SUMMARIES OF SUBSTANTIVE RATIFIED LEGISLATION

1995

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RESEARCH DIVISION
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To the Members of the 1995 General Assembly:

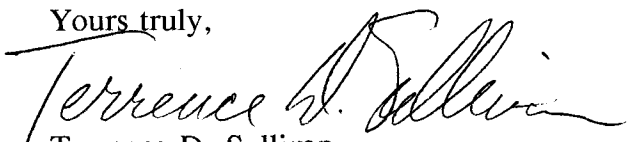
This publication contains summaries of substantive legislation enacted by the General Assembly during the 1995 Regular Session, except for local bills. Significant appropriations matters related to the subject area specified are also included. For an in-depth review of the appropriations and revenue 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. Each subject area also includes a listing of legislative, independent and agency studies. A bill/chapter number index listing the page number of each summary is at the end of the publication.

This document is the result of a combined effort by the following alphabetical listing of staff members of the Research Division: Linda Attarian, Cynthia Avrette, Brenda Carter, Donna Carter, Karen Cochrane-Brown, Sherri Evans-Stanton, Sue Floyd, Carol Fowler, Bill Gilkeson, George Givens, Kory Goldsmith, Tim Hovis, Carolyn Johnson, Robin Johnson, Linwood Jones, Sara Kamprath, DeAnne Mangum, Lynn Marshbanks, Giles Perry, Walker Reagan, Barbara Riley, Steven Rose, Susan Seahorn, Terry Sullivan, Sandra Timmons, Jim Watts, and John Young. Tim Hovis of the Research Division served as editor of this document. Also contributing were Martha Harris of the Bill Drafting Division and Sabra Faires of the Fiscal Research Division. The specific staff members contributing to each subject area are listed directly below the main heading for each area. 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.

Yours truly,



Terrence D. Sullivan
Director of Research

Summaries/TDS/95

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AGRICULTURE AND WILDLIFE
(Barbara Riley)

RATIFIED LEGISLATION

Agriculture

Seed Law Amendments (Chapter 47; SB 146): Chapter 47 makes a number of changes to the North Carolina Seed Law, Article 31, Chapter 106 of the General Statutes. The seed law regulates the sale and labeling of agricultural and vegetable seeds to prevent mislabeling and misrepresentation of seeds.

Section 1 amends G.S. 106-277.5 providing that the Board of Agriculture may require agricultural seed labels state the variety of seed. When a variety is required to be stated, the phrase "variety not stated" may not be used. Agricultural seed labels also must contain other information as prescribed by the Board by rule.

Sections 2 and 3 amend G.S. 106-277.6 and G.S. 106-277.7 to allow the Board to require additional information on the labels of containers of vegetable seeds. Section 4 amends G.S. 106-277.15 specifying that the Board of Agriculture shall adopt rules to implement the provisions of the Seed Law and provides authority to adopt rules prescribing labeling requirements.

Section 5 of the act amends G.S. 106-277.28 clarifying the collection of fees on seed offered for sale. The fee of 2 cents per container of 10 lbs. or more remains the same. The fee does not apply to seed grown by a farmer and offered for sale by the farmer at the farm where the seed was grown.

The act became effective upon ratification, April 20, 1995.

Inspection of Bison Meat (Chapter 194; SB 483): Chapter 194 amends Article 49B of Chapter 106, Meat Inspection Requirements, to provide for the State inspection of bison meat to be used as human food.

The Commissioner may establish an hourly fee for the inspections. The fees shall be credited as a departmental receipt to be applied to the cost of inspecting bison, ostriches, and other ratites to be used for food.

The act became effective upon ratification, June 7, 1995.

Transfer Tobacco Assessments (Chapter 239; SB 975): Chapter 239 allows the Tobacco Research Commission, the organization responsible for handling tobacco assessments, to transfer the assessments collected from the NCDA to the North Carolina Tobacco Foundation, Inc.

The act became effective upon ratification, June 13, 1995.

Siting of Swine Operations (Chapter 420; SB 1080): See **ENVIRONMENT.**

Amend Pesticide Law (Chapter 445; SB 388): See **ENVIRONMENT.**

Limit Pesticide Applications (Chapter 478; HB 873): See **ENVIRONMENT.**

Reprocessed Oil Regulation (Chapter 516; SB 200): Chapter 516 combines the original provisions of Senate Bill 200, Ag Penalties and the provisions of Senate Bill 1084, Reprocessed Oil Regulations.

The provisions regarding reprocessed oils amend Chapter 119 of the General Statutes to allow rerefined oil to be labeled as substantially equivalent to a product made from

virgin oil for a particular end purpose if the rerefined oil product conforms with the American Petroleum Institute classifications.

The second part of the act provides civil penalty authority in a number of programs that are administrated by the Department of Agriculture. In these programs the only penalties currently available are suspension or revocation of license by the Department, or for the Department to seek criminal sanctions against violators. More specifically it provides:

1. The Commissioner of Agriculture the authority to assess a penalty of up to $5,000 against a person violating the Oil and Gas Law, Article 3 of Chapter 119 of the General Statutes.
2. The Commissioner the authority to assess a civil penalty of not more than $5,000 for violation of the Meat Inspection Law, Article 49B, Chapter 106 of the General Statutes.
3. The Director of the Animal Health Division, NCDA, the authority to assess a civil penalty of up to $5,000 for violation of the Animal Welfare Law, Article 3, Chapter 19A of the General Statutes.
4. The Commissioner, or in the case of poultry hatcheries and chick dealers the Department, the authority to assess a civil penalty of up to $5,000 for violation of various animal health provisions in Chapter 106 of the General Statutes.

In all cases in which the civil penalty authority is extended in the act, the person exercising the authority is to consider the degree and extent of harm caused by the violation in assessing the penalty.

The act becomes effective October 1, 1995.

Agriculture Waste Mgt. Funds (Chapter 519; SB 917): Chapter 519 amends the powers of the Soil and Water Conservation Commission and the powers of the District Supervisors to allow members of the Commission and District Supervisors to apply for and receive grants under the Agriculture Cost Share Program for Nonpoint Source Pollution Control.

The act also allocates the sum of $500,000 from the appropriations to DEHNR to the Division of Soil and Water Conservation, DEHNR, to be used for capital expenses associated with developing agriculture waste management measures that reduce agricultural nonpoint source discharges. Funds remaining will not revert but shall remain available for the use authorized. The appropriations portion of the act became effective July 1, 1995. All other portions of the act were effective upon ratification, July 29, 1995.

Sweet Potato Assessments (Chapter 521; SB 649): Chapter 521 provides an alternate method of collecting assessments on sweet potatoes. Assessments for the promotion and sale of agricultural products are permitted under Article 50 of Chapter 106 of the General Statutes. Chapter 521 provides that the assessment may be made on the basis of the number of acres produced. Sweet potato producers are to report the acreage planted at a time and place to be determined by the agency representing the sweet potato producers.

Assessments shall be paid by September 1 of each year. Failure to pay by September 30 triggers a penalty of 10% of the unpaid amount plus 1% of the unpaid assessment for each month it remains unpaid. The agency representing the producers may conduct audits and inspections of the producers to verify the number of acres planted and may bring an action to recover unpaid assessments and penalties along with the reasonable costs of the action including attorneys fees. Finally, the entitlement to a refund under G.S. 106-567 is eliminated for sweet potato producers.

The assessments are applicable to those producers growing one acre or more of sweet potatoes.

The second part of the act declares the sweet potato to be the State vegetable.

The act became effective upon ratification and applies to sweet potatoes harvested on or after January 1, 1995.

Poultry Composting Credit (Chapter 543; SB 202): Chapter 543 provides a tax credit for persons constructing a facility for the composting of poultry carcasses from commercial poultry operations. The amount of the credit would be 25% of the installation, equipment, and materials cost of building the unit, not to exceed $1,000.

Section 1 of the act amends G.S. 105-151.25 and provides for the credit against the individual income tax.

Section 2 of the act amends G.S. 105-130.43 allowing the credit against the corporate income tax.

Section 3 amends G.S. 106-549.70 to include a poultry composting facility as a permissible means of disposing of the carcasses of dead poultry. As amended, all persons engaged in raising poultry, with flocks of more than 200 birds, must maintain a disposal pit, incinerator, or a poultry composting facility for the disposal of dead birds.

Section 4 of the act amends G.S. 106-549.51 by adding a definition of the term "poultry composting facility".

Sections 3, 4, and 5 of this act became effective upon ratification, July 29, 1995. Sections 1 and 2 become effective for taxable years beginning on or after January 1, 1995, and expire for taxable years beginning January 1, 1998.

Applicator of Agriculture Waste (Chapter 544; SB 974): See **ENVIRONMENT**.

Wildlife

Fish With Bow and Arrow (Chapter 36; SB 365): Chapter 36 allows fishing with bow and arrow under other hunting and fishing licenses. Until 1993, bowfishing was covered under a primitive weapons license. G.S. 113-272.2(d). However when the State hunting and fishing license laws were rewritten in 1993, the primitive weapons section was inadvertently omitted. A special device license has been required since that time in order to bowfish. Chapter 36 corrects this situation and provides for bowfishing under most of the hunting and fishing licenses.

The act became effective July 1, 1995.

Disabled Hunting/Fishing Exemptions (Chapter 62; HB 331): Chapter 62 amends Article 22 of Chapter 113, Regulation of Wildlife, adding a new section G.S. 113-297 that authorizes the Wildlife Resources Commission to give persons whose physical disability makes them unable to hunt or fish by conventional methods an exemption allowing the persons to use otherwise prohibited methods to hunt or fish. The duration of the disability must be expected to be a year or more and the application for the exemption would need to be accompanied by a signed statement from the persons physician stating (1) the nature of the disability; (2) the necessity of the exemption to hunt or fish; and (3) whether the disability is temporary or permanent. In providing reasonable exemptions, the Commission may allow the use of a crossbow or other specially equipped bow to a disabled person who submits a physician's statement indicating that the person is incapable of operating a longbow, recurve bow, or compound bow.

Chapter 62 became effective July 1, 1995.

Taking Nongame Animals (Chapter 64; HB 405): Chapter 64 amends G.S. 113-291.1(a), governing the manner of taking wild animals and birds, to authorize the

Wildlife Resources Commission to adopt rules governing the manner of taking wild birds and wild animals that are not classified as game. The law presently provides that nongame animals and birds open to hunting may be taken during any open season by the methods for taking game.

Chapter 64 became effective upon ratification, May 3, 1995.

Adjust Deer Management (Chapter 181; SB 764): Chapter 181 amends the deer management program to better handle deer population problems. As amended, G.S. 113-291.2(e) allows the taking of antlerless deer to correct a population imbalance earlier than November 1 and removes deer taken for these purposes from bag limits. Persons taking deer pursuant to this section must have a hunting license and must tag the deer immediately with a special antlerless deer tag provided by the Wildlife Resources Commission.

The act became effective July 1, 1995.

Restore Minimun Wildlife Penalties (Chapter 209; HB 805): See **ENVIRONMENT.**

Clarify Wildlife Comm'n Role (Chapter 392; HB 832): See **ENVIRONMENT.**

Marine Fisheries Provisions (Chapter 507, Sec. 26.5; HB 230, Sec. 26.5): See **ENVIRONMENT.**

CHILDREN AND FAMILIES

(Linda Attarian, Carolyn Johnson, Robin Johnson, Lynn Marshbanks, Walker Reagan, John Young)

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

RATIFIED LEGISLATION

Abortion

Limitation on State Abortion Fund (Chapter 324, Sec. 23.27; HB 229, Sec. 23.27; and Chapter 507, Sec. 23.8A; HB 230, Sec. 23.8A): Section 23.27 of Chapter 324, the 1995 Continuation Budget, reduces the State Abortion Fund to $50,000, and provides that it will fund only abortions to terminate pregnancies that result from rape or incest or that, in a physician's written opinion, endanger the mother's life. Section 23.8A of Chapter 507, the 1995 Expansion/Capital Budget, provides that eligibility for the State Abortion Fund is limited to women whose income is below the federal poverty level and who are not eligible for Medicaid.

Parental Consent for Abortion (Chapter 462; HB 481): Section 1 of Chapter 462 adds a new Part 2 to Article 1A of Chapter 90 of the General Statutes to make it a Class 1 misdemeanor for physicians to intentionally or knowingly perform an abortion on an unemancipated minor under the age of 18 unless they first obtain the written consent of a custodial parent, a legal guardian or custodian, a parent with whom the minor is living, or a grandparent with whom the minor has been living for at least six months before the date of the consent. If, in the best medical judgment of the physician, either a medical emergency exists that requires an immediate abortion or the parents refuse to consent and the delay to obtain a court order would endanger the minor's life or physical condition, then parental consent is not required. If the minor cannot or does not wish to obtain parental consent, she may petition, on her own or by guardian ad litem, the district court judge assigned to juvenile proceedings in the district where the minor resides or is physically present for a waiver of this requirement. The act directs the court to (i) ensure that assistance is given to the minor or the guardian ad litem in preparing the petition, (ii) inform the minor she is entitled to court-appointed counsel at no cost to her, (iii) conduct a confidential hearing and rule within seven days of the filing of the petition, unless the minor requests an extension, (iv) make written findings and conclusions, and (v) notify the Director of the Department of Social Services upon a finding that the minor has been a victim of incest. The court must grant the waiver if it finds that: (i) the minor is mature and well-informed enough to make the abortion decision; (ii) it is in the minor's best interest not to require parental consent; or (iii) the minor is a victim of rape or felonious incest. The act provides that the minor may appeal to superior court for a confidential de novo hearing within 24 hours from the date of the district court order. This hearing may be held out of district and out of session and must be held within seven days. Section 2 of Chapter 462 amends G.S. 7A-523(a) by providing that proceedings involving consent for an abortion are subject to the jurisdiction of the District Court Division of the General Court of Justice. Section 3 amends G.S. 7A-451(a) to provide that these proceedings offer entitlement to services of counsel at no cost to the minor or her parents or guardians. Section 4 provides that the court's entire record of these proceedings is not a matter of public inspection, must be maintained separately from any judicial record, shall be withheld from public inspection, and may be examined only by court order, by the minor, or by the minor's attorney or guardian

ad litem. Section 5 provides that no State or local government entity shall deny AFDC financial assistance to any infant or child because the mother was an unemancipated minor when the infant or child was born. Chapter 462 takes effect October 1, 1995.

Adoption

Adoptions to District Court (Chapter 88; SB 108): Chapter 88 provides that appeals from decisions of the clerk of superior court in adoption matters will be heard in district court rather than superior court. Also, adoption cases in which there are issues of fact will be transferred to district court. The bill becomes effective October 1, 1995, and applies to adoption petitions filed on or after that date.

Adoptions Rewrite (Chapter 457; SB 159): Recommended by the General Statutes Commission and based substantially on a proposed Uniform Adoption Act, the first two sections of Chapter 457 rewrite Chapter 48 of the General Statutes, which governs adoptions in this State. Article 1 states the act's intent, defines the terms used in the act, and states the legal effect of adoption. Article 2 spells out detailed procedural requirements for the various types of adoptions. Article 3 provides for the adoption of minors other than by stepparents; Article 4 provides for the adoption of minors by stepparents; Article 5 provides for the adoption of adults, including those who are incompetent; and Article 6 provides for adoption by a former parent, including one who was not the spouse of a stepparent who adopted. Articles 7 and 8 are reserved for future use. Article 9 concerns confidentiality of records and disclosure of information. Article 10 enumerates prohibited practices in connection with adoption.

The act makes the following significant changes to current law: (i) allows the State to exercise jurisdiction when the adoptee has lived in the State for at least six months before the filing of the petition and the prospective adoptive parent is now domiciled in the State; (ii) requires petition to be filed within 30 days after a minor is placed; (iii) eliminates interlocutory orders and allows final orders within six months; (iv) in adoptions of minors, other than by a stepparent or close relative, requires a preplacement assessment that must address specific issues to determine the suitability of the prospective parents; (v) provides that if adoptee is subject of pending juvenile proceeding, then district court retains jurisdiction until the final order of adoption is entered; (vi) in a direct placement, requires consent of the father if he has financially supported the minor or the mother or if he has regularly visited or communicated with or attempted to visit or communicate with them; (vii) requires the individual or agency placing a child for adoption to provide a written report with reasonably available non-identifying information about the child and the child's biological parents; (viii) allows mothers to consent to the adoption any time after the child's birth, fathers to consent before or after the birth, and guardians to consent at any time; (ix) requires a father to consent if married to the mother at or after the time of birth, if he acknowledged paternity and is obligated to support the child, if he has regularly visited or communicated with the child or the mother, if he holds the child out as his biological child, or if he is the child's adoptive father; (x) provides for a 21-day revocation period for children under three months old and a seven-day revocation period for older children; (xi) allows court to waive the requirement of consent of a minor who is at least 12 years old if court finds this would not be in the minor's best interest, allows court to waive requirement of the presence of all parties in adult adoptions, and allows court to waive requirement that spouse must join petition to adopt an adult; (xii) allows for direct placements by parents or guardians of the adoptee, and provides for "relinquishment" by the parents or guardians; (xiii) upon a proper revocation by a parent or guardian who placed a minor, requires the adoptive parents to return the

child to that parent or guardian; (xiv) provides for court action to obtain information "necessary for the protection of the adoptee or the public" (current law provides for court action to obtain "necessary information") and enumerates what court must consider in making its determination of whether cause exists for the release of the name or identity of an individual; (xv) allows solicitation of potential adoptive parents by biological parents or by adoption facilitators (individuals and nonprofits that assist, at no cost, biological parents in locating and evaluating prospective adoptive parents); (xvi) allows advertising only by county departments of social services, adoption facilitators, and agencies licensed by the Department of Human Resources; (xvii) provides that violation of the solicitation or advertisement limitations is a Class 1 misdemeanor; (xviii) allows adoptive parents, or persons acting on their behalf, to pay for reasonable and actual fees for adoption agency services, medical expenses directly related to the pregnancy, birth, or illness of the adoptee, counseling services for a parent or adoptee that are directly related to the adoption, ordinary living expenses of the mother during the pregnancy and for six weeks after the birth, and legal and administrative costs; (xix) makes unlawful payments a Class 1 misdemeanor for the first violation and a Class H felony for subsequent violations, which may include a maximum fine of $10,000; and (xx) provides that the unauthorized release of identifying information is a Class 1 misdemeanor.

Sections 3-9 of the act make conforming changes to other statutes. Section 10 directs the Revisor of Statutes to print with the act appropriate explanatory comments of the drafters. Section 11 provides that nothing in the act affects the validity of an adoption completed or validated under any prior law. Chapter 457 became effective July 1, 1995. Prior law applies to petitions for adoptions filed before or pending on that date.

Alimony

Alimony Changes (Chapter 319; HB 270): Chapter 319 makes the following changes to the alimony laws: (1) Provides that an award of alimony depends not only on the financial positions of the parties, but also on whether either or both spouses were involved in illicit sexual behavior during the marriage and before separation, other than behavior that was condoned by the other spouse. A dependent spouse involved in such behavior may not get alimony; a supporting spouse involved in such behavior must pay alimony; if neither spouse nor both spouses were involved in such behavior, the judge must decide whether to award alimony based on all the circumstances, including economic factors and any marital misconduct (defined in bill). (2) Provides that a judge may order the supporting spouse to pay postseparation support to the dependent spouse to meet the immediate financial needs of the dependent spouse if the judge finds that the dependent spouse's resources are not adequate to meet his or her needs and the supporting spouse has the ability to pay. Postseparation support is paid until either the date specified in the order of postseparation support or the date of the order awarding or denying alimony. The judge must consider any marital misconduct by both spouses in deciding whether to award postseparation support. (3) Provides that postseparation support or alimony terminates if the person receiving that support cohabits, in a private heterosexual or homosexual relationship, with another person. The act becomes effective on October 1, 1995, for civil actions filed on or after that date.

Child Protection

Conform Definition of Abuse (Chapter 255; SB 416): Chapter 255 conforms the definition of abuse, which governs the medical profession's authority to retain physical custody of a juvenile who is suspected of being abused, with the general definition of abuse found in the Juvenile Code as amended in 1993. The bill was made effective when it was ratified, June 15, 1995.

Change Guardian Ad Litem Appointment (Chapter 324, Sec. 21.13; HB 229, Sec. 21.13): Section 21.13 of Chapter 324, the 1995 Continuation Budget, provides that a guardian ad litem appointment ends after two years, except that the person may be reappointed upon a showing of good cause. Section 21.13 also provides that where an attorney is appointed through the guardian ad litem program, the appointment lasts only through the dispositional phase of the proceedings, except when necessary to further the child's best interest. This provision became effective on July 1, 1995.

Psychological Counseling of Parents (Chapter 328; SB 379): See **Juvenile Justice** under **CHILDREN AND FAMILIES.**

Child Support

Child Support Enforcement (Chapter 538; HB 168): Chapter 538 authorizes the revocation of some or all licensing privileges for failure to pay child support upon a finding that the obligor is willfully delinquent in payments equal to at least one month. Revocation of licensing privileges may be stayed upon conditions which require the obligor to make full payment over time and maintain current support obligations. Otherwise, the clerk of superior court shall notify the appropriate licensing board that the obligor's licensing privileges are revoked until such time that it is certified that the obligor is no longer delinquent. Licensing privileges, subject to revocation effective July 1, 1996, include hunting, fishing, or trapping licenses, and occupational, professional, and business licenses. Effective December 1, 1996, drivers licenses also shall be subject to revocation. Limited driving privileges may be issued if necessary to the obligor's livelihood.

The bill sets forth procedures and responsibilities of child support enforcement agencies, licensing boards, and courts to implement the revocation of licensing privileges amendments. Generally, obligor's are entitled to notice of pending actions, administrative and judicial review of issues pertaining to the underlying arrearage and relevant defenses, and reinstatement of privileges once compliance is certified.

Effective December 1, 1996, the bill authorizes the Division of Motor Vehicles to refuse the registration of a vehicle if the owner has been reported by a child support enforcement agency as having failed to meet court-ordered child support obligations. Other provisions of the bill include: (1) authorizing the Department of Human Resources to use electronic and print media to locate absent and deserting parents; (2) authorizing utility companies and financial institutions to provide certain identifying information to the Department of Human Resources to locate parents; and (3) authorizing the placement of liens upon insurance proceeds owed a claimant if past-due child support is owed.

The bill repeals the Uniform Reciprocal Enforcement of Support Act and enacts the Uniform Interstate Family Support Act. This act sets forth procedures for the State to exercise personal jurisdiction over a nonresident individual to establish and enforce support orders, including orders entered into in other states. The act also provides for

interstate rendition of individuals who have been criminally charged with failure to provide support.

The bill becomes effective January 1, 1996, except as otherwise specified. Please note that this summary only attempts to highlight the provisions of this bill and should be read in its entirety for more detail as desired.

Child Support Collection (Chapter 360, Sec. 4; HB 994, Sec. 4): Section 4 of Chapter 360 provides that no percentage of the gross proceeds collected for child support under the Setoff Debt Collection Act shall be retained by the Department of Revenue for the cost of collection. This provision of the bill becomes effective January 1, 1996.

Child Support Record Keeping (Chapter 444; SB 258): Chapter 444 clarifies that the clerk of court shall be responsible for record keeping necessary to monitor compliance with child support orders and the initiation of enforcement procedures in non-IV-D cases, and that the designated child support enforcement agency shall be responsible for such matters in IV-D cases. The bill requires the clerk of court to transmit child support payments made to the clerk in IV-D cases to the Department of Human Resources for distribution. This bill becomes effective July 1, 1996.

Grandparent Child Support (Chapter 518; SB 501): Chapter 518 amends G.S. 50-13.4(b) by providing that, absent proof that the circumstances warrant otherwise, if both the parents of a child requiring support were unemancipated minors at the time of the child's conception, the parents of both minor parents will share primary liability for the grandchild's support until both minor parents reach the age of 18 or become emancipated. If only one parent of the child requiring support was an unemancipated minor at the time of the child's conception, the parents of both parents are liable for any arrearages in child support owed by the adult or emancipated parent until the other parent reaches the age of 18 or becomes emancipated.

Chapter 518 also amends G.S. 110-129(3), by redefining the term "responsible parent" as that term pertains to child support enforcement. Under the new legislation a "responsible parent" includes the natural or adoptive parent of the child, including the father of a "child born out-of-wedlock", and the parents of a dependent child who is the custodial or noncustodial parent of the child. It should be noted that the prior definition included the phrase "father of an illegitimate child". This phrase was replaced with "a child born out-of-wedlock". The act becomes effective October 1, 1995, and applies to child support assessed for children born on or after that date.

Day Care

Day Care Provider Criminal Record Check (Chapter 507, Sec. 23.25; HB 230, Sec. 23.25): Section 23.25 of Chapter 507 requires the Department of Human Resources to have a criminal history record check based on fingerprint identification, performed on all persons who provide child day care services, or who own or operate child day care facilities. Based on the criminal record check, the Department is to prohibit a person from providing child day care who the Department determines is unfit to have responsibility for the safety and well-being of children. County and State criminal records must be checked on all day care providers, and national criminal records must be checked on all day care providers who have not lived continuously in North Carolina during the previous five years.

The criminal history is to include convictions and pending indictments of violent offenses of murder, rape, assaults, kidnapping; less violent acts of offenses against

public morality and decency, prostitution, crimes against minors, nonsupport, and public intoxication; as well as drug offenses and alcohol-related offenses including driving while impaired.

The person to be checked must consent to the criminal history check, must be given a statutory notice of what the check covers and the right to challenge the determination by the Department in district court. The criminal history information is privileged and not a public record. Limited immunity is provided to the employer of a day care provider, the owner of a day care facility, and agency employees who carry out this law except where this liability is indemnified.

The day care provider or the day care owner is responsible for the cost of obtaining fingerprints and the local criminal history record. The State is responsible for the costs for the State and national history checks. The SBI is to provide the State criminal history check and the FBI is to provide the national criminal history check.

These criminal history checks are to be performed on all day care providers and owners providing child day care on January 1, 1996, and on all persons newly hired or newly acquiring a child day care business on or after that day. The act is effective January 1, 1996.

Domestic Violence

No Firearm/Domestic Violence Order (Chapter 527; SB 402): Chapter 527 strengthens the laws relating to the prevention of domestic violence by modifying the court's powers. It amends G.S. 50B-3, which sets out the relief a court may grant in a domestic violence protective order. It adds authority to prohibit the purchasing of firearms, adds authority to order a party responsible for acts of domestic violence to attend an abuser treatment program, and adds general authority for the court to fashion the order as the court deems necessary to protect any party or any minor child. Chapter 527 also requires the sheriff to enter domestic violence orders in the criminal information network. It adds G.S. 14-269.8, which makes it a Class H felony for a person to purchase a firearm if there is a domestic violence order which prohibits such purchase. Chapter 527 amends G.S. 15A-534.1, which deals with conditions of pretrial release in cases of crimes of domestic violence, to require that in such cases the judicial official determining the conditions of pretrial release be a judge. Should a judge not make the determination within 48 hours, then a magistrate may act. The provisions of Chapter 527 regarding attendance at an abuser treatment program are effective October 1, 1996. The requirement for the sheriff to enter the orders on the criminal information network becomes effective April 1, 1996. The other provisions regarding domestic violence orders and the provision creating the felony violation for illegally purchasing a firearm are effective October 1, 1995. The provision relating to pretrial release was effective upon ratification, July 29, 1995.

Equitable Distribution

Allow Partial Distribution Awards (Chapter 240; HB 272): Chapter 240 allows a court to make a distributive award pending a final judgment in an equitable distribution action. It provides that for good cause shown, including provision of a spouse's subsistence during the pending action, the court may declare what is separate property and divide the marital property in part. The partial distribution may provide for a distributive award. Any orders entered must be taken into consideration at trial. The chief district court judge may arrange special sessions of court to hear these interim requests; those sessions do not have to be recorded or transcribed. The act becomes

effective October 1, 1995, and applies to all equitable distribution cases pending on or filed after that date.

Equitable Distribution/Sanction for Delay (Chapter 244; HB 269): Chapter 244 authorizes district court judges to sanction a party to an equitable distribution proceeding who willfully obstructs or unreasonably delays, or attempts to do so, a discovery proceeding or another pending proceeding, where the delay is prejudicial and is not consented to by the parties. The judge may include an order to pay the other party reasonable expenses and damages incurred because of the delay, including attorneys' fees and expenses for court-appointed experts whose services are necessary to ensure that the proceeding is conducted in a timely manner. These provisions become effective October 1, 1995, and apply to pending litigation. Chapter 244 also does the following: (1) Provides that affidavits of the inventory of property are subject to the requirements of Rule 11 of the Rules of Civil Procedure, are treated as answers to interrogatories, and are subject to the enforcement powers under Rules 26, 33, and 37 of the Rules of Civil Procedure; and (2) Establishes deadlines and procedures for scheduling and conducting discovery scheduling conferences, initial pretrial conferences, and final pretrial conferences. These provisions become effective October 1, 1995, and apply to claims for equitable distribution filed on or after date.

Equitable Distribution Before/After Divorce (Chapter 245; HB 273): Chapter 245 allows an equitable distribution judgment to be entered before the divorce decree. Currently, an equitable distribution judgment can only be entered before divorce where there is a consent judgment or a trial with the parties' consent after six months of separation. The act also declares that a second or subsequent spouse does not have any interest in the marital property of his or her spouse until a final equitable distribution is made of the marital property of the former marriage. The act becomes effective October 1, 1995, and applies to actions filed on or after that date.

Foster Care

Foster Parent Criminal Record Check (Chapter 507, Sec. 23.26; HB 230, Sec. 23.26): Section 23.26 of Chapter 507 requires the Department of Human Resources to have an SBI and FBI criminal history record check based on fingerprint identification of the county, state, and national criminal history records, performed on all persons over the age of 18 living in a family foster home. The criminal record checks are to used in determining whether the person's criminal history record adversely affects the fitness of the person to have responsibility for the safety and well-being of foster children. The criminal history is to include convictions and pending indictments of violent offenses of murder, rape, assaults, kidnapping; less violent acts of offenses against public morality and decency, prostitution, crimes against minors, nonsupport, and public intoxication; as well as drug offenses and alcohol-related offenses including driving while impaired.

The person to be checked must consent to the criminal history check, must be given a statutory notice of what the check covers, and the right to challenge denial of a license as a result of the record check. The criminal history information is privileged and not a public record. Limited immunity is provided for agency employees who carry out this law except where this liability is indemnified.

These criminal history checks are to be performed on all current foster parents by January 1, 1996, on all persons who apply to be licensed as foster parents after that date, and are to be rechecked annually at the time the foster care license is being considered for renewal. The act is effective January 1, 1996.

Guardianship

Standby Guardianship Act (Chapter 313, SB 682): The legislation provides for the appointment of standby guardians for the children of people who suffer from a progressively chronic illness or an irreversibly fatal illness. Standby guardians are persons who assume the duty of guardian over the person of a minor child or the minor's property upon one of the following conditions: (1) the death of a parent or guardian; (2) the incapacity of a parent or guardian; (3) the debilitation of a parent or guardian, if the parent or guardian consents; or (4) the written consent of the parent or guardian. The authority of the standby guardian is "concurrent" to parental rights, and does not divest the parent or legal guardian of any parental or guardianship rights, and any standby guardianship terminates when the child reaches 18, unless terminated sooner by the court, by revocation, or by renunciation.

Health/Mental Health/Substance Abuse

Tobacco Sales to Minors (Chapter 241; HB 766): Chapter 241 requires that sellers of tobacco products demand proof of age where there are reasonable grounds to believe the purchaser is under 18 years old. Failure to demand proof of age is a Class 2 misdemeanor. A person who sells tobacco products to a minor, an adult who either sends a minor to make a purchase of tobacco for the adult, or an adult who purchases a tobacco product for a minor is guilty of a Class 2 misdemeanor. The purchase or attempt to purchase tobacco products by a person under 18 years old is an infraction for which the penalty is payment of not more than $100.00. In order that statewide uniformity of the law governing tobacco sales will exist, ordinances, rules, and regulations are prohibited by other authorities if the subject matter of such is the sale, distribution, display, or promotion of tobacco products. Chapter 241 is effective December 1, 1995.

Monitor Birth Defects (Chapter 268; SB 818): Chapter 268 establishes a data collection system to collect information relative to birth defects in North Carolina by doing the following: (1) establishes a birth defect registry within the State Center for Health and Environmental Statistics to collect, tabulate, report, and monitor data on the occurrence of birth defects in North Carolina; (2) requires physicians and persons in charge of licensed medical facilities to permit program staff to review and copy medical records; (3) provides that information collected is not a public record; (4) protects hospitals and physicians from civil and criminal liability for permitting access to the records; and (5) establishes criteria for use and disclosure of the information.

Notification of Discharge of Minors (Chapter 336; HB 848): Prior to the enactment of this legislation, a minor who was voluntarily admitted by a parent or guardian to mental health or substance abuse treatment could have been discharged at any time without prior notification to or consultation with the minor's parent or guardian. Chapter 336 amends G.S. 122C-57 and requires prior notification and consultation with the minor's legally responsible person before the minor may be discharged from such treatment. The legislation also prohibits the minor's discharge from treatment upon the minor's request alone. There are exceptions to the notification requirement, however. The legislation does not apply to minors who have been admitted to treatment pursuant to the minor's consent alone. The legislation becomes effective October 1, 1995, and applies to admissions on or after that date.

"Willie M." Changes (Chapter 249; SB 775): See **HUMAN RESOURCES**.

Juvenile Justice

Psychological Counseling of Parents (Chapter 328; SB 379): Chapter 328 amends the Juvenile Code to expand the court's authority over the parent of a juvenile who is adjudicated abused, neglected, dependent, undisciplined, or delinquent to allow the court to: (1) remove the juvenile from the custody of the parent, guardian, or custodian; (2) require the juvenile to receive medical, psychiatric, psychological, or other treatment, and require the parent to participate in the treatment; (3) require the parent to undergo psychiatric, psychological, or other treatment or counseling, and require the parent to pay for the treatment.

Prior to the enactment of this legislation, the court's authority over the parent of an adjudicated juvenile to require the parent to receive treatment was limited to either requiring the parent to participate in the juvenile's treatment plan or the court could condition the legal custody or physical placement of the juvenile with the parent upon the parent undergoing psychological counseling.

The act becomes effective October 1, 1995, and applies to petitions filed on or after that date.

Disciplinary Control of Juveniles (Chapter 391; HB 733): Chapter 391 adds new provisions to G.S. 7A-571 and G.S. 7A-572 of the Juvenile Code allowing a law enforcement officer to take physical custody without a court order of a juvenile who is 16 or 17 years of age, at the request of the juvenile's parent, guardian, or custodian if there are reasonable grounds to believe the juvenile is beyond the disciplinary control of the parent and has been absent from the home without permission for 48 consecutive hours. The officer who takes the juvenile into physical custody is to return the juvenile to the custody of the parent, guardian, or custodian unless there are reasonable grounds to believe the juvenile is abused, neglected, or dependent and would be injured if returned to the parent, guardian, or custodian. In such a case, the officer is to follow procedures as specified in the Juvenile Code. The act becomes effective October 1, 1995.

Paternity

Enhancing Parental Support of Children/Civil Actions to Establish Paternity (Chapter 424; SB 836): Chapter 424 amends G.S. 49-14(c) to allow the filing of a civil action to establish paternity of an illegitimate child after the death of the putative father. If such a suit was commenced, but the putative father dies before a judgment was entered, the court has new authority to enter a judgment establishing paternity, despite the death of the putative father.

To guard against the filing of stale and fraudulent claims, the civil action must be filed within one year of the putative father's death or within 90 days after the first publication of notice to creditors to present claims against the decedent's estate, whichever is less. Chapter 424 further amends G.S. 49-14(d) to prohibit the court from establishing paternity after the death of the putative father without evidence from blood or a genetic marker test. The act becomes effective October 1, 1995, and applies to actions commenced on or after that date, regardless of the date of the death of the putative father. The act will expire October 1, 1998.

Smart Start

Early Childhood Education and Development Initiatives (Smart Start) (Chapter 324, Sec. 27A and 27A.1; HB 229, Sec. 27A and 27A.1): The Continuation Budget Act amends the Early Childhood Education and Development Initiatives, known as "Smart Start", for the 1995-97 fiscal biennium to (i) direct the Joint Legislative Commission on Governmental Operations to be the legislative oversight body and to select an independent firm to conduct a performance audit of the first two years of the program's operations; (ii) limit administrative costs of the 24 existing local partnerships to a maximum of 8% of the total statewide allocation to all the partnerships; (iii) direct local partnerships to administer quality incentive grants; (iv) require any new local partnership in later fiscal years to submit a detailed plan for expenditures before it may be approved to receive State funds; (v) require competitive bidding practices on all contract amounts of at least $1,500, and on all contract amounts under $1,500 where practicable; (vi) expand the role of the State Partnership to provide technical assistance to local partnerships, assess outcome goals, ensure that statewide goals are being met, help establish policies and outcome measures, obtain non-State resources for early childhood and family services, and document and verify cumulative contributions received by the local partnerships; (vii) allow $3,500,000 of funds available for the 24 existing partnerships to be used for planning grants for 12 new partnerships; (viii) prohibit funds for State-level funding to be used for State education technology; (ix) require the State and local partnerships to, in the aggregate, match no less than 50% of the total amount budgeted for the program as follows: cash contributions equal to at least 10% and in-kind contributions of no more than 20% for each fiscal year; and (x) require a proportionate reduction in the next fiscal year's appropriation for the program if the State and local partnerships fail to obtain a 20% match by May 1 of each year. The act also amends G.S. 143B-168.12(a) by adding the President Pro Tempore, the Speaker, and the Majority and Minority Leaders of each chamber, or the designees of these individuals, to the Board of Directors of the State Partnership.

Miscellaneous

Income Tax Cut/Child Credit (Chapter 42; HB 2): See **TAXATION**.

Youth Employment Certificates (Chapter 214; SB 560): See **EMPLOYMENT**.

No Algebra LD Child (Chapter 371; SB 701): See **EDUCATION**.

Food Stamp Felony Fraud (Chapter 507, Sec. 19.5; HB 230, Sec. 19.5): Section 19.5 of Chapter 507, the 1995 Expansion/Capital Budget, lowers the food stamp felony fraud threshold to $1,000. The act becomes effective December 1, 1995.

MAJOR PENDING LEGISLATION

For summaries of pending legislation concerning **Welfare Reform,** See **HUMAN RESOURCES** under **MAJOR PENDING LEGISLATION**.

STUDIES

Legislative Research Commission Studies

The 1995 Studies Bill (Chapter 542, HB 898) authorized the **Legislative Research Commission** to study the following issues: (1) Guardian Ad Litem Study; (2) Grandparent Visitation Rights; (3) Illegitimacy, its prevention, and related child support and welfare benefits issues; (4) Juvenile and family law.

Independent Studies, Boards, Etc., Created or Continued

Welfare Reform Study Commission is continued and shall focus on the effects of **federal budgetary policy on welfare reform.** (Chapter 542, Part XXII; HB 898, Part XXII and Chapter 507, Sec. 23.8B; HB 230, Sec. 23.8B)

CIVIL LAW AND PROCEDURE
(Tim Hovis, Linwood Jones, Walker Reagan, Steve Rose)

RATIFIED LEGISLATION

Civil Procedure

Adoptions to District Court (Chapter 88; SB 108): See **CHILDREN AND FAMILIES.**

Forum Selection Exception (Chapter 100; SB 862): Chapter 100 amends G.S. 22B-3 which voids contract provisions requiring prosecution of any action or arbitration of any dispute in another state, to permit the forum selection provision to be used with the consent of all parties to the contract at the time that the dispute arises. The act becomes effective May 23, 1995, and applies to any action or arbitration commenced before, on, or after that date.

Pro Se Indigent Prisoners (Chapter 102; SB 41): See **CRIMINAL LAW AND PROCEDURE.**

Shareholder Derivative Actions (Chapter 149; HB 420): See **COMMERCIAL LAW.**

Foreign Money Claims (Chapter 213; SB 477): Chapter 213 creates the North Carolina Foreign Money Claims Act to establish a standard for converting currency for monetary damages resulting from a foreign judicial proceeding or arbitration. The act defines a foreign money claim as a claim upon an obligation to pay or for recovery of a loss, expressed in or measured by money other than money of the U.S. Standards established by the act apply regardless of the effect of conflict of laws rules as to other issues, and may be varied by agreement of the parties. The act provides that the proper money of the claim is that which has been agreed upon by the parties, and if no agreement, it is the money either (1) regularly used between the parties in the course of usage or dealing; (2) used at the time of the transaction in international trade for valuing or settling transactions in the commodity or service involved; or (3) in which the loss was ultimately felt or will be incurred by the claimant, as appropriate in each case. The act authorizes the assertion of claims and defenses in specified foreign currency, establishes rules for measuring the amount of the claim, and for converting judgments, awards, and distribution proceedings. It provides that prejudgment and preaward interest is determined by the substantive law governing the right to recovery under North Carolina conflict of laws rules. Procedures for enforcing foreign judgments and determining the dollar value of assets to be seized or restrained are set out as well as rules applicable in the event of revalorization of currency.

The act becomes effective October 1, 1995, and applies to actions and distribution proceedings commenced on or after that date.

Debtor Protection for Individual Retirement Accounts (Chapter 250; SB 1003): Chapter 250 amends G.S. 1C-1601(a), Right to Claim Exempt Property statute, to provide that a debtor's individual retirement accounts are exempt from execution to satisfy judgments and are therefore not subject to the claims of creditors. The act becomes effective October 1, 1995, and applies to judgments entered on or after that date.

Expedite Execution of Judgments (Chapter 257; SB 585): Chapter 257 amends G.S. 1-360 and G.S. 1-360.1, which deal with the execution of a judgment against a person who holds property of or is indebted to a debtor. Under present law, an execution of judgment against a debtor must be returned unsatisfied before a creditor can proceed against a third party who has property of a judgment debtor or who owes a debt to a judgment debtor. The amendments to the statutes will allow a judgment creditor to proceed against these third parties immediately rather than waiting for a judgment to be returned unsatisfied. The amendments also deal with how a judgment creditor determines whether such property exists in the hands of third parties. Present law says that upon the filing of an affidavit that a third party holds property of or owes a debt to a judgment debtor, the court may require that person, or an officer or a member of such a corporation, to appear and answer questions concerning the property or debt. The statute presently provides that such inquires may be answered by sworn interrogatories. The amendment provides that the use of sworn interrogatories will be in the discretion of the court. The act becomes effective October 1, 1995, and applies to judgments entered on or after that date.

Private Service of Process (Chapter 275; HB 265): Chapter 275 amends Rule 4 of the North Carolina Rules of Civil Procedure to allow for private service of process if process is attempted using a proper officer and the process is returned unexecuted. A private party serving process must be at least 21 years old, may not be party to the action, and may not be related by blood or marriage to a party to the action or to a person upon whom service is to be made. Chapter 275 also amends G.S. 7A-305(d), which specifies the costs that may be recovered in a civil action. The amendment provides that if private process is used, the amount recoverable is equal to the actual cost of service, not to exceed $50.00, unless the court finds that due to difficulty of service a greater amount is appropriate. The act becomes effective October 1, 1995, and applies to actions that are filed or have not reached final judgment on or after that date.

Certain Limitations/Suits by State (Chapter 291; HB 907): See **STATE GOVERNMENT**.

Videotaped and Sound Recorded Depositions (Chapter 353; HB 762): Chapter 353 amends Rule 30 of the Rules of Civil Procedure to change the permissible methods of taking depositions without the necessity of stenographic means of recording. The act eliminates the requirement that depositions taken by sound recording or video recording also be recorded by stenographic means. In addition to stating the means of taking the deposition, the notice of deposition must also state if a stenographer is to be present. If the deposing party is not supplying a stenographer, any other party may supply a stenographer. The party providing the stenographer provides for transcribing the testimony. Depositions taken by sound recording are to be transcribed by the party taking the deposition.

The act provides that the videotape, transcript of the video tape, a transcript of a sound recording, or the stenographic transcript of a deposition, be submitted to the deponent for examination and review unless this right is waived. The deponent may note changes and the reasons for any change. The person administering the oath shall certify the deposition and any changes made by the deponent.

The act becomes effective October 1, 1995, and applies to cases filed on or after that date.

Clarify Civil Remedies for Returned Checks (Chapter 356; HB 905): Chapter 356 clarifies G.S. 6-21.3 to permit a person who receives a bad check to send a second

demand letter prior to filing suit, to the person who wrote the bad check, giving notice that the maker is also then liable for treble damages which has previously been the law. The act permits the person receiving the check to give a first notice that the check and fees must be paid within 30 days or the maker may also be additionally liable for treble damages. If the amount owed is not paid in 30 days, the act permits a second letter to be sent prior to filing suit stating that the person writing the check owes treble damages, of not less that $100.00 and not more than $500.00, in addition to the amount of the check and fees, and that this new amount must be paid within 30 days to avoid suit being filed. The person receiving the check must wait 30 days after sending the second letter for payment before filing suit. The act becomes effective December 1, 1995.

Civil Procedure Rules Amendments (Chapter 389; SB 929): Chapter 389 amends the Rules of Civil Procedure relating to service of process in foreign countries and taking of depositions in foreign countries. The purpose of the act is to conform the North Carolina rules to the federal rules which were amended in 1993 to reflect the fact that the United States has entered into certain agreements with other countries, most notably the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents. The act also adds a new Rule 44.1 on determination of foreign law. It requires a party who intends to raise an issue concerning foreign law to give notice of that intent. It allows the court to consider any relevant material, even though it might not normally be admissible under the Rules of Evidence. The act becomes effective October 1, 1995, and applies to civil actions filed on or after that date.

Indigent Appeal Changes (Chapter 536; SB 256): Effective October 1, 1995, Chapter 536 amends G.S. 1-288 by removing language requiring an attorney's opinion and written statement in appeals by indigents of a judgment in a civil action.

Liability

Civil Damages for Certain Crimes (Chapter 185; SB 259): See **CRIMINAL LAW AND PROCEDURE.**

Landowner Liability Protection Act (Chapter 308; HB 127): Chapter 308 reduces the liability of a landowner who permits the landowner's land to be used without charge for educational or recreational purposes by lowering the landowner's duty of care to the person coming onto the property for these purposes to the duty owed to a trespasser. This change in liability of the landowner does not apply in the case of an attractive nuisance or land used as a dwelling and the property immediately adjacent to the dwelling. The landowner does have a duty to inform direct invitees of artificial or unusual hazards of which the owner has actual knowledge. This lower duty of care would not apply to land usually used for educational or recreational purposes for a fee, even when the fee is not charged, or when the owner extends the invitation to come on the land to promote a commercial enterprise.

The Department of Public Instruction is to inform all local school boards of the effects of this act on school activities and what it means to students, parents, and teachers. Insurance companies are required to rerate liability insurance policies upon their anniversaries to reflect the additional limitation of liability arising from this act. The act is effective October 1, 1995.

Death Settlement Approval (Chapter 401; SB 243): Chapter 401 amends G.S. 28A-13-3(a)(23) to permit the trial judge or trial tribunal to approve settlements in a wrongful

death action brought by the deceased's personal representative. Current law appears to require a superior court judge to approve all settlements, unless everyone entitled to damages is a competent adult and has agreed in writing. This is required even if the action was filed in a different court. The act, recommended by the General Statutes Commission, allows the judge in the action to approve the settlement. The act becomes effective October 1, 1995.

Immunity for Volunteer Engineers/Architects (Chapter 416; SB 119): Chapter 416 gives qualified immunity from liability to professional engineers and architects who voluntarily, and without compensation, provide services at the scene of a disaster or emergency. The disaster or emergency must be declared under federal or State law, and the services must be provided at the request of a public official acting in his or her official capacity. The services must be provided within 45 days of the disaster or emergency, unless the 45-day period is extended by an executive order of the Governor. The immunity does not apply if the loss was caused by the gross negligence, wanton conduct, or intentional wrongdoing of the engineer or architect, or arose out of the operation of a motor vehicle. Chapter 416 was effective upon ratification, July 11, 1995, and applies to any cause of action arising on or after that date.

Mediation

Remove Sunset On OAH Mediation Statute (Chapter 145; SB 772): Chapter 145 removes the June 30, 1995, sunset date from G.S. 150B-23.1. The 1993 General Assembly enacted G.S. 150B-23.1, which allows mediated settlement conferences for contested cases being heard in the Office of Administrative Hearings. In enacting this procedure, the General Assembly provided for a report by the Attorney General evaluating the effectiveness of the program. The report recommended that the program be made permanent. The act was effective upon ratification, June 1, 1995.

Mediated Settlement Conferences (Chapter 500; SB 528): In 1991, the General Assembly enacted G.S. 7A-38 authorizing a mediated settlement conference pilot program in eight judicial districts for civil cases filed in Superior Court and for farm nuisance disputes. Chapter 500 adds G.S. 7A-38.1 which requires that mediated settlement conferences be implemented in all judicial districts as soon as the Director of the Administrative Office of the Courts (AOC) determines it to be practicable. Chapter 500 includes the following: (1) Supreme Court may adopt rules to implement the statewide program; (2) senior resident superior court judge may order all cases, not otherwise exempted by the Supreme Court rules, to mediated settlement conference; (3) farm nuisance disputes must initiate mediation prior to bringing a civil action unless certain conditions are met; (4) parties and their attorneys must attend the conference, unless exempted by the Supreme Court Rules, and failure to attend may result in monetary sanctions; (5) parties may select the mediator; (6) senior resident superior court judge may, with the parties consent, order other dispute resolution methods in lieu of the mediated settlement conference; (7) mediators have judicial immunity in the same manner and to the same extent as a judge; (8) costs of the conference is borne by the parties; (9) statements made and conduct occurring in a conference, which are not otherwise discoverable, are not subject to discovery and are inadmissible in any proceeding on the same claim; and (10) right to a jury trial is not restricted by the act. Prior to bringing a civil action, all farm nuisance disputes must first attempt mediation, unless the claim is brought as a class action, the court finds good cause for failure to attempt mediation, or the parties waive the mediation requirement in writing. The Chapter authorizes the Supreme Court to adopt standards for the certification and

conduct of mediators who participate in the mediated settlement conference program. Mediator certification, regulation, and decertification will be conducted through the Dispute Resolution Commission, which the Chapter establishes. Chapter 500 also establishes a fee of $200.00 to be charged by the AOC to applicants for certification and renewal of certification as mediators. The statewide mediation program becomes effective October 1, 1995. Notwithstanding this date, the act will apply to all superior court civil actions only after the Supreme Court adopts rules implementing the act.

Tort Reform

Products Liability Amendments (Chapter 522; HB 637): Chapter 522 amends the Products Liability Act of 1979, primarily to add new sections governing two types of products liability claims: (1) inadequate warning claims and (2) inadequate design claims. The act also codifies the current North Carolina case law on strict liability for products liability: there is no strict liability in tort in products liability actions.

To prove a claim based on inadequate warning or instruction, the claimant must prove that the manufacturer or seller acted unreasonably in failing to provide adequate warning or instruction, that this was a proximate cause of the injury, and that either (i) the manufacturer or seller knew or should have known the inadequate warning rendered the product unreasonably dangerous when released or (ii) the manufacturer or seller became aware or should have become aware of the product's danger after its release and failed to give warning or take other appropriate action. A manufacturer is not required to warn about an open and obvious risk that is a matter of common knowledge. In addition, a drug manufacturer that provides adequate instructions to physicians on prescription drugs is not required to give direct warnings to the patients using these drugs unless the Food and Drug Administration requires otherwise.

To prove a claim based on inadequate design, the claimant must prove that the manufacturer or seller acted unreasonably, this was the proximate cause of the injury, and that either (i) the manufacturer failed to adopt a safer, practical, and feasible alternative design that was reasonably available that would have prevented or substantially reduced the risk of harm without impairing the product's utility, practicality, or desirability or (ii) the product was so unreasonably dangerous that a reasonable person wouldn't use it. The act specifies seven factors to be used in determining whether a manufacturer's design was reasonable, including the foreseeability of risks, consumer awareness of the dangers, product utility, and the technical, economic, and practical feasibility of having used an alternative design at the time of manufacture. Manufacturers are not liable under inadequate design claims for inherently dangerous characteristics of a product that can't be eliminated without impairing the product's usefulness or desirability, as long as the ordinary person would recognize these dangerous characteristics. Similarly, a drug manufacturer is not liable under an inadequate design claim for an unavoidably unsafe aspect of an approved drug (i.e., an aspect that was not capable of being made safe).

The act makes clear that breach of warranty claims are preserved under the Products Liability Act. The act takes effect January 1, 1996, and applies to causes of action arising on or after that date, but does not apply to products liability actions for death or injury resulting from a silicone gel breast implant implanted prior to January 1, 1996.

Punitive Damages (Chapter 514; HB 729): Chapter 514 makes the following changes concerning punitive damages:

Cap on punitive damages: Punitive damages are capped at three times the amount of compensatory damages or $250,000, whichever is greater. Compensatory damages include both (i) economic damages, such as medical bills and lost wages and (ii)

noneconomic damages, such as pain and suffering. They also include, for purposes of the punitive damages law, nominal damages. For example, a plaintiff awarded $1 million in compensatory damages could potentially recover as much as $3 million in punitive damages; a plaintiff awarded nominal damages of $1.00 could potentially recover $250,000 in punitive damages. As under prior law, no one is entitled to punitive damages; whether they are awarded continues to be within the discretion of the trier of fact.

The act does not change the law concerning the award of punitive damages to the plaintiff. All punitive damages recovered belong to the plaintiff.

The cap does not apply to claims for injury or harm caused by a person who is driving while impaired. However, the other provisions of the act do apply to these claims.

Conduct/Standard of Proof: Punitive damages are allowed, in the jury's discretion, only if the defendant's underlying conduct involved one or more of the following aggravating factors that were related to the injury: fraud, malice, or willful or wanton conduct. Neither ordinary nor gross negligence is grounds for a punitive damages award. (A conforming change is made to the wrongful death act to eliminate gross negligence as a grounds for punitive damages in wrongful death actions). The plaintiff must prove the existence of malice, fraud, or willful or wanton conduct by clear and convincing evidence.

Actions in which punitive damages are allowed: A claim for punitive damages cannot be brought independently. There must be an underlying civil action. The act prohibits punitive damages awards based solely on breach of contract. However, it does not prohibit punitive damages for tort actions arising from breach of contract. The act also prohibits punitive damage awards based solely on vicarious liability. However, an employer or other principal is still subject to punitive damages for the actions of its employee or agent if it participated in the conduct that constitutes the aggravating factor giving rise to the punitive damages or, in the case of a corporation, the officers, directors, or managers of the corporation participated in or condoned this conduct.

A plaintiff may pursue both punitive damages and any other remedy for multiple damages (for example, a claim for treble damages under the Unfair and Deceptive Trade Practices Act) simultaneously, but the plaintiff may not recover under both; he must elect between the remedies prior to judgment.

Pleading and Trial of Punitive Damages Issues: A claim for punitive damages must be specifically pleaded in the complaint. The complaint must also specifically spell out the aggravating factor on which the claim is based.

The trier of fact determines both the liability for and the amount of punitive damages. The defendant may have the punitive damages issue tried separately. Once liability for compensatory damages has been established, the trier of fact determines the amount of punitive damages by considering the following factors: the punitive and deterrent effect of these damages; the reprehensibility of the defendant's motives; the likelihood, at the time, of serious harm and the extent to which the defendant was aware of this likelihood; the duration of the defendant's misconduct; the actual damages suffered by the claimant; whether the defendant concealed its conduct or the consequences; whether it profited from its conduct; and its ability to pay punitive damages, as evidenced by its revenues or net worth. When the trier of fact is the jury, it is not to be told at any time about the statutory cap on punitive damages.

Judicial Review: The trial judge must reduce a jury's punitive damages award if it exceeds the cap and enter judgment for the maximum amount allowed. The award is subject to further review to determine whether it complies with the standards enunciated in the act for determining the appropriateness and amount of punitive damages awards.

The trial court must state its reason in writing for disturbing the jury's findings concerning liability for punitive damages or the amount of punitive damages.

Effective Date: This act takes effect January 1, 1996, and applies to claims for relief arising on or after that date.

Medical Malpractice Actions (Chapter 309; HB 730): Chapter 309 amends the law governing malpractice civil actions by requiring that expert witnesses in medical malpractice cases have appropriate qualifications to testify on the standard of care and that there be an expert witness review as a condition of filing a malpractice action. In a medical malpractice action, a health care provider is held to the "standard of practice among members of the same health care profession with similar training and experience situated in the same or similar communities at the time of the alleged act giving rise to the cause of action" (G.S. 90-21.12). Because jurors know very little about the standard of care in a medical malpractice action, expert testimony is generally necessary to establish whether a health care provider has breached that standard.

Same specialty/active practice: An expert seeking to testify on the standard of care in a medical malpractice action must first qualify as an expert witness under Rule 702 of the North Carolina Rules of Evidence. Rule 702 requires the expert to be qualified through his or her knowledge, skill, experience, training, or education to give an opinion. Chapter 309 imposes two additional requirements on an expert testifying about the standard of care in a medical malpractice action. First, if the defendant is a specialist, the expert must be a member of either (1) the defendant's specialty or (2) a similar specialty that performs the same procedure on which the malpractice action is based, provided that the expert has prior experience treating similar patients. Second, the expert must be an active practitioner. Although the expert is not required to be actively practicing at the time he testifies, he must have devoted a majority of his professional time during the year prior to the time the malpractice occurred to the active clinical practice of the same health care profession. If the defendant is a specialist, the expert's clinical practice time must have been in either (1) the defendant's specialty or (2) a similar specialty that performs the same procedure on which the malpractice action is based, provided that the expert has prior experience treating similar patients. The "active clinical practitioner" requirement does not apply to medical school professors and other health care instructors who teach in the same health care profession (and if the defendant is a specialist, in the same specialty).

The act also addresses three instances in which the "same specialty" requirement is not appropriate: (1) when a defendant is a general practitioner rather than a specialist, the expert witness must have spent a majority of his professional time during the year prior to the occurrence of the malpractice in active clinical practice as a general practitioner or in the instruction of students in the general practice of medicine; (2) in a medical malpractice action against a nurse, nurse practitioner, certified registered nurse anesthetist, certified registered nurse midwife, physician assistant, or other medical support staff, a physician who is knowledgeable on the applicable standard of care is competent to testify on that standard; and (3) testimony on the appropriate standard of care of a hospital as to administrative or other nonclinical issues may be given by any person who has substantial knowledge based on training and experience of the standard of care among similar hospitals situated in similar communities at the time of the alleged negligent acts.

The new rules concerning expert witnesses apply only to expert witnesses testifying on the standard of care, including both the plaintiff's and defendant's experts. They do not apply to expert witnesses testifying on damages and other issues.

Hardship exception: To alleviate hardship caused by the "same or similar specialty" rule and "active clinical practice" rule, the act allows a party to petition a resident superior court judge of the county or judicial district in which the action is pending to

allow testimony from an expert who does not meet these requirements. In order to obtain this relief, the petitioning party must show extraordinary circumstances and the judge must determine that allowing the motion will serve the ends of justice. The expert must still be knowledgeable on the applicable standard of care in order to qualify as an expert witness. The act is silent on what constitutes "extraordinary circumstances," leaving this determination to the judge. A party's inability, after reasonable efforts, to obtain an expert witness in the same or a similar specialty as the defendant may be one ground for relief under this provision.

Certification of merit: The act also amends the pleading requirements for medical malpractice actions to require certification by the plaintiff's expert that the lawsuit is meritorious. The complaint must specifically plead that a qualified expert (i.e., one who meets the criteria discussed above and who is expected to be qualified as an expert) has reviewed the medical care the plaintiff received and is willing to testify that the defendant breached the standard of care. If the plaintiff's expert is one who must be qualified through the hardship rule discussed above, the plaintiff must file the complaint and the motion for qualification together.

Statute of limitations relief extension: Relief is also available for a party that brings its case to an attorney just before the statute of limitations is to expire. The attorney will not have had sufficient time in these cases to secure an expert's review before filing the complaint. The act allows the party to petition a resident superior court judge of the county in which the cause of action arose for an additional 120 days beyond the statute of limitations in which to file the complaint in order to comply with the requirement for certification on the lawsuit's merit. This motion is allowed only for good cause shown.

Res ipsa loquitur claims: If the plaintiff is relying on the doctrine of res ipsa loquitur to establish the defendant's negligence, he must plead the facts giving rise to the negligence claim under res ipsa. Certification of the lawsuit's merit by an expert is not required in res ipsa cases. Except for unusual cases, our courts have not applied the doctrine of res ipsa loquitur to medical malpractice actions. The act makes clear that the legislature is not extending the current common law scope of the res ipsa loquitur doctrine as it relates to medical malpractice claims.

Effective Date: The act takes effect January 1, 1996, and applies to actions filed on or after that date.

Miscellaneous

Repeal Antiquated Laws (Chapter 379; SB 56): Chapter 379 repeals or amends various antiquated, obsolete, or unconstitutional laws. These include laws making it illegal to counterfeit Spanish milled dollars, laws that refer to departments of the federal government which have had their names changed, oaths of office for offices that no longer exist, and references to statutes declared unconstitutional by the courts. The act also clarifies that the only motor vehicles eligible to use acetylene lights are those eligible for a Historic Vehicle Owner special registration plate. Chapter 379 was effective upon ratification, July 6, 1995.

Foreign Legal Consultants (Chapter 427; HB 761): Chapter 427 establishes a procedure for the licensing of foreign legal consultants. Application is made to the North Carolina State Bar, and the actual license is issued by the North Carolina Supreme Court. A foreign legal consultant must be licensed as an attorney and engaged in the practice of law in a foreign country. Reciprocity between North Carolina and the foreign country in which the applicant is licensed is required. Services performed by a foreign legal consultant are limited and may not include

representation of a party in legal proceedings in this country, or in connection with other legal matters related to this country. The person may use the title "foreign legal consultant" and must not give the impression that he or she is licensed to practice law in North Carolina. The act becomes effective January 1, 1996.

STUDIES

Chapter 542

The 1995 Studies Bill (Chapter 542, HB 898) authorized the **Legislative Research Commission** to study the following: (1) consumer protection issues; and (2) mold liens.

Separate House Studies

Tort Reform Study (Chapter 542; HB 898): Chapter 542 authorized the Speaker of the House of Representatives to direct a House standing committee, permanent standing subcommittee, or select committee to study tort reform issues introduced but not enacted by the General Assembly. This would include the following bills: House Bill 731 (collateral source rule); House Bills 636 and 965 (Rule 11 sanctions); and House Bill 820 (loser pays attorneys' fees). A report may be made to the 1996 Regular Session of the 1995 General Assembly (Chapter 542, Part III; HB 898).

Referrals to Departments, Agencies, Etc.

Supreme Court Case Management Plan (Chapter 333; HB 231): Chapter 333, recommended by the Court's Commission, requests the North Carolina Supreme Court to develop and implement a case flow management plan designed to avoid delay and unnecessary appearances and to increase trial court efficiency. The plan should place responsibility for case flow management with specific persons, adopt case processing standards and goals, address the problem of delay, avoid unnecessary appearances in court, provide case control mechanisms, establish definite deadlines throughout the process, include a limited continuance policy, be considerate of the interests of victims and witnesses, provide accountability mechanisms, and provide training for persons responsible for managing case flow. The Supreme Court was requested to report to the General Assembly by May 1, 1996, including any recommended legislation. The act was effective upon ratification, June 27, 1995.

COMMERCIAL LAW
(Karen Cochrane-Brown, Linwood Jones, Walker Reagan)

RATIFIED LEGISLATION

Banking

Remove Sunset on Reverse Mortgages (Chapter 115; HB 97): See **PROPERTY**.

Miscellaneous Bank Changes (Chapter 129; SB 482): Chapter 129 makes certain technical, clarifying, and substantive changes in the laws governing banks, and other regulatory laws under the responsibility of the Banking Commissioner and the State Banking Commission. The substantive changes include increasing the period during which a bank may hold real estate owned by it other than as an office or as collateral from one to five years; allowing banks to set their own hours of operation and deleting the requirement that banks be open at least 5 days a week and at least 3 hours after 3 p.m. on one day; adding a new section defining permitted loans to bank executive officers; and eliminating the prohibition against a bank or bank holding company owning a nonbank bank, such as a trust company or a credit card bank, among others. This act became effective May 31, 1995.

Savings Banks Conversion (Chapter 142; SB 413): Chapter 142 amends the law relating to the conversion of savings associations to State banks, to include authorization for the conversion of savings banks to State banks. This Chapter confirms that a State or federal savings bank may convert to a State chartered commercial bank. Equivalent provisions of law were previously enacted into Chapter 54C, the State Savings Bank Act, but in order to ensure absolute authority for this type of conversion, the State Banking Act is amended to include similar language. This act became effective June 1, 1995.

Interest Rate Adjustments (Chapter 155; HB 758): Chapter 155 amends the Consumer Finance Act to allow licensees under the act to assess a reasonable credit investigation charge at closing of the loan. The charge may not exceed the actual cost of the credit investigation and may not be assessed more than twice in any year. The Commissioner of Banks may review these charges to ensure that they are reasonable. This act became effective June 1, 1995.

Conform Financial Privacy Act (Chapter 222; HB 736): Chapter 222 makes changes in the North Carolina Financial Privacy Act to conform it to the federal Right to Financial Privacy Act. This Chapter adds an alternative means of notifying a customer that a court order or subpoena has been issued to obtain information from the customer's financial records. The customer has 10 days from service by mail, which is presumed received three days from mailing, to challenge the court order or subpoena. The Chapter also authorizes a financial institution or its officer, employee, or agent to notify a government authority that it has information relevant to a possible violation of law. The amendment also contains a provision granting immunity under State law from liability to the customer for information so provided or for failure to notify the customer of the disclosure. This act became effective June 12, 1995.

Extend Equity Line Agreements (Chapter 237; SB 408): Chapter 237 extends the maximum term of an equity line of credit agreement from 15 to 30 years. The borrower and lender may agree, in writing, to extend the period for advances up to 30

years from the end of the preceding period for advances. The act sets forth a suggested form for a "Certificate of Extension of Period for Advances Under Home Equity Line of Credit", which must be executed and registered where the mortgage or deed of trust is registered in order to maintain the priority of the mortgage or deed of trust that secures the line of credit with respect to advances made after the preceding loan period from a date not later than the registration of the certificate. This act becomes effective October 1, 1995.

Clarify Banking Commission Authority (Chapter 267; SB 686): Chapter 267 clarifies the authority of the State Banking Commission when reviewing actions of the Banking Commissioner. The act eliminates reference to the obsolete term "tellers window" and expands the review power of the Commission to any other matter which may properly come before the Commissioner for review. In addition, the act clarifies that a member may not vote on an application or other matter involving an institution in which the member has a financial interest or with which the member is affiliated. This act became effective June 15, 1995.

Bank Stock as Collateral (Chapter 296; SB 1086): Chapter 296 rewrites G.S. 53-64 to allow banks to make loans secured by shares of its own stock or that of its parent holding company provided that if the bank exercises its rights upon default of the loan or other transfer, the bank must dispose of the stock within a six-month period. Banks are still prohibited from making a loan to finance the purchase of its stock and from purchasing its own stock unless it is purchased or pledged to the bank to prevent a loss upon a debt contracted in good faith, in which case the stock must be disposed of within six months. This act became effective June 20, 1995.

Interstate Branching Early Opt-In (Chapter 322; SB 414): Chapter 322 authorizes North Carolina to begin interstate branch banking in accordance with the federal Reigle-Neal Interstate Banking and Branching Efficiency Act of 1994, immediately, rather than in 1997, when it will become effective for all states. In 1993, the General Assembly provided for nationwide interstate branching on a reciprocal basis. This act retains the reciprocity requirement until 1997, at which point the federal law will not permit it. This act provides for interstate branching by de novo entry, acquisition, and merger, with prior approval of the Commissioner of Banks. The Commissioner is also authorized to enter into cooperative, coordinating, and information-sharing agreements with other bank supervisory agencies or organizations. Section 2 of the act makes conforming changes to the Revenue Laws. Section 2 became effective July 1, 1995. The remainder of Chapter 332 became effective June 22, 1995.

Opt-Out Usury Preemption (Chapter 387; SB 412): Chapter 387 amends North Carolina law to allow certain provisions of the federal Depository Institutions Deregulation and Monetary Control Act of 1980, to apply to loans made by financial institutions chartered in North Carolina. This act will allow state-chartered federally insured financial institutions to charge the higher of the rate of interest allowed by State law or a rate one percent above the discount rate on 90-day commercial paper at the district Federal Reserve bank, on all loans other than first mortgage loans or business or agricultural loans. Chapter 387 also amends the law relating to certain revolving credit loans by increasing the maximum amount a lender may charge for a late payment from five dollars to ten dollars, provided the late charge may not exceed the outstanding principal balance and is not incurred until the payment is at least 30 days past due. This act became effective July 1, 1995.

Confidentiality of Financial Institution's Records (Chapter 408; SB 899): Chapter 408 requires banks, savings and loans, and savings banks to maintain complete records of compliance review documents. The compliance review records must be made available for examination by State and federal regulators, but they are not public records and are not discoverable or admissible in evidence in a civil action against the financial institution or its officers or employees. This act became effective July 10, 1995.

Bank Investment Authority (Chapter 417; SB 430): Chapter 417 rewrites G.S. 53-47 relating to the investment authority of banks. The act authorizes banks to invest in the capital stock or other securities of other state, national, or foreign banks or trust companies, and other deposit taking entities. The act further provides that a bank may invest up to 75% of its unimpaired capital fund in the stock or assets of other entities primarily engaged in activities permissible for national banks, as well as those primarily engaged in activities of a financial nature, or engaged in any other activity approved by the Commissioner. The act also directs the Commissioner to monitor the impact of investment activities of banks. This act became effective July 11, 1995.

Banks/Savings Institutions Mergers (Chapter 479; SB 415): Chapter 479 rewrites G.S. 53-12, relating to merger or consolidation of banks, to include provisions permitting banks to merge, consolidate with, or transfer their assets and liabilities to another bank or to a savings association, and allowing savings associations to do the same with banks. The transaction must be approved by the stockholders or membership of the institution and by the Commissioner of Banks. This Chapter also adds new provisions to Chapter 54B (the Savings and Loan Associations Act) and Chapter 54C (the Savings Banks Act) to limit and regulate simultaneous conversion/mergers between savings and loan associations or savings banks and banks. This act became effective July 26, 1995.

Business

Shareholder Derivative Actions (Chapter 149; HB 420): Chapter 149 revises and recodifies the law governing shareholder derivative actions. The act retains much of the existing law but adds additional provisions in order to limit derivative actions that lack merit by establishing higher requirements before suits can be brought, giving greater authority to the directors of the corporation to determine if the action is meritorious, and limiting the discretion of the court.

The act adds definitions for "derivative proceeding" and "shareholder" which do not substantially change the former law except to provide for actions against foreign corporations in some cases. The act adds a new provision that the shareholder must fairly and adequately represent the interests of the corporation in enforcing the right.

The new G.S. 55-7-42 requires that before commencing a derivative action the shareholder must make a written demand on the corporation to take suitable action and wait 90 days to allow the corporation to act, unless the corporation notifies the shareholder that the demand has been rejected, or irreparable injury to the corporation would result by waiting 90 days.

The new G.S. 55-7-44 requires that the court dismiss the complaint if one of the following groups determines, after conducting a reasonable inquiry, that the maintenance of the action is not in the best interest of the corporation:

(1) A majority of "independent directors" present at a meeting of the board if they constitute a quorum,

(2) Majority vote of a committee of two or more of "independent directors" appointed by a majority vote of "independent directors" at a meeting of the board, regardless of whether they constitute a quorum, or

(3) A panel of one or more independent persons appointed by the court only upon motion of the corporation.

A director will not be disqualified as not being "independent" just because the director was nominated or elected by persons who are defendants in the action or against whom the action is demanded, the director is named as a defendant or a person against whom the action is demanded, or approval by the director of the act being challenged did not result in personal benefit to the director.

Under the new G.S. 55-7-45, consideration of the interests of creditors is no longer required when the court considers approving the dismissal or settlement of a derivative action.

The new G.S. 55-7-46 changes the standards for when recovery of court costs and attorneys' fees is allowed by the plaintiff against the corporation, to proceedings that result in "a substantial benefit" to the corporation instead of the former law standard of "successful in whole or in part".

The new G.S. 55-7-47 adds provisions that provide that derivative actions in the rights of foreign corporations are governed by the laws of the jurisdiction of incorporation of the foreign corporation, except for the demand requirements, the discontinuance or settlement requirements, and the expense and attorneys' fees requirements.

The act is effective October 1, 1995, and applies to actions upon which derivative suits are based occurring on or after that date.

Uniform Commercial Code Amendments (Chapter 232; SB 81): Chapter 232 amends Chapter 25 - Uniform Commercial Code (UCC), by replacing the prior Article 3 - **Commercial Paper** with the Revised Article 3 - **Negotiable Instruments**, and makes conforming and miscellaneous amendments to Article 1 and Article 4 - **Bank Deposits and Collections**. The act updates the provisions of the UCC dealing with the payment by checks and other paper instruments to provide essential rules for the new technologies and practices in payment systems since the UCC was originally adopted 30 years ago. While much of the prior law was retained, the act made the following substantive changes. (All references are to Articles and sections in Chapter 25):

3-103(a)(7) defines "ordinary care" for the first time and allows for automated processing of checks by the payor bank.

3-104(a) and **3-112** allow notes with variable interest rates to be considered negotiable instruments.

3-118 and **4-111** adopt a uniform statute of limitations for various types of claims on checks and other instruments ranging from 3 to 10 years. The statute of limitations on instruments under seal is not affected.

3-307 makes a change from the Uniform Fiduciaries Act by creating a presumption in a holder-in-due-course situation that the depository bank has notice of a breach of fiduciary duty when a check payable to the principal or fiduciary as such is deposited to the personal account of the fiduciary.

3-309 and **3-312** establish procedures for replacing and enforcing lost or stolen official checks.

3-311 provides for methods to avoid inadvertent accord and satisfaction while continuing to process high volume accounts receivables, and gives protection to other payees.

3-402 makes an authorized representative not personally liable when signing for the principal named on the instrument even when the agent's status is not indicated on the instrument.

3-404, 3-405, and **3-406** allow for a division of liability between parties when both are at fault, in situations involving imposters and fictitious payees, employer liability for fraudulent endorsement by employees, negligence contributing to forged signature or alteration of the instrument, and the customer's duty to discover and report unauthorized signatures or alterations.

3-411 makes the bank liable for consequential damages if the bank refuses to pay an official check after receiving notice of special circumstances.

3-417 and **4-208** permit a collecting bank to assert the negligence of the drawer of the check as a defense to a warranty claim by the payor bank.

3-605 makes the failure of the holder of a promissory note to record the security agreement an unjustifiable impairment of collateral so as to discharge the accommodation endorsers of the note. The defense of discharge based on impairment of collateral is also made available to nonaccommodating makers or comakers in addition to accommodation parties.

4-105 includes savings banks, savings and loan associations, credit unions, and trust companies, in the definition of banks, to insure that the transactions of these entities are governed and protected by the UCC.

4-110, 4-209, and **4-406** give banks the ability to accept electronic presentment of items for payment (truncation of checks) without a separate agreement.

4-209 provides for new warranties by collecting banks for encoding errors and retention of items under a truncation (electronic presentment) agreement.

4-215 eliminates the time of "process of posting" as a test for final payment.

4-401 permits a bank to pay a postdated check prior to the date on the check unless the customer has a stop payment order entered.

4-403 clarifies who can order a stop payment on a joint account by permitting any person authorized to draw on the account to sign the order.

4-406 changes the former law for the time period to report unauthorized signatures and alterations to instruments from a 14/60-day period to a standard 30-day period.

The act is effective October 1, 1995.

Changes to the Limited Liability Company Act, Professional Corporation Act, and the Real Estate Licensing Law (Chapter 351; HB 473): Chapter 351 makes various changes to Chapter 57C, **Limited Liability Company Act;** Chapter 24, **Interest and Usury**, related to loans to corporations, limited liability companies, and partnerships engaged in commercial pursuits for pecuniary gains; Chapter 55B, **Professional Corporation Act**, concerning stock ownership by professionals licensed in other states; and Chapter 93A, **Real Estate License Law.**

The changes made to Chapter 57C include changing the definition of "person", clarifying that the references to professional corporations, partnerships, limited partnerships, and limited liability companies include both domestic or foreign entities; adding a new subsection allowing a limited liability company to change its registered office or agent by including that information in its annual report; clarifying that reference to various legal entities (corporations, partnerships, and limited liability

companies) included domestic and foreign entities; removing the requirement that all members approve the indemnification of a manager or member when the indemnification is provided for in the articles of organization or a written operating agreement; permitting indemnification of a manager for deliberate acts and acts committed prior to the date the indemnification privilege became effective if approved by all members; clarifying that a withdrawing member is entitled to the fair value of the member's interest; and clarifying that a limited liability company may engage in rendering professional services to the the same extent that a professional or general corporation is permitted under the applicable licensing statutes.

The act amends G.S. 24-9 which exempts loans to corporations from the usury laws by expanding the exemption to limited liability companies and partnerships engaged in commercial pursuits for pecuniary gain and makes a conforming change by repealing G.S. 24-9.2.

The act also amends G.S. 55B-4(2) and G.S. 55B-6(a) to permit stock in professional corporations to be held by persons who are not licensed in North Carolina but who are licensed in another jurisdiction in which the corporation maintains an office to perform professional services for the corporation in the other jurisdiction, so long as at least one shareholder is a North Carolina licensee as defined in G.S. 55B-2.

The act amends Chapter 93A to permit real estate brokers and salespersons to organize real estate businesses as limited liability companies or other business entities in addition to organizing as corporations.

The act is effective October 1, 1995.

Amend Non-Profit Corporation Act (Chapter 400; SB 242): Chapter 400 amends the Non-Profit Corporation Act by making changes to conform to the Business Corporation Act, to clarify the authority of nonprofit and for-profit corporations to merge, and to clarify the minimum number of member votes required to amend the bylaws. The act brings the Non-Profit Corporation Act into conformity with the Business Corporation Act as it relates to the register agent, duties of the Secretary of State, foreign corporations' authority to conduct affairs, and the inapplicability of the Administrative Procedures Act. The act amends the Non-Profit Corporation Act and the Business Corporation Act to clarify that business corporations can merge with nonprofit corporations and vice versa. The act also clarifies that bylaw amendments to increase or decrease the number of votes any member is entitled to on any member action, or the number of votes required to take any member action, must be approved by the members entitled to vote on that action by a vote that would be sufficient to take the action under the bylaws before their amendment. Conforming changes are also made for approval of amendments to articles of incorporation for merger approval, sale of assets, and dissolution. The act is effective October 1, 1995.

Economic Development

Loss Reserve Account/Economic Development (Chapter 252; SB 268): Chapter 252 makes clear that fees paid as additional security by a borrower into a certain type of loss reserve account are not "interest" for purposes of the usury law. This provision is narrowly limited to those loss reserve accounts administered and controlled by a nonprofit corporation that is part of a State-funded program that provides loans to promote economic development. This act became effective June 15, 1995.

CDBG Loan Guarantee Program (Chapter 310; SB 300): Chapter 310 authorizes the Department of Commerce to participate in the CDBG loan guarantee program. Under the loan guarantee program, the State can pledge its future federal CDBG funds as

security for the loan. This act also explicitly authorizes cities and counties to participate in the program and ratifies the actions of those cities and counties that have already participated.

The United States Department of Housing and Urban Development (HUD) limits the amount of future federal CDBG funds that can be pledged. Although the loan guarantees are backed by the full faith and credit of the United States, they are not backed by the full faith and credit of the State of North Carolina, its cities, or its counties. The pledging of future federal CDGB funds does not obligate the State or its cities and counties to levy taxes.

Loan guarantees are available, as are traditional CDBG funds, for different categories of assistance. Numerous safeguards are included as conditions on the use of these loan guarantees: (i) the loan size may not exceed $5 million per project; (ii) no more than 50% of the project's funding may be from these loan guarantee funds; (iii) the project must have at least 25% equity from the sponsor; (iv) the project must be personally guaranteed by any person with 10% or more equity in the sponsor; (v) the project must be projected to have sufficient cash flow to repay the loan; and (vi) the project must meet HUD and State eligibility requirements and cannot be a hotel, motel, convention center, or private educational or recreational facility. In addition, the Department of Commerce must maintain a loss reserve fund of no less than 10% of the amounts of outstanding loans at any one time as additional security. In the event of a default on a loan, the loss of future funds is to come primarily from the same category in which the loan was made.

This act became effective July 1, 1995.

Corporate Filings (Chapter 539; HB 490): Chapter 539 authorizes the Secretary of State to provide for expedited filings of documents (subject to higher fees), to retain filed documents in reproduced form, and to correct apparent errors and omissions in documents with the consent of the filer. The act also amends the time after which a corporation can use the name of a dissolved corporation and makes several other changes regarding filings with the Secretary of State. Most of these changes affect corporations, nonprofit corporations, limited liability companies, and limited partnerships. Part of the Chapter became effective on July 29, 1995, part becomes effective October 1, 1995, and part becomes effective July 1, 1996.

Miscellaneous

Debtor Protection for Individual Retirement Accounts (Chapter 250; SB 1003): See **CIVIL LAW AND PROCEDURE.**

Deed of Trust Cancellation (Chapter 292; HB 459): See **PROPERTY.**

Counterfeit Trademarks (Chapter 436; HB 311): Chapter 436 makes it a criminal offense under the Trademark Registration Act to knowingly and willfully use counterfeit trademarks for the purpose of sale, to possess goods with counterfeit marks with the intent to sell, and to possess tools used or intended to be used to produce counterfeit trademark products. Possession, custody, or control of more that 25 counterfeit items constitutes a presumption of intent to sell. This Chapter also makes fraudulent registration of a trademark and infringement of a trademark an unfair and deceptive trade practice, subject to the provisions of Chapter 75 of the General Statutes.

Under this law, a person who uses a counterfeit mark or possesses counterfeit goods, with intent to sell counterfeit goods:

less than $3,000 in value, is guilty of a Class 2 misdemeanor.

more that $3,000 but less than $10,000, is guilty of a Class I felony.
more than $10,000, is guilty of a Class H felony.

A person in possession of tools for counterfeiting, either using or intending to use the tools for counterfeiting, is guilty of a Class H felony. The act also provides that personal property used in violation of this law may be seized and subject to forfeiture.

The act authorizes law enforcement agents of the Secretary of State to investigate offenses under this act in cooperation with local law enforcement agencies. Attorneys employed by the Secretary of State may also assist in the prosecution of counterfeit trademark cases when requested by a district attorney. The Secretary of State is required to report any evidence of violations to the appropriate district attorney and also, when appropriate, to the Secretary of Revenue.

The act is effective December 1, 1995, and applies to offenses committed on or after that date and to causes of actions arising on or after that date.

MAJOR PENDING LEGISLATION

Outdoor Advertising/Just Compensation (HB 220): House Bill 220 would require local governments to pay just compensation to outdoor advertising owners whose advertising is required to be removed by local government actions or ordinances, and would prohibit the use of amortization in most cases.

Advance Rental Payments (SB 1054): Senate Bill 1054 would require realtors that accept advance payments for future rentals of residential property to hold those deposits in a trust account and not disburse the money for commissions or to the property owner, until the tenant takes possession of the property or breaches the lease agreement.

Amend Certain Loan Procedures (SB 332): Senate Bill 332 would allow lenders to collect fees, interest, and charges for certain loans in amounts agreed upon by the parties, with no statutory maximum limit, and would authorize computation of rebates by the simple interest method on contracts governed by the Retail Installment Sales Act.

STUDIES

Legislative Research Commission Studies

The 1995 Studies Bill (Chapter 542; HB 898) authorized the **Legislative Research Commission** to study the following topics relating to Commercial Law: (1) bad check fees; and (2) consolidation of regulatory agencies of financial institutions.

CONSTITUTION
(Bill Gilkeson, Barbara Riley)

RATIFIED LEGISLATION

Veto-1 (Chapter 5; SB 3): Chapter 5 sends to the voters in November 1996 a proposed constitutional amendment to give the Governor veto power. If adopted, when the Governor vetoes a bill, it can become law only only if three-fifths of the members present and voting in each house of the General Assembly vote to override the veto. Exempted from the veto would be the following:

* Constitutional amendments;
* Resolutions;
* Bills in which the General Assembly makes appointments;
* Legislative and congressional redistricting bills;
* Local bills (nonappropriations bills applying in fewer than 15 counties).

The Governor would have 10 days to veto a bill while the General Assembly is in session. If the Governor waited longer than 10 days before doing anything, the bill would become law anyway. If, however, the General Assembly adjourned before the 10 days had run on a bill and the Governor vetoed that bill, the Governor would be required to call a special session to give the General Assembly an opportunity to override the veto, unless a majority of both houses waived that right. If the voters approve the amendment, it will go into effect January 1, 1997.

Veto Conforming Changes (Chapter 20; SB 54): Chapter 20 changes the General Statutes to conform to the gubernatorial veto that would be established in the State Constitution by Senate Bill 3. The changes include provisions for the mechanics of approving bills under the new system and of waiver by the General Assembly of an override session after adjournment if a majority of both houses agree such a session is not needed. The bill also cleans up language in the statutes that refers to "ratification by the General Assembly" or words to that effect. The bill will go into effect January 1, 1997, but only if the voters approve the constitutional veto provision in November 1996.

Alternative Punishments (Chapter 429; SB 4): Chapter 429 puts on the ballot in November 1996 a proposed constitutional amendment to add community service, restraints on liberty, work programs, restitution, and suspended sentences to the punishments for crime that are recognized in the State Constitution. Currently, only death, imprisonment, and removal and disqualification from office are recognized. The amendment would become effective January 1, 1997, if approved by the voters.

Victims Rights Amendment (Chapter 438; SB 6): Chapter 438 puts on the ballot in November 1996 a proposed constitutional amendment to give certain rights to victims of crime to participate in the criminal justice system. The amendment lists eight rights of victims of crime:

1. To be informed of and be present at court proceedings of the accused;
2. To be heard at sentencing and at other times;
3. To receive restitution;
4. To be given relevant information about the system;

5. To be notified about the disposition of the case and the sentence of the accused;
6. To be notified of postsentencing changes in the status of the convict;
7. To present concerns about any action that could lead to the convict's release, prior to that action's being taken;
8. To confer with the prosecution.

Virtually every clause in the constitutional amendment is modified by the phrase "as prescribed by law". The effect is that the rights will take the shape they are given by statute or other law. If the voters approve the amendment in November 1996, it will go into effect immediately.

CRIMINAL LAW AND PROCEDURE
(Brenda Carter, Tim Hovis, Susan Seahorn)

RATIFIED LEGISLATION

Corrections

Pro Se Indigent Prisoners (Chapter 102; SB 41): Chapter 102 provides that when a motion to proceed as an indigent is filed by an inmate who is not represented by an attorney, the motion along with the proposed complaint must be presented to a superior court judge who will then determine whether the complaint is frivolous. The judge may dismiss the complaint, or may determine that the inmate may proceed as an indigent. Chapter 102 became effective upon ratification on May 25, 1995.

Department of Correction Changes (Chapter 233; HB 357): The section requiring monthly inspection of all mines in North Carolina in which State convicts are or may be employed and employment of a mine inspector to accomplish this task was repealed. Also repealed was the subsection of the wages, allowance and loans section of the prison regulations article that required DOC to establish a revolving fund from inmate welfare funds to be used for loans to prisoners and parolees in accordance with the regulations approved by DOC. These provisions were effective upon ratification, June 13, 1995.

Inmate Labor Pilot Program/Comm. Colleges (Chapter 269; SB 967): See **EDUCATION.**

Repeal Prison Cap/Prevent Parole of Violent Felons (Chapter 324, Sec. 19.10; HB 229, Sec. 19.10 as amended by Chapter 507, Sec. 19; HB 230, Sec. 19): Effective July 1, 1995, the Secretary of Correction is authorized to contract with private for-profit or nonprofit firms for the operation of two or more confinement facilities totaling up to 1,000 beds, exclusive of the 500 beds in private substance abuse treatment centers previously authorized. Contracts for the facilities may contain an option to purchase and will require that plans be reviewed by the Office of State Construction to ensure that projects are suitable for habitation and may be suitable for future acquisition by the State. Prisoners housed in private confinement facilities remain subject to rules adopted for the conduct of inmates in the State prison system. Contracts may be entered for a period of 10 years, renewable for additional 10-year periods. Contracts are subject to the approval of the Council of State and the Department of Administration in consultation with the Joint Legislative Commission on Governmental Operations.

Prison Cap Repeal (Chapter 324, Sec. 19.9; HB 229, Sec. 19.9): The Continuation Budget Act amends G.S. 148-4.1 to require that the Department of Correction provide space to allow habitual and violent felons to serve the full sentence imposed. Violent offenses are defined as first and second degree murder, voluntary manslaughter, first and second degree rape, first and second degree sexual offense, any sexual offense involving a minor, robbery, kidnapping, assault, and attempts, solicitation, or conspiracy to commit any of these offenses. The prison cap is raised from 24,500 to 27,500. Persons who

have been convicted of a violent offense or who have been convicted of drug trafficking will not be eligible for parole solely because of the cap. The prison cap is repealed as of January 1, 1996, though the Department of Correction will remain authorized to reduce the prison population when necessary to reach a more manageable level and to meet its legal obligations.

Community Penalties Program (Chapter 324, Sec. 21.9; HB 229, Sec. 21.9): In addition to appropriating funds for community penalties programs, Section 21.9 of Chapter 324 adds to the definition of community penalties program any "State-run office" within a judicial district which prepares or monitors community penalty programs or arranges with other agencies for necessary services for offenders. This section also amends G.S. 7A-772 to allow the Director of the Administrative Office of the Courts (AOC) to establish community penalty programs and appoint necessary staff. The AOC is authorized to adopt rules and procedures and to administer funds appropriated for community penalties programs. Contracts entered into by the AOC for the program are exempt from competitive bidding procedures. Section 21.9 amends G.S. 7A-773 to require a community penalties program to prepare community penalty plans at the request of the sentencing judge.

Community Service Immunity (Chapter 330; HB 416): Chapter 330 clarifies that the immunity of a supervising governmental agency or supervising nonprofit agency or corporation from liability for injuries to a person performing community service also applies to persons performing community service under a deferred prosecution agreement and persons on probation or parole. Chapter 330 was effective upon ratification, June 26, 1995.

Prisoner Medical Care Fees (Chapter 385; HB 1018): Chapter 385 authorizes local governments operating local confinement facilities to charge fees of not more than $10 per incident for the provision of nonemergency medical care to prisoners. A procedure must also be established for waiving fees for indigent prisoners. Chapter 385 was effective upon ratification on July 6, 1995.

Reserve for Bunking Inmates in Shifts (Chapter 507, Sec. 19.2; HB 230, Sec. 19.2): Effective July 1, 1995, $250,000 of the funds appropriated to the Department of Correction for the 1995-96 fiscal year is placed in a reserve for bunking inmates in shifts. DOC will develop a plan for a pilot program at Lincoln Correctional Center that provides for arranging inmates' daily activities so that at least two different groups of inmates may occupy the same dormitory space. DOC will report on the development of the plan by May 15, 1996, to Governmental Operations and Corrections Oversight, and to the Chairs of the Senate and House Appropriations Committees and the Justice and Public Safety Subcommittees.

Exemption From Licensure and CON (Chapter 507, Sec. 19.9; HB 230, Sec. 19.9): Section 19.9 of Chapter 507 exempts inpatient chemical dependency or substance abuse facilities providing services to inmates of the Department of Correction from licensure, but only for that portion of the facility that serves inmates. Persons contracting with the Department to provide chemical dependency or substance abuse services to inmates may also operate a new facility without first obtaining a certificate of need. The facility may not admit anyone other than inmates, however, without obtaining a certificate of need.

Community Service District Supervisor Residency Requirement (Chapter 507, Sec. 20; HB 230, Sec. 20): Section 20 of Chapter 507 provides that community service program districts shall have the same boundaries as district court districts effective September 1, 1995. Furthermore, all community service program district supervisors hired after September 1, 1995, must reside in his or her district.

Crimes

Fire Misdemeanors Reenacted (Chapter 210; HB 812): Chapter 210 adds two fire misdemeanors to Chapter 14 of the General Statutes. G.S. 14-138.1 creates a Class 3 misdemeanor for any person, firm, corporation, or other legal entity who starts a fire upon grassland, brushland, or woodland without fully extinguishing the fire. G.S. 14-410 creates a Class 3 misdemeanor for any person, firm, corporation, or other legal entity who burns brush, grass, or other material whereby any property may be endangered or destroyed without keeping and maintaining a careful watchman in charge of the burning. Fire escaping from the brush, grass, or other material is prima facie evidence of a violation of this provision. Both offenses include possible fines of ten dollars to fifty dollars. Chapter 210 was effective upon ratification, June 8, 1995.

Tobacco Sales to Minors (Chapter 241; HB 766): See **CHILDREN AND FAMILIES.**

Domestic Abuse/Disabled Elder Adults (Chapter 246; SB 127): See **HUMAN RESOURCES.**

Assault Law Enforcement Animal-2 (Chapter 258; SB 616): Chapter 258 amends G.S. 14-163.1, Injuring or killing law enforcement animal, to increase the penalty from a Class 1 misdemeanor to a Class I felony for any person who willfully and not in self-defense causes serious injury to or kills a law enforcement animal. The Chapter also makes it a Class I felony to "maim" a law enforcement animal. Chapter 258 becomes effective December 1, 1995, and applies to offenses committed on or after that date.

Amend Statutory Rape Law (Chapter 281; SB 287): Chapter 281 amends the law regarding a sexual act or vaginal intercourse with a person who is 13, 14, or 15 years old by raising the age for consensual sex from 13 to 16. Violation of the law is a Class B1 felony, punishable by a minimum active prison sentence of between 144 months and life without parole, if the offender is at least 6 years older than the victim. It is a Class C felony, punishable by a minimum sentence of between 38 and 181 months, if the offender is at least 4 but less than 6 years older than the victim. Consent is not a defense to this charge, but the offense cannot be committed between married persons. Under former law, any rape or sexual act committed against a 13, 14, or 15-year old - without regard to age factors - would have been an offense punishable by prison sentence of a minimum of between 38 and 181 months. Consent was a defense under prior law. Chapter 281 is effective December 1, 1995.

Failure to Give Way (Chapter 283; HB 328): See **TRANSPORTATION.**

Vital Records Changes-1 (Chapter 311; SB 632): See **HUMAN RESOURCES.**

Assault On School Bus Driver (Chapter 352; HB 496); amended by Chapter 507, Sec. 19.5; HB 230, Sec. 19.5: Assaulting a school bus driver, school bus monitor, or school employee who is boarding the school bus or who is on the school bus is a Class A1 misdemeanor. The provision is effective December 1, 1995.

Criminal Enterprises (Chapter 378; SB 987): Chapter 378 creates a new offense that applies to a person who is in a position of leadership within a group of 5 or more other persons who commit a series of felonies. Where the person in the leadership position obtains substantial income from the enterprise, that person will be guilty of a Class H felony in addition to the punishment for offenses actually committed by the group. This offense applies to all felonies in Chapter 14 and does not apply to drug offenses. The new offense provides for the forfeiture of profits and interests in the enterprise when a person is convicted of the offense. Chapter 378 also rewrites the requirements for peddlers, itinerant merchants and specialty market vendors to require that they keep and be able to produce records of the source of goods in their possession. Failure to keep the required records will create a presumption that the goods are stolen. Portions of the act requiring changes in the record keeping of merchants become effective July 1, 1996. The remainder becomes effective December 1, 1995.

Wireless Telephone Fraud (Chapter 425; SB 955): Chapter 425 prohibits the unauthorized use of wireless telecommunications services and establishes civil and criminal penalties for acts relating to such use. The law is intended to address fraud which occurs when persons use special receivers to pick up the identifying codes of cellular telephones so they can be sold or cloned into other phones and allow calls to be charged to an innocent party's account. Violation is a Class 2 misdemeanor; however, if the offense involves 5 or more unlawful telecommunications devices, it is punishable as a Class G felony. The court is authorized to order restitution in addition to any sentence imposed, and any person who is a victim of the offense is authorized to bring a civil action to recover damages. Chapter 425 is effective December 1, 1995.

Counterfeit Trademarks (Chapter 436; HB 311): See **COMMERCIAL LAW.**

Prohibit Sale of Some Pyrotechnics (Chapter 475; HB 280): Chapter 475 prohibits the sale to persons under 16 of snake and glow worms, smoke devices, snappers and drop pops, sparklers, or other sparkling devices which emit showers of sparks. Violation is a Class 2 misdemeanor. Chapter 475 is effective December 1, 1995.

Juvenile Indecent Liberties (Chapter 494; HB 72): Chapter 494 creates a new offense that criminalizes lewd and lascivious acts upon, or immoral, improper or indecent liberties between persons under 16 years of age where the perpetrator is at least 3 years older than the victim. The offense is a Class 1 misdemeanor. Chapter 494 is effective October 1, 1995.

Assault On Emergency Personnel (Chapter 507, Sec. 19.6; HB 230, Sec. 19.6): Assault on emergency personnel, which includes law enforcement

officers, firemen, ambulance attendants, utility workers, doctors, nurses, emergency medical services technicians, and other persons engaged in providing emergency services is made a Class F felony if the assault is with a firearm. If the assault is with a dangerous weapon or substance it is a Class I felony; if it is a simple assault it is a Class 1 misdemeanor. The provision is effective December 1, 1995.

Criminal Procedure

Venue for Insanity Hearings (Chapter 140; SB 312): Chapter 140 provides that if the district attorney of the county in which a person is found not guilty by reason of insanity elects to represent the State's interest at a subsequent insanity hearing, the venue for the hearing, rehearings, and supplemental rehearings may be the county in which the person was found not guilty by reason of insanity. Chapter 140 became effective upon ratification on June 1, 1995.

Life Sentence Appeals (Chapter 204; SB 832): Chapter 204 provides for the Court of Appeals to hear appeals in criminal cases in which life sentences are imposed. Prior law provided for appeal of right directly to the Supreme Court in all cases in which the defendant is convicted of first degree murder and the judgment of the superior court includes a sentence of death or imprisonment for life. Chapter 204 is effective December 1, 1995.

Prisoner Transport by City Police (Chapter 206; HB 634): Chapter 206 authorizes city law enforcement officers to transport a person in custody to or from any place in the State for the purpose of that person attending criminal court proceedings. It also gives officers specific authority to arrest persons at any place in the State for offenses occurring in connection with and incident to the transportation of persons in custody. Chapter 206 is effective December 1, 1995.

Bail Bond Changes (Chapter 290; HB 851), **Bond Forfeitures in District Court** (Chapter 448; SB 792), **Clarify Bail Bond Forfeitures** (Chapter 503; SB 459): Chapter 290 made various changes to the law concerning bail bonds. These changes were later modified by Chapter 448 and Chapter 503. Chapter 290, as modified by Chapter 503, amends G.S. 15A-531 to provide that a bail bond for which the surety is a surety bondsman acting on behalf of an insurer shall be considered the same as cash. A bail bond signed by a professional bondsman who is not a surety bondsman is not considered the same as cash. Furthermore, cash bonds in child support contempt proceedings may not be satisfied in any manner other than a cash deposit. Chapter 290 also provides that a surety may surrender his principal to the sheriff where the defendant was bonded. Chapter 290, as modified by Chapters 448 and 503, also provides that an order of forfeiture must be set aside if the principal fails to appear because he or she is incarcerated in North Carolina and the surety satisfies the court of this fact. In addition to this provision, the order of forfeiture must be stricken upon the payment of costs if the principal is incarcerated or served an order of arrest in North Carolina within 90 days of judgment against the obligor and the principal is placed on a new bond or released by the court. Chapter 290 also adds a new G.S. 15A-547.1 requiring the bail bond to be remitted if the defendant is convicted and sentenced to community punishment or intermediate

punishment and no appeal is pending. All of the changes contained in Chapter 290, as modified by Chapters 448 and 503, were effective upon ratification. The final ratification date for these three Chapters was July 28, 1995.

Chapter 448 adds a provision requiring the clerk of each county to prepare a forfeiture calendar once each month when court is in session. All forfeitures entered more than 60 days previously in each county and all written motions to strike an order of forfeiture shall be placed on the calendar for hearing to determine if the order of forfeiture should be entered as a judgment or, if entered, should be satisfied by execution. The school board attorney may be appointed by the district attorney as the district attorney's designee for the presentation of the forfeiture calendar. This change was effective upon ratification, July 18, 1995.

Chapter 503 includes the following changes: (1) requires the obligor to enter the obligor's mailing address, street address, and telephone number on the bond; (2) provides for service of an order of forfeiture by certified mail; (3) after entry of judgment on an order of forfeiture, requires a petition for remission of judgment to be served upon the county school board attorney and placed on the next forfeiture calendar; and (4) requires the sheriff to notify the clerks and magistrates in each county in the district if a levy of execution upon a judgment against an obligor remains unsatisfied for 10 days. These changes become effective December 1, 1995.

Mental Health Pretrial Procedures (Chapter 299; HB 386): Chapter 299 amends G.S. 15A-1002(b) to provide that if a defendant charged with a felony, whose capacity to proceed to trial is questioned, is ordered to a State facility for examination without first having an examination by local forensic evaluators, the judge must make a finding that an examination in a State facility would be more appropriate to determine capacity. Chapter 299 also provides that a defendant, including minor clients, held in a 24-hour facility because his or her capacity is questioned may be restricted from keeping or using personal clothing. Adult defendants may also be restricted from communicating with individuals of his or her own choice. Chapter 299 becomes effective October 1, 1995.

Electronic Surveillance Act (Chapter 407; SB 896): Specific wiretaps will be authorized by a judicial review panel that is designated by the Chief Justice of the North Carolina Supreme Court when, in the Attorney General's discretion or at the request of local law enforcement, the Attorney General applies for such authorization and can show that a serious offense is involved, specifies who the suspected persons are, the type of communications sought to be intercepted, and the premises where the wiretap is to be used. All communications intercepted pursuant to such an authorization must be recorded and the recordings must be preserved for 10 years. The SBI is authorized to own, oversee the use of, and use all equipment owned by the SBI or local authorities. Chapter 407 is effective December 1, 1995.

Notice of Commutations (Chapter 507, Sec. 19.3; HB 230, Sec. 19.3): Effective July 29, 1995, the Governor must provide notice of the commutation of any sentence within 20 days after the commutation. Unless waived, notice must be made to the victim or victims of the crime for which the sentence was imposed, the victim's spouse, children, and parents, any other members of the victims' family who request to be notified, and the Chairs of the Joint

Legislative Corrections Oversight Committee. Notice is by first-class mail to the last known address of the recipient.

Sex Offender Registration (Chapter 545; SB 53): Chapter 545 establishes a sex offender registration program that will cover persons released from penal institutions on or after January 1, 1996, and persons convicted of sex offenses on or after January 1, 1996. Persons who have been convicted of first or second degree rape or sex offense; attempted rape or sex offense; intercourse and sexual offenses with certain victims; incest between near relatives; employing or permitting a minor to assist in offenses against public morality and decency; first, second, and third degree sexual exploitation of a minor; promoting prostitution of a minor; participating in prostitution of a minor; and taking indecent liberties with a minor will be required to register and to maintain registration, for a period of 10 years, with the sheriff of the county in which they reside. Information about a person's registration status may be divulged to an individual who makes a request to the sheriff concerning a specified person that includes the name and sex of the person, the physical description, and other relevant information known to the requesting individual. If the person inquired about is registered, the requesting individual will be entitled to view a photograph of the person, and obtain a copy of the registration information. Groups who use persons for the care or supervision of children, disabled or elderly persons may obtain a copy of the entire registry. Persons required to register who fail to do so will be guilty of a Class 3 misdemeanor for the first offense and a Class I felony for subsequent offenses.

Domestic Violence

No Firearm/Domestic Violence Order (Chapter 527; SB 402): See **CHILDREN AND FAMILIES.**

Drugs

Drug Schedule Additions (Chapter 186; HB 409): See **HUMAN RESOURCES.**

Special Prosecutor/Grand Juries (Chapter 362; SB 325): Chapter 362 allows the district attorney's designee or a special prosecutor to request that an investigative grand jury be convened to consider the commission of or conspiracy to commit violations of the N.C. Controlled Substances Act with regard to trafficking or continuing criminal enterprise, any part of which violation or conspiracy occurred in the county where the grand jury sits. Under prior law, only the district attorney could make such request. Chapter 362 is effective December 1, 1995.

Drug Trafficking Conspiracy (Chapter 375; SB 597): Chapter 375 adds drug trafficking conspiracy to the list of offenses for which extraordinary mitigation may not be used, and thereby provides that a defendant who is convicted of a drug trafficking conspiracy is not eligible for intermediate sanctions under the structured sentencing act. Under prior law, upon a finding by the court of extraordinary mitigating factors of a kind significantly greater than in the

normal case, the court could determine that it would be an injustice to impose an active sentence and could, in its discretion, impose an intermediate sentence. Chapter 375 is effective December 1, 1995.

Expedite Eviction/Drug Offenders (Chapter 419; SB 558): See **PROPERTY.**

Drug Treatment Courts (Chapter 507; Sec. 21.6; HB 230, Sec. 21.6): Section 21.6 of Chapter 507 adds Subchapter XIV, Article 62, North Carolina Drug Treatment Court Act, to Chapter 7A. The Article creates the North Carolina Drug Treatment Court Program in the Administrative Office of the Courts (AOC) to facilitate the creation of drug treatment court pilot programs in a minimum of two judicial districts. The goals of the pilot programs include the reduction of alcoholism and other drug dependencies, the reduction of recidivism and drug-related court workload, the increase of personal, familial, and societal accountability of offenders, and the promotion of interaction between criminal justice personnel and community agencies. The pilot programs will be operated under guidelines promulgated by the Director of the AOC, in consultation with the State Drug Treatment Court Advisory Committee, and the Director shall administer program funds and award grants. The act requires each judicial district applying to participate in a funded pilot program to form a local drug treatment court management committee. The required membership of such a committee is listed in the act. Grant applications for the pilot programs are submitted to the director of the AOC. The act requires each defendant to contribute to the cost of treatment received in the program, based upon guidelines of the local committee. The act requires each grant application to provide a method for evaluating the pilot program at the local level. The AOC is required to evaluate the effectiveness of all pilot programs at the State level and submit a report to the General Assembly by May 1, 1998. Section 21.6 appropriates funds for the implementation and evaluation of the pilot programs. The act became effective July 1, 1995, and expires June 30, 1998.

Drug Nuisance Forfeiture (Chapter 528; SB 783): Chapter 528 provides for the forfeiture of property owned by persons participating in nuisances on the property involving the sale or use of narcotic drugs. Chapter 528 provides that in actions where an injunction or order of abatement is issued in which the nuisance consists of at least two prior occurrences within 5 years of the illegal possession or sale of narcotic drugs, the real property on which the nuisance exists or is maintained is subject to forfeiture. If the court finds that all the owners have participated in maintaining the nuisance or had been notified in writing and had failed to make good faith efforts to stop the nuisance, the property is forfeited. If one or more of the property owners did not participate or did not have written notice of the nuisance, the court shall not order immediate forfeiture. If the nuisance continues or recurs within 5 years, and the owner has not made good faith efforts to abate the nuisance, a hearing shall be held to determine whether the property should be forfeited. Upon an order of forfeiture, title to the property will vest in the school board of the county in which the property is located. Chapter 528 is effective December 1, 1995, and applies to nuisances existing on or after that date.

Firearms

Concealed Handgun Permit-2 (Chapter 398; HB 90 as amended by Chapter 507, Sec. 22.1 and 22.2; HB 230, Sec. 22.1 and 22.2, and Chapter 509, Sec. 135(d) and (e); SB 590, Sec. 135(d) and (e)): Beginning December 1, 1995, qualified persons may obtain a 4-year permit to carry a concealed handgun except where concealed handguns are not permitted by federal or State law, or where notice prohibiting concealed handguns is posted by the property owner. The act raises the penalty for second and subsequent offenses of illegally carrying a concealed handgun to a Class I felony. Concealed handguns would not be permitted on school property, at paid assemblies, where alcoholic beverages are sold and consumed, in State or federal offices and buildings, at parades, law enforcement offices, jails, prisons, and financial institutions. A concealed handgun may not be carried while the person is consuming or has alcohol or an unlawful controlled substance in the person's body. The permittee must be carrying the permit while carrying the concealed handgun and must disclose to a law enforcement officer the fact that a concealed handgun is being carried. To qualify for a permit, the applicant must be a U.S. citizen, a N.C. resident for at least 30 days, and 21 years of age or older. The applicant must have successfully completed an approved firearms safety and training course which involves the actual firing of handguns and instruction in N.C.'s law governing the carrying of a concealed handgun and the use of deadly force. The applicant cannot have charges pending or have been convicted of a felony or violent misdemeanor, be an unlawful user of or addicted to alcohol or drugs, be mentally ill or lacking mental capacity, have been discharged from the armed forces other than honorably, or have been convicted of a DWI within the previous 3 years. Upon payment of an $80 fee, the sheriff shall have a State and federal fingerprint-based criminal history check performed. The permit may be renewed upon continued qualification based on a criminal history check, payment of a $80 fee, and possibly additional safety training.

Comply With Brady Bill (Chapter 487; SB 865): Chapter 487 amends provisions regarding the sale of weapons in certain counties to conform to the Brady Bill. Changes include: (1) a prerequisite for issuance of a permit for the purchase of a handgun must include a criminal background check that indicates that the purchase, possession or receipt of a firearm by the individual will not violate State or federal law; (2) the permit for purchase is valid for five years only; (3) reasons for denial of a permit are modified to include that the person applying is an illegal alien, has been dishonorably discharged from the armed forces, has renounced U.S. citizenship, or is subject to a court order restraining the person from harassing, stalking, or threatening others because the person has been found to be a threat to another person's safety. The offense of possession of a firearm by a convicted felon was amended to cover conviction of all felony offenses in North Carolina or offenses similar to felony offenses in North Carolina and the definition of a felony was changed to offenses carrying a punishment of more than one year. Chapter 487 is effective December 1, 1995.

Impaired Driving

DMV/DOT Technical Changes (Chapter 163; HB 134): See **TRANSPORTATION.**

Governor's Task Force on DWI (Chapter 506; HB 353): Chapter 506 implements recommendations of the Governor's Task Force on Driving While Impaired. Section 1 authorizes a judge to order an ignition interlock system on any vehicle driven as a condition of a limited driving privilege. Such a system is designed to prevent the vehicle from starting if the driver has been drinking. Section 2 of the bill requires all defendants convicted of driving while impaired under G.S. 20-138.1 to have a substance abuse assessment before being eligible for a limited driving privilege. Sections 3, 4, 5, and 6 raise the prohibition against driving after drinking any amount of alcohol from age 18 to age 21. The length of license revocation for a violation of this section is one year. If the person is 18, 19, or 20 and has not previously been convicted of a violation of this section, the person may apply for a limited driving privilege. Sections 7, 8, and 9 prohibit the transportation of an open alcoholic beverage in the passenger area of a vehicle if the driver is consuming alcohol or alcohol remains in the driver's body. A second or subsequent conviction of this offense results in the revocation of the license of the driver for a period of six months for a second offense and one year for a third or subsequent offense. Section 10 adds impaired driving offenses to the list of offenses for which an officer may make an arrest without a warrant. Section 11 lowers from .20 to .16 the level of concentration constituting an aggravating factor. Section 12 lowers from .11 to .09 the level of alcohol concentration constituting a mitigating factor. Section 13 lowers from .15 to .13 the minimum blood alcohol concentration at which the court may order treatment. Section 14 lowers the blood alcohol limit for operating a motorboat from .10 to .08. Chapter 506 becomes effective September 15, 1995.

DWI-Assessment Enhancement (Chapter 496; HB 458): Chapter 496 requires a substance abuse assessment and, depending on the results of the assessment, completion of either an alcohol and drug education traffic school or a substance abuse treatment program for the restoration or continuation of driving privileges revoked after a conviction for driving while impaired or driving while a provisional licensee after consuming drugs or alcohol. The revocation period for a person who is subject to the requirement is extended until the Division of Motor Vehicles receives the certificate of completion. Area mental health authorities are required to provide, directly or by contract, the substance abuse services needed by a person to obtain a certificate of completion. The driver is required to pay an assessment fee of $50, and must pay a fee of $75 to the treatment facility or school. (Area facilities may not deny services because the person is unable to pay.) The act becomes effective January 1, 1996, and applies to offenses occurring on or after that date.

Sentencing

Extend Sentencing Commission (Chapter 236; SB 186): See **STATE GOVERNMENT.**

Civil Damages for Certain Crimes (Chapter 185; SB 259): This act adds the offenses of larceny by an employee, embezzlement, and obtaining property by false pretenses to the law which permits the owner of the property taken to bring a civil suit to recover the amount of the property taken and consequential damages. The Chapter sets the minimum consequential damages to be recovered at $150, with a $1,000 maximum, except it provides for no maximum amount of consequential damages for larceny by an employee and embezzlement. The act sets the consequential damages for which parents may be responsible for their children at a minimum of $150 and a maximum of $1000. The act also permits the owner to attempt to collect damages prior to filing suit by sending a demand letter as set out in the statute, for payment of $150 in lieu of filing suit. Chapter 185 adds a new subsection which gives a merchant immunity from lawsuits for detention, malicious prosecution, false imprisonment, or false arrest if a person suspected of larceny or concealment of merchandise was detained upon store premises, or in a reasonable proximity thereto, in a reasonable manner for a reasonable amount of time. The parties detaining **must** have probable cause to believe the offense had been committed. Chapter 185 would become effective December 1, 1995.

Additional Punishments (Chapter 429; SB 4): Chapter 429 provides for a constitutional amendment to be submitted to the voters in November 1996, that will amend Article XI, Section 1 by adding to the list of permissible punishments under the North Carolina Constitution the following: suspension of a jail or prison term with or without conditions, restitution, community service, restraints on liberty, and work programs. Previously, only death, imprisonment, fine, removal from office, or disqualification to hold and enjoy offices of honor, trust, or profit were specifically listed as permissible punishments. This provision also repeals the section of the sentencing statute allowing persons sentenced to probation to invoke their sentences.

Modify Criteria for IMPACT (Chapter 446; SB 404): Effective October 1, 1995, Chapter 446 modifies the criteria for selection to IMPACT (Intensive Motivational Program of Alternative Correctional Treatment), familiarly known as "boot-camp". Chapter 446 raises the age level to include offenders up to 30 years old, and deletes the provision which made offenders ineligible due to prior active sentences.

Increase Some Criminal Penalties (Chapter 507, Sec. 19.5; HB 230, Sec. 19.5): Section 19.5 of Chapter 507 creates a new offense class and punishment row for misdemeanor assaults. It amends G.S. 14-33 to change simple assault from a Class 1 to a Class 2 misdemeanor. Assault on a sports official remains a Class 1 misdemeanor. The following offenses are reclassified from Class 1 misdemeanors to a new category of Class A1 misdemeanor: assault with a deadly weapon, assault inflicting serious injury, assault on a female, assault on a child under 12, assault on a government officer or employee, and assault on a school bus driver, monitor, or other school employee who is boarding or on a school bus. Assault by pointing a gun is also a Class A1 misdemeanor. A person convicted of a Class A1 misdemeanor may receive an active or intermediate sentence from 1-60 days on a first offense, whereas a Class 1 misdemeanant is subject to community punishment from 1-45 days on a first offense. Prior Class A1 or Class 1 misdemeanors are assigned 1 point in determining prior record levels for felony sentencing.

Section 19.5 of Chapter 507 creates the offense of habitual misdemeanor assault, which is punishable as a Class H felony. The offense is committed when a person who commits an assault has been convicted of 5 or more prior misdemeanor convictions, 2 of which were assaults. The new offense of assault with a firearm on a law enforcement officer is created as a Class E felony. Possession of a firearm by a felon is increased from a Class H to a Class G felony.

Minimum sentences for felony offense classes B2, C, and D are increased by 16%, and active sentences are authorized for prior record levels I and II of felony offense Class H. Obstruction of takeoff and landing operations and patterns of aircraft at an airport is made a Class 1 misdemeanor. The level at which food stamp fraud is deemed a felony is decreased from $2,000 to $1,000. First degree sexual exploitation of a minor is increased from a Class E felony to a Class D felony; promoting prostitution of a minor is increased from a Class F felony to a Class D felony.

Section 19.5 of Chapter 507 is effective December 1, 1995.

MAJOR PENDING LEGISLATION

Streamline Crim. Appeals (HB 9): House Bill 9 would make a series of changes to Chapter 15A concerning the postconviction appeals process in criminal cases in North Carolina including placing time limits on the filing and hearing of a motion for appropriate relief, and enacting statutory standards for the defendant's burden of proof during postconviction appeal.

STUDIES

Legislative Research Commission Studies

The 1995 Studies Bill (Chapter 542; HB 898) authorizes the **Legislative Research Commission** to study criminal law and procedures including sentencing.

Other Legislative Research Commission Studies

In Chapter 324, the **Legislative Research Commission** is also authorized to study issues related to **civilianizing some State government law enforcement functions and positions.** An interim report may be made to the 1996 Regular Session and a final report must be made to the 1997 General Assembly. (Chapter 324, Sec. 8.3; HB 229, Sec. 8.3 and Chapter 507, Sec. 7.29; HB 230, Sec. 7.29)

Independent Studies, Boards, Etc., Created or Continued

Study Commission on the Department of Crime Control and Public Safety. (Chapter 324, Sec 20.4; HB 229, Sec. 20.4) A Study Commission was established to review the efficiency and effectiveness of the Department of Crime Control and Public Safety and determine whether the Department should be reorganized or any of its divisions eliminated or transferred; whether other law enforcement agencies in the State should be transferred to the

Department; and any cost savings of recommended reorganizations or transfers. A final report to be submitted by 5/1/96.

Referrals to Departments, Agencies, Etc.

The **Department of Correction** is required to study: (1) **substance abuse programs**, a report to be made 5/1/96 to Senate and House Appropriations and the subcommittees on Justice and Public Safety (Chapter 507, Sec 19.1; HB 230, Sec. 19.1); (2) a pilot program for **bunking inmates in shifts**, a report to be made 5/15/96 to the Joint Legislative Commission on Governmental Operations, Joint Legislative Corrections Oversight Committee, and the Senate and House Appropriations Committees and the subcommittees on Justice and Public Safety (Chapter 507, Sec. 19.2; HB 230, Sec. 19.2); (3) a pilot program on **intensive out-patient substance abuse treatment**, a report to be made jointly with DHR to the Senate and House Appropriations Committees and the subcommittees on Justice and Public Safety 5/15/96 (Chapter 507, Sec. 19.8; HB 230, Sec. 19.8); (4) **DART aftercare** pilot program, a report to be made 5/15/96 to the Senate and House Appropriations Committees and the subcommittees on Justice and Public Safety (Chapter 507, Sec. 19.11; HB 230, Sec. 19.11).

The **Administrative Office of the Courts** is required to study: (1) **jury fee waiver program** savings, a report to be made 3/1/97 to the Senate and House Appropriations Committees and the subcommittees on Justice and Public Safety (Chapter 324, Sec. 21.1(b); HB 229, Sec. 21.1(b)); (2) a **criminal case management pilot program**, a report to be made 5/1/96 to the Senate and House Appropriations Committees and the subcommittees on Justice and Public Safety (Chapter 507, Sec 21.10; HB 230, Sec. 21.10).

Referrals to Existing Commissions

The **Joint Legislative Corrections Oversight Committee** shall study: (1) the **DOC salary continuation** program (Chapter 507, Sec. 19.10; HB 230, Sec. 19.10); and (2) **inmate Housing** (Chapter 542, Part XI; HB 898, Part XI).

The **Sentencing and Policy Advisory Commission** shall contract with an external consultant to study **recidivism of criminal offenders** assigned to community correctional programs or released from prison, a report to be made to the Senate and House Appropriations Committees and the subcommittees on Justice and Public Safety (Chapter 507, Sec. 21.2; HB 230, Sec. 21.2).

The **Governor's Crime Commission** shall study the **effects** of passage of the **Concealed Handgun Permit law**, a report to be made to the 1996 Regular Session and the 1997 General Assembly. (Chapter 542, Part V; HB 898, Part V).

EDUCATION
(Kory Goldsmith, Robin Johnson, Jim Watts)

RATIFIED LEGISLATION

Public Schools

State Board Report on School System (Chapter 6; SB 16): Chapter 6 (effective March 9, 1995) calls for a comprehensive plan by the State Board of Education to reform the structure and function of the State public school system and to reorganize the Department of Public Instruction (DPI). The legislation charges the State Board to develop a comprehensive school reform plan to: place emphasis on improved student performance; increase local flexibility and control; promote economy and efficiency; emphasize the basic curriculum areas of reading, writing, and mathematics; and improve other components of the public schools. A preliminary report, including the State Board's accountability plan, was presented to the General Assembly in May with a final report due in March 1996.

The legislation also called for a reorganization of DPI in order to increase local flexibility, promote economy and efficiency, and improve student performance. The legislation further directed the State Board to reduce the staff and budget of DPI by a suggested 50%. Reorganization reports were received by the General Assembly in March and May, and reductions in DPI staff and budget are reflected in the continuation budget ($9.3 million in the 1995-1996 FY and by $10.7 million in the 1996-1997 FY). Funds saved through downsizing DPI have been reallocated to local school units in the expansion budget.

Notice of School Replacement (Chapter 8; SB 63): A recommendation of the Legislative Research Commission's Committee on Cultural Resources, Chapter 8 amends G.S. 115C-521(c) to require the State Superintendent to submit to the North Carolina Historical Commission copies of cost and feasibility analyses that local boards of education must submit when considering the replacement of an existing school building. Chapter 8, effective upon ratification, March 13, 1995, applies to cost and feasibility analyses submitted to the Superintendent on or after that date.

Technical Changes to Revenue Laws (Chapter 17; SB 104): Sections 14 and 15 amend G.S. 153A-158 and 153A-158.1 and codifies numerous session laws allowing certain counties to acquire an interest in real and personal property on behalf of a school administrative unit. For additional analysis, see **TAXATION**.

Make Bond Taxation Uniform (Chapter 46; SB 120): See **TAXATION.**

School Weapon Exemption (Chapter 49; HB 71): Chapter 49 amends G.S. 14-269.2(g) to allow firefighters, emergency service personnel, and North Carolina Forest service personnel to possess or carry weapons on school grounds when discharging their official duties. The act became effective upon ratification, April 26, 1995.

School Athletic Rules (Chapter 60; SB 321): Chapter 60 adds a new subsection to G.S. 115C-12 and allows the State Board of Education to adopt rules governing interscholastic athletic activities conducted by local boards of education. The State Board may authorize a designated organization to apply and enforce the Board's rules governing participation in interscholastic athletic activities at the high school level. The act became effective May 2, 1995.

State Board of Education Authority (Chapter 72; HB 7): Chapter 72, ratified and effective on May 9, 1995, amends G.S. 115C-19, 115C-21, 143A-39, 143A-40, and 143A-42 to make it clear that the duties of the Superintendent of Public Instruction as secretary and chief administrative officer of the State Board of Education are (i) subject to the direction, control, and approval of the State Board, and (ii) limited to nonfiscal supervision and administration of the public school system. The act (i) designates the State Board, rather than the Superintendent, as the head of the Department of Public Instruction; (ii) transfers from the Superintendent to the State Board the power to appoint personnel to the Department of Public Instruction; and (iii) transfers the office of the Superintendent to the Department. Section 4 of the act directs the State Board to review statutes and its rules to determine whether they conform with the changes made in the act, and to report any recommended statutory changes to the General Assembly by June 1, 1995.

Administrator Standards Board Changes (Chapter 116; HB 235): Chapter 116 makes technical and clarifying changes to laws establishing the North Carolina Administrative Standards Board and extends to 1998 the date for implementation of the Standards Board exam. Certain sections become effective January 1, 1998. Other sections became effective upon ratification, May 29, 1995.

Emergency School Closings (Chapter 130; SB 918): Chapter 130 amends G.S. 115C-84(c) to authorize the State Board of Education, at the request of a local board of education, to suspend one or more days from the 180-day school term for an individual school (regardless of how many days have been made up within the school calendar for that school unit as whole) if emergency conditions exist at that school that might be threatening to the health, safety, and welfare of students and staff. These days will not have to be made up by the students or teachers, and the teachers will be paid for the first 15 of these days. The act took effect upon ratification, May 31, 1995.

Remove 50-Acre Limit (Chapter 199; SB 277): Chapter 199 amends G.S. 115C-517 to remove the 50-acre limitation on the amount of land a local board of education may acquire by condemnation for a single site. The act became effective upon ratification, June 8, 1995.

Teaching Standards Debt Collection (Chapter 227; SB 348): Chapter 227 amends G.S. 105A-2(1) allowing the State Board of Education to recoup funds owed by teachers who do not fulfill their obligations incurred while participating in the National Board for Professional Teaching Standards process. The act became effective upon ratification, June 13, 1995.

School Accountability Changes (Chapter 272; SB 20): Chapter 272 amends the School Improvement and Accountability Act of 1989 (Senate Bill 2) including the provisions for differentiated pay. The legislation also amends staff participation in the school improvement process by limiting it to principals, teachers, teacher assistants, and instructional support personnel. Earlier language had included other noncertified staff (clerical, bus drivers, cafeteria, custodial, etc.) in the process. Other amendments provide greater local flexibility in determining school performance goals. The act became effective July 1, 1995, and applies to plans beginning with the 1995-1996 school year.

Elementary Education Gun Safety Program (Chapter 289; HB 767): Chapter 289 encourages the State Board of Education to make available information regarding appropriate gun safety programs for elementary schools, and to promote gun safety

education programs designed to help prevent firearm-related accidents among children. The act became effective June 19, 1995.

Remove Dangerous Students From Schools (Chapter 293; SB 51): Chapter 293 amends G.S. 115C-391 to require a 365-day suspension for any student (14 years or older) who brings a gun onto school property. The act allows local boards to modify this requirement on a case-by-case basis and to provide educational services to a student who is suspended under this subsection in an alternative school setting. The act becomes effective August 1, 1995, and applies to any student who brings a weapon onto school property on or after that date.

Public Schools Workers' Compensation (Chapter 324, Sec. 17; HB 229, Sec. 17): Section 17 of Chapter 324, the Continuation Budget Act, amends G.S. 115C-337(a) to limit the State's liability for compensation made to school employees for injuries or death caused by accident arising out of and in the course of employment in connection with the State-operated school term to the extent of the proportionate part of each employee's salary that is paid from State funds. Formerly, the State's liability included the employee's salary that was supplemented by local funds.

Outcome-Based Education Program Repealed (Chapter 324, Sec. 17.2; HB 229, Sec. 17.2): Section 17.2 of Chapter 324, the Continuation Budget Act, repeals Part 5 of Article 16 of Chapter 115C of the General Statutes, the Outcome-Based Education Program that has been piloted in six locations.

Teacher Leave in Cases of Catastrophic Illness (Chapter 324, Sec.17.4; HB 229, Sec. 17.4): Section 17.4 of Chapter 324, the Continuation Budget Act, amends G.S. 115C-336 to (i) direct the State Board of Education to adopt rules allowing an employee who requires a substitute to use annual leave on days that students are in attendance if that employee has exhausted all sick leave and the absence is due to the catastrophic illness of the employee; and (ii) provide that the employee is not required to pay for the substitute.

Site-Based Management Task Force/Staff (Chapter 324, Sec. 17.8; HB 229, Sec. 17.8): Section 17.8 of Chapter 324, the Continuation Budget Act, amends G.S. 115C-238.7 by (i) providing that the Task Force on Site-Based Management operates under the State Board of Education, rather than the Department of Public Instruction, (ii) removing the director, formerly appointed by the State Superintendent, from membership on the Task Force; (iii) clarifying that the Task Force is to advise and report to the State Board, rather than to actively monitor the development and implementation of building-level plans or to report to the General Assembly; and (iv) directing the State Board to appoint a director of the Task Force and deleting statutory authority for the director to provide training and assistance to public schools and to supervise site-based management specialists at the technical assistance centers. Section 17.8 also directs the State Board to develop a plan for the reconfiguration of staff development activities, with an emphasis on assistance to schools.

Teacher Academy Transfer/UNC Leadership Programs (Chapter 324, Sec.17.9; HB 229, Sec. 17.9): Section 17.9 of Chapter 324, the Continuation Budget Act, transfers the Task Force on Teacher Staff Development and the Teacher Academy Program from the Department of Public Instruction to The University of North Carolina, and renames the Task Force as the North Carolina Teacher Academy Board of Trustees. The Board of Trustees is directed to establish a statewide network of high quality, integrated, comprehensive, collaborative, and substantial professional development for teachers to

be provided through summer programs, and to report on its summer programs to the Joint Legislative Education Oversight Committee by November 1, 1995.

Reports on Reorganization (Chapter 324, Sec. 17.14; HB 229, Sec. 17.14): Section 17.14 of Chapter 324, the 1995 Continuation Budget Act, directs the State Board of Education to report quarterly, beginning September 1, 1995, to the Joint Legislative Education Oversight Committee on its reorganization of the Department of Public Instruction.

Substitute Teacher Pay (Chapter 324, Sec. 17.15; HB 229, Sec. 17.15): Section 17.15 of Chapter 324, the 1995 Continuation Budget Act, amends G.S. 115C-12(8) to provide that a teacher assistant assigned to a classroom in kindergarten through third grade who acts as a substitute teacher for that classroom is to receive the same daily salary as an entry-level teacher with an "A" certificate.

Smart Start (Chapter 324, Sec. 27A and 27A.1; HB 229, Sec. 27A and 27A.1): See **CHILDREN AND FAMILIES.**

Public School Uniform Pilot (Chapter 334; HB 487): Chapter 334 allows the State Board of Education to authorize up to five local school administrative units to implement pilot programs in which students are required to wear uniforms in schools. The State Board is charged with developing guidelines for local boards to use when establishing local requirements. State Board guideline considerations may include: (i) promotion of parental involvement; (ii) State and federal constitutional concerns; and (iii) ability of students to purchase uniforms. No State funds are to be used for the purchase of uniforms. The act became effective upon ratification, June 27, 1995.

Assault on School Bus Drivers (Chapter 352; HB 496): See **CRIMINAL LAW AND PROCEDURE.**

Clarify School Administrators' Contracts (Chapter 369; SB 858): Chapter 369 makes clarifying amendments to G.S. 115C-287.1 and 115C-325 regarding the employment of school administrators. Beginning July 1, 1995, all school administrators, including assistant principals, shall be employed under term contracts unless they have achieved career status as an administrator, or are eligible to achieve career status as an administrator by June 30, 1997. An administrator may voluntarily relinquish career status by promotion, resignation, or otherwise, and loses career status if dismissed or demoted. Contracts may be from 2 to 4 years in length during which time, an administrator may be dismissed or demoted for the reasons and by the procedures applicable to career status administrators. The process for renewing contracts and the appeal of nonrenewals is also revised. The act became effective July 1, 1995.

No Algebra for LD Child (Chapter 371; SB 701): Chapter 371, as amended by Section 17.13 of Chapter 507, the 1995 Expansion/Capital Improvement Budget Act, exempts learning disabled students with a documented mathematics disability from the Algebra I graduation requirement. The act allows the State Board to require reasonable course substitutions for these students. Chapter 371 was effective upon ratification, July 5, 1995.

School Employee Records Checks (Chapter 373; SB 223): Chapter 373 adds a new Part 6 to Article 22 of Chapter 115C to require every local board of education to adopt a policy on whether and when to conduct criminal background checks of certain defined crimes on any potential employee or independent contractor before permanently hiring

the person, and requires the Department of Justice to furnish this information to the schools, including information in the national criminal database. The act requires every school personnel applicant whose criminal record is to be checked to consent to the record check, be fingerprinted, and furnish any other information required by the Department of Justice. Local boards may not charge applicants for a criminal record check or for fingerprinting. The local board must consider an applicant's refusal to consent when making employment decisions. In order to use the criminal history to disqualify an applicant, the board must find that the history indicates the applicant (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill the duties of the position. The board must make a written finding of how the criminal history information was used in the hiring decision. The board must provide to the State Board of Education the criminal history it receives on a person who is certificated, certified, or licensed by the State Board, and the State Board must determine whether the license or certificate should be revoked. The information received in the criminal history remains privileged, and is not a public record. Local boards, the State Board of Education, and their employees are immune from liability from carrying out this law, except: (i) for damages or injuries arising from gross negligence, wanton conduct, or intentional wrongdoing; (ii) when the liability is covered by insurance (some local school boards and some local school employees); (iii) when liability is covered by indemnification under the Defense of State Employees Act (Articles 31A and 31B of Chapter 143) (employees of the State Board of Education and public school employees); and (iv) when sovereign immunity is waived under the Tort Claims Act (Article 31) (State Board of Education; school bus drivers and school bus maintenance mechanics). The act took effect July 1, 1995.

School Expulsion Modified (Chapter 386; SB 26): Chapter 386 amends G.S. 115C-391(d) to allow local boards to expel (i.e., permanently remove) students 14 years old and older whose continued presence in school constitutes a clear threat to the safety of other students or employees. Local boards also must consider whether there is an alternative program offered by the school unit before expelling a student under G.S. 115C-391(d). Currently, these students may only be expelled if they also have been convicted of a felony and if their continued presence constitutes a clear threat to the safety and health of other students or employees. Students may request a reconsideration of the expulsion decision any time after the first July 1 that is at least six months after the board's decision, and the board must readmit the student if the student demonstrates to the board's satisfaction that the student's presence in school no longer poses a threat to the safety of other students or employees. Section 2 of the act requires local superintendents to keep data on suspended and expelled students. The data must include race, gender, age, duration of suspension or expulsion, and whether an alternative education was considered or provided. Section 3 directs the State Board to develop guidelines defining acts and conduct that are considered a clear threat to the safety of students and teachers, and requires the State Board of Education to report to the General Assembly and to the Joint Legislative Education Oversight Committee by December 1, 1996, on the implementation of the act, including the numbers of expelled students under it. Chapter 386 takes effect September 1, 1995, and applies to acts committed on or after that date.

Streamline State Education Agency (Chapter 393; SB 15): Chapter 393 amends G.S. 126-5(d) to transfer from the Superintendent of Public Instruction to the State Board of Education the power to designate, as exempt from the State Personnel Act, policy-making positions in the Department of Public Instruction. Section 2 allows the State

Board to designate exempt policy-making positions in the Department within 120 days of the ratification date of the act. The act took effect upon ratification, July 10, 1995.

Concealed Handgun Permit (Chapter 398; HB 90): Chapter 398 specifically provides that a permit to carry a concealed handgun does not authorize a person to carry the gun on educational property, as it is defined in G.S. 14-269.2(a)(1). For additional analysis, see **CRIMINAL LAW and PROCEDURE.**

School Budget Flexibility/Accountability (Chapter 450; HB 6): Chapter 450 is designed to give greater budget flexibility to local school systems, to encourage systems to use this flexibility to benefit students and classrooms directly, and to allow local boards and school improvement teams to determine whether they want to direct certain funds into K-3.

In addition to consolidating numerous existing funding allotments for education into 11 new categories, Section 1 does the following: (i) directs the State Board of Education to adopt formulas for computing new allotments; (ii) allows the Board to shift funds as necessary to create new allotments; (iii) directs the Board to establish a time line for implementing new allotments; (iv) directs the Board to allocate Safe Schools and Intervention/Prevention funds on grant basis for the 1995-96 fiscal year; (v) provides that the formula for Central Office Administration shall provide for a dollar allotment, not a position allotment; (vi) prohibits the use of funds from other categories for central office administrators; (vii) provides that funds for At-Risk Student Services/Alternative Schools for the 1995-96 fiscal year will remain available for expenditure until September 1, 1996, and those funds for the 1996-97 fiscal year will become available on July 1, 1996, and remain available for expenditure until August 31, 1997; (viii) directs the Board to adopt policies to establish the purposes for which the funds within each new allotment category may be used, starting with the funds in the At-Risk Student Services/Alternative Schools category; (ix) directs the Board to adopt procedures for allocating funds that formerly were distributed as grants; (x) allows local boards of education to use, without obtaining a waiver from the State Board, designated allocations for additional purposes, including funds allocated for Instructional Support Personnel which may be used for teacher positions to reduce class size in any grade; (xi) directs the State Board to develop a plan to enable local school improvement teams to take advantage of the increased budget flexibility; and (xii) directs the State Board to report on the formulas, time line, policies, procedures, and plan by April 15, 1996, to the Joint Legislative Education Oversight Committee.

Section 2 allows funds allocated in the 1994 Extra Session for school psychologists, social workers, and guidance counselors specifically for kindergarten through eighth grade to be used in the same manner as permitted under the Instructional Support Personnel Allotment. Section 3 directs the State Board to develop a plan for tracking funds to unit and buildings, especially those for personnel. Section 4 directs the State Board to provide to the Director of the Budget an analysis relating each of its requests for expansion funds to anticipated gains in student performance. Sections 5-11 amend G.S. 115C-81(e), and G.S. 115C-206 through G.S. 115C-209 to remove mandatory language concerning school health coordinators and community schools programs.

Chapter 450 amends various provisions [G.S. 115C-238.2(b), 115C-238.3(b1), 115C-238.5, and 115C-238.6(a)] of the School Performance and Accountability Act. These changes will allow an individual school building to decide, in connection with a building-level plan, to use (i) funds allotted for teacher assistants to reduce class size or the student-teacher ratio in kindergarten through third grade, so long as affected teacher assistant positions are not filled when the plan is adopted or amended by the building-level staff entitled to vote on the plan or the positions are not expected to be filled

when the plan is implemented; (ii) funds for classroom materials/instructional supplies/equipment for textbooks; (iii) funds for textbooks for classroom materials/instructional supplies/equipment; and (iv) funds for noninstructional support personnel for teacher positions to reduce class size in K-3. These amendments also will prohibit the State Board from granting waivers that would allow (i) funds under any other funding category to be used for central office administrators; (ii) funds for classroom teachers to be used for any additional purpose other than for teachers for exceptional children, for teachers for at-risk students, and for textbooks, supplies, equipment, and other classroom materials; and (iii) funds for teacher assistants to be used for any purpose other than for personnel to serve students only or primarily in K-3. Finally, these amendments direct the State Board to review on a regular basis the waivers it has granted to determine whether to repeal any rules.

Sections 16 and 23 repeal, effective June 30, 1996, the Intervention/Prevention Grant Program and the Safe Schools Grant Program. Sections 17-21 amend G.S. 115C-272(b), 115C-285(a), 115C-302(a), and G.S. 115C-316(a) to allow local units to set their own monthly pay dates for employees, so long as they are not prepaid for services. Section 22 makes a technical change. Section 24 provides for a standard deduction from the salaries of teachers who are on leave who require a deduction for substitute pay. Section 25 provides that the State Board is to authorize pilot projects in Mecklenburg and Burke County School Administrative Units to allow schools in those units to use funds allotted for teacher assistants to reduce class size or the student-teacher ratio in K-3 without considering attrition. Mecklenburg also is authorized to continue to use funds for teacher assistants that were converted to certificated teachers under a previous pilot program before July 1, 1995. Section 25 also directs the State Board to evaluate the use of funds for teacher assistants by all school systems and to report to the Joint Legislative Education Oversight Committee by October 1, 1996, and annually thereafter through 1999.

Chapter 450 took effect July 1, 1995.

Teacher Scholarship Program Changes (Chapter 435; SB 453): Chapter 435 amends G.S. 115C-471 to: (i) increase the regular scholarship loan from $2,000 to $2,500; (ii) raise the interest rate from 6% to 10%; and (iii) add a provision reducing the service requirement from four to three years if the recipient teaches in a low-performing or warning status school unit. Amendments apply only to scholarship loan agreements entered into after the effective date. The act became effective upon ratification, July 13, 1995.

US Flag Pledge in Classrooms (Chapter 455; HB 65): Chapter 455 amends G.S. 115C-47 to encourage local boards of education to adopt policies to provide for (i) the display of the United States and North Carolina flags in each classroom, (ii) regular recitation of the Pledge of Allegiance by students, and (iii) instruction on the flags and the Pledge. The act specifies that no person is to be compelled to stand, salute the flag, or recite the Pledge. If flags are available, the act requires them to be displayed in each classroom. The act was effective upon ratification, July 18, 1995, and must be implemented by January 1, 1996.

Moment of Silence (Chapter 497; SB 140): Chapter 497 amends G.S. 115C-47 to revise current law to state the purpose for which school boards may authorize a moment of silence and to prohibit local boards from adopting policies that prevent participation in voluntary prayer, that encourage or require individuals to participate in prayer, or that influence the form or content of any prayer in the public schools. Chapter 497 applies to all school years, beginning with the 1995-96 school year.

School of Science and Math (Chapter 502, Sec. 15.1; HB 230, Sec. 15.1): See **STATE GOVERNMENT.**

Alternative Learning Programs (Chapter 507, Sec. 17.9; HB 230, Sec. 17.9): Section 17.9 of Chapter 507 provides expansion funds for alternative schools and addresses issues of technical assistance, training, evaluation of programs, and placement and referral of students. The legislation creates an Alternative Educators Planning Group to identify technical assistance and training needs for educators involved in alternative learning programs. The State Board is directed to develop model guidelines for the referral and placement of students into alternative schools and to conduct a five-year evaluation of the quality and success of programs. Further provides that the funds used for alternative learning programs shall be used to increase the Alternative Schools/At-Risk Student Allotment in the 1996-1997 FY.

School-Based Incentive Award Funds (Chapter 507, Sec. 17.10; HB 230, Sec. 17.10): Section 17.10 of Chapter 507 establishes a school-based incentive award pilot program for up to 10 school units. The legislation directs the State Board of Education to set student achievement goals for schools participating in the pilot and make award grants to schools for achieving those goals. $2 million was appropriated for the 1995-1996 FY to fund the pilot program.

Teacher Vacation Leave for Adoptive Parents (Chapter 507, Sec. 17.13; HB 230, Sec. 17.13): Section 17.13 of Chapter 507 amends G.S. 115C-302 to provide that teachers may use annual leave, personal leave, or leave without pay (no more than 12 weeks) to care for a newborn child or a child placed with the teacher for adoption or foster care.

Refocus School Testing on the Basics (Chapter 524; SB 24): Chapter 524 repeals Part 1 of Article 10A of § 115C which established the Commission on Testing. The legislation further provides that the State Board of Education may appoint an Advisory Council on Testing. Amends G.S. 115C-174.10 to add that the testing program include the improvement of instructional delivery and accountability at the State, local, and school levels. Amends G.S. 115C-174.11(c) to provide that the annual testing program assess reading, communication skills, and mathematics at grades three through eight and that the State Board designate competencies to be tested in grades nine through twelve. Further provides that the State Board shall adopt no new tests and shall consider reducing testing prior to receiving the July 1, 1996, report from the Standards and Accountability Commission. Requires the State Board of Education to review the testing program after considering the recommendations of the Standards and Accountability Commission and report recommendations to the General Assembly by December 1, 1996. The act became effective upon ratification, July 29, 1995.

Teach Abstinence Until Marriage (Chapter 534; HB 834): Section 1 of Chapter 534 repeals G.S. 115C-81(a2), which requires instruction in the public schools relating to AIDS and communicable diseases as part of the Basic Education Program; Section 2 repeals G.S. 115C-81(e), which requires a comprehensive school health education program to be included in the Basic Education Program; and Section 3 creates a new G.S. 115C-81(e1) to require a comprehensive health education program as part of the Basic Education Program (and which incorporates much of what currently is in G.S. 115C-81(e)) that includes instruction relating to the prevention of sexually transmitted diseases, including AIDS, and other communicable diseases, and relating to abstinence until marriage.

The new G.S. 115C-81(e1) does the following:

1. Directs the State Board to: (i) supervise the development of the school health education program, (ii) adopt objectives for the program, (iii) approve textbooks and materials incorporating those objectives, (iv) regularly review materials and make list of reviews available to local units, (v) ensure that programs, textbooks, and materials relating to the prevention of sexually transmitted diseases and to abstinence until marriage meet specific requirements, (vi) make available to local school units for at least a 60-day review period by parents and guardians the curriculum and learning materials that pertain to sexually transmitted diseases, including AIDS, to the avoidance of out-of-wedlock pregnancy, and to the abstinence until marriage program, and (vii) evaluate abstinence until marriage curricula and maintain a list of one or more approved abstinence until marriage curricula that meet the criteria.

2. Allows the State Board to develop an abstinence until marriage curriculum that meets the criteria in the act to be included on the list.

3. Requires all abstinence until marriage programs on the recommended list to include the positive benefits of abstinence until marriage and the risks of premarital sex as the primary focus.

4. Prohibits the availability and distribution of contraceptives on school property.

5. Requires local boards to provide a comprehensive school health education program that meets all the requirements of the subsection and all the objectives developed by the State Board. Local boards may expand on these objectives. (If a local board does decide to expand its school health education program, current law allows State funds to be used for the purchase of State-adopted textbooks and any materials the local unit considers appropriate. In addition, individual schools can, as part of a school improvement plan, request a waiver from the State Board to allow them to purchase textbooks that are not State-adopted.)

6. Allows local boards to adopt a comprehensive sex education program after a public hearing and 60-day review period.

7. Requires all materials to be made available for parental review each year before students can participate in AIDS prevention, avoidance of out-of-wedlock pregnancy, abstinence until marriage, or comprehensive sex education program.

8. Directs local boards to adopt policies governing parental consent in order to allow students to participate in any portion of the health program related to AIDS prevention, avoidance of out-of-wedlock pregnancy, abstinence until marriage, or comprehensive sex education program.

9. Requires parental consent "in accordance with a local board's policy regarding parental consent" in order for students to receive instruction concerning the availability of contraceptives or abortion referral services.

10. Deletes the State Health Advisory Committee (which is currently in G.S. 115C-81(e)) and all references to local units developing plans to be approved by this Committee.

Chapter 534 took effect upon ratification, July 29, 1995. Local boards may implement the act as soon as feasible, but no later than the beginning of the 1996-97 school year.

Higher Education

Community Colleges Board/Absences (Chapter 192; SB 303): Chapter 192 adds a new subsection to G.S. 115D-2.1 allowing the State Board of Community Colleges to declare vacant the office of an elected or appointed member who, without justifiable excuse, does not attend three consecutive scheduled meetings. The act became effective June 7, 1995, and applies to absences occurring on or after that date.

Inmate Labor Pilot Program/Community College (Chapter 269; SB 967): Chapter 269 establishes a pilot correction education program allowing prison inmates to participate in community college capital construction projects. Inmate participation in the construction projects shall be related to courses offered in the correction education program. The State Board shall designate up to five community colleges to participate in the pilot program, and shall submit a progress report to the General Assembly prior to January 1, 1997. The act became effective June 15, 1995.

Simplify Higher Education Credit Transfer (Chapter 287; HB 739): Section 1 of Chapter 287 directs the Board of Governors of The University of North Carolina and the State Board of Community Colleges to develop a plan for the transfer of credits from one community college to another community college and from a community college to the constituent institutions of the University. Section 2 directs the Board of Governors and the State Board of Community Colleges to present a preliminary plan regarding credit transfers to the Joint Legislative Oversight Committee on Education prior to March 1, 1996. It is the intent of the General Assembly to adopt a plan prior to July 1, 1996. Section 3 directs the State Board of Community Colleges to develop a common course numbering system, including common course descriptions, for all community college programs by July 1, 1997. The State Board must submit a progress report to the Education Oversight Committee by March 1, 1996. The act took effect June 19, 1995.

Facilitate Academic Credit Transfer (Chapter 288; HB 740): Chapter 288 amends G.S. 115D-4.1 to repeal the enrollment limits on community college transfer programs. It also directs the State Board of Community Colleges to develop college transfer program criteria and standards that include: (1) meeting accreditation standards of the Southern Association of Colleges and Schools; (2) having at least one articulation agreement with a four year college or university; and (3) disclosing the terms of the articulation agreement to students registered for college transfer courses. The Board of Governors of The University of North Carolina is required to report to each community college and to the State Board of Community Colleges the academic performance of each college's transfer students. The State Board of Community Colleges must review a community college's program to determine corrective action in the event a college's transfer students are not performing adequately at four-year colleges. The State Board must also report annually to the General Assembly regarding the transfer student reports and any actions taken. The act takes effect September 1, 1995.

Rewarding Faculty Teaching (Chapter 324, Sec. 15.9; HB 229, Sec. 15.9): Section 15.9 of the Continuation Budget directs the UNC Board of Governors to (i) design and implement a system to monitor faculty teaching workloads; (ii) direct the constituent institutions to give primary consideration to teaching when making faculty personnel decisions; (iii) develop a plan for rewarding faculty who teach more than a standard academic load; and (iv) review the procedures used to employ graduate teaching assistants to ensure the teaching assistants can communicate and teach effectively.

Teacher Academy Transfer/UNC Leadership Programs (Chapter 324, Sec. 17.9; HB 229, Sec. 17.9): See summary under **Public Schools** above.

Antiquated Laws Repealed (Chapter 379; SB 56): Section 17 of Chapter 379 repeals Article 22 of Chapter 116 of the General Statutes. In 1968, a federal district court ruled that Article 22 was unconstitutionally vague. The act became effective July 6, 1995.

Community College Trustee/State Board Member Qualifications (Chapter 470; HB 914): Section 1 of Chapter 470 amends G.S. 115D-12 regarding who may be appointed to serve on the board of trustees of a community college. It prohibits a local board of education from appointing one of its own members, and prohibits the board of county commissioners from appointing more than one of its own members. It also prohibits anyone who in the last five years has been employed full time at the community college, or whose spouse or child is employed by the community college from serving as a trustee. Section 2 allows local boards of trustees to declare vacant the seat of any member who, without justifiable excuse, fails to attend a trustee training session within 6 months of appointment. Section 3 makes technical changes to G.S. 115D-2.1(b)(4)f thereby making the House and Senate nominating process for members of the State Board of Community Colleges the same. Section 4 prohibits any person who has been employed by the Department of Community Colleges in the past 5 years from serving on the State Board of Community Colleges. The act became effective July 24, 1995, and applies to terms beginning on or after that date, except Section 2 applies to terms beginning after June 30, 1995.

Centennial Authority (Chapter 458; SB 606): See **TAXATION.**

UNC Mission (Chapter 507, Sec. 15.17; HB 230, Sec. 15.17): Section 15.17 of Chapter 507 amends G.S. 116-1 to further clarify the purpose and mission of The University of North Carolina as education, research, and public service. Further states that: "[t]eaching and learning constitute the primary service that the university renders to society. Teaching, or instruction, is the primary responsibility of each of the constituent institutions. The relative importance of research and public service, which enhance teaching and learning, varies among the constituent institutions depending on their overall mission."

Mission of the Community College System (Chapter 507, Sec. 16.7; HB 230, Sec. 16.7): Section 16.7 of Chapter 507 designates the Community College System as the primary lead agency for delivering job training, literacy, and adult education programs in the State. Further directs the Governor to review workforce preparedness budgets and to prepare a plan for cooperating with the Community College System in the delivery of these programs.

Primary Care Providers (Chapter 507, Sec. 23A.5; HB 230, Sec. 23A.5): Section 23A.5 of Chapter 507 directs the UNC Board of Governors to set goals for State-operated health professional schools offering training programs for physician assistants, nurse practitioners, and nurse midwives to increase the percentage of those graduates who enter clinical programs and careers in primary care.

Appalachian State University's Master of School Administration Program Continued (Chapter 507, Sec. 27.2; HB 230, Sec. 27.2): Section 27.2 of Chapter 507 directs the UNC Board of Governors to continue the Master of School Administrators program at Appalachian State University.

Community College Fund Allocation (Chapter 515; HB 738): Chapter 515 authorizes the issuance of $23,900,000 of Community College Bonds as authorized by the Education, Clean Water, and Parks Bond Act of 1993. It also allocates the proceeds of the bonds according to community college for specified capital improvements. The Board of Trustees of an individual community college is authorized to change the projects or allocations for that college, including a project or an allocation for a satellite campus, within the total amount of funds allocated for that college. Section 4

amends Section 6(b) of Chapter 542 of the 1993 Session Laws (the Education, Clean Water, and Parks Bond Act of 1993) by providing that if the State Board of Community Colleges determines that a community college has not met the matching requirements of G.S. 115D-31(a)(1) by July 1, 1998, the bond proceeds allocated for that community college shall be placed in a special account and used for making grants to other community colleges based upon a priority ranking of legitimate community college capital improvement needs developed by the State Board. No more than four million dollars ($4,000,000) may be allocated from the special account to a single community college. The act became effective upon ratification, July 29, 1995.

MAJOR PENDING LEGISLATION

Public Schools

Public School Construction: A number of bills were introduced in the 1995 Session to alleviate critical public school facility needs. The House passed House Bill 389 - State Public School Bonds, which provides for a $500 million State Bond referendum to fund local school construction. House Bill 389 provided for allocations to be distributed on an ADM and low-wealth basis. The Senate responded with a committee substitute to House Bill 389 that provides for a $1.8 billion bond referendum that makes allotments on the basis of low-wealth, ADM, and high growth considerations.

The Senate defeated Senate Bill 624 that would have dedicated State lottery proceeds to public school construction. A similar lottery initiative for public school construction (House Bill 838) is still alive in the House Judiciary II Committee.

House Bill 502 - County Sales Tax for Schools - which provides an additional 1 cent local option sales tax for public school construction is currently calendered pursuant to Rule 36(A) in the House.

A School Capital Construction Study Commission was established in the 1995 Studies Bill in order to study issues related to school facilities needs and funding.

Charter Schools (HB 955 and SB 940): Both the House and the Senate passed different versions of Charter School legislation that would provide the opportunity for the establishment of Charter Schools. A Charter School is a public school created and operated under a charter granted by a sponsoring governing group. Both versions provide that Charter Schools become an independent entity free of many State and local rules and regulations that govern other public schools. The Senate Committee Substitute to House Bill 955 replaces the second edition of the bill with the third edition of Senate Bill 940. The bill is currently in conference.

Vouchers - Tuition Tax Credit: There currently are three bills in the House that propose to provide tuition tax credits or vouchers for private school education. These bills are not subject to the crossover deadline and will continue to be a topic of debate in the House. House Bill 954, a bill that will provide tuition tax credits for parents whose children attend private schools, received a favorable report from the House Finance Committee. The bill was re-referred to the Appropriations Committee, and has been presented to the Education Appropriations Subcommittee. Chapter 542 authorizes the LRC to study this issue.

Use of Teacher Assistant Funds (SB 21): Senate Bill 21 permits local school boards to use funds appropriated for teacher assistants and program enhancement teachers to reduce class size in grades K-3 if part of a local school improvement plan and does not

affect current positions. Schools would not be required to seek a waiver from the State Board. (These provisions were adapted and incorporated into House Bill 6.)

Opportunities for Teacher Assistants (SB 922): Senate Bill 922 provides scholarship opportunities for teacher assistants through the Prospective Teaching Scholarship Program.

Moment of Silence (HB 202): Requires local boards to adopt a moment of silence at the beginning of each school day. (See SB 140)

Teacher Tenure (HB 210): The House Education Committee amended House Bill 210 to eliminate the Professional Review Committee (PRC) as part of the dismissal appeals process. The House amended the bill to retain the PRC. The bill sponsor then requested that the bill be re-referred to the House Rules Committee. No action was taken on the bill before the cross-over deadline. However, the current version of the bill is likely to have a fiscal impact. Chapter 452 authorizes the LRC to study this issue.

Abolish End-of-Course Testing (HB 877): Abolishes end-of-course and end-of-grade testing, requires the State Board of Education to study testing issues. These provisions were incorporated into Senate Bill 24, which was ratified.

School Health Services Limited (HB 878): The bill, currently in Senate Education/Higher Education, enumerates four options for rules concerning parental consent that local boards of education would be required to adopt.

Alternative Teacher Certification (HB 881): The original bill provided for the lateral entry certification of individuals with certain academic qualifications who pass the NTE and perform satisfactorily in an initial internship period. The Senate Education/Higher Education Committee has adopted a Senate Committee Substitute recommending that this issue be studied during the interim.

No School Employee Political Action (HB 900): Prohibits school employees from managing a political campaign, campaigning themselves for public office, attempting to influence students, parents or other employees on governmental actions, and otherwise engaging in political activity while on duty or during other times that they are expected to perform services for compensation. Prohibits the use of State or local government property to secure support for or opposition against a candidate, party, issue, or governmental action. Provides that the willful violation of the act is a misdemeanor punishable by a fine between $500 and $1,000. Effective December 1, 1995.

No Vulgar Material in Schools (HB 906): Authorizes local school boards to establish community advisory committees to evaluate challenges to textbooks and curriculum materials.

Teach Reading by Phonics Methods (HB 917): Requires the teaching of phonics in K-3 public schools, in-service training for teachers and preservice training in phonics.

Character Education Required (HB 908): House Bill 908 directs local boards of education to require the teaching of certain character traits in the public schools. The character traits include courage, good judgment, integrity, kindness, perseverance, respect, responsibility, and self-discipline. The act would be effective upon ratification

and apply to all schools beginning with the 1995-96 school year. The bill is currently in the Senate Education/Higher Education Committee.

Moral, Ethical, and Virtuous/Education (SB 1078): Senate Bill 1078 authorized local school boards to adopt policies requiring the posting of information, tenets, principles or teachings from the world's religions and great philosophers. The purpose is to educate students about moral, ethical, and virtuous principles. The House Education Committee adopted a Committee Substitute that replaced SB 1078 with the language from HB 908 (Teach Character Education). The Senate did not concur and a conference committee has been appointed.

Higher Education

Appointments Bills: Several bills were introduced in the 1995 Session to provide for Legislative appointments of confirmation of gubernatorial appointments to various State and local boards. Sections 7 and 8 of House Bill 673 would allow the President Pro Tempore of the Senate and the Speaker of the House to appoint a certain number of trustees to the boards of trustees of all the UNC constituent institutions and the community colleges. Section 10 of House Bill 174 would require legislative confirmation of the Governor's appointments to the boards of trustees of the UNC constituent institutions.

Ex-Governor on BOG Emeritus (HB 943): House Bill 943 amends G.S. 116-6 to delete the requirement that a former Governor of the State must serve on the Board of Governors of The University of North Carolina for at least one term after July 1, 1991, in order to be a member emeritus with full rights and privileges of membership. The bill also amends G.S. 116-8 to prohibit the Board of Governors from electing a chairman between the time that the General Assembly elects members and those members take office. The bill is effective upon ratification. The bill currently is in Senate Rules.

Board of Governors Eligibility Limit (SB 452): Senate Bill 452 would require a two-year cooling-off period before members of the General Assembly may be elected to the Board of Governors of The University of North Carolina. The bill is in House Education Subcommittee on Community Colleges and Universities.

Education Improvement Act (HB 42): This bill, currently in House Education Appropriations Subcommittee, would provide college scholarships to needy students with demonstrated academic achievement. Chapter 542 authorizes the LRC to study this issue.

Postsecondary Education Program (SB 977): Senate Bill 977, currently in the Senate Education Committee, establishes the Prepaid Postsecondary Expense Trust Fund and Board. The purpose of the fund is to provide a medium through which the cost of higher education may be paid in advance of enrollment at a State postsecondary institution at a rate lower than the the projected corresponding cost at the time of actual enrollment.

STUDIES

Legislative Research Commission Studies

The 1995 Studies Bill (Chapter 542; HB 898) authorized the **Legislative Research Commission** to study a variety of issues facing public education including: (i) State grants and and loans for community college tuition and fees; (ii) school building disposition; (iii) school funding; (iv) ability grouping and tracking; (v) teacher tenure, performance evaluation, and incentives; and (vi) choice in education, including tuition tax credits. (Chapter 542, Sec. 2.1(7); HB 898, Sec. 2.1(7))

Independent Studies, Boards, Etc., Created or Continued

School Capital Construction Study Commission. (Chapter 542; Sec. 14.1; HB 898, Sec. 14.1): The Commission shall conduct a comprehensive study of public school facilities in the State and shall: (i) identify the public school needs in the State; (ii) develop criteria for ranking the school facility needs; (iii) identify funding sources currently available to meet those needs; (iv) examine the roles the State and counties should play in meeting those needs; (v) explore methods of government financing; (vi) evaluate how current formulas affect the counties' ability to meet their school facility needs; (vii) consider developing model designs for public schools; and (viii) develop a long-term plan for funding identified school facility needs.

State and Local Government Fiscal Relations and Trends Study Commission. (Chapter 542, Sec. 15.1; HB 898, Sec. 15.1.): The Commission is authorized to review the current responsibilities of State agencies and local government for administering, financing, and making decisions about public services, particularly public education at both the K-12 level and through the community college system.

Referrals to Departments, Agencies, Etc.

The University of North Carolina is requested to direct North Carolina State University to conduct research into reducing the level of tar in cigarettes. (Chapter 542, Sec. 17.1; HB 898, Sec. 17.1.)

Other Reports

A variety of studies and reports have been requested from the State education agencies to be studied and reported to the Joint Legislative Education Oversight Committee and the General Assembly.

Board of Governors - equity of funding; alternative approaches to funding; off-campus programs; incentive funding to improve undergraduate education quality; rewards for faculty teaching; faculty workloads; capital construction priorities.

State Board of Community Colleges - common course numbering system and other articulation issues including the transfer of credits to constituent institutions of The University of North Carolina (in cooperation with the Board of Governors).

State Board of Education - Teacher Academy/professional development; reorganization of the Department of Public Instruction; student expulsions; alternative learning

programs; testing; State public school system; school-based incentives; and the use of funds by local units and schools.

Education Cabinet - comprehensive plan for increased higher education enrollment and workforce preparedness.

EMPLOYMENT

(Karen Cochrane-Brown, Bill Gilkeson, Sandra Timmons)

RATIFIED LEGISLATION

Workers' Compensation

Workers' Compensation/Real Estate Salesman (Chapter 127; HB 751): See **INSURANCE.**

Workers' Comp. Self-Insureds Safeguards (Chapter 471; SB 931): See **INSURANCE.**

Workers' Compensation Rating Law (Chapter 505; SB 973): See **INSURANCE.**

'95 Expansion/Capital Appropriations (Chapter 507; HB 230, Sections 7.21A, 25, 25.13): Chapter 507, the Expansion and Capital Budget bill, contains the following provisions concerning workers' compensation:

* **Assist Volunteer Safety Workers** (Section 7.21A) -- This section sets up a Workers' Compensation Fund in the Department of Insurance to provide workers' comp benefits to members of volunteer fire department and volunteer rescue/EMS units that are tax exempt and are not part of local government. The Fund would get its revenues from General Fund appropriations and an annual per member amount paid to the Fund by eligible fire departments and rescue/EMS units. The Fund would pay benefits for injuries and deaths occurring on or after July 1, 1996. This section also increases the monthly pension benefits for eligible fire and rescue/EMS workers from $110 a month to $135 a month, effective July 1, 1995. The revenue to fund the increased benefits comes from an increase in the member contributions from $5.00 a month to $10.00 a month.
* **Workers' Comp. Cost Containment Program Pilot** (Section 11.1)-See **State Employees** in this section.
* **Industrial Commission/Fraud Check** (Section 25) -- This section shifts from the Department of Insurance to the Industrial Commission, in the Department of Commerce, the responsibility of investigating fraud in the workers' compensation system by or against insurers or self-funded employers, for conducting violation proceedings, and for assessing and collecting penalties and restitution. The Industrial Commission is appropriated $100,000 for each year of the biennium to implement the provision.
* **Industrial Commission Mediation/Sunset Off** (Section 25.13) -- This section removes a sunset of June 30, 1995, from the authority of the Industrial Commission to order parties to participate in mediation in workers' compensation and State Tort Claim cases.

Insurance Omnibus Changes (Chapter 517; SB 345): See **INSURANCE.**

Unemployment Compensation

Unemployment Tax Cut (Chapter 4; SB 13): See **TAXATION.**

ESC Work Search Reports (Chapter 270; HB 341): Chapter 270 requires persons receiving employment benefits to report at an employment office at least once every four weeks. The bill was made effective October 1, 1995.

Drug Test/Unemployment Benefits (Chapter 284; HB 340): Chapter 284 disqualifies a person from receiving unemployment benefits for any week in which a person fails a drug test that is required as a condition for a job. This is an addition to the requirement that any applicant for unemployment benefits during a week must be "available for work" during that week. The bill says that a person is not "available for work" during any week in which that person fails a drug test if:

- The drug test is administered according to the Controlled Substance Examination Regulation Act of 1991;
- The drug test is a condition for being hired; and
- The job is suitable work for the person.

Employers are required to report to the Employment Security Commission persons who fail drug tests under those circumstances, according to rules adopted by ESC. The bill was made effective October 1, 1995.

ESC Quarterly Reports (Chapter 463; SB 180): Chapter 463 makes the following changes in the payment and collection of unemployment contributions:

- Effective September 30, 1995, it increases the minimum payment threshold from $1 to $5. A person is not required to make unemployment contributions if the amount owed is less than the minimum payment threshold.
- Effective September 30, 1995, it increases the unemployment contribution refund threshold from $1 to $5. If a person overpays unemployment contributions by less than the refund threshold, ESC will refund the overpayment only if the person that made the overpayment asks for a refund in writing.
- Effective September 30, 1995, it gives ESC the authority to allow certain small employers to file an annual report rather than quarterly reports and to file the annual report by telephone. The small employers that can be allowed to do this are those that have filed reports with the Commission for at least the past three years and have not been liable for quarterly contributions for the past year.
- Effective for quarters beginning March 31, 1996, it establishes another automatic reduction in unemployment contributions for employers with positive ratings in one circumstance. That circumstance is when the Unemployment Insurance Fund has a balance of at least $800,000,000 and the Unemployment Insurance Fund ratio is at least 5%. The Unemployment Insurance Fund ratio is determined by dividing the amount in the Fund by the State taxable wage base. The current ratio is 4.6% and is not expected to reach or exceed 5% in the next five years. If the fund ratio does reach 5%, the taxes of employers with positive ratings will be reduced by 60% rather than 50%.
- Effective upon ratification of the bill, July 20, 1995, it requires a representative of ESC to attempt to contact a person who owes less than $50 in delinquent unemployment contributions before the ESC obtains a judgment lien for the delinquent amount.
- Effective upon ratification of the bill, July 20, 1995, it eliminates the imposition of a $5 late filing penalty for employers who file a return within 30 days of the due date and owe no tax with the return.
- Effective upon ratification of the bill, July 20, 1995, it removes the current 24-month restriction on waiving penalties. Under this restriction, the Commission cannot waive penalties against the same employer more than once in a 24-month period. Under the bill, there is no limit on the number of times a penalty can be waived against the same employer in any time period.

State Employees

Amend State Personnel Act (Chapter 141; SB 405): Chapter 141 amends the State Personnel Act to provide for changes in several areas concerning State employees who are subject to the act. It redefines career State employee to cover those subject employees in a permanent position appointment who have 24 months of continuous State employment. Additionally, the State Personnel Commission is authorized to establish alternate dispute resolution policies and procedures and to designate December 31 of the previous year as the observed New Year's holiday in specific circumstances. Chapter 141 further outlines the specific personnel actions for which a State employee or former employee may file a contested case in the Office of Administrative Hearings. It institutes a 30-day time limit for applicants and noncareer State employees to file petitions for a contested case hearing with the Office of Administrative Hearings, when exercising appeal rights.

Amend Register of Deeds Retirement (Chapter 259, HB 333): Chapter 259 changes the law governing eligibility for benefits from the Register of Deeds' Supplemental Pension Fund to allow an otherwise eligible register of deeds who separates from service as a register of deeds on or after January 1, 1996, to receive the benefit whenever such individual retires from the Local Governmental Retirement System. The act also increases the proportion of the assets of the Fund used to pay monthly benefits from 90% to 93% and applies the remaining 7% to pay the costs of administration of the Fund. The act further amends the law governing city personnel to provide that a city may only restrict the benefits it pays to a disabled former employee to the same extent that the earnings of disability beneficiaries in the Local Governmental Employees' Retirement System are restricted. This act becomes effective December 31, 1995.

Health Plan Eligibility Change (Chapter 278; HB 448): Chapter 278 provides that eligibility of certain groups of employees for coverage under the State Health Plan is based on a minimum of five years of retirement membership service which may be earned after a disability began. Chapter 278 became effective upon ratification, June 19, 1995, and applies to disabled former employees who have at least five years of retirement membership service on or after that date.

Elimination of the Ombudsman Office in the Office of the Governor (Chapter 324, Sec. 9.2; HB 229, Sec. 9.2): Section 9.2 of Chapter 324, the Capital Improvements Appropriations Act, abolishes the Ombudsman's Office in the Office of the Governor and prohibits the use of State funds to reestablish that office.

Retirement/Federal Compliance (Chapter 361, SB 341): Chapter 361 makes certain changes in the State's retirement laws to insure that the plans remain in compliance with requirements of federal law. Provisions of the four major public retirement systems have been amended to reflect adjustments to the maximum annual compensation which may be used to compute benefits under the respective Articles, in accordance with the Internal Revenue Code. Effective January 1, 1996, the annual compensation used to compute a benefit may not exceed $150,000. However, for a person whose membership began before January 1, 1996, this limitation may not reduce the amount of compensation below the amount that would have been used on July 1, 1993. The act also adds new provisions to the Supplemental Retirement Income Plans for State and local law enforcement officers to protect the rights of participants of these plans when their employment is interrupted for military service. This protection is required by the

federal Uniformed Services Employment and Reemployment Rights Act. This act becomes effective January 1, 1996.

'95 Expansion/Capital Appropriations (Chapter 507; HB 230): Chapter 507, the Expansion and Capital Improvements Appropriations Act of 1995, contains the following provisions concerning State employment:

* **State Employees Salary Increases** (Sec. 7.1 - 7.15): These sections of Chapter 507 outline provisions for an average annual salary increase of two percent (2%), effective July 1, 1995, for most State and legislative employees, regular judicial department workers, and community colleges and university personnel while reflecting no change in salary for members of the Council of State, nonelected department heads, certain executive branch officials, and specified judicial branch officials.
* **State Employee RIF Rights/Options** (Sec. 7.20): Section 7.20 of Chapter 507 requires that State employees receive notification of reduction-in-force (RIF) no less than 30 days in advance. It provides that RIF employees who return to career State service maintain their most recent salary prior to RIF, except when the salary exceeds the maximum of the salary grade for their new position.
* **Additional State Employee RIF Rights/Options** (Sec. 7.21): Section 7.21 of Chapter 507 allows RIF State employees who were formerly covered by the State Health Plan to be eligible for coverage on a noncontributory basis for the length of time the employee remains eligible for priority reemployment consideration.
* **State Employee Health Benefit Plan/Increased Wellness Benefits** (Sec. 7.24): Section 7.24 of Chapter 507 provides coverage of allowable charges for routine diagnostic examinations up to a maximum amount of $150 per fiscal year. Examinations and tests necessary to obtain employment, secure insurance coverage, comply with legal proceedings, attend schools or camps, meet travel requirements, participate in athletic activities, or comply with governmental licensing requirements are excluded from coverage. Section 7.24 also increases the level of allowable charges for immunizations for the prevention of contagious diseases to 100 percent.
* **State Employee Health Benefit Plan/Increased Lifetime Benefit** (Sec. 7.25): Section 7.25 of Chapter 507 increases the maximum lifetime benefit for each covered individual to two million dollars. The provision was made effective January 1, 1994.
* **State Employee Health Benefit Plan/Oral Surgery Benefits** (Sec. 7.26): Section 7.26 of Chapter 507 expands covered dental services to include oral surgery required because of medical treatment.
* **State Employee Health Benefit Plan/Waiver of Inpatient Hospital Certification Penalty** (Sec. 7.27): Section 7.27 of Chapter 507 eliminates the penalty to the employee or individual for failing to secure advance certification for inpatient hospitalization when approval would have been given if the certification had been requested, as required.
* **State Employee Health Benefit Plan/Retiree Premiums Based on Retirement Service Credit** (Sec. 7.28): Section 7.28 of Chapter 507 provides that retired teachers, State employees, and members of the General Assembly are eligible for coverage on either a noncontributory or partially contributory basis under the State Health Plan, provided certain specified conditions are met.
* **State Employee Health Benefit Plan/Increased Chiropractic Benefits** (Sec. 7.28B): Section 7.28B of Chapter 507 increases the maximum benefits for chiropractic services to $2,000 per fiscal year.
* **Workers' Compensation Cost Containment Program Pilot** (Sec. 11.1): Section 11.1 of Chapter 507 mandates the Office of State Budget and Management to develop a pilot program to be known as the Workers' Compensation Cost Containment Program, after consulting with the Office of State Personnel. The Office of State

Budget and Management is authorized to choose, through the competitive bidding process, a third-party administrator to manage claims processing. A report setting forth the status of the program, results achieved, and recommendations for any further action which may be required by the General Assembly must be submitted to the General Assembly on or before April 1, 1996.

1995 Retirement Benefits Act (Chapter 507, Sec. 7.22, 7.23, 7.23A; HB 230, Sec. 7.22, 7.23, 7.23A): Sections 7.22, 7.23, and 7.23A of Chapter 507, the Expansion and Capital Improvements Appropriations Act of 1995, amend the law to enhance benefits payable from the four major public retirement systems. Effective July 1, 1995, the act provides a 2% increase in the retirement allowances paid to beneficiaries of the Teachers' and State Employees' Retirement System, the Consolidated Judicial Retirement System, the Legislative Retirement System, and the Local Governmental Employees' Retirement System. The act also increases the accrual rate for members of the Teachers' and State Employees' System from 1.73% of average final compensation multiplied by the number of years of service to 1.75%, and makes an adjustment to retirees' allowances on account of the increase in the accrual rate of 1.2%. Also, for members of the Local Employees' System, the following changes were made: (1) a clarifying provision stating that deferred retirement allowances for members retiring on or after July 1, 1995, shall be computed in accordance with the service retirement provisions; (2) a similar increase is made in the accrual rate from 1.71% to 1.72%; (3) the actuarial based reduction for early service retirement allowances is replaced by an empirical reduction which provides a benefit equal to the greater of three calculations; (4) the allowance paid to retirees is increased on account of the accrual rate change by .6%; and (5) an equalizing increase of .7% was granted to members who retired prior to July 1, 1993, to help keep them on a par with teachers and State employees. The act also includes several other conforming changes.

Restore the Provision for Purchase of Out-of-State Service in the Local Governmental Employees' Retirement System and the Teachers' and State Employees' Retirement System (Chapter 507, Sec. 7.23D; HB 230, Sec. 7.23D): Section 7.23D of Chapter 507, the Expansion and Capital Improvements Appropriations Act of 1995, restores the right of active and retired members of the Local Governmental Employees' System and the Teachers' and State Employees' Retirement System, to purchase credit for out-of-state service. Prior to 1981 in the State system and 1988 in the Local system, members were permitted to purchase this service after obtaining 10 years of membership service, if they made the purchase within three years of first becoming eligible. This act restores the statutory basis for this benefit for persons who were members at the time of the repeal, and furthermore, extends it to all members who obtain at least five years of membership service at the full actuarial cost. The act allows a maximum of 10 years of out-of-state service if the service would have been creditable in this State and if no benefit is allowable in another public retirement system as a result of the service.

Miscellaneous

Youth Employment Certificates (Chapter 214; SB 560): Chapter 214 authorizes county directors of social services to delegate the function of issuing youth employment certificates to personnel outside of their staff, subject to the approval of the Commissioner of Labor. This bill was made effective October 1, 1995.

Small Employer Coverage Changes (Chapter 238; SB 652): See **INSURANCE.**

Teacher Leave/Catastrophic Illness (Chapter 324, Sec. 17.4; HB 229, Sec. 17.4): See **EDUCATION.**

Substitute Teacher Pay (Chapter 324, Sec. 17.15; HB 229, Sec. 17.15): See **EDUCATION.**

Teacher Vacation Leave for Adoptive Parents (Chapter 324, Sec. 17.13; HB 230, Sec. 17.13): See **EDUCATION.**

Drug On-Site Testing (Chapter 383; HB 970): Chapter 383 amends the State's law regulating workplace drug testing by giving an employer an option. Where prior law required that both screening and confirmation of samples be conducted at an approved laboratory, the act lets an employer perform the screening test on-site, provided that samples showing a positive result are sent to an approved laboratory for confirmation. The act was made effective upon ratification, July 6, 1995.

Common Follow-Up System for State Job Training and Education Programs (Chapter 507, Sec. 25.6; HB 230, Sec. 25.6): Section 25.6 of the Capital Improvements Appropriations Act of 1995 directs the Employment Security Commission to develop and implement a common follow-up information management system for tracking the employment status of current and former participants in State job training and placement programs. Other agencies are required to cooperate.

STUDIES

Legislative Research Commission Studies

The **Legislative Research Commission** is authorized to study issues related to **civilianizing certain State government law enforcement functions and positions.** (Chapter 324, Sec. 8.3; HB 229, Sec. 8.3)

Independent Studies, Boards, Etc., Created or Continued

Section 20.4 of the Continuation Budget Act of 1995 creates the **Study Commission on the Department of Crime Control and Public Safety.** The Commission shall review the **efficiency and effectiveness of the Department and the reorganization of the Department.** (Chapter 324, Sec. 20.4; HB 229, Sec. 20.4)

Section 8.5 of the Expansion and Capital Improvements Appropriations Act of 1995 creates the **Joint Legislative Study Commission on Job Training Programs.** The Commission will be a 12-member legislative study commission to **study job training programs that are State and federally funded** to determine if any can be eliminated or consolidated to prevent duplication, inefficiency, or ineffectiveness. The Commission is directed to report to the 1997 General Assembly. (Chapter 507, Sec. 8.5; HB 230, Sec. 8.5)

Referrals to Departments, Agencies, Etc.

Section 10.1 of the Continuation Budget Act of 1995 directs the **Office of State Budget and Management** to review and analyze **the administrative span of control, or the**

ratio of supervisors to those supervised, exercised throughout State government. (Chapter 324, Sec. 10.1; HB 229, Sec. 10.1)

Section 15.10 of the Continuation Budget Act of 1995 directs the **Board of Governors** of The University of North Carolina to study **potential cost savings to UNC through privatization of certain services.** (Chapter 324, Sec. 15.10; HB 229, Sec. 15.10)

Referrals to Existing Commissions

Section 19.10 of the Expansion and Capital Improvements Appropriations Act of 1995 requires the **Joint Legislative Corrections Oversight Committee** to study the **salary continuation program in the Department of Correction.** The committee is to review five specific areas of concern and to report its findings and recommendations to the 1996 Regular Session of the 1995 General Assembly. (Chapter 507, Sec. 19.10; HB 230, Sec. 19.10)

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

RATIFIED LEGISLATION

Require Composite Water Testing (Chapter 25; SB 286): Chapter 25 adds a new subsection (b3) to Section 130A-315 to provide that the Department of Health, Environment, and Natural Resources shall not certify or renew certification of any laboratory that fails to offer to perform composite testing of samples taken from a single public water supply system for those contaminants that the laboratory is seeking certification or renewal of certification as allowed under the regulations of the United States Environmental Protection Agency. This act became effective upon ratification on April 6, 1995. Laboratories certified prior to this date have a 30-day grace period in which to comply or DEHNR will revoke the certification or certification renewal of any noncomplying laboratory.

Run Hill State Natural Area (Chapter 26; SB 333): See **STATE GOVERNMENT.**

Deletions From State Parks Preserve (Chapter 131; SB 1046): SEE **STATE GOVERNMENT.**

Beach Access Program Clarification (Chapter 183; SB 1001): Chapter 183 makes the State law consistent with the federal law by allowing local governments along coastal waterfronts to access Coastal Beach Access Program funds for public access projects, rather than limiting the use of State funds for only projects that provide access to the beach. This act became effective upon ratification on June 6, 1995.

Minimum Streamflow/Small Hydroelectric Power Dams (Chapter 184; SB 1041 and Chapter 439; SB 491): Chapter 184 amends G.S. 143-215.31 to establish minimum streamflows in the length of streams affected by dams operated by small power producers that divert water from 4,000 feet or less of the natural streambed with the water returning to the same stream. For dams in operation prior to 1 January 1995, the minimum streamflow is the minimum average flow for a period of seven consecutive days that, in the absence of the dam, would have an average occurrence of once in 10 years (7Q10), or 10% of the average annual flow, whichever is less. For dams placed in operation after 1 January 1995, the minimum streamflow is 7Q10 or 10% of the average annual flow, whichever is greater. Notwithstanding the foregoing, the minimum streamflow is 28 cubic feet per second for any dam that diverts water from 2,500 feet or more of a stream on which six or more small hydroelectric dams were located on 1 January 1995. (In practice, this provision applies only to the High Falls project located on the Deep River.) Chapter 184 provides that the North Carolina Environmental Management Commission and the Department of Environment, Health, and Natural Resources shall not recommend a minimum streamflow above the minimum as required under subsection (c) when advising the Federal Energy Regulatory Commission, as a matter of State policy.

Chapter 439 exempts from the foregoing a small hydroelectric power dam if the length of the stream affected by the dam receives a discharge of waste from

a permitted treatment works, is designated as a component of the State Natural and Scenic Rivers System, or is designated as a component of the National Wild and Scenic Rivers System. In such cases, the minimum streamflow will be established by rules adopted by the Environmental Management Commission. (In practice, Chapter 439 applies only to the Codeemee project on the South Fork of the Yadkin River in Davie County and the Cullasaja River in Macon County.)

Chapter 184 became effective upon ratification on 6 June 1995. Chapter 439 became effective 6 June 1995.

Sewer System Moratorium Notice (Chapter 202; SB 643): Chapter 202 amends G.S. 143-215.67 to provide that any person who holds a valid building permit issued prior to notice of any moratorium on additional sewer connections may discharge waste in excess of the capacity of the treatment works of a public utility or local government if the Environmental Management Commission finds that the discharge will not result in any significant degradation of water quality. Chapter 202 adds a new subsection (c) to G.S. 143-215.67 that authorizes the Commission to impose a moratorium on additional waste if the Commission determines that the treatment works cannot adequately treat additional waste, and prohibits the issuance of a permit for a sewer line that will connect to the treatment works during the moratorium. The Commission is required to notify affected permitted persons of an impending moratorium at least 45 days before the moratorium becomes effective. Chapter 202 also adds a new subsection (d) to G.S. 143-215.67 to require a public utility or unit of local government that operates a treatment works to give notice of a moratorium on the discharge of waste to a treatment works it operates. Notice must be given (i) by publication in a newspaper having general circulation, (ii) of a notice having a form and content specified by the Commission, (iii) within 15 days after the public utility or local government receives notice of the impending moratorium from the Commission. This act becomes effective 1 October 1995.

Restore Minimum Wildlife Penalties (Chapter 209; HB 805): Chapter 209 restores minimum penalties for major wildlife offenses and makes other minor revisions to the penalty provisions in G.S. 113-294. Subsection (b) of this Chapter provides that any person who unlawfully sells, possesses for sale, or buys any deer or wild turkey is guilty of a Class 2 misdemeanor and shall pay a minimum fine of $250 in addition to any other prescribed punishment. Subsection (c) establishes a minimum fine of $250 in addition to any other prescribed punishment and makes it a Class 2 misdemeanor to unlawfully take, possess, or transport any wild turkey. Subsection (c1) establishes a minimum fine of $2,000, in addition to any other prescribed punishment, to be paid by any person who commits the Class 1 misdemeanor of unlawfully taking, possessing, transporting, selling, possessing for sale, or buying any bear or bear part. Chapter 209 also amends subsection (d) by establishing a minimum fine of $100, in addition to any other prescribed punishment, to be paid by anyone who commits the Class 3 misdemeanor of unlawfully taking, possessing, or transporting any deer. Subsection (e) provides that it shall be a Class 2 misdemeanor to unlawfully use artificial light to take a deer between a half hour after sunset and a half hour before sunlight and establishes a minimum fine of $250 in addition to any other prescribed punishment. Subsection (f) provides that it shall be a Class 3 misdemeanor to unlawfully

take, possess, transport, sell, or buy any beaver, or to violate any Wildlife Resources Commission rule designed to protect beavers. Chapter 209 makes it a Class 2 misdemeanor to unlawfully sell, possess for sale, or buy a fox, or to take a fox with the aid of any electronic calling device. Subsection (m) is amended to include as punishable offenses any violations of a migratory game bird permit or the tagging rules of the Wildlife Resources Commission which shall constitute a Class 2 misdemeanor subject to a minimum fine of $100 in addition to any other prescribed punishment. A new subsection (n) is added to establish that any person who violates any Commission rule that restricts vehicular access on game lands to individuals with a special vehicular access identification card and permit is guilty of a Class 2 misdemeanor and is subject to a minimum fine of $100 in addition to any other prescribed punishment. This Chapter amends G.S. 113-115(a) by providing that a second or subsequent conviction within three years constitutes a Class 2 misdemeanor. This act becomes effective 1 October 1995 and applies to offenses committed on or after that date.

Amend Wastewater Systems Law (Chapter 285; HB 912): Chapter 285 provides that an improvement permit for wastewater system construction shall be valid for an indefinite term if the applicant shows the Department of Environment, Health, and Natural Resources or the local health department that the site and soil conditions are unaltered, that the facility, design wastewater flow, and wastewater characteristics are not increased, and that a wastewater system can be installed that meets the permitting requirements in effect on the date the permit was issued. Chapter 285 adds a new subsection (f1) to G.S. 130A-335 to provide that an improvement permit and an authorization for wastewater construction may be obtained from the local health department simultaneously. The authorization for wastewater construction is valid for a period of five years. After that time, the local health department must hold a preconstruction conference with the owner or developer, or an agent of the owner or developer and must issue a revised authorization for wastewater construction that includes the most current technology available. Chapter 285 also: (1) deletes the certificate of completion for certain wastewater systems instead of an operation permit; (2) removes the requirement that an operator of an aerobic sewage treatment plant be employed or under contract with the county in which the plant is located; (3) requires that DEHNR provide a listing of all approved experimental and innovative wastewater systems to the local health departments; and (4) repeals the "On-Site Wastewater Systems Institute". This act becomes effective October 1, 1995, and applies to all improvement permits and authorizations to construct issued on or after the effective date of this act.

Reclassify Certain Watersheds (Chapter 301; HB 491): Chapter 301 exempts from the provisions of G.S. 143-214.5 (Water Supply Watershed Protection) "any water supply watershed that was classified as a WS-III water supply watershed on 1 March 1995, and that: (i) affects a land area of approximately 70,956 acres; (ii) includes within the watershed the headwaters of a river that ultimately converges with other rivers to form a major river that flows west into another state; and (iii) is located within two adjacent counties that have a combined area of 467 square miles, have a combined population of approximately 29,367, share western borders with another state, have a national park running through the counties, are both located in the same two-member State Senate district, and one of the adjacent counties has a point

of elevation of at least 3,589 feet above sea level." (The area described in the watershed of the North Toe River, which lies primarily in Avery and, to a lesser extent, in Mitchell counties.) The bill provides that reclassification of a water supply watershed to a less restrictive class reduces the affected land area from 70,956 acres to 35,490 acres. Chapter 301 also provides that any water supply watershed that is reclassified as a WS-IV under this Chapter shall not be reclassified to a more restrictive classification. Chapter 301 provides for automatic WS-IV reclassification for any water supply watershed that meets the requirements of this act on 1 October 1995. This act became effective upon ratification on 20 June 1995.

Food Equipment Repeal (Chapter 321; HB 798): Chapter 321 amends G.S. 130A-309.10(d) to repeal the delayed contingent ban on the sale or distribution of polystyrene foam products (styrofoam) used in conjunction with food for human consumption. This ban would have gone into effect on 1 October 1997 unless the Secretary of EHNR certified that at least 25% of such products were being recycled. Chapter 321 also requires the Secretary of EHNR to report to the General Assembly no later than 1 March 1997 on industry efforts to recycle foam products. This act became effective upon ratification on 21 June 1995.

Monitor Compliance Data Electronically (Chapter 327; HB 708): Chapter 327 provides that commercial hazardous waste facilities need not be inspected a minimum of 40 hours per week if compliance data can be electronically monitored and recorded off-site by the Department of Environment, Health, and Natural Resources (DEHNR). Nothing in this act prohibits DEHNR from conducting inspections more than 40 hours per week, if necessary.

Chapter 327 also amends the statutory provisions relating to the use of private environmental consulting and engineering firms in the implementation and oversight of voluntary remedial actions at inactive hazardous substance or waste disposal sites. These provisions, enacted in 1994, authorized DEHNR to "select and hire" such firms. Chapter 327 amends G.S. 130A-310.9(c) to provide that an owner, operator, or other responsible party who enters into an agreement with the Secretary of DEHNR to implement a voluntary remedial action may hire a private consulting or engineering firm approved by DEHNR. DEHNR may revoke its approval and assume direct oversight if deficiencies occur. Chapter 327 also amends G.S. 130A-310.12(b) to conform and clarify the rule-making authority of the Commission for Health Services with respect to the implementation and oversight of voluntary remedial actions by private environmental consulting and engineering firms.

This act became effective upon ratification on 26 June 1995.

Underground Storage Tank Amendments (Chapter 377; SB 1012): Chapter 377 makes the following changes to the UST program.

A. Changes to the UST Program generally

1. Risk assessment (Sections 1, 13, and 16) Effective upon ratification.

The Environmental Management Commission (EMC) is directed to adopt rules establishing a risk-based approach to assessing, prioritizing, and cleaning up releases from petroleum USTs. The rules will apply both to commercial and noncommercial sites. The EMC is authorized to require an owner or operator of a UST or a landowner to determine the risk posed by a petroleum release at a specific site. The costs of a site-specific risk assessment that is completed in accordance with the EMC's rules will be covered by either the

Commercial Fund, subject to any applicable deductible, or the Noncommercial Fund, whichever is applicable.

The primary purpose of this change in the law is to protect the solvency of the Commercial and Noncommercial Funds, and to ensure that the limited resources of the Funds are spent on sites that present the greatest risk to human health and the environment. Thus if a site-specific risk assessment reveals that the site poses a degree of risk "that is no greater than the acceptable level of risk established by the Commission" under the risk-assessment rules, any further cleanup costs incurred will not be covered by either Fund. EMC will notify the owner or operator of the UST or the landowner that no further action will be required at the site.

It is always possible that, even though EMC determines that a site presents little risk, a court may find otherwise and require cleanup. If this occurs, the cleanup expenses will be covered by either the Commercial Fund, subject to the applicable deductible, or the Noncommercial Fund (assuming either Fund otherwise apples to the release). Similarly, if a third party sues or threatens to sue with respect to a release at a low risk site, the Commercial Fund or the Noncommercial Fund will reimburse any damages above $100,000 ordered by a court (again, assuming either fund otherwise applies); and will reimburse any settlement amount above $100,000, as long as the amount is approved by EMC prior to the execution of the settlement agreement or the entry of a consent judgment. If the EMC later determines that the site does pose a degree of risk to human health or the environment sufficient to require cleanup, the site would be covered by either the Commercial Fund or the Noncommercial Fund (again, assuming the site was otherwise eligible).

These new risk-assessment provisions become effective once the EMC's rules become effective, and they will apply to any assessment or cleanup in progress or begun on or after that effective date. When the rules become effective, a site-specific risk assessment is likely to be required at most, if not all, sites reported in the future as part of the comprehensive site assessment. In addition, EMC may require a site-specific risk assessment at a site that already is undergoing cleanup and, if appropriate, require no further cleanup and end access to the Commercial Fund or the Noncommercial Fund. As an interim measure prior to the adoption of rules, the EMC is to implement a risk-based approach to petroleum release sites under existing rules, and may adopt temporary rules until final risk assessment rules can be adopted.

2. **Requirement of an operating permit for commercial tanks** (Sections 2, 8, and 14) Effective 1 July 1996.

   The owner or operator of each commercial UST will be required to obtain an operating permit for the facility at which the UST is located. The operating permit must be obtained from the Department of Environment, Health, and Natural Resources (DEHNR), and will be valid for one year. The owner or operator will have to renew the operating permit annually.

   An owner or operator will be required to meet certain conditions to be eligible for an operating permit. These conditions are:

   a. **Notification of existence of USTs.** The owner or operator must notify DEHNR of all USTs that exist at the facility as required by federal law.

   b. **Tank fees.** The owner or operator must have paid all fees for tanks located at the facility as required by State law. These are the tank fees that owners and operators are already required to pay; there are no new fees for the operating permit.

c. **Release detection and vapor control.** The owner or operator must be in compliance with applicable release detection and vapor control requirements, and, in addition, must notify DEHNR of the release detection and vapor control methods being used and certify that all applicable leak detection and vapor control requirements are being met.

d. **Compliance with law.** DEHNR will have the discretion to deny an operating permit based upon the compliance history of the owner or operator, or the compliance history of a parent, subsidiary, or affiliated entity. The owner or operator must show substantial compliance with UST standards, air and groundwater standards, and other federal and State laws and rules for the protection of the environment.

The permit program is scheduled to go into effect on 1 July 1996. By that time, each owner or operator of commercial USTs must have obtained operating permits for each facility at which the USTs are located. Each facility will be issued a certificate that identifies the number of USTs at the facility and the permit expiration date.

An operating permit will be essential for owners and operators of commercial USTs. Once the permit program goes into effect, it will be a violation of law for any person (not just the tank owner or operator) to put petroleum in any UST at a facility that does not have a valid operating permit. However, a petroleum supplier will be entitled to rely on an unexpired certificate displayed at a facility, unless the supplier knows or should know that the certificate is invalid.

3. Enforcement (Sections 3 and 10) Effective 1 January 1996. ***

The bill sets out new enforcement provisions for the UST program. These provisions (civil penalties, criminal penalties, and injunctive relief) are the same as those currently applicable to the water quality program, except that the maximum civil penalty for a violation under the UST program is capped at $200,000. Because substantially the same enforcement provisions already apply to the water quality program, these enforcement provisions already apply to those aspects of the UST program that directly relate to groundwater standards. This section makes these enforcement provisions apply to all other aspects of the UST program. These provisions become effective 1 January 1996.

4. Liability of oil suppliers (Section 12) Effective upon ratification.

Under present law, a person "having control over oil" prior to its discharge is liable for the damage caused by the discharge. The North Carolina Oil Pollution and Hazardous Substances Control Act defines "having control over oil" as including any person that uses, transfers, stores, or transports oil immediately prior to its discharge.

The North Carolina Court of Appeals recently interpreted this definition in a case involving an oil supplier, Jordan v. Foust Oil Company. The court's opinion is not a model of clarity, but the case could be read to mean that an oil supplier is liable simply for filling a leaking UST with oil -- even if the supplier did not know the tank was leaking.

The bill seeks to clarify the law and eliminate a potentially harsh interpretation of the Foust case. It amends the definition of "having control over oil" to exclude a person who delivers oil into a UST that is not owned or operated by the person, unless: (a) the person knows a discharge is occurring from the UST, or (b) the person's negligence causes the discharge, or (c) the

facility at which the UST is located does not hold or display a valid operating permit.

5. Definitions (Section 4) Effective upon ratification.

The bill adds definitions for "affiliate", "facility", "parent", and "subsidiary".

B. Changes to the Commercial Fund

1. The 120-day rule (Sections 5 and 11) Effective upon ratification. *

The Commercial Fund covers only petroleum discharges from commercial USTs that are discovered or reported on or after 30 June 1988. In addition, as the law is now written, the Commercial Fund will cover a discharge only if, at the time the discharge is discovered or reported, the UST from which the discharge occurred either is still underground or was removed within the preceding 120 days. This is the so-called 120-day rule. In effect, this rule requires that the discharge be discovered or reported within 120 days of the time the UST is removed from the ground; otherwise, the Commercial Fund does not apply.

The act eliminates this rule so that the Commercial Fund will cover a petroleum discharge from a commercial UST if the discharge is discovered or reported on or after 30 June 1988.

2. Multiple deductibles (Section 5) Effective upon ratification. *

The Commercial Fund pays cleanup costs in excess of an amount set by statute (in effect, a deductible). That amount depends on the date the discharge is discovered or reported and on certain other factors set out in the statute.

Under current law, if there is a discharge from more than one commercial UST, and those discharges combine to form a single contamination plume, DEHNR treats them as a single occurrence, and the UST owner or operator pays just one deductible. However, if the discharges do not combine, each discharge is a separate occurrence, and each will have its own separate deductible, even if the discharges occur at the same facility.

The act contains a provision that specifically addresses multiple discharges at a single facility. This provision uses what is essentially a mathematical formula to determine one overall deductible for the multiple discharges. The deductible will be the lesser of: (a) the sum of the deductibles for each of the discharges, each treated separately as if it were the only discharge, or (b) 1.5 times the highest single deductible. Under this formula, the most a deductible could be is $112,500 (which is 1.5 x $75,000).

3. Increase in coverage (Section 5) Effective upon ratification. *

The Commercial Fund now covers environmental cleanup costs and third-party damage claims up to a maximum of $1,000,000. Under the act, the maximum coverage increases to $1,500,000. The Commercial Fund reimburses 80% of the environmental cleanup costs and third party damages between $1,000,000 and $1,500,000; the UST owner or operator, or the landowner, is required to pay the other 20%.

4. Insurance payments (Sections 5, 7, and 8) Effective upon ratification. **

Apparently there have been some cases where insurers of UST owners or operators have funded cleanups of petroleum discharges, and then billed the Commercial Fund or the Noncommercial Fund for the cleanup expenses (i.e., those expenses in excess of the applicable deductible). In effect, the State becomes the insurer, even though the private insurer has agreed to provide insurance and has accepted and retained premiums for the insurance.

The act prevents this practice. The act includes a provision that precludes the Commercial and Noncommercial Funds from reimbursing costs reimbursed

by some other source, such as an insurer. Any person seeking reimbursement from either Fund must certify to DEHNR that the costs for which reimbursement is sought are not eligible to be reimbursed by any other source.

5. Outside review (Sections 8 and 9) Effective upon ratification. *

The act grants DEHNR explicit authority to contract with outside consultants to review and evaluate reimbursement applications. DEHNR may use this authority to investigate sites where there is more than one possible source of a release, or to hire expert witnesses to evaluate claims such as for personal injury, where DEHNR does not have its own in-house expertise.

6. Procedure for third party claims (Section 8) Effective upon ratification. *

The Commercial Fund reimburses not only for environmental cleanup costs, but also for injury or property damage to third parties in excess of $100,000. The present statute does not address the appropriate procedure for handling these claims, particularly in cases where there is a settlement agreement or consent judgment between the UST owner or operator and the damaged third party.

The act addresses this procedure explicitly. It states that DEHNR may not reimburse a settlement amount from the Commercial Fund or from the Noncommercial Fund unless DEHNR has approved the settlement prior to the time the UST owner or operator and the third party enter into the settlement agreement, and similarly, DEHNR may not reimburse a consent judgment award unless DEHNR has approved the judgment prior to the time the judgment is entered by the court.

7. Tank fees (Section 6) Effective 1 January 1996.

The act provides that all tank fees at a single facility are due at the same time. The act also allows DEHNR to waive tank fees late penalties under certain circumstances.

C. **Appropriations** (Section 15)

The act increases funding effective 1 July 1995 for the UST program above current funding levels as follows:

1. From the Commercial Fund to DEHNR

1995-1996	1996-1997
$2,100,000	$1,950,000

2. From the Noncommercial Fund to DEHNR

1995-1996	1996-1997
$ 125,000	$ 125,000

3. From the Commercial Fund to the Department of Agriculture

1995-1996	1996-1997
$ 135,000	$ 90,000

4. DEHNR is authorized to use up to $250,000 of these funds appropriated from the Commercial Fund and the Noncommercial Fund to DEHNR to identify and evaluate abandoned USTs.

D. **Effective dates** (Section 17)

As noted above, various provisions of the act became effective on specific dates. The following notes apply.

* Sections 5, 7, 8, 9, and 11 are effective upon ratification and apply to any pending claim for reimbursement and apply retroactively to any discharge or release that was discovered or reported on or after 30 June 1988 (the date on which the UST program originally became effective), except as indicated in the following note.

** G.S 143-215.94B(d)(6), as set out in Section 5, G.S. 143-215.94D (d)(6), as set out in Section 7, and G.S. 143-215.94E(f1), as set out in Section 8,

which relate to costs paid or reimbursed from other sources, including insurance, apply only to payments and reimbursements made on or after the date the act becomes effective and only to costs that are eligible to be paid or reimbursed for a discharge that was discovered or reported on or after 30 March 1990. (30 March 1990 is the date on which the United States Environmental Protection Agency approved the State's UST program as sufficient to satisfy owner/operator financial responsibility requirements under federal law.)

*** Sections 3 and 10 (enforcement provisions) become effective 1 January 1996 and apply to offenses occurring or continuing on or after that date.

Clarify Wildlife Comm./Endangered Species (Chapter 392; HB 832): Chapter 392 adds a new subsection (b) to G.S. 113-333 which directs the Wildlife Resources Commission to develop a conservation plan for the recovery of protected wild animal species. The Commission shall consider factors including the cause of the decline of the species and its habitat and the range of potentially beneficial measures to restore the species and its habitat. The Commission shall also consider the costs of protective measures and the impact on the local economy, local government, and the development of private property. The analysis must also consider reasonably available options for minimizing the costs and adverse economic impacts of protective and restorative measures. This Chapter adds a new subsection (c) which provides that the Wildlife Resources Commission shall not adopt any rule that restricts the use or development of private property. This subsection also provides that the Commission may seek assistance from any public or private entity in implementing conservation plan measures which exceed the Commission's authority. This act became effective upon ratification on 10 July 1995.

CAMA Administrative Permit Review (Chapter 409; SB 990): Chapter 409 amends G.S. 113A-121.1 (Administrative review of permit decisions) to provide that if a court determines that the Coastal Resources Commission erred in determining that a contested case hearing is not appropriate, the decision on that appeal is whether or not to grant a hearing under G.S. 150B-23. The CRC would then hear the contested case and make a final agency decision based on G.S. 113A-122 (procedure for hearings on permitted decisions). This act becomes effective October 1, 1995.

Licensing of Soil Scientists (Chapter 414; HB 826): See **STATE GOVERNMENT.**

Siting of Swine Operations (Chapter 420; SB 1080): Chapter 420 amends Chapter 106 of the General Statutes by adding a new Article 67 to establish minimum separation requirements for siting swine houses and lagoons in proximity to any occupied residence (1500 ft.), school (2500 ft.), hospital (2500 ft.), church (2500 ft.), and property boundary (100 ft.). The outer perimeter of the land area onto which water is applied from a lagoon shall be at least 50 feet from any residential property boundary and any perennial stream or river. Chapter 420 provides for closer sitings than those prescribed under this act with written permission of the property owner that is recorded with the register of deeds. This act becomes effective 1 October 1995 and applies to any new swine farm for which a site evaluation is conducted on or after that date.

Donations of Conservation Land (Chapter 443; SB 229): See **PROPERTY.**

Amend Pesticide Law (Chapter 445; SB 388) Chapter 445 makes a number of amendments to Article 52, Chapter 143 of the General Statutes, the North Carolina Pesticide Law.

Section 1 of the act amends G.S. 143-437, functions of the Pesticide Board, to allow the Board to enter into agreements with private property owners to conduct monitoring activities on their property. The information collected could not be disclosed in a manner that would identify property owners unless they consented to the disclosure.

Section 2 of the act corrects a typographical error from G.S. 143-442(e). Section 3 amends G.S. 143-443 which sets forth miscellaneous prohibited acts relating to the registration, distribution, sale, packaging and labeling of pesticides. The new provisions add two subdivisions; (6) making it unlawful to assault, impede, intimidate or interfere with a State employee performing his duties under the pesticide law, and (7) making it unlawful to apply, for compensation, an unregistered pesticide.

Section 4 increases the license fee for pesticide dealers from $25 to $30. Section 5 adds the failure to timely pay a civil penalty as grounds for denial, suspension, or revocation of a license by the Pesticide Board.

Section 6 amends the definitional section of the pesticide law by deleting the G.S. 143-460(10), the definition of the term "engage in business". Section 7 amends the definition of the term "pesticide applicator". In particular, the amendment clarifies that volunteers who apply general use pesticides on the property of another are not required to have a license.

Section 8 adds a new subsection to G.S. 143-465 that prohibits local governments from adopting or continuing in effect ordinances regulating pesticides in areas subject to regulation by the Pesticide Board. Cities and counties are not prohibited from exercising their zoning or planning authority or from exercising its fire prevention or inspection authority.

Section 9 of the act clarifies that inspectors have the authority to copy as well as inspect records. Section 10 rewrites the civil penalty section to provide the Board the authority to levy a civil penalty of no more than $2,000 against anyone who violates or directly causes a violation of the provisions of the pesticide law.

The act became effective upon ratification on 18 July 1995.

Recycled Newsprint Tax Change (Chapter 459; SB 1055): See **TAXATION.**

Limit Pesticide Applications (Chapter 478; HB 873): Chapter 478 prohibits a pesticide applicator from applying a substance that has the same active ingredients as a registered pesticide, but that is not itself a registered pesticide. Chapter 478 also prohibits combining such a substance with a registered pesticide to apply as a pesticide or for any other purpose. Violation of these provisions is a Class 2 misdemeanor punishable by a fine of up to $1,000 per application. This act becomes effective October 1, 1995.

Expedite Environmental Permitting (Chapter 484; HB 836): Chapter 484 amends G.S. 143-215.108 to require the Environmental Management Commission to adopt rules governing the submittal of air quality permit applications that have been certified by a professional engineer, including draft permits that can simultaneously be sent to public notice and hearing and subjected to technical review by DEHNR. The amended statute requires

DEHNR to process an application that is certified by a professional engineer as follows:

(1) DEHNR is to determine whether an application is complete within ten working days of its receipt. Within 30 days after the date on which an application is determined to be complete, DEHNR is to publish any required notices, schedule any required public meetings or hearings, and initiate any and all technical reviews of the application.

(2) DEHNR shall conduct its completeness of determination by comparing the permit application with the checklist set out in the rules adopted by the Environmental Management Commission. If DEHNR determines that the application is not complete, DEHNR shall promptly notify the applicant in writing of all deficiencies and the ten-day completeness review period shall be suspended. If the applicant submits the requested information within the time specified by DEHNR, the ten-day time period begins again on the day the additional information is submitted. If the additional information is not submitted within the time specified, DEHNR shall return the application to the applicant, and the applicant may either treat the application as denied or resubmit the application at a later time. If DEHNR fails to notify the applicant that an application is not complete within the specified time periods, the application shall be deemed complete.

(3) DEHNR shall issue a decision on the application within 30 days of the last day of any public hearing held on the application, or if there is no hearing, within 30 days of the close of the notice period.

(4) If DEHNR fails to issue a decision on the application within the time specified, the applicant may either take no action and thereby consent to the continued review of the application, or treat the application as denied and appeal the denial under the Administrative Procedure Act.

(5) DEHNR may at any time terminate review of an application if it determines that the permit application is not in substantial compliance with applicable rules or that the applicant has failed to pay all permit application fees.

(6) If DEHNR terminates review of an application, the applicant may revise and resubmit the application or treat the termination as a denial and appeal the denial under the Administrative Procedure Act.

(7) Submission of a permit application certified by a professional engineer is optional with the applicant, and no certification shall be required. DEHNR may not impose any additional fee for processing an application certified by a professional engineer.

The amended statute also directs the Environmental Management Commission to adopt rules governing review of air quality permit applications other than those that are certified by a professional engineer. The amended statute requires the EMC to specify maximum times for various actions on permit applications.

Chapter 484 also increases the amount of the fee that the EMC is authorized to charge for processing an air quality permit application from $400 to $500.

Chapter 484 requires DEHNR to submit a report on its progress in implementing this act and any recommendations for further legislation to the Environmental Review Commission by 1 April 1996.

This act becomes effective 1 January 1996, except that the EMC is directed to initiate the rule making required by this act as soon as possible after the act is ratified (26 July 1995) with the goal of having permanent rules in place no later than 18 months after ratification.

Small Demolition Landfills (Chapter 502; SB 927): Chapter 502 amends G.S. 130A-294(a)(4)a to exempt landfills for the disposal of demolition debris generated on the same parcel or tract of land on which the landfill is located and that have a disposal area of one acre or less from the permitting requirements generally applicable to landfills. These small demolitions debris landfills must meet the requirements of G.S. 130A-301.2, which was enacted by Chapter 502. G.S. 130A-301.2 provides that a person may not dispose of demolition debris in a landfill to which that section applies unless the Board of Commissioners of the county in which the landfill is proposed to be located approves the landfill. If the landfill is to be located within a city or within the extraterritorial jurisdiction of a city, the Board of Commissioners must consult the governing board of the city before approving the proposed landfill. The Board of Commissioners must approve the landfill if the Board finds that the landfill is located at least one-quarter mile from any other landfill of any type; the perimeter of the landfill is at least 50 feet from the property boundary; the perimeter of the landfill is at least 500 feet from the nearest drinking water well; the waste disposal area of the landfill is at least four feet above the seasonal high ground water table; and the landfill will comply with all applicable federal, State, and local laws, regulations, rules, and ordinances. No waste other than that generated by the demolition of a building or other structure may be disposed of in the landfill, but the demolition debris need not be separated into debris components. The owner or operator of the landfill must close it within 30 days after the demolition is completed or terminated, compact the debris, and cover it with at least two feet compacted earth. The cover of the landfill must have a suitable vegetative cover and must be graded so as to minimize water infiltration, promote proper drainage, and control erosion. No building may be constructed immediately above any part of the landfill, and no construction other than site preparation or foundation work may be commenced on the site until the landfill is closed. G.S. 130A-301.2 includes specific requirements relating to recordation of a survey plat and notice that a demolition debris landfill has been located on the site in the office of the register of deeds. A copy of the notice and survey plat must be filed with the Department of Environment, Health, and Natural Resources along with a $25 filing fee, within 15 days after the notice is recorded. A statement that the land has been used for a demolition debris landfill must be included in any subsequent deed or other instrument of transfer.

Chapter 502 also authorizes DEHNR to grant a variance in the geographic area served by a sanitary landfill, as specified in the permit for the landfill, to allow the disposal of municipal solid waste generated in a county adjacent to the county in which the landfill is located if the variance will result in closure of the landfill on or before 31 December 1996. This does not authorize disposal of waste in excess of the permitted capacity of the landfill. (In practice, only Cabarrus County is likely to be able to obtain a variance under this provision.)

This act became effective upon ratification on 28 July 1995. The provisions relating to demolition debris landfills expire 30 June 2001. The provision relating to a variance in the geographic area served by a sanitary landfill expires on 31 December 1996.

Allocate Roanoke Water/Environmental Technical Corrections (Chapter 504; SB 874): Chapter 504 allocates to the State of North Carolina, as protector of the public interest, all rights in the water in those portions of Kerr Lake and Lake Gaston that are located in the State. Chapter 504 also makes a number

of clarifying, conforming, and technical changes to various laws relating to environment, health, and natural resources. This act became effective upon ratification on 28 July 1995.

Marine Fisheries Provisions (Chapter 507, Sec. 26.5; HB 230, Sec. 26.5): Subsection (a) of Section 26.5 of Chapter 507 extends the moratorium of fishing licenses from June 30, 1996 to June 30, 1997 to allow for implementation of recommendations made to the General Assembly by the Moratorium Steering Committee.

Subsection (b) of Section 26.5 of Chapter 507 amends G.S. 113-154 to allow a shellfish leaseholder who purchases an individual shellfish license to utilize up to two additional persons to take shellfish from the leaseholder's lease without purchasing individual shellfish licenses.

Subsection (c) through (e) of Section 26.5 of Chapter 507 allow the Marine Fisheries Commission to: (1) adopt temporary and permanent rules to restrict the issuance of new land or sell licenses to out-of-state persons when the fishery is controlled by a quota imposed on the State by a federal fisheries management plan, and (2) authorize the use of no more than three crab pots for noncommercial purposes by an unlicensed vessel if the owner of the vessel does not hold any other fisheries licenses and if the crabs are not sold.

Chapter 507 appropriates $25,000 for each of the fiscal years to DEHNR for the Moratorium Steering Committee and $10,000 for each of the fiscal years to the Dept. for the Appeals Panel (considering denials of fisheries licenses under the moratorium).

Water and Sewer Authority Powers (Chapter 511; SB 908): See **LOCAL GOVERNMENT.**

State-Owned Submerged Lands (Chapter 529; SB 52): Chapter 529 establishes a method for obtaining easements for State-owned lands covered by navigable waters that: (1) includes compensation; (2) recognizes the common law rights of waterfront property owners; and (3) balances those rights with the State's obligation to protect public trust rights for all of its citizens.

Section 1 of Chapter 529 recognizes the role generally served by publicly and privately owned piers, docks, wharves, marinas, and other structures located on State-owned lands covered by navigable waters to further public trust purposes. This section also makes it clear that nothing in the Subchapter applies to privately owned lakes or hydroelectric reservoirs.

Section 2 of Chapter 529 amends G.S. 146-12 (Easements in land covered by water) to provide a method for obtaining an easement without requiring approval by the Governor or Council of State. This method includes: (1) a voluntary procedure for existing structures; (2) a mandatory procedure for new structures; (3) a detailed easement application process; (4) an easement term of 50 years with one 50 year renewal; (5) a method for computing the easement purchase payment including a riparian credit; and (6) exemptions for private piers, docks, etc., structures constructed by public utilities, or structures owned by the State.

Section 3 of Chapter 529 creates a "Natural Resources Easement Fund" as a nonreverting fund within the Dept. of Administration. Net proceeds will be transferred annually to the Wildlife Resources Commission and the Marine Fisheries Commission (50% each) for enhancing public trust resources and increasing the public's access to and use of public trust resources.

Chapter 529 becomes effective October 1, 1995 and provides that no rules are necessary to implement the act.

Applicator of Agriculture Waste (Chapter 544; SB 974): Chapter 544 requires a person who performs the land application of waste from swine lagoons on farms with more the 250 swine to be certified in the operation of animal waste management systems. To be certified, a person must complete six hours of instruction on the operation of animal waste management systems, demonstrate competence in the operation of such systems by passing an examination, and pay a $10 fee. The training and certification program will be developed by the Department of Environment, Health, and Natural Resources in cooperation with the Cooperative Extension Service. The authority of DEHNR to adopt rules under this act became effective upon ratification 29 July 1995. All other provisions of this act, including the certification requirements, become effective 1 January 1997.

MAJOR PENDING LEGISLATION

Environmental Audits (HB 817): House Bill 817, which would create a limited privilege for environmental audits and provide civil and criminal immunity if a person voluntarily discloses a violation of environmental laws under certain circumstances, is pending in the Senate Judiciary I Committee.

Solid Waste Amendments (HB 859/SB 891): House Bill 859 and Senate Bill 891, which would amend the Solid Waste Management Act of 1989 in various ways, are both pending in the Senate Agriculture and Environment Committee. (The Solid Waste Management Act of 1989 governs nonhazardous solid waste and is sometimes referred to as "Senate Bill 111".)

Environmental Permit Appeals (HB 893): House Bill 893, which would revise (i) the process by which the Department of Environment, Health, and Natural Resources (DEHNR) reviews applications for permits under the mining, hazardous waste management, water quality, and air quality programs and (ii) administrative and judicial review of decisions by DEHNR on such permit applications is pending in the Senate Judiciary I Committee.

STUDIES

Legislative Research Commission Studies

The 1995 Studies Bill (Chapter 542; HB 898) authorizes the Legislative Research Commission to study the following:

1. Atlantic States Marine Fisheries Compact Withdrawal
2. Cape Fear River Basin
3. Energy Conservation
4. Property Issues
5. Water Issues

Independent Studies, Boards, Etc., Created or Continued

State-Owned Submerged Lands Advisory Committee (Chapter 2; HB 67): Chapter 2 created the State-Owned Submerged Lands Advisory Committee to study management of the private use of State-owned submerged lands, including the history of the use of these Committee trust lands and the appropriate fee structure, if any. The act required the Committee to make its final written report to the General Assembly on or before May 1, 1995. Chapter 2 also directs the Department of Administration not to adopt a permanent schedule of terms and consideration for granting easements in State-owned submerged lands prior to December 1, 1995. Chapter 2 became effective upon ratification, February 23, 1995. (See summary under Chapter 529 for substantive provisions.)

Agricultural Waste, Blue Ribbon Study Commission on (Chapter 542, Part IV; HB 898, Part IV): The Commission is created in the General Assembly to study the following: effect of agricultural waste on groundwater, drinking water, and air quality, and any other environmental impacts of agricultural waste; methods of disposing of and managing agricultural waste currently in use; methods of disposing of and managing agricultural waste that have fewer adverse impacts than those currently in use; the economic impact of agricultural waste in areas where there is a high concentration of agricultural waste; implementation of the recommendations contained in the Swine Odor Task Force reports and any recommendations that result from the federally funded study of the potential for groundwater contamination from animal waste lagoons currently being conducted by DEHNR; general economic impact of agriculture industries on areas with a high concentration of agricultural waste; coordination of regulatory activities and other activities between federal, State, and local government agencies; and identification of beneficial uses of agricultural waste.

The Commission consists of 18 members including six appointed by the Pro Tem, six appointed by the Governor, and six appointed by the Speaker.

The Commission shall submit a final report to the 1996 Regular Session of the 1995 General Assembly prior to its convening.

State Ports Study Commission (Chapter 542, Part XVI; HB 898, Part XVI): The State Ports Study Commission is established and shall study the status, resources and operations of the State's ports, determine whether the ports are serving the needs of exporters and importers, and develop ways in which

industries and the State would benefit from port improvements and modifications.

The Commission consists of 12 members as follows: three Senators appointed by the Pro Tem; three members of the House appointed by the Speaker; two representatives of the State's industries appointed by the Governor; two representatives of the State's industries appointed by the Pro Tem; and two representatives of the State's industries appointed by the Speaker. Appointments shall be made before September 1, 1995. The Pro Tem and Speaker shall appoint cochairs from the General Assembly membership. The first meeting shall be held no later than September 21, 1995.

The Commission shall report to the 1995 General Assembly by May 1, 1996, and terminate upon filing the final report.

State Government Reorganization and Privatization Study Commission (Chapter 542, Part XXI; HB 898, Part XXI): The Commission is created and shall study the following issues: Government reorganization, restructuring, and downsizing; privatization efforts of the State and other jurisdictions and the need for State control of essential services and activities; State aid to private entities, including, but not limited to, the Biotechnology Center and MCNC; private auxiliary entities connected with State programs, including, but not limited to, the North Carolina Zoological Society; privatization of State services and programs, including, but not limited to, the North Carolina Zoological Park, the North Carolina Aquariums, and the State Ports; outsourcing of State information resource development, operations, and maintenance; State expenditures for legal services; outside counsel for the State; boards and commissions consolidation and abolition; and other related issues.

The Commission consists of 12 members as follows; four Senators and two members from the private sector appointed by the Pro Tem, and four House members and two members from the private sector appointed by the Speaker.

The Commission may submit an interim report on or before May 15, 1996, shall submit a final report to the 1997 General Assembly on or before January 15, 1997, and shall terminate upon filing the final report.

Wetlands, Legislative Study Commission on (Chapter 542, Part XXII; HB 898, Part XXII): The Commission is established and shall study the current wetlands regulatory program including the need to develop a statewide wetlands restoration and mitigation program and mitigation bank.

The Commission consists of 16 members as follows: four House members appointed by the Speaker; four Senators appointed by the Pro Tem; two environmentalists, one appointed by the Speaker and one appointed by the Pro Tem; four persons representing the business community, two appointed by the Speaker and two by the Pro Tem; one person representing the commercial fishing industry appointed by the Pro Tem; and one scientist appointed by the Speaker. The Speaker and Pro Tem shall each designate a cochair.

The Commission shall make its final report to the 1996 Regular Session of the 1995 General Assembly.

Referrals to Departments, Agencies, Etc.

The **Department of Environment, Health, and Natural Resources** shall study the following: (1) **State-Funded environmental education** and report to the

Joint Legislative Commission on Governmental Operations by January 15, 1996 (Chapter 324, Sec. 26; HB 229, Sec. 26); (2) whether the State needs **three aquariums** and may report to the Joint Legislative Commission on Governmental Operations on or before April 1, 1996 (Chapter 324, Sec. 26.8; HB 229 Sec. 26.8); (3) **aquatic weed infestation** to report to the Joint Legislative Commission on Governmental Operations by March 15, 1996 (Chapter 507, Sec. 26; HB 230, Sec. 26); and (4) **alternatives for disposal or dredging materials** and report to the Joint Legislative Commission on Governmental Operations by March 1, 1996 (Chapter 507, Sec., 26.7; HB 230, Sec. 26.7).

Referrals to Existing Commissions

Environmental Review Commission shall study:

(1) **Environmental rule making and quasi-judicial functions consolidation into one environmental commission** and shall report to the 1997 General Assembly on or before 15 February 1997 (Chapter 542, Part VII, HB 898).

(2) **Plastics recycling** and shall report to the General Assembly no later than 15 February 1997 (Chapter 542, Part XIX; HB 898).

(3) **Toxic air pollutant control** and shall report to the 1996 Regular Session (Chapter 542, Part XVIII; HB 898).

Seafood and Aquaculture, Joint Legislative Commission on, shall study the use of **agriculture and seafood cooperatives** that can be utilized to enhance and promote economic development through the production of value added products which include raw material resources and related infrastructure weaknesses of rural and coastal counties and may make an interim report to the 1996 Regular Session and shall report to the 1997 General Assembly (Chapter 542, Part VI; HB 898).

HUMAN RESOURCES
(John Young, Linda Attarian, Carolyn Johnson, Sue Floyd)

RATIFIED LEGISLATION

Adult Care Homes (Rest Homes)

Rest Home Regulation (Chapter 280; HB 756): Chapter 280 makes the following changes to the statutes establishing rest home regulations: (1) adds a definition of rest home administrator to the list of definitions for rest homes; (2) amends G.S. 131D-2(b)(1) to provide that a new license shall not be issued for any rest home whose administrator was the administrator for any rest home that has had its license revoked and applies for one full year after revocation; (3) adds a new G.S. 131D-2(b) to clarify that the public records laws apply to all records of the Division of Social Services and any county social services department concerning inspections of rest homes, except for information in the records that is confidential or privileged. The act is effective October 1, 1995.

Resolve Conflict in Temporary Management Statutes for Rest Homes (Chapter 298; HB 378): Chapter 298 resolves a conflict that could arise when a temporary manager is appointed for a rest home and the appointee is a Department of Human Resources employee or official. G.S. 131E-237 says that candidates for temporary manager can be DHR employees. G.S. 108A-47 says that no State/County Special Assistance payment (the major payor for rest home care) can be made to residents in rest homes owned or operated in whole or in part by a list of people including a DHR employee or official. Chapter 298 amends G.S. 108A-47(2) to provide that the limitation on payment for care in rest homes owned or operated by an employee of DHR does not apply if the employee has been appointed as a temporary manager. The act was effective upon ratification, June 20, 1995.

Domiciliary Care Homes Req./Rules (Chapter 449; SB 864): Chapter 449 creates three new sections in Chapter 131D of the General Statutes which provide for domiciliary care home cost reporting requirements, minimum staff training requirements, client assessment, and case management. (Note: Chapter 535, SB 502, in this same section, changes the term "domiciliary care home" to the term "adult care home".) Chapter 449 also provides a means for special assistance reimbursement rates for domiciliary care homes to be based on actual costs. Until now, the special assistance reimbursement rate has been set by the General Assembly without objective cost data. While there have been a number of previous attempts to do so, in 1994 the General Assembly mandated the Department of Human Resources to develop a rate-setting methodology that would accurately reflect actual costs for reimbursing domiciliary care homes. As a result of the mandate, DHR came forth with a proposal that was incorporated into Senate Bill 864.

Chapter 449 repeals G.S. 131D-3 and G.S. 131D-4 and creates new sections as follows:

G.S. 131D-4.1 sets out the legislative intent to ensure the quality of life and services provided for residents of domiciliary care homes.

G.S. 131D-4.2 mandates that licensed domiciliary care facilities receiving State/county special assistance funds and/or Medicaid personal care funds submit cost reports, in accordance with rules adopted by DHR, as follows:

(1) Except for family care homes, domiciliary care homes with 7 to 20 beds shall submit audited reports of actual costs to DHR at least every two years. (Other years, an annual cost report shall be submitted.)

(2) Except for family care homes, domiciliary care homes with 21 beds or more shall submit audited reports of actual costs to DHR annually.

(3) Family care homes shall submit annual cost reports to DHR.

(4) Facilities that do not receive State/county special assistance or Medicaid reimbursement are exempt from reporting.

The first audited report is due March 1, 1996, and would cover the period from January 1, 1995, through September 30, 1995. Thereafter, annual reports are due March 1 for the period October 1 through September 30. DHR is authorized to seek court orders or to revoke licenses of homes to enforce reporting compliance.

G.S. 131D-4.3 provides for the Social Services Commission to adopt rules to implement Chapter 449 and rules to ensure that domiciliary care homes provide to their residents a minimum of the following:

(1) Client assessment and independent case management;

(2) A minimum of 75 hours of training for personal care aides performing heavy care tasks and a minimum of 20 hours of training for all personal care aides. At a minimum, training shall include:

a. Personal care skills;
b. Cognitive, behavioral, and social care;
c. Basic restorative services; and
d. Residents' rights.

Persons who either pass a competency examination developed by DHR, have been employed as personal care aides for a period of time as established by DHR, or meet minimum requirements of a combination of training, testing, and experience as established by DHR shall be exempt from the training requirements of this subdivision;

(3) Monitoring and supervision of residents; and

(4) Oversight and quality of care as stated in G.S. 131D-4.1.

The Department is granted the authority to suspend or revoke licenses of homes to enforce compliance with the rules.

G.S. 143B-153(3) is rewritten deleting the mandate that the Social Services Commission report proposed changes in rules imposing increased staffing requirements in domiciliary homes to the Joint Legislative Commission on Governmental Operations prior to adoption. This reporting requirement is superseded by using the report documentation pursuant to the new G.S. 131D-4.2(f).

DHR is directed to make progress reports on implementation of Chapter 449 to the Study Commission on Aging by October 1, 1995, and March 1, 1996. DHR is further directed to make evaluations and report to the Joint Legislative Commission on Governmental Operations and the Study Commission on Aging by June 30, 1999.

Chapter 449 became effective upon ratification, July 18, 1995.

Adult Care Home Reimbursement Rate (Chapter 507, Sec. 23.10; HB 230, Sec. 23.10): Section 23.10 of Chapter 507 allows the Department of Human Resources to implement the results of a study which would do the following: (1) draw down federal Medicaid funds to pay for existing service-personal care services; (2) from the State and county funds freed up, allow for a 10% rate increase for adult care homes; (3) hire 29 staff positions for DHR to set up monitoring, rate setting and technical assistance services to adult care homes;

(4) provide mental health services to certain adult care homes; and (5) establish State and county matching ratios for the nonfederal share of Medicaid. Additionally, the section caps the county nonfederal share at 15%. The act was effective upon ratification, July 28, 1995.

Domiciliary Care Report (Chapter 507, Sec. 23.11A; HB 230, Sec. 11A): The Secretary of the Department of Human Resources shall report quarterly beginning October 1, 1995 to the Joint Legislative Commission on Governmental Operations on the planning and status of implementation of the following: (1) rate-setting and financing of domiciliary care, including the use of Medicaid funds for personal care services; (2) quality assurance and enhancement of domiciliary care, including case management for residents with special needs, monitoring of domiciliary care facilities and specialized training of direct care staff; and (3) the process for the evaluation of the Domiciliary Care Financing and Quality Assurance Program. The act was effective upon ratification, July 28, 1995.

Special Alzheimer's Unit (Chapter 507, Sec. 23.11B; HB 230, Sec. 23.11B): Chapter 507 created a second Special Alzheimer's Unit with this Unit being placed in Wilson. Section 23.11B requires that this Unit shall serve only those clients who cannot be served by any similar private facility. This act was effective upon ratification, July 28, 1995.

Alzheimer's Association of North Carolina Funds (Chapter 507, Sec. 23.11C; HB 230, Sec. 23.11C): Section 23.11C of Chapter 507 directs $25,000 of 1995-96 nonrecurring funds to each of the four chapters of the Alzheimer's Association of North Carolina. It requires each chapter to submit a plan to the Division of Aging for approval for use of the funds prior to receipt of the funds. The act was effective upon ratification, July 28, 1995.

In-Home Aide Funds (Chapter 507, Sec. 23.11D; HB 230, Sec. 23.11D): Section 23.11D of Chapter 507 appropriates $500,000 each year of the biennium to the Division of Aging to expand in-home and caregiver support services. The act became effective July 1, 1995.

Services to Older Adults (Chapter 507, Sec. 23.11E; HB 230, Sec. 23.11E): Section 23.11E of Chapter 507 appropriates $2,000,000 for FY 1995-96 to the Department of Human Resources for services to older adults, adults with disabilities, at-risk children, youth, and families. The act became effective July 1, 1995.

Veterans Home Reserve (Chapter 507, Sec. 26A; HB 230, Sec. 26A): Section 26A of Chapter 507 appropriates $660,000 for FY 1995-96 to the Veterans Home Reserve to supplement cost of construction. The act became effective July 1, 1995.

Senior Citizens Affairs/Senior Games (Chapter 507, Sec. 28.8; HB 230, Sec. 28.8): Section 28.8 of Chapter 507 establishes a Senior Citizens Affairs position in the Governor's office and appropriates an additional $15,000 each year to North Carolina Senior Games Program. The act became effective July 1, 1995.

Assisted Living Terminology (Chapter 535; SB 502): Chapter 535 establishes the licensing and registration of assisted living facilities. There is created an umbrella term for assisted living which includes the current domiciliary homes (the name would change to adult care homes) and a new type of housing and services called "multi-unit assisted housing with services". The primary difference between adult care homes and multi-unit assisted housing with services (MIHS) is the level of capability of residents allowed to reside in each. Residents in MIHS do not require 24 hour supervision by housing management and must be able to arrange provision of needed personal care services through licensed home care agencies and be competent to understand and sign a lease agreement. Adult care homes (the old domiciliary home category) on the other hand must be able to provide 24 hour supervision and accommodate residents' scheduled and unscheduled personal care needs. There is a specific definition and listing of conditions of persons who cannot be cared for in adult care homes and who must be referred to a medical care facility. Regulation of the two types of assisted living is in line with the level of competency of residents and the services provided. Disclosure statements and registration is required in MIHS settings while licensure is required for adult care homes. The act becomes effective October 1, 1995.

Aging

Remove Sunset on Reverse Mortgages (Chapter 115; HB 97): See **PROPERTY.**

Home Care Commission Repeal (Chapter 179; SB 317): The 1989 General Assembly established in G.S. 143B-181.9A the Committee on Home and Community Care for Older Adults. The purpose was to achieve a coordinated, county-based full service system for older adults. Chapter 179 repeals the statute establishing the Committee. The act was effective upon ratification, June 6, 1995.

Domestic Abuse of Disabled or Elder Adults (Chapter 246, SB 127): Chapter 246 was recommended to the 1995 General Assembly by the North Carolina Study Commission on Aging. It amends Article 8 of Chapter 14 of the General Statutes by creating a new section, G.S. 14-32.3.

New criminal offenses are created in G.S. 14-32.3(a), (b), and (c) for the abuse, neglect, or exploitation, by a caretaker of a disabled or elder adult residing in any residential setting other than a health care facility or residential care facility. Three separate criminal offenses are created with the following elements:

(1) Abuse - Person with malice aforethought, knowingly and willfully assaults, fails to provide medical or hygienic care, or confines or restrains in a place or condition that is cruel or unsafe and results in mental or physical injury to a disabled or elder adult.

(2) Neglect - Person wantonly, recklessly, or with gross negligence fails to provide medical or hygienic care, or confines or restrains in a place or condition that is unsafe and causes mental or physical injury to a disabled or elder adult.

(3) Exploitation - Person knowingly, willfully and with intent to permanently deprive the owner makes false representations, abuses a fiduciary or trust position, or coerces, commands, or threatens a disabled or elder adult

and such action results in the loss of possession and control of property or money.

Six different levels of punishment, depending on the nature of the offense and the extent of the injury, are provided as follows:

(1) Class F felony - abuse with serious injury.
(2) Class G felony - neglect with serious injury.
(3) Class H felony - abuse with other than serious injury.
(4) Class H felony - exploitation with loss of more than $2,000.
(Note: Under G.S. 14-72 larceny of more than $1,000 is a Class H felony.)
(5) Class I felony - neglect with other than serious injury.
(6) Class 1 misdemeanor - exploitation with loss of $2,000 or less.

G.S. 14-32.3(d) defines a disabled or elder adult as a person age 18 or over who is physically or mentally incapacitated, or who is age 60 or older who is not able to provide for services necessary to safeguard their rights or resources or to maintain their well-being.

Chapter 246 becomes effective December 1, 1995, and G.S. 14-32.3 applies to offenses committed on or after that date.

Older Adults Update (Chapter 253; SB 318): The 1989 General Assembly required the Division of Aging within the Department of Human Resources to submit an aging plan by March 1, every odd-numbered year to the General Assembly. Chapter 253 amends G.S. 143B-181.1A(a) to specify that the Division of Aging is to submit the plan by March 1 every other odd-numbered year beginning March 1, 1995. The act was effective upon ratification, June 15, 1995.

Changes in Long Term Care Ombudsman Program (Chapter 254; SB 334): Chapter 254 makes the following changes in the Long Term Care Ombudsman so that it conforms with the 1992 amendments to the Older Americans Act of 1965, as amended, 42 U.S.C. Sec. 3001 et. seq.: (1) amends the provisions pertaining to the disclosure of the identity of a resident or complainant to make such disclosures possible only as permitted under the Older Americans Act; and (2) amends the provisions pertaining to access to patient records of residents by deleting references specifying ombudsman access to a resident's records and substituting general language referring to requirements under the Older Americans Act. The act became effective July 1, 1995.

State Veterans Home Program (Chapter 346; HB 437): Chapter 346 provides for the establishment of State veterans homes under the authority and control of the Division of Veterans Affairs of the Department of Administration with the following provisions: (1) these homes would be exempt from certificate of need (2) the North Carolina Veterans Trust Fund is established; (3) DVA is authorized to apply for and receive federal funds; (4) DVA is authorized to contract for operation of the homes; (5) a veteran must be the administrator for the program; (6) eligibility for admission is specified; (7) residents are required to pay the costs for residence; (8) annual reports are to be made to the Secretary of the Department of Administration; and (9) the North Carolina Veteran Trust Fund is added to the list in G.S. 147-69.2(a) that provides for how the State Treasurer is to invest special funds. The act became effective upon ratification, June 29, 1995.

Child Support

Child Support Enforcement (Chapter 538; HB 168): See **CHILDREN AND FAMILIES.**

Child Support Collection (Chapter 360, Sec. 4; HB 994, Sec. 4): See **CHILDREN AND FAMILIES.**

Child Support Record Keeping (Chapter 444; SB 258): See **CHILDREN AND FAMILIES.**

Grandparent Child Support (Chapter 518; SB 501): See **CHILDREN AND FAMILIES.**

Disabled

Disabled Hunting/Fishing Exemptions (Chapter 62; HB 331): See AGRICULTURE.

Purchases for Blind/Disabled (Chapter 256; SB 554): The Divisions of Vocational Rehabilitation and Services for the Blind within the Department of Human Resources assist clients with disabilities find jobs which may include purchases of equipment necessary to enable the client to perform the job. When purchasing this equipment, the Secretary of the Department of Administration currently has the authority to consider vocational rehabilitation concerns when taking bids on a contract. The current process is time consuming and cumbersome and may delay the purchase of equipment needed for the person to readily assume the job. Chapter 256 provides that the rules the Secretary of Administration adopts concerning the purchase and contract of goods and services must include special provisions for goods and services purchased for people with disabilities. These special provisions must include involving the individual in choosing goods and service providers and giving certain vendors priority based on equipment compatibility, training expertise, service guarantees, and convenience of the vendor's location for the individual with the disability. The bill becomes effective October 1, 1995, and applies to rules for purchases made on or after that date.

Purchases from Blind/Disabled (Chapter 265; SB 519): Chapter 265 allows, but does not require, State agencies, local governments, and other governmental agencies to purchase goods and services directly from nonprofit work centers for the blind and severely disabled without soliciting bids. State agencies, public schools, community colleges, and universities, all of which are currently under the State's purchasing system may buy goods directly under the following conditions: (1) goods must not be available on a State term contract; (2) the cost of the goods must not exceed the agency's "delegation limit"; and (3) the goods must be at a price and quality determined suitable by the agency. Cities, counties, hospital authorities, and other types of political subdivisions whose purchasing activities are governed by Article 8 of Chapter 143 of the General Statutes may set their own limitations on how and when they will purchase from the nonprofit work centers. The Department of Administration will monitor, track, and report on participation by nonprofit work centers in State Contracts. The act becomes effective January 1, 1996,

applies to contracts for which bids or offers are solicited on or after that date, and expires January 1, 2000.

Assistance Dog Law Change (Chapter 276; HB 336): G.S. 168-3 allows the mobility impaired, visually impaired and the hearing impaired person to be accompanied by an assistance dog when they use common carriers, airplanes, motor vehicles, railroad trains, motor buses, streetcars, boats or other public conveyances or modes of transportation, hotels, lodging places, places of public accommodations, amusements or resorts to which the general public is invited. Under this statute, the trainer of the assistance dog is not granted permission to take the dog to these places. Therefore, Chapter 277 would allow the trainer, during training sessions, to take the assistance dog to those places listed in G.S. 168-3. The act is effective October 1, 1995.

Deaf Interpreter Compensation Change (Chapter 277; HB 350): The 1981 General Assembly expanded entitlement of deaf persons to interpreters in certain judicial, executive, legislative and administrative proceedings. Since that time, practice and the Americans with Disabilities Act required some modifications. Therefore Chapter 277 would: (1) provide that the fee paid to an interpreter for the deaf should include, in addition to the actual time spent performing interpretation services, and time spent waiting, that the fee should also include the time reserved by the courts for the assignment; (2) delete the provision that the Department of Human Resources would reimburse State administrative agencies that needed and paid for the deaf interpreters; and (3) delete a provision regarding reimbursement by DHR to cities and counties for interpreters. The act is effective July 1, 1995.

Vocational Rehabilitation Services Act (Chapter 403; SB 423): The Vocational Rehabilitation Program and the Vocational Rehabilitation Division within the Department of Human Resources has been operational primarily under federal statutes and rules since its inception many years ago. To prepare for possible new federal directions, Chapter 403 allows for continued participation in the federal program and also allows for program aspects that are reflective of State needs and priorities. The act does the following: (1) provides a policy statement indicating that individuals with physical and mental disabilities should be able to participate in activities, including gainful employment, that are available to all citizens of the State; (2) lists the types of services to be provided within available resources; (3) grants rule-making authority; (4) specifies the responsibility of the Secretary of the Department of Human Resources; and (5) reiterates the current requirements regarding cooperation with the Federal Rehabilitation Services Administration. The act became effective July 15, 1995.

Health

OB/GYN Access (Chapter 63; HB 773): See **INSURANCE**.

Health Law Changes (Chapter 123; SB 506): Chapter 123 accommodates recent reorganizations and other changes in the Public Health Code by making the following changes: (1) repeals DHR's responsibility for the Mosquito Control Program; (2) deletes references to local grade A milk sanitation programs; (3) allows the State Health Director to be represented by a designee

on the Coastal Resources Advisory Council; (4) changes one of the Commission on Anatomy slots from "a representative of the State Board of Mortuary Science" to "one representative from the field of mortuary science"; (5) corrects citations and program nomenclature in State and local asbestos abatement and air pollution programs; (6) requires parents to obtain the pre-kindergarten health assessment no more than 12 months prior to the date of school entry; (7) consolidates into one section of the Code the entire statutory authority for the sanitary inspections of all food handling facilities. A new substantive addition to the Code requires that when final disposition of a human body entails interment, the top of the uppermost part of the burial vault or other encasement must be a minimum of 18 inches below ground. The act was effective upon ratification, May 30, 1995.

Health Workers Liability (Chapter 228; SB 449): Chapter 228 adds an additional subsection to G.S. 130A-144 which grants immunity from civil or criminal liability to anyone who assists in the investigation by the State Health Director of the risk of transmission of HIV or Hepatitis B by an infected health care worker. This same immunity would apply to people who serve on an expert panel appointed by the State Health Director to evaluate these risks. The immunity granted does not include immunity for violations of G.S. 130A-143, governing the confidentiality of AIDS patient's medical records. The act was effective upon ratification, June 13, 1995.

Tobacco Sales to Minors (Chapter 241; HB 766): See **CHILDREN AND FAMILIES**.

"Willie M." Changes (Chapter 249; SB 775): The legislation amends Chapter 122C of the General Statutes to provide for the determination of eligibility for "eligible assaultive and violent children" and to ensure that such children are provided services. The legislation also establishes the procedures for contested case hearings for an eligible assaultive and violent child and his or her parent, advocate or legal guardian for the purposes of appealing the denial of eligibility.

Removal of Health Board Member (Chapter 264; SB 505): Chapter 264 amends G.S. 130A-35 (single-county board of health) and 130A-37 (district board of health) to specify that a member may be removed for the following reasons: (1) commission of a felony or other crime involving moral turpitude; (2) violation of a State law governing conflict of interest; (3) violation of a written policy adopted by the county board of commissioners; (4) habitual failure to attend meetings; (5) conduct that tends to bring the office into disrepute; and (6) failure to maintain qualifications for appointment. A board member may be removed only after the member has been given written notice of the basis for removal and has had the opportunity to respond. The act is effective October 1, 1995 and applies to acts occurring after that date.

Monitor Birth Defects (Chapter 268; SB 818) See **CHILDREN AND FAMILIES**.

Codify Institute of Medicine (Chapter 297; HB 227): The 1983 General Assembly chartered and incorporated the Institute of Medicine pursuant to the authority granted in Article VIII, Section 1 of the North Carolina Constitution. This language was placed in Chapter 923 of the 1983 Session Laws. Chapter

297 codifies this language through G.S. 90-470. The act became effective upon ratification, June 20, 1995.

Vital Records Changes-1 (Chapter 311; SB 632) and **Vital Records Changes-2** (Chapter 428; HB 844): G.S. 130A-26 makes various violations of the vital records law general misdemeanors. Chapter 311 repeals G.S. 130A-26 and replaces it with a rewritten list of violations constituting Class 1 misdemeanors or Class I felonies. Chapter 428 amends the birth registration provision to require that registration occur within five instead of ten days. Chapter 428 also clarifies that all "records containing privileged patient medical information" are confidential. Both Chapters are effective October 1, 1995.

Health Care Collaborative Practice (Chapter 382, HB 774): Chapter 382 amends the Professional Corporation Act, Chapter 55B of the General Statutes. G.S. 55B-14 is amended to allow that a professional corporation may be formed among the following:

(1) A licensed psychologist and a physician practicing psychiatry to render psychotherapeutic and related services;

(2) Any combination of a registered nurse, nurse practitioner, certified clinical specialist in psychiatric and mental health nursing, certified nurse midwife, and certified nurse anesthetist, to render nursing and related services that the respective stockholders are licensed, certified, or otherwise approved to provide;

(3) A physician and a physician assistant who is licensed, registered, or otherwise certified under Chapter 90 of the General Statutes to render medical and related services;

(4) A physician practicing psychiatry, or a licensed psychologist, or both, and a certified clinical specialist in psychiatric and mental health nursing to render psychotherapeutic and related services that the respective stockholders are licensed, certified, or otherwise approved to provide;

(5) A physician and any combination of a nurse practitioner, certified clinical specialist in psychiatric and mental health nursing, or certified nurse midwife, registered or otherwise certified under Chapter 90 of the General Statutes, to render medical and related services that the respective stockholders are licensed, certified, or otherwise approved to provide; and

(6) A physician practicing anesthesiology or surgery and a certified nurse anesthetist to render anesthesia and related medical services that the respective stockholders are licensed, certified, or otherwise approved to provide.

G.S. 55B-2(6) is amended to include in the definition of "professional service" any type of personal or professional service provided by a clinical social worker certified under G.S. 90B-3. The act is effective October 1, 1995.

Physician Cooperation Act (Chapter 395; SB 396): Chapter 395 would allow physicians to seek a certificate of public advantage from the Department of Human Resources, approved by the Attorney General's office, to be permitted to cooperate with other health care providers in ways that otherwise may violate State or federal antitrust laws. The issuance of the certificate would grant protection from prosecution under State antitrust law, and is intended to create immunity under federal law through this State regulatory program. The General Assembly enacted a similar act for hospitals in 1993 as a means of encouraging cooperation among health care providers and increasing and

improving health care efficiency and effectiveness. There is established a schedule of filing fees based on the cost of the project for which an application or periodic report is made. The application filing fee cannot exceed $15,000. The periodic report filing fee cannot exceed $2,500. The act is effective October 1, 1995.

Health Professional Licensing Board Reporting (Chapter 507, Sec. 23A.4; HB 230, Sec. 23A.4): Section 23A.4 of Chapter 507 requires every licensing board having authority to license physicians, physician assistants, nurse practitioners, and nurse midwives to collect the following information: (1) area of specialty; (2) address of all locations where the licensee practices; and (3) other information the boards in consultation with the North Carolina Health Care Reform Commission deems relevant including social security numbers for research only in matching other data. The stated purpose is to assist the State in tracking the availability of health care providers to determine which areas of the State suffer inequitable access to specific types of health services and to anticipate future health care shortages. The act was effective upon ratification, July 28, 1995.

Primary Care Providers (Chapter 507, Sec. 23A.5; HB 230, Sec. 23A.5): See **EDUCATION**.

Food Sanitation Funds (Chapter 507, Sec. 26.8; HB 230, Sec 26.8): Of the funds appropriated to the Department of Environment, Health and Natural Resources, Section 26.8 of Chapter 507 allocates $100,000 each year of the biennium for conferences to provide continuing education and training for environmental health specialists. This section also makes the following changes to the statutes regulating food and lodging facilities: (1) the sanitation rules governing the grading of food and lodging facilities covered in G.S. 130A-248 shall be written in a manner that promotes consistency in both the interpretation and application of the grading system; (2) restricts the power of a local board of health to make more stringent regulations than the State governing the operation of food and lodging establishments listed in Part 6 of Article 8 of G.S. 130A and defined in G.S. 130A-247(1), (Prior law allowed for State preemption only on grading and permitting); and (3) creates a definition of "limited food service establishment" which is an establishment that prepares and serves food in conjunction with amateur athletic events. The Commission for Health Services is to establish rules governing the sanitation of these establishments. In adopting the rules, the Commission shall not limit the number of days that a limited food service establishment may operate. On or after January 1, 1997, limited food service establishment permits shall be issued only to political subdivisions of the State, establishments operated by volunteers that prepare or serve food in conjunction with amateur athletic events, or for establishments operated by organizations that are exempt from federal income tax under section 501(c)(3) or section 501(c)(4) of the Internal Revenue Code. Establishments that do not meet the above requirements may continue to operate as a limited food service establishment in accordance with Commission rules for not more than 60 days per year until January 1, 1997. This act was effective upon ratification, July 28, 1995.

Cancer Control Commission Funds (Chapter 526; HB 218): Chapter 526 requires that of the funds appropriated to the Department of Environment, Health and Natural Resources, $50,000 for FY 1995-96 and $50,000 for 1996-

97 shall be allocated to create a position to provide staff support for the Advisory Committee of Cancer Coordination and Control. This Advisory Committee was created by the 1993 General Assembly at the request of a Legislative Research Commission study. The act became effective July 1, 1995.

Hospitals

Public Hospital Contractor Records (Chapter 99; SB 771): Chapter 99 amends G.S. 131E-97.1 by adding a new subsection limiting the application of the public records laws to independent contractors of public hospitals and public hospitals that have been sold to independent nonprofit corporations. Chapter 99 creates the following limitations: (1) information regarding qualifications, competence, performance, character fitness or condition of appointment is not a public record; (2) information regarding hearings or investigations of complaints, charges, or grievances is not a public record; (3) final action making an appointment, discharge, or removal by a public hospital (public hospitals sold to nonprofit corporations are not mentioned) must be in open meeting unless otherwise exempted by law; and (4) the name, age, date of original contract, beginning and ending dates, position title, and total compensation of current and former positions, as well as the date of most recent promotion, demotion, transfer, suspension, separation or other change in professional classification of an independent health care provider to a public hospital (status of such information with regard to a public hospital which has been sold to a nonprofit corporation is not indicated) is a matter of public record. The act became effective upon ratification, May 23, 1995.

Redefine Cardiac Rehabilitation Program (Chapter 182; SB 890): Chapter 182 amends the Cardiac Rehabilitation Certification Program in the following ways: (1) amends the "purpose" section by striking the phrase "out of hospital" and inserting "outpatient"; and (2) amends the definition of cardiac rehabilitation program by striking the phrase "clients in environments other than hospitals" and inserting in its place the word "outpatients". The act becomes effective January 1, 1996.

Hospital Cooperation Act Amended (Chapter 205; SB 886): The 1993 General Assembly, as part of health care reform, enacted the Hospital Cooperation Act. The purpose was to encourage cooperation among health care providers, increase and improve health care efficiency and effectiveness, and grant health care providers who enter into cooperative agreements protection from prosecution under State and federal antitrust laws through a State regulatory program. Under the 1993 provisions, the permissible type of cooperative agreements that health care providers could enter into did not include mergers or collaborative partnerships. Chapter 205 amends the Hospital Cooperation Act by expanding the definition of "cooperative agreement". The 1993 Act and the 1995 amendments now offer a mechanism for antitrust immunity to hospitals that want to merge, form a partnership, or joint venture with another hospital or person. An additional fee can be charged if the Department of Human Resources and the Attorney General's office determine that consultants are needed to complete a review of the application. The act is effective October 1, 1995.

Licensing and Certification

Nursing Home Administrator's Board (Chapter 86; HB 204): Chapter 86 changes the composition of the State Board of Examiners for Nursing Home Administrators. Current law requires that three of the members of the Board be licensed nursing home administrators. The change requires that at least one of these three be employed by a nonprofit nursing home. Any member of the Board must be removed on certification by the Board to the Governor that a member no longer satisfies the act's criteria for appointment. The act is effective January 1, 1996.

Change Medical Board Name (Chapter 94; SB 1017): Chapter 94 changes the name of the Board of Medical Examiners of the State of North Carolina to the North Carolina Medical Board. The act became effective July 1, 1995.

Reasons to Discipline Chiropractors (Chapter 188; HB 829): Chapter 188 makes the following changes in the practice of chiropractic as administered by the Board of Chiropractic Examiners: (1) restates the existing grounds that the Board can apply to take disciplinary action against a chiropractor and adds four new grounds including physical, mental or emotional infirmities, violating the extent and limitation of the license, concealing information from the Board or failing to respond to Board inquiries, and failure to comply with final decisions of the Board; (2) clarifies that further treatment arising from a response to an ad for free or reduced rate services must be in writing signed by the patient and chiropractor and allows that the patient has three days to change his mind about further treatment after responding to free or reduced rate ad; and (3) changes the method for determining the standards of acceptable care for chiropractors from "the usual and customary methods taught in recognized chiropractic colleges" to the standards adopted by the Board, or the standards adopted by a majority of the recognized chiropractic colleges, if the Board has not adopted a standard in a particular area. The act is effective October 1, 1995.

Amend the Definition of Podiatry (Chapter 248; SB 399): Chapter 248 expands a podiatrist's area of treatment from the foot to the foot and ankle and their related soft tissue structures to the level of the myotendinous junction. A podiatrist is now permitted, under certain restrictions, to perform surgery on the ankle, to amputate toes and other parts of the foot, and to surgically correct clubfoot deformities in adults and children who are older than two years. The act became effective upon ratification, June 14, 1995.

Social Workers Board Fees Update (Chapter 344; SB 642): Chapter 344 deletes the current $100 fee for examination, and in its place, authorizes the Board to charge the cost of the national written exam plus an additional fee not to exceed $50. The act became effective July 1, 1995.

Barber School Instructors (Chapter 397; HB 85): Chapter 397 amends the provision of the barber licensing statute regulating barber schools to make an exception in the minimum number of instructors required for nonprofit educational institutions supported by a State university or community college. Such institutions are now only required to have one instructor for every 20 enrolled students. However, the instructor may not conduct classroom lectures

and study periods or lectures and demonstrations on practical work at the same time the instructor is providing supervised practice in barbering.

Amend the Medical Practice Act (Chapter 405; SB 653): Chapter 405 makes the following substantive amendments to Chapter 90 of the General Statutes:

1. G.S. 90-14(a)(11); The Chapter permits the Board to order an examination "upon reasonable grounds" when it suspects a lack of professional competence. The prior statute allowed the Board to require a physician to sit for an examination to test the physician's competence only after the Board had made a determination of incompetence.
2. G.S. 90-14(a)(12); The Chapter permits the Board to discipline a physician for any type of exploitation of a patient resulting from the provision of services or from the promotion of the sale of drugs, devices, appliances or goods for a patient.
3. G.S. 90-14(a)(13); The Chapter permits the Board to pursue disciplinary action against a physician based on any disciplinary ruling, (including having a license to practice medicine or the authority to practice medicine denied, revoked, suspended, restricted, or acted against) in any other jurisdiction. Prior to the enactment of the legislation, the Board could take action based on the disciplinary action of another state only if that action involved a suspension or revocation.
4. The Chapter amends G.S. 90-14 to prohibit a physician whose license has been revoked from having the license restored for two years following the date of revocation. Prior to the enactment of the legislation, the Board had the discretion to restore a revoked license at any time after it had been revoked.
5. G.S. 90-14.3 is amended to allow the Board to serve a physician by certified mail in addition to registered mail and permits the Board to serve the physician at the last known address shown on the records of the Board. A return receipt showing failure to locate the addressee at the last known address as shown by the records of the Board will also be deemed service of notice to the addressee. Under prior law, notice was deemed served only upon the return receipt showing delivery or refusal of the notice to the addressee.
6. G.S. 90-14.9 is amended to provide that before a stay of a Board's action can be obtained on appeal, the Board must be given notice and an opportunity to be heard on the matter. G.S. 90-14.11 is amended to provide the Board a similar right to notice and opportunity to be heard on the issue of whether a stay should be granted to the disciplined party when a decision of the superior court is appealed.
7. G.S. 90-14.13 is amended to provide notice to the Board of changes in privileges that physicians hold in health care institutions and to provide that the Board receive notice of any settlements of malpractice claims. The prior law only required reporting of changes in privilege status by hospitals. The Chapter requires the reporting of changes in privilege status by Health Maintenance Organizations and all other provider organizations which credential physicians. The second change in this section requires physicians who do not possess professional liability insurance to notify the Board of settlements of malpractice actions so that the information the Board maintains concerning malpractice settlements can be complete. The act is effective October 1, 1995.

Ambulance Provider License (Chapter 413, HB 447): Chapter 413 amends Article 7 of Chapter 131E, Regulation of Ambulance Services, by creating a new section, G.S. 131E-155.1, which provides for the licensing of ambulance providers by the Department of Human Resources. Providers must apply for and be granted a valid ambulance provider license before engaging in the business of transporting or treating patients on the roadways, waterways, or airways in the State. The Department is authorized to establish procedures for the application and renewal process and to establish a license validation period for not less than four years. The Medical Care Commission is directed to adopt rules pertaining to the licensing requirements. The Department is given the authority to deny, suspend, amend, or revoke a license when there has been substantial failure to comply with requirements and rules. Operating as a provider without a valid license is a Class 3 misdemeanor. Chapter 413 becomes effective December 1, 1995, and applies to licenses required on or after that date and to offenses committed on or after that date. The act is effective December 1, 1995.

Medicaid

Medicaid Fraud Change (Chapter 317; SB 308): Chapter 317 makes it unlawful for any person knowingly, willingly, and with intent to defraud, to obtain or attempt to obtain, or assist, aid, or abet another person to obtain money services, or any other thing of value to which the person is not entitled as a Medicaid recipient. It is also unlawful to misuse a Medicaid card, including the sale, alteration, or lending of the card to others for services and the use of the card by someone other than the recipient. A violation is a Class I felony for Medicaid assistance of more than $400 and a Class 1 misdemeanor for Medicaid assistance of $400 or less. The act is effective December 1, 1995.

Mental Health

Mental Health Insurance Coverage (Chapter 157; HB 958): See INSURANCE.

Drug Schedule Additions (Chapter 186; HB 409): Chapter 186 amends the controlled substances law to bring North Carolina's schedule of controlled substances in line with the current federal law, by adding new drugs to Schedules I and II. With few exceptions, NC's Controlled Substances Act parallels that of the Federal Controlled Substances Act. The act becomes effective October 1, 1995.

Mental Health Area Authorities (Chapter 305; HB 831): Chapter 305 amends Chapter 122C to expand the kinds of facilities that may be acquired, altered, or improved under G.S. 122C-147 to include facilities that provide outpatient treatment. Similarly, under prior law, the area authority could contract only with private non-profit corporations, and Chapter 305 amends this provision to permit the local area mental health authority to contract with governmental entities that operate facilities in addition to private nonprofit corporations. The Chapter allows real property to be purchased for use by

local area mental health authorities with specific capital funds appropriated by the General Assembly. The act became effective July 1, 1995.

Discharge of Minors/Notification (Chapter 336; HB 848): See **CHILDREN AND FAMILIES.**

Thomas S. **Death Review** (Chapter 498; SB 742): Chapter 498 provides statutory authority to the Secretary of Human Resources to investigate the circumstances leading to the death of any class member identified in Thomas S. et al. vs. Britt, who was not residing in a State mental health care facility at the time of the member's death. The Secretary is to adopt rules to allow for such investigations and to analyze any unusual circumstances relating to the death. The act became effective on July 27, 1995 and applies to deaths occurring on or after that date.

Blue Ribbon Task Force on Mental Health System (Chapter 507, Sec. 8.1; HB 230, Sec. 8.1): Section 8.1 of Chapter 507 provides that in the event the Mental Health Studies Commission was not reauthorized during the 1995 General Assembly, a Blue Ribbon Task Force shall be established on the Mental Health System. However, the Task Force will not be established because the Mental Health Studies Commission was reauthorized during the 1995 General Assembly pursuant to Part 8 of Chapter 548, HB 898.

Exemption From Licensure and Certificate of Need (Chapter 507, Sec. 19.9; HB 230, Sec. 19.9): Section 19.9 of Chapter 507 exempts inpatient chemical dependency or substance abuse facilities from both the mental health licensure statutes under G.S. 122C of the General Statutes and the certificate of need requirements pursuant to Article 9 of Chapter 131E of the General Statutes if those facilities provide services exclusively to inmates of the Department of Correction. If one of these facilities provides services to both the public and to inmates, the portion of the facility that serves inmates shall be exempt from licensure and certificate of need requirements. These exemptions apply to existing and future facilities. The act was effective upon ratification, July 28, 1995.

Area Authority Accountability/State Action (Chap. 507, Sec. 23.2; HB 230, Sec. 23.2): Section 23.2 of Chapter 507 allows the Secretary of Human Resources to suspend funding to any mental health area authority with a revenue or expenditure budget variance of 10% or a significant deterioration in the fund balance of the authority's general fund. In the event that funding is suspended, the Department of Human Resources may make direct payments, on an interim basis, to a contract provider of the area authority to avoid the disruption of direct services to clients.

At any time that the Secretary determines that an area authority is in imminent danger of failing financially and of failing to provide direct services to clients, the Secretary may assume control of the financial affairs of the area authority and divest the area authority of its financial powers and transfer those powers to an appointed administrator. County funding of the area authority shall continue when the State has assumed financial control.

The Department must develop and implement, in conjunction with the area authority, a corrective plan of action when the area authority's funding is suspended or when the State assumes financial control of the area authority. In the event that an area authority fails to comply with the corrective plan of

action, the Secretary must appoint a caretaker administrator or a caretaker board of directors or both. The Secretary may assign any powers and duties to the caretaker administrator as it deems necessary and appropriate to continue to provide direct services to clients. After a caretaker has been appointed, the General Assembly shall consider at its next regular session the future governance of the area authority. The act became effective upon ratification, July 28, 1995.

Area Authority Board Members' Training (Chap. 507, Sec. 23.3; HB 230, Sec. 23.3): Section 23.3 of Chapter 507 amends Part 2 of Article 4 of Chapter 122C of the General Statutes by inserting a provision requiring all members of an area authority's board of directors to receive an initial orientation on the board members' responsibilities, and training in fiscal management, budget development, and fiscal accountability. The training is to be provided by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services. A board member's refusal to participate in the training and orientation could be grounds for the board member's removal from the board.

Confidential Client Information Sharing Clarified (Chap. 507, Sec. 23.4; HB 230, Sec. 23.4): Section 23.24 of Chapter 507 amends G.S. 122C-53(i) to permit a facility to disclose confidential information to an attorney only at the request of either an adult client who has not been adjudicated incompetent, or the legally responsible person for any other client.

Miscellaneous

Clarify Volunteer EMS Liability (Chapter 85; SB 118): Chapter 85 amends G.S. 90-21.14 to clarify that a medical or health care provider who serves as medical director of an EMS agency without compensation and volunteer members of rescue squads will not be liable for damages for injuries or death connected with the rendering of that service, unless the injury or death is caused by gross negligence, wanton conduct, or intentional wrongdoing. Previously, the statute protected only volunteers at local health departments and nonprofit community health centers and those treating patients referred by such entities. Chapter 85 became effective May 17, 1995, and applies to services rendered on or after that date.

Youth Employment Statistics (Chap. 214; SB 560): See **CHILDREN AND FAMILIES**.

Conform Definition of Abuse (Chap. 255; SB 416): See **CHILDREN AND FAMILIES**.

Identify Dead Bodies (Chapter 312; SB 651): Chapter 312 would require the funeral director or other person responsible for the final disposition of a body to affix permanent identification to either the ankle or wrist. If the body is cremated, the identification must be on the inside of the vessel. The identification must include the name, date of death, social security number, county and state of death, and site of interment. The act is effective October 1, 1995.

Limitation on State Abortion Fund (Chap. 324, Sec. 23.27; HB 229, Sec. 23.27): Section 23.27 of Chapter 324, of the 1995 General Session Laws, directs that no State funds in excess of $50,000 each fiscal year of the biennium shall be expended for the State Abortion Fund's funding of the performance of abortions. The State Abortion Fund is to be used to fund abortions only to terminate pregnancies resulting from cases of rape or incest, or to terminate pregnancies that endanger the life of the mother. The eligibility for services of the State Abortion Fund is to be limited to women whose incomes are below the federal poverty level or who are eligible for Medicaid. This eligibility provision was subsequently amended by Section 23.8A of Chapter 507, of the 1995 General Session Laws, by clarifying that eligibility for services of the State Abortion Fund is to be limited to women whose incomes are below the federal poverty level and who are not eligible for Medicaid.

Home Health Agencies Service Area Restrictions (Chapter 359; SB 1021): Chapter 359 restricts home health agencies from providing home health services that are reimbursed by Medicare and Medicaid to patients outside the service area designated in the agency's certificate of need. Home health agencies shall be allowed to provide such services to private patients outside their service area. The service restriction expires at such time that the Division of Facility Services completes and implements the current rewrite of home care licensure rules, but the expiration shall be no earlier than February 1, 1996, and no later than June 30, 1996.

Nursing Home Requirements (Chapter 396; SB 478): Chapter 396 prevents a nursing home from receiving a monetary fine under both federal and State law for the same violation. The bill provides that the Department of Human Resources cannot assess an administrative penalty as established in State statute against a nursing home if a civil monetary penalty has already been assessed under federal laws for the same violation. This act became effective upon ratification, July 10, 1995.

Medical Care Saving Plan (Chapter 418; SB 525): Chapter 418 requires the State Health Director to prepare a medical and health care plan to provide incentives for employees whose employers pay all or part of their health care benefits costs to forego unnecessary medical treatment and to shop around for necessary treatment. The plan would allow employers to set up an account for each employee to act as an allowance for health care. It would require employers to keep a percentage of the amount they would spend for health care to purchase or self-fund health benefits for each employee, to pay any costs above the amount in the account. Any unspent amount in the account would belong to the employee at the end of the year, with half of the interest going to the employee and half to the State to fund indigent care. Money in the account and money spent for health care would not be taxed by the State. Employers would receive State tax credits. The State Health Director and the Insurance Commissioner must work on a plan, with the help of DHR and DEHNR, and make a final report to the 1996 General Assembly. This act became effective upon ratification, July 11, 1995.

Caregiver Criminal Checks (Chap. 453; HB 807): Chapter 453 amends G.S.114-19.3, Criminal record checks of personnel of hospitals, nursing homes, and area mental health, developmental disabilities, and substance abuse authorities and their contact agencies, to add the following agencies to those agencies for which a criminal record check of personnel may be made:

1. Domiciliary care facilities,
2. Home care agencies or hospices,
3. Child placing agencies,
4. Residential care facilities,
5. Licensed child day care facilities and registered and nonregistered child day care homes,
6. Any other organization or corporation, whether for profit or nonprofit, that provides direct care or services to children, the sick, the disabled, or the elderly.

The Department of Justice is further authorized to provide a criminal record check of a volunteer who provides direct care on behalf of the organization or corporation, if the volunteer consents to the check. The act is effective October 1, 1995, and applies to checks conducted after that date.

ADAP Task Force (Chapter 481; SB 776): Chapter 481 requires the Secretary of the Department of Human Resources to establish within the Office of the Secretary a special task force to determine a minimum reimbursement rate for Adult Developmental Activity Programs (ADAP). In addition, this task force shall review the current funding stream to ensure that it is the most effective way possible to provide day services to adults with developmental disabilities, including which division within the Department is most appropriate. The task force shall report to the Mental Health Study Commission in time for their results to be included in the Mental Health Study Commission's Report to the 1995 General Assembly, Regular Session 1996. At a minimum, the task force shall consist of: (1) two representatives from community rehabilitation programs; (2) a representative of DHR; (3) a representative from the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services; (4) a representative from the Division of Vocational Rehabilitation; and (5) a representative from the Association for Retarded Citizens. The act is effective July 26, 1995.

Mandate Criminal History Checks of Child Day Care Providers and Study Use of Central Registry on Child Abuse and Neglect (Chap. 507, Sec. 23.25; HB 230, Sec. 23.25) See **CHILDREN AND FAMILIES.**

Mandate Criminal History Checks on All Foster Parents in Licensed Family Foster Homes (Chap. 507, Sec. 23.26; HB 230, Sec. 23.26) See **CHILDREN AND FAMILIES.**

MAJOR PENDING LEGISLATION

Adult Care Homes (Rest Homes)

Repeal Property Limitations for State/County Special Assistance (HB 380): In 1994 the General Assembly chose a federal option that allowed all Supplemental Security Income (SSI) recipients to be automatically eligible for Medicaid. This change affected some other State programs tied to SSI rules

such as the State/County Special Assistance Program (SA) which is the program that provides funding for rest homes. Therefore, the purpose of House Bill 380 is to conform the rules for the SA program to the income and resource rules for SSI. G.S. 108A-41, which limits to $12,000 the amount that can be excluded from SA eligibility determination, would be repealed to be consistent with and conform to SSI law.

Rest Home Penalty/Patient Left Alone (HB 744): The House Committee Substitute for HB 744 would impose an administrative penalty on any rest home if, during inspection, it was found that a resident was left alone with no staff in attendance in the facility in which the resident resides. The penalty shall be $1,000 for the first offense, $3,000 for the second offense, and $5,000 for the third offense. The required penalty would not preempt the Department of Human Resources' already existing powers to revoke a license. The provisions of the bill would not apply to developmentally disabled adult group and family care homes when the client has been deemed capable of remaining alone and the approval is documented in the client's record.

Rest Home Alarms Mandated (HB 935): House Committee Substitute for House Bill 935 would require that by March 1, 1996 all rest homes, except group homes for the developmentally disabled, must have continually activated alarms at all entrances and exits. Alarms may not be deactivated from 9:00 p.m. through 6:00 a.m. unless staff is at the door. The alarms must be adequate to alert staff. DHR shall review the use of new technology for security and locating residents who are known to wander and report proposed rules and findings to the North Carolina Study Commission on Aging.

Nursing/Rest Home Employment Checks (SB 1014): This bill would require criminal background record checks of unlicensed applicants for employment in nursing homes and adult care homes, hospitals, area mental health agencies, and substance abuse authorities.

Mental Health

Advance Instructions for Mental Health Treatment (SB 846): Senate Bill 846 would allow a person with a mental illness to specify, in advance, how he or she wishes to be treated in the event that he or she is rendered incapable by that mental illness to exercise treatment choices. Their advance instructions may include consent to or refusal of all or certain types of mental health treatment. The bill would also allow the person to appoint, in advance, an attorney-in-fact to make treatment decisions for them during periods of incapacity.

The bill would require those decisions regarding treatment that are included in an advance instruction to be followed when a qualified crisis services professional and a physician or eligible psychologist determine that the person is incapable of making treatment decisions unless compliance is not consistent with best medical practice, or the treatments requested are unavailable or the treatments are prohibited by law. The bill provides that the advance instruction would not limit present authority under involuntary commitment statutes to take the person into custody and provide necessary treatment, even if that treatment is contrary to that person's advance instruction.

Thomas S. Diversion (SB 859): The title of the bill in its original versions was **Mental Health Commitment Law**. The current version of the bill is substantially the same as the original version with respect to the changes in the mental health commitment laws and no changes were adopted that affected the potential diversion of Thomas S. class members.

Senate Bill 859 would change the mental health commitment laws in three significant ways: **First,** the bill would strengthen the role of area authorities in relation to the current role of the clerk or magistrate in determining the focus of care of persons experiencing a fatal illness crisis by establishing the following: (a) a new staff role designation of "qualified crisis services professional"; and (b) new emergency and non-emergency involuntary commitment procedures for areas with a single portal plan for mental health facilities.

In nonemergency situations, the qualified crises services professional (QCSP) may be contacted by phone or in person by anyone requesting the commitment of someone suffering a mental health crises. The QCSP would have the authority to determine, based on the information provided to him or her, whether involuntary commitment to a treatment facility is the most appropriate course of action to take. If QCSP determines that the person is subject to involuntary commitment, the QCSP may recommend in writing to a clerk or magistrate that a custody order be issued. This recommendation may be faxed to the magistrate, who would be authorized under the bill to issue the custody order. Current law requires, in nonemergency situations, the personal appearance before the clerk or magistrate of the person requesting commitment, as well as the person's signed affidavit, before the clerk or magistrate is authorized to issue a custody order.

The bill would also establish new emergency commitment procedures for areas with a single portal plan. Current emergency procedures require that the respondent be mentally ill and "subject to inpatient commitment" and be in need of immediate "hospitalization" to prevent harm to self or others. The new procedures would apply to a respondent who is "subject to commitment" (inpatient or outpatient) and in need of immediate "treatment" to prevent harm to self or others. The current emergency procedures in Chap. 122C would only be applicable to areas without a single portal plan if Senate Bill 859 were enacted.

Second, the proposed legislation would also give area authorities more control over decisions regarding the involuntary commitment of individuals to 24-hour treatment facilities. For example, the clerk or magistrate would be required to contact the area authority to determine if more appropriate resources are available through the area authority before issuing any custody order. Also, the bill would provide authority for the court to order inpatient commitment of a person who has been found to be mentally retarded and because of a mental illness is dangerous to self or others under the supervision of the area authority where the respondent resides. The area authority, and not the court, would determine the most appropriate 24-hour facility for the respondent's inpatient treatment.

Third, the bill would remove from the Chapter 122C's declaration of policy that adults who are mentally retarded, but not mentally ill, and because of an accompanying pattern of maladaptive behavior, characterized by gross outbursts of rage or physical aggression against others or property, are dangerous to others, should be involuntarily committed to a 24-hour facility. All provisions currently included in G.S. 122C allowing for the involuntary commitment of adults meeting such criteria have been deleted.

New provisions would be added to Chapter 122C providing for the involuntary commitment of individuals who are mentally retarded and, because of an accompanying mental illness, are dangerous to self or others. These provisions are in addition to current provisions that allow for the involuntary commitment of persons who are mentally ill and dangerous to self or others.

Welfare Reform

Public Assistance Responsibility (HB 5): House Bill 5 would eliminate AFDC cash assistance for all out-of-wedlock births. Such recipient of public assistance would be provided only Medicaid and WIC for the parent, and food stamps, Medicaid and WIC for the child. A family cap limit would prohibit any increase in AFDC, other than general increases, for the birth of an additional dependent child of a recipient parent. No public assistance would be available to minor parents who are unmarried or pregnant unless the minor resides with a parent, guardian, adult relative or in a foster home, maternity home or residential care facility.

The bill would limit AFDC assistance to two years and place a five-year lifetime cap on AFDC assistance. Recipients would not be eligible to reapply for AFDC assistance for three years once the two-year benefit limit was exhausted. The two-year limit could be extended for up to one year if the extension would assist the recipient's ability to leave public assistance. Transitional child care and Medicaid benefits would be extended to 24 months.

The bill would also provide that: (1) 100% of any monthly food stamp and housing subsidy allotments a recipient qualifies for shall count as income for the purpose of determining AFDC eligibility; (2) resources of a "substitute parent" or "man-of-the-house" shall count as income for the purpose of determining AFDC eligibility.

Recipients would be allowed to accumulate savings not to exceed $10,000 in Individual Development Accounts that may be used only for education or training, enhancing employment or self-employment opportunities, home purchase, residence relocation or purchase of health, disability or long-term insurance. Diversionary assistance would be available to provide short-term cash assistance to divert a recipient from continuing public assistance.

Recipients, who are addicted to alcohol or drugs, would be required to participate in appropriate treatment programs and submit to random testing as a part of those programs. The benefits of recipients convicted of a felony or found in violation of parole or probation would be terminated until the conditions of such conviction or violation are satisfied.

The bill would eliminate certain work disincentives and establish new incentives to encourage work, including raising asset limits for eligibility.

Food Stamp EBT (HB 16): House Bill 16 would require the Department of Human Resources to implement an electronic benefits transfer system for food stamps in at least one county.

Food Stamp Workfare (HB 24): House Bill 24 would require all nonexempt food stamp recipients to perform community service, subject to receipt of any required federal waivers.

New Hire Reporting (HB 164): House Bill 164 would encourage, but not mandate, employers with five or more employees to provide the Employment

Security Commission with new hire information so that the information could be made available for child support enforcement purposes.

AFDC Fraud Control Program (HB 479): House Bill 479 would require the Department of Human Resources to implement the federal AFDC Fraud Control Program, and provides incentive bonuses to counties to encourage their efforts to recoup fraud claims.

Full Employment Program (HB 1043): House Bill 1043 would establish an employment program for recipients of public assistance, and provide tax credits for employers who hire recipients of public assistance and construct child care center for their employees. The program would require recipients to register with the Employment Security Commission for job placement prior to a determination of eligibility for public assistance benefits, unless the recipient was exempt from work requirements. The recipient would be required to work 40 hours or be placed in community service jobs.

AFDC Employment/Workfare (HB 1052): House Bill 1052 would require all nonexempt AFDC recipients to participate in employment or workfare programs in the following program components: Job Search, Job Preparedness, and Community Service.

Partnership for Independence (SB 35): Senate Bill 35 would establish the Work First Program to replace the JOBS Program. The Work First Program would require recipients, unless exempted, to participate in 30 hours per week of compensated work, community service, training and education activities or a combination thereof. Diversionary assistance would be available to provide short-term cash assistance to divert a recipient from continuing public assistance.

Recipients would be required to execute personal responsibility agreements as a condition of eligibility for AFDC assistance. The failure to execute an agreement would result in the denial or termination of AFDC or Medicaid. Failure to comply with the agreement would result in either a reduction, suspension or termination of AFDC benefits for the parent. However, benefits would not be reduced, suspended or terminated, if the recipient's failure to comply is the result of the local social services office's or State's failure to provide specified services or due to circumstances beyond the recipient's control.

The bill would prohibit AFDC assistance to unmarried minor recipients, unless they live with their parents or guardians. The bill's family cap limit would prohibit any increase, other than general increases, in AFDC assistance to a recipient for any child born at least ten months after the recipient begins receiving assistance.

The bill would limit AFDC assistance to two cumulative years from the date of being assigned to active status in the Work First Program. The two-year limit could be extended up to one year if a recipient is unable to find employment while actively engaged in a job search or needs the continued assistance to complete a training or education program.

Recipients convicted of a felony who receive an active sentence in State-owned or operated facility or found in violation of a felony parole or felony probation would be ineligible for benefits and their benefits terminated until the conditions of their conviction, parole or probation have been satisfied. Recipients, who are addicted to alcohol or drugs, would be required to

participate in appropriate treatment programs and submit to random testing as a part of those programs.

The bill would eliminate certain work disincentives and establish new incentives to encourage work, including increasing transitional benefits and raising asset limits for eligibility. The bill would authorize a pilot project to test the use of Individual Development Accounts.

Miscellaneous

Nursing Home Penalty Law (HB 332): The 1987 General Assembly established an administrative penalties process for violations of nursing home and rest home facility laws. House Bill 332 would amend the statutes related to administrative penalties to add the word "licensee" to assure that the corporation or entity that is licensed to operate the facility is the one assessed the penalty.

STUDIES

Legislative Research Commission Studies

The Legislative Research Commission (Chapter 542; HB 898 [unless otherwise noted]) may study the topics listed below and may report to the 1996 Regular Session of the 1995 General Assembly, if approved by the cochairs, or the 1997 General Assembly:

- Child day care providers record check (Chapter 507, Sec 23.24(d); HB 230, Sec. 23.24(d))-The LRC shall study using the records in the Central Registry on Child Abuse and Neglect for conducting records checks of child day care providers. The LRC shall report to the 1997 General Assembly.
- Chiropractic care.
- Domiciliary care and nursing homes.
- Emergency medical services.
- Grandparent visitation rights.
- Guardian Ad Litem program (Chapter 324, Sec. 21.12; HB 229, Sec. 21.12)- The LRC may study the Guardian Ad Litem program and may report to the 1996 Regular Session of the 1995 General Assembly.
- Illegitimacy.
- Juvenile and family law.
- Occupational and professional regulation.
- State and federal retirees.
- State and other governmental assistance to volunteer fire, rescue, and emergency medical service units (Chapter 507, Sec. 7.21A(m); HB 230, Sec. 7.21A(m))-The LRC shall study and shall report to the 1996 Regular Session.

Independent Study Commissions Created or Continued

Heart Disease and Stroke Prevention Task Force (Chapter 507, Sec. 26.9; HB 230, Sec. 26.9): The Task Force is created and is to be administered with the Division of Adult Health Promotion, DEHNR. Of the funds appropriated to the Department, $100,000 each year of the biennium shall be used to

support the Task Force. The Task Force has 27 members. The General Assembly shall appoint upon the recommendation of the Pro Tem, three members of the Senate, a heart attack survivor, a local health director, a certified health educator, a hospital administrator, and a representative of the North Carolina Association of Area Agencies on Aging.

The General Assembly shall appoint, upon recommendation of the Speaker, three members of the House, a stroke survivor, a county commissioner, a licensed dietitian/nutritionist, a pharmacist, and a registered nurse. The Governor shall appoint a practicing family physician, pediatrician, or internist; a president or chief executive officer of a business upon recommendation of a North Carolina wellness council which is a member of the Wellness Councils of America; a news director of a newspaper or television or radio station; a volunteer of the North Carolina Affiliate of the American Heart Association; a representative from the North Carolina Cooperative Extension Service; a representative of the Governor's Council on Physical Fitness and Health; and two members at large. The appointments shall be made not later than 30 days after the adjournment of the 1995 General Assembly's 1995 Regular Session. The Governor shall appoint the Chair; the Vice-Chair shall be elected by the Task Force.

The Task Force shall submit to the Governor and General Assembly a preliminary report by January 1, 1996; an interim report within the first week of the convening of the 1997 General Assembly; and a final report by October 1, 1997. Upon filing the final report, the Task Force shall expire.

The act became effective July 1, 1995.

Health Care Reform Commission, North Carolina (previously North Carolina Health Planning Commission) (Chapter 507, Sec. 23A.3; HB 230, Sec. 23A.3; G.S. 143-611): The 1993 General Assembly established the Health Planning Commission. Section 23A.3 of Chapter 507 extensively revises this Commission in the following ways: (1) changes the name to "North Carolina Health Care Reform Commission"; (2) changes the number of Commission members from 16 to 14; (3) deletes the Governor, Lt. Governor, the Speaker of the House, and the President Pro Tempore of the Senate from membership; (4) changes the number of members from five to six members that are to be appointed by each of the presiding officers of the House and Senate; (5) deletes reference and duties related to the "North Carolina Health Plan"; (6) requires the Commission to study 16 listed topics (some of which were in the original authorizing legislation but new topics are added); and (7) assigns the following new duties which shall be reported to the Governor and General Assembly: (a) develop methods to ensure adequate primary care for all eligible residents and appropriate compensation for primary care services to achieve that end; (b) identify and review initiatives and incentives to enhance the practice of primary health care in rural areas; (c) identify or develop incentives to encourage diversification in health care facilities; (d) assess the impact of the locum tenens program; and (e) develop alternative ways of expanding coverage to uninsured persons. The act was effective upon ratification, July 28, 1995.

(Chapter 542, Part XII; HB 898, Part XII) The Commission is directed to study:

(1) **Childhood immunizations.**

(2) **Fees for copies of medical records.**

(3) **Medicaid and medical cost containment.**

The Commission may make an interim report to the 1996 Regular Session of the 1995 General Assembly and shall report to the 1997 General Assembly.

Job Training Programs, Joint Legislative Study Commission on (Chapter 507, Sec. 8.5; HB 230, Sec. 8.5): The Study Commission is created and is to review State and federally funded job training programs currently in existence to determine the feasibility of eliminating or consolidating those which are duplicative, inefficient, or ineffective in carrying out their purposes and activities.

The Commission consists of six members of the House appointed by the Speaker and six members of the Senate appointed by the Pro Tem. The Speaker and Pro Tem shall each appoint one member to serve as cochair.

The Commission shall make an interim report to the 1995 General Assembly, the Joint Legislative Commission on Governmental Operations, and the Joint Legislative Education Oversight Committee not later than May 1, 1996, and shall make its final report to the 1997 General Assembly and the same as above. The report shall identify each job training program operating in the State as of January 1, 1995, and recommendations on the continuation of each program.

Medicaid in North Carolina, Blue Ribbon Task Force on the Issue of the Potential Impact of Federal Block Grant Funding and Other Federal Actions, etc. (Chapter 507, Sec. 23.5A; HB 230, Sec. 23.5A): The Task Force's study shall include: an examination of the potential impact on all of the State's diverse populations effected by Medicaid and the State's organizations that provide programs and services related to Medicaid; a determination of the fiscal and organizational adjustments that would need to be made to balance each of the potential impacts; a recommendation of how best the General Assembly may address Medicaid and related issues; and any other Medicaid-related issues.

The Task Force is established in the General Assembly and is composed of 12 members, six House members appointed appointed by the Speaker and six Senate members appointed by the Pro Tem. The Speaker and Pro Tem shall each designate a cochair.

The Task Force shall report to the 1996 Regular Session of the 1995 General Assembly within a week of its convening or to a special session of the 1995 General Assembly called to deal with federal block grant funding issues.

Mental Health Study Commission (Chapter 542, Part XIII; HB 898, Part XIII and Chapter 507, Sec. 23.24; HB 230, Sec. 23.24): The Commission is continued and directed to study **single portal of entry and exit for developmental disabilities services of area mental health authorities.** The Commission shall include the results of this study in its report to the 1996 Regular Session of the 1995 General Assembly.

Public Health Study Commission (Chapter 507, Sec. 23A.6; HB 230, Sec. 23A.6): Section 8.1 of Chapter 771 of the 1993 Session Laws established the Public Health Study Commission, but included a sunset of June 30, 1995. Section 23A.6 of Chapter 507 of the 1995 Session Laws removes this sunset and adds a new item for study. This new item requires the Commission to study the capacity of small counties to meet the core public health functions mandated by current State and federal law. The Commission shall consider whether the current county and district health departments should be organized

into a network of larger multidistrict community administrative units. In making its recommendation on this issue, the Commission shall consider whether the State should establish minimum populations for local health departments. If the Commission determines that minimum populations should be established, the Commission shall then recommend the number of and configuration for these multicounty administrative units, and shall recommend a series of incentives to ease county transition into these new arrangements. This act was effective upon ratification, July 28, 1995.

Welfare Reform Study Commission (Chapter 542, Part XXIII; HB 898, Part XXIII): The Commission is continued and membership is changed to 12 members as follows: six House members appointed by the Speaker and six members of the Senate appointed by the Pro Tem.

(Chapter 507, Sec. 23.8B, H.B. 230): The Commission's study shall focus on the effects of federal budgetary policy on welfare reform. The Commission shall submit a final report to the General Assembly on or before the first day of the 1996 Regular Session of the 1995 General Assembly and shall terminate at that time.

Referrals to Departments, Agencies, Etc.

Department of Correction shall study the following: (1) Hire a consultant to **evaluate substance abuse programs** and shall report to the Chairs of the Senate and House Appropriations Committees and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety by May 1, 1996 (Chapter 507, Sec. 19.1; HB 230, Sec. 19.1); (2) Develop a **pilot program for intensive out-patient substance abuse treatment** and report with DHR jointly to the Chairs of the Senate and House Appropriations Committees and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety by May 15, 1996 (Chapter 507, Sec. 19.8; HB 230, Sec. 19.8); and (3) Develop **DART aftercare pilot programs** and report to the Chairs of the Senate and House Appropriations Committees and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety by May 15, 1996 (Chapter 507, Sec. 19.11; HB 230, Sec. 19.11).

Department of Environment, Health, and Natural Resources shall develop **abstinence until marriage curriculum** and shall report to the House Appropriations Subcommittee on Natural and Economic Resources, the Senate Appropriations Subcommittee on Natural and Economic Resources and the Joint Legislative Commission on Governmental Operations by May 1, 1996 (Chapter 507, Sec. 26.5A; HB 230, Sec. 26.5A).

Department of Human Resources shall study the following: (1) the **Average Staff vacancy rate by division over the last five fiscal years, to determine its effect on lapsed salaries** and report to the 1996 Regular Session (Chapter 324, Sec. 23.6B(1); HB 229, Sec. 23.6B(1)); (2) an **analysis of unbudgeted revenues in excess of revenues in the certified budget in the last two years** and report to the 1996 Regular Session (Chapter 324, Sec. 23.6B(2); HB 229, Sec. 23.6B(2)); (3) the **Division of Youth Services' programs and services** and report by November 1, 1995 (change in reporting date) (Chapter 324, Sec. 23.34; HB 229, Sec. 23.34); (4) Secretary shall establish a task force to determine **minimum reimbursement rate for Adult Developmental Activity Programs (ADAP)** and report to the Mental Health Study Commission before

the 1996 Regular Session (Chapter 481; SB 776); and (5) shall make progress report on implementation of **Chapter 449, cost reporting by domiciliary homes, staff training, etc.,** to the Study Commission on Aging by October 1, 1995, and March 1, 1996, and to the same and Joint Legislative Commission on Governmental Operations by June 30, 1999 (Chapter 449; SB 864).

Office of State Budget and Management shall perform a performance audit of the **family support/deaf and hard of hearing services contract** and report to the General Assembly, Fiscal Research Division, and DHR by December 1, 1996 (Chapter 507, Sec. 23.17; HB 230, Sec. 23.17).

INSURANCE
(Linwood Jones, Lynn Marshbanks)

RATIFIED LEGISLATION

Insurance Fraud (Chapter 43; HB 103): Chapter 43 makes the following changes to the insurance fraud law: (1) Extends coverage of the law to multiple employer welfare arrangements (MEWAs) and to employers and employer groups self-insured for workers' compensation; (2) Applies the law to insurers that fraudulently deny payment of benefits and claims to policyholders and third party claimants; (3) Increases the penalty for insurance fraud from a Class I to a Class H felony; (4) Allows a judge, in sentencing a defendant convicted of insurance fraud, to order restitution as a condition of probation and to include in the restitution order the investigative and legal costs incurred in investigating and attempting to collect on the claim; (5) Provides that in a civil action for recovery based on a claim for which the defendant has been convicted of insurance fraud, the conviction is admissible against the defendant in the civil action; (6) Provides that in a civil action, the court may award the prevailing party attorneys' fees, costs, and reasonable investigative costs; (7) Provides that if the defendant has engaged in a pattern of insurance fraud, the court may award treble damages. The act becomes effective on October 1, 1995, and applies to violations occurring on or after that date.

OB/GYN Access (Chapter 63; HB 773): Chapter 63 requires that women and girls age 13 or older who are participating in managed care arrangements offered under health benefit plans have direct access to obstetrician-gynecologists, without prior referral, for services within the benefits provided that relate to obstetrician-gynecologists. Each plan must inform female participants and beneficiaries in writing of this access. The act becomes effective on January 1, 1996, and applies to health benefit plans issued, renewed, or amended on or after that date. Renewal is presumed to occur on each anniversary of the date when coverage was first effective.

Cancellation of Insurance Contracts (Chapter 121; HB 749): Chapter 121 modifies the notification procedures that an insurance premium finance company must follow when it exercises a power of attorney to cancel an insured's policy. It allows the premium finance company to send, rather than mail, the notices to the insurance agent and the insurance company. It also allows the premium finance company not to send the power of attorney with the request for cancellation if the insurance company has already received a copy of the power of attorney with the application. The act becomes effective on October 1, 1995.

Workers Compensation/Real Estate Salesman (Chapter 127; HB 751): Chapter 127 allows a real estate broker and the broker's salesman to agree for the salesman to reimburse the broker for workers' compensation coverage for that salesman. This agreement must be contained in the governing contract between the broker and the salesman and is allowed only if the salesman is recognized for certain federal tax purposes as a nonemployee. This act took effect on ratification (May 30, 1995).

Trustee's Duties/Life Insurance Trust (Chapter 153; HB 606): See **PROPERTY.**

Mental Health Coverage (Chapter 157, HB 958): Chapter 157 authorizes licensed professional counselors to be reimbursed by the State Health Plan for their counseling services relating to mental health and chemical dependency. The act also amends the

counselors' practice law to (i) make clear that counseling includes the treatment of mental disorders and other conditions through the use of appropriate counseling techniques and (ii) to specify a January 1, 1996, deadline for counselor applicants to apply for grandfathering (if they were practicing prior to July 1, 1993). This act becomes effective October 1, 1995.

Hospital and Medical Service Corporations Under Guaranty Fund (Chapter 177, HB 788): Chapter 177 adds medical service corporations and hospital service corporations, such as Blue Cross, to the Life and Health Insurance Guaranty Association. The Life and Health Guaranty Association exists to protect policyholders of life and health policies and annuity contracts in the event their insurer becomes financially impaired or insolvent. Each member of the Association is subject to assessments by the Association, up to a certain amount, for the costs of the Guaranty Fund, including both administrative costs and costs incurred in paying claims, providing benefits, etc. on behalf of delinquent insurers. This act became effective on ratification (June 5, 1995).

Insurance Technical Amendments (Chapter 193; SB 353): Chapter 193 makes numerous technical amendments to insurance and insurance-related laws. Most of these changes took effect on ratification (June 7, 1995).

Credit Accident & Health Insurance (Chapter 208; HB 799): Chapter 208 modifies the definition of credit accident and health insurance in G.S. 58-57-5(2) by allowing that insurance to be sold with or without accidental death benefits. The act was effective on June 8, 1995, and applies to all actions filed on or after that date.

Direct Reimbursement/Pharmacists (Chapter 223; HB 787): Chapter 223 provides for direct payment of licensed pharmacists under health insurance policies and plans. Payment would be required when: (1) the pharmacist performed a service within his or her scope of practice; (2) the service is not initial counseling services required by law or regulation; (3) the policy reimburses identical services performed by other licensed health care providers; and (4) the service is identified as a separate service performed by other licensed health care providers and is reimbursed by identical payment methods. The act became effective on July 1, 1995, and applies to claims for payment or reimbursement for services rendered on or after that date.

Small Employer Coverage Changes (Chapter 238; SB 652): Chapter 238 amends the Small Employer Group Health Reform Act to eliminate the continued phased-in shift to adjusted community rating on small employer group health plans. Adjusted community rating had been scheduled to be fully phased in by 1997. Under Chapter 238, insurers are allowed to have limited experience and administrative variances between groups in the small group health market, although rates for employers with similar case characteristics may not vary from the adjusted community rate by more than 20%. The bill also places a cap on the annual percentage increase for small groups, standardizes the age brackets for plans in the small group market, and allows the alliances that obtain coverage for small employers to offer coverages in addition to those available under the basic and standard plans. A study is required on the use of adjusted community rating without administrative and experience rating bands. This act took effect on ratification (June 13, 1995).

Insurer Financial Amendments (Chapter 318; SB 342): Chapter 318 does the following: (1) Requires a transferring insurer under an assumption reinsurance agreement to notify policyholders of the agreement and allows policyholders to opt out of the transfer; (2) Requires that the Commissioner approve of assumption reinsurance

agreements involving either domestic insurers or State residents holding insurance policies from states that do not offer the same protections; (3) Requires domestic insurers to file reports with the Commissioner disclosing material acquisitions and dispositions of assets (involving more than 5% of the insurer's total assets) or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements; (4) Amends G.S. 58-12-2 to include property and casualty insurers in Article 12, concerning risk-based capital requirements for insurers; and (5) Provides that the Commissioner shall not use risk-based reports or plans for rate making. The act becomes effective on January 1, 1996, and (1) and (2) apply to assumption agreements entered into on or after that date.

Pastoral Counselor Treatment (Chapter 406; SB 751): Chapter 406 provides that treatment and services rendered by certified fee-based practicing pastoral counselors and within their scope of practice are reimbursable under health insurance policies. It also requires certified fee-based practicing pastoral counselors to be compensated under the State Health Plan for treatment of chemical dependency and mental illness. The act became effective on July 15, 1995, and applies to treatment or services rendered on or after that date. The act sunsets on July 1, 1999.

Self-Insured Workers' Comp Funds (Chapter 471; SB 931): Chapter 471 requires employer groups that self-insure their workers' compensation liabilities to be members of the same trade or professional association, and the trade or professional association must have been in existence at least 5 years, be incorporated in North Carolina, and document its 501(c) tax exempt status. These restrictions do not apply to self-insured employer groups that were approved and operating as of July 1, 1995.

Chapter 471 also requires groups to determine their employer members' "premiums" or contributions using Rate Bureau rates and classifications. The group can file with the Commissioner for deviations from the Bureau rates, and these deviations do not have to uniformly apply to all classifications. The Commissioner can deny the proposed deviation if he finds that it would cause a hazardous financial condition for the group. A deviation is deemed approved if not denied within 60 days of filing. The Commissioner can adopt rules to ensure disclosure that members are subject to assessments for their joint and several liability in the group and to ensure disclosure of information on specific and aggregate insurance coverage. Persons adjusting claims for self-insured employers and employer groups must be licensed as adjusters.

Chapter 471 makes self-insured employer groups subject to additional provisions of the insurance laws, including the insurance regulatory surcharge and the insurance supervision, liquidation, and rehabilitation laws. An individually self-insured employer will also be subject to the insurance regulatory surcharge. Funds are allocated from the special Department of Insurance Fund to the Department of Insurance ($891,030 for fiscal year 1995-96 and $801,030 for fiscal year 1996-97) to implement this act. This act becomes effective October 1, 1995, except for (i) the appropriation, which became effective July 1, 1995, and (ii) the requirement for using Rate Bureau rates, which becomes effective January 1, 1996, and applies to policy years that begin on or after that date.

Bones and Joints Insurance Coverage (Chapter 483; HB 594): Chapter 483 prohibits insurers (including HMOs, hospital and medical service corporations, and MEWAs) from discriminating in their coverage of diagnostic, therapeutic, or surgical procedures involving bones or joints of the face, neck, or head. Any medically necessary treatment of these bones or joints for a condition caused by congenital deformity, disease, or traumatic injury must be covered to the same extent (with the same limitations,

conditions, etc.) as treatments and procedures generally for other bones and joints. Coverage for treatment of conditions of the jaw (temporomandibular joint) must include coverage for splinting and the use of intraoral prosthetic appliances to reposition the bones. The act also makes clear that its provisions do not mandate that health benefit plans cover certain orthodonic and dental procedures. Splinting and other nonsurgical treatments of TMJ are subject to reasonable lifetime maximum dollar amounts of coverage. This act takes effect January 1, 1996, and applies to policies issued or renewed on or after that date.

Workers' Compensation Rating Law (Chapter 505; SB 973): Chapter 505 creates the North Carolina Workers' Compensation Loss Costs Rating Law. Currently, the North Carolina Rate Bureau develops rates for use by all insurers in this State writing workers' compensation coverage. Each insurer may deviate from these rates with the approval of the Commissioner of Insurance. Under Chapter 505, the Rate Bureau will develop "prospective loss costs" rather than final rates (except for the residual market, for which the Bureau will still develop final rates). These prospective loss costs will be filed with the Commissioner of Insurance as a reference filing for all insurers writing workers' compensation coverage. Each insurer will then file its own individual rates. The insurer may use these advisory loss costs to establish its rates or it may file upward or downward modifications of these advisory loss costs based on its own anticipated experience. (Supporting documentation is required for these modifications). The insurer's rates will be the combination of the prospective loss costs and the insurer's individual expense multiplier.

The Rate Bureau will continue to annually update and file prospective loss costs with the Commissioner of Insurance. Each insurer may also update its loss multiplier or it may allow that multiplier to remain in effect, to be applied to future changes in the prospective loss costs. Subsection (j) of proposed G.S. 58-36-100 delineates whether and when an insurer must update its loss multiplier. Uniform policy forms, classifications, and experience rating plans will be developed by the Rate Bureau for use by all insurers.

Until September 1, 1997, insurers' filings remain subject to the approval of the Commissioner of Insurance. (During this two-year period, the Bureau and its member insurers are not required to refile any previously implemented rates). After that date, prior approval by the Commissioner is not required for insurers' rate filings. Nevertheless, insurers' rate filings are still subject to the law prohibiting excessive, inadequate, or unfairly discriminatory rates.

The act also allocates $200,930 from the Department of Insurance Fund to the Department of Insurance for fiscal year 1995-96 and $182,088 for fiscal year 1996-97 to implement this act. The act became effective on ratification (July 28, 1995).

Health Insurance Reform (Chapter 507, Sec. 23A.1; HB 230, Sec. 23A.1): Section 23A.1 of Chapter 507 contains the following health insurance reform measures, which became effective July 1, 1995:

(1) Group health policies must be guaranteed renewable, except for nonpayment of premium, fraud, material misrepresentation, or cessation of health business by the insurer after appropriate notice to the Commissioner.

(2) A group health policy cannot be modified with respect to any insured in order to exclude or restrict coverage for a particular condition or disease that is otherwise covered by the policy.

(3) The maximum waiting period for coverage of preexisting conditions on individual policies is reduced from 2 years to 1 year (making it consistent with the waiting period on group policies).

(4) The credit given under a group policy for the time spent in satisfying the waiting period under a previous policy is broadened. Previously, credit was given only for prior group plans. The credit will now also be given for other types of prior plans, including government health care plans. (Other limitations on group plan size and the lapse of time between the new and prior plan's coverage dates still apply.)

Insurance Omnibus Changes (Chapter 517; SB 345): Chapter 517 is the insurance "omnibus" bill, containing numerous significant changes to insurance and insurance-related laws. These changes are organized below by subject matter. Most provisions became effective on ratification (July 29, 1995), but several do not take effect until October 1, 1995.

Workers' compensation insurance:

Assigned risk pool: Section 18 requires that the compendium maintained by the Rate Bureau of employers who are unable to obtain workers' compensation insurance in the voluntary market be accessible to agents. The compendium is already accessible to insurers and TPAs for self-insured groups. The Rate Bureau is immune from liability for releasing this information to the proper parties, provided it does so in good faith and without malicious or willful intent to harm.
Deviations: An insurer may, under existing law, charge a higher rate for workers' compensation insurance on a specific risk with the approval of the Commissioner and the consent of the insured. Section 21 requires these approved higher rates to be furnished to the Rate Bureau.
Subcontractors: Section 36 eliminates the waiver provision for subcontractors under the workers' compensation law.
Limited Liability Companies: Section 35 recognizes "limited liability companies" for purposes of the workers' compensation law by allowing the members of limited liability companies to elect whether they will cover themselves under the Workers' Compensation Act (an option already available to partners, sole proprietors, and, at the discretion of the corporation, corporate officers).

Fire, casualty, general liability:

Beach Plan: Section 28 allows the Beach Plan, which writes property coverages on the barrier islands, to issue policies of either 1 or 3 years.
Repeal of old laws: Section 33 repeals an old law requiring city fire chiefs to approve structural changes and the placement of scenery or decorations in hotels and similar buildings. These matters are now adequately governed by the State Building Code and the State Fire Code. Section 27 also repeals an antiquated law -- one that required agents to inspect property in municipalities before issuing a fire insurance policy on the property.
Waterslide insurance: Section 34 allows waterslide operators to post bonds, deposits, or other approved proof of financial security in lieu of carrying the statutory liability insurance (expires December 31, 1997).
Risk-sharing pool: Section 26 extends the life of the enabling legislation for insurance risk-sharing pools two more years. Risk-sharing pools provide a means for the Commissioner of Insurance to ensure the availability of insurance coverage that is not readily available in the voluntary market. Although they have not been used since they were authorized in 1986, the legislative authority for these pools is generally extended every two years in the event they are needed.

Health and life insurance and related matters:

Medical Database Commission: Sections 38 and 39 eliminate the Medical Database Commission and privatize the collection of hospital and ambulatory surgery center medical data, effective October 1, 1995. Hospitals and ambulatory surgery centers must report their data to a statewide data processor that is certified by the Division of Facility Services and can have their licenses revoked or suspended for failing to report. More than one vendor may be certified, although the hospital or ambulatory surgery center is required to report to only one vendor.

The vendor(s) will furnish a report to the State, at no charge, comparing the 35 most frequent charges. The State can purchase the remaining data from the vendor(s). The data vendor(s) must meet certain conditions in order to be certified. Compilations of patient data by the State that are received from the data vendor(s) and that are prepared for release or distribution by the State are public records.

The State may use funds available in the Department of Insurance Fund, which is funded by a regulatory surcharge on insurance companies, to pay for any costs incurred in certifying data vendors or buying data.

Maternity coverage/48 and 96 hours: Insurers and other defined health benefit plans that provide maternity coverage must provide inpatient hospitalization coverage for a mother and her newborn child for a minimum of 48 hours after birth (96 hours if birth is by C-section). This law does not require the mother and her newborn child to remain in the hospital for this period of time. The law takes effect October 1, 1995, but will apply to policyholders at different times after that date, depending on when their policies are issued, renewed, or amended.

Small Employer Group Health Reinsurance Pool: Section 29 prohibits a small employer group of more than 25 persons from being ceded by the insurer to the Small Employer Reinsurance Pool.

Conversion: Section 30 imposes the same premium requirements and standards on group health conversion policies as it does on individual conversion policies.

Viatical settlements, etc.: Section 31 makes several changes concerning life insurance and annuities. G.S. 58-58-22 and 58-58-23 codify existing regulations and industry practice concerning universal life insurance, variable life insurance, and standard provisions of individual life insurance policies, annuities, and pure endowment contracts. The remainder of the section regulates the use of viatical settlement contracts, in which policyholders with terminal illnesses assign their policies to third parties for immediate payment of money or other consideration.

Regulatory Matters:

Sections 1 through 15 and Section 19 of the bill make numerous changes in the insurance regulatory process:

- The Commissioner may accept financial examinations of foreign insurance companies from states not accredited by the NAIC (Sec. 1).
- The Commissioner may establish qualifications for consulting actuaries who certify insurer's financial statements or rate filings (Sec. 2).
- The Commissioner may limit or prohibit certain kinds or amounts of insurance writings by companies in financial trouble (Sec. 3).
- Reinsurance agreements must be in writing (Sec. 4).
- Hearings conducted in response to the Commissioner's notification or orders of risk-based capital deficiencies are confidential (Sec. 5).

- Requirement in G.S. 58-16-5 that foreign insurers file a power of attorney with the Department for service of process is repealed since service is already covered by other statutes (Sec. 6).
- The law is made clear that foreign insurers must continue to meet the capital and surplus requirements and related requirements initially required for licensure in order to continue to be licensed (Sec. 7).
- Service of process on the Commissioner is allowed for foreign legal entities in addition to insurance companies, and service upon the Commissioner is allowed by registered mail also (Sec. 8).
- The definitions of "control" and "person" under the Insurance Holding Company Act are amended. "Control" is amended to delete the exemption for corporate officers and directors from persons who might control these entities, and "person" is amended to delete the exemption for joint venture partnerships handling real property or tangible personal property. An acquisition of control of a domestic insurer must be completed within 90 days of the Commissioner's order approving the acquisition unless the Commissioner grants an extension (Secs. 9 - 12).
- The priority for claims against an insurance company in receivership is changed to allow for the collection of the receiver's claims and claims for losses and/or benefits under the insurance policies before government claims (Secs. 13 and 14).
- A motor vehicle safety program is authorized for State employees operating State vehicles (Sec. 15).
- The laws governing the issuance of refunds to policyholders in auto, homeowners, and workers' compensation cases specifies the refunds as the difference between the total premium per policy using the final rate levels and the total premium per policy collected while the rates were under judicial review. The language concerning the computation of the interest rate on refunds is also amended (Sec. 19).

Agents and related matters:

Limited representatives: Section 16 authorizes two types of specialized insurance products to be sold under a limited representative license: (1) vehicle service agreements and mechanical breakdown insurance and (2) prearrangement funeral insurance sold by persons already licensed by the Board of Mortuary Science as "preneed" licensees. Section 32 makes a conforming change to the prearrangement insurance disclosure laws.

Prelicensing and continuing education instructors: Section 17 allows the Commissioner to establish qualifications for providers and instructors of prelicensing courses and continuing education courses and allows the Commissioner to terminate their authority to provide or teach these courses under certain circumstances.

Auto insurance

Consent to rate: A policyholder may already consent to a higher rate than that set by the Bureau if the Commissioner has approved the higher rate. Section 20 authorizes this "consent to rate" procedure to be used specifically to obtain the amount of liability coverage that may be needed to satisfy the requirements of an umbrella or excess policy. Section 23 contains a related change.

Private passenger auto: Section 25 allows 5 or more vehicles to be insured under a personal auto policy if they are owned by an individual who is the named insured

or owned jointly by members of the same household or relatives. Current law restricts a single personal auto policy to 4 or fewer cars.

Reinsurance Facility: The plan of operation for the Reinsurance Facility is required to be amended to provide for the distribution of any gains in the Facility (Section 24).

Self-Insurance Guaranty Fund (Chapter 533; SB 710): Chapter 533 increases the North Carolina Self-Insurance Guaranty Fund by requiring that it reach $5,000,000 (currently $1,000,000) before new assessments are made and by requiring that it be maintained at $5,000,000. It reduces the assessment payable to the Fund from 0.5% to 0.25% of the annual standard workers' compensation premium that would have been paid by a member insurer for workers' compensation insurance during the prior calendar year. Assessments paid by members will be credited toward taxes paid by self-insurers. The act is effective for taxable years beginning on or after January 1, 1995. (See also Senate Bill 931 below concerning additional regulation of self-insureds).

MAJOR PENDING LEGISLATION

Beach Property Insurance (SB 880): Senate Bill 880 directs the Beach Plan to provide insurance coverage for indirect losses, including loss of business income, additional living expenses, and loss of rental income. Passed Senate.

STUDIES

Legislative Research Commission Studies

The 1995 Studies Bill (Chapter 542; HB 898) authorizes the **Legislative Research Commission** to study the following: (1) insurance and insurance-related issues; and (2) workers' compensation.

Independent House Studies

Chapter 542 authorizes the following House studies: (1) issues involved in tort reform that were introduced in the 1995 Session but not enacted. (Chapter 542, HB 898)

Independent Studies, Boards, Etc., Created or Continued

North Carolina Health Care Reform Commission. (Chapter 507, Sec. 23A.3; HB 230, Sec. 23A.3)

LOCAL GOVERNMENT
(Giles Perry, Barbara Riley, Susan Seahorn)

RATIFIED LEGISLATION

OSB Study Local Fire Protection Funds (Chapter 507, Sec.10; HB 230, Sec. 10): Section 10 of Chapter 507 directs the Office of State Management and Budget to study the current fire protection grant process, and report to the 1996 Regular Session of the General Assembly. This section became effective July 1, 1995.

Close Housing Standard Loophole (Chapter 347; HB 552): Chapter 347 authorizes municipalities in excess of 190,000 that have commenced proceedings under substandard housing regulations regarding a dwelling to be repaired or vacated and closed, and the owner has vacated and closed the dwelling for a year, to order the building repaired or demolished. Chapter 347 became effective June 29, 1995.

Water & Sewer Authority Board (Chapter 207; HB 754): Chapter 207 authorizes a city that is not a member of a water and sewer authority formed by another city and a county, but contains the majority of the customers of the water and sewer authority, to join the authority and appoint members to its board. Chapter 207 became effective upon ratification, June 8, 1995.

ABC/Local Government Regulate Possession (Chapter 366; HB 645): Chapter 366 authorizes local governments to (1) regulate or prohibit the possession of alcohol on public streets; and (2) regulate or prohibit the possession of open containers of alcohol by pedestrians on public streets (open or closed) or pedestrians on other public property. Chapter 366 became effective July 1, 1995.

Centennial Authority (Chapter 458; SB 606): See **TAXATION.**

Housing Authority Changes (Chapter 520; SB 559): The acceptance of rent by Housing Authorities will not consitute a waiver of a default or failure to abide by the rental agreement whether or not the Authority knew of the default or failure prior to acceptance of the payment. A waiver will occur if the Authority expressly agrees to a waiver in writing or fails to notify the tenant of the violation of the agreement within 120 days of obtaining knowledge of the breach. The Housing Authority may adopt rules to regulate entry of guests and visitors to its property so long as such regulations do not violate the U.S. Constitution or the North Carolina Constitution.

Notice of Zoning Changes (Chapter 546; SB 873): Allows cities and counties to elect to mail notice to affected property owners of proposed map amendments as an alternative to the method of publication provided. Effective upon ratification, 7/29/95.

Notice of Lis Pendens (Chapter 158; SB 309): Allows cities and counties to adopt ordinances requiring notice of complaints made pursuant to building inspections or minimum housing standards to be filed with the clerk of superior court in the county where the property is located. Filing of these notices will provide notice to possible purchasers, successors, and assigns of the owners and parties in interest to the property. Effective 10/1/95.

Notice of Road Closures (Chapter 374; SB 530): Changes the publication requirement for notice of road closures by counties from 4 successive weeks to 3 successive weeks requiring that the notice be reasonably calculated to give full and fair disclosure of the proposed closing. Effective upon ratification 7/5/95.

Water/Sewer Dist. Valid-1 (Chapter 266; SB 679): Chapter 266 adds a new section to Article 162A of the General Statutes providing that contracts entered into by a county water and sewer district on or before February 1, 1995 are not invalid for failure to comply with Article 8 of Chapter 143, Public Contracts.

Section 2 of the act amends G.S. 136-27.1 to provide that the Department of Transportation shall pay costs for relocating water and sewer lines that were constructed by a water and sewer authority organized under Chapter 162A and then sold or transferred to a municipality with a population over 5,500.

The act became effective upon ratification, June 15, 1995, but shall not affect pending litigation.

Guaranteed Energy Savings Contracts (Chapter 295; SB 1042) Chapter 295 amends the Guaranteed Energy Savings Contract Law adopted in 1994. The provision prohibiting a Guaranteed Energy Savings Contract from requiring a unit of local government to enter into a maintenance contract with a provider is relocated from the definitions contained in G.S. 143-64.17 to G.S. 143-64.17B(e). That provision is amended to require the local government unit to budget for maintenance if it chooses to use its own forces or another provider for maintenance.

The act also contains provisions limiting the right of a unit of local government to terminate a guaranteed energy savings contract. In cases where the energy savings are not as great as projected, contracts may be terminated without paying the balance due under the contract only where all required shortfall payments have not been made. The definition of "total costs" is also amended to exclude the obligations of the unit of local government on the termination of the contract if those obligations are disclosed when the contract is entered into. Total costs of the contract are the measure for determining savings resulting from the performance of the contract.

The sunset on the guaranteed energy savings contract law is extended from July 1, 1997 to July 1, 1999.

The act became effective upon ratification, June 20, 1995 and applies to contracts entered into on or after that date.

Finance Land for Landfills (Chapter 384; HB 997) Chapter 384 amends the North Carolina Solid Waste Management Loan Program to add the acquisition of land for landfills to the list of eligible purposes for which the North Carolina Solid Waste Management Capital Projects Agency may make a loan to a unit of local government.

The act became effective upon ratification, July 6, 1995.

Sanitary District Services (Chapter 422; SB 798) Chapter 422 amends G.S. 130A-55, corporate powers of sanitary districts, to allow them (1) to acquire, construct, maintain, operate, and regulate streets within the district that are not State-maintained roads, and (2) to contract for security personnel to provide law enforcement within the district. Sanitary districts may not acquire roads by condemnation. G.S. 130A-55(15) is amended to provide that, until June 30, 1997, the income of the district may be used for these purposes. Effective July 1, 1997, however, income from the sanitary district may not be used to provide law enforcement within the district.

Chapter 422 also amends the provisions of G.S. 130A-56, to provide that board members of small and large sanitary districts are compensated in the same manner. Each member of the board may be compensated as provided by members of State boards under G.S. 138-5.

The act became effective upon ratification, July 12, 1995.

Mountain Ridge Service Districts (Chapter 434; SB 752) Chapter 434 allows the county commissioners in a county with a protected mountain ridge to define service districts composed of subdivisions served by public roads in order to finance the maintenance of public roads that provide access from a State road to the subdivision's lots. This applies where some portion of the public roads is not required to comply with standards for subdivision streets set by the Board of Transportation. The requirement that, to be part of a service district, the public roads must have been recorded on a plat in the register of deeds office before October 1, 1975 is removed.

Service districts shall include subdivision lots and contiguous subdivisions only where the property owners' association, whose purpose is to represent these lots, agrees to be included in the service district. Subdivision lots in a contiguous subdivision or other adjacent or contiguous property may not be annexed under G.S. 153A-303, the statute allowing a county to annex contiguous territory to a service district, unless the property owners' association approves the annexation.

G.S. 136-98, prohibiting local road taxes, is amended to provide that it does not prohibit counties from establishing service districts for road maintenance under Part 1, Article 16 of Chapter 153A of the General Statutes.

The act became effective upon ratification, July 13, 1995.

Water and Sewer Authority Powers (Chapter 511; SB 908) Chapter 511 amends the powers of Water and Sewer Authorities to allow Authorities whose membership includes part or all of a county with a population of at least 40,000, to require owners of developed property within the Authority's jurisdiction to connect with the water and/or sewer lines. The Authority may also require the payment of a periodic availability charge in cases of improved property that would qualify for the issuance of a building permit for the construction of one or more residential dwelling units or commercial establishments and the Authority has installed water or sewer lines directly available to the property.

The act also amends the number of members for metropolitan sewerage districts. If the district lies entirely within one county with a population in excess of 25,000, the board of county commissioners shall appoint 3 members to the district board who reside in that district. If the population of the county is less than 25,000, the county commissioners shall appoint 5 members.

The act also amends the "quick take" condemnation authority of the Stanly Airport Authority to any purpose for which the Authority may condemn property.

The act became effective upon ratification, July 29, 1995.

PROPERTY

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

RATIFIED LEGISLATION

Estates/Trusts/Wills

Opening Empty Lock Boxes (Chapter 89; SB 245): Chapter 89 was recommended by the General Statutes Commission. Present law requires safe deposit boxes to be opened in the presence of a member of the staff of the Clerk of Superior Court. Chapter 89 allows the personal representative to obtain permission from the clerk to open the box without the clerk being present, if the personal representative believes the box to be empty. The box must be opened in the presence of a bank employee who signs a certificate stating the box is empty. Should the box not be empty, it must be resealed and can only be reopened following the usual and formal procedure. The act becomes effective October 1, 1995 and applies to the estates of decedents dying on or after that date.

Trustee's Duties for Irrevocable Life Insurance Trust (Chapter 153; HB 606): Chapter 153 amends G.S. 36A-2, which concerns the "prudent man" rule of investing trust funds, to provide that the duties of a trustee of a life insurance trust do not include the duties to: (1) determine if the insurance is or remains a proper investment; (2) exercise policy options under the contract; or (3) diversify the contract. A trustee is not liable for any loss arising from the absence of these duties. The trustee of a life insurance trust established before October 1, 1995, must notify the settlor in writing that those duties do not apply. However, the settlor may, within 60 days of that notice, notify the trustee that those duties do apply. The act is effective October 1, 1995 and applies to trusts in existence on or after that date.

After-Born Or After-Adopted Children's Shares (Chapter 161; SB 707): Chapter 161 addresses the inheritance rights of a child born or adopted after the parent has executed a will. Under current law, that child would be entitled to take an intestate share of the estate unless (1) some provision, no matter how small, is made in the will for the child, or (2) it is apparent from the will that the lack of a share for the child was intentional. Chapter 161 adds three additional provisions. They are: (1) the parent had living children when the will was executed and none of the children take under the will; (2) the will provides that the surviving spouse is to receive all of the estate; or (3) the parent made some other provision for the child that takes effect upon the death of the parent whether that provision is adequate or not. The act becomes effective October 1, 1995 and applies to the estates of decedents dying on or after that date.

Uniform Rule Against Perpetuities (Chapter 190; SB 83): Chapter 190 adopts the Uniform Statutory Rule Against Perpetuities (USRAP) as Article 2 of Chapter 41 of the General Statutes. The USRAP includes a two prong test for the validity of future interests. First, if the interest is valid under the common-law rule, it remains valid under the USRAP. The common-law rule requires the interest to vest within 21 years of some life in being at the creation of the interest. Second, if the future interest violates the common-law rule, the interest is valid if it actually vests within 90 years. The USRAP includes provisions governing the time of creation of an interest and allows for the reformation of a failed interest by the court. Certain interests are excluded from the statutory rule including certain commercial transactions and marital and divorce agreements. (Commercial transactions are governed by Chapter 525, Limit Options in

Gross, which is also summarized in this section.) The USRAP is to be applied prospectively, effective October 1, 1995. However, a court may reform a future interest created prior to that date.

Honorary/Pet/Cemetery Trusts (Chapter 225; SB 85): Section 1 of Chapter 225 enacts a new Article 14, Honorary Trusts; Trusts for Pets; Trusts for Cemetery Lots, in Chapter 36A of the General Statutes. Honorary trusts are deemed valid by Chapter 225 to be performed by the trustee for a term of 21 years. Trusts for the care of cemetery lots are also deemed valid by the Chapter. Trusts for the care of pets are validated, provided the pet is alive at the time the trust is created. The trust terminates at the death of the animal. Except as required under the pet trust agreement or by the clerk, no accounting is required. Section 2 of Chapter 225 also amends G.S. 65-9 to provide for the termination of a cemetery trust if the trust corpus falls below $100.00. Chapter 225 becomes effective October 1, 1995. Section 1 applies to trusts created on or after that date. Section 2 applies to cemetery trusts in existence before or created on or after that date.

Amend Powers of Fiduciaries (Chapter 235; HB 566): Chapter 235 makes several changes relating to the powers of fiduciaries. Sections 1, 2, and 3 amend G.S. 32-27 to add the following to the powers of a fiduciary that may be incorporated by reference into a will or trust agreement: (1) the power to make non-pro rata distributions of assets in an estate or trust; (2) the power to make transfers to custodians under the North Carolina Uniform Transfers to Minors Act, Chapter 33A of the General Statutes, or any similar statute in the state where the minor resides; and (3) the power to make non-pro rata distributions of income and principal from a trust which has been divided into two or more separate trusts. For trusts created prior to the enactment of this act, Section 4 amends G.S. 36A-136 to give trustees of all express trusts the power to divide a trust into two or more separate trusts and make non-pro rata distributions from the separate trusts. Section 5 provides that, for the purposes of the federal generation-skipping transfer tax exemption, pecuniary amounts which are satisfied with assets valued at any time other than the time of distribution must have a value which is fairly representative of the appreciation or depreciation of all property available for distribution. Sections 6 and 7 amend Chapter 35A concerning guardians of the estate of an incompetent person to authorize the guardian to renounce any interest in property with the prior or subsequent approval of the clerk or judge of superior court. Section 8 authorizes the guardian of an institutionalized ward to transfer assets to the spouse of the guardian's ward, if the ward qualifies for Medicaid. Section 8 also allows a guardian to create a special needs trust for the ward using the ward's assets, if the State will be reimbursed from amounts remaining in the trust at the death of the ward for the State's medical assistance. Section 9 authorizes a clerk of court to award costs and attorney fees in all types of guardianship proceedings under Chapter 35A, not just competency proceedings. Section 10 amends G.S. 37-22(c) to provide that capital gains distributions from mutual funds and real estate investment trusts shall be treated as principal rather than income. Section 11 amends the Principal and Income Act to provide that expenses for trusts established prior to 1994 are allocated in the same manner as trusts established after 1994. Chapter 235 is effective October 1, 1995.

Estate Amount Changes (Chapter 262; SB 82): Chapter 262 amends G.S. 28A-25-1 and G.S. 28A-25-1.1 to increase the amount of property which may be collectible by small estate affidavit from $10,000 to $20,000 in both testate and intestate cases, if the affiant is the surviving spouse and sole heir of the decedent. The Chapter increases by 100% the intestate share of the surviving spouse in personal property, the statutory spousal allowance of an intestate or testator, and the statutory children's allowance. If

the estate does not exceed $10,000 (was $5,000), the statutory allowance for the year's support is the maximum support which may be received. In an action by a surviving spouse or child for assignment of support in excess of the statutory allowance, the estate of the decedent must exceed $10,000 (was $5,000). Chapter 262 also increases from $2,000 to $2,500 the amount of funeral expenses which may be paid as a second class claim against the estate of the decedent. Chapter 262 becomes effective October 1, 1995 and applies to estates of persons dying on or after that date.

Simplified Estate Administration (Chapter 294; SB 244): Chapter 294 provides a procedure for the summary administration of a decedent's estate where a surviving spouse is the sole beneficiary of the estate. Whether the person died with or without a will, if the surviving spouse is the sole heir or devisee the spouse may petition the clerk of court to issue an order authorizing the transfer of the decedent's property to the spouse, and to the extent of the property received, the spouse becomes liable for the debts of the decedent. Notices to creditors, inventories, and accounts are eliminated. The act becomes effective January 1, 1996, and applies to the estates of decedents dying on or after that date.

Gifts by Attorney-in-Fact (Chapter 331; SB 724): Chapter 331 amends the statutory short form of General Power of Attorney contained in G.S. 32A-1 to allow a principal to authorize gifts of the principal's property to charities, individuals, and to the named attorney-in-fact. G.S. 32A-2, which explains the powers listed in the statutory short form, is amended to explain this additional authority. The Chapter also clarifies that a general grant of authority to an attorney-in-fact confers upon the attorney-in-fact the power to make gifts. However, unless expressly authorized by the principal, a general grant of authority does not authorize gifts to the attorney-in-fact. An attorney-in-fact authorized to make gifts may nevertheless seek approval from the clerk of superior court for a gift or gifts. Such approval is not required, however. If a general grant of authority is not contained in the power of attorney, the attorney-in-fact may initiate a special proceeding before the clerk for the authority to make gifts, to the extent such authority is not inconsistent with the terms of the power of attorney. Chapter 331 provides that it is intended to codify existing common law. The act becomes effective October 1, 1995.

Uniform Custodial Trust Act (Chapter 486; SB 320): Chapter 486, recommended by the General Statutes Commission, is based on the Uniform Custodial Trust Act, promulgated by the National Conference of Commissioners on Uniform State Laws in 1987. It provides for the creation of statutory trusts for adults similar to those created under the North Carolina Uniform Transfers to Minors Act. The act permits creation of a custodial trust guaranteeing management of property if an adult becomes incapacitated. It may also be used to pass on property at death without probate. The person who creates the custodial trust for his or her own benefit retains control over it until incapacity or death. That control entitles the beneficiary to direct the management of the property, receive income and principle, and cancel the trust at any time. The act also makes conforming amendments to the statutory power of attorney form. The act permits a broad range of instruments to be used to create the trust provided there is a designation that the trust is created for the beneficiary under the North Carolina Uniform Custodial Trust Act. There is a limitation on the value of custodial trust property. It must not exceed, in the aggregate, one hundred thousand dollars in value, exclusive of the value of the transferor's or declarant's personal residence. The limitation on value does not apply to appreciation in value of the property held in the custodial trust. A good faith violation of the limitation does not invalidate a custodial trust. The act becomes effective October 1, 1995.

Real Property

Remove Sunset on Reverse Mortgages (Chapter 115; HB 97): Chapter 115 removes the October 1, 1995, sunset from the Reverse Mortgage Act, as recommended by the Study Commission on Aging. The Reverse Mortgage Act allows elderly homeowners to access the equity in their homes without having to sell their homes or take out home equity loans. A reverse mortgage provides payments to the homeowner over a period of years, and the debt is generally paid off when the homeowner dies, moves or sells the home. The Reverse Mortgage Act contains certain safeguards for the protection of elderly homeowners who take out reverse mortgages, such as the requirement that the borrower receive mortgage counselling prior to closing the loan. In addition, the Commissioner of Banks is authorized to adopt rules to protect the interest of those borrowing under reverse mortgages. This act became effective May 29, 1995.

Uniform Rule Against Perpetuities (Chapter 190; SB 83): See Estates/Trusts/Wills in this section.

Deed of Trust Cancellation (Chapter 292; HB 459): Chapter 292 makes various changes concerning the methods of cancellation of a note secured by a deed of trust or mortgage as provided in G.S. 45-37. Section 1 of Chapter 292 provides that no fee may be charged by the register of deeds for recording a **notice of satisfaction** of a deed of trust or mortgage. Section 2 provides for the discharge of a deed of trust or mortgage by exhibition to the register of deeds of a **certificate of satisfaction.** The certificate of satisfaction must be accompanied by the note, bond or other evidence of indebtedness with an endorsement of payment and satisfaction by the owner of the note. Section 3 of Chapter 292 provides a form for a certificate of satisfaction. Section 4 provides a form for an **affidavit of lost note.** Such an affidavit may be used with a certificate of satisfaction when evidence of indebtedness cannot be produced. The affidavit must be signed by the owner of note, bond, or other evidence of indebtedness. Section 5 amends G.S. 45-37 to provide that cancellation of a note, bond or other evidence of indebtedness by the exhibition of the deed of trust or mortgage together with the note, bond or other evidence of indebtedness endorsed paid and satisfied may only be used if the endorsement is dated prior to December 31, 1995. Section 6 makes changes concerning the recording of satisfactions by the register of deeds. Section 5 of Chapter 292 becomes effective January 1, 1996. With the exception of Section 5, Chapter 292 becomes effective October 1, 1995.

Landowner Protection Act (Chapter 308; HB 127): See **CIVIL PROCEDURE.**

Expedite Eviction/Drug Offenders (Chapter 419; SB 558): Chapter 419 creates a new Article 7 of Chapter 42 of the General Statutes entitled "Expedited Eviction of Drug Traffickers and Other Criminals." The bill permits a landlord of a leased residential premises to bring an action in small claims court or district court for the eviction of a tenant for the following: (1) criminal activity on or within the rental unit; (2) use of the unit to promote criminal activity; (3) criminal activity on or in the immediate vicinity of any portion of the entire premises; (4) permission by the tenant to a person to return or reenter upon the premises after the person has been removed pursuant to this Article; or (5) failure to notify law enforcement or the landlord upon learning that an individual barred under this Article has returned or reentered the tenant's unit. The court may order the removal of a person other than the tenant if the person engaged in criminal activity on or in the immediate vicinity of any portion of the leased premises. The court may also issue a conditional eviction order against a tenant providing that, as a condition of tenancy, the tenant shall not give permission to or invite a barred person

to return to or reenter any portion of the entire premises. A criminal conviction for the alleged criminal activity is not required for eviction under this Article. Chapter 419 lists certain affirmative defenses to an eviction action including the tenant's lack of knowledge of criminal activity and reasonable actions by the tenant to prevent criminal activity. Chapter 419 becomes effective October 1, 1995 and applies to acts committed on or after that date.

Landlord/Tenant Changes (Chapter 460; HB 899): Chapter 460 makes changes in the statutes relating to the relationship between a landlord and a tenant. It amends G.S. 42-25.9 to add additional procedures for the disposition of the property of a tenant who has been put out of possession by the execution of a writ of possession. It allows the landlord to throw away, dispose of, or sell all items of personal property remaining on the premises. The landlord must hold the property for 10 days and, upon request of the tenant, must release that property during the 10 day period during regular business hours or at a time agreed upon. The landlord must also give notice of the intent to sell the property to recover his damages. If there is a surplus from the sale the tenant may request it. Otherwise, it is delivered to the government of the county in which the property is located. If the value of the property remaining on the premises is less than one hundred dollars, it may be deemed abandoned five days after the time of execution of the writ and may be thrown away or otherwise disposed of. The act also amends G.S. 42-28, which deals with a summons for ejectment. Under the present law, the summons requires the defendant to appear not later than 10 days from the date of issuance. The amendment reduces that time to seven days, excluding weekends and legal holidays. The act amends G.S. 42-29, which deals with service of the summons. It puts limitations on the time of service by the sheriff. The sheriff must now mail the summons and complaint not later than the end of the next business day or as soon as practicable. The present provision that the officer may attempt to telephone the defendant to request the defendant to come to the officer to accept service or to schedule an appointment to accept delivery of service is now shortened to five days from the date of issuance of the summons. Also, the time within which the officer must proceed to attempt personal service is shortened to five days from the date of issuance of the summons. The act amends G.S. 42-36.2 to require that the sheriff must execute a writ of possession not more than seven days from the sheriff's receipt of the writ. When the sheriff gives the required notice to the tenant of the proposed execution, the sheriff must notify the tenant that failure to request property on the premises within ten days of execution may result in the property being thrown away, disposed of, or sold. G.S. 42-36.1A is added to the summary ejectment proceeding. It provides that prior to obtaining execution of a judgment for possession entered more than 30 days prior, a landlord must sign an affidavit stating that the landlord has neither entered into a formal lease with the defendant nor accepted rent money from the defendant for any period of time after entry of the judgment. The act makes other conforming changes to the General Statutes. It becomes effective January 1, 1996.

Residential Property Disclosure Act (Chapter 476; HB 281): Chapter 476 creates the Residential Property Disclosure Act which requires sellers of residential real estate consisting of one-to-four dwelling units to disclose any known defects in property being sold, or to disclaim any representations at all, prior to or at the time of contract. This act applies to sales or exchanges, installment land sales contracts, options, and certain leases with option to purchase. This act does not apply to new construction, most non-arms length sales, to leases with options to purchaser where the purchaser occupies the dwelling, or to any transaction where both parties agree not to complete a disclosure statement.

The disclosure statement is to include statements concerning the conditions of the following parts of the property:

1. Water and sanitary sewage disposal systems.
2. Roof, floors, foundation, basement, load bearing walls, leaks.
3. Plumbing, electrical, heating, or cooling systems.
4. Pest infestation.
5. Zoning law violations and restrictive covenants.
6. Presence of lead-based paint, asbestos, underground storage tanks, or other hazardous or toxic materials.

If the seller makes disclosure after the offer or option to purchase is made, the buyer may withdraw the offer or rescind the contract within 3 days of receipt of disclosure. If the buyer wishes to withdraw the offer as permitted under this section, the buyer must give notice of intent to withdraw and upon compliance may withdraw without penalty, including return of deposit. If the buyer fails to terminate by the earlier of settlement or occupancy date, then the buyer conclusively waives right to terminate. The seller must promptly deliver a corrected disclosure statement to the buyer if any defects become known or arise after the original disclosure is delivered. The seller may meet the disclosure requirements by providing a report on the condition written by a professional in his or her area of expertise. The seller will not be liable for errors in the report provided that seller reasonably relied on that information and was not negligent in obtaining or submitting it. The seller's real estate agent or broker must inform the seller of the seller's rights and obligations under this act, but once the agent complies, the agent is not responsible for the seller's willful refusal to disclaim or disclose. The act does not affect the landlord-tenant relationship. North Carolina Real Estate Commission is authorized to prepare the form and charge a fee therefor of twenty-five cents (25¢) per form plus postage. The act applies to real estate contracts entered into on or after January 1, 1996.

Amend Cartway Statute (Chapter 513; HB 545): Chapter 513 amends the cartway law by: (1) expanding the circumstances under which cartways can be granted to include property used for single-family homesteads of at least 7 acres, and (2) defining the maximum size for a cartway as not more that 18 feet in width for the area of travel and not more than 30 feet in width for cuts, fills and ditches. The act eliminates a permissive easement or right-of-way as a bar to obtaining a cartway, but requires that priority be given for the location of a cartway in the location of other easements and cartways. The act eliminates the automatic 5-year expiration of cartways for the removal of timber and provides that all cartways expire at a time specified in the petition and found necessary by the court. The act contains specific provisions limiting the establishment of a cartway across a railroad right-of-way to require the cartway to be located at an existing private railroad crossing provided the cartway holder agrees to share the cost of maintenance except when specifically agreed to by the railroad. The railroad is required to negotiate in good faith for a suitable railroad crossing for the cartway. The act is effective July 29, 1995 but the changes made in these sections will expire July 1, 1997.

The act contains permanent changes to the law clarifying that the right to a trial de novo includes a right to a jury trial on all issues, including the right to relief, the location of the cartway, and the assessment of damages. The act also contains session law language which was not codified into the cartway statutes which requires that compensation to the landowner whose property is crossed by the cartway, be established in accordance with the condemnation law found in Chapter 40A of the General Statutes. These provisions are effective July 29, 1995.

Limit Options in Gross (Chapter 525; SB 84): Chapter 525 is a companion act to Chapter 190, Uniform Statutory Rule Against Perpetuities, which is also summarized in this section. Chapter 525 replaces the common-law rule against perpetuities with statutory time limits for options in gross and other commercial transactions. An "option in gross" is defined as an option in which the holder does not own any leasehold or other interest in the land. A "preemptive right in the nature of a right of first refusal in gross with respect to an interest in land" means a preemptive right in which the holder does not own any leasehold or other interest in the land. An option in gross or a preemptive right becomes invalid if it is not actually exercised within 30 years of its creation. A lease, excluding an oil, gas or mineral lease, also becomes invalid if its term does not commence within 30 years after its execution. Other provisions invalidate the following: (1) a nonvested easement in gross which does not actually vest within 30 years; (2) a possibility of reverter, right of entry, or executory interest if the right to vest depends on an event affecting the use of land and the interest does not actually vest within 60 years of its creation. The following possibilities of reverter, rights of entry, or executory interests are excluded from the act: (1) those held by a charity, a government or governmental agency or subdivision excluded from the Uniform Statutory Rule Against Perpetuities (See Chapter 190 in this section); or (2) an arrangement relating solely to an interest in oil, gas, or minerals. Chapter 525 becomes effective October 1, 1995 and applies to a property interest or arrangement created on or after that date.

Miscellaneous

Require Smoke Detectors in Rental Property (Chapter 111; SB 295): Chapter 111 amends the State Building Code and the Landlord-Tenant Act to require the proper installation of approved smoke detectors by the property owner in all rental dwelling units, including manufactured homes, regardless of when the unit was constructed. The act clarifies the duty of the landlord to provide an operational detector at all times, and fresh batteries at the beginning of a lease; and the duty of the tenant to notify the landlord if the detector is defective and replace the batteries as needed after the beginning of the lease, unless the parties otherwise agree in writing. The failure of the tenant to replace batteries as needed shall not be considered as negligence on the part of the tenant or the landlord. The act is effective May 29, 1995, but the provisions amending the Landlord-Tenant Act are effective January 1, 1996 and apply to all residential rental agreements in effect on or after that date.

Business Building Code Compliance (Chapter 242; SB 612): Chapter 242 amends the State Building Code to permit an exception to the business occupancy building requirements for buildings built prior to 1953, to permit these buildings to have a single exit if the building fully complies with standard exit requirements on or before December 31, 2006. The Building Code Council is to adopt rules and amend the Building Code consistent with this law on or before October 1, 1995. The act was effective June 14, 1995.

Donation of Conservation Lands (Chapter 443; SB 229): Chapter 443 amends three statutes to remove disincentives and impediments for donations of conservation or preservation lands or property, by: (1) recognizing and ratifying conservation and preservation agreements with the federal government entered into since June 1, 1979; (2) amending the Marketable Title Act to permit exceptions for conservation and preservation agreements; and (3) eliminating the collection of deferred property taxes for property donated for conservation or preservation purposes. The act is effective

July 18, 1995, except the elimination of the collection of deferred taxes is effective retroactive to January 1, 1995.

STUDIES

Legislative Research Commission Studies

The 1995 Studies Bill (Chapter 542; HB 898) authorizes the Legislative Research Commission to study the following: (1) lien laws; and (2) property issues including property rights, annexation laws, and condemnation laws.

RESOLUTIONS

Joint Resolutions

Inviting Governor (Res. 1; SJR 2).

Lingerfelt as Banks Comm'r (Res. 2; HJR 91).

Inviting Chief Justice (Res. 3; SJR 225).

Memorializing John Codington (Res. 4; SJR 236).

Memorializing James Marshall Hall (Res. 5; HJR 501).

Honoring UNC-CH Women's Basketball (Res. 6; HJR 226).

Joint Session for Confirmation (Res. 7; SJR 538).

Elect Community College Board (Res. 8; SJR 945).

Honoring Underage Veterans (Res. 9; HJR 981).

Memorializing Mary Seymour (Res. 10; SJR 1096).

Honoring State Defense Militia (Res. 11; HJR 987).

Memorializing Frank Howey, Sr. (Res. 12; SJR 515).

Honoring World War II Veterans (Res. 13; HJR 535).

Memorializing Amy Jackson (Res. 14; SJR 1102).

1995 Adjournment Resolution (Res. 15; HJR 1069).

Simple Resolutions

1995 House Rules (HR 1).

1995 Permanent House Rules (HR 43).

Board of Governors Election (HR 126).

Inviting Miss America (HR 209).

Select Comm. Certificate of Need (HR 688).

1995 Senate Rules (SR 1).

Senate UNC Board Elections (SR 176).

Spencer Shops Centennial (SR 1098).

STATE GOVERNMENT

(Karen Cochrane-Brown, Bill Gilkeson, Linwood Jones, Giles Perry, Terry Sullivan, Steve Rose)

(FOR SUMMARIES CONCERNING STATE EMPLOYEES, SEE EMPLOYMENT)

RATIFIED LEGISLATION

Alcoholic Beverage Control

ABC Permit/Certain Leased Property (Chapter 372; HB 783) Chapter 372 exempts property owned by a local board of education which was leased for 99 years or more to a nonprofit auditorium authority created prior to 1991 and whose governing board is appointed by certain local governmental entities from the prohibition against the possession and use or sale of certain alcoholic beverages on such property. This act became effective July 5, 1995.

Liquor Importer/Bottler Permit (Chapter 404; SB 293): Chapter 404 creates a new type of commercial ABC permit known as a liquor importer/bottler permit. The application fee for this permit will be $250. The holder of such a permit would also need to obtain a State license, for which the annual tax will be $250. A holder of this permit can import liquor in closed containers into the foreign trade zone at either of the State Ports via ships that dock at the Ports. The imported liquor can be bottled, packaged, or labeled or it can be stored and shipped to State or local ABC warehouses. This act became effective July 11, 1995.

ABC LRC Study Recommendations (Chapter 466; SB 57): Chapter 466 makes conforming, definitional, and substantive changes to the ABC laws. The substantive changes include: (1) adding provisions for businesses organized as limited liability companies; (2) requiring that mixed beverages permits may only be issued after a mixed beverage election where the operation of ABC stores has been approved by the voters; (3) adding political organizations to the list of entities allowed to obtain a purchase-transportation permit; (4) requiring that all containers of liquor held by a permittee must have the tax stamp, except for private functions under a special occasion permit; and (5) requiring a supplier to notify the ABC Commission of the brands the supplier provides to a wholesaler. This act becomes effective October 1, 1995.

Courts

Divide Superior Court District 11 (Chapter 51; HB 527): Chapter 51 eliminates Superior Court District 11 (Harnett, Johnston, and Lee) and creates Superior Court Districts 11A (Harnett and Lee) and 11B (Johnston). The old district had two judges. The new districts will have one judge each. The present judge who resides in Harnett County will be the judge in District 11A. The present judge who resides in Johnston County will be the judge in District 11B. Chapter 51 becomes effective October 1, 1995, or when it is precleared by the United States Justice Department, whichever is later.

Emergency Recall of Court of Appeals Judges (Chapter 108; SB 871): Chapter 108 provides for the emergency recall of judges and justices to serve on the Court of Appeals. A justice or judge of the Appellate Division may apply to the Governor for

appointment as an emergency recall judge of the Court of Appeals. The Governor must be satisfied that the person is physically and mentally able to perform the duties. The Chief Judge of the Court of Appeals has discretion as to the actual use of a justice or judge. There are specific qualifications for appointment. The justice or judge must be retired or eligible for retirement; must not have reached the mandatory retirement age of 72 (although the Governor may make an exception); must have at least five years service on the bench with at least six months in the Appellate Division; and judicial service must have ended within the preceding 15 years. The maximum number of such judges in service at any time is three. Compensation, expenses and allowances are the same as for recalled emergency superior court judges. The recall judge must not engage in the practice of law during the time of his or her commission, but the person may serve as a referee, arbitrator, or mediator. The act become effective July 1, 1995.

Jury Fee Waiver Program (Chapter 324, Sec. 21.1; HB 229, Sec. 21.1): Section 21.1 of Chapter 324, the Continuation Budget Operations Appropriations Act of 1995, amends G.S. 7A-312 relating to uniform fees for jurors to allow a juror to waive payment of the $12.00 per diem fees provided by that section. The Administrative Office of the Courts is directed to determine the extent to which cost savings may be generated by allowing jurors to waive payment of the fees and to report to the Chairs of the Senate and House Appropriations Committees by March 1, 1997. Permission to waive payment of the fees expires on June 30 1997.

Magistrates/Judges/Judicial Districts (Chapter 507, Sec. 21.1; HB 230, Sec. 21.1); Section 21.1 of Chapter 507 increases the maximum allowable number of magistrates for Currituck, Pasquotank, and Surry Counties; further divides District Court District 9 by putting Warren County and part of Vance County in a new district 9B; and adds two special superior court judges to be appointed by the Governor for terms expiring September 30, 2000. The successors to the judgeships shall be appointed for five year terms. Most of the provisions of this section become effective January 1, 1996, subject to preclearance by the U.S. Department of Justice under the Voting Rights Act.

Drug Treatment Courts (Chapter 507, Sec. 21.6; HB 230, Sec. 21.6): See **CRIMINAL LAW AND PROCEDURE.**

Cultural Resources

Retain Museum of Art Security (Chapter 40; HB 401): Chapter 40 repealed 1993 and 1994 budget provisions that required the Department of Cultural Resources to discontinue its in-house law enforcement and to transfer the guards at the State Museum of Art to the State Capitol Police. The act was made effective upon ratification, April 17, 1995.

Historical Commission Plan Review (Chapter 324, Sec. 12; HB 229, Sec. 12): Section 12 of Chapter 324 requires the State Historical Commission to review plans for the use and maintenance of any building when the Commission evaluates whether the building should be designated as a State Historic Site and also when the Commission reports on proposals for State funding of historical buildings. The provision was made effective July 1, 1995.

Roanoke Island Commission Changes (Chapter 507, Sec. 12.6; HB 230, Sec. 12.6): Section 12.6 of Chapter 507 specifies that the Commission, already charged with

preservation, development and interpretation of the cultural assets of Roanoke Island, is to operate and administer the Elizabeth II State Historic Site and Visitor Center, the Elizabeth II, Ice Plant Island and all other Department of Cultural Resources-administered properties on Roanoke Island having historical significance. The personnel, personal property and unexpended funds for the Elizabeth II State Historic Site and Visitor Center, the Elizabeth II and the Roanoke Island Commission are transferred to the Commission from the Department of Cultural Resources. The Roanoke Island Commission Fund is established as a nonreverting fund to receive deposits of 75% of the revenues collected from properties operated by the Commission and gifts, donations and bequests received by the Commission. Moneys in the Fund shall be used for the expenses of the Commission and the operation and maintenance of Commission-operated properties. The Roanoke Island Commission Endowment Fund is created as a nonreverting fund to be administered by the Commission, with 25% of the revenues collected from properties operated by the Commission deposited. These moneys are to be held in reserve until July 1, 2000. On or after that date, 80% of the interest generated may be used by the Commission to carry out its duties, including capital expenditures on Commission-operated properties. The Commission is granted authority to appoint an executive director and to hire other employees. The provisions of the Executive Budget Act restricting expenditure of funds for which the General Assembly has considered but not enacted an appropriation and restricting the transfer of funds between objects and line items are specified not to apply to the law establishing the Roanoke Island Commission and its operations. This section was effective on July 28, 1995.

Capitol Preservation Commission Repeal (Chapter 507, Sec. 12; HB 230, Sec. 12): Section 12 of Chapter 507 repeals that Commission, that was created by Chapter 682 of the 1993 Session Laws (Second Session, 1994), to care for and administer the State Capitol and Union Square. This section reenacts the former law vesting those duties with regard to the State Capitol's rotunda, first floor corridors and stairways, and second, third and loft floors in the Department of Cultural Resources; and with regard to the offices and working areas on the State Capitol's first floor, washrooms and exterior in the Department of Administration. This section was effective on July 28, 1995.

Elections

(NOTE: REGARDLESS OF THE DATE ON WHICH THE GENERAL ASSEMBLY MAKES A STATEWIDE ELECTION-LAW BILL EFFECTIVE, IF IT CONTAINS A "CHANGE AFFECTING VOTING" IT CANNOT BE IMPLEMENTED UNTIL IT IS APPROVED BY THE U.S. ATTORNEY GENERAL UNDER SECTION 5 OF THE VOTING RIGHTS ACT OF 1965. THE ATTORNEY GENERAL WILL NOT OFFICIALLY CONSIDER ANY BILL FOR APPROVAL UNTIL IT HAS BEEN RATIFIED AND SUBMITTED TO HER.)

Appellate Court Electoral Reform (Chapter 98; SB 448): Chapter 98 makes clear that, when a vacancy occurs in an eight-year term on the Supreme Court or the Court of Appeals, the next election for that seat on the court will be for a full eight-year term, regardless of how much time was left on the term of the vacating judge. Prior law had been interpreted to mean that, if a vacancy occurred in a term on one of those courts, the Governor would appoint someone to serve until the next even-year general election, at which time an election would be held to fill the remainder of the term of the vacating judge. Thus, if a judge was elected in 2000 and died in 2005, five years into

her eight-year term, then there would be an election in 2006 to fill the remaining two years of the unexpired term and another election in 2008 to fill the next full eight-year term. The bill changes the system so that the 2006 election would be for a full eight-year term, and there would not be another election for the seat until 2014. The act became effective upon ratification, May 23, 1995.

Election Supervisor Name Change (Chapter 243; SB 813): Chapter 243 changes the names of all county election supervisors to "directors," effective January 1, 1996.

Train Referendum Committee Treasurer (Chapter 315; HB 428): Chapter 315 requires that treasurers of referendum committees must receive training from the State Board of Elections, specifically pointing out to them that, although referendum committees may receive corporate contributions, they may not make contributions to candidates, political committees, or other referendum committees.

Contracts for Ballots (Chapter 324, Sec. 14; HB 229, Sec. 14): Section 14 of Chapter 324 removes an exemption from the competitive bid law that had been given to the State Board of Elections in letting contracts for printing and distributing ballots. This section was made effective July 1, 1995.

Precincts Not Divided (Chapter 355; HB 846): Chapter 355 says that, whenever the General Assembly draws congressional or legislative districts after the return of a Census, it must do so without splitting precincts. That rule would be waived if a redistricting plan was rejected under the Voting Rights Act, but only to the extent that splitting precincts was necessary to gain approval. The act does not prevent any action to comply with federal law. The act was made effective upon ratification, June 29, 1995.

Precinct Boundaries (Chapter 423; SB 815): Chapter 423 establishes for the rest of the 1990's a program designed to get all of North Carolina's precinct boundaries on the Census Bureau's maps for the 2000 count so that the General Assembly in the 2001 redistricting will know where all the precincts are and who lives in them, according to the 2000 census. The bill mandates State and county participation in the Census Bureau's Census Redistricting Data Program. The first phase of that program, beginning in 1995, involves county boards of elections in all 100 counties receiving the Census Bureau's preliminary maps for the 2000 Census: The counties, with assistance from the Legislative Services Office, are to mark on the maps lines that they will need as the basis for precinct lines. The Census Bureau will then decide whether it will recognize those lines as boundaries for Census blocks. A Census block is the smallest geographical unit in which the Bureau counts people and provides demographic data. In the second phase of the program, probably occurring in 1997-99, the Bureau will send back the 2000 maps on which it has designated block boundaries. The county boards of elections will then mark their precincts on those maps, following either Census Block boundaries or city or township lines, and the Legislative Services Office and the State Executive Secretary-Director of Elections will determine whether those precincts follow lines consistent with the law. The act puts all 100 counties through essentially the same program that 48 counties underwent before the 1990 Census. One difference in this cycle is that counties may be allowed to retain some precincts whose lines are based on mountain ridgelines that the Census Bureau does not accept. If the Executive Secretary-Director approves such precinct lines, then one or more precincts may be combined for Census reporting purposes. The act also cleans up old language so that it is clear that county boards of elections may put territory from more than one

township in the same precinct. The act was made effective upon ratification, July 12, 1995.

Refund Filing Fee--Candidate's Death (Chapter 464; SB 182): Chapter 464 says that if a person who has filed a notice of candidacy for office dies before the primary, the estate of the deceased is entitled to a refund of the filing fee if application is made to the board of elections no later than one year after the date of death. The bill was made effective retroactively to January 1, 1994.

Elections Changes/Appropriations (Chapter 507, Sec. 13.1, 13.2, and 25.10; HB 230, Sec. 13.1, 13.2, and 25.10): Chapter 507 contains the following election-related provisions:

* State Board of Elections Authority to Sell Software for Campaign Reporting (Sec. 13.1). This allows the State Board to sell computer software to candidates and political committees to help bring about a uniform system of electronic filing of campaign finance reports.
* Statewide Computerized Voter Registration (Sec. 13.2). This directs the State Board of Elections to develop a centralized voter registration system. It allows the State Board to spend $1.5 million in the 1995-96 fiscal year to set up the central component of such a system and appropriates $3.5 million for the 1996-97 fiscal year to give grants for the county component.
* Removal of ESC Voter Registration Sunset/ESC Voter Registration Funds (Sec. 25.10). This extends to July 1, 1996 the designation of unemployment offices as voter registration agencies. The section also appropriates $300,000 for fiscal 1995-96 from the Worker Training Trust Fund to conduct voter registration.

The provisions were made effective July 1, 1995.

Licensing Boards and Commissions

Real Estate Exam Fees (Chapter 22; HB 33): Chapter 22 requires an applicant for a real estate license who fails the examination to pay the $30 application fee each time the applicant is reexamined. Chapter 22 also increases the real estate license renewal fee from $25 to $30, unless the Real Estate Commission sets a higher fee, not to exceed $50. Chapter 22 became effective April 4, 1995, and applies to application for or renewal of a license filed on or after that date.

Change Medical Board Name (Chapter 94; SB 1017): See **HUMAN RESOURCES.**

Sheriff Education and Training Standards Amendments (Chapter 103; SB 362) simplifies language relating to the Sheriff Education and Training Standards regulation and its governing Commission. The Commission's membership is increased by one to 17, and its membership representing sheriffs is reorganized to provide that the North Carolina Sheriff's Association will appoint a sheriff from each of 10 specified geographical districts and two sheriffs at large; formerly, the sheriffs were appointed representing the 11 congressional districts. A written appeal of a proposed adverse determination regarding certification as a justice officer by the Commission must be filed within 30 days of notice of the action. The Commission may apply for injunctive relief to prevent violations of the law regulating sheriff education and training standards or rules adopted under that law. The Commission is prohibited from acting adversely on certification as a justice officer solely because the individual has been convicted of a crime where the individual has been granted an unconditional pardon of innocence of a crime. Chapter 103 is effective on September 1, 1995.

Amend Electrical Contractors Law (Chapter 114; HB 47): Chapter 114 made several changes in the licensing law governing electrical contractors, including:

* Increasing from $17,500 to $25,000 the threshold dollar amount of a project on which a limited licensee can work;
* Limiting the applicability of residential dwelling electrical contractor licenses to projects not exceeding the value limit permitted on a limited license. Current law does not limit a residential dwelling licensees by project value.
* Changing the way members of the State Board of Examiners of Electrical Contractors are selected.

The act was generally made effective December 1, 1995, but the Board-term provisions were made effective January 1, 1997, and the $25,000 amount went into effect July 1, 1995.

State Board of Certified Account Examiners Injunctive Relief (Chapter 137; HB 400) permits that board to seek injunctive relief to prevent violations of the law regulating certified public accountants or of rules adopted under that law. Chapter 137 is effective on October 1, 1995.

Fire Sprinkler System Drawings (Chapter 146; SB 884): Chapter 146 amends the Professional Engineer's Practice Act to allow licensed fire sprinkler contractors to prepare fire sprinkler plans and design drawings. This act took effect on ratification (June 1, 1995).

Reasons to Discipline Chiropractors (Chapter 188; HB 829): See **HUMAN RESOURCES.**

Notary Law Amendments (Chapter 226; SB 344): Chapter 226 amends Chapter 10A of the General Statutes, which regulates Notaries Public. The amendments require that the course of study to become a notary must be administered by an instructor certified in accordance with rules adopted by the Secretary of State, which includes completion and passing of an instructor's course. Instructors must have a minimum of six months active experience as a notary and must maintain a current commission. There are certain exemptions for registers of deeds and clerks of court and their assistants and deputies. Certification is for two years. The act further amends Chapter 10A by clarifying that an applicant for recommissioning as a notary does not have to complete the required course of study again, nor does that person have to obtain a recommendation of a publicly elected official again. A provision is also added stating that the Secretary of State can revoke a notary commission if the notary fails to administer an oath or affirmation when performing an act requiring the administration of an oath or affirmation. Finally, an amendment provides that law enforcement agents of the Department of Secretary of State, with regard to investigation and arrests for violations of the notary public chapter, have State-wide arrest powers and may assist local law enforcement agencies in such investigations, and may initiate and carry out their own investigations. The act becomes effective October 1, 1995 and applies to applications for recommission on or after that date.

Clarify Banking Comm'n Authority (Chapter 267; SB 686): See **COMMERCIAL LAW.**

Refrigeration Contracting Provisions (Chapter 376; HB 63): Chapter 376 makes the following changes to laws governing the practice of refrigeration contracting: (1) One of the public member positions on the Board of Refrigeration Examiners is eliminated from the Board and replaced with a position for a member with an engineering

background in refrigeration; (2) the licensing exemption for persons working on gas-fueled devices and ice-using and storing equipment is eliminated; (3) a specialty license is authorized for transport refrigeration contractors; (4) the Board is authorized to accept a civil penalty of up to $1,000 to settle a disciplinary charge against a licensee; and (5) the Board is authorized to use its funds to defray legal and other expenses in prosecuting violations of refrigeration contracting laws. This act becomes effective October 1, 1995.

Barber School Instructors (Chapter 397; HB 85): Chapter 397 amends the licensing requirements for barber schools to: (1) require nonprofit barber schools with a curriculum and continuing education support system established with a State university or community college to have at least one instructor for every 20 students; and (2) require that barber programs established in postsecondary institutions be authorized only after evaluation by the relevant academic program approval process. Chapter 397 became effective upon ratification, July 10, 1995.

Licensing of Soil Scientists (Chapter 414; HB 826): Chapter 414 creates the North Carolina Board for Licensing of Soil Scientists and requires persons engaged in the practice of soil science to be licensed unless otherwise exempt under the act. Licensure requires (1) at least a BS degree with minimum hours in soil science and related sciences, except that the Board may, by rule, provide for a combination of experience and education in lieu of this degree; (2) successful completion of the examination; (3) completion of 3 years experience as a soil scientist in training (which may be supervised experience, professional "in-charge" work, or certain teaching activities); and (4) payment of applicable licensing and examination fees. A person may forego the exam under the grandfather clause if he or she is already practicing soil science, meets the other licensing requirements, and applies for grandfathering within the prescribed time. Although this law took effect upon ratification (July 11, 1995), the practice of soil science without a license does not become unlawful until January 1, 1997.

Regulation of Attorneys-at-Law (Chapter 431; SB 166): Chapter 431 makes numerous changes to the statutes governing attorneys, the State Bar, which is an agency of the State, and the district bars, which are subdivisions of the State Bar. Some of the substantive changes include (1) allowing the Council to set the annual membership fee required of all active attorneys, so long as it does not exceed $200. and authorizing it to charge a late fee not to exceed $30., beginning in 1996, (2) allowing the district bar to set the district membership fee by a majority vote of the members present at the meeting, (3) increasing the number of lawyers elected to the Council from 50 to 55, (4) providing that a member who has been disbarred may not seek reinstatement prior to five years from the effective date of the order of disbarment, and (5) authorizing the Council to issue advisory opinions on what constitutes the unauthorized practice of law. This act becomes effective October 1, 1995, and applies to orders of disbarment entered on or after that date and disciplinary proceedings based upon convictions of offenses committed on or after that date.

Real Estate Appraisers/Trainees (Chapter 482; HB 443): Chapter 482 requires that all real estate appraisers be licensed or certified before holding themselves out for business, beginning October 1, 1995. It also creates a classification for trainee real estate appraiser for those persons who meet certain qualifications and who assist real estate appraisers. This act becomes effective October 1, 1995.

Boxing Commission (Chapter 499; HB 555): Chapter 499 establishes a North Carolina Boxing Commission to regulate boxing. No one could act in certain boxing-

related roles without first being licensed by the Commission, and no boxing match could be held without a permit from the Commission. In addition, the act bans "ultimate warrior matches," defined as contests in which the participants use any combination of boxing, kicking, wrestling, hitting, punching, or other types of fighting in combinations that are not otherwise specifically authorized. The Commission would be housed administratively under the Secretary of State, who would appoint two of the five voting members. The Speaker, the President Pro Tem, and the Governor would each appoint one of the other three voting members. There would also be two nonvoting physician members whose role it would be to advise the Board on medical matters. The boxing-related occupations that would be licensed by the Commission would be:

* Announcer;
* Contestant;
* Judge;
* Manager;
* Matchmaker;
* Promoter;
* Referee;
* Timekeeper;
* Second.

Civil and criminal penalties are established for violation of the act. As introduced, the act would have imposed a 6% gate tax on boxing matches to raise revenue for the Commission's operation. That tax, however, was amended out before ratification. As passed, the act provides no special funding source for the Commission other than licensing fees and permit fees. The act was made effective January 1, 1996.

Health Prof. Licensing Board Reporting (Chapter 507, Sec. 23A.4; HB 230, Sec. 23A.4): See **HUMAN RESOURCES.**

Increase Cosmetology Fees (Chapter 541; SB 966): Chapter 541 changes the law governing cosmetologists and manicurists as follows: (1) increases the cosmetology examination fee from $10 to $20; (2) increases the manicurist examination fee from $5 to $15; (3) increases the cosmetology licensure fee from $33 to $39 (over three years); (4) increases the fee for a registered apprentice cosmetologist and certified manicurist from $5 to $10; (5) authorizes an examination, and a $25 fee for the examination, for a license to teach cosmetic art. Chapter 541 becomes effective September 1, 1995.

Office of State Budget and Management

Line Item Budgeting and Performance Budgeting (Chapter 324, Sec. 10; HB 229, Sec. 10): Section 10 of Chapter 324 details revenue and expenditure information to be contained in the line item budget to be submitted by the Director of the Budget (Governor). This section requires the continuation of the performance budget in those State government areas directed in the 1995-1997 fiscal biennium, but prohibits expanding the format to new areas, and requires the Office of State Budget and Management to report to the General Assembly at its 1996 Session on the effectiveness of performance budgeting and its recommendation as to continuation of performance budgeting. This section was effective on July 1, 1995.

Administrative Span of Control (Chapter 324, Sec. 10.1; HB 229, Sec. 10.1): Section 10.1 of Chapter 324 directs the Office of State Budget and Management to study the ratio of supervisors to those supervised throughout State government, except

for the community college system and The University of North Carolina to determine the average and appropriate span of control. The results of the study are to be reported to the 1996 Session of the General Assembly within a week of its convening. This section was effective on July 1, 1995.

State Agency Reports and Forms Review (Chapter 324, Sec. 10.2; HB 229, Sec. 10.2): Section 10.2 of Chapter 324 directs the Director of the Budget through the Office of State Budget and Management to review every three years all reports and forms used by State agencies to determine whether they are still needed and if appropriate to eliminate or modify them. This section was effective on July 1, 1995.

Downsizing State Government Expenditures Report (Chapter 324, Sec. 10.5; HB 229, Sec. 10.5): Section 10.5 of Chapter 324 requires the Office of State Budget and Management to report, by September 30, 1995, to the Joint Legislative Commission on Governmental Operations all expenditures incurred since July 1, 1994, related to the downsizing of State government, including those of accumulated leave and severance pay, moving expenses for employment of other State agencies, and expense or referral services by the Office of State Personnel and the Employment Security Commission. The Office of State Budget and Management is to make a report to the General Assembly by May 1, 1996 of these expenses and their funding sources for both the 1994-95 and 1995-96 fiscal years. This section was effective on July 1, 1995.

Open Meetings/Public Records

Fiscal Information Confidentiality (Chapter 324, Sec. 8.1; HB 229, Sec. 8.1 and Chapter 507, Sec. 8.2; HB 230, Sec. 8.2): Both budget bills contain sections concerning the confidentiality of public records. Section 8.1 of Chapter 324 imposes on State agency employees the duty to keep legislative fiscal requests confidential. It says that if an employee of a State agency receives a request for assistance in the preparation of a legislative fiscal note, that employee is required to keep confidential not only the fact of the request but also any documents prepared pursuant to the request. Section 8.2 of Chapter 507 modifies that new duty by providing that documents submitted to the Fiscal Research Division of the Legislative Services Office cease to be confidential when Fiscal Research releases a fiscal note based on the documents. Both provisions became effective July 26, 1995, 30 days after ratification of Chapter 324.

Public Records Changes (Chapter 388; SB 426): Chapter 388 amends the public records law to:

1. Require a public agency to provide a requested copy of a public record free or at "actual cost," defined so that it does not include costs the public agency would have incurred had the request not been made;
2. Require that before purchasing any computer system, a public agency must first determine that the system will not impair the public's access to public records;
3. Prohibit public agencies from denying access to public records on the grounds that they contain confidential information commingled with nonconfidential information;
4. Prohibit public agencies from requiring requesters of public records from disclosing their motive or purpose;
5. Establish a timetable for public agencies to compile an index of the public records on their computer databases. (e.g., State agencies by July 1, 1996, larger cities and counties by July 1, 1997, smaller cities and counties by July 1, 1998.)

6. Change the law on civil remedies for denial of access to public records by giving such cases priority on the court docket and by allowing a court to charge the plaintiff's attorney's fees against an individual public employee or official who knowingly violated the public records law.

The act was made effective October 1, 1995.

Parks

Run Hill/State Natural Area (Chapter 26; SB 333): Chapter 26 authorizes the Department of Environment, Health, and Natural Resources to add the Run Hill State Natural Area (Dare County) to the State Parks System, upon acquisition of the land with funds approved for this purpose by the Natural Heritage Trust Fund Board of Trustees. Chapter 26 became effective upon ratification, April 6, 1995.

Deletions from State Parks Preserve (Chapter 131; SB 1046): Chapter 131 deletes: (1) 0.0052 acres of land in Crowders Mountain State Park from the State Nature and Historic Preserve; (2) 73 acres from the Kerr Lake State Recreation Area; and (3) a 30 foot right-of-way from Hanging Rock State Park. Chapter 131 became effective upon ratification, May 31, 1995.

Parks Authority/Trust Funds (Chapter 456; HB 718): Chapter 456 creates the North Carolina Parks and Recreation Authority, a nine-member appointed body within the Department of Environment. Health, and Natural Resources, which will receive and allocate funds in the Parks and Recreation Trust Fund. The fund is allocated as follows: 65% for State Parks, 30% as matching funds for local parks, and 5% for beach access. Chapter 456 earmarks 75% of the State share of the excise stamp tax on real estate conveyances to the Trust Fund. Chapter 456 becomes effective July 1, 1996.

Public Utilities

Remove Fuel Cost Adjustment Sunset (Chapter 15; SB 271): Chapter 15 removes the sunset from G.S. 62-133.2, which governs fuel charge proceedings for electric utilities. Under present law, the statute would sunset July 1, 1997. Chapter 15 makes the statute permanent. Chapter 15 also modifies the reporting requirement concerning fuel charge proceedings. Under present law, the Utilities Commission is required to report to the Joint Legislative Utility Review Committee every two years concerning fuel cost adjustment proceedings, with the report containing a recommendation as to the continuation, repeal, or amendment of the statute. The Joint Legislative Utility Review Committee would report to the General Assembly after receiving the Commission report. Chapter 15 requires the Utilities Commission to make a biennial report to the Joint Legislative Utility Review Committee, but the Committee's actions based upon that report are now in the discretion of the Committee. Chapter 15 was effective upon ratification, March 22, 1995.

Local Telephone Competition (Chapter 27; HB 161): Chapter 27 permits competitive offerings of local exchange and exchange access telephone service and authorizes the Utilities Commission to deregulate either particular telecommunications services, or entire telecommunications public utilities, provided there is competition and the deregulation is in the public interest. Any business wishing to provide competitive local services must show the Commission that it is capable of doing so, including financial capability. Also, competitive offerings must not adversely impact reasonably

affordable local telephone service. The Commission may require a person seeking authorization to provide competitive local services to participate in the support of universal telephone service. The Commission may not permit competitive offerings prior to July 1, 1996, unless the local exchange company already occupying a given territory has adopted a price regulation plan (described below).

Chapter 27 also provides for local exchange telephone pricing using methods other than the traditional "rate of return" method. This would include price regulation, which means that the pricing of services would be related to the value of specific services, and the competition to offer those services.

The act provides that the Commission will adopt rules for the designation of universal service providers and for the method of funding universal service. Interim rules will be adopted by December 31, 1996, and permanent rules will be adopted by July 1, 1998.

Any telephone franchise area with 200,000 or fewer access lines is exempt from competitive offerings in its territory. However, these franchise holders are not permitted to compete in other territories. If they do seek to compete outside their territory, then they are subject to competition within their territory. Telephone membership corporations are completely exempt from the competition provisions and their territories are thus protected from competition.

The act became effective July 1, 1995.

Water and Sewer Surety Bond Limits (Chapter 28; SB 207): Chapter 28, recommended by the Joint Legislative Utility Review Committee, amends G.S. 62-110.3 by removing the present cap of $200,000 on the surety bond which the Utilities Commission imposes on public utility water and sewer companies prior to issuing a franchise. The minimum bond remains $10,000, but the maximum will now be in the discretion of the Utilities Commission. The act also amends the items the Commission must consider in setting the bond. The Commission will be allowed to consider the design of a system and, when an existing company is being acquired, the condition and type of equipment. The amendments require the Commission to make findings as to the factors considered in setting the bond. The existing provision which prohibits the Commission to require the applicant to post a bond if it has already posted a bond with another State agency, or if it has posted a bond for another water or sewer franchise, is removed. The amendments require a public utility extending water and sewer service into contiguous territory to advise the Commission of the proposed extension, and an appropriate bond will be required. The act was effective upon ratification, April 10, 1995.

Sanitary Dist. Util. Relocations (Chapter 33; SB 152): See **TRANSPORTATION.**

Natural Gas Franchises (Chapter 216; HB 366): Chapter 216 amends G.S. 62-36A to provide that the Utilities Commission is to issue franchises for all territory in the State which is not presently franchised to a local distribution company for natural gas service. The issuance of franchises is to be completed by January 1, 1997, after the Utilities Commission conducts a process in which any person capable of providing natural gas service to an area may request the franchise. In determining who shall get the franchise, the Commission is to consider the timeliness with which an applicant could begin providing service to the area as well as any other criteria considered to be relevant. In the event no party applies for a particular area, or if an area is not awarded to any applicant, the Commission is to issue the franchise to a party already holding a franchise for another area. The act became effective July 1, 1995.

Gas Franchise; Use It Or Lose It (Chapter 271; HB 792): Chapter 271 amends G.S. 62-36A(b) by requiring the Utilities Commission to establish rules to provide for expansion of natural gas service by each franchised natural gas local distribution company to all areas of its franchised territory by July 1, 1998, or within three years after the franchise is awarded, whichever is later. If a company is not providing service to an area of its territory by the specified time, it forfeits its exclusive franchise rights to that portion of the territory not being served. The act was effective upon ratification, June 15, 1995.

Joint Municipal Power Amendments (Chapter 412; HB 556): Chapter 412 makes numerous amendments to Chapter 159B of the General Statutes, which regulates the formation and operation of joint municipal assistance agencies and joint municipal power agencies. Joint municipal assistance agencies allow municipalities that sell electricity to join together for their mutual aid and assistance. Joint municipal power agencies allow municipalities that sell electricity to join together for the purpose of owning electrical generation facilities. The rewrite of Chapter 159B is intended to allow for a streamlining of operations. There are presently two separate power agencies, each with a separate board of commissioners. The act would allow the power agencies to join together for management purposes. In addition, the act allows the power agency boards of commissioners to delegate operating authority to an executive committee. Chapter 412 also allows joint municipal power agencies to become members of joint municipal assistance agencies. Currently, membership in joint municipal assistance agencies is restricted to municipalities. The act makes numerous technical and stylistic changes to Chapter 159B. Chapter 412 further directs the Joint Legislative Utility Review Committee to study the question of whether additional changes are needed to Chapter 159B and to report its findings and recommendations to the 1996 Regular Session of the General Assembly.

The act was effective upon ratification, July 11, 1995.

Joint Legislative Utility Review Committee; Utilities Commission Confirmations (Chapter 440; HB 222): Chapter 440 makes a technical correction to G.S. 120-70.2, which deals with the membership and organization of the Joint Legislative Utility Review Committee. The amendment provides that a vacancy on the Committee will be filled by the appointing officer, rather than the presiding officer of the house of the General Assembly from which the committee member was appointed. G.S. 120-70.2 was further amended by Chapter 542 (HB 898; The Studies Act of 1995). Section 20.5 of Chapter 542 increases the membership of the joint committee from six to ten sitting members of the General Assembly, with five appointed by the President Pro Tempore of the Senate and five appointed by the Speaker of the House. A quorum would now consist of six, rather than four members.

Chapter 440 also confirmed the appointment of JoAnne Sanford to the North Carolina Utilities Commission, and confirmed the appointment of Robert P. Gruber as Executive Director of the Public Staff of the North Carolina Utilities Commission.

Chapter 440 was effective on ratification, July 17, 1995.

Chapter 542 was effective upon ratification, July 29, 1995.

Intrastate Property Transportation and Wireless Communications (Chapter 523; HB 941): Chapter 523 makes numerous amendments to Chapter 62 of the General Statutes to conform that Chapter to the federal preemption of State regulation of intrastate transportation of property and wireless telecommunications carriers. The federal preemption concerning intrastate transportation of property, deals with all intrastate transportation of property by motor carriers except for transportation of household goods. Household goods remains regulated. However, provision is made allowing

exempted motor carriers to file an application with the Utilities Commission to participate in one or more standard transportation practices, as specifically allowed under the federal legislation. These include uniform cargo liability rules, uniform bills of lading or receipts for property being transported, and uniform cargo credit rules. Chapter 523 provides that a $25 fee will be charged for a filing to participate in standard transportation practices. Chapter 523 also removes mobile radio communications services from the definition of a public utility, since there is now federal preemption of all aspects of this service. This includes one- way or two-way radio services provided to mobile or fixed stations or receivers using mobile radio service frequencies, but does not include cellular telephone service. Other provisions of Chapter 523 provide an increase from $100 to $250 for each application for discontinuance of train service, or for a change in or discontinuance of station facilities. G.S. 105-449.105, as enacted in Chapter 390 of the 1995 Session Laws, is amended to provide that marinas may obtain a refund of tax paid on undyed diesel fuel purchased for use in a boat or marine vessel provided the fuel is delivered at the time of purchase to a storage facility clearly indicating it is for boat use or is not to be used to operate a highway vehicle.

The provisions of Chapter 523 relating to refund of diesel fuel taxes become effective January 1, 1996. The remainder of Chapter 523 became effective upon ratification, July 29, 1995.

State Contracts

State Furniture Requirements Contracts (Chapter 136; HB 301): Chapter 136 requires at least 3 awards per category for each State furniture requirements contract unless the State Purchasing Officer determines that it is not in the best interests of the State to make awards to 3 or more vendors or that there are not 3 qualified vendors available. This essentially establishes a presumption that multiple awards (3 or more) are appropriate for each category on the furniture contracts unless the State Purchasing Officer determines otherwise. When making a determination that less than 3 awards should be made, the State Purchasing Officer must document the reasons for this determination.

The contracts must be competitively bid and the bids must be reviewed in accordance with the existing statutory criteria for bid evaluation. An award cannot be made to a nonqualified bidder in order to reach the 3-vendor threshold. When an agency (State agency, community college, or public school) purchases furniture from a multiple-vendor contract, it must make the most economical purchase that meets its needs. All agencies must report these purchases to the Department of Administration. The Department will report the information to the General Assembly no later than July 1, 1997. This act became effective on ratification (May 31, 1995) and applies to bids or offers solicited on furniture requirements contracts on or after that date.

Raise Force Account Work Limits (Chapter 274; SB 999): State and local governments may have their own employees (force account labor) perform construction and repair work if the total cost of the work, including labor, materials, supplies and equipment, does not exceed a specified amount (most recently $75,000). Chapter 274 increases the $75,000 maximum to $125,000 and also allows the use of force account labor on projects of up to $50,000 in labor costs where only labor is involved. Chapter 274 also repeals a 1995 local bill for Mecklenburg County that had increased the force account amount from $75,000 to $125,000. This local bill was no longer needed after enactment of Chapter 274. This act took effect on ratification (June 19, 1995).

Government Construction Contracts (Chapter 367; SB 437): Chapter 367 makes several significant changes to the laws governing public construction contracts and bonding, including revisions to the single-prime and separate prime bidding methods.

The State has historically required contracts for the construction or repair of public buildings over a certain threshold amount (most recently, $100,000) to be bid and awarded as separate prime contracts. Under the separate prime contract system, separate contracts are awarded for the general work, the electrical work, the plumbing work, and the heating, ventilation, and air conditioning ("HVAC") work. During the 1980s, local governments increasingly sought local legislation from the General Assembly to exempt themselves from the separate prime contract requirements, usually for specified projects. These exemptions typically allowed the local government units to use the single-prime contracting method whereby one contract is awarded by the governmental unit to a contractor, and that "single-prime" contractor is responsible for securing the necessary subcontractors.

In 1989, bills were filed to allow the State and all government entities statewide to use single-prime contracting. As a result of the deliberations in 1989, a compromise was reached to allow government entities to use single-prime contracting only under one condition: the project must be bid under both the single prime and separate prime methods and the single-prime bid must come in lower than the corresponding separate prime bids. Separate prime bidding could continue to be used without seeking bids both ways. Other parts of the compromise included a five-year study of the costs of single-prime versus separate prime contracting and a provision requiring a minority goals program. The final piece of the 1989 compromise was an agreement to sunset the 1989 changes on June 30, 1995.

Single-prime/separate prime: Chapter 367 allows single-prime contracts to be awarded on public building projects up to $500,000 without going through this dual bidding procedure. The owner may still use the dual-bidding procedure, and if it does so, it must take the lowest responsible bid between these two bidding systems. If the project exceeds $500,000, the owner must continue to use the current law for now -- i.e., bid it as separate prime, or bid it in the alternative between single-prime and separate prime with award made to the lowest responsible bid between the two systems.

Beginning July 1, 1996, there will be an additional option available to public bodies for contracts over $500,000. The public body may, on or after that date, petition the State Building Commission for authorization to use an "alternative" method of contracting. For example, a local government might seek authority from the Commission to use single-prime contracting on projects over $500,000 without going through the dual-bidding procedure. However, the Commission's ability to grant exemptions is drafted restrictively to ensure that exemptions are not routinely granted. These restrictions are as follows:

(1) A government entity cannot obtain a blanket exemption covering all of its construction projects. An exemption applies to only one project. For each additional project it wants exempted, the government entity must obtain a new exemption.

(2) The government entity must demonstrate to the Commission its need for the exemption. The Commission will adopt rules specifying the criteria that it will use in deciding whether an exemption is justified.

(3) The Commission can grant the exemption only with the approval of two-thirds of its members who are present and voting.

(4) Under no circumstances may the Commission waive the competitive bidding laws.

Specifications for the four specified categories of work (general, electrical, plumbing, and HVAC) must be prepared for all building projects over $100,000,

regardless of whether the owner has decided to use single-prime bidding only. The purpose of this is to ensure that the specifications are available should the owner decide to bid the project under separate-prime and to provide clear specifications on which the subcontractors in these categories of work can bid to the contractor. However, the monetary threshold for determining when each of the four areas must be separately bid is increased from $10,000 to $25,000. When the amount of work in one of the four areas is less than $25,000, it can be combined with the bid for another area.

Special rules on single-prime contracts: The act adds two special provisions that apply to single-prime contracts. First, it strengthens the existing requirement that bidders in the four major areas of work (HVAC, plumbing, electric, and general) be listed on the single-prime contractor's bid by adding a provision that prohibits the single-prime contractor from replacing any of these named subcontractors without showing good cause for the replacement and obtaining the government agency's approval. This is designed as a protection against bid shopping. In addition, a contractor must give its subcontractors substantially the same contractual terms, conditions, and requirements that it has with the owner.

Project expediter: The act authorizes the use of a project expediter to help oversee progress on a project. The project expediter, which may be any responsible person, including one of the prime contractors, may recommend to the owner whether payment to a particular contractor should be approved. The contractors and subcontractors doing work in the four major areas (general, electrical, plumbing, and HVAC) will have input into the preparation of the initial project schedule.

Competitive bidding: The threshold amount that triggers the formal competitive bidding law for public construction contracts is increased from $50,000 to $100,000.

Prequalification: G.S. 143-128 already provides that public bodies may prequalify bidders for all public construction contracts. This prequalification authority is moved to its own statute to make clear that it covers all public construction contracts, not just public building contracts.

Bonding: The act raises the threshold at which the State and other public bodies must require bonds from contractors on public works projects. Currently, if the project costs more than $50,000, each contractor on the project with a contract of more than $15,000 must provide a performance and payment bond. The act raises the $50,000 project threshold to $100,000. (The $15,000 threshold remains the same).

Minorities: The act retains the existing minority goals program intact, with one addition. The addition is language that makes clear that alternative contracting methods approved by the State Building Commission beginning July 1, 1996, are also subject to the goals program.

Effective Dates: The repeal of the June 30, 1995 sunset took effect on ratification (June 30, 1995). Except for the alternative bidding methods that are allowed with State Building Commission approval next year, the remainder of this act becomes effective October 1, 1995.

Purchases from Blind/Disabled (Chapter 265; SB 519): See **HUMAN RESOURCES.**

Purchases for Blind/Disabled (Chapter 256; SB 554): See **HUMAN RESOURCES.**

Miscellaneous

Veto-1 (Chapter 5; SB 3): See **CONSTITUTION.**

Veto Conforming Changes-2 (Chapter 20; SB 54): See **CONSTITUTION.**

State Games Vehicles (Chapter 97; HB 750): Chapter 97 authorizes the Department of Administration to allow the organization sanctioned by the Governor's Council on Physical Fitness to conduct the State Games of North Carolina to use State trucks and vans for the Games. No fees may be charged for use of the vehicles, and liability insurance must be carried by the organizer of the Games. Chapter 97 became effective upon ratification, May 22, 1995.

North Carolina Progress Board (Chapter 117; HB 456): Chapter 117 creates the North Carolina Progress Board. The Board will develop a long-range vision and goals for North Carolina's economic and social progress over the next 20 to 30 years and will formulate strategies to meet these goals. The Board will track North Carolina's progress in several major areas, including health, education, the labor force, the economy, the environment, infrastructure, technology, community safety, community development, and government accountability. These goals are based on goals developed by the Commission for a Competitive North Carolina.

The Board will consist of 14 members: the Governor (who serves as chair), 7 appointees of the Governor, 3 appointees of the Speaker and 3 appointees of the Senate President Pro Tempore. After initial staggering of terms, terms of office are for four years. No member may be appointed to serve more than two consecutive terms. The act also repeals the enabling legislation for the State Goals and Policy Board.

The Board is to submit to the 1997 General Assembly a report giving specific targets and milestones to accomplish the mission or progress over the next 20 to 30 years. Thereafter, the Board is to report periodically to the public on North Carolina's progress in meeting its goals and the targets and milestones established by the Board. The act notes that the General Assembly will further define the Board's mission in future sessions of the legislature. Goals, targets, and milestones recommended by the Board may be adopted by the General Assembly, and if so adopted, the General Assembly may revise them.

Chapter 117 became effective on ratification (May 29, 1995).

Adjutant General (Chapter 122; SB 487): Chapter 122 provides that the military head of the State Militia, the Adjutant General, may appoint an assistant adjutant general for Army National Guard, who shall serve in the military position of Brigadier General -- Line, Deputy, State Area Command (STARC) Commander. Chapter 122 became effective upon ratification, May 30, 1995.

Who May Administer Oaths (Chapter 147; HB 82): Chapter 147 adds two types of officers to the list of those authorized to administers oaths of office: (1) chair of any county board of commissioners, and (2) any member of the General Assembly. Chapter 147 becomes effective for oaths of office administered on or after December 1, 1995.

State Publications of OSP (Chapter 166; HB 423): Chapter 166 provides for copies of certain court and legislative publications for the Office of State Personnel and the State Personnel Commission. This act became effective on ratification (June 5, 1995).

Legislative Ethics Committee Cochairs and Membership (Chapter 180; SB 575): increases the membership of that Committee and creates cochairs for that Committee to

be appointed from each legislative chamber. The Legislative Ethics Committee is an independent committee consisting equally of House and Senate members and of both political parties. The Committee is charged, among other matters, with advising legislators on ethical matters. Under prior law, the Committee chair was appointed from one chamber one year and the other chamber the following year; the vacating chair was no longer a member of the Committee.

Chapter 180 amends the Legislative Ethics Act to:

1. Increase from nine to 10 the number of Legislative Ethics Committee members;
2. Provide that the Speaker and the Senate President Pro Tempore would designate from each's appointees a cochair for the Committee;
3. Provide the Senate cochair presides in odd-numbered years, and the House cochair in even-numbered years;
4. Allow the cochairs to vote by removing the prohibition against the chair voting except in cases of a tie; and
5. Raise, in view of the new appointment, the Committee's quorum from 5 to 6 members, i.e. a majority of the membership.

Chapter 180 was effective on June 6, 1995.

Elevator Inspection Changes (Chapter 217; HB 424): Chapter 217 allows the Department of Labor to bill elevator owners and operators for elevator inspections rather than collecting at the time of inspection, and it allows elevators out-of-service for more than one year to be returned to service by meeting regulations for existing elevators rather than those for new elevators. This act was effective upon ratification (June 12, 1995).

Extend Sentencing Commission (Chapter 236; SB 186): Chapter 236 extends the North Carolina Sentencing and Policy Advisory Commission to July 1, 1997. Chapter 236 became effective upon ratification, June 13, 1995.

Loss Reserve Accts./Econ. Development (Chapter 252; SB 268): See **COMMERCIAL LAW.**

Housing Coordination and Policy Council Membership Amendments (Chapter 263; SB 349): Chapter 263 reduces, as the current terms expire on that Council, its membership from two to one, each, the members representing the N.C. Housing Partnership, the Community Development Council, and the N.C. Housing Finance Agency Board of Directors; redesignates various ex officio members of the Housing Coordination and Policy Council, and adds to the Council's membership a representative, each, from the AIDS Care Branch or a designee familiar with the Division of Adult Health Promotion's housing programs; the Director of the Office of Economic Opportunity or a designee familiar with programs for the homeless; and adds to the Council's membership two nonprofit organization members experienced in housing advocacy for low income persons and with State and Federal housing programs. Chapter 263 was effective on June 15, 1995.

Deaf Interpreter Comp. Change (Chapter 277; HB 350): See **HUMAN RESOURCES.**

Certain Limitations/Suits by State (Chapter 291; HB 907): Chapter 291 makes the six-year statute of limitation imposed by G.S. 1-50 applicable to actions brought by the State or a political subdivision of the State when the function at issue is proprietary. It repeals the common law doctrine that statutes of limitation do not run against the State for civil actions brought by the State or a political subdivision of the State when the

function at issue is proprietary, as opposed to governmental. This act becomes effective October 1, 1995 and applies to civil actions commenced on or after that date.

CDBG Loan Guarantees (Chapter 310; SB 300): See **COMMERCIAL LAW.**

Repeal Art Works in State Buildings Requirement (Chapter 324, Sec 12.2; HB 229, Sec. 12.2): Section 12.2 of Chapter 324, the Continuation Budget Operations Appropriations Act of 1995, repeals Article 47A of Chapter 143 of the General Statutes which declared it the policy of the State to promote the development of artists and craftsmen by providing that one-half of one percent of the amount spent for the construction of State buildings would be used for the acquisition of works of art for that building.

Notice of Mandates (Chapter 415; HB 895): Chapter 415 establishes a mechanism to screen and review the fiscal impact of proposed legislation by the General Assembly and proposed State agency rules on local governments. The act also requires scrutiny of proposed laws and rules that are purportedly required in order to comply with federal law or to retain or receive federal funding.

The fiscal impact review of agency rules will occur primarily through the administrative rule-making process under the Administrative Procedures Act. Each agency's rule coordinator must ensure that accurate fiscal notes are completed on that agency's proposed rules. For rules that give local governments more responsibilities, increase their costs, or reduce their revenues, the coordinator is responsible for leading the drafting effort to ensure that local government concerns are considered in the development of the rule. These rules must also be submitted to the Governor for review prior to adoption. A rule with a local fiscal impact must be delayed if its effective date will disrupt the local budgeting process, unless conditions beyond the control of the agency require otherwise.

The fiscal impact review of legislation will occur through the legislative fiscal note process. A fiscal note will be required on any bill that could increase or decrease local government revenues or expenditures. The costs must be projected for the first five fiscal years of the proposed legislation.

The second component of this legislation concerns federal mandates. When an agency proposes a rule purportedly required by federal law or as a condition of receipt of federal funds, the agency's rule coordinator must certify that the rule is in fact required, identifying the federal law and the extent, if any, to which the rule exceeds the federal requirement. A similar certification is required from the Fiscal Research Division on bills introduced in the General Assembly that are purportedly required by federal law or as a condition of receipt of federal funds. Fiscal Research will also compile a list of federal mandates for review. Chapter 415 becomes effective October 1, 1995.

Rescue Squad Worker Relief Fund (Chapter 421; SB 499): Chapter 421 adds "payment of additional benefits approved by the Board of Trustees" to the list of authorized uses of the Rescue Squad Workers' Relief Fund. Chapter 421 became effective upon ratification, July 12, 1995.

Repeal South Africa Restrictions (Chapter 501; SB 143): Chapter 501 repeals several laws enacted during the 1980's in response to the practice of apartheid in South Africa. Of the five repealed laws, two had prohibited the State Treasurer from investing certain funds in companies doing business in South Africa unless those companies were adhering to certain anti-apartheid practices, such as nonsegregated working facilities and fair employment practices, and were making efforts to help eliminate other apartheid practices. The other three laws had authorized cities, counties, and school boards to (i)

withhold the investment of their funds in companies doing business in South Africa and (ii) prohibit the award of public contracts to companies doing business in South Africa. This act took effect upon ratification (July 28, 1995).

Authorization of Private License Tags on State-Owned Motor Vehicles (Chapter 507, Sec. 6.2; HB 230; Sec. 6.2): Section 6.2 of Chapter 507, the Expansion and Capital Improvements Appropriations Act of 1995; reduces the number of fictitious license plates that may be issued by the Commissioner of Motor Vehicles for use by local, State or federal law enforcement from 100 to 50. This section became effective July 1, 1995.

School of Science and Mathematics (Chapter 507, Sec. 15.1; HB 230, Sec. 15.1): Section 15.1 of Chapter 507, the Expansion and Capital Improvements Appropriations Act of 1995, amends G.S. 116-235(b) relating to the admission of students to the North Carolina School of Science and Mathematics. The amendment adds a provision that in no event shall the number of students offered admission to the program from each congressional district deviate more than three percentage points from the average number per district who are offered admission.

Improvement of the Administrative Rules Process/Legislative Oversight/Fiscal Accountability (Chapter 507, Sec. 27.8; HB 230, Sec. 27.8): Section 27.8 of Chapter 507, the Expansion and Capital Improvements Appropriations Act of 1995, makes several changes to the law designed to improve the administrative rule-making process, including, among other things, (1) creating a new Joint Legislative Administrative Procedure Oversight Committee which is charged with reviewing aspects of the rule-making process and making recommendations to the General Assembly; (2) imposing a requirement that before publishing a proposed permanent rule which has a substantial economic impact, an agency must obtain a fiscal note from the Office of State Budget and Management containing a description of the persons affected, a description of the costs of compliance, a description of the purposes and benefits of the rule, and an explanation of how the estimate of the costs was computed; (3) changing the effective date of temporary rules to the earliest of the date specified in the rule, the effective date of a permanent rule that replaces it, or the date the Rules Review Commission returns a rule to which it has objected to the agency; (4) changing the procedure for adopting a permanent rule to include any required fiscal note and publication of a notice of rule-making proceeding and the text of the proposed rule; (5) making permanent rules approved by the Rules Review Commission effective on the 31st legislative day of the next regular session of the General Assembly that begins at least 25 days after the Commission approves the rule, and allowing the Governor to make a rule effective by executive order, under certain conditions; (6) strengthening the authority of the Rules Review Commission to determine whether a rule is necessary; (7) exempting the Department of Revenue and the Department of Correction from the rule-making provisions of the APA for certain purposes; (8) subjecting the Employment Security Commission, the Industrial Commission, the Department of Revenue, and the Building Code Commission to the fiscal note requirements. This section becomes effective December 1, 1995, and applies to all rules for which a notice of rule making is published on or after that date and to Building Code changes that are initiated on or after that date.

Delivery of Warrants and Disbursements for Non-State Entities (Chapter 507, Sec. 27.4; HB 230, Sec. 27.4): Section 27.4 of Chapter 507 (the expansion and capital budget) requires warrants for the withdrawal of money from the State treasury and disbursements therefrom to be delivered by the appropriate agency to that entity's legally

designated recipient by U.S. mail or its equivalent or electronic transfer. This section became effective July 1, 1995.

MAJOR PENDING LEGISLATION

Elections

Superior Court Judges by District (HB 195) would require the election, as well as the nomination, of all Superior Court judges by district rather than statewide. Passed House.

Primary Date Change (HB 352) would move the primary date from early May to early March, and would remove the present 90-day waiting period after changing parties before a person could be a candidate in that party's primary. Passed House.

Party Alignment Rotated (HB 509) would require the order of the parties on the general election ballot to rotate every two years. Passed House.

Repeal Political Party Checkoff (HB 911) would abolish the $1 checkoff on the State Income Tax Return that goes to political parties. Passed House.

Campaign Reporting (SB 38) would require all statewide nonjudicial candidates and legislative candidates to file a report just after Labor Day, rather than just requiring defeated primary candidates to file a report after the primary. Passed Senate.

Voter Registration Cleanup (SB 58) would replace inadvertently repealed sections concerning county commissioners' funding duty and other matters. Passed both houses, but in conference concerning House amendments, including one to mandate voters displaying an I.D. at the polls.

Party Gifts Exemption (SB 247) would lower the political contribution limit from $4,000 to $2,000 and remove the exemption from that limit now given to political party executive committees. Passed Senate.

Observers at Polls/Voter Info. (SB 323) would remove the requirement that party observers at a precinct must be voters in the precinct, saying instead they could be voters anywhere in the county. Passed Senate.

Superior Court Electoral Reform (SB 550) would make the same change for Superior Court judges' terms that the ratified SB 448 would make for appellate judges' terms. Passed Senate.

Nonpartisan Judicial Elections (SB 961) would make all judicial elections nonpartisan rather than partisan, and would elect Superior Court judges by district rather than statewide. Passed Senate.

Miscellaneous

Eliminate Board Self-Appointments (SB 447): Senate Bill 447 would prohibit a city council or board of county commissioners from appointing one of their own members to serve as a member of any public board or commission except under certain circumstances. Passed Senate.

Reciprocal Bid Preferences (HB 802): House Bill 802 provides for preferences to be given to North Carolina bidders on State contracts with respect to bidders from other states that give in-state bid preferences. Passed House.

STUDIES

Legislative Research Commission Studies

(Except as otherwise noted, pursuant to Chapter 542 of the 1995 Session Laws, the LRC may study the topics listed below and may report to the 1996 Regular Session of the 1995 General Assembly, if approved by the cochairs, or the 1997 General Assembly.)

- **Election laws reform**
- **Energy Conservation**
- **Executive Budget Act revision**
- **Occupational and professional regulation**
- **State and other governmental assistance to volunteer fire, rescue, and emergency medical service units** (Chapter 506, Sec. 7.21A(m); HB 230, Sec. 7.21A(m)): The LRC shall study and shall report to the 1996 Regular Session.
- **Transfer of all State vehicles to Motor Fleet Management** (Chapter 324, Sec. 8.2; HB 229, Sec. 8.2): The LRC may study and may make an interim report to the 1996 Regular Session of the 1995 General Assembly; shall make a final report to the 1997 General Assembly.

Independent Senate Studies

Campaign Reform (Chapter 542, Part III; HB 898, Part III): The President Pro Tempore of the Senate may direct a Senate standing committee or select committee to study campaign reform. A report may be made to the 1996 Regular Session of the 1995 General Assembly.

Merger of the Travel and Tourism Division of Department of Commerce with the Division of Parks and Recreation of the Department of Environment, Health and Natural Resources (Chapter 542, Part III; HB 898. Part III): The President Pro Tempore of the Senate may direct a Senate standing committee or select committee to study the above merger. A report may be made to the 1996 Regular Session of the 1995 General Assembly.

Independent Studies, Boards, Etc. Created or Continued

Administrative Procedure Oversight Committee, Joint Legislative (Chapter 507, Sec. 27.8; HB 230, Sec. 27.8; G.S. 120-70.100): The above permanent oversight committee is created and directed to review rules to which the Rules Review Commission has objected to determine if statutory changes are needed to enable an agency to fulfill the intent of the General Assembly; to receive reports prepared by the Rules Review Commission containing the text and a summary of each rule approved by the Commission; to prepare a notebook containing administrative rules approved by the Rules Review Commission and reported to the Committee and to notify each member of the General Assembly of the availability of the notebook; to review State regulatory programs to determine if the rules are necessary, or can be streamlined; to review the rule-making process to determine if the procedures for adopting rules give the public

adequate notice of and information about proposed rules; to review other concerns about administrative law to determine if statutory changes are needed; and to report to the General Assembly on the Committee's activities and recommendations.

The Committee consists of 16 members including eight members of the Senate appointed by the President Pro Tempore, at least three of whom are members of the minority party, and eight members of the House appointed by the Speaker, at least three of whom are members of the minority party. The Pro Tem and Speaker shall each designate a cochair.

State Government Reorganization and Privatization Study Commission (Chapter 542, Part XXI; HB 898, Part XXI): The Commission is created and shall study the following issues: Government reorganization, restructuring, and downsizing; privatization efforts of the State and other jurisdictions and the need for State control of essential services and activities, State aid to private entities, including, but not limited to, the Biotechnology Center and MCNC; private auxiliary entities connected with State programs, including, but not limited to, the North Carolina Zoological Society; privatization of State services and programs, including, but not limited to, the North Carolina Zoological Park, the North Carolina Aquariums, and the State Ports; outsourcing of State information resource development, operations, and maintenance; State expenditures for legal services; outside counsel for the State; boards and commissions consolidation and abolition; and other related issues.

The Commission consists of 12 members as follows: four Senators and two members from the private sector appointed by the Pro Tem, and four House members and two members from the private sector appointed by the Speaker.

The Commission shall submit a final report to the 1997 General Assembly on or before May 15, 1996, and terminate upon filing the report.

Referrals to State Departments, Agencies, Etc.

Office of State Budget and Management shall review the use and costs of **State-owned aircraft**, the feasibility and desirability of consolidating or sharing State aircraft and contracting aircraft services from outside sources, and the use of associated and ancillary equipment such as aerial photographic cameras and related instrumentation. (Chapter 324, Sec. 10.4; HB 229, Sec. 10.4 and Chapter 507, Sec. 10.1; HB 230, Sec. 10.1)

Department of Administration shall study the **obsolescence and replacement of motor vehicles** to determine the optimal replacement time and shall report to the Joint Legislative Commission on Governmental Operations and to the FRD by March 1, 1996 (Chapter 324, Sec. 11.3; HB 229, Sec. 11.3).

Department of Labor shall study making the **Elevator Division self-supporting** and shall report to the Joint Legislative Commission on Governmental Operations by April 1, 1996 (Chapter 324, Sec. 27; HB 229, Sec. 27).

Office of State Budget and Management and the **Office of State Controller** shall jointly study the **State Computer Center** and shall report to the 1995 General Assembly by May 1, 1996 (Chapter 507, Sec. 27.1; HB 230, Sec. 27.1).

State Printing Officer shall study **State government printing services** and report to the Joint Legislative Commission on Governmental Operations on or before October 31, 1995 (Chapter 324, Sec. 18.23; HB 229, Sec. 18.23).

Referrals to Existing Commissions

Utility Review Commission, Joint Legislative is directed to study (1) whether or not the **extension of interstate natural gas pipelines into North Carolina** can and should be encouraged and shall report to the 1996 Regular Session; and (2) **utility energy cost** for small power producers and may make an interim report to the 1996 Regular Session and is directed to report to the 1997 General Assembly.

Equitable distribution case processing report (Chapter 316; HB 463) requires the Administrative Office of the Courts to present to the General Assembly and Governor, by January 1, 1996, statistics by judicial district dealing with delay in the disposition of equitable distribution cases and to recommend how these cases may be more timely resolved. Chapter 316 was effective on June 21, 1995.

LRC Study Transfer of All State Vehicles (Chapter 324, Sec. 8.2; HB 229, Sec. 8.2): Section 8.2 of Chapter 324, the Continuation Budget Operations Appropriations Act of 1995, directs the Legislative Research Commission to study the transfer of all State vehicles to the Division of Motor Fleet Management, Department of Administration. The LRC may make an interim report to the 1996 Session of the General Assembly, and is directed to make a final report to the 1997 General Assembly.

LRC Study Civilianization (Chapter 324, Sec. 8.3; HB 229, Sec. 8.3): Section 8.3 of Chapter 324, the Continuation Budget Operations Appropriations Act of 1995, authorizes the Legislative Research Commission to study issues related to civilianizing certain State government law enforcement functions and positions, including the appropriate use of nonsworn, noncertified personnel in positions for which sworn status is not cost-effective or required. The study shall include the recommendations made by the Government Performance Audit Committee on civilianization to the 1993 General Assembly. The Legislative Research Commission may report to the 1996 Regular Session of the 1995 General Assembly and shall make a final report to the 1997 General Assembly.

Dept. of Administration Study of Replacement of Motor Vehicles (Chapter 324, Sec. 11.3; HB 229, Sec. 11.3): Section 11.3 of Chapter 324, the Continuation Budget Operations Appropriations Act of 1995, directs the Department of Administration to study the obsolescence and replacement of motor vehicles, including those used by law enforcement agencies, to determine the optimal replacement time. The Department is directed to report to the Joint Legislative Commission on Governmental Operations by March 1, 1996.

Study Department of Crime Control and Public Safety (Chapter 324, Sec. 20.4; HB 229, Sec. 20.4): Section 20.4 of Chapter 324, the Continuation Budget Operations Appropriations Act of 1995, creates the Study Commission on the Department of Crime Control and Public Safety. The Commission shall review the efficiency and effectiveness of the Department and determine whether the Department should be reorganized or any of its divisions eliminated or transferred. The Commission shall also consider whether other law enforcement agencies in the State should be transferred to the Department and the potential cost savings of any recommended reorganizations or transfers. The Commission must report to the General Assembly by May 1, 1996. The Study Commission is allocated $50,000 for the 1995-96 fiscal year from the Legislative Services Commission's studies reserve.

Study Transfer of Butner Public Safety (Chapter 324, Sec. 20.5; HB 229, Sec. 20.5): Section 20.5 of Chapter 324, the Continuation Budget Operations Appropriations Act of 1995, creates the Study Commission on the Transfer of Butner Public Safety. The Commission shall (1) examine the potential for transferring the functions and responsibilities of Butner Public Safety from the Department of Crime Control and Public Safety to other State or local entities; (2) determine the most appropriate means of meeting the service needs of both the State institutions and the local residents that would be affected by such a transfer; and (3) determine the most cost-effective means of accomplishing such a transfer. The Commission must report to the General Assembly by May 1, 1996. The Study Commission is allocated $25,000 for the 1995-96 fiscal year from the Legislative Services Commission's studies reserve.

TAXATION

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

RATIFIED LEGISLATION

Unemployment Tax Cut (Chapter 4; SB 13): Chapter 4 reduces unemployment insurance taxes, effective January 1, 1995, in the following ways:

(1) It lowers the taxable wage base for the tax by changing the formula used to compute the base. It reduces from 60% to 50% the percentage of annual average wages used to calculate the taxable wage base. This change reduces the 1995 wage base from 13,500 to 12,300. This tax reduction benefits all employers and will save existing employers as well as new businesses an estimated $36 - $40 million a year.

(2) It reduces the tax rates that apply to rated employers with a positive unemployment insurance account balance. This reduction is estimated to save employers about $15 million a year.

(3) It sets a zero tax rate for employers with credit ratios of 5.0 or over. Under current law, the lowest rate is 0.01%. This change is estimated to save employers about $130,000 a year.

Taken together, the changes cut unemployment insurance taxes by about 23% and save employers more than $51 million a year. Unemployment tax contributions are paid by employers on a quarterly basis and deposited into the State Unemployment Insurance Trust Fund. After deducting any refunds payable from the Fund pursuant to G.S. 96-10(f), the money is deposited with the secretary of the treasury of the United States to the credit of this State's account in the Unemployment Trust Fund. Funds in the State's account earn interest that is also credited to the account. As money in the State's account is needed to pay benefits, it is transferred to the State and credited to the benefits account of the State's Unemployment Insurance Fund to be used to pay benefits to people who lose their job through no fault of their own. Federal law prohibits transfer of or payment of refunds from money in the Trust Fund.

The General Assembly has reduced unemployment insurance taxes several times in recent years. In 1994, the General Assembly reduced the taxes by an average of 38% for rated employers with a positive credit balance and by 20% for employers who are not yet rated. A rated employer is an employer who has had a chargeable account for more than 13 consecutive months immediately preceding the date for calculating the employer's tax rate.

In 1993, the General Assembly enacted legislation that reduced the unemployment tax rate by 30% for rated employers with a credit balance in their unemployment insurance tax account for any calendar year in which the balance in the Unemployment Insurance Trust Fund equals or exceeds $800,000,000 as of the preceding August 1. This percentage reduction in the tax rate was increased to 50% in the 1994 legislation as part of the tax rate reduction for employers who have a credit balance in their unemployment insurance tax account. In 1992, the General Assembly suspended an additional unemployment tax collected from employers and credited to the Employment Security Commission Reserve Fund, which bolsters the State Unemployment Insurance Trust Fund. Despite these cuts, the North Carolina Trust Fund in Washington, from which unemployment benefits are paid, is close to $1.5 billion.

Before enactment of the 1994 legislation, North Carolina's average unemployment tax rate, 0.5%, was already the 45th lowest in the nation. Since the enactment of the 1995 act, North Carolina's average unemployment tax rate is the lowest in the nation. The 1.8% starting rate for new employers is now the second lowest rate in the nation. The North Carolina average weekly benefit amount paid to claimants for unemployment

benefits is the highest in the southeast at $171.41. North Carolina also pays the highest maximum weekly benefit amount in the southeast at $289.00.

Repeal Obsolete Use Tax (Chapter 7; HB 80): Chapter 7 repeals the special use tax that was levied in 1957 on vehicles, machinery, tools, and other equipment brought into North Carolina for use in construction. The repeal became effective July 1, 1995. This act was recommended by the Revenue Laws Study Committee. The Department of Revenue suggested this issue as a study topic for the committee because the tax generated little revenue, was difficult for taxpayers to understand and comply with, was difficult to administer, and no longer served its original purpose of protecting North Carolina contractors from out-of-state competition. The repeal is expected to result in a General Fund revenue loss of no more than $20,000 a year.

The special use tax applied to contractors who do work in more than one state, purchase equipment in a state other than North Carolina for use in the other state, and then bring the equipment for use in construction. The regular sales and use tax would not apply to this equipment because the equipment was not purchased in this State and was not purchased for use in this State. The special use tax rate for an item other than a motor vehicle was the regular use tax rate of 4% State and 2% local. The special use tax rate on a motor vehicle was the same as the highway use tax rate, which is 3% subject to the applicable maximums.

To compute the special use tax due on an item of equipment, a contractor had to multiply the sales price of the equipment by the percentage of the equipment's useful life that was expected to be spent in North Carolina. The contractor then had to apply the applicable special use tax rate and subtract as a credit the proportional amount of sales and use tax paid on the equipment in another state. When filing a return, the contractor had to list each piece of equipment separately, along with the equipment's original purchase price, the amount of sales and use tax paid when the equipment was purchased, the state to which the tax was paid, the equipment's estimated useful life, and the period of time the equipment is expected to be in North Carolina.

Until 1989, the special use tax did not allow a credit for taxes paid in another state; accordingly, the tax operated as a protectionist measure to give North Carolina construction companies a competitive advantage over companies from other states. In 1989, the Revenue Laws Study Committee determined that without a credit for taxes paid in another state, the special use tax probably violated the federal constitution's interstate commerce clause. In addition, the committee found that retaliatory laws in neighboring states created a burden on North Carolina companies seeking to do construction business in those states. In accordance with the committee's recommendation, the 1989 General Assembly enacted the special use tax credit for regular sales and use taxes paid to other states and to local governments in other states.

Of our neighboring states, Virginia, South Carolina, and Tennessee have similar special use taxes on construction equipment brought into the state. Georgia does not have a similar tax. The border states that have a similar special use tax allow a credit for regular sales and use taxes paid in another state. Repeal of North Carolina's special use tax will therefore not affect North Carolina companies doing business in the border states; the companies will continue to receive credit for North Carolina sales and use taxes paid.

Revenue Laws Technical Changes (Chapter 17; SB 104): Chapter 17 makes a number of unrelated technical and clarifying changes to various revenue statutes. The changes are described below by section:

Section	Explanation
1	Adds a missing period in the phrase "G.S".

2 Deletes a duplicate word.

3 - 4 Clarifies that a taxpayer's federal taxable income, used as a starting point for North Carolina corporate and individual income tax, is to be determined in accordance with the Internal Revenue Code.

5 Requires a taxpayer to add to State taxable income the amount of any federal estate tax paid on an item of income in respect of a decedent that is included in federal taxable income. Under current law, taxpayers are allowed an income tax deduction for both State inheritance tax paid on an item of income in respect of a decedent and federal estate tax paid on the same item of income in respect of a decedent. Allowing a State deduction for a federal tax is contrary to the tax structure of the State and is the result of an oversight. This proposal corrects this oversight by repealing the deduction for federal estate tax but retaining the deduction for State inheritance tax paid on an item of income in respect of a decedent.

Income in respect of a decedent is income to which a person was entitled when the person died. An example of an item of income in respect of a decedent is the gain from an installment sale made by the decedent before death. This income is subject to inheritance tax upon the death of the decedent as part of the decedent's property. An income tax deduction is allowed for the inheritance tax paid on an item of income in respect of a decedent to prevent double taxation.

6 Changes the word "section" to "subsection."

7 Makes a conforming change to the use tax statutes. In 1993, upon recommendation of the Revenue Laws Study Committee, the General Assembly enacted legislation providing that a retailer's sales tax license becomes void if, for a period of 18 months, the retailer does not file any returns showing taxable sales. This section makes the same change to the corresponding retail use tax license.

8 Corrects two incorrect cross-references and reorganizes and modernizes the current law allowing certain entities refunds of sales and use taxes.

9 Rewrites the definition of the Internal Revenue Code used in State tax statutes to change the reference date from January 1, 1994, to January 1, 1995. Updating the Internal Revenue Code reference makes 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. This year, because the federal government has not enacted any changes to the Code that affect our statutes, the update has no substantive effect and is merely a technical change.

10 Restores the correct time period for filing a petition for administrative review with the tax review board. This time period was inadvertently shortened in a rewrite of the statute enacted in 1993.

11 Adds three new exceptions to the prohibition against disclosing confidential tax information. The State's Tax Secrecy Act, G.S. 105-259, prohibits the disclosure of a taxpayer's tax information except in specified circumstances. The act fails to provide that the Department of Revenue may share a copy of a tax return with the taxpayer who filed it. This section corrects this problem in three ways: it allows the Department to provide a copy of a tax return (1) to the taxpayer who filed it, (2) to the legal representative of the

estate of the taxpayer if the taxpayer is incompetent or deceased, or (3), in the case of a return filed by a partnership, a corporation, an estate, or a trust, to a "person having a material interest" as determined under the Code. A person having a material interest would be, for example, a partner in the partnership that filed the return, a corporate agent designated by the corporation's board of directors or CEO, a corporate shareholder with more than 1% of the outstanding stock, a shareholder in a Subchapter S corporation, the executor of an estate, or the trustee of a trust.

11.1 Gives a person who files an amended return after receiving a federal determination the same amount of time to ask for a refund that the Department of Revenue has to assess additional taxes. A federal determination is a change or correction made by the IRS to a federal tax that affects the person's liability for State income, gift, or withholding taxes. Last session, the General Assembly (in Chapter 582) revised and consolidated the provisions concerning assessments of tax following a federal determination and did not make a corresponding change to the statute of limitations for refunds.

11.2 Makes a conforming change to correspond to the change made by Section 11.1. The section deletes language in the statute that describes the procedure for claiming a refund that conflicts with the statute of limitations set in G.S. 105-266(c).

12 Adds a missing hyphen.

13 Restores a missing portion of a cross-reference.

13.1 Makes it clear that a motor carrier that operates in interstate, as opposed to intrastate, commerce must file a road tax report for each quarter whether or not the carrier drove in North Carolina during the quarter for which the report is due. The Department now requires these carriers to file quarterly reports but the statute can be construed as requiring them to file a report only if they drove in North Carolina during that quarter. When a motor carrier registers with the Department, the carrier must state on the application whether the carrier is an intrastate or an interstate carrier.

14 - 16 Consolidates, codifies, and conforms various local acts that authorize certain counties to acquire and improve public school property on behalf of their local school boards. These existing local acts authorize the named counties to finance school construction projects through lease-purchase. This section eliminates the confusion of having numerous similar local acts scattered throughout the Session Laws and provides that clarifying language that was included only in some of the more recent local acts will apply equally to all affected counties.

17 Chapter 681 of the 1993 Session Laws revised the State Ports Tax Credit. Because that tax credit expires for tax years ending after 2/28/96, the revisions to the credit need to expire at the same time.

18 Repeals a Session Law that duplicates another Session Law; both laws revised G.S. 105-241.1(e).

19 - 22 Clarifies that refunds of local meals taxes must be made only to certain nonprofit and government entities to the same extent as State sales tax refunds. The following local governments are currently authorized to levy a meals tax: Charlotte/Mecklenburg County, Dare County, Wake County, Cumberland County, and the Town of Hillsborough.

23 Repeals two 1971 acts that gave Nash County and Edgecombe County a special 1%¢ local option sales tax as an alternative to the 1%¢ local option sales tax enacted for all counties. These local acts provided that each county could levy or repeal the tax only if the other took the same action.

These alternate local options were never exercised and are no longer viable because of subsequent changes in the State and local sales tax laws.

24 Provides that the sections of the act are effective upon ratification unless otherwise specified. Section 1 became effective July 1, 1995; Sections 5 and 9 became effective for taxable years beginning on or after January 1, 1995; and Section 11.1 and Section 18 became effective January 1, 1995. All other sections became effective March 23, 1995, the date of ratification.

Chapter 17 was a recommendation by the Revenue Laws Study Committee.

Local Sales Tax Information (Chapter 21; SB 220): Chapter 21 gives counties access to information regarding local sales tax refunds paid to nonprofit corporations and governmental entities, beginning July 1, 1995. Under prior law, counties did not have access to this information because the local sales tax is collected by the State and the tax secrecy statute prevents the Department of Revenue from disclosing information about individual taxpayers. Without information about local sales tax refunds, counties were not able to audit claims for refunds against them. The counties had to rely on the Department of Revenue to audit the claims, but the Department does not have enough resources to provide the level of audit some counties wished to provide for themselves.

Under G.S. 105-164.14, nonprofit corporations and certain governmental entities may seek a refund of State and local sales taxes they pay on their purchases. To do so, these entities must file a written request for refund with the Department of Revenue and name the counties where the purchases were made. The Secretary of Revenue deducts the claimed refunds of local sales taxes from tax revenue distributed to the counties. Errors in identifying the correct county in refund claims occur because the local sales tax applies to the county in which the retailer is located, not the county in which the purchaser is located. Some counties believe that entities located in one county who pay sales tax to another county are claiming the refund against the county in which they are located, rather than against the county in which they made the purchase.

To obtain information concerning local sale tax refunds under this act, a county must request the information in writing from the Secretary of Revenue. The Secretary has 30 days to provide the chair of the board of county commissioners with a list of each nonprofit corporation or governmental entity that received a refund of at least $1,000 of that county's local taxes within the last 12 months. The county can then use this list to identify entities whose refund claims the county may wish to audit. Upon the written request of the county, this act requires an entity that has received a refund to provide the county with a copy of the request for refund, along with supporting documentation requested by the county to verify the request. If an entity determines that a refund it has received has been charged to the wrong county, it must file an amended return for the refund. The amended return will enable the Department to make the appropriate adjustments in the subsequent quarterly distribution of local sales tax revenue.

This act specifies that the information disclosed to the county is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1, which governs the disclosure of local tax records. Section 2 of the act amends the tax secrecy statute to allow the Department to furnish the county with the required tax refund information.

During the first year the act is in effect, the Department of Revenue will have 90 rather than 30 days to provide a county the requested information. This extra time is allowed because the Department will have to compile the information manually. After the first year, it is anticipated that the new Integrated Tax Administration System will enable the Department to compile the information electronically.

Minimal Property Tax Bills (Chapter 24; SB 167): See summary for Chapter 329 in this section.

Intangibles Repeal/Hold Harmless (Chapter 41; SB 8): Chapter 41 repeals the intangibles tax on stock, bonds, mutual funds, and accounts receivable effective for the 1995 tax year (taxes due April 15, 1996). The repeal will result in a tax reduction of $124 million a year for individuals and corporations. This act dedicates $93 million in recurring General Fund revenue for distribution to local governments annually to reimburse them for their revenue loss due to the repeal of the tax. A total of $95 million of State funds will be distributed to local governments for the intangibles tax because $2 million that was formerly deducted from the tax to pay for the Local Government Commission and similar local cost items will instead be deducted from local sales taxes distributed to local governments.

The intangibles tax was a State-levied property tax of 25¢ per $100 of value of stocks, bonds, notes, mutual funds, certain accounts receivable, and interests in foreign trusts. Accounts with investment brokers and securities dealers were exempt from the tax on accounts receivable. Until 1985, the tax applied also to cash on hand, money on deposit, and accounts with investment brokers and securities dealers. These portions of the tax were repealed in 1985; at that time, the General Assembly dedicated recurring General Fund revenues for distribution to local governments to reimburse them for their revenue loss due to the repeal. The amount of the reimbursement was indexed to grow automatically at the same rate as State personal income.

Before 1937, the intangibles tax was levied by local governments. It was converted in 1937 to a State-levied tax with 50% of the revenue to be shared with local governments. The local share was increased to 75% in 1941 and to 100% in 1957. In 1991, in order to balance the State budget, the Governor cut local governments' share of the tax and their reimbursement for the parts of the tax repealed in 1985. Later that year, the General Assembly restored this cut but froze the distribution and reimbursement amounts, so that the State would share in the tax revenue as it grew above the frozen amount. In 1993, the General Assembly enacted legislation that would have frozen the State's share of the tax and restored future growth to local governments beginning in 1995. That legislation never went into effect, however, because the tax was repealed by this act.

By 1995, the State's share was approximately $31 million and the local share was approximately $93 million. By dedicating State revenue to reimburse local governments for their share in future years, this act requires the State to absorb the entire $124 million loss from the General Fund. Because the reimbursement to local governments is frozen and will not grow, local governments must absorb the loss of expected revenue growth that would have been restored to them in 1995 had the tax not been repealed.

The reimbursements enacted in 1985 and the new reimbursement provided in this act are allocated among the counties in proportion to the amount of tax collected in each county in the last year the tax that is being reimbursed was in effect. The amounts allocated are then divided among the county and its municipalities in proportion to the total amount of ad valorem taxes levied by each during the fiscal year preceding the distribution. The distributions will be made each August, beginning in 1995.

The repeal of the intangibles tax by this act was precipitated by litigation challenging the constitutionality of the tax on stocks and stock mutual funds. The stock tax statute exempted a proportion of corporate stock equal to the percentage of the corporation's business that is conducted in North Carolina. Thus, stock of a corporation that did 100% of its business in North Carolina was 100% exempt from the intangibles tax. This exemption was known as the "taxable percentage" deduction. In 1993, in Fulton Corp. v. Justus, the North Carolina Court of Appeals ruled that the taxable percentage

deduction violates the interstate commerce clause of the federal constitution. The court invalidated the deduction effective for the 1994 tax year but, before the decision could go into effect, it was overturned by the North Carolina Supreme Court in December 1994. The North Carolina Supreme Court agreed with the State's argument that the stock tax and the taxable percentage deduction are both constitutional. The case is now on appeal in the United States Supreme Court. The plaintiffs are arguing that the entire stock tax is unconstitutional and should be invalidated by the court. If the 1995 General Assembly had not repealed the tax, taxpayers, the State, and local governments would have remained uncertain as to whether the court's decision would prohibit collection of the stock tax for the 1995 tax year, authorize collection of the tax but prohibit allowance of the taxable percentage deduction for the 1995 tax year, or leave the entire stock tax structure in place.

Income Tax Cut/Child Credit (Chapter 42; HB 2): Chapter 42, as amended by Chapter 370 of the 1995 Session Laws, provides income tax relief only to low and middle income taxpayers. The act will reduce the number of taxpayers by between 260,000 and 280,000 people. The tax relief provided by the act will result in a General Fund revenue loss of $235 million in fiscal year 1995-96 and $244.1 million in fiscal year 1996-97. The act makes the following changes in State individual income taxes:

(1) Increases each personal exemption the taxpayer may claim by $250 for the 1995 taxable year if the taxpayer has an adjusted gross income less than the applicable amount listed below:

Married filing jointly	$100,000
Head of Household	80,000
Single	60,000
Married filing separately	50,000

(2) Increases each personal exemption the taxpayers may claim by an additional $250 for the 1996 taxable year if the taxpayer has an adjusted gross income of less than the applicable amount stated above.

(3) Allows a tax credit of $60 per dependent child for taxpayers with adjusted gross incomes of less than the applicable amount stated above.

Increase in personal exemptions

Prior to this act, the State personal exemption amount of $2,000 had not been changed since 1989, when North Carolina began using federal taxable income as the starting point in calculating North Carolina taxable income. The State personal exemption is not indexed for inflation, as is the federal personal exemption. Therefore, to calculate North Carolina taxable income, a taxpayer must add back to federal taxable income the difference between the lower North Carolina personal exemption amount and the higher federal personal exemption amount.

The effect of this act is to require a lower amount to be added back each year for taxpayers whose adjusted gross income is less than the stated amounts. For the 1995 taxable year, the amount to be added back is $250 less than under the current law. For example, the federal personal exemption amount for the 1995 taxable year is $2,500. Under this act, the State personal exemption amount will be $2,250, rather than $2,000, for taxpayers whose adjusted gross income is less than the stated amounts. For taxpayers whose adjusted gross income is equal to or more than the stated amounts, the State personal exemption amount will remain at $2,000. For the 1996 taxable year and subsequent taxable years, the amount to be added back is $500 less than under the current law for taxpayers whose adjusted gross income is less than the stated amounts.

Credit for dependent children

The $60 tax credit for dependent children also applies only to taxpayers whose adjusted gross incomes are less than the stated amounts. The credit is in addition to

the federal and state tax credits or exclusions for child care expenses. The new credit is allowed for each dependent child for whom the eligible taxpayer could take a federal personal exemption under section 151(c)(1)(B) of the Internal Revenue Code. That Code section allows an exemption for each dependent child who either is less than 19 years old at the end of the taxable year or is a student and is less than 24 years old at the end of the taxable year. A child is a son, stepson, daughter, or stepdaughter. A dependent child is a child over half of whose support was provided by the taxpayer.

Make Bond Taxation Uniform (Chapter 46; SB 120): Chapter 46 provides that capital gains from the transfer of all State, local, and federal bonds will be subject to uniform State income tax treatment; it does this by repealing special State tax exemptions for capital gains from transfers of certain State and local bonds. The act becomes effective July 1, 1995, and applies to bonds issued on or after that date. It does not affect the tax treatment of capital gains on bonds issued before July 1, 1995.

This act was recommended by the Revenue Laws Study Committee to address an inconsistency in the State income tax treatment of capital gains from various bonds. The interest earned on federal bonds is exempt from State income tax, as is the interest earned on North Carolina State and local bonds. If the holder of a bond transfers it, there may be a capital gain. Gain from the transfer of federal bonds is subject to State income tax. Gain from the transfer of most North Carolina State and local bonds is also subject to State income tax. There are some State and local bonds, however, for which the bond law provides a State income tax exemption for gain from their transfer.

The Attorney General's Office notified the Department of Revenue, the State Treasurer, and the Revenue Laws Study Committee that allowing a tax exemption for gain from some North Carolina bonds but not for gain from federal bonds may violate the federal constitutional doctrine of intergovernmental tax immunity. In order to avoid constitutional problems, the State must treat federal and North Carolina bonds alike. To achieve uniform tax treatment for bonds, the General Assembly had the choice of either repealing the special capital gains exemption for a limited number of bonds or granting a tax exemption for capital gains from all federal bonds and all North Carolina State and local bonds. The Revenue Laws Study Recommended the former option. Repealing the special exemption is expected to cause only a small revenue increase, for three reasons: (1) there are relatively few bonds affected, (2) North Carolina bonds are not generally traded for capital gains, and (3) some bondholders are probably not aware of the tax exemption and are not currently claiming it. The other option, exempting the capital gain from all bonds, would have caused a General Fund revenue loss that was expected to be of greater magnitude because it would involve a much larger group of State and local bonds as well as all federal bonds. The amount of the potential loss to the General Fund was unknown due to a lack of data.

In addition to repealing the special capital gains exemption for a select group of State and local bonds, this act makes other two changes. First, it clarifies that bonds are not exempt from franchise tax or inheritance and gift tax; some bond statutes are ambiguous on this point, but the statutes have not been interpreted as granting a special exemption from these taxes. Second, in Section 1, it repeals a 1955 law authorizing the creation of business development corporations and allowing them to issue bonds. This law has never been used and is now obsolete.

This act is not expected to affect the marketability of State or local bonds, whether outstanding or issued in the future. The tax changes in the act do not apply to any bonds issued before July 1, 1995. Future issues of State and local bonds in the following categories will be subject to the same capital gains tax treatment as other bonds:

-- Bonds of the Global TransPark Authority, a State agency
-- Bonds of the Nash-Edgecombe merged school administrative unit

- -- Revenue bonds of the Higher Education Facilities Finance Agency, a State agency
- -- Revenue bonds of The University of North Carolina system
- -- Revenue bonds of the State Education Assistance Authority, a State agency
- -- Bonds of the N.C. Housing Finance Agency, a State agency
- -- Bonds of the N.C. Agricultural Finance Authority, a State agency
- -- Bonds of the N.C. Medical Care Commission, a State agency
- -- Revenue bonds of public hospital authorities created by local governments
- -- Refunding bonds issued by the State
- -- Bonds of the N.C. State Ports Authority, a State agency
- -- Bonds of local government housing authorities
- -- Bonds issued by municipalities or joint municipal power agencies to finance electrical power projects
- -- Special obligation bonds issued for solid waste capital projects by local governments or by the N.C. Solid Waste Management Capital Projects Agency, a State agency
- -- Bonds issued by local government housing agencies

Transporter Plate/Salvage Changes (Chapter 50; HB 122): Chapter 50 makes several unrelated changes to the laws concerning motor vehicles. The changes expanding the allowable uses of transporter plates only for special mobile equipment and providing a highway use tax exemption and a reduced title fee for the transfer of a salvage vehicle when the transfer was from an insurance company to the person who owned the vehicle when it became a salvage vehicle were recommended by the Revenue Laws Study Committee. The changes made by this act will reduce the Highway Trust Fund by approximately $171,600 a year and the Highway Fund by approximately $32,400 a year.

Transporter plate changes

The act allows transporter plates to be used on vehicles in two new circumstances. The first circumstance is to drive special mobile equipment from the manufacturer of the equipment to the facility of the special mobile equipment dealer, from one facility of the dealer to another, or from the dealer to the buyer of the equipment. The second circumstance is to move a motor vehicle that is owned by a business and is a replaced vehicle offered for sale; under current law only a utility may obtain a transporter plate to move a replaced motor vehicle. The changes are effective upon ratification.

A transporter plate is a type of commercial license plate. A transporter plate is issued on a calendar-year basis, can only be used for a purpose that is listed in the statutes, and can be transferred from one vehicle to another during the year as long as the vehicle to which it is transferred is driven for one of the authorized business purposes. It differs from a dealer plate in its restrictions on use. A vehicle bearing a dealer plate can be driven for any purpose as long as the driver is an officer or an employee of the dealer. The fee for a transporter plate is $10.

Under the law prior to the enactment of this act, a special mobile equipment dealer had to use a dealer plate to drive special mobile equipment on the highway. The number of dealer plates available to a dealer is based on the dealer's sales volume. A dealer in special mobile equipment might sell fewer than 12 pieces of special mobile equipment in a year, and based on that sales volume, may be entitled to only one dealer plate. This part of the act alleviates this problem by allowing the special mobile equipment dealer to use either transporter plates or dealer plates for the three limited transport purposes.

Special mobile equipment is a class of vehicles; the class consists of vehicles that have permanently attached special equipment whose purpose is to perform off-road work. Truck cranes and well-drilling rigs are two types of special mobile equipment.

Special mobile equipment is driven on the roads only to get to off-road jobs. It is subject to sales tax rather than highway use tax and pays a flat annual registration fee of $20 rather than a fee based on weight.

Salvage vehicle changes

The act eliminates the double title transfer now required when a vehicle is wrecked to the extent it is a salvage vehicle and the owner wants to keep the vehicle. Under the prior law, the owner had to transfer the vehicle to the insurer and the insurer had to then transfer the vehicle back to the owner. A salvage vehicle is one on which a claim has been paid that exceeds 75% of the fair market value of the vehicle, as determined by the National Automobile Dealers' Association Pricing Guide Book or another pricing guide approved by the Commissioner of Motor Vehicles. In place of the double transfer, the act requires the owner of the salvage vehicle to sign a form acknowledging the status of the vehicle as a salvage vehicle. This change became effective July 1, 1995.

For those salvage vehicles retained by their owners, eliminating the double title transfer means that the insurer will not have to pay the $10.00 fee that applies to transfers of salvage vehicles to an insurer and that the owner will not have to pay the highway use tax and $35 title fee that applies to transfers of titles in general. The insurer and the owner will not have to pay these fees because there will be no title transfer that triggers their payment.

Utility vehicles

The act exempts utility vehicles that are licensed in another state and are used in this State in an emergency to restore utility service from two different registration requirements. The two requirements from which the vehicles are exempt are (i) the requirement to register with the Division of Motor Vehicles and pay an apportioned license fee and (ii) the requirement to register with the Department of Revenue and pay a road tax based on the number of miles driven in the State. These changes were recommended to the 1994 General Assembly by the Joint Legislative Utility Review Committee. They passed the House of Representatives during the 1994 biennium as part of a larger bill, but the larger bill did not pass the Senate. These changes become effective October 1, 1995.

Opening Empty Lock Boxes (Chapter 89; SB 245): Chapter 89, which was recommended by the General Statutes Commission, establishes a procedure to allow a decedent's safe deposit box to be opened outside the presence of the Clerk of Superior Court if the box is empty. Under current law, financial institutions managing safety deposit lock boxes may not open a box after the death of the box holder unless someone from the clerk of court's office is present. When the box is opened, the clerk makes an inventory of its contents and furnishes a copy to the Secretary of Revenue for inheritance tax purposes. This requirement serves no purpose in cases in which the box is empty.

Under this act, if the personal representative of an estate believes the box may be empty, the representative may request the clerk of court to authorize the box to be opened outside the presence of an employee of the clerk of court. With this permission, the box may be opened in the presence of a representative of the financial institution, who must certify that the box is empty. No notice is sent to the Department of Revenue. If the box is not empty, the box must be closed immediately and reopened only in the presence of the clerk. This act becomes effective October 1, 1995, and applies to the estates of decedents dying on or after that date.

Overdue Truck Penalties & Taxes (Chapter 109; HB 213): Chapter 109 clarifies the law concerning the authority of a law enforcement officer of the Division of Motor Vehicles (DMV) to detain a truck until any delinquent penalties or taxes previously

assessed against the truck's owner for motor carrier vehicle violations or motor carrier taxes have been paid. It also consolidates the various provisions concerning the weighing of trucks and eliminates inconsistencies in these provisions. The act becomes effective October 1, 1995. It is one of the recommendations of the Joint Legislative Transportation Oversight Committee to the 1995 General Assembly.

G.S. 20-96 authorizes the detention of a truck "with an overload as described in this section or which is equipped with improper registration plates, or the owner of which is liable for any overload penalties or assessments applicable to the vehicle and due and unpaid for more than 30 days." This language can be construed to mean that a vehicle can be detained only when it has an overload, has improper registration plates, or has an overdue overweight penalty assessed against that particular truck. However, in practice, a DMV law enforcement officer can detain a truck when the officer finds that the truck's owner has previously been assessed a penalty for a motor carrier vehicle violation and payment of the penalty is overdue. Penalties are due upon assessment and become delinquent 30 days after the date of assessment. Motor carrier vehicle violations include registration, equipment, and overweight violations. A DMV officer can also detain a truck when the officer finds that the trucks' owner is delinquent in paying motor carrier road taxes due under Article 36B of Chapter 105 of the General Statutes. This act rewrites G.S. 20-96 to make it clear that the authority applies to all motor carrier vehicle violations and to delinquent motor carrier taxes.

The act also consolidates the statutory provisions on the weighing of trucks and eliminates inconsistencies in those provisions. Currently, G.S. 20-96 has several inconsistencies. First, it states that overweights are subject only to axle-group penalties, and not single-axle or tandem-axle weight limit penalties. Second, it states that overweights on light-traffic roads are subject only to single-axle or tandem-axle penalties, and not axle-group penalties. Both of those statements conflict with G.S. 20-118. Third, it refers to a tax that was repealed years ago.

Minimal Property Tax Bills-2 (Chapter 329; SB 496): Chapter 329 gives the governing body of a taxing unit that collects its own taxes the authority to adopt a resolution directing the tax collector not to collect property taxes when the amount of tax due is less than the amount set in the resolution. The amount set may not exceed $5.00 and should be the amount it would cost the taxing unit to send a tax bill. All of the taxes and fees due on a tax receipt or on a motor vehicle property tax notice, including those taxes and fees of other units for which it collects taxes, are included in determining whether the amount due is less than the threshold set by the taxing unit.

Under current law, the governing body of a taxing unit may permit its tax collector to treat small underpayments of taxes as fully paid and to not refund small overpayments of taxes unless the taxpayer requests a refund. The statute defines "small" as $1.00 or less. This act expands that concept, by allowing taxing units to eliminate billing and collection of minimal taxes up to $5.00. As with small underpayments and small overpayments, the tax collector must keep a record of the taxes by taxpayer and amount and must report the amount of taxes to the governing body as part of the settlement for the year.

The act is effective July 1, 1995, which is the beginning of the 1995-96 tax year. To authorize the tax collector not to collect minimal taxes for a tax year, the governing body must adopt a resolution to that effect by June 15 preceding the first day of the tax year (July 1). The resolution remains in effect for subsequent tax years until amended or repealed by another resolution of the taxing unit. Because this act was ratified June 26, 1995, it gives taxing units an extension until June 30, 1995, to adopt a resolution for the 1995-96 tax year.

The General Assembly had earlier ratified as Chapter 24 of the 1995 Session Laws an act that allowed counties not to bill for motor vehicle property taxes when the

amount due on the tax bill is less than the cost of preparing and sending the bill. That act was repealed by this act because this act will cover motor vehicle property taxes as well as all other property taxes. If a county adopted a resolution under Chapter 24 before its repeal, the resolution will be effective under this act.

Revise Drug Tax (Chapter 340; HB 123): Chapter 340 revises the State excise stamp tax on controlled substances to bring it in line with a 1994 decision of the United States Supreme Court. The act becomes effective October 1, 1995, and is expected to have a minimal negative impact on excise stamp tax collections.

On June 6, 1994, the United States Supreme Court ruled that Montana's tax on illegal drugs was unconstitutional. In Montana v. Kurth Ranch, 114 S.Ct. 1937 (1994), the court held that the tax was in fact a punishment, not a true tax, and thus violated the Fifth Amendment's double jeopardy clause that protects against multiple punishments for the same offense. The court acknowledged that a tax is not necessarily a punishment if it is at a high rate and is designed to deter unlawful conduct; the court also acknowledged that an unlawful activity may be taxed. The court found that Montana's tax crossed the line from a tax to a punishment because, in addition to being on an illegal activity, at a high rate, and designed to deter undesirable behavior, the tax was conditioned on the commission of a crime and was exacted only after the taxpayer was arrested and the taxed drugs were no longer in the taxpayer's possession. The court based its decision on its finding that under Montana law, a taxpayer has no obligation to file a return or pay tax unless and until the taxpayer is arrested for illegal possession of the drugs. Four Justices dissented from the court's decision.

North Carolina levies an excise stamp tax on the possession of illegal drugs. The tax is at the rates of $3.50 for each gram of marijuana, $200 for each gram of any other drug sold by weight, and $400 for each 10 dosage units of any drug not sold by weight. Seventy-five percent (75%) of the tax proceeds received due to an assessment of the tax are distributed to the law enforcement agency that conducted the investigation leading to the assessment; the remaining tax proceeds are credited to the General Fund.

The Attorney General's Office reviewed the opinion in Montana v. Kurth Ranch and concluded that North Carolina's drug tax law is not unconstitutional because it differs from the Montana law in one key respect: the North Carolina law applies whether or not a person is arrested for a drug violation. North Carolina law requires a person who acquires more than a minimum amount of illegal drugs to pay the tax within 48 hours and place stamps on the drugs to show that the tax has been paid. In other respects the North Carolina law is similar to Montana's: it is at similar rates, it is designed to deter undesirable behavior, and it applies only to drugs possessed in violation of the criminal law.

The act makes the following changes to North Carolina's drug tax law to remove any aspects of the tax that could indicate that the tax is a punishment rather than a true tax designed to raise revenue; these changes were recommended by the Revenue Laws Study Committee on the advice of the Attorney General's Office and the Controlled Substance Tax Division of the Department of Revenue.

(1) It clarifies that the purpose of the tax is to raise revenue for law enforcement and for the General Fund rather than to provide a second punishment.

(2) It revises the tax rates so that they do not, in general, exceed the market value of the various illegal drugs. The act imposes a lower tax rate on low-street-value drugs, which include steroids, depressants, stimulants, and hallucinogenic substances. It also imposes a lower tax rate on stems and stalks of marijuana that have been separated from other parts of the plant. Separated stems and stalks are usually the debris left over from harvesting marijuana and are of much less value in this form. The failure of Montana's

drug tax to provide lower tax rates for lower value drugs was a key factor in the court decision finding the tax unconstitutional.

(3) It provides that the tax applies to any actual or constructive possession of drugs, with an exemption for a person who is authorized by law to possess the drugs. Currently, the tax applies to anyone who possesses drugs in violation of criminal drug statutes.

(4) It repeals the special law that makes failure to pay the drug tax a felony. Other tax laws are covered by the general tax penalty provisions of G.S. 105-236, which criminalize only intentional conduct. Under the act, the drug tax is subject to the same penalty provisions as other tax laws.

(5) It reduces the civil penalty for failure to pay the drug tax from 100% of the tax due to 50% of the tax due, so it will be the same as the penalty for failure to pay the tobacco tax. The 100% drug tax penalty has been imposed but, as a practical matter, is virtually never collectible.

(6) It repeals provisions that required State and local law enforcement agencies to report drug arrests to the State Bureau of Investigation which, in turn, had to report them to the Department of Revenue. These law enforcement agencies plan to continue to cooperate with the Department of Revenue on a voluntary basis.

(7) It repeals the tax on counterfeit controlled substances, which do not have the same value as true controlled substances.

(8) It clarifies that the proceeds of the tax may be distributed more frequently than quarterly.

Trade-In Allowance/Hwy. Use Tax (Chapter 349; HB 768): Chapter 349 specifies in the statutes that an exchange of motor vehicles between two parties is a sale under the highway use tax. An exchange between two parties has always been considered a sale under the highway use tax, so the act does not change the law on this subject. The act became effective July 1, 1995. Because the act does not change the law, the act has no fiscal impact.

The definition of "sale" in G.S. 105-164.3(15) that applies to the highway use tax specifically includes an exchange of property. The Division of Motor Vehicles, which administers the tax, has followed this definition and treated exchanges as sales.

If a transaction is a sale under the highway use tax, the amount on which the highway use tax is computed is reduced by the amount of any trade-in allowance. The amount on which highway use tax is computed is the market value of the vehicle. If a seller of a vehicle is not a car dealer, the market value of the vehicle is presumed to be the wholesale book value of the vehicle. The amount allowed as a trade-in allowance, however, is not based on market value. The amount allowed as a trade-in allowance is the amount determined by the seller to be the value of the vehicle.

The effect, therefore, of treating a two-party exchange of vehicles as two sales is to allow a trade-in allowance to be applied to each sale, thereby reducing the amount on which highway use tax is computed. If each seller gives a trade-in allowance equal to the market value (wholesale book value) of the vehicle owned by the seller at the time of the exchange, no highway use tax will be due because the market value of the vehicle less the trade-in allowance will be zero.

The highway use tax was enacted in 1989 to provide revenue for the Highway Trust Fund. It replaces the former sales tax on motor vehicles. The highway use tax is 3% of the retail value of a motor vehicle, subject to both a minimum tax that applies until July 1, 1996, and to a maximum tax. The minimum tax, which is repealed effective July 1, 1996, is $40.00. The maximum tax is $1,500 for automobiles and other vehicles that weigh no more than 26,000 pounds and is $1,000 for vehicles that weigh more than 26,000 pounds. The highway use tax is payable when a certificate of

title is issued for a motor vehicle. The tax is in addition to the $35.00 fee that is charged for the issuance of a title and the $10.00 or $20.00 fee that is charged for the transfer or issuance of a license plate.

Truck Tax Conforming Changes (Chapter 350; HB 1058): Chapter 350 amends the property tax laws and the corporate income tax laws to preserve the existing property tax and income tax treatment of for-hire motor carriers of property. Because of changes in federal law, these motor carriers did not fit the statutory definitions that applied prior to the effective date of this act. This act became effective June 29, 1995. The act is not expected to have a fiscal impact.

A federal act passed in the fall of 1994 prohibits federal or state regulation of rates, routes, and service of trucking companies, other than those that carry household goods. Until this prohibition, the North Carolina Utilities Commission regulated intrastate trucking companies and the Interstate Commerce Commission (ICC) regulated interstate trucking companies. The North Carolina Utilities Commission can no longer regulate these intrastate trucking companies, and the ICC's regulation of interstate trucking companies has been greatly reduced.

The state property tax and income tax definitions of trucking companies that were in effect when the 1994 federal act became effective referred to trucking companies as being regulated by the Utilities Commission or the ICC. Because of the change in the scope of regulation, these definitions no longer applied. The act therefore modifies the definitions to ensure that the change in regulation does not inadvertently cause a change in the way the trucking companies pay property and income taxes.

Under the State property tax laws, the "rolling stock" (vehicles) of all intrastate trucking companies that have two or more terminals in the State and of all interstate trucking companies that do business in the State is valued by the Department of Revenue rather than by the county assessor of the counties in which the company's terminals are located. The value of the vehicles is then allocated among the counties in which the terminals are located in proportion to the percentage (tonnage) of freight handled at each terminal during the preceding year. This method of taxation avoids the problem of multiple counties trying to tax the same property.

If the trucking company does business outside the State, the Department of Revenue must determine the share of the company's property that is taxable in this State and will therefore be allocated among the counties. This determination is made on the basis of mileage in this State. Similarly, under the corporate income tax, the income of a trucking company that does business in more than one state is allocated among those states based on the number of vehicle miles traveled in each State.

Appropriations Fee Provisions (Chapter 360; HB 994): Chapter 360 contains a variety of changes that concern either insurance taxes and fees or the payment of administrative costs under the Setoff Debt Collection Act. The changes were recommended by the House and Senate Appropriations Committees as part of the biennial State budget and were revised by the House and Senate Finance Committees.

Section 1 of this act transfers the responsibility of collecting part of the premiums tax imposed on insurance companies from the Department of Insurance to the Department of Revenue, effective January 1, 1996. This responsibility will cost the Department about $100,000 a year, with additional one-time costs of about $200,000 in the 1995-96 fiscal year. These amounts were appropriated to the Department of Revenue in the expansion budget, Chapter 570 of the 1995 Session Laws.

Under G.S. 105-228.5, insurance companies pay taxes based on their gross premiums instead of paying corporate income and franchise taxes. In addition, employers that carry their own workers' compensation risk, known as self-insurers, and employers that pool their workers' compensation liabilities pay the gross premiums tax

on premiums they pay or on the premiums that would be charged to cover the risk. The workers compensation premiums tax rate is 2.5% of gross premiums and the general premiums tax rate is 1.9% of gross premiums. Insurers that provide fire and lightning coverage pay an additional tax at the rate of 1.33% of gross premiums for fire and lightning coverage provided on property other than vehicles and boats.

Section 1 of this act provides that collection of the 2.5% tax on workers' compensation self-insurers and the additional 1.33% tax on fire and lightning coverage remains with the Department of Insurance. Collection of the 2.5% tax on other workers' compensation premiums and of the rest of the premiums tax is transferred to the Department of Revenue. This section also reorganizes and modernizes the language of the gross premiums tax statutes, clarifies that interest on installment overpayments of gross premiums tax is calculated the same way as interest on installment overpayments of corporate income tax, and deletes from Article 2 of Chapter 97 of the General Statutes, the Workers' Compensation Act, redundant and inaccurate provisions about the collection of the tax on workers' compensation insurance.

Section 2 of this act eliminates the insurance audit and examination fees for insurance companies, HMOs, medical corporations, and guaranty associations, effective July 1, 1995. Under current law, when the Insurance Department audits an insurer or a rate organization, it charges the cost of the audit to the company as a fee. The act repeals these fees. Consequently, the costs of the audits will be paid for by the insurance regulatory charge as part of the costs of regulating the insurance industry. The Fiscal Research Division estimated that the amount of fee revenue that will be replaced by regulatory charge revenue is $4.5 million a year.

Section 3 of this act expands the purposes for which the insurance regulatory charge is to be used, effective July 1, 1995, to include costs incurred by other departments as well as by the Department of Insurance in regulating the insurance industry. The insurance regulatory charge, which is a percentage of gross premiums tax liability, was imposed on insurance companies in 1991 in order to make the Department of Insurance receipt-supported and thereby eliminate General Fund support of that department. Its use was limited to paying the cost to the Department of Insurance of regulating the insurance industry and other industries as well as the State's costs incidental to the Department of Insurance's costs. Section 3 removes the limitation that costs payable from the charge must be incurred by the Department of Insurance; this change is designed to include in the costs that are paid from the charge the costs of the Attorney General's Office in providing counsel on insurance matters. To reflect the broader application of the insurance regulatory charge, Section 3 also changes the name of the fund to which the charge is credited from the Department of Insurance Fund to the Insurance Regulatory Fund and specifies that this fund is to be administered by the Office of State Budget and Management.

Section 4 of this act changes the administrative reimbursement under the Setoff Debt Collection Act by excluding child support collections from payment of the administrative costs, effective January 1, 1996. The Setoff Debt Collection Act is the law under which the Department of Revenue retains an income tax refund of an individual who owes money to a claimant agency and sends the refund to the claimant agency to be applied to the debt. The Department pays for this program by deducting its administrative costs from amounts collected on behalf of all claimant agencies. The Department of Human Resources and county agencies are claimant agencies that use the debt setoff program to collect child support arrearages pursuant to the federal Child Support Enforcement Program. This section provides that the Department of Revenue will no longer deduct its administrative costs from amounts collected for child support arrearages, but it will continue to receive the same amount of reimbursement as under the current law by spreading among other claimant agencies the portion of the Department's administrative costs now deducted from child support collections. Thus,

a greater percentage of other debts collected will be deducted for administrative costs. The Fiscal Research Division has estimated that approximately $300,000 a year in child support setoff administrative costs will be shifted from child support collections to other setoff collections, resulting in an increase in the percentage deducted from those other collections from the current 7% to about 14% of the amount collected.

Section 5 of this act repeals a provision in the 1995 continuation budget that made certain budget reductions contingent on enactment of this act. Because this act has been enacted, the contingency language in the budget is not needed.

Tax Law Technical Changes-2 (Chapter 370; HB 142): Sections 1 through 3 of Chapter 370 make clarifying and technical changes to acts enacted during the 1995 session. Sections 4 through 6 make clarifying changes and technical corrections to laws enacted in previous sessions.

Sections 1 and 2 make changes to Senate Bill 8, Intangibles Repeal/Hold Harmless, enacted as Chapter 41 of the 1995 Session Laws. Section 1 inserts a cross-reference to the Department's costs of administering the intangibles tax reimbursement. The effect of the cross-reference is to maintain the Department's current authorization to deduct from local government revenues its costs of administering the intangibles tax distributions. Section 2 makes technical wording changes so that the various intangibles tax reimbursement allocations will read the same. These sections became effective July 1, 1995; the Fiscal Research Division reported that they have no fiscal impact.

Section 3 of this act makes a clarifying change to the personal exemption increase enacted by House Bill 2, Income Tax Cut/Child Care Credit as Chapter 42 of the 1995 Session Laws. The additional language added by the increased exemption was slightly ambiguous and might have been misconstrued to require an inflation adjustment only if the taxpayer's adjusted gross income was below the thresholds set in the act. The inflation adjustment -- an addition to taxable income -- is required of all taxpayers, however. This section becomes effective for the current tax year and has no fiscal impact.

Section 4 of this act clarifies the amount of a deduction a corporation may take as a charitable contribution for donating land for conservation purposes when it also takes a credit for the donation under G.S. 105-130.34. That statute allows a credit of 25% of the value of the land, up to a maximum credit of $25,000. This section clarifies that a deduction is allowed for the excess value of the land over the value used in computing the credit, rather than the excess value over the amount of the credit itself. For example, if the value of the land is $120,000, the credit is 25% of that value, $30,000, capped at $25,000. Because the credit is based on the first $100,000 of land value, a deduction is allowed only for the remaining $20,000 of value. Before clarification by this section, the current provision could have been construed to allow a deduction in this circumstance for $95,000, which is the excess value of the land over the amount of the credit allowed. This section becomes effective for the current tax year and could result in a minor increase in General Fund tax revenue.

Sections 6 and 7 of this act correct errors in the jobs tax credit statutes that reverse the proper order of the county rankings based on population. The correct order is highest to lowest instead of lowest to highest. These sections are effective upon ratification and have no fiscal impact.

Motor Fuel/Use Tax Change (Chapter 390; SB 943): Chapter 390 makes several significant changes to the motor fuel tax laws and to the highway use tax laws. The changes become effective at various times as explained. The changes are expected to generate net annual additional Highway Trust Fund revenue of $10 million when all the changes have become effective.

First, the act establishes a uniform system for the collection of the per gallon motor fuel excise taxes on gasoline and clear diesel. Under the system, fuel is taxed when it is removed at a "rack" at a motor fuel terminal. Under current law, gasoline is taxed on its first sale after the rack and clear diesel is taxed when it is sold to a person who is going to either resell it at a service station to operate highway vehicles or store it for subsequent use in highway vehicles the person owns. Parts I, II, and III of the act make this change, effective January 1, 1996.

Second, the act repeals the $40 minimum highway use tax that is payable when the title to a vehicle is transferred, effective July 1, 1996. Part IV of the act makes this change.

Third, it establishes a minimum mileage presumption for motor carriers that drive in the State but do not report mileage to the State and imposes increased penalties for motor carriers that understate mileage to the State by more than 25%. Part V of the act makes these changes, effective October 1, 1995.

Uniform System For Motor Fuel Tax Collection

Part I of the act repeals the current laws on the collection of motor fuel excise taxes and replaces them with new laws on this subject. The new laws move the point of collection for the per gallon motor fuel excise taxes to the terminal, thereby eliminating opportunities for tax evasion and making the system easier to administer. North Carolina is particularly vulnerable to motor fuel tax evasion because its motor fuel tax rate is 21.95¢ a gallon compared to 16¢ a gallon in South Carolina and 7.5¢ a gallon in Georgia.

The new system will eliminate opportunities for tax evasion by reducing the availability of non-tax-paid fuel purchased in this State and by having a large part of the tax on imported fuel collected by out-of-state suppliers. The proposed system will be easier to administer because it will parallel the federal system as well as South Carolina's and the number of taxpayers will be greatly reduced.

Part II of the act provides for transitional provisions to facilitate the change to the new system. Part III of the act makes conforming changes to various statutes that refer to motor fuel laws. The following outline summarizes the distinctions between the act and the current law:

Subject	Chapter 390	Current Law
Taxing Point	Removal from terminal	Gasoline - first sale Diesel - last sale before highway use
Taxpayer	Distributor; supplier is trustee and will collect tax from distributor and remit to state	Distributor, who pays directly to state
Tax Due Date	22nd of each month; licensed distributor can pay supplier the same date that supplier must pay the state	Gasoline- 20th Diesel- 25th
'Tare' Allowance	Licensed distributor gets 1% on taxable gasoline and diesel plus quarterly hold-harmless	Licensed gasoline distributor gets: 2% on first 150,000 1½% on next 100,000 1% on excess over 250,000 and tare

		applies to exempt gov't sales; Diesel distributor does not get tare
Supplier Allowance	1/10 of 1%, with $8,000 monthly maximum	None; supplier does not collect from distributors and remit to the state
Tax on Imports	Reported and paid by distributor	Paid mainly by elective or permissive supplier; paid in part by one of three types of importers: bonded, occasional, and tank wagon. Import verification number required.
Bond Amounts	$2,000,000 for refiner, supplier, terminal operator, and bonded importer. Two times monthly liability with minimum of $2,000 and maximum of $250,000 for distributor, occasional importer, tank wagon importer, blender.	Gasoline: two times monthly liability with minimum of $2,000 and maximum of $125,000 Diesel: Two times; monthly liability with minimum of $500 and maximum of $125,000
Exemptions	Same as current law	Exports, sales to federal government, sales to state, sales to local boards of education
Refunds	Motor fuel delivery vehicle, accidental mixes, lost diesel fuel, and clear diesel bought by marinas; otherwise the same	Exempt gov't sales, exports, cities and counties, a few non--profits, taxis, cement mixers, garbage compactors, and a few other vehicles that have power equipment, and off-highway uses
Enforcement	Same shipping document plus import verification number	Destination state shipping document

Repeal of Minimum Highway Use Tax

Part IV of the act repeals the minimum $40 highway use tax, effective July 1, 1996. Section 30 of that Part repeals the tax. Sections 31, 32, and 33 are conforming changes to references to the minimum tax. Section 34 adjusts revenue between the

Highway Fund and the Highway Trust Fund to ensure that the Highway Trust Fund does not lose revenue.

The highway use tax was enacted in 1989 as part of the Highway Trust Fund legislation to provide revenue for that Fund. The highway use tax replaces the former sales tax on motor vehicles. The highway use tax is 3% of the retail value of a motor vehicle, subject to both a minimum and a maximum tax. The minimum tax is $40.00. The maximum tax is $1,500 for automobiles and other vehicles that weigh no more than 26,000 pounds and is $1,000 for vehicles that weigh more than 26,000 pounds.

The highway use tax is payable when a certificate of title is issued for a motor vehicle. The tax is in addition to the $35.00 fee that is charged for the issuance of a title and the $10.00 or $20.00 fee that is charged for the transfer or issuance of a license plate. Thus, the minimum combined tax and fees payable when a certificate of title is transferred as the result of the sale of a motor vehicle is $85.00 if the new owner transfers a license plate to the vehicle and is $95.00 if the new owner obtains a new license plate for the vehicle. These figures are the result of adding the $40.00 tax, the $35.00 title fee, and either the $10.00 or $20.00 fee for a license plate.

The $40.00 minimum tax is regressive and does not distinguish between motor vehicles valued at less than $1,300. The transfer of a boat trailer, for example, that has a value of $150 triggers the payment of at least $85.00 in taxes and fees while the transfer of a car valued at $1,300 triggers payment of the very same amount of taxes and fees.

Since the enactment of the tax, the Revenue Laws Study Committee and the Division of Motor Vehicles of the Department of Transportation have received numerous complaints about the high minimum amount that must be paid to transfer a certificate of title. According to the Director of Vehicle Registration of that Division, the high minimum tax on utility trailers and other low-value vehicles is the number one complaint from the public about the highway use tax. Part IV of this act responds to these complaints by repealing the minimum tax.

Motor Carrier Enforcement Changes

Part V of the act makes changes to the road tax that are designed to increase compliance with that tax. It establishes a minimum mileage presumption for motor carriers that drive in the State, as evidenced by records of the Division of Motor Vehicles, but either do not report mileage to the State or underreport mileage. The presumption is 10 trips of 450 miles each for each of the carrier's vehicles.

The act also imposes an increased penalty on motor carriers that understate their mileage to the State by more than 25%. Under current law, the penalty for negligently understating the amount of tax owed is 10% of the deficiency. This act increases the penalty for motor carriers that understate their mileage by more than 25% to an amount equal to two times the amount of the deficiency. This Part becomes effective October 1, 1995.

The purpose of the road tax is to tax motor carriers who drive in the State using fuel purchased in another State. The road tax on motor carriers is set at the same rate as the per gallon excise tax and a credit is given for any State per gallon excise taxes paid. The number of miles a motor carrier drives in North Carolina in a reporting period and the total amount of fuel consumed by the motor carrier in that reporting period determine the motor carrier's road tax liability.

Liquor Importer/Bottler Permit (Chapter 404; SB 293): Chapter 404 creates a new type of commercial ABC permit known as a liquor importer/bottler permit. The application fee for this permit is $250.00. The fee is collected by the ABC Commission and remitted to the State Treasurer for the General Fund. The permit is valid for one year, from May 1 to April 30. G.S. 18B-903 provides that the renewal fee is 25% of the original application fee: $62.50. The holder of a liquor

importer/bottler permit would also need to obtain a State license. The annual tax for this license is $250.00. The act became effective upon ratification, July 11, 1995, and will generate a small amount of revenue for the General Fund.

A liquor importer/bottler permit will allow the holder of the permit to import liquor in closed containers into the foreign trade zone at either of the State Ports via ships that dock at the Ports. The imported liquor can be bottled, packaged, or labeled or it can be stored and shipped to State or local ABC warehouses and, where permitted by other jurisdictions, to public and private agencies in those jurisdictions. The liquor can also be transported from the State Ports for purposes related to bottling, packaging, labeling, sale, or storage.

Prior to the enactment of this new permit, State law did not provide a way for liquor to be imported into North Carolina. For imported liquor to be sold in this State, it had to be imported into another State and then be sold to this State. This act will allow a person to purchase liquor in bulk, import it into the State, bottle it, and send it to a warehouse. The permit is similar to the bottler permit the State currently provides for malt beverages, unfortified wine, and fortified wine and to the distillery permit, which allows the holder to import ingredients used in the distillation of spirituous liquor.

Leased Vehicle Trade-In Allowance (Chapter 410; HB 504): Chapter 410 excludes a trade-in allowance from the amount on which the alternate highway use tax on leased vehicles is calculated. The change becomes effective October 1, 1995. The change is expected to reduce Highway Trust Fund revenue by $1 million to $1.5 million a year.

Until October 1, 1995, the highway use tax on leased vehicles will apply to the gross receipts from the lease or rental of the vehicle with no deduction for the value of a trade-in allowance. If, for example, a person leases a vehicle for $250 a month and at the same time trades in a vehicle worth $5,000, highway use tax is due on the monthly payment and on the trade-in allowance of $5,000.

This is in contrast to the way highway use tax is calculated on the sale of a motor vehicle. The sales price of a motor vehicle is reduced by the amount of any allowance given by the seller for a motor vehicle taken in trade as a partial payment for the purchased motor vehicle. If, for example, a person buys a car worth $20,000 and at the same time trades in a vehicle worth $5,000, highway use tax is due on $15,000.

The difference in treatment between sales and leases stems from differences in the highway use tax and the sales tax. As part of the 1989 Highway Trust Fund legislation, motor vehicles were exempted from sales tax and made subject to highway use tax. When vehicles were subject to sales tax, the sales price was not reduced by the amount of a trade-in allowance. The new highway use tax specifically allows a reduction in sales price for the value of a trade-in but does not allow a reduction in the lease price. The highway use tax legislation provides that highway use tax due on the lease of a motor vehicle is to be administered as if it were a sales tax on the motor vehicle. Consequently, the general sales tax rule that the lease price is not reduced by a trade-in allowance applies to the collection of highway use tax on leased vehicles.

The highway use tax is 3% of the retail value of a motor vehicle, subject to both a minimum and a maximum tax. The minimum tax is $40 until July 1, 1996. Beginning July 1, 1996, the minimum tax is repealed. The maximum tax is $1,500 for automobiles and other vehicles that weigh no more than 26,000 pounds and is $1,000 for vehicles that weigh more than 26,000 pounds. When a lessor of vehicles buys a vehicle to be leased, the lessor has the option of either paying highway use tax when the lessor obtains a certificate of title for the vehicle or paying a tax on the gross receipts of the vehicle. If the lessor elects to pay on the gross receipts, the lessor must pay the alternate tax to the Department of Revenue. The alternate tax is 3% on the gross receipts from long term leases and rentals and 8% on the gross receipts from

short term leases and rentals. The 8% tax goes to the General Fund and the 3% tax goes to the Highway Trust Fund.

Donations of Conservation Land (Chapter 443; SB 229): Chapter 443 removes disincentives for donations of conservation or preservation land or property in three ways:

(1) It recognizes and ratifies conservation and preservation agreements with the federal government.
(2) It amends the Marketable Title Act to prevent conservation and preservation agreements from expiring if not rerecorded.
(3) It eliminates the requirement that back property taxes be paid when use value property is donated for conservation or preservation purposes.

Section 1 of this act adds the federal government as a recognized holder of a conservation or preservation agreement under Article 4 of Chapter 121 of the General Statutes, the Conservation and Historic Preservation Agreements Act. That Article permits an owner of real property to include restrictions on property interests transferred to a governmental entity or non-profit corporation to retain land and water in their natural, scenic, or open condition or in agricultural, horticultural, farming, or forest use. The Article also authorizes restrictions on transferred historical structures to preserve their historically significant architecture, archaeology, or historical associations. This section became effective upon ratification, July 18, 1995, and Section 2 extends it retroactively to June 1, 1979, thereby ratifying conservation and preservation agreements entered into with the federal government since that date.

Section 3 of this act adds an additional exception to the Marketable Title Act for conservation and preservation agreements entered into pursuant to the Conservation and Historic Preservation Agreements Act. The purpose of the Marketable Title Act is to simplify chains of title to real property by extinguishing certain claims against property if the claims are more than 30 years old, unless the claimed interest is rerecorded within the 30-year period. Because of concerns that the renewal dates for conservation and preservation agreements could be overlooked by the government or non-profit corporation that holds the property interest, and because these agreements serve a public purpose, this act provides that they will not be allowed to expire or be terminated as a matter of law by the Marketable Title Act.

Section 4 of this act eliminates the rollback of deferred taxes on transferred use value property if the property is donated to a governmental unit or is donated to a nonprofit organization for use as a protected natural area or for nonprofit historic preservation purposes. Property tax law provides that all property is to be taxed at its market value. A special use value law makes an exception for agricultural land, horticultural land, and forestland: it can be taxed at its value in its current use. The taxes that would otherwise have been due are deferred and become a lien on the land, however. If the property is transferred or otherwise becomes ineligible for use value taxation, three years of these deferred taxes become due and payable to the local government taxing units. This section provides an exception for land the owner donates to governmental units or donates to nonprofits for conservation or preservation. This section, which became effective January 1, 1995, will cause a revenue loss to local governments. The amount of the loss cannot be determined because one cannot predict how much property will be donated each year.

Railroad Diesel Sales Tax (Chapter 451; HB 360): Chapter 451 exempts railroad companies from paying the 6% State and local sales tax on diesel fuel used to operate railroad locomotives and railroad cars. Railroad companies do not pay motor fuel tax on diesel fuel used to operate railroad locomotives and railroad cars because the fuel is not used to operate a vehicle on the highways. The motor fuel tax on diesel fuel is

21.95¢ per gallon. This act, introduced on behalf of the Department of Transportation, exempts railroad companies from paying either sales tax or motor fuel tax on diesel fuel. The act is effective September 1, 1995, and is expected to reduce General Fund tax revenues by about $1.5 million a year.

There are many exemptions from the sales and use tax in the current law. An existing exemption, similar to the railroad diesel exemption added by this act, is the sale of fuel used by ocean-going vessels engaged in interstate commerce.

Partnership Use Value Property (Chapter 454; SB 237): Chapter 454 makes several changes to the special property tax classification for property taxed at its use value rather than its market value. It clarifies the kinds of individual owners who can qualify for this classification, allows farmland owned by a partnership, a trust, or a limited liability company to qualify for use value tax treatment to the same extent as a corporation, allows farmland owned by certain trusts to qualify for use value tax treatment, and expands the definition of "relative" used to determine qualification for use value tax treatment. The changes became effective January 1, 1995, and apply to tax years beginning with the 1995-96 tax year. The changes are not expected to have a significant impact on local property tax revenues, but will reduce revenue to a slight extent.

Property tax law provides that unless property is exempted or classified for special tax treatment, it is to be taxed at its market value. Agricultural land, horticultural land, and forestland are classified and are taxed at their value in their present use as agricultural land, horticultural land, or forestland. The difference between the taxes due on the present use value treatment and the taxes that would have been payable in the absence of this special treatment, together with any interest, penalties, or costs, are a lien on the property. The difference in taxes is carried forward in the records of the taxing unit as deferred taxes. The deferred taxes for the preceding three years become payable whenever the property is sold or whenever the property loses its eligibility for the benefit of the special use value law.

To qualify for use value taxation, the property must meet minimum size requirements, must be in actual production, must be owned by an individual or by a corporation whose principal business is cultivating the land and whose shareholders are all either actively engaged in this business or are relatives of someone who is actively engaged in this business. Agricultural land and horticultural land must also produce gross income that meets minimum thresholds.

Before the enactment of this act, the term "individually owned" had been interpreted administratively to include an individual who is a beneficiary of a trust, a partner in a partnership, or a member of a limited liability company. Under this interpretation, these individuals could qualify their share of the land as if they owned it directly. The act codifies this interpretation of the law by modifying the definition of "individually owned" to specifically include these individuals and to clarify how an undivided interest is identified.

The act expands the special use value law to allow partnerships and limited liability companies to qualify their property for use value if they meet the conditions set for corporations. These conditions are that the principal business of the entity is cultivating the land, that the partners or members are all actively engaged in this business or are relatives of someone who is actively engaged in this business, and that the entity or a partner or member of the entity owned the land for the previous four years.

The act further expands the special use value law to allow three types of trusts to qualify. The first type is a trust that is created by an individual and whose beneficiaries are all either the creator of the trust or a relative of the creator. The second type is an extension of the first type; it is a trust created that is created by an individual and

whose beneficiary is a trust whose beneficiaries are all either the creator of the initial trust or a relative of the creator. The third type is a testamentary trust created by an individual who owned land that was taxed at its use value, transferred the land to the trust upon death, had no relatives at the time of death, and designated that all trust income be used exclusively for nonprofit purposes. For any of these trusts to qualify, the trust or the creator of the trust had to own the land for the previous four years.

Finally, the act expands the definition of "relative" to include nieces and nephews and their descendants, aunts and uncles, parents-in-law, stepchildren and their descendants, and the spouse of any of these relatives. The definition of "relative" in the current law does not include these relatives.

Parks Authority/Trust Funds (Chapter 456; HB 718): Chapter 456 reallocates the State's share of the deed stamp tax to the Parks and Recreation Trust Fund and the Natural Heritage Trust Fund, modifies the purposes for which the Parks and Recreation Trust Fund may be used, and creates the North Carolina Parks and Recreation Authority to administer the Parks and Recreation Trust Fund. These changes become effective July 1, 1996.

Under current law, 15% of the State's share of the deed stamp tax ($3.1 million) each year is dedicated to the Natural Heritage Trust Fund created in G.S. 113-77.7 and the remaining 85% ($18 million) goes to the General Fund. Chapter 772 of the 1993 Session Laws declared that it was the intent of the General Assembly to dedicate 75% of the State's share of the deed stamp tax each year to the Parks and Recreation Trust Fund and an additional 10% to the Natural Heritage Trust Fund. Section 3 of this act fulfills that intent by dedicating 75% of the State's share ($15.9 million) to the Parks and Recreation Trust Fund and 25% ($5.3 million) to the Natural Heritage Trust Fund. These funds will be transferred on a quarterly basis each year beginning July 1, 1996. None of the State's share of the deed stamp tax will go to the General Fund after that date.

The deed stamp tax is an excise tax on instruments transferring real property. It is collected by the register of deeds of the county in which the property is located and is collected when the deed transferring the property is recorded. The tax rate is $1.00 for each $500.00 (0.2%) of the value of the property conveyed. Each county must remit one-half of the net proceeds of the tax to the Department of Revenue. The requirement that each county send one-half of the tax to the State was enacted in 1991 when the State doubled the tax rate from 50¢ to $1.00 for each $500.00 of value.

Section 2 of this act modifies the use of revenue in the Parks and Recreation Trust Fund. It decreases the amount of the Fund that is to be used for the State Parks system from 75% to 65% and increases the amount that is to be used for local matching grants for local parks and recreation from 20% to 30%. In addition, it allows the use of up to 3% of the Fund each year for operating expenses associated with managing capital improvements, acquiring land, and administering local grants.

The remainder of this act creates the North Carolina Parks and Recreation Authority within the Department of Environment, Health, and Natural Resources. The Authority will administer the Parks and Recreation Trust Fund and report annually to the General Assembly on allocations from that Trust Fund. The Authority will also advise the Secretary of Environment, Health, and Natural Resources. The existing Parks and Recreation Council, an advisory council within the Department of Environment, Health, and Natural Resources, is repealed. The Authority will have nine members; the Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate will each select three. Members will serve staggered two-year terms.

Centennial Authority (Chapter 458; SB 606): Chapter 458 provides the statutory framework for the General Assembly to create a "facility authority" and, in conjunction

with that framework, establishes a Centennial Authority in Wake County. The purpose of a facility authority is to study, design, plan, construct, own, promote, finance, and operate a regional facility. A regional facility is a facility designed to attract major regional, national, and international sports and recreational events. The act became effective upon ratification.

A facility authority will have either eight or 13 members, depending on the territorial jurisdiction of the authority. The initial eight members are appointed by the General Assembly. The territorial jurisdiction of an authority is the county in which the regional facility is to be located. If the jurisdiction of an authority is a county where the main campus of a constituent institution of The University of North Carolina is located, then the authority will have 13 members. Of the additional five members, two are appointed by the board of county commissioners, two are appointed by the city council of the city with the largest population in the county, and the remaining member is appointed jointly by the mayors of all the cities in the county. A member may be removed by the appointing authority for cause and a vacancy occurring in the membership will be filled by the remaining members.

An authority has the power to issue bonds, approved by the Local Government Commission. The bonds may be secured by the revenues of the regional facility, by security interests in real or personal property, including a leasehold interest, acquired or improved with the proceeds of the bonds, and, with the approval of the county levying the tax, by the receipts of a room occupancy and prepared food and beverage tax levied by the county. A pledge of a county's room occupancy and prepared food and beverage tax does not restrict the county's right to repeal the tax. The faith and credit of the State or a political subdivision of the State may be pledged as security for bonds.

An authority has the power to contract with any public entity. Also, The University of North Carolina or any constituent institution of The University of North Carolina may enter into a contract with an authority if the function is one The University of North Carolina could undertake separately. If a regional facility is used to host an athletic event sponsored by a constituent institution of The University of North Carolina whose principal campus is located in the territorial jurisdiction of the authority, then at least 50% of the seats for the event must be made available to students at that institution and to members of the general public. The act also amends the ABC laws to allow the sale of beer and unfortified wine at a regional facility unless the events being hosted are high school or college functions.

After setting forth the statutory framework for facility authorities, the act specifically creates one in Wake County, to be known as the Centennial Authority. The act authorizes the Director of the Budget to allocate any funds which have been appropriated to the Centennial Authority, but not yet expended or obligated, to the Centennial Authority. The act also amends the Wake County room occupancy and prepared food and beverage tax law to require some distribution of revenue to the Centennial Authority.

Under the new distribution of tax proceeds, Wake County and the City of Raleigh must jointly transfer $11 million to the Centennial Authority by June 30, 1996, and an additional $11 million by June 30, 1997. This money may be used by the Authority only to fund all or part of the acquisition, construction, financing, and debt servicing of a regional facility to be located in the general vicinity of the Carter-Finley stadium. The act also directs Wake County and the City of Raleigh to transfer 7% of the total undesignated proceeds distributed to them to the Centennial Authority by July 1 of each year, beginning July 1, 1995. This money may be used only for enhancement of operating revenues of a regional facility and for planning, design, renovations, maintenance, and repairs to a regional facility. "Undesignated proceeds" are all tax

proceeds distributed to Wake County and to Raleigh other than annual distributions to Raleigh of $680,000 of room tax proceeds and $680,000 of meals tax proceeds.

Recycled Newsprint Tax Change (Chapter 459; SB 1055): Chapter 459 amends the excise tax on newsprint that was enacted in 1991. The purpose of the tax is to encourage the use of recycled newsprint by imposing a privilege license tax on those who produce publications printed on newsprint and do not use a minimum amount of recycled paper. The tax became effective October 1, 1991, and is payable quarterly. The tax rate is $15.00 for each ton of newsprint that is consumed during a reporting period and has an average recycled content percentage that is less than the required minimum recycled content percentage. The proceeds of the tax are earmarked for the Solid Waste Management Trust Fund created under G.S. 130A-309.12.

Under the law, a publisher must pay the tax unless the recycled content percentage of the newsprint consumed by the publisher equals or exceeds stated percentages. Under the original legislation, the percentage of required recycled content of the newsprint consumed gradually increased from 12% in 1991 to 40% in 1997. This act eases the burden on publishers to meet these purchasing percentage goals in two ways:

(1) It extends the period of time a publisher has to reach the goal of using newsprint with at least 40% recycled content. Under this act, the percentage increase from 25%, which is the current percentage rate, to 40% would be extended by 3 years to the year 2000.

(2) It creates a credit, that can be used towards the recycled content percentage goals, for publishers who develop and operate or contract for the operation of a newspaper recycling program. A publisher would receive one-half ton credit toward its total recycled content tonnage for each ton of recycling tonnage.

The act also makes a few less substantive changes:

(1) It eliminates the need for filing a quarterly return and substitutes the use of an annual return. To conform with this change, the act directs the Secretary of Revenue to credit the tax proceeds to the Solid Waste Management Trust Fund on or before April 15 of each year.

(2) It changes the term "producer" to "publisher".

(3) It changes the basis for determining the recycled content percentage to gross tonnage of newsprint consumed, instead of net tonnage. The act also clarifies how this calculation is made.

The tax does not apply in a few circumstances. It does not apply to newsprint that is acquired by a publisher and then recycled by the publisher. It also does not apply if the publisher of a publication could not meet the required minimum recycled content standards for one or more of several reasons. The reasons are an inability to obtain newsprint made from recycled paper at a price or quality comparable to other newsprint, in an amount needed for a publication, or in a reasonable amount of time. A publisher who claims an exemption for one of these reasons must document the publisher's effort to obtain newsprint that contained the required minimum percentage of recycled paper.

City-County Taxation/Finance (Chapter 461; HB 1060): Chapter 461 modifies the law relating to consolidated city-counties, effective July 19, 1995. Article 20 of Chapter 153A of the General Statutes provides a procedure for a city and a county to form a consolidation study commission to adopt a plan of consolidation and to hold a referendum on the consolidation. The consolidation of a city and a county must be enacted by the General Assembly, however, before it can become effective.

Chapter 160B of the General Statutes, the Consolidated City-County Act of 1973, governs consolidated city-counties. A consolidated city-county is a county in which the

largest municipality has been abolished and its powers, duties, rights, privileges, and immunities have been consolidated with those of the county. Other municipalities may also be abolished and consolidated with the county. A consolidated city-county may define urban service districts to finance services within the county at a higher level than in other areas of the county. These urban service districts may replace municipalities that have been abolished or may be created to serve areas that have population density, property valuation, and needs that justify a higher level of services than is provided in the county generally. The consolidated city-county may levy property taxes, motor vehicle taxes, and privilege license taxes within an urban service district to finance additional services within the district.

Sections 1 and 2 of this act amend Chapter 160B of the General Statutes to clarify the powers and governance of a consolidated city-county. A consolidated city-county has the same powers, duties, rights, etc., as a county throughout its jurisdiction and as a city within its urban service districts. To the extent a city can exercise powers, duties, rights, etc., outside its boundaries, a consolidated city-county can exercise those powers, duties, rights, etc., outside the boundaries of its urban service districts. The powers, duties, rights, etc., of an urban service district are exercised by the governing body of the consolidated city-county and debts owed an urban service district are payable to the governing body of the consolidated city-county.

This act makes other miscellaneous changes relating to consolidated city-counties. Section 1 provides a procedure for a consolidated city-county to study dissolution and prepare a plan of dissolution. Section 2 provides that, before the effective date of a consolidation, an interim governing board of a proposed consolidated city-county may define an urban service district, which will take effect on the effective date of the consolidation. Sections 2 and 3 provide that a plan for consolidation may include proposed urban service districts and, if the planned consolidation goes into effect, no additional notice is required of the proposed district. Sections 6 - 18 make conforming and technical changes to various statutes relating to taxation, water sewer districts, solid waste, and local government fiscal control to clarify the status of a consolidated city-county.

Sections 4 and 5 make changes that apply only to New Hanover County. In order to comply with the State constitutional requirement in Section 4(1) of Article V that only general, not local, laws may be enacted relating to local government debt, these provisions are made applicable only to a class that includes counties with a population over 120,000 and a land area less than 200 square miles. New Hanover County is the only county in this class. Sections 4 and 5 provide that a consolidation cannot become effective unless the voters of the county have approved the assumption of the city's debt. These sections provide a procedure for the referendum, requirements for assumption of debt and notification, and limitations on actions to contest consolidations.

ESC Quarterly Reports (Chapter 463; SB 180): Chapter 463 makes the following changes in the payment and collection of unemployment contributions:

(1) It increases the minimum payment threshold from $1 to $5. A person is not required to make unemployment contributions if the amount owed is less than the minimum payment threshold. This change becomes effective September 30, 1995.

(2) It increases the unemployment contribution refund threshold from $1 to $5. If a person overpays unemployment contributions by less than the refund threshold, the Employment Security Commission will refund the overpayment only if the person who made the overpayment asks for a refund in writing. This change becomes effective September 30, 1995.

(3) It gives the Employment Security Commission the authority to allow certain small employers to file an annual report rather than quarterly reports and to file the annual report by telephone. The small employers that can be allowed to do this are those that have filed reports with the Commission for at least the past three years and have not been liable for quarterly contributions for the past year.

For those allowed to make annual reports, the report is due by January 31 of each year. The authority to make an annual report is revoked if the employer becomes liable for contributions or if certain information on the employer's last report changes. To ensure that the Commission has timely employee and wage information, employers filing annual reports must report changes in employment status and wages to the Commission within 14 days and must respond to inquiries from the Commission within 14 days. This change becomes effective September 30, 1995.

(4) It establishes another automatic reduction in unemployment contributions for employers with positive ratings in one circumstance. That circumstance is when the Unemployment Insurance Fund has a balance of at least $800,000,000 and the Unemployment Insurance Fund ratio is at least 5%. The Unemployment Insurance Fund ratio is determined by dividing the amount in the Fund by the State taxable wage base. The current ratio is 4.6% and is not expected to reach or exceed 5% in the next five years. If the fund ratio does reach 5%, the taxes of employers with positive ratings will be reduced by 60% rather than 50%. This change becomes effective for quarters beginning on or after March 31, 1996.

(5) It requires a representative of the Employment Security Commission to attempt to contact a person who owes less than $50 in delinquent unemployment contributions before the Commission obtains a judgment lien for the delinquent amount. This change becomes effective upon ratification.

(6) It eliminates the imposition of a $5 late filing penalty for employers who file a return within 30 days after the due date and owe no tax with the return. This change becomes effective upon ratification.

(7) It removes the current 24-month restriction on waiving penalties. Under this restriction, the Commission cannot waive penalties against the same employer more than once in a 24-month period. Under the bill, there is no limit on the number of times a penalty can be waived against the same employer in any time period. This change also becomes effective upon ratification.

No Transpark Tax/Some Trailers (Chapter 465; SB 407): Chapter 465 exempts trailers from the annual $5 vehicle registration tax imposed in the counties in the Global Transpark Development Zone. The counties in the Transpark Zone are Carteret, Craven, Duplin, Edgecombe, Greene, Jones, Lenoir, Nash, Onslow, Pamlico, Pitt, Wayne, and Wilson counties. The exemption becomes effective October 1, 1995. The exemption will reduce annual revenue for the Transpark Zone by approximately $330,000.

The $5 tax is in addition to the regular vehicle registration fee. When the additional $5 tax was imposed on July 1, 1994, it applied to all trucks, all trailers except mobile homes, and all passenger vehicles registered in a county in the Transpark Zone. When this act becomes effective, the tax will no longer apply to trailers. The regular annual registration fee for a trailer is 10.00.

The vehicle registration tax levied by the Zone is a temporary tax that will expire 5 years after the effective date of the first tax levy, which was July 1, 1994. The Division of Motor Vehicles collects and administers the tax at the same time and in the same manner that it administers the annual vehicle registration fees.

The Commissioner of Motor Vehicles credits the proceeds of the $5.00 temporary Zone vehicle registration tax to a special account. The interest on the special account is credited quarterly to the Highway Fund to reimburse the Division for the cost of collecting and administering the tax. The Zone must place 15% of the tax proceeds distributed to it in a general funds account and the remaining 85% in an interest-bearing trust account. The Zone may not disburse the principal of the trust account except pursuant to a contract that provides that the Zone will recover or be repaid the amount disbursed within a reasonable period of time, not to exceed 20 years. Each county that is a member of the Zone is the beneficial owner of a share of the principal of the trust account in proportion to the amount of tax proceeds collected in that county.

The enactment of this act makes the vehicle base for the Triangle Transit Authority different from the vehicle base for the Global Transpark. The $5 vehicle registration tax imposed by the Triangle Transit Authority applies to trailers.

Inheritance/Gift Tax Changes (Chapter 468; SB 121): Chapter 468 makes the time limits for assessing any inheritance tax due after a federal determination of the value of an estate the same as the time limits that apply to assessments of other state taxes following a federal determination. The act became effective August 1, 1995. The original bill, recommended by the Revenue Laws Study Committee, would also have reduced inheritance and gift taxes in a number of ways.

The act makes the same changes for inheritance tax that were made for gift tax, income tax, and withholding tax by Chapter 582 of the 1993 Session Laws: it revises the procedures for assessments of inheritance tax following a federal determination of federal estate tax to match those that apply to gift tax, income tax, and withholding tax. The revision makes the following substantive changes: (1) It extends from 30 days to two years the period of time in which a taxpayer must file an amended inheritance tax return following a federal determination.

(2) It gives the State an additional one-year or three-year period to make an assessment of inheritance tax following a federal determination.

(3) It reduces the penalty for failure to file an amended return following a federal determination from 25% of the amount of any additional tax due, with a minimum of $25 and a maximum of $500, to 5% of the amount of tax due, with an additional 5% for each month the tax is overdue.

(4) It denies a refund that would otherwise be due if an amended return is not filed after a federal determination.

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, therefore, 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 the 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, gift, and withholding tax laws, a taxpayer who receives a federal determination of federal income, gift, or withholding tax must, within two years, file the appropriate amended State return with the Department of Revenue reflecting the determination. Under these taxes, if a taxpayer files an amended return in response to a federal determination, the Department of Revenue has one year from the date it receives the return to make an assessment of State income, gift, or withholding taxes. If a taxpayer does not file an amended return in response to a

federal determination, the Department of Revenue has three years from the date it receives a copy of the determination from the IRS to make an assessment.

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 out in G.S. 105-241.1. An additional time period is necessary when a federal determination is made in order to allow the State adequate time to respond to the federal determination. The State might 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, gift, and withholding tax laws, the inheritance tax laws, prior to the enactment of this act, did not give the State any additional time to make an assessment following a federal determination. Therefore, for an assessment of inheritance tax, the State had to make an assessment within the general three-year time period for making assessments. When the State did not receive notice of a federal determination of estate taxes until near the end of or after the end of this three-year period, the State was foreclosed from making an assessment.

Nonprofit Homes Sales Tax Refund (Chapter 472; HB 759): Chapter 472 allows certain nonprofit homes for the aged, sick, or infirm to obtain semiannual refunds of State and local sales and use taxes paid by the homes. The bill became effective upon ratification and applies retroactively to purchases made on or after January 1, 1995. The refunds will reduce General Fund revenue by approximately $1.5 million a year and they will reduce local government revenues by approximately $.7 million a year.

The homes covered by the act are those whose property is exempt from property taxes under G.S. 105-275(32). That provision exempts the property of church-related and Masonic continuing care retirement homes from property tax. The homes that qualify are nonprofit self-contained communities that meet the following qualifications:

(1) Are designed for elderly residents.
(2) Operate a skilled nursing facility, an intermediate care facility, or a home for the aged.
(3) Include residential dwelling units, recreational facilities, and service facilities.
(4) Have a charter that provides that in the event of dissolution, the assets of the home will revert or be conveyed to a nonprofit entity.
(5) Are managed by a church or other religious body or a Masonic group.
(6) Have an active program to generate funds through one or more sources, such as gifts, grants, trusts, bequests, an endowment, or an annual giving program, to assist the home in serving persons who might not be able to reside at the home without financial assistance or subsidy.

In exempting these homes from sales and use taxes, the bill resolves lingering issues from a 1984 property tax case. Before 1984, the Department of Revenue allowed sales and use tax refunds to these homes as nonprofit charitable or religious institutions. In 1984, the Court of Appeals upheld a decision of the Property Tax Commission denying a property tax exemption to Lutheran Home Ministries on the basis that it was not a charitable institution. The General Assembly responded to the court's ruling by granting these homes a property tax exemption in 1987 under G.S. 105-275(32).

The Department of Revenue applied the court's reasoning to sales and use taxes and denied sales and use tax refunds to some of these homes beginning in 1984. Because the 1987 legislation did not change the sales and use tax laws, the Department continued to deny refunds to some of these homes based upon the 1984 Court of Appeals decision. This act clarifies that homes that are exempt from property tax as charitable institutions are also entitled to a refund of sales and use taxes. The General

Assembly ratified this act on July 25, 1995. Subsequently, on August 1, 1995, the Court of Appeals issued a decision finding that these homes are entitled to a refund of sales and use taxes. The case before the court concerned whether or not Southminster, Inc. and Davidson Retirement Community, Inc. were charitable organizations and as such were entitled to a semi-annual refund of sales and use taxes. The court found that the two institutions were charitable organizations, based partially on the fact that they are considered charitable organizations for property tax purposes under G.S. 105-275(32).

Reduce Soft Drink Tax (Chapter 474; HB 223): Chapter 474 reduces the State excise tax on soft drinks by 25% effective July 1, 1996. It does not phase out the soft drink tax, as did the original version of House Bill 223.

The act reduces the excise tax on bottled soft drinks from 1¢ a bottle to 3/4¢ a bottle, reduces the excise tax on liquid base products from $1.00 a gallon to 75¢ a gallon, and reduces the excise tax on dry base products from 1¢ an ounce to 3/4¢ an ounce. It preserves the current 1/2 rate of tax on the first 15,000 gross of bottled soft drinks sold each year by a distributor. The act is expected to reduce soft drink tax revenue by $9.6 million in fiscal year 1996-97 and $10.1 million in 1997-98.

The soft drink excise tax was enacted in 1969. The purpose of the tax is to provide an additional source of revenue to the General Fund. In fiscal year 1993-94, the soft drink excise tax accounted for $36,538,688 of the General Fund tax collections. A soft drink is defined as a beverage that is not an alcoholic beverage. The following items are exempt from the tax:

(1) Natural liquid milk drink produced by a farmer or a dairy.
(2) A bottled soft drink that contains at least 35% natural milk.
(3) Natural juice.
(4) Juice that would be natural if it did not contain sugar.
(5) Natural water.
(6) A base product used to make a bottled soft drink subject to tax under this Article.
(7) Coffee or tea in any form.
(8) A bottled soft drink or base product sold outside the State.
(9) A bottled soft drink or base product sold to the federal government.
(10) A base product for home use that either contains milk or requires milk to be added to make a soft drink.

The soft drink excise tax is payable by the person who is the first to bring the product into the State. The soft drink excise tax has a bifurcated tax rate system. The purpose of the bifurcated tax system is to tax the sale or distribution of the soft drink itself when practical, but to tax the sale or distribution of the ingredients of the soft drink when the taxation of the product itself is not practical.

Aquaculture Sales Tax Exemption (Chapter 477; HB 55): Chapter 477 clarifies the application of two sales and use tax agricultural preferences to farmers who raise fish or water plants and expands a current agricultural sales and use tax exemption to include this type of farmer. The act became effective August 1, 1995. The act is projected to reduce annual State sales and use tax collections by less than $50,000 and to reduce annual local sales and use tax collections by less than $25,000. The bill was recommended by the Joint Legislative Commission on Seafood and Aquaculture.

A sales and use tax preference is the exemption of an item from sales and use tax or the taxation of an item at less than the regular 6% combined State and local rate. The two sales and use tax preferences the bill clarifies are the taxation of certain items at the rate of 1% with an $80 cap and the exemption of certain items used in agriculture.

Section 1 of the act makes it clear that machines and machine parts sold to a farmer for use in raising an aquatic species are taxable at the State rate of 1% with an $80 cap rather than at the full State and local 6% rate. An aquatic species is any species of finfish, mollusk, crustacean, or other aquatic invertebrate, amphibian, reptile, or aquatic plant. The Department of Revenue has construed "farm crops" in this category to include aquatic species. The act therefore clarifies the application of this reduced rate to fish farmers rather than include them in the reduced rate for the first time.

Section 2 of the act makes it clear that the agricultural exemptions in G.S. 105-164.13(2) apply to aquatic species farmers and that all the exemptions in this subdivision, other than the one for seeds, are limited to commercial production. It does this by changing references to "livestock and poultry" to "animals," by changing references to "agriculture" to the "commercial production of plants or animals," and by inserting a statement that the items must be for commercial use. The exemptions are for medicine, litter material, feed, pesticides and similar products, defoliants, and plant growth regulators.

The Department of Revenue has construed "livestock" in the exemptions in G.S. 105-164.13(2) to include fish and has for many years interpreted the exemptions for all items in this subdivision, other than seeds, to apply to commercial use only. The act therefore clarifies these exemptions and their application to aquaculture.

In addition to clarifying these two sales and use tax preferences, the act expands the agricultural exemption in G.S. 105-164.13(4c) for certain kinds of facilities and equipment to include fish facilities and equipment. Prior law exempted facilities for commercial use in housing, raising, or feeding swine, livestock, or poultry, equipment used in these facilities, and building materials used to construct these facilities. "Livestock" under this exemption had not been interpreted to include fish. Section 3 of the act expands this exemption to include fish by deleting references to "swine, livestock, and poultry" and referring instead to "animals." This exemption applies to both State and local sales and use taxes

Clarify Investment Tax Credit (Chapter 491; SB 1049): Chapter 491 addresses a loophole in the Qualified Business Investment tax credit by prohibiting an investor from receiving two tax credits on the same investment. The act also authorizes the Legislative Research Commission to study the tax credit.

In 1987, the General Assembly enacted the Qualified Business Investment tax credit to allow tax credits to individuals and corporations that invest in qualified North Carolina businesses registered with the Secretary of State or in North Carolina Enterprise Corporations. The amount of the credit allowed is 25% of the amount invested, up to a maximum credit of $50,000 for individuals and $750,000 for corporations. If the allowable credit exceeds the taxpayer's tax liability, the excess may be carried forward for five years. The total amount of tax credits that can be granted in any tax year is capped at $12 million. The investors apply for the credit through an application filed with the Department of Revenue by April 15; the Department then determines whether the $12 million cap has been exceeded and, if so, proportionally reduces the amount of each credit applied for.

In 1993, the General Assembly enacted legislation to allow a pass-through entity to qualify for the credit and pass it on to the entity's owners. A pass-through entity is an entity, such as a partnership, a limited liability company, or a Subchapter S corporation, that is treated as owned by individuals or other entities under federal tax law and whose income, losses, and credits are reported by the owners on their State income tax returns.

The law allowing pass-through entities to qualify for this credit became effective with the 1994 tax year. A problem arose because an investor could invest money in a

pass-through entity that is itself a qualified business. The investor would receive a 25% tax credit for this investment and, if the pass-through entity then invests in another qualified business, the original investor would receive a second 25% tax credit, via the pass-through entity, based upon the original financial investment. Section 1 of this act, recommended by the Secretary of State, eliminates this problem by prohibiting a pass-through entity that is also a qualified business from passing the tax credit through to its owners. Therefore, the investor's initial investment in the pass-through entity will qualify for the 25% tax credit but the entity's subsequent investment in another qualified business will not qualify for an additional tax credit for the original investor.

Section 1 will have an unknown effect on General Fund revenues. This section became effective beginning with the 1995 tax year; in order to protect investments made in reliance on the current law, it does not apply to investments and commitments to invest made before August 1, 1995.

Section 2 of the act authorizes the Legislative Research Commission to study the Qualified Business Investment tax credit, in particular to consider how the law can be modified to better encourage venture capital investment in North Carolina. The Commission may make an interim report to the 1996 Session and must make a final report to the 1997 General Assembly.

Expand Ports Tax Credit (Chapter 495; HB 396): Chapter 495 modifies the income tax credit allowed for amounts assessed by the State ports in three ways. The bill was an agency bill requested by the State Ports Authority. The modifications, outlined below, became effective for taxable years beginning on or after January 1, 1995:

(1) It expands the credit to include imports; the current credit applies only to exports. The act allows a credit for break-bulk cargo and container cargo imported at either Wilmington or Morehead City and for bulk cargo imported at Morehead City. The act does not allow a credit for bulk cargo imported at Wilmington.

(2) It limits the credit for bulk exports to bulk exports at the Morehead City terminal. The current export credit applies to bulk exports at Wilmington as well as at Morehead City.

(3) It extends the sunset on the credit for two years. Under prior law, the credit would have expired for taxable years ending on or before February 28, 1996. Under this act, the credit will expire for taxable years ending on or before February 28, 1998.

The State ports income tax credit was enacted in 1992 and expanded in 1994. It was enacted to encourage exporters to use the two State-owned port terminals, which are at Wilmington and Morehead City. When enacted, the credit applied to amounts paid by a taxpayer on cargo exported at either port. The General Assembly expanded the credit in 1994 to include all amounts assessed on exported cargo, regardless of who paid the shipping costs.

The amount of credit allowed is equal to the amount of charges assessed on a taxpayer's cargo that exceeds the average amount assessed on the taxpayer's cargo during the three-year period that includes the current taxable year and the previous two taxable years. The credit may not exceed 50% of the amount of income tax owed by the taxpayer for the taxable 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 allowed to the same taxpayer may not exceed $1 million.

Vehicle Tax Technical Changes (Chapter 510; SB 693): Chapter 510 makes various technical changes to the statutes concerning the property tax on motor vehicles. The changes are effective for taxes imposed for taxable years beginning on or after July 1, 1995. The changes were suggested by a committee of assessors, collectors, and finance

officers as amendments that would improve the administration of the tax. The act has no fiscal effect.

In 1991, the General Assembly created a new procedure for collecting property taxes on motor vehicles that are registered with the Division of Motor Vehicles. Under the system, the registration of a motor vehicle with the Division of Motor Vehicles is considered a listing of the vehicle for property tax purposes and the taxes payable on the vehicle are due four months after the registration is obtained or renewed. If the taxes are not paid within four months after they become due, the Division of Motor Vehicles will refuse to renew the vehicle's registration the following year unless the taxpayer obtains a receipt showing that the previous year's taxes have been paid.

The amendments to the motor vehicle property tax statutes are as follows:

Section	Explanation
1	The changes in subsection (a) of G.S. 105-330.2 eliminate the problem of the correct evaluation date when an owner with a registration that expires December 31 renews during the January grace period. Under the amendment, the value of the vehicle is determined as of January 1 preceding the date the current registration expires. The ownership, situs, and taxability of the vehicle are determined on the actual day the current registration is renewed. The change in subsection (b) deletes taxability and situs from the requirement that appeals must be taken within 30 days of the date of the notice. Because of incorrect information in DMV records, many situs appeals must be handled more than 30 days after the date of the notice. Under the amended statutes, appeals of situs and taxability will be handled under G.S. 105-381, which allows a taxpayer to contest the situs and taxability within 6 months of the date of payment or within 5 years after the tax first became due, whichever is later.
2	The change in subsection (a) of G.S. 105-330.4 establishes a new procedure for prorating taxes on vehicles registered under the annual system. Currently, when a vehicle is first registered under the annual system in a month other than December, no taxes are due on that vehicle until after the registration is renewed. This amendment makes prorated taxes due on that vehicle four months after it is registered. The change in subsection (b) postpones the accrual of interest when, for whatever reason, the tax notice is not prepared until some time after the tax due date for a vehicle. In such a case, the amendment provides that interest will begin to accrue on the first day of the second month following the date of the notice, rather than on the first day of the first month following the date the taxes were due.
3	A new subsection (a1) is created in G.S. 105-330.5 that establishes a formula for prorating taxes on vehicles registered under the annual system. For example, if a new registration is obtained in July, five months remain in the calendar year, so the taxes on that vehicle would be 5/12 of the full amount. These taxes would be due November 1, four months after the date the vehicle is registered. The amendment to subsection (b) requires a county to remit municipal and special district taxes at least once a month rather than the current 30 days after collection. It also requires the county to furnish municipalities and special districts located in it information that will enable them to account for the tax payments remitted to them. The amendment to subsection (d) changes the rule concerning the levy year in which a tax is to be included when the notice is prepared after the tax due date. For example, under the current law, if a tax is due June 1

but the notice is prepared in August, the tax must still be included in the previous fiscal year's levy. Under the amendment, the tax would be included in the levy for the current fiscal year.

4 The amendment to subsection (a) of G.S. 105-330.6 establishes a tax year for vehicles registered under the annual system that is based on a January 1-December 31 calendar year. The addition of this tax year is needed to deal with prorated refunds and releases of prorated taxes due on annual system registrations.

The amendment to subsection (c) increases the time a taxpayer has to request a refund or release of taxes after surrendering the vehicle's plates from 60 days to 120 days.

Antique Auto Property Tax (Chapter 512; HB 1001): Chapter 512 combines two bills that were considered by the General Assembly this session. The original bill, House Bill 1001, reduces the amount of property tax collectors of antique vehicles must pay by limiting their value to no more than $500 for property tax purposes. The Senate amended the bill to include the contents of Senate Bill 170, which eliminates the highway use tax on a motor vehicle when the owner moves away and then returns to the State within one year. The first part of the act will result in an annual local government revenue loss of less than $700,000. The second part of the act will result in a maximum annual loss to the Highway Trust Fund of approximately $15,000.

Antique automobiles

Under this act, antique automobiles owned by collectors will be effectively exempt from property tax, effective for taxable years beginning on or after October 1, 1995. A vehicle qualifies for this exemption if it meets all of the following conditions:

1. It is registered with the Division of Motor Vehicles and has an historic vehicle special license plate. To be qualify for an historic vehicle special license plate, a vehicle must be 35 years old from the date of manufacture. The annual license plate fee for an historic vehicle special license plate is the regular license fee plus an additional $10.00.
2. It is maintained for use in exhibitions, club activities, parades, and other functions of public interest.
3. It is used only occasionally for other purposes.
4. It is owned by an individual.
5. It is used by the owner for a purpose other than the production of income and is not used in connection with a business.

Motor vehicles are designated as a special class of property under G.S. 105-330.1. Vehicles that are registered with the Division of Motor Vehicles are taxed annually as of the day on which the current registration is renewed or the day on which a new registration is applied for. Under Chapter 329, ratified by the General Assembly this session, a local government may adopt a resolution directing the tax collector not to collect property taxes when the amount due is less than $5.00. Few, if any, taxing units have a property tax rate that exceeds $1.00 per $100 of value. Therefore, since the value of the car can not exceed $500 under this act, any unit that adopts a resolution allowing the tax collector to forego collection of property tax bills that are less than $5.00 will effectively eliminate property taxes on antique automobiles owned by collectors.

Personal property that is used by the owner of the property for a purpose other than the production of income and that is not used in connection with a business has been exempt from property taxes since 1987. Personal property includes household furnishing, clothing, pets, and lawn equipment. The term also includes collectibles such as antiques, coins, and paintings. However, the term does not include motor vehicles.

Eliminate double vehicle tax
Effective October 1, 1995, a motor vehicle owner will be allowed a credit against the highway use tax for the amount of highway use tax paid on the same vehicle within the past year. This credit is available only to a person who applies for a certificate of title for a motor vehicle that is titled in another state. The effect of the bill is to relieve a person from paying the highway use tax if, within a single year, a person paid the highway use tax in this State, moved to a different state and titled the motor vehicle in that state, and then moved back to North Carolina and titled the vehicle in this State.
The highway use tax is a titling tax that is collected whenever a certificate of title is issued. A resident of North Carolina is required to have a certificate of title for each vehicle the resident owns that is operated on the highways. The highway use tax is 3% of the value of the vehicle, subject to a maximum tax of $1,500 and a minimum tax of $40 until July 1, 1996. Beginning July 1, 1996, the minimum tax is repealed.
Under current law, there are two provisions for motor vehicles brought into North Carolina from another state. Under G.S. 105-187.6, the maximum highway use tax that maybe imposed on a vehicle that has been titled in another state for at least 90 days is $150.00. Under G.S. 105-187.7, a person is allowed a credit against the highway use tax for the amount of a substantially equivalent tax imposed and paid to another state within 90 days before applying for a certificate of title.

Self-Insurance Guaranty Fund (Chapter 533; SB 710): Chapter 533 represents one part of a two-part plan to address the self-insured workers compensation market. At the present time, over 55% of the employees in the State have workers compensation coverage through either self-funded plans or pools. These plans or pools are currently unregulated by the Department of Insurance and several are skirting potential insolvency. This act seeks to put the Self-Insurance Guaranty Fund in a better position that it currently is to pay claims if insolvencies occur. The second part of the plan was embodied in Senate Bill 931, ratified as Chapter 471 of the 1995 Session Laws. Under that act, the Department of Insurance was given more regulatory oversight over the self-insured plans or pools. That part of the plan seeks to decrease the risk of insolvencies among this group of insurers.
Under this act, the Self-Insurance Guaranty Fund cap is raised from $1,000,000 to $5,000,000. The Fund is financed by assessments paid by self-insurers. These assessments represent .25% of the self-insurers premiums tax base. The assessment is credited toward the insurers premium tax liability. As such, any assessments paid by self-insurers are deducted from their tax payments and represent a loss to the General Fund. The act is expected to decrease General Fund revenues $1.8 million in fiscal years 1995-96 and 1996-97 and $400,000 in fiscal year 1997-98. It is assumed that the $5,000,000 cap will be reached within three years and that continued assessments beyond the third year will not be needed.
The assessments paid by self-insurers to the Self-Insurance Guaranty Fund differ from the assessments paid by private insurers in two respects:

(1) The assessment is paid to the State. The amount assessed is "diverted" from gross premium tax revenue. With private insurers, the assessment is paid to the private Guaranty Fund. The premium tax liability is not affected. However, the General Assembly allows a credit against an insurer's premium tax liability equal to the amount paid by the insurer to the Guaranty Fund.

(2) The amount paid as an assessment is determined by the State. Therefore, the amount of potential loss to the General Fund is more fixed.

Poultry Composting Credit (Chapter 543; SB 202): Chapter 543 creates a temporary income tax credit for constructing a facility in this State for the composting of poultry

carcasses resulting from commercial poultry operations. The credit is available only to individuals and shareholders in Subchapter S corporations; it is not available to C corporations. The amount of the credit allowed is 25% of the installation, equipment, and materials cost of building the facility, not to exceed $1,000. The credit does not apply to costs paid with funds provided to the taxpayer by a State or federal agency. The amount of the credit allowed cannot exceed the amount of tax imposed for the taxable year.

The credit is effective for taxable years beginning on or after January 1, 1995, and expires for taxable years beginning on or after January 1, 1998. The yearly General Fund revenue loss from the credit is not expected to exceed $350,000.

A poultry composting facility is a structure or an enclosure in which whole, unprocessed poultry carcasses are decomposed by a natural process into an organic, biologically safe by-product that can be used for plant food. Every person that is engaged in raising poultry for commercial purposes and has a flock of at least 200 fowl is required by G.S. 106-549.70 to dispose of the poultry carcasses in a pit, an incinerator, or a poultry composting facility that has been approved by the Department of Agriculture.

The purpose of the credit is to encourage people who raise turkey, chickens, or other poultry to compost the dead poultry rather than burn it or put it in a pit. By composting the poultry carcasses, the by-product can be converted into a useful product.

In the poultry business, the grower of a bird is often not the owner of the bird. The burden of disposing of poultry mortalities is usually on the grower of the bird.

Recommended by the Agriculture and Forestry Awareness Study Commission.

MAJOR PENDING LEGISLATION

Taxpayer Protection Act (HB 3): House Bill 3 has passed both the House of Representatives and the Senate. It is in a conference committee. The bill would limit increases in the General Fund budget, prohibit unfunded State mandates, and establish other taxpayer rights.

Repeal Insurance Surcharge (HB 236): House Bill 236 would repeal the insurance regulatory charge and provide that the fees collected by the Department of Insurance are departmental receipts. The Department of Insurance has been receipt-supported since 1991. This bill would restore General Fund support for the Department.

Public School Building Bond Act of 1995 (HB 389): House Bill 389 has passed the Senate and was referred to the House Finance Committee for consideration of the Senate Committee Substitute. The bill would authorize the issuance of general obligation bonds of the State, subject to a vote of the people, to provide funds for grants to counties for public school building capital projects.

County Sales Tax for Schools (HB 502): House Bill 502 would authorize counties to levy an additional 1% sales and use tax, if approved by the voters of the county, for public school construction.

Highway Bond Act of 1995 (HB 540): House Bill 540 authorizes the issuance of $800,000,000 general obligation bonds of the State, subject to a vote of the people, for the construction of highways.

Diesel Fuel Payment Method (HB 975; SB 797): These bills would provide that the per gallon excise tax on diesel fuel would be paid partly at the pump and partly either by making an additional payment when a motor carrier report is filed or by payment of an annual registration tax.

Reduce White Goods Tax (HB 986): House Bill 986 would reduce the white goods disposal tax rate by approximately 33%.

Venture Capital Investment Incentive (HB 995): House Bill 995 would allow an insurance premiums tax credit for venture capital investments in North Carolina.

Expand Homestead Exemption (SB 9; HB 307): Senate Bill 9 would expand the property tax homestead exemption for low-income elderly and disabled individuals.

Expand Jobs Tax Credit (SB 376; SB 497; H84): All of these bills would expand the jobs tax credit for more distressed areas.

STUDIES

Legislative Research Commission Studies

LRC may study the **qualified business investment tax credit.** (Chapter 491; SB 1049)

LRC may study the **Executive Budget Act** and the budget process. (Chapter 542; HB 898)

LRC may study North Carolina's **tax treatment of State and federal government retirees** residing in North Carolina. (Chapter 542; HB 898)

LRC may study **revenue and tax issues.** (Chapter 542; HB 898)

Independent Studies, Boards, Etc., Created or Continued

State and Local Government Fiscal Relations and Trends Study Commission. (Chapter 542, Part XV; HB 898, Part XV)

TRANSPORTATION
(Brenda Carter, Bill Gilkeson, Lynn Marshbanks)

RATIFIED LEGISLATION

Automobile Dealers

MV Manufacturer Warr. Audits (Chapter 156; HB 837): Chapter 156 would reduce from 24 to 12 months the period prior to paying a claim that motor vehicle manufacturers or distributors may audit their dealers for chargeback of claims for warranty parts or service. For chargeback of incentive compensation, such as sales incentives, service incentives, or rebates, the audit/chargeback period is 24 months. Chapter 156 was made effective October 1, 1995.

Auto Dealers Relevant Market Area (Chapter 234; HB 515): Chapter 234 changed the formula that determines which existing dealers of a given car manufacturer may demand a hearing on whether that same manufacturer will be allowed to franchise a new dealership in the area. The law says that when a new dealership of a car manufacturer is proposed, any existing dealership in the "relevant market area" of the proposed dealership may initiate a hearing before the Commissioner of Motor Vehicles on whether the new dealership will be allowed to open, and the Commissioner must make the decision, considering a list of factors set out in the law. The "relevant market area" is determined by drawing a circle out from the proposed dealership, using one of three different radii depending on the amount of population within the circle:

a. If 250,000 people live within a 10-mile circle, then only existing dealers within the 10-mile circle can call a hearing;
b. If 250,000 don't live within a 10-mile circle, but 150,000 live within a 15-mile circle, then existing dealers within a 15-mile circle can call a hearing;
c. If 150,000 people don't live within a 15-mile circle, then existing dealers within a 20-mile circle can call a hearing.

The prior law said that in counting the population within the circle, all the population in any Census tract wholly or partially within the circle must be counted. A hearing officer of DMV had ruled that everyone in the Census tract must be included in the count, even if data from the smaller Census units of block group and block would give a more accurate count. The result, at that stage of the case, was that the circle was drawn smaller and an existing dealer outside the circle was prevented from calling a hearing. The act puts language in the law saying that block groups and blocks must be used rather than tracts to give a more accurate count in determining how wide the circle is. Chapter 234 was made effective upon ratification, June 13, 1995, but any litigation pending at that time was exempted from it.

Department of Transportation

Sanitary District Utilities Relocation (Chapter 33; SB 152): Chapter 33 provides that the Department of Transportation must pay for the nonbetterment relocation of sanitary district water and sewer lines that lie in the State highway right-of-way, where those lines must be relocated for a State highway improvement project. The act became effective on April 13, 1995.

DOT Appraisal License (Chapter 135; HB 136): Chapter 135 removes the July 1, 1995 sunset on G.S. 146-22.2, which exempts real estate acquired by the Department

of Transportation from the requirement that it be appraised by a licensed or certified appraiser when the estimated value of the real estate is less than ten thousand dollars.

DOT Contract Letting Changes (Chapter 167; HB 446): Chapter 167 raises the threshold for formal bids for highway construction or repair contracts from $300,000 to $500,000. All contracts over $500,000 must be let to a bidder after public advertising. Also, the bill adds "maintenance" to "construction or repair". The act became effective on June 5, 1995.

Let DOT Dredge for Local Government (Chapter 247; SB 240): Chapter 247 authorizes the Department of Transportation to perform dredging services for a local government that cannot get private dredging services for a reasonable cost after soliciting bids for dredging. The act also exempts from G.S. 66-58, which does not allow the State to sell goods or services in competition with business, the performance by DOT of dredging services for a local government unit. The act became effective on July 1, 1995.

Continuation Budget (Chapter 324, Sec. 18.1, 18.2, and 18.17; HB 229, Sec. 18.1, 18.2, and 18.17): The Continuation Budget contains three sections concerning transportation:

* Adopt-A-Highway Program (Sec. 18.1) allows DOT to permit participants in its Adopt-A-Highway Program to have access to controlled access place to remove litter.
* Railroad Dividend Uses Submitted as Part of Annual DOT Budget (Sec. 18.2) requires DOT to include in its annual budget the purposes for which dividends from North Carolina Railroad Co. stock will be used (the Section lists six railroad-related purposes as examples); and
* Study of Drivers License Medical Evaluation Program (Sec. 18,17) creates a six-member study commission to study the program and report to the 1997 General Assembly. The Commission may also report to the 1996 Short Session.

DOT Assigned Vehicle Changes (Chapter 402; SB 357): Chapter 402 requires each agency other than the Department of Transportation to report quarterly to the Division of Motor Fleet Management, Department of Administration, on the miles driven during the quarter by each vehicle assigned to the agency or its employees. The Division must verify that each vehicle has been driven the minimum allowable mileage. If a vehicle has not been driven that minimum mileage, and there is no justification for the lower mileage, the Division must revoke the permanent vehicle assignment. DOT must submit an annual report to the Division on the miles driven by vehicles assigned to DOT or its employees. If a vehicle has not been driven 12,600 miles or more during the year, DOT must review the reasons for the lower mileage and decide whether to terminate the assignment. The Division may not revoke an assignment for failure to meet the minimum mileage requirement unless DOT consents. The act became effective on July 10, 1995.

Ferries

Let DOT Sell Ferry Souvenirs (Chapter 211; SB 241): Chapter 211 authorizes the Department of Transportation to sell souvenirs that publicize the ferry system to ferry passengers, on ferries or at ferry facilities. The act became effective on July 1, 1995.

Motor Vehicle Law

Delay Window Tinting Changes (Chapter 14; SB 162): Chapter 14 delays the effective date of changes made during the 1993 Session to the window tinting statute, G.S. 20-127, from March 1, 1995, to November 1, 1995.

Transporter Plate/Salvage Changes (Chapter 50; HB 122): Effective April 26, 1995, Chapter 50 expands the allowable use of transporter plates to authorize the use of transporter plates by businesses to move a replaced motor vehicle that is owned by the business and is offered for sale. It also authorizes the use of the plates to drive special mobile equipment from the manufacturer of the equipment to a facility of the dealer, from one facility of the dealer to another facility of the dealer, or from a dealer to the person who purchases the equipment. Effective July 1, 1995, Chapter 50 allows owners of salvage vehicles to retain title to the vehicles. It amends G.S. 20-109.1 to require that when a vehicle is damaged to the extent that it becomes a salvage vehicle, the insurer must determine whether the owner wants to keep the vehicle after payment of the claim. The act sets out the procedure for transfer of the vehicle to the insurer, or for the owner of the salvage vehicle to retain title to the vehicle. Effective October 1, 1995, Chapter 50 exempts out-of-state utility vehicles from N.C. vehicle registration and road tax requirements when such vehicles are used for the purpose of restoring utility services in an emergency outage.

Overdue Truck Penalties & Taxes (Chapter 109; HB 213): Chapter 109 amends the law regarding the collection of overdue truck penalties and assessed taxes and consolidates provisions concerning overweight vehicles. It amends G.S. 20-88 to make it illegal to drive a vehicle on a highway if the vehicle's gross weight exceeds its declared gross weight, and rewrites G.S. 20-118.1 regarding law enforcement officers' authority to stop and weigh a vehicle to determine whether the vehicle's weight is in compliance with the vehicle's declared gross weight and the weight limits set by law. G.S. 20-183.11 regarding failure to permit a vehicle to be weighed is repealed; similar language is set out in G.S. 20-118.1. G.S. 20-96 is rewritten to authorize law enforcement officers to detain any vehicle used for the transportation of property, when it is determined that the vehicle is more than 3 days overdue in paying truck penalties or certain taxes assessed against the owner of the vehicle. The act becomes effective October 1, 1995.

DMV/DOT Technical Changes (Chapter 163; HB 134): Chapter 163 does the following: (1) Makes technical changes to the motor vehicle laws and other laws concerning the Department of Transportation; (2) Clarifies that the officer who gives a breathalyzer test to a driver can also read that person his or her rights; (3) Clarifies in G.S. 20-118(b)(12) that the agricultural exception to the weight laws does not apply to interstate highways; (4) Corrects an inadvertent reversal of the punishments for prearranged racing and nonprearranged racing; (5) Clarifies that new vehicles that have not been titled are not subject to the emissions inspection requirements; (6) Provides that obstruction of a highway drain is an infraction rather than a Class 3 misdemeanor; (7) Amends G.S. 47-108.11 to make recorded instruments where seals have been omitted valid if recorded on or before January 1, 1995. The act became effective on June 5, 1995, except that (4) and (6) became effective on July 1, 1995, and apply to offenses occurring on or after that date.

Blood Transport May Use Red Lights (Chapter 168; HB 461): Chapter 168 authorizes the use of red lights on vehicles used by an organ procurement organization or agency

for the recovery and transportation of blood as well as human tissues or organs for transplantation. The act becomes effective October 1, 1995.

Raise Reportable Accident Amount (Chapter 191; SB 154): Chapter 191 raises from $500 to $1,000 the amount of property damage in a motor vehicle accident that triggers the requirement that the accident be reported to law enforcement authorities. The act does not change the requirement that an accident be reported, regardless of amount of property damage, in case of death or injury to a person. The act makes several conforming and cleanup changes to the statutes concerning the reporting of accidents. Chapter 191 was made effective January 1, 1996.

License Photos Confidential (Chapter 195; HB 135): Chapter 195 makes confidential, except for law enforcement purposes, all photographic images taken by the Division of Motor Vehicles for drivers licenses and for special identification cards. The act became effective on June 7, 1995.

Failure to Give Way (Chapter 283; HB 328): Chapter 283 increases the penalties for failure to give way to an overtaking vehicle when such failure is the proximate cause of a collision resulting in bodily injury or property damage. G.S. 20-149(b) provides that a driver must give way to the right to an overtaking vehicle "on audible signal" and not increase speed until completely passed. Violation of that subsection is currently an infraction. Chapter 283 makes failure to give way or not increase speed a Class 1 misdemeanor when the failure is the proximate cause of a collision resulting in serious bodily injury; a Class 2 misdemeanor when the failure is the proximate cause of a collision resulting in bodily injury or property damage; and an infraction in all other cases. G.S. 20-151 is repealed. The act becomes effective December 1, 1995.

Retired Court Clerk Plates (Chapter 326; HB 108): Chapter 326 authorizes specialized registration plates for retired clerks of superior court and for supporters of professional sports teams located in North Carolina. Before issuing a professional sports fan plate, DMV must receive 300 or more applications and must be licensed by the team to use the official team logo without charge. Chapter 326 also limits the issuance of American Legion specialized registration plates to members of the organization. The act became effective June 26, 1995.

Truck Weight Tolerances Limits (Chapter 332; SB 331): Chapter 332 provides a limited tolerance for existing truck weights. It amends G.S. 20-118 to provide that a vehicle may exceed maximum and inner axle-group weight limitations by a tolerance of 10%. However, it does not authorize a vehicle to exceed either the single-axle or tandem-axle weight limitations, or the maximum gross weight limit of 80,000. If an axle-group weight of a vehicle exceeds the weight limit plus any tolerance allowed, DOT will assess a civil penalty against the owner or registrant of the vehicle. Penalties are assessed on the number of pounds by which the axle-group weight exceeds the limits. The act became effective June 27, 1995.

Allow Temporary Plate for 60 Days (Chapter 394; SB 155): Chapter 394 authorizes the Division of Motor Vehicles to issue temporary license plates valid for 10 to 60 days. The fee for a plate valid for 10 days is $3; the fee for a plate valid for more than 10 days is the regular license plate fee. If a person has a plate valid for more than 10 days and applies for a permanent plate, there is no additional fee. The bill also provides that a temporary license plate may not be issued by a dealer. The act became effective on July 10, 1995.

Olympics Special Plates (Chapter 433; SB 689): Chapter 433 provides that the Division of Motor Vehicles issue a special Olympic Games license plate if it receives 300 or more applications for that plate and if the U.S. Olympic Committee licenses the State, without charge, to develop the plate. The fee is $25 above the regular license plate fee. Of the $25, $10 goes to the Special Registration Plate Account, and $15 goes to the Collegiate and Cultural Attraction Plate Account (CCAPA). The funds in CCAPA that are derived from the sale of Olympic plates will be allocated: 50% to the U.S. Olympic Committee; 25% to N.C. Amateur Sports for the State Games; and 25% to the Governor's Council on Physical Fitness and Health. The act also provides for issuance of special square dance club license plates; a plate is to be issued if DMV receives 300 or more applications for that plate; the fee is $10 above the regular license plate fee. The act became effective on July 13, 1995.

Window Tinting Revisions (Chapter 473; HB 120): Chapter 473 rewrites a previously enacted law regarding automobile window tinting. The windshield of a vehicle may be tinted only along the top of the windshield. Any other window may be tinted so long as the total light transmission of the tinted window is at least 35%, the light reflectance of the tinted window is 20% or less, and the material used to tint the window is nonreflective and is a color other than red, yellow, or amber. Mini-vans and pickup trucks are added to the list of vehicles which are exempt from the restrictions as they would apply to windows other than the windshield. It is a Class 2 misdemeanor to apply tinting that does not meet the restrictions, or to drive a vehicle with a window that does not meet the window tinting restrictions. Chapter 473 eliminates the requirement that vehicles with after-factory installed tinting be inspected by a certified window tinting inspector, and provides that as part of the required tvehicle safety inspection the inspection mechanic determine whether after-factory tint has been applied. If after-factory tint has been applied, the mechanic must use a light meter to determine if the window meets the window tinting restrictions. An additional $10 is added to the fee for the inspection of a vehicle with an after-factory tinted window. The act becomes effective November 1, 1995.

Motor Vehicle Liens (Chapter 480, SB 754): Chapter 480 does the following:

* Permits charges that can be recovered through a mechanic's lien to include the charges for a rental car furnished to the person whose car is being repaired, serviced, or stored. This change was made effective upon ratification of the bill, July 26, 1995.

* Allows a lienor to take title to the personal property sold to satisfy a lien free and clear of inferior liens in the same way that a third party buyer would be entitled to take. This change was made effective upon ratification of the bill, July 26, 1995.

* Allows a motor vehicle dealer to name a successor to the franchise and to require that any affected manufacturer or distributor who objects to that appointment must raise the objection at the time the appointment is made. The dealer must notify the affected manufacturer or distributor so that an objection can be made. This part of the act was made effective October 1, 1995. The act provides that any dealer who made an appointment prior to October 1, 1995 may obtain the benefits of the act by providing or reproviding the notice required in the act to the affected manufacturer or distributor.

Roads and Highways

DOT Private Contract Participation (Chapter 447; SB 668): Chapter 447 removes the June 30, 1995, sunset from G.S. 136-28.6, which allows the Department of Transportation to participate in private engineering and construction contracts for State highways. It also adds a provision allowing a municipality to participate financially in

private engineering and construction contracts for projects pertaining to streets or highways that are on the municipality's thoroughfare plan. The act was effective on July 18, 1995.

MAJOR PENDING LEGISLATION

Graduated Drivers Licenses (SB 839): Senate Bill 839 would provide for driving privileges to be granted on a graduated basis to minors. Completion of a driver education program would be required for a limited learner's permit. For a provisional license, a person would have to have driven with a limited learner's permit for at least six months without a moving violation. All passengers in a vehicle driven by a person with a limited learner's permit or a provisional license would have to be in a seat belt or car seat. Also, the bill would require that driver education programs include at least six hours of actual driving experience.

STUDIES

Legislative Research Commission Studies

The 1995 Studies Bill (Chapter 542; HB 898) authorizes the **Legislative Research Commission** to study the transfer of all State vehicles to Motor Fleet Management.

Independent Studies, Boards, Etc., Created or Continued

Commission to Study the Drivers License Medical Evaluation Program. Chapter 324, Sec. 18.17; HB 229, Sec. 28.17.

State Ports Study Commission. Chapter 542, Part XVI; HB 898, Part XVI.

Referrals to Departments, Agencies, Etc.,

The **Division of Motor Vehicles** shall study comparing the cost of services provided by contract branch agents with the cost of providing those services at DMV in Raleigh and Charlotte. (Chapter 324, Sec. 18.16; HB 229, Sec. 18.16)

Referrals to Existing Commissions

The **Joint Legislative Transportation Oversight Committee** shall study the following: (1) DMV Campus in Wake County (Chapter 507, Sec. 18.4; HB 230, Sec. 18.4); (2) liens on towed and stored vehicles (Chapter 507, Sec. 28.1; HB 230 Sec. 18.1); (3) motor fuel tax exemption for community colleges (Chapter 542, Part IX; HB 898, Part IX); and (4) use of Special Registration Plate Fund (Chapter 324, Sec. 18.7(b); HB 229, Sec. 18.7(b).

The **Joint Legislative Commission on Governmental Operations** shall study the Division of Motor Vehicles. (Chapter 507, Sec. 18.14; HB 230, Sec. 18.14)

INDEX OF SUMMARIES OF RATIFIED BILLS

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