): See summary under **TAXATION**.

Park and Recreation Trust Fund (SB 733; Chapter 772): Senate Bill 733 establishes a Parks and Recreation Trust Fund in the State Treasurer's Office. The Trust Fund is a nonreverting special revenue fund which will consist of gifts and grants to the Trust Fund and other monies appropriated to it by the General Assembly. The bill indicates that the intent of the General Assembly is to dedicate an amount equal to 75% of the State's share of the deed stamp tax to the Fund; 10% of the State's share of the deed stamp tax is to be dedicated to the Natural Heritage Trust Fund, (previously called the Recreation and Natural Heritage Trust Fund). Beginning July 1, 1995, funds in the Parks and Recreation Trust Fund are annually appropriated to the Department of Health and Natural Resources and allocated as follows: 75% for the state parks system; 20% to local governments on a dollar-for-dollar matching basis for local park and recreation purposes; and 5% for the Coastal and Estuarine Water Beach Access Program. The bill establishes protection of land with outstanding natural or cultural heritage values as the first priority for trustees of the Natural Heritage Trust Fund in the acquisition of land. The act became effective upon ratification on July 16, 1994.

Reduce Publication Costs to State/Authorize Publication of N.C. Administrative Code by Contract With Private Business (SB 1504; Chapter 777, §2): Section 2 of Senate Bill 1504 provides that the Codifier of Rules may authorize and license the private indexing, marketing, sales, reproduction, and distribution of the N.C. Administrative Code. This section was effective July 17, 1994.

Tort Claims Award Increase (SB 1504; Chapter 777, §5): Senate Bill 1504, the cleanup appropriations bill, contains a section that raises from $100,000 to $150,000 the maximum award that may be made to a tort plaintiff against a State agency under the State Tort Claims Act. That act waives the sovereign immunity of the State from tort lawsuits, but limits the awards that plaintiffs may be granted by the Industrial Commission, which functions as a court in tort suits against the State. The increase was made effective October 1, 1994, and applies to claims arising on or after that date.

Raise Educational Qualifications of Magistrates/Modify Magistrates' Pay Plan (SB 1505; Chapter 769, §7.13): Effective July 1, 1994, to be eligible for nomination as a magistrate, an individual must have a four-year college degree from an accredited institution or must have a two-year associate degree and four years of relevant work experience. The salary plan for full-time magistrates is modified to provide for an entry rate of $22,958 (up from $17,399), and ranges up to $40,420 at the top of the scale. All initial appointments are at the entry rate.

Cultural Resources Security Officers (SB 1505; Chapter 769, §12.3): Section 12.3 of Senate Bill 1505 requires the Department of Cultural Resources to develop a plan to transfer by July 1, 1995, the security positions at the Museum of Art to the State Capitol Police, Department of Administration. Those departments must submit the plan, including a detailed cost proposal, to the General Assembly by March 1, 1995. This section was effective July 1, 1994.

Prison Classes (SB 1505; Chapter 769, §18.4): See summary under **EDUCATION.**

Department of Correction Pay Local Confinement Cost of Offender Held in Contempt for Probation Violation (SB 1505; Chapter 769, §21.7): Effective July 1, 1994, when an offender serves a sentence in a local confinement facility for contempt based upon a probation violation, the Department of Correction is required to pay for the confinement at a rate determined by the General Assembly.

Regional Response Teams for Hazardous Materials Emergencies (SB 1505; Chapter 769, §22.4): Section 22.4 of Senate Bill 1505 is the North Carolina Hazardous Materials Emergency Response Act. Its purpose is to establish a system of regional response to hazardous materials emergencies. The Division of Emergency Management, Department of Crime Control and Public Safety, will administer the regional response program, which will include at least six "hazmat" (hazardous materials) teams. Members of response teams are immune from liability while responding to a hazardous materials incident, except for willful misconduct, gross negligence, or bad faith; they may enter onto any private or public property as part of their official duties when there has been a release, or there is a threatened release, of hazardous materials. A Regional Response Team Advisory Committee is created to advise the Secretary on the establishment and possible expansion of the program. Any person causing the release of a hazardous material requiring the activation of a response team is liable for all reasonable costs incurred in responding to and mitigating the incident; those costs will be placed in a Hazardous Materials Emergency Response Fund. This section was effective July 16, 1994.

State Parks Bond Allocation (SB 1663; Chapter 663): Senate Bill 1663 authorizes the issuance of $35 million in State parks bond funds that were approved by the General Assembly and the voters in 1993. The bill sets out specific capital projects and land acquisitions for 31 different State parks and specifies the amount of funds to be spent on each project and acquisition. Quarterly reports to the Joint Legislative Commission on Governmental Operations are required. Senate Bill 1663 became effective July 1, 1994.

State Agency Debt Collection (SB 1707; Chapter 735): Senate Bill 1707 amends the State Setoff Debt Collection Act to require the Department of Revenue to offset former State employees' income tax refunds to the extent they have been overpaid their salary and the State agency for which they worked is attempting to collect the overpayment. Senate Bill 1707 became effective July 1, 1994.

Appointment of persons recommended by President and President Pro Tempore, technical changes (SB 1724; Chapter 773): Senate Bill 1724 appoints various individuals recommended, under G.S. 120-121, by either the Senate President or Senate President Pro Tempore to specified offices. The Senate President Pro Tempore or his designee is substituted for the Lieutenant Governor as a member of the Economic Development Board. Amends the method of appointment of the membership of the Substance Abuse Professional Certification Board to require that the appointments by

the Speaker of the House and of the President Pro Tempore be, instead, by the General Assembly upon those officers respective recommendations as provided by G.S. 120-121. The act became effective upon ratification, July 16, 1994.

STUDIES

Agency Studies

Administration, Department of
Division of Purchase and Contracts
Correction Enterprises Preference (SL93-769, SB 1505, §21)
Shall report to Joint Legislative Commission on Governmental Operations and Chairs of Senate and House Appropriations Subcommittees on Justice and Public Safety by August 1, 1994, and January 1, 1995.

Administration, Department of
Day Care Facility Task Force (SL93-769, SB 1505, §11.6)
DOA shall develop innovative, state-of-the-art day care facility; Task Force purpose is organizational, budgetary, and administrative; report to 1995 GA on progress.

Administrative Office of Courts
Drug Treatment Court Pilot Program (SL93-769, SB 1505, §24.8)
Shall report to 1995 GA by March 1, 1995.

Auditor, State
Cost Analysis of Broadband Telecommunications (SL93-769, SB 1505, §15A)

Auditor, State
Wildlife Resources Commission Financial Audit and Performance Audit (SL93-769, SB 1505, §27.2)
Shall report to 1995 GA upon convening.

Budget, Director of
Plan for Implementation of Performance Measurement System (SL93-769, SB 1505, §11.1
Shall present to GA at same time the 1995-97 fiscal biennium budget is submitted; beginning in 1996, shall report to GA no later than February 1 in odd-numbered years and no later than April 1 in even-numbered years on plan.

Budget Officer, State
Voter Registration Expenses/ESC/Implement NVRA (SL93-769, SB 1505, §16.1)
Upon request of Employment Security Commission, shall conduct workload analysis; shall report to Director of Budget, appropriate House and Senate Appropriations Subcommittees, and FRD by December 1, 1994, and April 1, 1995.

Commerce, Department of
Center for Community Self-Help (SL93-769, SB 1505, §28.17)
Shall make quarterly reports to State Auditor; written report by May 1 of each year for next three years to GA; and report quarterly for next three years to Joint

Legislative Commission on Governmental Operations, House Appropriations Subcommittee on Natural and Economic Resources, Senate Appropriations Committee on Natural and Economic Resources, and Department of Commerce.

Commerce, Department of

Piedmont Sports and Entertainment Facilities Study Commission (SL93-769, SB 1505, §28.21)

Shall report to GA on or before the first day of the 1995 GA by filing report with President Pro Tempore and Speaker.

Commerce, Department of

Regional Economic Development Commissions Transfer of Counties (SL93-769, SB 1505, §28.7)

Shall study and make recommendations concerning transfers to 1995 GA by January 15, 1995.

Shall recommend to 1995 GA by January 15, 1995 strategy for reducing duplication and fragmentation in organization.

Community Colleges, Department of

Visiting Artists' Program (SL93-769, SB 1505, §18.7)

Shall report to Joint Legislative Commission on Governmental Operations and to FRD regarding progress in making grants.

Community Colleges, State Board of

Community Colleges Behind Walls (SL93-769, SB 1505, §18.5)

Develop above plan to train and educate prison inmates better and present plan to 1995 GA prior to February 1, 1995.

Community Colleges, State Board of

FTE Cost Model (SL93-769, SB 1505, §18.1)

Shall develop a program-based FTE cost model plan and report to 1995 General Assembly.

Community Colleges, State Board of

Regional Programs Progress (SL93-769, SB 1505, §18)

Shall report quarterly to Joint Legislative Education Oversight Committee.

Controller, Office of State

Information Highway Grants Advisory Council (SL93-769, SB 1505, §10.1)

Shall advise Governor, GA, and Office of State Controller; shall make various reports including specific one to 1995 General Assembly regarding grants program and other legislative oversight committees upon request.

Controller, Office of State

Review Chart of Accounts Used by Revenue (SL93-769, SB 1505, §15)

Shall report to the 1995 GA and Revenue by March 1, 1995.

Correction, Department of

Substance Abuse Treatment Pilot Program (SL93-769, SB 1505, §21.1)

Shall report on implementation and cost by January 15, 1995, to Joint Legislative Commission on Governmental Operations, Chairs of Senate and House Appropriations Committees, Chairs of Senate and House Appropriations Subcommittees on Justice and Public Safety, and FRD.

Correction, Department of

Warehouse Location Report (SL93-769, SB 1505, §21.4)

Shall report to Joint Legislative Commission on Governmental Operations as soon as determination has been made.

Crime Control and Public Safety, Department of

Community Policing Pilot Program (SL93-769, SB 1505, §22.1)

Secretary shall report by March 1, 1995 to 1995 GA.

Cultural Resources, Department of

African-American Tourism Site Committee (SL93-769, SB 1505, §36)

The Secretary is encouraged to appoint an Advisory Committee on Tourism at North Carolina Sites Highlighting African-American Accomplishments. The Committee, if appointed, is encouraged to study and make recommendations to the Secretary, Governor, and GA.

Cultural Resources, Department of

Roanoke Island Commission (SL93-769, SB 1505, §12.5)

Shall report to GA before July 1, 1995, initially; thereafter within 30 days of convening of each regular session.

Cultural Resources, Department of

Security Officers Positions Transfer to State Capitol Police (SL93-769, SB 1505, §12.4)

Shall develop a plan; shall submit plan to GA by March 1, 1995.

Education, State Board of

Incentive Options for NBPTS Certification and Costs and Impact of Certification on Student Performance (SL93-769, SB 1505, §19.28)

Shall report preliminary results to Joint Legislative Education Oversight Committee in December 1994; final report in January 1997.

Elections, State Board of

Needs Assessment for Computerized Voter Registration (SL93-769, SB 1505, §16)

Board shall use outside consultant procured through DOA to conduct assessment and analysis.

Elections, State Board of

Voter Registration Grants to Counties (SL93-769, SB 1505, §16.2)

Together with Office of State Budget and Management and State Data Center in Office of Policy and Planning in Governor's Office shall develop and issue rules related to grant process; rules shall be developed and issued no later than September 15, 1994; grants shall be awarded no later than October 31, 1994.

Environment, Health, and Natural Resources, Department of

Blue Ribbon Advisory Council on Oysters (SL93-769, SB 1505, §27.16)

Shall make written quarterly reports to Marine Fisheries Commission and Joint Legislative Commission on Seafood and Aquaculture beginning October 1, 1994; final report on or before October 1, 1995.

Environment, Health, and Natural Resources, Department of

Regional State Park Study (SL93-769, SB 1505, §27.21)

Shall report to 1995 GA.

Environment, Health, and Natural Resources, Department of
Watts Farm Cleanup Study (SL93-769, SB 1505, §27.5)
Shall report to Joint Legislative Commission on Governmental Operations, Chairs of House Appropriations Subcommittee on Natural and Economic Resources, Chair of Senate Committee on Natural and Economic Resources, and FRD by January 15, 1995.

Human Resources, Department of
Child Welfare System (SL93-769, SB 1505, §25.10)
Shall report to Joint Legislative Commission on Governmental Operations and FRD by February 15, 1995.

Human Resources, Department of
Child-Caring Agencies Reimbursement Discrepancies (SL93-769, SB 1505, §25.43)
Shall report to GA by March 15, 1995.

Human Resources, Department of
Domiciliary Care Rate-Setting Methodology Continued (SL93-769, SB 1505, §25.24)
Final plan shall be submitted to 1995 GA and FRD by February 1, 1995.

Human Resources, Department of
Domiciliary Homes/Budgetary Impact of Additional Beds (SL93-769, SB 1505, §25.22)
Shall report on progress to 1995 GA by March 15, 1995

Human Resources, Department of
Domiciliary Homes/Staffing Issues (SL93-769, SB 1505, §25.6)
Shall report to 1995 GA and FRD by February 1, 1995.

Human Resources, Department of
Division of Social Services
Foster Care Reporting (SL93-769, SB 1505, §25.37)
Shall report to Joint Legislative Commission on Governmental Operations and FRD by April 30, 1995.

Human Resources, Department of
Maternity Home and Adoption Funds (SL93-769, SB 1505, §25.44)
Shall report to 1995 GA and FRD by March 15, 1995.

Insurance, Department of
with North Carolina Rate Bureau
Workers' Compensation/Methods and Costs of Assigning Difficult to Place Risks, Etc. (SL93-679, SB 906, § 8.6)
Commissioner shall report to Joint Legislative Commission on Governmental Operations by February 1, 1995.

Judicial Department
Dispute Settlement Centers (SL93-769, SB 1505, §24.8)

Shall provide information to Chairs of House and Senate Appropriations Committees and Chairs of House and Senate Appropriations Subcommittees on Justice and Public Safety by February 1 annually.

Justice, Department of

Capital Murder Study (SL93-769, SB 1505, §23.3)

Shall report to 1995 GA.

Justice, Department of
with help of Office of State Budget and Management

Centralized Utilization of Legal Publications (SL93-769, SB 1505, §23.1)

Shall report by February 1, 1995 to GA by submitting report to President Pro Tempore, Speaker, and FRD.

Motor Vehicles, Division of

Emission Inspection Program (SL93-769, SB 1505, §20)

Shall report quarterly beginning in January 1995 to Joint Legislative Transportation Oversight Committee and FRD.

Public Instruction, Department of

Cued Speech Funds (SL93-769, SB 1505, §19.23)

Shall evaluate and report to Commission on Children with Special Needs before October 1, 1995.

Public Instruction, Department of

NC Professional Teaching Standards Commission (SL93-740, SB 883, § 1 and 2; GS 115-295.1)

No later than November 1, 1994, shall make interim report to Governor, Joint Legislative Education Oversight Committee, and State Board of Education; no later than January 1, 1995, shall report to Governor, GA, Joint Legislative Education Oversight Committee, and State Board of Education.

State Board of Education shall review plan and submit comments to Joint Legislative Education Oversight Committee no later than first Friday in February 1995.

Public Instruction, Department of

Task Force on Vocational and Technical Education (SL93-769, SB 1505, §19.10 and 19.11)

Shall make interim report to Joint Legislative Education Oversight Committee, Governor's Commission on Workforce Preparedness, and State Board of Education prior to January 15, 1995; final report prior to March 1, 1996.

Shall make interim report on Teacher Academy programs and 1995 expenditures to Joint Legislative Education Oversight Committee and State Board of Education no later than October 1, 1994; final plan to be submitted to State Board of Education no later than December 1, 1994; legislative recommendations to Joint Legislative Education Oversight Committee and General Assembly no later than January 15, 1995.

Teachers' and State Employees' Comprehensive Major Medical Plan, Board of Trustees

Enhanced Benefit Package (SL93-769, SB 1505, §7.32)

Shall recommend to the 1995 General Assembly no later than March 1, 1995.

Transportation, Board of

Aircraft and Ferry Acquisitions (SL93-769, SB 1505, §20.2)

Shall report additional costs to GA and Joint Legislative Commission on Governmental Operations prior to purchase.

Transportation, Department of
and Department of Justice

Adopt-A-Highway (SL93-769, SB 1505, §20.5)

Shall study and report to Joint Legislative Transportation Oversight Committee no later than December 31, 1994.

UNC Board of Governors

Legislative College Opportunity Program (SL93-769, SB 1505, §17.14)

Shall establish pilot program guidelines by January 31, 1995; shall report on guidelines, progress, etc., by May 15, 1995, to Joint Legislative Education Oversight Committee by May 15, 1995, with copies to House and Senate Appropriations Subcommittees on Education; annual reports to Ed Oversight by May 15, 1996, and each succeeding year through 2001.

UNC Board of Governors

NC Agricultural and Technical State University Funds Use Plan (SL93-769, SB 1505, §37.3)

Shall present plan to Joint Legislative Commission on Governmental Operations.

UNC Board of Governors

Sea Grant College Program for Fisheries Oceanography Study (SL93-769, SB 1505, §17.7; SL93-576, HB 1540, §3)

Shall report quarterly to Joint Legislative Commission on Seafood and Aquaculture and Marine Fisheries Commission beginning October 1, 1994.

Existing Commissions, Studies to be Conducted by

School Technology, Commission on

State School Technology Plan (SL93-769, SB 1505, §19.26; GS 115C-102.6B and 115C-102.7)

Shall present plan to Joint Legislative Commission on Governmental Operations and Joint Legislative Education Oversight Committee prior to January 1, 1995, and every two years thereafter; shall report in October each year to State Board of Education, Joint Legislative Commission on Governmental Operations, Joint Legislative Education Oversight Committee.

Local Government Commission

County Appropriations to Local School Current Expense Funds (SL93-769, SB 1505, §19.32)

Shall report on March 1, 1995, and annually thereafter to State Board of Education and House and Senate Appropriations Committees.

Legislative Research Commission Studies

Child Care Study Committee, LRC

Day Care Rates (SL93-769, SB 1505, §25.35)

LRC Child Care Study Committee shall study and shall include results in report to LRC for transmittal to 1995 GA.

Election Laws Review Committee, LRC (SL93-771, HB 1319, Part III)
LRC Committee abolished; Commission established; see under "LEGISLATIVE STUDIES" below.

Corporate Annual Report Filing Requirement and the Business License Information Office (SL93-769, SB 1505, §9.2)
LRC may study; may make interim report to the 1995 GA; and may make final report to the 1997 GA; $25,000 of funds appropriated to GA is allocated to LRC to conduct this study.

Insurance Fraud (SL93-771, HB 1319, Part IV)
LRC may study; may make report to 1995 GA.

Mental Health Committee, LRC (SL93-771, HB 1319, Part I)
LRC Committee abolished; Commission reestablished; see under "LEGISLATIVE STUDIES" below.

Public Health Committee, LRC (SL93-771, HB 1319, Part II)
LRC Committee abolished; Commission reestablished; see under "LEGISLATIVE STUDIES" below.

Public School Finance (SL93-769, SB 1505, §9.4)
LRC may study; may report results to 1995 GA.

Legislative Studies

Election Laws Review Commission (SL93-771, HB 1319, Part III)
Independent Commission established; LRC Committee abolished; shall submit final report on or before convening of 1995 GA.

Firefighter and Rescue Worker Pension Fund Study Commission (SL93-769, SB 1505, §9.3)
Shall study alternative methods to increase funding for Firemen's Pension Fund and Rescue Squad Worker's Pension Fund; shall submit final written report on or before convening of 1995 Session; terminates upon filing report; $20,000 allocated from appropriation to LSC.

Insurance Department Independent Financial Audit (SL93-769, SB 1505, §9)
$75,000 shall be used to contract for independent financial audit of Insurance Department; shall be completed on or before January 15, 1995.

Mental Health Commission (SL93-771, HB 1319, Part I)
Independent Commission reestablished and continued until July 1, 1995; LRC Committee abolished.

Public Health Commission (SL93-771, HB 1319, Part II and Part VIII)
Independent Commission established until June 30, 1995; LRC Committee abolished; shall report to GA, Governor, and Lt. Governor not later than 30 days after the convening of each biennial session.

Seafood and Aquaculture, Joint Legislative Commission on

Fishing Industry Study by NC Sea Grant College Program (SL93-769, SB 1505, § 17.7; SL93-576, SB 1540, §5)

May report to 1995 GA and shall report on first day 1996 Regular Session commences.

Continuations and Reporting Dates Extensions

Budget and Management, Office of State

Criminal Justice Information Network Study Committee (SL93-769, SB 1505, §8.3

Shall make progress report prior to expenditure of funds for consultant; shall make final report before April 1, 1995.

Child Fatality Task Force (SL93-769, SB 1505, §27.8)

Shall provide updated reports to Governor and GA within first week of convening of 1995 GA and within first week of convening of 1996 Regular Session; also membership changed from 30 to 36 members.

Education, State Board of

Exceptional Children's Funds (SL93-769, SB 1505, §19.5A)

Shall report preliminary recommendations by March 15, 1994; final recommendations by January 1, 1995.

Education, State Board of

Supplemental Funding (SL93-769, SB 1505, §19.32)

Shall report to Joint Legislative Education Oversight Committee prior to May 1, 1994, and May 1, 1995, and annually thereafter.

Education, State Board of

Noncertified School Employee Salaries (SL93-769, SB 1505, §19)

Shall report to GA prior to March 31, 1995, and March 31, 1996.

Governor's Commission on the Reduction of Infant Mortality(SL93-769, SB 1505, §27.7; SL93-771, SB 1319, Part V)

Shall continue its study and shall report to GA on or before October 1, 1994.

Health Planning Commission, North Carolina

Plan for State Department of Health (SL93-769, SB 1505, §25.51; SL93-771, HB 1319, Part VI)

Governor shall present to GA no later than February 1, 1995.

Human Resources, Department of

Division of Youth Services' Programs and Services Study (SL93-769, SB 1505, §25.26)

Shall complete study by March 1, 1995 and shall report to 1995 GA by April 1, 1995.

Human Resources, Department of

Pilot Subsidy for Domiciliary Homes for Services to Developmentally Disabled Residents (SL93-769, SB 1505, §25.23)

Shall present results to GA by April 15, 1995.

Human Resources, Department of
Division of Mental Health, Development Disabilities, and Substance Abuse Services
Unified System of Services (SL93-769, SB 1505, §25.4)
Shall report to Human Resources Appropriations Subcommittees by March 1, 1995.

Wildlife Resources Commission
Beaver Control (SL93-769, SB 1505, §27.3)
Beaver Damage Control Advisory Board shall report to Commission no later than September 30, 1994, and June 30, 1995.
Wildlife Resources Commission to report on statewide program no later than January 1, 1995, to House and Senate Appropriations Subcommittees on Natural and Economic Resources.

Wildlife Resources Commission
Long-Range Budget Plan (SL93-769, SB 1505, §27.2)
Shall report to GA and FRD by January 12, 1995.

TAXATION

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

Income Tax

Photovoltaic Equipment Tax Credit (SB 1045; Chapter 584): Senate Bill 1045 broadens two existing corporate and individual income tax credits concerning the installation of solar energy equipment and one existing corporate income tax credit concerning the production of photovoltaic equipment. Photovoltaic equipment is equipment that uses solar energy to produce electricity. The act is effective for taxable years beginning on or after January 1, 1994, and is expected to result in an annual decrease in General Fund revenues of between $127,500 and $178,500. The changes made by the act to each credit are described below.

Credits for Installing Residential Solar Energy Equipment
- Increases the costs for which a credit can be claimed from 25% to 40%.
- Increases the maximum credit per system from $1,000 to $1,500.
- Expands the credit to include photovoltaic equipment.
- Increases from 3 years to 5 years the number of years a credit can be carried forward.

Corporate Credit For Constructing Photovoltaic Equipment Facility
- Increases the costs for which a credit can be claimed from 20% to 25%.

Credits for Solar Equipment Used To Produce Heat in Certain Processes
- Increases the costs for which a credit can be claimed from 20% to 35%.
- Increases the maximum credit for an installation from $8,000 to $25,000.
- Expands the credit to include the production of electricity.

The corporate income tax credit for installing residential solar equipment is available to corporations that construct or install solar energy equipment in residential buildings used or sold by the corporation for commercial or business purposes. The credit is

available to the corporation that owns or controls the use of the building when the equipment is installed or, in the case of a building constructed to be sold, to the owner who first occupies or leases the building for use. The credit taken may not exceed the amount of income taxes imposed on the person taking the credit and a credit is not allowed to the extent any of the cost of the equipment was provided by federal, State, or local grants. A similar individual income tax credit is allowed.

The photovoltaic corporate income tax credit is allowed to a corporation that constructs a facility in North Carolina for the production of photovoltaic equipment. The credit may not exceed the amount of income tax imposed on the corporation and it is not allowed to the extent that any of the costs were provided by governmental grants. Any excess credit may be carried forward for five years. There is no parallel individual income tax credit.

The credit for installing solar equipment to produce heat is allowed to a corporation or an individual for constructing or installing solar equipment to produce heat in the manufacturing or service processes of a business located in North Carolina. The credit may not exceed the amount of tax imposed on the corporation or individual and the credit is not allowed to the extent that any of the costs were provided by governmental grants.

Tax Withholding Penalty and Information (SB 1377; Chapter 661): Senate Bill 1377 makes one substantive change to the State law concerning payment to the Department of Revenue of withheld State income taxes plus two technical changes to this law and a clarifying change concerning the kinds of information the Secretary of Revenue can ask a person who is required to file any tax return or report to provide. Section 1 of the act makes the State withholding tax changes and Section 2 makes the clarifying change concerning tax information. The State withholding tax changes become effective January 1, 1995, and apply to payments of withheld State income taxes made on or after that date. The clarifying change concerning tax information became effective upon ratification. This act was recommended by the Revenue Laws Study Committee. The withholding tax change is expected to cause a minimal increase in General Fund revenues because it accelerates slightly the payment schedule for underpayments of withholding tax and lowers slightly the threshold for imposing penalties for underpayments of withholding tax.

The substantive change to the State withholding tax laws ties the State penalty provisions concerning payments by employers of withheld State individual income taxes to the federal penalty provisions that apply to payments to the Internal Revenue Service of federal employment taxes attributable to the same wages. The immediate effect of this change is twofold. First, it changes the amount of a shortfall in the remittance of withheld State income taxes that triggers the imposition of interest and penalties from the current State amount to the current federal amount. Second, it changes the time by which a shortfall must be remitted in order to avoid the imposition of penalties and interest. The continuing effect of the change is to adjust the State provisions for determining when an employer is subject to interest and penalties on a shortfall in withheld State income taxes automatically in accordance with changes in the corresponding federal provisions.

Under prior State law, an employer who did not remit the full amount of State income taxes withheld from wages by the date they were due was not liable for interest or penalties on the shortfall if the amount of the shortfall was less than 5% of the amount due and the employer included the amount of the shortfall in the next withholding tax return the employer filed. A return is due quarterly by the last day of the month following the end of the quarter.

Under current federal law, an employer who does not remit the full amount of federal employment taxes attributable to wages by the date they are due is not liable for

interest or penalties on the shortfall if the amount of the shortfall does not exceed the greater of 2% of the amount due or $100 and the employer remits the shortfall by the shortfall make-up date. The shortfall make-up date for an employer who remits monthly is the due date of the quarterly return. The shortfall make-up date for an employer who remits on a semi-weekly basis is the first Wednesday or Friday that falls on or after the 15th day of the month following the month in which the remittance was required to be made. Federal employment taxes attributable to wages are withheld federal income taxes, withheld employee old age, survivor, and disability insurance taxes and hospital taxes, the employer's corresponding old age, survivor, and disability insurance taxes and hospital taxes, and certain amounts withheld under the backup withholding requirements.

Thus, the immediate effects of the act are to delete the 5% shortfall threshold and substitute a threshold that is the greater of 2% or $100, and to require employers who remit on a semi-weekly basis to remit a shortfall by approximately the 15th day of the month following the month in which it occurred instead of at the time the employer files the next quarterly return. The result is that the shortfall threshold for determining whether a penalty applies and the due date of a shortfall will be the same for federal and State law; to avoid interest or a penalty on a shortfall of withheld State income taxes, an employer must remit more of the total amount payable by the due date and remit any shortfall within a shorter amount of time than was required under prior State law.

In addition to the substantive change, the act makes two technical changes to the State withholding tax laws. First, it changes the phrase "federal income taxes withheld from the same wages" to "federal employment taxes attributable to the same wages" because this latter phrase is more accurate. As noted above, federal income tax withheld from wages is only one of the kinds of taxes that are included under federal law in applying the test for determining when interest and penalties apply.

Second, it changes the phrase "within three banking days" to "semi-weekly" for the same reason; the former phrase is no longer accurate. Effective January 1, 1993, the Internal Revenue Service changed the designation of employers who are required to remit more frequently than on a monthly basis from a "within three-banking-day" employer to a "semi-weekly" employer to reflect changes in the payment schedule for employers. The Internal Revenue Service abandoned the eighth-monthly periods in favor of semi-weekly periods. Under the former law, an employer who accumulated $3,000 or more in employment taxes in any eighth-monthly period had to remit the taxes within three banking days after the end of that eighth-monthly period. Under the revised regulations, employers who paid at least $50,000 of employment taxes in the previous 12-month period ending June 30 must remit whatever amount of employment taxes they accumulate in a semi-weekly period. One semi-weekly period consists of Wednesday, Thursday, and Friday; employment taxes attributable to wages paid in this period are due on or before the following Wednesday. The other semi-weekly period consists of Saturday, Sunday, Monday, and Tuesday; employment taxes attributable to wages paid in this period are due on or before the following Friday.

The State withholding tax changes made by this act keep the penalty provisions concerning payments of withheld State income taxes consistent with the intent of the 1990 act of the General Assembly that revised the laws concerning payment of these taxes. Chapter 945 of the 1989 Session Laws (1990 Regular Session) revised the withholding tax provisions to require payment of the taxes on a faster basis. It did so by putting payment of the taxes by larger employers on the same schedule that applied under federal law. As part of the changes, that act set the penalty provisions to mirror the federal ones. The federal law changed in 1993, however, and a corresponding change was not made to State law.

Section 2 of the act makes a clarifying change concerning information provided by taxpayers. It updates the law that requires various entities to complete tax returns and answer questions submitted to them by the Secretary by incorporating the definitions of "person," "Secretary," and "taxpayer" that now apply to this law and by referring specifically to reports as well as returns. It also clarifies the type of information the Secretary can require a taxpayer to provide by enumerating the permissible kinds of information.

The changes concerning tax information were included in the act because, in reviewing the State withholding tax changes, the Revenue Laws Study Committee became concerned about the scope of information the Secretary could request. The State withholding tax law required a person who must file a withholding tax return to provide any information requested by the Secretary. The Committee wanted to ensure that all information requested is related to a determination of tax liability. The requirement that a person provide any information requested by the Secretary appears throughout Chapter 105 of the General Statutes. To provide a uniform policy on tax information, the Committee therefore decided to amend the appropriate statute in Article 9 of Chapter 105 rather than make a change that applies only to information about withholding taxes. Article 9 of Chapter 105 contains the administrative provisions that apply to all taxes administered by the Secretary under that Chapter.

Update IRC Reference/Conformity (SB 1619; Chapter 662): Senate Bill 1619 rewrites the definition of the Internal Revenue Code used in State tax statutes to change the reference date from January 1, 1993, to January 1, 1994, and revises the tax refund statute of limitations to eliminate an unintended conflict between that statute and the law allowing deductions for carrybacks, worthless debts, and worthless securities.

The act updates the Internal Revenue Code reference, thus making recent amendments to the 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 premiums tax, and intangibles tax also determine some exemptions based on the provisions of the Code. The federal Omnibus Budget Reconciliation Act of 1993 enacted a number of different changes that affect individual and corporate income tax. The following are among the most important of the federal changes that affect the State:

1. Changes in the moving expense deduction.
2. Valuation of securities dealers' inventory at fair market value; securities not in inventory are considered to have been sold at fair market value.
3. Reduction of the amount of qualifying business meals and entertainment expenses that may be deducted, from 80% to 50%.
4. Repeal of the deduction for certain club dues.
5. Expansion of the rules for amortization of certain intangible business assets, including goodwill.
6. Elimination of passive loss restrictions for certain real estate professionals.
7. Retroactive extension of the health insurance deduction for self-employed individuals.
8. Increase in the recovery period for depreciation of non-residential property, from 31.5 years to 39 years.
9. Deduction for wages of the CEO and four highest paid officers of a public corporation limited to $1 million each.
10. Repeal of the deduction for lobbying expenses.

The act also eliminates an inconsistency in the tax law. Since 1989, the State individual income tax law has conformed to the federal law that allows a taxpayer to carry net operating losses and certain capital losses back to the three previous tax years and then forward for fifteen years. Under the new law, the first tax year to which a loss could be carried back is 1989, which means that carrybacks were allowed beginning with losses incurred in 1992. To deduct the loss carryback for the 1989 tax year, the taxpayer must file an amended return for that year. The taxpayer would first learn of the loss in preparing the tax return for the 1992 tax year, which was due April 15, 1993, for calendar year taxpayers. Under federal law, the taxpayer has three years from the due date of the 1992 return to claim the loss carryback on an amended return for 1989. Under prior North Carolina law, however, the normal statute of limitations applied: the loss had to be claimed within three years after the due date of the 1989 return. Thus, in most cases, the taxpayer would have had to file the amended return within days or weeks of learning the deduction was available.

This discrepancy in the law occurred because, at the time the law was changed to allow loss carryback deductions, no conforming change was made to the statute of limitations to allow time to file for the deductions. The act makes this conforming change so that the usual three-year period for claiming refunds will run, in the case of loss carryback deductions, from the due date of the return for the year the loss occurs rather than the year to which the deduction is carried back.

Another change made by the act conforms the State individual income tax law to the federal law that allows a seven-year period for claiming a refund due to a deduction for a worthless debt or a worthless security. This longer period is considered equitable because of the complexity under federal law of determining when a debt or security became worthless and, consequently, which year is the appropriate year for taking the deduction. A security becomes worthless for federal tax purposes not when it loses value but when the taxpayer has no reasonable expectation that it will become valuable at some future time. A debt becomes worthless for federal tax purposes when there are identifiable events that have caused the taxpayer to reasonably abandon hope of ever recovering any payment. In many cases, a taxpayer may take the deduction for the wrong year and learn much later that the deduction should have been taken for a different year. Without the longer statute of limitations, the taxpayer could not then file an amended return to take the deduction and claim a refund for the appropriate year.

The conforming changes made by the act to the statute of limitations are retroactive to the 1989 tax year, the year in which the changes were first needed. Interest on refunds due to loss carrybacks will run, however, only from 45 days after the filing date of the return for the year in which the loss occurred rather than from the year to which the loss is carried back. For example, if the taxpayer is a calendar year taxpayer, interest on a refund for a loss that occurred in 1992 and is carried back to 1989 will run only from May 30, 1993, which is 45 days after the April 15 due date of the 1992 return.

The Department of Revenue estimates that the revenue gain from conforming the Internal Revenue Code reference to the latest federal changes will be approximately $5 million in the 1994-95 fiscal year. The estimated loss from the net operating loss carryback change is a one-time loss of $3.4 million in the 1994-95 fiscal year. Therefore, the net impact of this act is a gain to the General Fund of $1.6 million for the 1994-95 fiscal year and a gain of at least $5 million for each fiscal year thereafter.

Cogenerating Power Tax Credit (SB 716; Chapter 674): Senate Bill 716 modifies the corporate income tax credit for construction of a cogenerating power plant and codifies the principles that apply to all income tax credits of partnerships. The modifications to the cogenerating power plant tax credit that broaden the credit are effective for taxable

years beginning on or after January 1, 1993, and the modifications that limit the credit become effective for taxable years beginning on or after either January 1, 1994 or January 1, 1998, as explained below. The codification of the principles that apply to all income tax credits of partnerships is effective for taxable years beginning on or after January 1, 1993. The changes to the cogenerating power plant tax credit are expected to decrease General Fund tax revenue annually by an amount that ranges from $275,000 in fiscal year 1994-95 to $800,000 in fiscal year 1997-98; codification of the principles that apply to income tax credits of partnerships has no fiscal impact.

The cogenerating power plant tax credit, set out in G.S. 105-130.25, is a corporate income tax credit that has no parallel individual income tax credit. Until this act, the credit applied to 10% of the costs of purchasing and installing in a power plant equipment that sequentially produced electrical or mechanical power and useful thermal energy from a shared power source that used a fuel other than residual oil, middle distillate oil, gasoline, natural gas, or liquid propane gas. The credit was allowed only for costs paid during the taxable year, could not exceed the amount of tax owed for the taxable year, and could not be carried forward or backward if the allowable credit exceeded the amount of tax owed.

The act both broadens and limits this tax credit and sets out the current administrative practice concerning the availability of the credit to a corporate partner in a partnership. Section 1 of the act broadens the credit in two ways. First, it extends the credit to cogenerating equipment fueled by natural gas. Second, it gives a corporation the option of cumulating costs paid for cogenerating equipment in years before a plant becomes operational and claiming a credit for the cumulated costs in the year the plant becomes operational. Prior to this act, natural gas was not an allowable fuel source and the cost of cogenerating equipment could be claimed as a credit only in the year the cost was paid.

If a corporation chooses the optional method of calculating costs and claims a credit for cumulated costs in the year the plant becomes operational, the credit cannot exceed one-fourth of the amount of corporate income tax the corporation owes for the taxable year reduced by any other credits allowed the corporation. Other credits allowed the corporation for the taxable year include carry-forwards of the cogenerating credit. If the credit claimed exceeds this one-fourth limitation, the excess can be carried forward for the next 10 taxable years. To carry forward an amount that exceeds the one-fourth limitation, however, a corporation must submit an application for the credit for each year the corporation seeks to claim the carry-forward.

Sections 2 and 4 of the act limit the credit in three ways. Section 2 sets an annual ceiling on the credit and creates a one-year delay in taking the credit. Section 4 eventually allows a credit only for cogenerating equipment fueled by natural gas.

Beginning in taxable year 1994, the act sets a ceiling of $5 million on the amount of cogenerating power plant credits that can be taken in a taxable year by all corporations combined. The amount of any cogenerating credits to be carried forward from a previous year is included in determining whether the total amount claimed for a year exceeds the ceiling. Current law does not set a ceiling on the total amount of credits that can be claimed. The amounts claimed for the taxable years for which the credit has been in effect have ranged from zero to $2.9 million, and the total amount claimed for all taxable years for which the credit has been in effect is approximately $6.1 million. The ceiling was enacted to prevent a large loss in any one year due to the new option of cumulating costs.

Under the revised credit, if the amount claimed by all corporations exceeds the $5 million ceiling, the credit claimed by each corporation is reduced proportionally until the total reduced amount does not exceed the ceiling. A corporation whose credit is reduced to meet the ceiling may carry the amount of the reduction forward for the next 10 taxable years. To carry the amount forward, however, the corporation must submit

an application for the credit for each year the corporation seeks to claim the carry-forward. An annual application is necessary to enable the Department of Revenue to determine for each year whether the amounts claimed exceed the $5 million ceiling.

The act further limits the credit by delaying by one year the tax period for which the credit can be taken. Until taxable year 1994, a corporation that claims a credit for a taxable year takes the credit for the year the credit is claimed. Thus, a corporation that claims a credit for the 1993 taxable year can subtract the amount of the credit from the amount of tax due for the 1993 taxable year. Starting with the 1994 taxable year, a corporation must apply for the credit in one year and then take the credit in the following year. This delay is a result of the $5 million ceiling. The delay allows the State to determine in advance of a taxable year whether the credits claimed for that year will exceed the ceiling and to notify corporations of any reduction in the credits claimed in the event the amount claimed by all corporations exceeds the ceiling.

The final limitation the act imposes on the credit is to require the cogenerating equipment to be fueled by natural gas beginning in taxable year 1998. Thus, the act first allows natural gas as a fuel source beginning in taxable year 1993 and then excludes all fuel sources other than natural gas beginning in taxable year 1998.

The act also changes the language of the credit to include a partnership as well as a corporation. This is a clarifying change rather than a substantive change, however, because corporate partners of a partnership could already take the credit under the prior law because they were corporations. Corporate partners of partnerships were allowed to take corporate income tax credits in proportion to the corporate partner's distributive share of the partnership income.

Because the application of the cogenerating credit to a corporate partner was not clear, the act codifies the principles that apply to the eligibility of a partnership for any corporate or individual income tax credit. Section 3 of the act sets out these principles. Under these principles, a partner in a partnership is eligible for a credit if the partnership qualifies for the credit and the partner could take the credit if the partner stood in the position of the partnership. Thus, an individual partner in a partnership could not take the cogenerating credit because the credit is not available to individuals.

Partnerships qualify for corporate income tax credits on behalf of their corporate partners. Whether a partnership qualifies for an individual income tax credit depends on the wording of the credit. For example, a partnership qualifies for an individual income tax credit that is allowed to a person, but not one that is allowed to an individual or a taxpayer.

The amount of a credit that can be taken by a partner is determined by the partner's distributive share of the partnership in accordance with sections 702 and 704 of the Internal Revenue Code. Under those sections, a partner's distributive share is determined by the partnership agreement. If the partnership agreement does not provide for the distributive shares, however, a partner's share is determined in accordance with the partner's interest in the partnership.

Any limit on the amount of a credit that can be taken or any other restrictions on a credit apply separately to each partner of a partnership that is eligible for a credit. Thus, if a credit cannot exceed 25% of a person's tax liability, the limit is calculated separately for each partner. This principle results from the nature of a partnership as a pass-through entity. In a partnership, the partners and not the partnership itself is liable for any income tax due on income earned by the partnership.

Modify Ports Tax Credit (HB 1944; Chapter 681): House Bill 1944 changes the State ports income tax credit by expanding it to include any charges assessed on cargo exported by a taxpayer as well as any charges paid on the cargo exported by a taxpayer. The change, recommended by the Economic Development Board of the Department of Commerce, is effective for taxable years beginning on or after January

1, 1994. It is estimated that this act will reduce General Fund revenues by approximately $50,000 annually.

Many exporters sell their products "F.O.B. plant" (free on board plant), which means that the buyer rather than the seller (exporter) pays the cost of shipping the product, including the port costs for which the State ports income tax credit is available. Under prior law, a taxpayer could claim the ports credit only for charges paid by the taxpayer. Therefore, a taxpayer who exported a product that is shipped "F.O.B. plant" could not take the credit for that export because the taxpayer did not pay for the shipping costs.

This act eliminates the requirement that a person who claims the ports credit must have paid the shipping cost. It allows a taxpayer to claim a credit for all of the port costs assessed on cargo exported by the taxpayer, regardless of who paid the costs.

The 1992 General Assembly enacted the State ports income tax credit to encourage exporters to use the two State-owned port terminals at Wilmington and Morehead City. When the credit was enacted, 70% of North Carolina exporters and importers used ports in other states to move their cargo, even though the North Carolina ports had the capacity to accommodate the additional vessels and cargo. The amount of credit allowed is equal to the amount of charges paid to the North Carolina Ports Authority in the taxable year that exceeds the average amount of charges paid to the Authority for the past three years. The credit is limited to 50% of the tax imposed on the taxpayer for the current year. Any excess credit may be carried forward and applied to the taxpayer's income tax liability for the next five years. The cumulative credit may not exceed one million dollars per taxpayer. The credit will expire in 1996.

Motor Fuel Tax

Improve Tracking of Fuel Shipment (SB 1473; Chapter 726): Senate Bill 1473 two areas of motor fuel tax evasion: cross-border movements of fuel and the use of non-tax-paid fuel in a motor vehicle for highway use. The parts of the act addressing cross-border movements of fuel were recommended by the Revenue Laws Study Committee. The act becomes effective January 1, 1995; the resulting reduction in fuel tax evasion is expected to increase collections by an unknown amount, possibly several million dollars.

Cross-border Movement of Fuel

A cross-border movement of fuel is a movement of fuel across state borders. To avoid fuel taxes in a state with a high fuel tax rate, a person can buy fuel in one state, pay that state's tax on the fuel, bring the fuel to a state with a higher fuel tax, and then sell the fuel in that higher fuel tax state without paying the higher rate of tax. North Carolina is particularly vulnerable to tax evasion by cross-border movements of fuel because its motor fuel tax rate is 22¢ a gallon compared to 16¢ a gallon in South Carolina and 7.5¢ a gallon in Georgia. The act combats this problem through improved documentation and reporting requirements for interstate movements of fuel.

The most important change the act makes concerning cross-border movements of fuel is the "destination state" requirement. Under this requirement, a shipping paper issued by a terminal operator for fuel to be delivered by transport truck or railroad tank car must state the destination state of the fuel, the driver of the truck or the rail carrier must deliver the fuel in accordance with the listed destination state, and the buyer of the fuel is prohibited from accepting delivery if the destination state on the shipping document is not correct. Section 4 of the act contains these requirements along with

sanctions for failure to comply with the requirements. For the first violation, there is a civil penalty equal to the amount of fuel tax payable on the improperly transported or diverted fuel. For a second or subsequent violation, there is a civil penalty equal to the greater of $1,000 or five times the the amount of fuel tax payable on the improperly transported or diverted fuel.

Two of our neighboring states, Virginia and Georgia, have already enacted destination state legislation. The Uniformity Committee of the Motor Fuel Tax Section of the Federation of Tax Administrators is strongly encouraging all states to enact similar legislation.

In addition to the destination state requirement, the act modifies the kind of information that must be reported to the Secretary by those who receive or deliver fuel by pipeline, marine vessel, railroad tank truck, or transport truck. Section 6 of the act requires these transporters of motor fuel to report all fuel imported into or exported from the State.

Prior law required these transporters to report all fuel imported into the State and all fuel transported from one place in the State to another place in the State. It did not require the transporters to report fuel exported from the State and it did not limit reports of tank truck movements to movements of fuel by trucks that carry at least 4,200 gallons. The prior law was not enforced, however. Section 6 therefore changes the reporting requirements by deleting both the requirement that intrastate movements be reported and the requirement that trucks designed to carry fewer than 4,200 gallons file reports and by expanding the law to include reports of exports. The section also changes the date a report is due from the 10th of each month to the 25th. This later date corresponds better to the tax reports of motor fuel, which are due either on the 20th or the 25th of each month.

The other sections of the act that concern cross-border movements of fuel make conforming changes needed to implement the destination state requirement or the modified reporting requirements. Section 1 adds definitions of "bulk plant," "destination state," "rack," "terminal," "terminal operator," and "transport truck," and clarifies the definitions of "import" and "export." All of the added or modified definitions, except that of "transport truck," reflect definitions used by the Internal Revenue Service or recommended for use by the Uniformity Committee of the Motor Fuel Tax Section of the Federation of Tax Administrators. The definition of "transport truck" is used to distinguish the large transport trucks that typically carry between 8,000 and 9,000 gallons of motor fuel from the small "tank wagons" used to carry less than 4,200 gallons.

Section 2 requires terminal operators who are not already licensed as distributors of gasoline or suppliers of diesel fuel to register with the Secretary of Revenue. There are only a few of these in the State. The registration requirement is needed to enable the Department of Revenue to enforce the requirement that terminal operators print the destination state on shipping documents and make reports to the Secretary.

Section 3 modifies the requirements that apply to persons whose only connection with motor fuel in this State is to buy it for export to another state. Under prior law, these persons could buy the fuel tax-free because it is exported to another state, and they did not have to show that they were licensed for motor fuel tax purposes with the state to which the fuel is exported. The act requires these buyers of motor fuel to establish that they are registered with another state for the payment of fuel taxes to that state before they can buy tax-free fuel in this State.

Section 5 makes a conforming change to the list of Class 1 misdemeanor gasoline tax violations to include failure to give or show a shipping document when required by Section 4 of the act. Section 5 also provides that the violations apply to a "person" rather than a "distributor," so that terminal operators as well as licensed distributors will be covered.

Sections 7 and 8 make conforming changes to the diesel fuel tax laws. Section 7 makes the destination state requirement applicable to shipments of diesel fuel; it deletes the provisions of a statute that duplicate G.S. 105-228.90 and substitutes the destination state requirement for diesel fuel. Section 8 conforms the list of Class 1 diesel fuel tax violations to the list of gasoline tax violations by adding to the list failure to give or show a shipping document when required.

Non-Tax-Paid Fuel Used on the Highways

Diesel fuel is subject to federal and State per gallon excise taxes if it is used to operate a motor vehicle on a highway. Beginning in 1994, the federal government began requiring non-tax-paid diesel fuel, which is supposed to be used only for non-highway uses, to be dyed. Diesel fuel on which the tax has been paid is therefore "clear" diesel because it is not dyed. Under the federal law, it is unlawful to use dyed diesel fuel for a highway use, and a person who operates on a highway a motor vehicle whose supply tank contains dyed diesel fuel is liable for a civil penalty equal to $10 a gallon or $1,000, whichever is greater.

Section 10 of this act makes it a State violation as well as a federal violation to use dyed diesel fuel for a highway use. A person who operates on a highway a motor vehicle whose supply tank contains dyed diesel fuel is guilty of a Class 1 misdemeanor and is liable for a civil penalty. The penalty is the greater of $1,000 or five times the amount of motor fuel tax payable on the fuel in the supply tank. This penalty is in addition to any motor fuel tax assessed.

Sales and Use Tax

Art in State Building (SB 605; Chapter 739): Senate Bill 605 exempts certain works of art from State and local sales and use taxes. The works of art affected are those purchased for State buildings under the State's "Art Works in State Buildings Program," which is set out in Article 47A of Chapter 143 of the General Statutes. The exemption becomes effective September 1, 1994.

The Art Works in State Buildings Program requires that one-half of one percent of the amount appropriated to construct a State building be used to buy works of art for the building. A State building is a building that is to be used by a State agency and is to be constructed or renovated by means of a State appropriation of $1 million or more. A work of art can be sounds, such as the North Carolina sound tape in the Department of Revenue, a mural, such as the one on the side of the Department of Public Instruction's Education Building, or more traditional art forms such as sculptures or paintings. The only restriction on works of art is that they cannot be reproductions of original art by mechanical means.

This exemption is the second sales and use tax exemption specifically for works of art. G.S. 105-164.13(29) exempts works of art purchased by the North Carolina Museum of Art in whole or in part with money received through gifts or other donations.

The exemption delays the timing but not the amount of revenue received by the State. It does not affect the amount of local sales and use tax paid by the State because the State receives a refund under G.S. 105-164.14(e) of any local sales and use taxes paid. Thus, the act allows the State to retain revenue it would otherwise receive in the form of a refund. The act does not affect the net amount of State revenue because the reduction in the State's cost for the required artwork in State buildings offsets the reduction in State sales and use tax revenue.

The exemption applies to the 2% local sales and use taxes as well as the 4% State sales and use taxes. The exemption from local sales and use taxes results from G.S. 105-467. That statute limits local sales and use taxes to items that are taxed by the State at the general State 4% sales tax rate.

Miscellaneous Tax Legislation

Federal Determination/Withholding (HB 80; Chapter 582): House Bill 80 makes three substantive changes and several technical changes to the statutes concerning the assessment of certain State taxes by the North Carolina Department of Revenue after the federal Internal Revenue Service (IRS) has corrected or otherwise determined a taxpayer's liability for a federal tax that affects the amount of State tax owed. The changes become effective January 1, 1995, and apply to assessments of taxes for which the time period for making assessments has not yet expired. The act is expected to have no significant effect on State revenues.

The substantive changes affect the statute of limitations that applies to assessments of State income, gift, or withholding taxes following a federal determination. The changes reduce the period of time the Department of Revenue has to assess an underpayment of State income or gift taxes following a federal determination of federal income or gift taxes, give the Department of Revenue a longer time to make an assessment of State withholding taxes following a federal determination of withheld federal employment taxes, and give taxpayers a longer time to file an amended State gift tax return following a federal determination of federal gift tax liability.

The technical changes consolidate into G.S. 105-241.1(e) the various limitation periods on making assessments following a federal determination and make technical changes in the wording of G.S. 105-241.1(b), (i), and (j). The various limitation periods are moved to G.S. 105-241.1 from G.S. 105-230.20 (corporate income tax), G.S. 105-259 (individual income tax), G.S. 105-160.8 (estate and trust income tax), and G.S. 105-197.1 (gift tax) to avoid duplication in the statutes and to establish a uniform period for these taxes.

A federal determination is a report by the Internal Revenue Service (IRS) that a taxpayer has not filed a return or has filed an incorrect return and, consequently, either owes more taxes or is entitled to a refund. If a taxpayer did not file a return or understated the amount due on a return, the determination states the amount of tax the IRS finds is due and serves as the federal notice of assessment. The IRS eventually sends the appropriate state a copy of a federal determination. A delay between when a taxpayer receives a federal determination and when a state receives a copy of the determination occurs when the taxpayer is in the process of resolving with the IRS questions raised by the determination.

Under the State income tax laws, a taxpayer who receives a federal determination of federal income tax must, within two years, file an amended State income tax return with the Department of Revenue reflecting the determination. Under the State gift tax laws, a taxpayer who receives a federal determination of federal gift tax must, within 30 days, file an amended gift tax return reflecting the determination. This act extends from 30 days to two years the period of time in which a taxpayer must file an amended gift tax return following a federal determination. In making this change, the act establishes a uniform period for both income and gift taxes.

Until January 1, 1995, if a taxpayer files an amended State income or gift tax return in response to a federal determination, the Department of Revenue has three years from the time it receives the return to make an assessment of State income or gift tax. If a taxpayer does not file an amended return in response to a federal determination, the Department of Revenue has five years from the date it receives a copy of the

determination from the IRS to make an assessment of State income or gift tax. This act shortens the additional three-year period to one year and shortens the additional five-year period to three years. Thus, under the act, the Department of Revenue has an additional one-year period to make an assessment of State income or gift tax when a taxpayer files an amended return within two years of receiving a federal determination, and the Department has an additional three-year period to make an assessment after receiving notice from the IRS of a federal determination when a taxpayer does not file the required amended return.

The general limitations period for an assessment of any State tax is three years after a return was filed or due to be filed. The one-year and three-year periods following a federal determination are in addition to the regular three-year period, which is set in G.S. 105-241.1. An additional time period is necessary when a federal determination is made to allow the State adequate time to respond to the federal determination. The State may not receive an amended return following a federal determination or a notice of a federal determination from the IRS until near the end of or after the end of the general three-year period.

Unlike the income tax laws, the withholding tax laws do not give the State any additional time to make an assessment following a federal determination. Therefore, for an assessment of withholding taxes, the State must make an assessment within the general three-year time period for making assessments. When the State does not receive notice of a federal determination of employment taxes until near the end of or after the end of this three-year period, the State is foreclosed from making an assessment.

This act gives the State the same additional one-year or three-year period to make an assessment of withholding taxes following a federal determination of federal employment taxes that it gives for assessments of income or gift taxes following a federal determination. In making this change, the act restores part of the 1990 law on assessments for withholding taxes. Until 1990, the withholding tax laws gave the same additional time periods for making an assessment after a federal determination that the income tax and gift tax laws provide. In 1990, the withholding tax statutes were extensively rewritten to speed up payments of withheld taxes. As part of the changes, G.S. 105-163.17 was rewritten and the cross-reference to the additional time periods was inadvertently deleted. The act reinstates additional time periods following a federal determination but shortens the allowed additional time periods to either one year or three years as described for income and gift taxes.

Sections 1, 2, 3, and 6 of the act rewrite the individual income tax statute, the corporate income tax statute, the estate and trust income tax statute, and the gift tax statute, respectively, concerning federal determinations to delete the portions that are consolidated into rewritten G.S. 105-241.1(e) in Section 5 of the bill. Section 4 of the bill adds a statute that gives additional time periods for making an assessment of withholding taxes following a federal determination. Section 5 rewrites part of the assessment statute, G.S. 105-241.1, to consolidate the various time periods that apply to assessments and to make the statute easier to understand.

The act does not affect assessments of State inheritance tax following a federal determination of federal estate tax, nor does it affect when interest begins to accrue on an overpayment of State income, gift, or withholding tax. The act deletes language from several statutes that directs the Department of Revenue to refund overpayments of tax within 30 days because the language is unnecessary and confusing. The 30-day limit does not determine when interest begins to accrue on overpayments and has no practical effect. G.S. 105-266(a) requires the Department of Revenue to refund overpayments of any tax as soon as possible, and G.S. 105-266(b) states when interest begins to accrue on overpayments.

The act stems from a recommendation of the Revenue Laws Study Committee. The recommendation of the study committee covered only the additional periods for an assessment of State withholding taxes after a federal determination and the technical changes.

Workers' Compensation Reform (SB 906; Chapter 679): Senate Bill 906 amends the Workers' Compensation Act to make it fairer to employees as well as to employers and to make it simpler and easier to enforce. Among the changes made by the act are two that affect tax information. The act requires employers to include information relating to their workers' compensation coverage on the annual informational return they must file with the Department of Revenue concerning the taxes deducted and withheld from their employees' wages. The employers must name their workers' compensation insurance carriers and the number and expiration dates of their policies. If self-insured, the employers will report the name of their self-insurance group, if applicable, the names of the third parties that administer their self-insurance programs, and the employer code numbers used by the Department of Insurance for these self-insureds. The act also amends the confidentiality provisions of the revenue laws to allow the Department of Revenue to release to the Industrial Commission the information it collected on the annual informational returns concerning employers' workers' compensation coverage. The act provides that these changes became effective on the date it was ratified, July 5, 1994. Employers will be required to provide the information beginning with their next annual informational return, which is due in early 1995. (For more detail see the summary under **EMPLOYMENT**.)

Revenue Laws Technical Changes (HB 1725; Chapter 745): House Bill 1725 makes a number of technical and clarifying changes to various revenue laws and makes four substantive changes in these laws. The act also makes two substantive changes unrelated to revenue laws. The original bill, which consisted only of technical and clarifying changes to various revenue laws and related statutes, was recommended by the Revenue Laws Study Committee.

The first substantive change modifies liability for and payment of the soft drink excise tax. This change allows a person who is not otherwise liable for the tax to assume liability for the tax, effective October 1, 1994. It does this at the request of soft drink taxpayers who would rather be responsible for paying the tax than have to trace the method of shipment of soft drink products they receive in order to determine their liability. This change is expected to be revenue-neutral.

The soft drink excise tax is payable by the person who is the first to bring the product into the State. Who the first person is depends on how the product is brought into the State. If it is brought in by common carrier, the person who receives it is the person to bring it in. If it is brought in on a truck owned or operated by the out-of-state seller of the product, the out-of-state seller is the person to bring it in.

Taxpayers of the soft drink excise who receive products from a person who both transports some products by the person's own trucks and ships others by common carrier often find it difficult to sort out the products for which they are liable and those for which they are not. Sections 32 and 33 create a soft drink certificate of liability that allows a taxpayer to assume liability for all soft drink products the taxpayer acquires, regardless of their mode of shipment. The act does not change the rate of tax or the total amount of tax payable.

The second substantive change extends the sunset on the corporate and individual income tax credits for constructing a fuel ethanol distillery. Under prior law, the credits were set to expire January 1, 1996. The bill extends the expiration date until January 1, 1998. A credit has never been claimed under these sections. The credit is allowed for 20% of the cost of constructing a distillery to make ethanol, at least 80% of

which will be used for fuel for motor vehicles or airplanes, as a de-icer, or in a process that removes pollutants from coal or other sources of fuel. Section 34 extends the corporate credit and Section 35 extends the individual credit.

Sections 36 through 38 make the third substantive change. They prohibit a county from charging a disposal fee for the disposal of a white good while the white goods disposal tax is in effect. A white goods disposal tax is levied on the sale of a white good. The tax is $5.00 if the white good does not contain chlorofluorocarbons and it is $10 if the white good does contain chlorofluorocarbons. Although under prior law a county could not charge an additional fee to dispose of a white good, it could charge whatever fee it levied for the disposal of other types of municipal solid waste. Many taxpayers complained about the disposal fee, which was in addition to the white goods disposal tax. This change became effective August 1, 1994.

The fourth substantive change exempts from the soft drink excise tax juice whose only added ingredients are sugar, vitamins, minerals, or extracts of the juice. These juices were exempt from the excise tax prior to 1991. In 1991, the General Assembly replaced the exemption for soft drinks that contained at least 35% natural fruit juice with an exemption for soft drinks that are 100% natural fruit juice. The definition of "natural" now specifies that a product is not "natural" if it has sugar as an added ingredient.

Under the prior law, bottled juice that would be natural if it did not contain sugar was taxed at the rate of one cent (1¢) per bottle. Juice concentrate that would be natural if it did not contain sugar was taxed at the rate of $1.00 per gallon, or four-fifths of a cent (4/5¢) an ounce. Under the act, both forms of juice are exempt from the tax beginning October 1, 1994. Section 38.2 contains this exemption.

The last two substantive changes are unrelated to the revenue laws. The first of these two changes, made by Section 38.1, extends the deadline that allows a person with experience in clinical social work to apply for certification as a clinical social worker without meeting the educational requirements. Prior to this act, a person with at least one year experience in social work could apply for certification without meeting the educational requirements of the Social Worker Certification Act if the person applied for certification prior to January 1, 1993. This act extends the deadline to include people who applied for certification between December 1, 1993, and January 15, 1994.

The second of these two changes, made by Section 38.3, amends a law enacted by the General Assembly last session. Prior to October 1, 1993, the law required that payments made by a buyer be applied to the purchases bought on credit in proportion to the amount owing on each purchase. Last year, the General Assembly changed the law to reflect the more common accounting practice of applying payments first to finance charges and then to principal in the order that each obligation is assumed. That act, however, did not address how merchants were to apply payments on accounts to which items had been charged prior to October 1, 1993. The implementation problem created by this oversight meant merchants had to bifurcate each account and divide each payment made so as to apply payments proportionally on items charged before October 1, 1993, and to apply payments on a "first in-first out" basis to charges made after October 1, 1993. This section solves the implementation problem by allowing merchants to treat payments received on or after October 1, 1988, on a "first in-first out" basis if the seller determined, and disclosed to the buyer, that this accounting method would be used at the time the items were charged.

The technical changes are described below by section:

Section	Explanation
1	Repeals a Session Law that duplicates another Session Law, Section 18 of Chapter 485 of the 1993 Session Laws.

2 Adds a missing catchline to a subdivision.

3 Conforms statute to existing administrative practice that soft drink base products are taxed on a per container basis. If a container contains less than the unit measure (a gallon for liquid products and an ounce for dry products), the tax is reduced proportionally.

4 Reenacts a provision that may not have been rollcalled when originally enacted and corrects a grammatical error.

5 Clarifies that the deduction described in this subdivision is based on two forms of the same federal adjustment. This change was requested by the Department of Revenue.

6 Removes an unnecessary cross-reference and a reference to a repealed statute and substitutes a reference to the Code.

7 Provides an individual income tax deduction to prevent double taxation in cases in which the basis of property for State tax purposes exceeds the basis of property under the Code. For example, individual taxpayers who claim certain federal income tax credits may be required to make a reduction in the basis of their property; if there is no corresponding State tax credit, the basis for State tax purposes will be higher.

8 Clarifies that the reduction in basis required when a taxpayer takes a tax credit for a qualified business investment applies only if the taxpayer was not required to make a corresponding adjustment under the State corporate income tax.

9 Deletes a reference to a repealed subsection and clarifies that certain references to "the Secretary" mean the Secretary of State.

10 Adds a missing catchline.

11 Makes a language change that was in the 1993 Session Laws but did not go into effect due to a redlining error.

12 Deletes a word that was inadvertently retained due to a redlining error and modernizes and clarifies language.

13 Makes conforming changes to reflect the fact that the gasoline and oil inspection fee has been renamed the gasoline and oil inspection tax.

14 Removes a redundant sentence, adds a catchline, and modernizes and clarifies language.

15 Corrects an incorrect word.

16 Corrects an incorrect term.

17 Removes an obsolete reference to pensions for Confederate soldiers and widows and deletes redundant provisions.

18 Removes language that gives the incorrect impression that there are restrictions on whom a taxpayer is permitted to consult with and clarifies that an interview will not be suspended if the taxpayer is already accompanied by a representative.

19 Makes a conforming change to reflect the fact that the gasoline and oil inspection fee has been renamed the gasoline and oil inspection tax.

20 - 25 Changes the word "propel" to "operate" to clarify that fuel used to operate a motor vehicle on the highways is equally taxable whether the vehicle is moving or idling.

26 Makes a conforming change to reflect the fact that the gasoline and oil inspection fee has been renamed the gasoline and oil inspection tax and changes the word "propel" to "operate" to clarify that fuel used to operate a motor vehicle on the highways is equally taxable whether the vehicle is moving or idling.

27 Repeals a redundant statute. The substance of this statute is contained in Article 9 of Chapter 105 of the General Statutes, which governs the administration of taxes collected by the Department of Revenue.

28 In 1993, the fees for nonresident malt beverage permits and nonresident wine vendor permits were raised from $25.00 to $50.00. The 1993 legislation failed to make a conforming increase from $25.00 to $50.00 in the fee for a combined nonresident malt beverage and nonresident wine vendor permit. This section makes the conforming increase in the combined permit fee.

29 Makes a conforming change to reflect the fact that the gasoline and oil inspection fee has been renamed the gasoline and oil inspection tax. Also clarifies and modernizes the language of the statute.

30 Deletes a reference to a repealed subsection.

31 Changes a cross-reference to reflect that the powers of a regional economic development commission, formerly listed in a single statute, are now listed in several statutes in Article 2 of Chapter 158 of the General Statutes.

32-38.3 Discussed above.

39: Clarifies that real and personal property belonging to the Woodmen of the World is exempt from property tax under the exemption for fraternal or civic orders and organizations operated for nonprofit benevolent, patriotic, historical, charitable, or civic purposes. This organization is a kind of fraternal order.

40 Provides that the act is effective upon ratification except as otherwise provided: Section 11 becomes effective July 1, 1995, Sections 32 and 33 (soft drink tax liability) become effective October 1, 1994, Section 36 (no white goods fee) became effective August 1, 1994, Section 38 (white goods fee when tax repealed) becomes effective July 1, 1998, and Section 38.2 (soft drink exemption for certain juice with sugar) becomes effective October 1, 1994.

1994-95 Budget Modification (SB 1505; Chapter 769): Section 8.2 of Senate Bill 1505, The Current Operations and Capital Improvements Appropriations Act of 1994, reserved $28,100,000 of available revenue for future tax relief. These funds were credited to a special reserve account established by this act rather than expended for current operations. The funds will be held in this reserve until the General Assembly directs how they should be used.

TRANSPORTATION
(Tim Hovis, Giles S. Perry)

Billboards

No Billboards Near Pilot Mountain (HB 1158; Chapter 559): House Bill 1158 prohibits the erection of outdoor advertising in Surry County on NC 752 and US 52 from the airport south past Pilot Mountain State Park. The bill also prohibits the erection of new or replacement outdoor advertising within 660 ft. of any Interstate Highway in Buncombe County outside the corporate limits of a municipality. House Bill 1158 became effective May 24, 1994.

Billboard Compensation Extended (SB 1425; Chapter 725): Senate Bill 1425 extends the requirement that just compensation be paid for removal by local authorities of billboards on Interstate and Federal-aid primary highways, as required by Federal law

In 1978, Congress amended the Federal Highway Beautification Act to require just compensation for removal by local governments of billboards lawfully erected under State law adjacent to an Interstate or Federal-aid primary highway (23 U.S.C. 131(g)).

To comply with this Federal directive, and avoid a potential loss of 10% of the State's Federal highway funds, in 1982 the General Assembly enacted G.S. 136-131.1. This section prohibits local governments from removing billboards lawfully erected under State law and adjacent to an Interstate and Federal-aid primary highway without the payment of just compensation.

G.S. 136-131.1 was originally given a sunset date of June 30, 1984, apparently in case the Federal law was subsequently repealed. The Federal law remained in effect, and G.S. 136-131.1 was, as a result, extended to June 30, 1988, and then to June 30, 1990, and finally to June 30, 1994.

Senate Bill 1425 extends the sunset date of G.S. 136-131.1 to June 30, 1998.

Motor Vehicles

Liability Insurance Proof Change (HB 1551; Chapter 595): House Bill 1551 eliminates the current requirement of North Carolina law that persons who are renewing their drivers license and must take the written test (due to conviction for a traffic violation within the proceeding four year period) show proof of liability insurance. The form showing proof of insurance is commonly referred to as the "DL-123." House Bill 1551 is expected to eliminate the need for 230,000 persons who are renewing their license each year, and must show proof of insurance due to a conviction for a traffic violation in the previous four years, to obtain and present the DL-123 form to the Division of Motor Vehicles. The current requirements for proof of insurance upon initial issuance of a license, upon restoration of a license, or upon granting of a limited driving privilege are unaffected by this bill. House Bill 1551 becomes effective October 1, 1994.

Single State Insurance Registration (HB 1619; Chapter 621): House Bill 1619 conforms the State law concerning the registration of certain interstate for-hire motor carriers to the requirements of federal law, clarifies the registration requirements that apply to intrastate for-hire motor carriers, and makes technical changes to the motor carrier registration laws. The changes became effective upon ratification, July 1, 1994.

The Intermodal Surface Transportation Act of 1991 amended 49 U.S.C. § 11506 by directing the federal Interstate Commerce Commission (ICC) to adopt regulations requiring states to implement a single-state registration system for interstate for-hire motor carriers that are regulated by the ICC. The ICC accordingly revised 49 C.F.R. Part 1023 to make the mandated changes. As revised, 49 C.F.R. Part 1023 required states to eliminate the bingo stamp method of registering ICC-regulated for-hire interstate motor carriers by December 31, 1993, and replace it with a single-state registration system that is similar to other multi-state registration systems such as the International Registration Plan and the International Fuel Tax Agreement.

The Division of Motor Vehicles of the Department of Transportation complied with the new federal law and, effective with the 1994 calendar year, switched to the single-state registration system. The North Carolina statutes, however, have not been changed and therefore conflict with both federal law and administrative practice. Sections 1 and 4 of this bill rewrite the appropriate statutes to resolve these conflicts.

Section 1 establishes the single-state registration method for for-hire motor carriers that are regulated by the ICC and retains the bingo stamp method for interstate motor carriers that are not regulated by the ICC. The difference in these two methods is described below.

Section 4 revises the fee schedule for registration of interstate for-hire motor carriers to eliminate fees the State is prohibited by federal law from collecting. Federal law prohibits a state from collecting a fee from an ICC-regulated interstate for-hire motor carrier for filing with the state a copy of the carrier's ICC certificate of authority or an amendment to that certificate. Accordingly, Section 4 eliminates the current $25 fee on these carriers for filing a copy of their ICC certificate of authority and the $5 fee for filing an amendment to the certificate.

Federal law also requires the State to waive collection of the $1 vehicle registration fee if it had a reciprocal agreement with another state on November 15, 1991, that required it to do so. Accordingly, Section 4 lists the states with which North Carolina had reciprocal agreements as of that date.

Both the bingo stamp method and the single-state method of registering interstate motor carriers are means to ensure that for-hire motor vehicles operated in interstate commerce in North Carolina are insured. Under the bingo stamp method, the motor carrier applies to each state in which a vehicle will be driven for an identification stamp that is specific to the vehicle. To obtain the stamp, the carrier must prove that the carrier has insurance on the vehicle and that the insurance meets the state's requirements for insurance coverage. The carrier places each stamp on a card that resembles a bingo card. The card has a blank for a stamp from each state. The carrier then puts the card with the stamps in the motor vehicle for which the stamps were issued. The driver of the motor vehicle must display the card to a law enforcement officer when requested to do so.

Under the single-state method, the states choose whether or not to be a participating state and each motor carrier selects one of the participating states as its registration state. The state selected must be the carrier's principal place of business or the state in which it will operate the largest number of vehicles. North Carolina has chosen to be a participating state. Therefore, each motor carrier whose principal place of business is in North Carolina and each motor carrier whose principal place of business is in a non-participating state and whose operations are largely in North Carolina must choose North Carolina as its single registration state. North Carolina's role as the single registration state for a motor carrier is to register the vehicles the carrier will operate in any state during a calendar year, collect the fees that apply to each state in which a vehicle will be operated, and issue a receipt to the carrier showing the total number of vehicles the carrier has registered for each state.

To obtain a receipt, a carrier must prove that it has a certificate of authority issued by the ICC. The certificate of authority is proof that the carrier has adequate insurance; a state may not demand more coverage than is required to obtain an ICC certificate of authority. The carrier must put a copy of the receipt in each of the carrier's vehicles. Like its bingo stamp predecessor, the receipt must be shown to a law enforcement officer upon request. Unlike its bingo stamp predecessor, the receipt is not specific to a vehicle, thereby enabling a carrier to replace vehicles or swap them without applying for a new receipt.

The switch to a single-state method for ICC-regulated interstate for-hire motor carriers completely changes the registration system for these vehicles. The Division of Motor Vehicles will register vehicles to be operated in any jurisdiction for motor carriers who select North Carolina as their registration state and will not register any vehicles to be operated in the State by motor carriers whose registration state is a state other than North Carolina. In addition, as required by federal law, the application period for registration and the period in which a registration is valid differs from the

bingo stamp method. The application period for the single-state system is August 1 to November 30, and the application period for the bingo stamp method is October 1 through January 31. A registration issued under the single-state system expires on December 31, and a registration issued under the bingo stamp method expires February 1.

In addition to rewriting the statutes to incorporate the single-state method, the bill clarifies the registration requirements of intrastate motor carriers, makes the current penalty for violations by interstate motor carriers applicable to intrastate motor carriers as well, and makes technical changes. The State statutes do not address the registration of intrastate motor carriers even though the Division of Motor Vehicles currently requires the carriers to both register their operations with the State and verify that their vehicles are insured. Section 2 of the bill codifies the current administrative practice on this subject.

Section 3 moves the penalty provisions in G.S. 20-382(d) that apply to interstate motor carriers to a new statute and includes intrastate motor carriers within its scope. The existing penalty was subject to legal challenge on the basis of both equal protection and the federal commerce clause.

The bill makes numerous technical changes to make the wording of the statutes consistent, to eliminate confusion, and to eliminate unnecessary provisions. Section 5 of the bill is part of the technical changes. It deletes definitions in G.S. 20-386 that either duplicate the definitions in G.S. 20-4.01 or are not used in the Article. The definitions in G.S. 20-386(6), (11), (17), and (20) are also in G.S. 20-4.01, which applies to every statute in Chapter 20. The definitions in G.S. 20-386(3), (10), (12), (18), and (22) are not used in the Article and are therefore unnecessary.

Make Dealer Plate Law Consistent (HB 1775; Chapter 697): House Bill 1775 makes two changes in the dealer plate laws. First, it establishes a uniform policy on the display of dealer license plates on motor vehicles that are used in a business that is separate from a dealer's business of selling motor vehicles. It does this by repealing the one exception to the general prohibition on this type of use, effective July 1, 1996. Second, effective July 6, 1994, it allows a registration card for dealer plates to be a generic card that applies to all dealer plates issued to the same dealer rather than a card that is specific to a particular plate.

With one exception, the dealer license plate laws prohibit a dealer from putting a dealer license plate on a motor vehicle that is used by the dealer in a business that is separate from the business of selling motor vehicles. The one exception is for a motor vehicle dealer who also sells, trades, or services farm tractors or other farm-related equipment. The law allows these dealers to put a dealer license plate on a motor vehicle that is used to haul the farm tractors or other farm-related equipment.

This one exception to the general prohibition is the result of two conflicting provisions concerning dealer license plates that were enacted in the 1993 Session. Section 169.4 of Chapter 321 of the 1993 Session Laws, the Current Operations Appropriations Act, amended the dealer license plate laws by inserting the exception to the general prohibition. Chapter 321 was ratified on July 9, 1993; the exception was effective July 1, 1993. On July 12, 1993, the General Assembly enacted Chapter 440 of the 1993 Session Laws. Chapter 440 rewrote the dealer license plate laws to restrict the number of plates that can be issued to a dealer and to set out clearly the existing restrictions on the use of dealer plates. That act, which was recommended by the Revenue Laws Study Committee, became effective October 1, 1993.

Chapter 440 contained no exceptions to the general prohibition against the display of a dealer license plate on a motor vehicle that is used in a business that is separate from a dealer's business of selling motor vehicles. The exception created by Chapter

321 remained, however, even though the exception was contrary to the intent of Chapter 440.

The result is that the current law allows a dealer who sells tractors or other farm-related equipment to put a dealer plate on a vehicle used in a business that is separate from the business of selling motor vehicles and prohibits all other dealers from a similar use of dealer plates. A dealer's business of selling motor vehicles includes only the sale of motor vehicles that must have a license plate to be driven on a highway. Consequently, if a dealer both sells and services motor vehicles, the dealer cannot put a dealer plate on a motor vehicle the dealer loans to a car owner whose vehicle is being repaired by the dealer. That dealer also cannot put a dealer license plate on a motor vehicle the dealer uses to pick up parts for the vehicles the dealer services.

Dealers have been and are now generally restricted from using dealer license plates on motor vehicles that are used in a separate business of the dealer because this use is contrary to the purpose of dealer license plates and is difficult to reconcile with the requirement that a motor vehicle displaying a dealer license plate be part of the inventory of the dealer. The purpose of a dealer license plate is to allow a customer of the dealer to test-drive a motor vehicle offered for sale by the dealer and to allow the dealer to pick up a motor vehicle from its point of purchase by the dealer and to have the vehicle prepared for sale. Furthermore, a motor vehicle used regularly by the dealer for property-hauling purposes or any other purpose is not in fact part of the dealer's inventory.

The Revenue Laws Study Committee, which recommended this bill, was concerned about the improper use of dealer plates because of the effect of the improper use on State and local revenues. A motor vehicle that is improperly driven with a dealer license plate escapes local property taxes, escapes State motor vehicle title and registration fees, and receives an unfair advantage on automobile insurance. It escapes property taxes because it is supposedly part of the inventory of the dealer and is, therefore, exempted from property tax by the exemption of inventory. It escapes motor vehicle title and registration fees because the title to the vehicle has not been transferred to the person who uses the vehicle. It enjoys an unfair advantage on insurance because it is insured through the dealer's blanket liability insurance policy rather than through a policy that is specific to the vehicle.

Emissions Inspections Changes (HB 1843; Chapter 754): House Bill 1843 brings the State vehicle emissions inspection program into compliance with federal law and makes administrative and technical changes to both the emissions inspection program and the safety inspection program to enable the Division of Motor Vehicles (DMV) of the Department of Transportation to administer the programs more efficiently. Most of the changes become effective October 1, 1994; however, the computer matching component of the motorist compliance provisions became effective upon ratification and the registration denial component of these provisions becomes effective October 1, 1996.

Before the enactment of this bill, North Carolina was not in compliance with 40 C.F.R. Part 51, the regulations adopted by the federal Environmental Protection Agency (EPA) to implement the 1990 amendments to the federal Clean Air Act, and had not been in compliance since January 1, 1994. If the State had not changed its law to comply with these regulations and submitted to EPA a State Implementation Plan concerning the emissions program, the State cound have been sanctioned for its failure to comply.

There are two sanctions for failure to comply with 40 C.F.R. Part 51. They are the withholding of federal highway funds, except safety funds, in the emission counties and the imposition of a 2:1 offset requirement as a condition of the issuance of a new air discharge permit in the emission counties. The sanction concerning federal highway

funds can be imposed by EPA only if the United States Department of Transportation concurs. The offset sanction can be imposed by EPA without the concurrence of any other agency. The emission counties are Wake, Durham, Orange, Guilford, Forsyth, Mecklenburg, Gaston, Cabarrus, and Union.

The changes in the law are outlined below according to the type of change.

Changes Needed To Comply With Federal Law

(1) Establishment of a dedicated, nonreverting fund to provide revenue for the emissions inspection program: The bill amends G.S. 20-183.7 to create the Emissions Program Account and to shift from the Highway Fund to this Account the portion of the emissions inspection sticker fee that currently goes to the Highway Fund. The portion is $1.80 of the $2.40 fee. For fiscal year 1993-94, the $1.80 is expected to generate $2.8 million.

(2) Establishment of a mechanism to deny or revoke the registration of a vehicle that fails to comply with the emissions inspection requirements: Section 9 of the bill establishes a temporary computer matching system to be in effect until October 1, 1996. Section 8 establishes an automatic registration denial system effective October 1, 1996. The two systems are included because automatic vehicle registration denial is the best method but it cannot be implemented until DMV's vehicle registration computer system is overhauled, which will not occur until October 1, 1996. Consequently, until then, a different system must be used.

(3) Monetary penalties against vehicle owners who do not comply with the emissions inspection requirements: Federal law requires mandatory monetary penalties that constitute a meaningful deterrent. G.S. 20-183.8A, in Section 1 of the bill, imposes a civil penalty against vehicle owners in three circumstances -- failure to have a vehicle inspected within 4 months after its sticker expired, tampering with the emission control devices of a vehicle, or falsely registering a vehicle to avoid the emissions inspection requirements. The penalty is $100 if the vehicle is a pre-1981 vehicle and is $220 if the vehicle is a 1981 or newer model.

(4) Monetary penalties against emissions license holders and suspension or revocation of an emissions license: Federal law requires a penalty schedule that imposes "swift, sure, effective, and consistent penalties" for violations of the emissions inspection procedures. The schedule must categorize and list the penalties for first, second, and subsequent violations, impose mandatory minimum $100 penalties against an emissions mechanic for serious violations, and suspend the station's license and the mechanic's license for serious violations.

G.S. 20-183.8B and 20-183.8C, in Section 1, establish the penalty schedule and list violations. The schedule categorizes violations into three types -- serious, minor, and technical -- and establishes penalties for first, second, third, and subsequent violations of each type of violation. The penalty for a first or second serious violation by a mechanic is $100 and revocation of the license for 6 months. The penalty for a third or subsequent serious violation by a mechanic is $250 and revocation of the license for 2 years. The penalties for a station are higher -- $250 and $1000 -- but the revocation period is the same. The penalties for minor and technical violations are scaled down accordingly.

(5) Increased Licensing Requirements for Mechanics. -- Federal law requires inspector mechanics to be licensed, to pass an 8-hour emissions course to be licensed, to renew the license every 2 years, and to pass a 4-hour refresher course in order to renew. G.S. 20-183.4A and 20-183.4B, in Section 1, codify the current emissions

licensing requirements that have been implemented through administrative practice and revise these requirements to meet the requirements of federal law.

(6) Sticker Expiration Dates. -- Federal law requires a sticker issued for a vehicle whose inspection is overdue to become effective the day it would have become effective if the vehicle had been inspected in a timely way. G.S. 20-183.4D(d) makes this change.

Changes to Improve The Inspection Programs

(1) Establishing a uniform time period for reinspection of a vehicle without payment of an inspection fee: G.S. 20-183.7, as amended by Section 1 of the bill, sets a 45-day period for both safety and emissions reinspections without charge. Prior law allowed 90 days for a reinspection without charge when a vehicle failed a safety inspection and 30 days when it failed an emissions inspection. The bill changes both to 45 days to make the same time limit apply to both. Emissions repairs are no less complicated and time consuming than safety repairs, and the difference in these time periods added unnecessary complication to the program.

(2) Elimination of one-way permits in favor of defenses to violations: Prior law authorized the Division to issue a one-way permit to drive a vehicle with an expired inspection sticker to a place to be inspected. These permits will typically issued for vehicles whose stickers had expired while the vehicles were in a state of disrepair and could not be driven. The bill eliminated the need for permits in these circumstances by making it a defense to a citation to drive a vehicle in these circumstances to be repaired. This eliminates the administrative time needed to issue the permit and the time spent by the motorist in trying to obtain a permit.

(3) Administrative Hearing Time Limits: Prior law required administrative hearings on inspection violations to be held by the Commissioner within 10 days. This time limit was not met; persons requesting a hearing were asked to agree to waive the right to a hearing within the 10-day limit. The bill, in G.S. 20-183.8E of Section 1, eliminates the 10-day limit, establishes a 14-day limit for hearings on revocations or suspensions of an emissions license, and establishes a 90-day limit for all other inspection hearings. The 14-day limit is required by federal law.

(4) Including Leased Federal Installations Within the Emissions Program: Federal law requires vehicles operated on federal installations that are within an emissions county and are owned by the federal government to be subject to an emissions inspection. The bill defines a federal installation to include property leased by the federal government as well as owned. This simplifies the program for federal installations and establishes a policy that does not vary depending on how the federal government chooses to provide property for its agencies. The method of providing property is unrelated to the emissions produced by vehicles and cannot be determined without investigation. The EPA complex in the Research Triangle, for example, is leased rather than owned.

(5) Assessing emissions license holders a penalty of $25 for each sticker that is missing: Prior law imposed no monetary penalties for missing stickers or any other inspection violations. This penalty is imposed to address the problem created by stickers that are "lost" by stations. DMV reported that it is not uncommon for an officer at DMV to find that a station has over 100 stickers missing and no plausible explanation of what happened to them.

Technical Changes

The bill makes numerous technical and clarifying changes. Most importantly, it clarifies which vehicles are subject to inspection, what the inspection entails, and who

can perform the inspection. In making the clarifying changes, it codifies the current administrative practice concerning safety and emissions inspections and, except for the changes required by federal law, the requirements for various licenses.

The emissions program is a one-paragraph afterthought in the current law. This bill integrates the emissions requirements into the statutes and distinguishes between safety inspections and emissions inspections.

The bill also makes conforming changes and moves various provisions from one place to another. Section 2 renames the Article that contains the inspection programs from the "Motor Vehicle Law of 1947" to "Safety and Emissions Inspection Program" because there is nothing substantive left in the Article that was enacted in 1947. Section 3 repeals the remaining vestige of the 1947 act because the purposes stated in the repealed Part are no longer accompanied by statutes that implement the stated purposes.

Section 4 repeals G.S. 20-127(e) because it is incorporated in G.S. 20-183.3(a)(5) as amended in Section 1. Section 5 repeals G.S. 20-128.2(b) because it is incorporated in G.S. 20-183.3(b) as amended in Section 1. Section 6 moves from G.S. 20-183.2(a) and 20-183.8(c) to G.S. 20-384 the requirement that a motor carrier comply with the federal Motor Carrier Safety Regulations and the infraction for failure to do so.

Vehicle Window Glazing (HB 1854; Chapter 683): House Bill 1854 rewrites G.S. 20-127 governing vehicle window tinting. The bill provides that it is unlawful to operate a motor vehicle that is registered or required to be registered in this State if it has a sunscreen device or tinted film which does not meet the requirements of this section. The bill prohibits nonconforming devices and tinting on a vehicle's front side wings, front side windows adjacent to the right and left of the driver, or its windows to the rear of the driver. This provision applies to windows installed after factory delivery. The bill lists the following requirements for sunscreen devices and tinted film: (1) prohibits red, yellow, or amber devices or film; (2) allows devices or film only along the top of the windshield; (3) prohibits the use of devices or film on windows other than a windshield when the device reduces the total light transmission to less than 35% or has a reflectance of light exceeding 20%.

A vehicle with an after-factory installed sunscreen device or tinting film must display the installer's sticker and requires persons installing such devices to place a sticker on each glass identifying the installer by name and street address. The bill requires the Commissioner of Motor Vehicles to certify window tinting inspectors and authorizes the Commissioner to set certification standards. Certification is valid for a period of four years and may be revoked by the Commissioner for a violation of the bill.

House Bill 1854 exempts certain vehicles listed in the bill. The bill includes a procedure for the inspection of vehicles with after-factory sunscreen devices and film installed outside of the State, including the use of inspection stickers.

It is a misdemeanor for a vehicle to have a sunscreen device or tinted film which does not meet the requirements of the bill. Failure of a person to have an out-of-state sunscreen device or window tinting inspected and certified is also a misdemeanor. All other violations are infractions. The bill does provide that it is a defense to a violation if the driver produces a certificate showing that the tinting passed inspection or that the tinting has been removed from the vehicle or modified to so that the vehicle is in compliance.

House Bill 1854 becomes effective March 1, 1995.

Red Lights on State EMS Vehicles (SB 1072; Chapter 719): Senate Bill 1072 amends G.S. 20-130.1 to provide that State Emergency Management Vehicles may be equipped with red lights and sirens. The bill makes a conforming amendment to G.S. 20-125(b)

to provide that EMS vehicles shall be equipped with special lights, bells, sirens, horns or exhaust whistles of a type approved by the Commissioner of Motor Vehicles. Senate Bill 1072 became effective upon ratification, July 7, 1994.

Strengthen Child Restraint Law (SB 1467; Chapter 748): See summary under **CHILDREN AND FAMILIES.**

Uniform License & Registration Information (SB 1566; Chapter 750): Senate Bill 1566 makes several changes to the drivers license and special identifiction card laws. Most importantly, it enables the Division of Motor Vehicles (DMV) of the Department of Transportation to use the social security number of an individual as the identifying number for that individual in the drivers license records, the vehicle registration records, and the special identification card records of the Division. It does this by requiring an individual who applies for a drivers license, the registration of a vehicle, or a special identification card to include the individual's social security number on the application. The bill authorizes but does not require DMV to use a social security number as the drivers license number that is printed on a drivers license.

The bill also allows race to be included on a drivers license, at the option of the licensee; makes anyone who is a resident of this State eligible for a special identification card, and delete the requirement that a test for an H (hazardous material) or X (tank) endorsement be written. Under current law, a person must be at least 11 years old and not have a drivers license in order to obtain a special identification card. The change concerning the test became effective July 15, 1994. The remaining changes become effective January 1, 1995.

DMV is in the process of establishing a new computer system for its drivers license, special ID, and vehicle registration records. Use of a unique social security number will enable DMV to cross-check information in these data bases. Currently, the drivers license and vehicle registration data bases do not use common identifiers and, consequently, cannot be used to cross-check information.

Under current law, an applicant for a regular drivers license, a special ID card, or a vehicle registration is not required to provide a social security number. An applicant for a commercial drivers license is required to provide a social security number. Approximately 33 states use social security numbers for identification in drivers license records.

The bill requires an application for a drivers license, a special ID card, or a vehicle registration to contain the disclosures concerning social security numbers that are required by federal law. Section 7 of the federal Privacy Act of 1974 (Pub. L. 93-579) requires a state that requests an individual to disclose his or her social security account number to inform the individual whether the disclosure is mandatory or voluntary, the statutory or other authority by which the number is requested, and the use that will be made of the number. That section also prohibits a state from denying a benefit to an individual based on the individual's failure to provide a social security number when requested to do so unless the request is required by "Federal statute" or is one of the pre-1975 grandfathered disclosures. The federal statutes, at 42 U.S.C. 405(c)(2)(C)(i), declare that it is the policy of the United States to allow a state to use social security numbers in the administration of any "tax, general public assistance, driver's license, or motor vehicle registration law ... for the purpose of establishing the identification of individuals affected by such law."

Thus, federal law authorizes a state to deny a drivers license or vehicle registration to an individual based on the individual's failure to provide a social security number. An application for a license or vehicle registration, however, must contain a statement that the disclosure is mandatory, cite the appropriate statute, and state that the number will be used as the identifying number of the individual for drivers license or vehicle

registration purposes, as appropriate. The federal law does not specifically refer to special identification cards. North Carolina considers these cards as part of its drivers license records, however, because a special ID card is an alternate to a drivers license as a form of official identification. Thus, the same exceptions that apply to drivers licenses also apply to special ID cards.

In adding the requirement of providing a social security number when applying for a drivers license, a special ID card, or a vehicle registration, the bill makes numerous technical changes. These changes are the reason why the bill is lengthy. The changes consolidate the application requirements for a license into one place in G.S. 20-7, delete duplicative application requirements from the special ID statute and the commercial drivers license statute, and consolidate the requirements for the kinds of information a drivers license must contain. The requirement that a person carry his or her drivers license when operating a vehicle is moved from G.S. 20-7(n) to G.S. 20-7(a). The requirement that an endorsement or restriction be noted on the face of a drivers license is moved from G.S. 20-7(c) and (e), respectively, to G.S. 20-7(n). The bill makes no changes in the information required to obtain a drivers license, a special ID card, or a vehicle registration other than the requirement of providing a social security number.

DMV and DOT Technical Changes (SB 1579; Chapter 761): Senate Bill 1579 makes numerous technical, conforming, and administrative changes to the statutes concerning the Division of Motor Vehicles (DMV) and the Department of Transportation. The technical and conforming changes fix errors made in the 1993 Session, conform various criminal violations with structured sentencing, delete obsolete or redundant provisions, or move certain provisions out of the Motor Vehicle Chapter, Chapter 20, into more appropriate Chapters. The administrative changes give DMV discretion to stagger any type of vehicle registration, allow staggering to be done on a quarterly as well as monthly basis, eliminate the grace period for expired, staggered International Registration Plan registrations, and require DMV to put at least 50 copies of the driver license handbook in the clerk of court's office in each county.

Changes made by each section of the bill are summarized below. Significant substantive changes are explained in detail:

Section 1:

Chapter 285 of the 1993 Session Laws changed the alcohol concentration level required for a conviction of driving while impaired from 0.10 to 0.08. That Chapter failed to make a conforming change to G.S. 20-17, which lists the circumstances under which a driver's license is revoked for regular driving while impaired or commercial driving while impaired. This section makes the needed conforming change.

Section 1.1:

Ensures that free copies of the driver license handbook are available throughout the State.

Sections 2 and 3:

These two sections merge driving while license revoked, other than permanently, and driving while license permanently revoked because they are both Class 1 misdemeanors under the structured sentencing scheme enacted by Chapter 539 of the 1993 Session Laws. The punishment for a person who drives while a license is permanently revoked will be stiffer than for a person who drives with a license that is revoked for a period other than permanently because, to get to the point of having a permanently revoked license, a person must have at least two prior

convictions of driving with a revoked license. These prior convictions will move the person into a higher prior conviction level.

Section 4:

Chapter 539 of the 1993 Session Laws classified misdemeanor offenses as Class 1, Class 2, or Class 3 misdemeanors so they would fit into the structured sentencing scheme enacted by Chapter 538 of the 1993 Session Laws. Section 324 of that act changed the "default" punishment for violations of Article 2, the drivers license article, of Chapter 20 of the General Statutes from a 6-month, $500 misdemeanor to a Class 2 misdemeanor. The "default" punishment is the punishment that applies when the law does not specify any other punishment.

The changes left inaccurate provisions in subsection (a) of this section as well as an incomplete sentence in subsection (b) that, if corrected, would do nothing more than repeat subsection (a). This section corrects these problems by rewriting subsection (a) so that it applies to all offenses in Article 2 and deletes subsection (b). Current subsection (a) is inaccurate because it implies that Article 2 contains only felonies and Class 2 misdemeanors. The Article includes other classes of misdemeanors in addition to Class 2.

Section 5:

This section makes three administrative changes and two technical changes in staggered vehicle registrations. The administrative changes allow the Division to stagger the registration of any type of vehicle, allow staggered registrations to expire at the end of any periodic basis composed of one or more months, and eliminate the 15-day grace period for expired International Registration Plan (IRP) staggered registrations.

The technical changes eliminate subsections (d) and (e); subsection (d) is inaccurate and is replaced by the new language in (g), and Section 8 of this bill incorporates subsection (e) in amended G.S. 20-95. Registration plates, as opposed to renewal stickers, are all calendar-year plates and are not staggered.

Current law restricts staggered registration to the following vehicles: motorcycles, private passenger vehicles, U-drive-it passenger vehicles, property-hauling vehicles licensed for 4,000 pounds gross weight, vehicles registered under the International Registration Plan (IRP), and trailers. The Division currently renews the registration of all of these types of vehicles by sticker except those registered under the IRP and is planning to implement staggered IRP registration in 1995.

The Division's plan for staggered IRP registration contemplates staggering the registrations on a quarterly as opposed to a monthly basis because this schedule best accommodates the IRP vehicle owners. Current law, however, requires all staggered renewals to be done on a monthly basis so that an approximately equal number of vehicle registrations expire at the end of each month. This section removes the monthly limitation and allows the Division to stagger registrations for IRP vehicles and any other vehicles on a periodic basis. The Division is best able to determine the period that will spread the work out evenly.

The section also eliminates the 15-day grace period for expired, staggered IRP registrations. Under current law, it is lawful to drive a vehicle registered under the staggered system for 15 days after the registration renewal sticker expires. This change is made at the request of DMV.

Sections 6-34:

Make technical, clarifying and conforming changes to various sections of Chapter 20, the motor vehicles statutes.

Section 34.1:

This section makes a vehicle driven by a person who is convicted of habitual impaired driving subject to forfeiture in accordance with the procedure that applies to forfeiture of a vehicle driven by a person who is convicted of driving without a license and driving while impaired.

Section 35:

This section provides the effective dates for each section of the bill. Sections 1-4, 17, 20, 23, 26, and 34.1 become effective October 1, 1994; Sections 29-31 become effective February 1, 1995; the remaining sections became effective July 16, 1994.

Department of Transportation

Remove DOT Appraisal Sunset (HB 1552; Chapter 691): Section 1 of Chapter 519 of the 1993 Session Laws exempts, until July 1, 1994, the Department of Transportation from the requirement that real property acquired by the Department be appraised by a licensed or certified appraiser, if the estimated value of the real estate is less than ten thousand dollars. House Bill 1552 extends the expiration date of this exemption from July 1, 1994 to July 1, 1995. House Bill 1552 became effective upon ratification, July 6, 1994.

Powell Funds Used For Sidewalks (HB 1661; Chapter 690): House Bill 1661 amends G.S. 136-66.1 to eliminating the prohibition against using funds provided to municipalities under G.S. 136-41.1 for sidewalk purposes. The bill also amends G.S. 136-41.3 to authorize the use of funds for planning, construction, and maintenance of sidewalks along public streets and highways. House Bill 1661 became effective upon ratification, July 6, 1994.

Tolls OK on Certain Bridges (SB 917; Chapter 765): Senate Bill 917 adds a new G.S. 136-82.2 to allow the Department of Transportation to charge a toll for the use of bridges included among the Highway Trust Fund Intrastate System Projects when the bridge is at least three and one-half miles in length. Tolls may not exceed ten dollars for a round trip or five hundred dollars for an annual pass for a vehicle. The bill authorizes the Department to set different rates for passenger motor vehicles and property-carrying vehicles. Toll revenue that exceeds the cost of collecting the toll will be credited to the Highway Trust Fund. The Department must report annually to the Joint Legislative Transportation Oversight Committee on the amount of toll revenue, the number of users paying the toll, the cost of collecting the toll, and any other information requested by the Committee. Senate Bill 917 became effective upon ratification, July 16, 1994.

Miscellaneous

Restrict Personal Watercraft (HB 486; Chapter 753): House Bill 486 amends Chapter 75A of the General Statutes by adding a new section governing personal watercraft such as jet skis and water bikes and by restricting certain activities in waters surrounding electric generating facilities. Specifically, Section 1 of the bill adds new G.S. 75A-13.2, which: (1) forbids the operation of personal watercraft between the hours from 1 hour after sunset to 1 hour before sunrise; (2) defines personal watercraft; (3) requires all persons riding on or being towed behind a personal watercraft to wear personal

flotation devices; (4) requires reasonable and prudent operation of the personal watercraft and lists maneuvers which would constitute reckless operation of a vessel under G.S. 75A-10; and (5) provides an exception for certain performers.

The bill also defines an electric generating facility and allows the Wildlife Resources Commission to adopt rules prohibiting the entry or use by vessels or swimmers of certain waters immediately surrounding such a facility. House Bill 486 became effective August 1, 1994, and applies to acts committed on or after that date.

Highway Utility Costs/Sanitary Districts (HB 1983; Chapter 736): See summary under **LOCAL GOVERNMENT.**

North Carolina Global Transpark Authority (SB 1504; Chapter 777, §4): Section 4 of Senate Bill 1504 changes the name of the North Carolina Air Cargo Airport Authority to the North Carolina Global Transpark Authority, effective July 17, 1994.