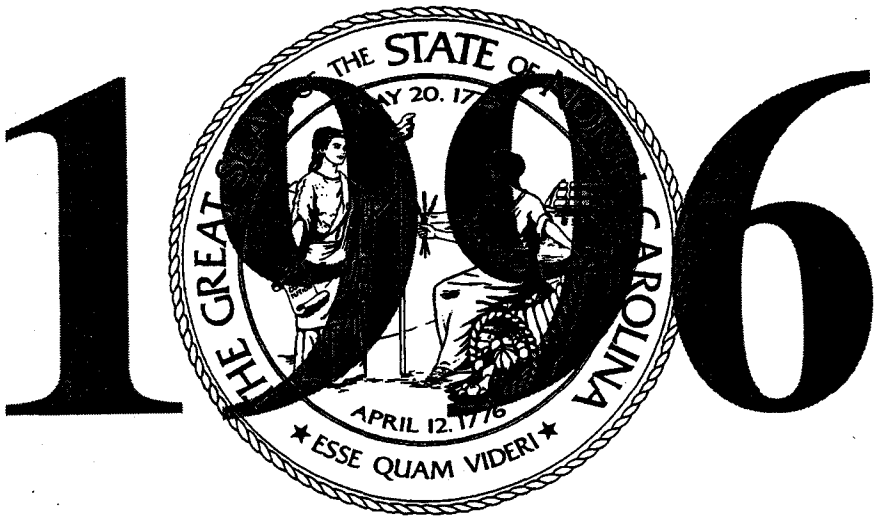
SUMMARIES OF SUBSTANTIVE RATIFIED LEGISLATION



1995 GENERAL ASSEMBLY

1996 REGULAR SESSION
1996 FIRST EXTRA SESSION
1996 SECOND EXTRA SESSION

RESEARCH DIVISION
N.C. GENERAL ASSEMBLY
SEPTEMBER, 1996

September, 1996

To the Members of the General Assembly:

This document contains summaries of substantive legislation enacted by the General Assembly during the 1996 First Extra Session, the 1996 Regular Session and the 1996 Second Extra Session. Significant appropriations related to the substantive legislation 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 created or authorized during the 1996 sessions. Two types of indices are included at the end of the document. The first index lists the session law chapter of the ratified legislation in numerical order with its corresponding page number. The second index lists the original bill number of the ratified legislation in numerical order with its corresponding page number. The ratified House bills index begins on page 125 and the ratified Senate bills index begins on page 128. *Legislation enacted during the 1996 Regular Session, the 1996 First Extra Session and the 1996 Second Extra Session are indexed separately.*

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, Susan Hayes, Tim Hovis, Jeff Hudson, Carolyn Johnson, Robin Johnson, Linwood Jones, Sara Kamprath, DeAnne Mangum, Lynn Marshbanks, Giles Perry, Walker Reagan, Barbara Riley, Steven Rose, 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

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AGRICULTURE AND WILDLIFE
(Barbara Riley)

Animal Waste Management Recommendations (Chapter 626; SB 1217; Regular Session 1996): See **ENVIRONMENT AND NATURAL RESOURCES.**

Remove Sunset for Grape Growers Excise Tax Distribution (Chapter 18, Sec. 25.2; HB 53, Sec. 25.2; Second Extra Session 1996): See **TAXATION.**

Beaver Damage Control Funds (Chapter 18, Sec. 27.15; HB 53, Sec. 27.15; Second Extra Session 1996): Section 27.15 of Chapter 18 adds nine counties to the list of those counties participating in the program to control beaver damage on private and public lands. The counties added are Anson, Chowan, Cumberland, Granville, Harnett, Jones, Lee, Lenoir, and Martin. The Beaver Damage Control Advisory Board is to report by January 15, 1997 to the Wildlife Resources Commission on the program in the participating counties and the desirability of expanding the program to additional counties. By March 15, 1997, the Wildlife Resources Commission shall present a plan to implement a statewide beaver damage control program to the House Appropriations Subcommittee on Natural and Economic Resources, the Senate Appropriations Committee on Natural and Economic Resources, and the Fiscal Research Division.

Accountability for Certain State Agriculture Cost Share Funding (Chapter 18, Sec. 27.22; HB 53, Sec. 27.22; Second Extra Session 1996): Section 27.22 of Chapter 18 adds a new subdivision (7) to G.S. 143-215.74(b) providing priority designation for projects that improve water quality. To be eligible for cost share funds under this subdivision, a project must be evaluated before funding is awarded and after the project is completed to determine the impact on water quality. Section 27.22 also requires the Soil and Water Commission to report annually to the Environmental Review Commission on the projects funded, the results of the water quality evaluations, and list recommendations to assure State funding is used in the most cost-effect manner.

STUDIES

Independent Studies, Boards, Etc.,

Abandoned Lagoons/Animal Facilities Environmental Impact (Chapter 18, Sec. 27.12; HB 53, Sec. 27.12; Second Extra Session 1996): A **legislative study commission** shall study the **environmental impacts of animal waste lagoons and animal facilities that have been closed or abandoned or are inactive** in order to determine the extent and scope of problems associated with these structures, to identify potential solutions, to identify scientifically and environmentally effective methods of closure of the structures in the future, and to determine the advisability of providing incentives for the proper management of abandoned animal waste lagoons and animal facilities. The commission shall report to the 1997 General Assembly, the Environmental Review Commission, and the Fiscal Research Division.

Referrals to Departments, Agencies, Etc.,

The **Board of Governors, NCSU's Agricultural Research Service** shall study **economically feasible odor control technologies.** (Chapter 18, Sec. 27.3; HB 53 Sec. 27.3; Second Extra Session 1996)

The **Board of Governors, NCSU's Agricultural Research Service** shall study the **groundwater impacts of lagoons.** (Chapter 18, Sec. 27.7; HB 53 Sec. 27.7; Second Extra Session 1996)

The **Wildlife Resources Commission** shall present a plan to implement a **statewide beaver damage control program** to the House Appropriations Subcommittee on Natural and Economic Resources, the Senate Appropriations Committee on Natural and Economic Resources, and the Fiscal Research Division. The plan must be presented by March 15, 1997. (Chapter 18, Sec. 27.15; HB 53, Sec. 27.15; Second Extra Session 1996)

The **Primary Investigator or Researcher** receiving funding from the State shall report on January 1, 1997 and July 1, 1997 to the Environmental Review Commission, the Joint Legislative Commission on Governmental Operations, the Scientific Advisory Council on Water Resources and Coastal Fisheries Management, and the Fiscal Research Division on the following studies:

(1) Odor Control Technology;
(2) Sources of nitrogen through isotope markers;
(3) Groundwater impacts of lagoons;
(4) Atmospheric deposition of nitrogen in the Neuse Estuary;
(5) Alternative animal waste technologies.

(Chapter 18, Sec. 27.32; HB 53, Sec. 27.32; Second Extra Session 1996)

The **Board of Governors, NCSU's Agricultural Research Service** shall study **alternative animal waste technologies** and report to the Environmental Review Commission and the Fiscal Research Division by January 1, 1997. (Chapter 18, Sec. 27.35; HB 53 Sec. 27.35; Second Extra Session 1996)

Referrals to Existing Commissions

The **Environmental Review Commission** shall evaluate **the animal waste permitting, inspection, and enforcement program** created by Chapter 626 including whether to transfer this responsibility to the Division of Soil and Water Conservation. The Commission shall report to the General Assembly by the first day of the 1997 Regular Session and shall report before the first day of the 1998 Regular Session. (Chapter 626, Sec. 12; SB 1217, Sec. 12; Regular Session 1996)

CHILDREN AND FAMILIES

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

No Same-Sex Marriages (Chapter 588; SB 1487; Regular Session 1996): Chapter 588 adds a new section to the marriage statutes, G.S. 51-1.2, that says that marriages from other states between persons of the same gender are not valid in North Carolina. The act became effective upon ratification, June 20, 1996.

Domestic Violence Changes (Chapter 591; HB 686; Regular Session 1996): Chapter 591 expands the ability of the courts to use domestic violence orders to prevent or deter acts of domestic violence. Under the new law, domestic violence orders may be entered between persons who have or have had a "familial relationship", which includes persons who have lived together as spouses, whether legally married or not, as well as persons who have familial relationship such as parents or grandparents of a child or grandchildren, or persons who have a child in common. The act also spells out more specifically what actions may be prohibited as acts of harassment or interference, including threatening, abusing, or following the other person, or harassing the other person by telephone, visiting the home or workplace, or by other means. As changed, a judge will now be able to extend existing protective orders for an additional year when justified. Violations of domestic violence orders can now be punished as criminal contempt of court as well as civil contempt. Law enforcement officers statewide will now be able to enforce domestic violence orders, not just officers within the local court's jurisdiction. Out-of-state protective orders are to be recognized by North Carolina courts and enforced by North Carolina law enforcement officers. The act adds requests for domestic violence orders to the list of actions for which a person may seek to file suit as an indigent, when qualified, without having to pay court costs. The act also amends the child custody statute to permit a judge to consider acts of domestic violence in awarding custody and in determining the appropriate limitations and requirements for child visitation. The act becomes effective October 1, 1996.

Length of Juvenile Commitment (Chapter 609; HB 1207; Regular Session 1996): Chapter 609 clarifies the maximum period of time a delinquent juvenile may be committed to a detention center or training school in accordance with the Structured Sentencing Act. Chapter 609 provides that the Structured Sentencing Act does not apply to juveniles dispositions, except that commitment of a delinquent juvenile may not be for a period of time in excess of the maximum term of imprisonment for which an adult in the highest prior record/conviction levels could be sentenced for the same offense. Chapter 609 also amends the juvenile code with regard to the procedure by which judges may require a county to pay the cost of a juvenile's treatment if the parent cannot afford to pay the cost. It requires the judge to conduct a hearing to determine whether the juvenile is in need of medical, surgical, psychiatric, psychological, or other treatment and who should pay the cost of the treatment. If the judge finds that treatment is necessary and that the parent is unable to pay the cost, the judge will order the county to pay for the cost of the treatment. The county department of social services will recommend the facility that will provide the juvenile with treatment. The act becomes effective December 1, 1996.

Exploit Child/Solicit by Computer (Chapter 632; HB 207; Regular Session 1996): See **CRIMINAL LAW**.

Child Support Lien (Chapter 674; HB 1280; Regular Session 1996): Chapter 674 amends the child support lien on insurance proceeds statute to add a provision that the child support lien is subordinate to medical and hospital liens on insurance proceeds for personal injuries and valid health care provider claims. The 1995 law created a lien for the Department of Human Resources when child support is owed for AFDC payment made, and for the child custodian in non-AFDC matters, on insurance proceeds in excess of $3000. This act makes the child support lien subordinate to the liens for drugs, medical supplies, ambulance services, medical attention, hospital services and attorneys fees under G.S. 49-49 and 49-50 and valid health care provider claims covered by health benefit plans, in personal injuries cases. This act is effective July 1, 1996.

Abduction From Legal Custodian (Chapter 745; HB 1301; Regular Session 1996): See CRIMINAL LAW.

Fingerprint, Photograph, and Retain Jurisdiction of Delinquent Juveniles (Chapter 18, Sec. 23.2; HB 53, Sec. 23.2; Second Extra Session 1996): Section 23.2 of Chapter 18 of the Second Extra Session 1996 makes changes to four sections of the juvenile law involving juvenile criminal procedures and processes. Subsection (a) and (b) require that a juvenile 10 years of age or older adjudicated to be delinquent of the more serious felonies be fingerprinted and photographed, and that this identification information be included by the SBI as part of the criminal identification information system. These records would not be public records and would not be included in the juvenile's court file. These subsections become effective October 1, 1996 for offenses committed on or after that date. Subsection (c) gives the district court jurisdiction over a person age 18 or over, who allegedly committed a felony between age 13 and 16 but who was not charged before reaching age 18, for the sole purposes of deciding to transfer the matter to superior court to be tried as an adult or to dismiss the changes. This subsection became effective August 3, 1996. Subsection (d) also allows the district court to retain jurisdiction over a person age 18 or over, who was charged with a felony before age 18 but for who delinquency proceedings were not able to be concluded by age 18, for the sole purposes of deciding to transfer the case to superior court to be tried as an adult or to dismiss the charges. This section became effective August 3, 1996 and applies to all cases pending on that date. Effective October 1, 1996, subsection (e) requires the Division of Youth Services to notify the juvenile, the juvenile's parents, guardian, or custodian, the DA, the arresting law enforcement agency, and the victim or victim's family, 30 days in advance of the release of a juvenile committed for a Class A or B1 felony.

AFDC-EA Rules Clarified (Chapter 18, Sec. 24.14; HB 53, Sec. 24.14; Second Extra Session 1996): Section 24.14 of Chapter 18 of the Second Extra Session requires the Social Services Commission to ensure that AFDC-Emergency Assistance cash is provided to those with verifiable emergencies. To accomplish this directive, the Commission shall ensure that (1) applicants produce documented or other reliable verification of the emergency for which assistance is requested, and (2) the verified emergency is one that threatens the health, safety or well-being of the child(ren) in the care or custody of the applicant.

Review of Automated Collection and Tracking System (Chapter 18, Sec. 24.15; HB 53, Sec. 24.15; Second Extra Session 1996): Section 24.15 of Chapter 18 of the Second Extra Session requires the Information Resource Management Commission to conduct a quarterly review of the ACTS project being developed by the Department of Human Resources. This provision became effective July 1, 1996.

Clarification of Authorized Additional Use of HIV Foster Care and Adoptive Families Funds (Chapter 18, Sec. 24.16; HB 53, Sec. 24.16; Second Extra Session 1996): See **HUMAN RESOURCES.**

Cabarrus AFDC and Food Stamp Pilot Extended (Chapter 18, Sec. 24.16A; HB 53, Sec. 24.16A; Second Extra Session 1996): Section 24.16A of Chapter 18 of the Second Extra Session extends the operation period for the Cabarrus County AFDC and Food Stamp Pilot. The pilot, enacted by Chapter 368 of the 1995 Session Laws, authorized Cabarrus County to implement a pilot workfare program for its AFDC and Food Stamp recipients. Initially, the pilot was to be evaluated by March 1, 1997, and end on July 1, 1997. As amended, the pilot shall be evaluated by May 1, 1998, and end on January 1, 1999.

Support Our Students Program Location (Chapter 18, Sec. 24.23; HB 53, Sec. 24.23; Second Extra Session 1996): See **STATE GOVERNMENT.**

Child Day Care Subsidies (Chapter 18, Sec. 24.26C; HB 53, Sec. 24.26C; Second Extra Session 1996): Section 24.26C of Chapter 18 of the Second Extra Session sets the maximum gross annual income for eligibility for subsidized child care services at 75% of the State median income, adjusted for family size. It also modifies and simplifies the fee structure and requires all parents receiving subsidies to pay part of the child care cost based on percent of gross family income and on family size. It also provides for an adjusted rate based on the quality of the license of the child care center or child care home. This section becomes effective on September 1, 1996.

Privatization of Richmond County Boundover Detention Facility (Chapter 18, Sec. 24.28; HB 53, Sec. 24.28; Second Extra Session 1996): See **STATE GOVERNMENT.**

Early Childhood Initiatives (Chapter 18, Sec. 24.29; HB 53, Sec. 24.29; Second Extra Session 1996): In early 1996, the General Assembly received recommendations as a result of a performance audit of the Smart Start program. Subsection (a) of Section 24.29 of Chapter 18 of the Second Extra Session directs the Department of Human Resources ("DHR") and the North Carolina Partnership for Children ("Partnership") to implement all of the performance audit recommendations with the following exceptions by July 1, 1997: (i) recommended administrative start-up costs for each local partnership apply only in the first year that partnership provides direct services; (ii) the Partnership, not the State Auditor, shall determine whether local contractors that receive more than $25,000 have complied with financial audit requirements; and (iii) the Director of DHR's Division of Child Development shall not be an ex officio member of the Partnership.

Subsection (b) amends G.S. 143B-168.12(a) to (i) require the Partnership to implement for all local partnerships a standard fiscal accountability plan that includes a uniform, standardized system of accounting, internal controls, payroll, fidelity bonding, chart of accounts, and contract management and monitoring; (ii) require all local partnerships to participate in this plan; (iii) require local partnerships that have significant deficiencies, as determined by the Partnership and based on the State Auditor's annual financial audits, and local partnerships in their first two years of operating to participate in a centralized accountability system managed by the Partnership; (iv) allow other local partnerships to participate in that centralized system; (v) direct the Partnership to develop a formula for the annual distribution of direct services funds to local partnerships; (vi) direct the Partnership to develop a system for rating local partnerships' performance and allow the Partnership to adjust its annual

funding allocations based on the results of those performance assessments; (vii) direct the Partnership to establish a local partnership advisory committee, composed of chairs and other members of local partnerships' boards of directors, to the Partnership's Board of Directors; and (viii) direct the Partnership to report quarterly to the Joint Legislative Commission on Governmental Operations on the work of the local partnerships and the continuing plans of DHR and the Partnership.

Subsection (c) of Section 24.29 amends G.S. 143B-168.13(a) to require DHR to (i) conduct a needs and resources assessment every three years, beginning in 1997-98; (ii) adopt rules to ensure that State leave policy is not applied to the Partnership and the local partnerships; and (iii) update annually its funding formula which will serve as the basis for determining "full funding" amounts for each local partnership. Subsection (d) of Section 24.29 amends G.S. 143B-168.14(a) to require local partnerships to participate in the uniform, standard fiscal accountability plan developed by the Partnership. G.S. 143B-168.15 is amended to provide that the Partnership must limit funds for capital projects in any two consecutive years to 10% of the total funds for direct services allocated to a local partnership in those two years; (ii) allow local partnerships to carry over funds from one fiscal year to the next in their first year of receiving funds for direct services and, in any subsequent year, allow them carry over any increase in funding they received over the earlier year; and (iii) require local partnerships to allocate at least 30% of their funds for direct services to child day care subsidies.

Subsection (g) of Section 24.29 repeals the Joint Legislative Oversight Committee on Early Childhood Education and Development Initiatives. Section 23.13 of Chapter 324 of the 1995 Session Laws is amended to require the Partnership, rather than DHR, to approve counties' Early Childhood Education and Development Initiatives Plans. Subsection (i) of Section 24.29 allows the Frank Porter Graham Development Center to use, as part of its ongoing evaluation of the Smart Start Program, any legal method track children who are participating or who have participated in the Program. Subsection (j) of Section 24.29 directs DHR and the Partnership to: (i) plan for the effective implementation of the Program to the remaining counties; (ii) maintain the current State level of administrative support for the Program for 1996-97; (iii) develop a statewide resource and referral database; and (iv) continue the ongoing evaluation of the Program by the Frank Porter Graham Developmental Center. Section 24.29 took effect July 1, 1996.

AFDC Fraud Control/Debt Setoff/Client Protection (Chapter 18, Sec. 24.30; HB 53, Sec. 24.30; Second Extra Session 1996): Section 24.30(a) - (c) of Chapter 18 of the Second Extra Session requires the Department of Human Resources to: (1) implement the optional federal AFDC Fraud Control Program; (2) award incentive bonuses for each fraudulent claim recouped by a county; (3) development and implement a statewide automated system to track and collect fraudulent claims. Sec. 24.30(d) amends G.S. 105A-2(1)r. to provide that Food Stamp, AFDC or Work First benefits received through an intentional violation or inadvertent household error are debts that may be collected and setoff by State tax refunds. Sec. 24.30(e) requires that persons charged with or suspected of AFDC fraud not be subjected to coercion, discrimination, or civil investigation or action without notice of the potential of criminal prosecution and being advised of their right not to self-incriminate themselves.

Food Stamp Felony Fraud (Chapter 18, Sec. 24.31; HB 53, Sec. 24.31; Second Extra Session 1996): Section 24.31 of Chapter 18 of the Second Extra Session amends G.S. 108A-53(a) to restore the felony threshold for food stamp fraud to $400. The section becomes effective December 1, 1996.

STUDIES

Independent Studies, Boards, Etc.

Child Fatality Task Force (Chapter 17, Part III; SB 46, Part III; Second Extra Session 1996): The Task Force is continued and shall report to the 1997 General Assembly and to the Governor within the first week of the session. Also, it may report to the 1998 Regular Session and shall report to the 1999 General Assembly.

Referrals to Departments, Agencies, Etc.

The **Department of Human Resources** and the **North Carolina Partnership for Children, Inc.**, shall study (i) a regionalization plan for local partnerships, (ii) administrative cost formulas, (iii) the definition of in-kind contributions and matching requirements, and (iv) transportation issues; shall submit recommendations to the Joint Legislative Commission on Governmental Operations by February 1, 1997; Partnership shall submit quarterly reports to Joint Legislative Commission on Governmental Operations; Smart Start program shall not be continued or expanded after 1996-97 until the General Assembly determines, after consideration of reports submitted, that the program at both the State and local levels is operating efficiently and producing the intended results. (Chapter 18, Sec. 24.29(a); HB 53, Sec. 24.29(a); Second Extra Session 1996)

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

Workers' Compensation Paupers Appeals (Chapter 552; HB 1089; Regular Session 1996): See **WORKERS' COMPENSATION.**

STUDIES

Independent Studies, Boards, Etc., Created or Continued

Civil Procedure Study Commission (Chapter 17, Part IV; SB 46, Part IV; Second Extra Session 1996): The Civil Procedure Study Commission is created to study all practices and procedures that affect the speed, fairness, and accuracy with which civil actions are disposed of in the trial divisions of the General Court of Justice, including the Rules of Civil Procedure, Rules of Evidence, other relevant statutes, statewide and local court-adopted rules of practice and procedure, administrative rules, appellate opinions and all other relevant practices, customs, and traditions in the trial courts of North Carolina; and to devise and recommend improved practices and procedures that (i) reduce the time required to dispose of civil actions in the trial divisions; (ii) simplify pretrial and trial procedure; (iii) guarantee the fairness and impartiality with which the claims and defenses are heard and resolved; and (iv) increase the parties' and the public's satisfaction with the process of civil litigation.

The Commission consists of 18 voting members, six appointed by the President Pro Tem, six appointed by the Speaker, and six appointed by the Chief Justice. No more than four appointed by the President Pro Tem and four appointed by the Speaker may be members of the General Assembly and no more than four appointed by anyone may be members of the same political party.

The Commission shall report to the General Assembly and the Chief Justice no later than April 1, 1998, and shall terminate upon reporting.

COMMERCIAL LAW

(Karen Cochrane-Brown, Tim Hovis, Linwood Jones, Walker Reagan)

Antitrust Revisions (Chapter 550; SB 843; Regular Session 1996): Chapter 550 was a recommendation from the Antitrust and Trade Regulation Law Section of the North Carolina Bar Association. The act repeals G.S. 75-5, 75-6, and 75-7. These statutes contained overlapping and unclear provisions and prohibited certain conduct which is generally accepted by the courts as pro-competitive and legal. Chapter 550 also adds G.S. 75-2.1 which makes it unlawful to "monopolize, or attempt to monopolize, or combine or conspire with any other person or persons to monopolize, any part of trade or commerce in the State of North Carolina". This language is patterned after the federal law (Sherman Act) and is enforced by civil action, not criminal prosecution. The act is effective October 1, 1996.

Financial Institutions Holiday Amended (Chapter 556; HB 1189; Regular Session 1996): North Carolina state chartered banks, savings banks, and savings and loan associations will no longer be required to close on state holidays. Chapter 556 amended the law to allow the board of directors of each institution to designate the days and hours, including holidays, on which the institution will be open. The bill also removed references to national banks and federal reserve banks that are governed by federal law. The act is effective September 1, 1996.

Amend Interstate Banking Act (Chapter 557; HB 1190; Regular Session 1996): Chapter 557 adds a new section to the North Carolina Reciprocal Interstate Banking Act to clarify that state chartered banks organized under North Carolina law, which are subsidiaries of bank holding companies, may act as agents for other banks affiliated with the bank holding company for the purpose of receiving deposits, renewing time deposits, closing and servicing loans, and receiving payments on other obligations, without becoming a branch of the affiliate bank, to the same extent that national banks are permitted to act as agents under the Reigle-Neal Interstate Banking Act. The act was effective on ratification on June 10, 1996.

Allow Cancellation by Exhibition (Chapter 604; SB 125; Regular Session 1996): See **PROPERTY.**

Good Funds Settlement Act (Chapter 714; SB 470; Regular Session 1996): See **PROPERTY.**

Mold Lien Act (Chapter 744; HB 1164; Regular Session 1996): See **PROPERTY.**

Resale of Water and Sewer (Chapter 753; SB 1183; Regular Session 1996): See **STATE GOVERNMENT.**

Corporate Reinstatement After Dissolution (Chapter 17, Part XV; Senate Bill 46, Part XV; Second Extra Session 1996): Part XV of Chapter 17 of the 1996 Second Extra Session extends the grace period in which a corporation or limited liability company that has been administratively dissolved by the Secretary of State (for not filing an annual report, not having a registered agent, or on other specified grounds) can apply for corporate reinstatement. The grace period, which was first created in 1995 and scheduled to end on July 1, 1996, is extended until July 1, 1997. The corporation or limited liability company must eliminate the problem that gave rise to the

administrative dissolution. This change in the law will help a number of small businesses that were administratively dissolved many years ago and did not act within two years to be reinstated. When the grace period ends July 1, 1997, the law will revert back to allowing reinstatement only within a two-year period after administrative dissolution. The General Statutes Commission will study this issue to recommend to the General Assembly an appropriate time limit for handling corporate reinstatement after administrative dissolution.

STUDIES

Referrals to Existing Commissions

The **General Statutes Commission** shall study **administrative dissolution and reinstatement after dissolution of corporations, nonprofit corporations, and limited liability companies** including the extension of time allowed for application for reinstatement. The Commission shall report to the General Assembly by March 1, 1997. (Chapter 17, Part XV; SB 46, Part XV; Second Extra Session 1996) (See also related summary under **COMMERCIAL LAW** above)

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

Domestic Violence Changes (Chapter 591; HB 686; Regular Session 1996): See **CHILDREN AND FAMILIES.**

Nursing/Rest Home Employment Checks (Chapter 606; SB 1014; Regular Session 1996): See **HUMAN RESOURCES.**

Length of Juvenile Commitment (Chapter 609; HB 1207; Regular Session 1996): See **CHILDREN AND FAMILIES.**

Exploit Child/Solicit by Computer (Chapter 632; HB 207; Regular Session 1996): Chapter 632 creates a Class I felony for a person 16 years old or older knowingly and with the intent to commit an unlawful sex act, to entice, advise, coerce, order, or command, by means of a computer, a child who is less than 16 years old and at least 3 years younger than the defendant to meet with the defendant or any person for the purpose of committing an unlawful sex act. The offense is committed in the State if the computer transmission originates or is received in the State. The act is effective December 1, 1996.

Blue Light Bandit Felony (Chapter 712; SB 359; Regular Session 1996): Chapter 712 increases the criminal penalty for impersonating a law enforcement officer by use of a vehicle with a blue light and for using the light to cause a person to yield the right-of-way or stop in obedience to the light from the current punishment of a Class 1 misdemeanor to a Class I and H felony, respectively. Use of a red light or siren remains a Class 1 misdemeanor. The act is effective December 1, 1996.

Streamline Criminal Appeals (Chapter 719; HB 9; Regular Session 1996): Chapter 719 modifies the post-conviction appeals process for capital defendants. Capital defendants are now limited to one Motion for Appropriate Relief (MAR) which must be filed within 120 days of the completion of the direct appeal stage. The only exception to this requirement is MARs based on newly discovered evidence may be brought at any time. There are specific time limits for the State to answer and the defendant to amend if necessary and the judge must set the date for hearing of the MAR without unnecessary delay. Several other provisions, such as waiver of the attorney-client privilege for ineffective assistance of counsel claims and opening of the prosecutorial and law enforcement files to the defendant, are included to further decrease the time required for this stage of the appellate process.

Chapter 719 also changes the process for setting the execution date for a capital defendant. The warden of Central Prison will set the date following the completion of the appellate process.

Chapter 719 became effective upon ratification 6/21/96. The 120 day deadline applies to cases in which the trial court judgment is entered after 10/1/96.

Felony Pleas in District Court (Chapter 725; SB 33; Regular Session 1996): Chapter 725 provides that with the consent of the presiding district court judge, the prosecutor, and the defendant, the district court has jurisdiction to accept a defendant's plea of guilty or no contest to a Class H or I felony if: (1) the defendant is charged with a felony, the felony is pending in district court, and the defendant has not been indicted for the offense; or (2) the defendant has been indicted for a criminal offense but the

defendant's case has been transferred from superior court to district court with the consent of the prosecutor and the defendant. The act requires that a record be made of district court proceedings in which defendants plead guilty or no contest to Class H or I felonies, and makes additional changes to criminal law procedure providing for arraignment only upon written request and entry of not guilty plea if not arraigned. The act becomes effective December 1, 1996 and will apply to offenses occurring on or after that date.

Bail Bondsmen Regulation (Chapter 726; SB 534; Regular Session 1996): Chapter 726 makes the following changes to Article 71 of Chapter 58 concerning regulation of bail bondsmen: (1) removes requirement, effective January 1, 1997, that a surety bondsman be a licensed insurance agent; (2) provides for the issuance of a picture identification card by the Commissioner of Insurance for licensed bail bondsmen; (3) provides that bail bondsman's and runner's licenses remain in effect until suspension or revocation (must be renewed on July 1 upon payment of renewal fee); (4) requires a criminal record check of all bail bondsman's license applicants and runner's license applicants; (5) authorizes Commissioner of Insurance to enter into private contract for processing, administration, and grading of written examinations for bail bondsman's and runner's license (fee for examination may offset cost of the contract); (6) requires all persons providing, presenting or instructing a prelicensing or continuing education course to obtain a certificate of authority from the Commissioner before instructing or providing the course; (7) requires bail bondsman to notify Commissioner of Insurance upon bondsman's filing for protection under any state receivership law; (8) if person holds insurance agent's license and bondsman's or runner's license, provides that revocation, suspension, or nonrenewal of one license applies to other license (expires January 1, 1997); (9) provides that professional bondsman's, surety bondsman's and runner's licenses are considered one license for purposes of suspension, revocation or renewal, but not for purposes of renewal fees; (10) prohibits bail bondsman or runner from impersonating a law enforcement officer or falsely representing connection with federal, state or local government; (11) requires runners to register with clerk of superior court before becoming surety on an undertaking on behalf of a professional bondsman; and (12) repeals G.S. 58-33-25(e)(9) allowing limited representative to receive license without examination for bail bonds executed or countersigned by surety bondsmen and provides that surety bondsmen holding licenses under that provision shall be issued licenses under Article 71 of Chapter 58.

Statewide Gun Regulation (Chapter 727; HB 879; Regular Session 1996): See **LOCAL GOVERNMENT.**

Abduction From Legal Custodian (Chapter 745; HB 1301; Regular Session 1996): Chapter 745 rewrites G.S. 14-41, Abduction of Children, to provide that any person who without legal justification or defense, abducts or induces any minor child who is at least four years younger than the defendant to leave any person, agency, or institution lawfully entitled to the child's custody, placement, or care is guilty of a Class F felony. The penalty was a Class F felony under prior law. However, the statute did not provide for the abduction of a child from an agency or institution. Therefore, abduction of a child from a local department of social services was not covered under the statute. The act is effective January 1, 1997.

Burn/Bomb Religious Building (Chapter 751; HB 1458; Regular Session 1996): Chapter 751 makes it a Class E felony to willfully and maliciously damage any building of worship by use of an explosive or incendiary device, and increases the punishment for setting fire to a religious building from a Class F to a Class E felony. The act

became effective on June 21, 1996 and applies to offenses committed on or after that date.

FTE Courses Taught in Prisons (Chapter 18, Sec. 17; HB 53, Sec. 17; Second Extra Session 1996): See **EDUCATION.**

Use of Facilities Closed Under GPAC (Chapter 18, Sec. 20.1; HB 53, Sec. 20.1; Second Extra Session 1996): Section 20.1 of Chapter 18 of the Second Extra Session requires the Department of Corrections to consult with the county or municipality in which any prison being closed under recommendation from the Government Performance Audit Committee is located or to consult with any private for-profit or non-profit firm about the possibility of other uses for the facilities. The Department of Correction may lease the facilities to parties wishing to convert them to other uses and may also consider converting some of the units from medium to minimum security facilities.

Reimbursement to Counties/Inmate Costs (Chapter 18, Sec. 20.2; HB 53, Sec. 20.2; Second Extra Session 1996): See **LOCAL GOVERNMENT.**

Salary Continuation/DOC Employees (Chapter 18, Sec. 20.7; HB 53, Sec. 20.7; Second Extra Session 1996): See **STATE GOVERNMENT.**

Report on Women at Risk (Chapter 18, Sec. 20.8; HB 53, Sec. 20.8; Second Extra Session 1996): Section 20.8 of Chapter 18 of the Second Extra Session requires the Women at Risk Program to report by December 1, 1996 and May 1, 1997 to the Joint Legislative Commission on Governmental Operations, the Chairs of the House and Senate Appropriations Committees, and the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety on the expenditure of State monies and the effectiveness of the Program, including the number of clients served, the number who have had their probation revoked, and the number who have successfully completed the Program.

Create Felony Assault Inflicting Serious Bodily Injury and Increase Punishment for Sale of Handguns or Controlled Substances to Minors (Chapter 18, Sec. 20.13; HB 53, Sec. 20.13; Second Extra Session 1996): Subsection (a) of Section 20.13 of Chapter 18 of the Second Extra Session creates a new offense (G.S. 14-32.4) of assault inflicting serious bodily injury. Serious bodily injury is defined as bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization. Violation of this statute is a Class F felony.

Subsection (b) increases the punishment for sale of a handgun to a minor from a Class I felony to a Class H felony.

Subsection (c) increases the punishment for sale or delivery of a controlled substance to a person under 16 years of age or a pregnant female from a Class E felony to a Class D felony.

Section 20.13 of Chapter 18 becomes effective January 1, 1997 and applies to offenses committed on or after that date.

Extend Period of Post-Release Supervision (Chapter 18, Sec. 20.14; HB 53, Sec. 20.14; Second Extra Session 1996): Sec. 20.14 of Chapter 18 of the Second Extra Session extends from six months to nine months the period of post-release supervision, except for offenses subject to sex offender registration under Article 27A of Chapter 14

which is extended to a period of five years. Also, for offenses requiring sex offender registration or involving the physical, mental, or sexual abuse of a minor, the controlling conditions of post-release supervision are amended to include the following: (1) registration as a sex offender as required by law; (2) participation in psychiatric, psychological, or other rehabilitative treatment as ordered by the Post-Release Supervision and Parole Commission; (3) not to communicate or contact the victim, or be in or on the victim's premises; (4) not to reside with a minor child if the offense involves sexual abuse of a minor; and (5) not to reside with a minor child if the offenses involves physical or mental abuse of a minor, unless a court expressly finds that the defendant's conduct is not likely to recur and it is in the child's best interest for the defendant to reside with the child. Sec. 20.14 also imposes these same conditions as conditions of probation for offenses requiring sexual offender registration or involving the physical, mental, or sexual abuse of a minor. In addition to the five conditions stated above, the court may impose any other conditions related to rehabilitation. The defendant may not be placed on unsupervised probation. Section 20.14 is effective December 1, 1996.

Felony Offense to Assault Law Officer (Chapter 18, Sec. 20.14B; HB 53, Sec. 20.14B; Second Extra Session 1996): Section 20.14B of Chapter 18 of the Second Extra Session makes it a felony to assault a law enforcement officer and inflict serious bodily injury and creates a new criminal offense of assaulting a firefighter.

Subsection (a) of the Section creates a new statute (G.S. 14-34.7) that makes it a Class F Felony to assault a law enforcement officer while the officer is discharging official duties if there is serious bodily injury inflicted on the officer.

Subsection (b) of the Section amends G.S. 14-34.6 to add firefighter as one of the persons covered under the statute. It also amends the statute to provide that the persons covered must be discharging or attempting to discharge their duties to be covered under this statute. A simple assault or affray is a Class A1 misdemeanor. The statute is amended to require that any bodily injury be "serious" for the offense to qualify as a Class I felony unless a deadly weapon, other than a firearm, is used.

This Section becomes effective December 1, 1996 and applies to offenses committed on or after that date.

Eliminate Waiver of Hearings/Parole and Post-Release Supervision Revocation (Chapter 18, Sec. 20.15; HB 53, Sec. 20.15; Second Extra Session 1996): Under current law, unless a parolee or supervisee waives the hearing, a parole or post-release supervision revocation hearing must be held within seven working days of the arrest of the parolee or supervisee to determine probable cause of a violation. Otherwise the parolee or supervisee must be released pending the hearing. Section 10.15 eliminates the ability of a parolee or supervisee to waive this probable cause hearing.

Additional Private Prison Beds (Chapter 18, Sec. 20.18; HB53, Sec. 20.18; Second Extra Session 1996): Section 20.18 of Chapter 18 of the Second Extra Session increases the number of private prisons and private prison beds for which the Department of Corrections may contract. The Department may now contract for four or more facilities totaling up to 2,000 beds. This is an increase of 1,000 beds. The Department shall take bids for the additional contracts and shall consult with the Chairs of the Joint Legislative Corrections Oversight Committee and the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety before making a recommendation to the State Purchasing Officer on the final award decision. The State Purchasing Officer shall make the final award decision and the contract shall be subject to the approval of the Council of State after consultation with the Joint Legislative Commission on Governmental Operations.

Private Prison Sites (Chapter 18, Sec. 20.19; HB53, Sec. 20.19; Second Extra Session 1996): Section 20.19 of Chapter 18 of the Second Extra Session provides that the two private prisons awarded to United States Corrections Corporation be located at the Pamlico and Avery/Mitchell sites. Construction is to begin by December 31, 1996 at both of these sites.

Report on Policy and Procedures for Stopping Motorists (Chapter 18, Sec. 21.3; HB 53, Sec. 21.3; Second Extra Session 1996): The Division of the State Highway Patrol, Department of Crime Control and Public Safety shall report by May 15, 1996 to the Crime Control and Public Safety Study Commission, the Chairs of the House and Senate Appropriations Committees, and the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety on the promotional system adopted by the State Highway Patrol. By January 1, 1997, the Division shall report on the criteria used to rank troopers and supervisors and the progress of the training process of the system. By July 1, 1997, the Department shall report on the implementation of the promotional system. The Division is directed to report by November 1, 1996 on its policies, procedures, and guidelines used to determine which motorists to stop and question, and which vehicles to search. This report shall include an explanation of the training of the Special Emphasis Team troopers on drug interdiction.

Maintain Butner Fees General Availability (Chapter 18, Sec. 21.4; HB 53, Sec. 21.4; Second Extra Session 1996): See **STATE GOVERNMENT.**

Annual Report on Recidivism (Chapter 18, Sec. 22.3; HB 53, Sec. 22.3; Second Extra Session 1996): Sec. 22.3 of Chapter 18 of the Second Extra Session requires the Judicial Department, through the North Carolina Sentencing and Policy Advisory Commission, and the Department of Correction to jointly prepare an annual report on recidivism among criminal offenders. The methodology of the report is to be similar to the 1996 Recidivism Study which includes tracking of all offenders assigned to community corrections programs or released from prison by fiscal year, beginning with fiscal year 1993-94, and identifying those offenders rearrested within two years or more after assignment to a program or release from prison. The report is due by April 1 of each year.

Increase Fees in Criminal Cases (Chapter 18, Sec. 22.13; HB 53, Sec. 22.13; Second Extra Session 1996): See **STATE GOVERNMENT.**

Authorization of Fictitious Licenses and Plates (Chapter 18, Sec. 23; HB 53, Sec. 23; Second Extra Session 1996): See **TRANSPORTATION.**

Fingerprint, Photograph, Jurisdiction/Delinquent Juveniles (Chapter 18, Sec. 23.2; HB 53, Sec. 23.2; Second Extra Session 1996): See **CHILDREN AND FAMILIES.**

Criminal Justice Information Network Governing Board (Chapter 18, Sec. 23.3; HB 53, Sec. 23.3; Second Extra Session 1996): Section 23.3 of Chapter 18 of the Second Extra Session creates a fifteen member Criminal Justice Information Network Governing Board. The Board is established within the Department of Justice, State Bureau of Investigation to operate the State's Criminal Justice Information Network, the purpose of which is to provide the technical and governmental information systems necessary to effectively share criminal justice information among law enforcement, judicial and corrections agencies. The Board is established within the Department of Justice, State Bureau of Investigation for organizational and budgetary purposes only

and shall exercise all of its statutory powers independent of control by the Department of Justice. The members of the Board are appointed to four year terms and are charged with developing and operating the Criminal Justice Information Network. The Board shall report their progress 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 April 1, 1997.

Food Stamp Felony Fraud (Chapter 18, Sec. 24.31; HB 53, Sec. 24.31; Second Extra Session 1996): Sec. 24.31 of Chapter 18 of the Second Extra Session amends G.S. 108A-53 to decrease from $1000 to $400 the amount of food stamps necessary to commit felonious food stamp fraud. Anyone who obtains or attempts to obtain food stamps or authorization cards in the amount of $400 or less by false statement or representation is guilty of a Class 1 misdemeanor. Anyone who obtains or attempts to obtain food stamps or authorization cards in the amount more than $400 is guilty of a Class I felony. Sec. 24.31 is effective December 1, 1996.

STUDIES

Independent Studies, Boards, Etc., Created or Continued

Criminal Procedure Study Commission. (Chapter 17, Part IV; SB 46, Part IV; Second Extra Session 1996): The Criminal Procedure Study Commission is created to study all practices and procedures that affect the trial and disposition of criminal prosecutions in the trial divisions of the General Court of Justice, including the Criminal Procedure Act, rules of evidence, other relevant statutes, statewide and local court-adopted rules of practice and procedure, administrative rules, appellate opinions and all other relevant practices, customs, and traditions in the trial courts of North Carolina. The Commission shall submit a report to the General Assembly and the Chief Justice no later than April 1, 1998.

Crime Control and Public Safety Study Commission. (Chapter 18, Part IV; HB 53, Part IV; Second Extra Session 1996): The Department of Crime Control and Public Safety Study Commission is continued and shall make a final report to the 1997 General Assembly.

Referrals to Departments, Agencies, Etc.,

The **Department of Correction** shall investigate methods of **housing inmates within the State** rather than in out-of-state facilities and shall report its findings to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Correction Oversight Committee. (Chapter 18, Sec. 20.11; HB 53, Sec. 20.11; Second Extra Session 1996)

The **Office of State Personnel (OSP)** shall study: (1) **employee classification, salary schedules, pay equity, and pay inequities** for law enforcement officers; (2) providing **salary continuation for employees** of State-operated residential facilities who have been injured by residents of these facilities or while performing supervision over residents; and (3) **civilianizing certain law enforcement functions** and positions. The OSP shall report to the Criminal Law Study Commission by December 15, 1996. (Chapter 18, Sec. 21.2; HB 53, Sec. 21.2; Second Extra Session 1996)

Referrals to Existing Commissions

The **Joint Legislative Correction Oversight Committee** shall develop a plan for conducting a **performance audit of the Division of Adult Probation and Parole, Department of Correction.** The plan shall be submitted to the General Assembly upon the convening of the 1997 Session. (Chapter 18, Sec. 20.17; HB 53, Sec. 20.17; Second Extra Session 1996)

EDUCATION
(Kory Goldsmith, Robin Johnson, Jim Watts)

Public Schools

1996 School Bonds Act (Chapter 631; HB 1100; Regular Session 1996): A recommendation of the School Capital Construction Study Committee, Chapter 631 authorizes the issuance of $1.8 billion of State public school bonds if approved by the voters in November of 1996. It addresses the $6.2 billion backlog of school capital needs in this State that were identified by a needs assessment prepared for the School Capital Construction Study Commission. Of the $1.8 billion in bond proceeds, $30 million would be set aside for grants to small county school systems, and the remaining $1.77 billion of bond revenue would be allocated on the basis of three different methods: 40% would be allocated on the basis of average daily membership; 35% would be allocated on the basis of low wealth; and 25% would be allocated on the basis of high growth.

The State Board of Education would determine which of the small county school systems could receive a grant from the $30 million set-aside for small school systems. A small county school system is one that was entitled to receive small school system supplemental funding under The Expansion and Capital Improvements Act of 1995. A county that receives a grant from the $30 million set-aside does not have to match the allocation.

Counties would be required to match the allocations from the remaining $1.77 billion of bond revenue. The amount of the match is based on average daily membership and high growth. The required match is 3 cents times the county's 1995-96 ability to pay rank for each $1.00 of bond proceeds to be received under those allocations. This rank has been determined by the State Board of Education. Public school capital expenditures and the face amount of debt authorized or incurred for public school capital purposes since January 1, 1992, qualify for the match. With respect to debt authorized or incurred for public school facilities before January 1, 1992, amounts expended on or after January 1, 1992, for debt service for the debt qualify for the match. Any allocated funds that are not matched as required by January 1, 2003, will be redistributed among the counties that met the matching requirements.

The proceeds of the bonds must be used to construct or improve public school buildings, buy equipment needed for the newly constructed or improved school buildings, or buy land needed for the construction or improvement of the school buildings. The facilities financed by the proceeds must be used for instructional and related purposes and cannot be used for central administration facilities, maintenance facilities, trailers, relocatable classrooms, or mobile classrooms.

The bonds authorized by Chapter 631 are State general obligation bonds. This means that the State pledges its taxing power in payment of the bonds. If issued, the debt service on the bonds would be one of the items to be paid by the State from its general revenues. Chapter 631 prohibits the State Treasurer from issuing more than $450 million of the bonds in any twelve-month period. The debt service costs of State general obligation bonds, including the proposed $1.8 billion of school bonds, will be less than 2.5% of General Fund revenues. The debt service payments incurred due to the issuance of bonds or notes under this Chapter are removed from any applicable General Fund spending limit.

Chapter 631 also dissolves The Commission on School Facility Needs, specifies that the last 11 local school administrative units on the priority list established in 1988 by the Commission shall be funded from the Critical School Facility Needs Fund, and repeals the Fund 30 days after the last of those 11 projects are funded.

Chapter 631 generally became effective upon ratification, June 21, 1996.

Snow Days Offset (Chapter 662; SB 1173; Regular Session 1996), (Chapter 723; HB 1187; Regular Session 1996), (Chapter 724; HB 1208; Regular Session 1996): Chapters 662, 723, and 724, separate local legislation affect 27 local school administrative units. The boards of education in those counties may schedule longer instructional days and use the additional time to offset days missed due to inclement weather. Before using the offset provision, a local board must first schedule for use as instructional days all the extra calendar days required by law. Local boards may still have the discretion of excusing up to three instructional days and may also apply to the State Board to excuse additional days. These chapters apply to the following school administrative units: Alleghany, Avery, Buncombe Cherokee, Clay, Craven, Duplin, Gaston, Graham, Haywood, Henderson, Jackson, Jones, Lenoir, Macon, Madison, McDowell, Mitchell, Pamlico, Polk, Rockingham, Swain, Stokes, Transylvania, Wake, Watauga, and Yancey. These acts took effect June 21, 1996 and apply to the 1996-97 school year.

School Budget Act Amendments (Chapter 666; HB 1102; Regular Session 1996): Chapter 666 amends Article 31 of Chapter 115C of the General Statutes (the School Budget and Fiscal Control Act) in order to (i) facilitate the tracking of local expenditures for school capital outlay, (ii) streamline the procedure for resolving budget disputes between local school boards and boards of county commissioners, and (iii) encourage these boards to hold periodic joint planning meetings and to develop five-year plans to meet local school capital outlay needs.

This Chapter directs the State Board of Education and the Local Government Commission to modify their accounting and reporting systems in order to include five-year capital needs plans as part of the uniform budget format and to improve the reporting of each county's appropriations for public school capital outlay. G.S. 105-503 is recodified as G.S. 115C-440.1 and is then amended to direct the Local Government Commission to report annually, beginning May 1, 1997, to the General Assembly on each county's appropriations for capital outlay, including appropriations to the public school capital outlay fund, funds expended by counties on or behalf of public schools for capital outlay, monies reserved for future years' retirement of debt incurred or capital outlay, especially in relation to revenue received from the two half-cent local-option sales taxes.

In addition, Chapter 666 amends G.S. 115C-431 so that the clerk of superior court will no longer be required to act as the arbitrator of budget disputes between a local board of education and a board of county commissioners. The clerk must appoint a mediator within five days of receiving a request for mediation from either board. Recommendations of the mediator then must be made within fifteen days. Within five days of receiving the recommendations, either board may file an action in superior court.

Chapter 666 became effective July 1, 1996.

ABC's Plan (Chapter 716; SB 1139; Regular Session 1996): Recommended by the State Board of Education in its March, 1996, Report on the ABC's Plan, and the Joint Legislative Education Oversight Committee, Chapter 716 implements the State Board's ABC's Plan in order to establish an accountability model for the public schools to improve student performance and increase local flexibility and control. Except as noted, Chapter 716 became effective June 21, 1996, the date of ratification.

SCHOOL-BASED MANAGEMENT AND ACCOUNTABILITY PROGRAM: Chapter 716 rewrites G.S. 115C-12(9) to direct the State Board of Education to develop guidelines, procedures, and rules to establish, implement, and enforce the "School-

based Management and Accountability Program" (the new name given for the ABC's Plan). The Program applies to K-8 schools beginning with the 1996-97 school year and to high schools beginning with the 1997-98 school year.

This Chapter recodifies Part 4 of Article 16 of Chapter 115C of the General Statutes, G.S. 115C-238.1 through G.S. 115C-238.8 [the Performance-Based Accountability Program (PBAP)], as Article 8B of Chapter 115C. Article 8B is then rewritten to: (i) change the name of the program; (ii) make the program mandatory, rather than optional; (iii) allow local boards to transfer funds, subject to certain restrictions but without a waiver from the State Board, between funding allotments; (iv) allow the State Board to grant waivers to local school boards pertaining to the placement of principals on the State salary schedule for public school administrators in order to provide financial incentives to encourage principals to accept employment in a low-performing school; (v) eliminate systemwide plans and advisory panels; (vi) direct the State Board to adopt a process to resolve disagreements between a local board and a school when the local board fails to accept the building's school improvement plan within 60 days of its submission to the board; (vii) allow a local board, either on its own or on the recommendation of an assistance team, to vacate any portion of a school improvement plan that is unlawful or found to impede student performance at a school; (viii) repeal all references to differentiated pay; (ix) require local boards to distribute 75% of staff development funds to schools to be used in accordance with school improvement plans; (x) direct the State Board to design and implement a system that sets annual goals for each school in order to measure the growth in performance of students in each school; (xi) require schools to consider these goals as they develop their school improvement plans; (xii) direct the State Board to establish a procedure to reward the certified personnel and teacher assistants in schools that exceed their expected growth; (xiii) allow these personnel to receive the financial awards on an individual basis or to choose to make and vote on a plan to use the funds differently, which the local board must approve unless the plan involves expenditures that are not for a public purpose or are otherwise unlawful; (xiv) direct the Board to design and implement a procedure to identify schools that fail to meet the minimum growth standards, as defined by the State Board, and in which a majority of students are performing below grade level; (xv) require these "low-performing" schools to notify the parents that they have been so designated and to describe what steps they are taking to improve student performance; (xvi) allow the State Board to assign assistance teams to low-performing schools or to any school that asks for an assistance team and that the Board believes would benefit; however, the Board must give priority to low-performing schools in which the students' educational performance is declining; (xvii) provide that assistance teams will work with the schools, central offices, and local boards in order to help these schools improve student performance, and will evaluate at least semiannually the staff assigned to the schools; (xviii) require the dismissal, in accordance with G.S. 115C-325(q), of personnel assigned to "low-performing" schools that have been assigned an assistance team; (xix) allow the State Board to appoint an interim superintendent and terminate the contract of the current superintendent if more than half the schools in a system are identified as low-performing and an assistance team assigned to one of those schools recommends this action based upon a finding that the superintendent has failed to cooperate with the assistance team or has otherwise hindered that school's ability to improve; (xx) allow the State Board to suspend any of the powers and duties of the local board of education, if the State Board appoints an interim superintendent and the State Board determines that the local board of education has failed to cooperate with the interim superintendent or has otherwise hindered the ability to improve student performance in that local school administrative unit or in a school in that unit; and thereafter, if the State Board determines it is necessary to

change the governance of the local school administrative unit in order to improve student performance, it may recommend this change to the General Assembly.

Chapter 716 repeals Article 6A of Chapter 115C, "State Assistance & Intervention in Low Performing School Units", under which the State Board may appoint a caretaker administrator, a caretaker board, or both, and may terminate the contract of the local superintendent when the SYSTEM has been identified as low-performing. Also, G.S. 115C-296 is amended to allow the Board to revoke or refuse to renew a teacher's certificate when the teacher's school is identified as low-performing, and the assistance team recommends this action based on one or more reasons established by the State Board in its rules for certificate revocation or suspension.

DISMISSALS: Dismissals of personnel assigned to schools that the State Board identifies as low-performing and to which the State Board assigns an assistance team are governed by G.S. 115C-325, which Chapter 716 amends by adding a new subsection (q). This new subsection provides that the State Board must suspend with pay a principal assigned to one of these schools for more than two years before the school is identified as low-performing and may suspend with pay a principal assigned to one of these schools for less than that time. The period of suspension is pending a hearing to be held within 60 days before a panel of three members of the State Board. The panel must dismiss the principal unless the panel makes a public determination that the principal has established that the factors that led to the identification of the school as low-performing were not due to the inadequate performance of the principal. The State Board is directed to adopt procedures that ensure that due process rights are afforded to these principals. Decisions of the panel may be appealed on the record to the full State Board, with further right of judicial review as provided under Chapter 150B of the General Statutes.

The new subsection also requires the State Board to dismiss a teacher, assistant principal, director, or supervisor assigned to one of these schools when it receives two consecutive evaluations that include written findings and recommendations concerning the person's inadequate performance from the assistance team. These findings and recommendations are substantial evidence of the person's inadequate performance. The State Board may dismiss one of these individuals if the Board determines the school has failed to make satisfactory improvement after the assistance team was assigned to the school and the assistance team recommends dismissal based on one of the grounds currently enumerated for the dismissal or demotion of a career teacher. A hearing before a panel of three members of the local board may be requested within 30 days of the dismissal. The State Board is directed to develop procedures to ensure that due process rights are afforded to these individuals. Decisions of the panel may be appealed on the record to the State Board, with a further right judicial review.

Finally, this new subsection allows the State Board or a local board to terminate the contract of a dismissed administrator and allows the State Board to subpoena witnesses and documents on behalf of any party to the proceedings under the subsection.

REPORTING: The State Board of Education must submit a progress report by December 15, 1996, to the Joint Legislative Education Oversight Committee on the implementation of the ABC's plan and on the pilot projects established in 1995. Beginning October 15, 1997, the Board must submit annual reports on the implementation of Chapter 716.

NO ADDITIONAL TESTS FOR TRANSFER STUDENTS: Chapter 716 amends G.S. 115C-288(a) to prohibit principals from requiring additional testing of a student entering a public school from a private or home school when test scores from a nationally standardized measure are available and are adequate to determine the appropriate placement of the child.

PHONICS: Chapter 716 directs the State Board to (i) develop a comprehensive plan to improve reading achievement; (ii) review and revise the standard course of study to include early and systematic phonics instruction; (iii) in collaboration with the UNC Board of Governors, review, evaluate, and revise current teacher certification standards and teacher education programs to reflect the changes in the standard course of study; (iv) report annually, beginning in December of 1996, to the Joint Legislative Education Oversight Committee on the comprehensive plan to improve reading; and (v) disseminate changes to the standard course of study to local boards of education. In addition, Chapter 716 encourages local boards of education to review and revise board policies, local curricula, and professional development programs to emphasize effective programs of reading instruction that include early and systematic phonics instruction.

CHARACTER EDUCATION: The Basic Education Program, G.S. 115C-81, is amended to allow local boards to require character education.

COMMUNITY MEDIA ADVISORY COMMITTEES: Chapter 716 amends G.S. 115C-98 to allow local boards to establish community media advisory committees that may investigate and evaluate public challenges to textbooks and supplementary instructional materials on the grounds that they are educationally unsuitable, pervasively vulgar, or inappropriate to the age, maturity, or grade level of the students. The State Board must review its policies concerning these challenges and must adopt guidelines to be followed by these committees, if established.

LOCAL FLEXIBILITY: Chapter 716 makes numerous statutory changes to enhance local flexibility and decision-making:

1. G.S. 115C-84(d) is repealed to remove the restriction that limited to 60 minutes the duration of classes in basic academic courses for grades seven through nine.

2. G.S. 115C-302(a)(1) is amended to allow the scheduling of teacher workdays after the tenth calendar month, but within the fiscal year, when: (i) local boards schedule make-up dates for these workdays to be used when work-days are missed due to hazardous weather and the teacher and the supervisor agree to that make-up date; (ii) local boards have approved school improvement plans that include these workdays; or (iii) teachers and supervisors agree to these workdays. Teachers may receive their last paycheck on a pay date that occurs before the scheduled workday if that day falls after the tenth calendar month. A teacher who does not continue to be employed and who fails to make up a scheduled workday must repay any salary received but not earned. A teacher who continues to be employed, but fails to make up a scheduled workday may be dismissed under G.S. 115C-325.

3. Various statutes are amended to clarify that local boards may enter into installment and lease-purchase contracts for automobiles, school buses, mobile classroom units, photocopiers, and computers. Previous law had allowed for installment purchase contracts for automobiles. Computers purchased by either type of contract must meet the technical standards of the North Carolina Instructional Technology Plan. Lease purchase contracts, which are defined as rental arrangements with an option or obligation to purchase, may include an option to upgrade, which is common for computers, that boards may exercise without having to rebid the contract. An installment purchase is defined as a purchase where title to the property passes to the buyer, but the seller retains a security interest to ensure payment. Chapter 716 prohibits either type of contract from extending beyond the useful life of the item purchased, requires their specific approval by the board of county commissioners, prohibits contracts that do not allow schools to substitute equipment, and limits the vendor to recovery of the purchased equipment in the event of default. Contracts greater than $500,000 and for more than 5 years must be approved by the Local Government Commission.

The Information Resource Management Commission, the Department of Administration, and the Local Government Commission are directed to develop

guidelines for determining the "useful life" of an item purchased under an installment or lease purchase contract. The guidelines must include a calculation for upgrades if appropriate. The agencies must provide the guidelines to the State Board of Education by November 1, 1996 and the State Board must provide them for schools by January 1, 1996.

4. The State Board is authorized to select 12 local school administrative units to allow purchasing off State contract when an item is less than the cost under the State contract, the cost does not exceed $10,000, and the savings is documented and reported. This may be expanded to additional school units if the Board determines the program is effective. The State Board is directed to report to the Joint Legislative Education Oversight Committee the information provided by the participating school units and any findings and recommendations annually beginning in October of 1997. These provisions are effective July 1, 1996, and apply to State term contracts for which bids or offers are solicited on or after that date.

5. G.S. 115C-326 is amended to allow local boards to develop teacher evaluation tools and to evaluate career teachers on less than an annual basis.

6. G.S. 115C-47 and 115C-98 are amended to allow local boards to (i) select, procure, and use textbooks that have not been adopted by the State Board and (ii) approve school improvement plans that allow the use of nonadopted textbooks.

7. G.S. 115C-112, which established specific procedures, some of which conflicted with federal law, for suspending and expelling students with special needs, is repealed. G.S. 115C-391, which is the general law governing discipline, suspension, and expulsion of students, is amended by adding a new subsection (g) to make it clear that the policies and procedures for the discipline of students with disabilities shall be consistent with federal laws and regulations.

8. G.S. 143-57.1 is amended to permit State agencies, including schools, to consider a number of factors when determining which State-certified vendor of furniture offers the most economical purchase.

STREAMLINE APA: Chapter 716 allows the State Board to use a streamlined procedure for adopting rules directly related to the implementation of the ABC's Plan. The Board may publish the text of any proposed rule as the first step in the rulemaking procedure; a rule may take effect without waiting for submission to the General Assembly; and no fiscal note is required unless the rule affects the expenditures or revenues of a unit of local government. Chapter 716 requires the State Board to (i) make a determination as to whether a proposed rule is directly related to the implementation of the ABC's Plan; i.e., it has a rational relationship to a specific provision in this Chapter; (ii) indicate on its notice that the rule is directly related to the implementation of this Act; and (iii) provide to boards of county commissioners and education written notice that states whether a fiscal note has been prepared and that a copy of the note may be obtained from the Board. This streamlined procedure does not apply to the provisions that allow the lease-purchase of equipment and that authorize the pilot projects for purchasing off State term contracts.

Charter Schools Act (Chapter 731; HB 955; Regular Session 1996): Chapter 731 authorizes the establishment of a maximum of 100 charter schools in North Carolina. The schools will, as a general rule, operate independently of the State's public school laws and regulations. Any person, group of persons, or nonprofit organization may apply to a chartering entity for a five-year charter, with final approval required from the State Board. Chartering entities include local boards of education, the State Board of Education, and UNC constituent institutions so long as the institution is involved in the planning, operation, or evaluation of the charter school.

A charter school will be a public school within the local school administrative unit in which it is located. It will be operated by a private nonprofit corporation according

to a contract signed by the local board of education and the charter applicant. The school will be accountable to the local board of education. A charter school's contract shall be terminated: if the school fails to meet the student performance requirements in the contract, fails to meet fiscal standards, violates the law, is in material violation of the terms of the contract, if two-thirds of the faculty and support personnel vote to terminate the contract, or for other good cause identified.

A charter school must be nonsectarian and may not charge tuition. It must serve at least 65 students and employ at least 3 teachers unless the application states a compelling reason for an exception, such as the school would serve a geographically remote and small student population. A charter school shall not discriminate against any student on the basis of ethnicity, national origin, gender, or disability and shall be subject to court-ordered desegregation plans in effect for the local unit. An existing public school may convert to a charter school if a majority of the teachers and parents at the school approve the conversion. No student shall be required to attend a charter school. Of the students who seek to attend a charter school, admission shall not be determined according to the attendance area in which the child resides. However, preference shall be given to students who reside in the former attendance zone of a school that converts. A student residing in one local school administrative unit may attend a charter school located in another unit subject to the mutual agreement of the two local boards of education. A charter school shall enroll an eligible student who submits a timely application, but if capacity prohibits, students shall be chosen by lot. A charter school may, during the period of suspension or expulsion, refuse to enroll a student who has been expelled or suspended from a public school.

Each charter school will receive the State's average per pupil funding for each student, plus the local per pupil funding from the local school administrative unit in which the student resides. The charter school shall provide transportation for students living within the local school administrative unit, and may provide it for students living outside the unit. Regarding the instructional staff, 75% of teachers in kindergarten through fifth grade and 50% of teachers in sixth through twelfth grade must hold teacher certificates. A charter school's instructional program must meet the following requirements: 1) the school year shall last at least 180 days; 2) the program shall meet the student performance standards established by the State Board of Education and the local board; 3) the charter school shall conduct assessments as required for charter schools by the State Board of Education; 4) the school shall comply with policies adopted by the State Board of Education for charter schools relating to the education of children with special needs; and 5) the school is subject to Article 27 of Chapter 115C (Discipline) except that a charter school may expel a student and return the student to another school in the local school unit in accordance with the terms of the charter school contract.

The State Board may establish a Charter School Advisory Committee to assist with the implementation of Chapter 731 and to provide technical assistance to chartering entities and applicants. The State Board must review the educational effectiveness of charter schools and the effect of charter schools on local units no later than January 1, 1999, and report its findings to the Joint Legislative Education Oversight Committee. The report shall include recommendations to modify, expand, or terminate the use of charter schools in this State. If analysis demonstrates substantial success, the General Assembly shall consider expanding the number of charter schools. The State Board must also report annually to the Joint Legislative Education Oversight Committee and to the Joint Legislative Commission on Governmental Operations on the impact of charter schools on the delivery of services by the public schools, academic progress of students in charter schools, and best practices resulting from the operation of these schools. Chapter 731 took effect June 21, 1996.

Substitute Pay for Teacher Assistants (Chapter 18, Sec. 18.4; HB 53, Sec. 18.4; Second Extra Session 1996): Effective July 1, 1996, Section 18.4 of Chapter 18 of the Second Extra Session amends G.S. 115C-12(8) to allow a teacher assistant who acts as a substitute teacher to receive substitute pay equal to the daily salary of an entry-level teacher with an "A" certificate. Formerly, only teacher assistants who substituted for teachers in kindergarten through third grade were able to receive this amount.

Exemptions from the Computer Skills Test (Chapter 18, Sec. 18.5; HB 53, Sec. 18.5; Second Extra Session 1996): Section 18.5 of Chapter 18 of the Second Extra Session authorizes the State Board of Education to exempt schools from the required computer skills test when they lack adequate computer resources. This section became effective July 1, 1996.

Minimum Vacation Leave for Bus Drivers (Chapter 18, Sec. 18.6; HB 53, Sec. 18.6; Second Extra Session 1996): Effective July 1, 1996, Section 18.6 of Chapter 18 of the Second Extra Session entitles bus drivers to one day of paid vacation leave each school year after they have been employed for at least one academic school year and if they are not entitled to more than one such day.

School Pay Date Flexibility Pilot Program (Chapter 18, Sec. 18.8; HB 53, Sec. 18.8; Second Extra Session 1996): Effective July 1, 1996, Section 18.8 of Chapter 18 of the Second Extra Session authorizes the State Board of Education to establish a pilot program to give a maximum of four local school boards additional flexibility in setting pay dates for 10-month employees. Participating boards may pay these employees for a month of employment even when the days employed are less than a full month at either end of the employees' contracts. The boards must bear the cost of any funds, regardless of whether they are recouped, that were prepaid for work never done. Section 18.8 directs the State Board to report on the program to the Joint Legislative Education Oversight Committee by September 1, 1998.

Additional Educational and Career Opportunities for Teacher Assistants (Chapter 18, Sec. 18.10; HB 53, Sec. 18.10; Second Extra Session 1996): Section 18.10 of Chapter 18 of the Second Extra Session amends G.S. 115C-468(c), which establishes the criteria for awarding funds to teacher assistants from the Scholarship Loan Fund for Prospective Teachers. The amendment directs the Superintendent of Public Instruction to give first priority to individuals who worked as teacher assistants for at least five years, whose positions as teacher assistants were abolished, and who have been admitted to an approved teacher education program in the State.

In addition, the Superintendent may earmark a portion of the funds designated for teacher assistants to be used for two-year awards for individuals who have been employed as teacher assistants for at least one year and who plan to attend community colleges to get skills to use in public schools or to obtain an early childhood associate degree. In addition to receiving credit upon the amount due by working as teachers in public schools, these recipients may receive credit by working in nonteaching positions in the State's public schools or in licensed day care centers. Section 18.10 took effect July 1, 1996.

Professional Teaching Standards Commission (Chapter 18, Sec. 18.12; HB 53, Sec. 18.12; Second Extra Session 1996): Effective July 1, 1996, Section 18.12 of Chapter 18 of the Second Extra Session is based on recommendations the Joint Legislative Education Oversight Committee received from the North Carolina Professional Teaching Standards Commission (Commission), which the General Assembly established in 1994 to establish high standards for North Carolina teachers and the

teaching profession. Section 18.12 amends G.S. 115C-295.1, which establishes the Commission, to make it comparable to the Standards Board for Public School Administration and to require a majority of the members, beginning September 1, 1996, to be teachers. Section 18.12 also adds the following two new sections to Article 20 (Teachers) of Chapter 115C of the General Statutes:

G.S. 115C-295.2 directs the Commission to: (i) develop recommended professional standards for teachers; (ii) review initial and continuing certification requirements, and certification renewal; (iii) consider methods of teacher assessment; and (iv) evaluate and develop a recommended procedure for the assessment and recommendation of candidates for initial and continuing teacher certification. The Commission is directed to submit its recommendations to the State Board, which must adopt or reject them. The State Board must adopt a recommendation in the substantive form in which it was submitted or provide specific reasons for its rejection. If the Board rejects a recommendation, the Commission may submit an amended recommendation for the Board's adoption or rejection. If the Board rejects the Commission's original and amended recommendation concerning the implementation of assessments for certification and the procedure for the assessment and recommendation of candidates for teacher certification, the State Board may develop its own plan. The Commission also is directed to report annually by December 1 to the Joint Legislative Education Oversight Committee. In addition, the State Board must report to that Committee by April 15, 1998, on the current status of assessments for certification and any changes to the procedures for assessment and recommendation of candidates for teacher certification.

G.S. 115C-295.3 directs the State Board to establish a Professional Practices Board composed of teachers, school administrators, and representatives of the public to (i) develop a code of ethics for the teaching profession, (ii) develop investigation procedures, (iii) investigate complaints concerning violation of the code of ethics, and (iv) make recommendations to the State Board concerning the revocation and suspension of teacher certificates as the result of an ethics violation. The State Board is directed to adopt rules necessary to implement this section.

Teacher Vacation Leave for Adoptive Parents (Chapter 18, Sec. 18.13A; HB 53, Sec. 18.13A; Second Extra Session 1996): Section 18.13A of Chapter 18 of the Second Extra Session, effective July 1, 1996, amends G.S. 115C-302(f) to remove the 12-week limitation on leave taken by teachers to care for an adopted or foster child.

School Facilities Guidelines (Chapter 18, Sec. 18.17; HB 53, Sec. 18.17; Second Extra Session 1996): Section 18.17 of Chapter 18 of the Second Extra Session is a recommendation of the School Capital Construction Study Commission and is based on the following Commission findings:

1. The current facilities standards and school plan review process should be revised in order to provide more flexibility and local control to school units in their design and construction of school facilities.
2. There is potential cost-savings in the design of public schools through the use of prototype plans.

In order to give additional flexibility to local school administrative units and to change the State Board's school facilities guidelines and standards to guidelines only, Section 18.17 makes the following statutory changes:

1. Subsection (a) of Section 18.17 amends G.S. 115C-81(b), which sets out the requirements of the Basic Education Program ("BEP"), to direct the State Board to adopt facilities guidelines that reflect educational program appropriateness, long-term cost efficiency, and safety considerations.

Formerly, this statute required the Board to adopt facilities standards as part of the BEP.

2. Subsection (b) of Section 18.17 repeals G.S. 115C-489.3(c), which required the "statewide school facility minimum standards adopted by the State Board" (used by the Board to make grants from the Critical School Facility Needs Fund) to apply to the "construction, reconstruction, enlargement, and improvement of all school buildings ...., regardless of the funds for the project."
3. Subsection (c) of Section 18.17 amends G.S. 115C-521(c) to remove the requirement that the State Superintendent must approve all plans for new school buildings. Instead, local boards will be required to (i) develop these plans based upon a consideration of the facilities guidelines adopted by the State Board, (ii) submit the plans for review and comments by the State Board, and (iii) review the plans based upon a consideration of any comments received from the State Board.
4. Subsection (e) of Section 18.17 provides that former guidelines and standards adopted by the State Board remain in effect after the ratification date, August 3, 1996, as guidelines only.

In addition, Subsection (d) of Section 18.17 creates a new G.S. 115C-521(e) to require the State Board to establish within the Department of Public Instruction a clearinghouse for access by local boards and others that may wish to use prototype designs. A computer database will be available to all local boards of education, and all registered NC architects and engineers may submit plans for inclusion in this computer database. The original architect or engineer will retain ownership and liability for a prototype design. The State Board may adopt rules to implement this Subsection.

North Carolina Standards Board for Public School Administrators (Chapter 18, Sec. 18.21; HB 53, Sec. 18.21; Second Extra Session 1996): Section 18.21 of Chapter 18 of the Second Extra Session was recommended by the Joint Legislative Education Oversight Committee. The General Assembly established the Standards Board for Public School Administration (Standards Board) in 1993 and directed the Board to (i) establish professional standards for school administrators, (ii) develop and implement the North Carolina Public School Administrator Exam (exam), based on those standards, and (iii) recommend persons for school administrator certification to the State Board of Education. Implementation of the exam will begin after January 1, 1998.

In order to conform the statutes governing the Standards Board with the State Board's constitutional authority to supervise and administer the State's public school system, Subsection (a) of Section 18.21 amends G.S. 115C-290.5 to require the Standards Board to submit its proposed exam to the State Board of Education for its adoption or rejection. The State Board must adopt it in the substantive form in which it was submitted or provide specific reasons for its rejection. The Standards Board may then resubmit the exam. If the State Board fails to adopt the proposed exam on its second submission, it may develop and adopt its own exam by December 1, 1997. If the State Board develops the exam, it is encouraged to use the Standard Board's proposed exam to the maximum extent that it is consistent with the State Board's policies. This Subsection took effect August 3, 1996, the date of ratification.

Subsection (b) of Section 18.21, effective January 1, 1998, amends G.S. 115C-290.7(a) to allow individuals who complete "certification only" programs by December 31, 1999, to be eligible to take the public school administrator exam in order to become eligible for certification after January 1, 1998. Before 1993, there were two general ways a person could become a public school administrator. One was to have a graduate degree from a public school administrator program. The other was to have a

graduate degree in any field and then to have completed what was known as a "certification only" program. In 1993, the General Assembly began to phase out these certification only programs at UNC's constituent institutions, but there are individuals who will not be quite finished in those programs on January 1, 1998.

Subsection (c) of Section 18.21 amends G.S. 115C-290.8, effective January 1, 1998, to expand the list of persons who will be exempt from the new school administrator standards (and the exam) to include individuals who held an active State administrator/supervisor certificate at any time during the five years before January 1, 1998, and at the same time were engaged in school administration. This covers private school administrators and professors of educational administration who have held active State administrator/supervisor certificates. In addition, individuals who, during the five years before January 1, 1998, complete an administrative internship as part of an approved graduate program in school administration and obtain an active State administrator/supervisor certificate will be exempt from the standards and the exam.

Education of Gifted Students (Chapter 18, Sec. 18.24; HB 53, Sec. 18.24; Second Extra Session 1996): Historically in North Carolina, academically gifted children have been included as one of the statutory categories of "children with special needs". The majority of the other categories of children included in that definition are children with disabilities, whose programs are governed primarily by federal law. The effect of including gifted children was to mandate evaluation, identification, and placement procedures at the State level. Effective July 1, 1996, Section 18.24 of Chapter 18 of the Second Extra Session, a recommendation of the Joint Legislative Education Oversight Committee, will allow local school systems to have greater control and flexibility in how they identify and serve these children. It is based on recommendations from the Task Force on Academically Gifted Education that the General Assembly received two years ago from the Department of Public Instruction.

Section 18.24 deletes all current statutory references to academically gifted students and creates a new Article 9B - "Academically or Intellectually Gifted Students" in Chapter 115C of the General Statutes.

G.S. 115C-150.5 states the intent of the General Assembly and provides a description of academically or intellectually gifted students, which is based on a definition that appeared in a national report several years ago.

G.S. 115C-150.6 directs the State Board of Education to develop and disseminate guidelines for local school units to use in developing local plans to identify and serve gifted students. The guidelines should address identification, staff development, program evaluation, and other appropriate information. This section also directs the Board to provide ongoing technical assistance to local units.

G.S. 115C-150.7 directs each local board of education to develop a local plan to identify and establish a procedure for providing appropriate educational services to gifted students. Parents, school personnel, and the community are to be involved in developing this plan. The plan must include: (i) screening, identification, and placement procedures; (ii) a statement of the program to be offered that includes different types of services provided in a variety of settings to meet the diversity of identified gifted students; (iii) measurable objectives for the various services that align with core curriculum and an evaluation method that focuses on improved student performance; (iv) professional development; (v) a plan to involve the school community, parents, and representatives of the local community in an ongoing manner; (vi) the person responsible for implementing the plan; (vii) a procedure to resolve disagreements between parents or guardians and the

local school administrative unit; and (viii) any other information the local board considers necessary or appropriate.

This section also directs the local board to submit its plan, and subsequent changes to its plan, to the State Board for its review and comments and to consider the Board's comments before it implements the plan or makes changes to the plan. Plans shall remain in effect for no more than three years, but may be amended more often.

G.S. 115C-150.8 allows parents or guardians to file a petition for a contested case hearing if the locally approved procedure fails to resolve a dispute between the parent or guardian and the local school administrative unit. The review will be limited to whether (i) the local school administrative unit improperly failed to identify the child as academically or intellectually gifted, or (ii) the local plan has been implemented appropriately in connection with the child.

Section 18.24 of Chapter 18 also changes the public school funding allotments so that funds for gifted students are separated from the funds for children with special needs. Previously, funds were allocated by using different formulas, but were merged in one "Exceptional Children" allotment category and could be used interchangeably. For the 1996-97 school year, the two new allotments may continue to be used interchangeably. In addition, funds for the gifted students may be used to implement the local plan and may be used for other purposes, if that use is part of an accepted school improvement plan and if that school demonstrates it is providing appropriate services to gifted students assigned to that school in accordance with the local plan for gifted students. Beginning with the 1997-98 school year, the funds for children with special needs may not be used for any other purpose, and the funds for gifted students may not be used for children with special needs unless that purpose is part of an accepted school improvement plan and that school demonstrates it is providing appropriate services to gifted students assigned to that school in accordance with the local plan for gifted students.

This Section directs the State Board to establish dates for school systems to begin implementation of local plans for gifted students. All systems must begin implementation no later than the beginning of the 1998-99 school year. Finally, the State Board must report to the Joint Legislative Education Oversight Committee by December 15, 1996, and by March 15, 1998, on the implementation of this Section.

School Bond Act Technical Corrections (Chapter 18, Sec. 18.25; HB 53, Sec. 18.25; Second Extra Session 1996): Effective upon ratification, August 3, 1996, Section 18.25 of Chapter 18 of the Second Extra Session amends Section 4 of Chapter 631 of the 1995 Session Laws, which authorized the issuance of $1.8 billion of general obligation bonds to finance public school construction, if approved by the voters in November of 1996. Section 18.25 clarifies that the non-State expenditures that may be used by counties to meet their local match requirements include: (i) amounts expended on or after January 1, 1992, for debt service for debt incurred for public school facilities before that date; (ii) the face amount of debt authorized or incurred for public school facilities on or after January 1, 1992; and (iii) with respect to expenditures other than for debt service, funds budgeted, earmarked, or committed on or after January 1, 1992, for the purpose of public school facilities.

Repeal Local School Pay Dates (Chapter 18, Sec. 18.26; HB 53, Sec. 18.26; Second Extra Session 1996): Section 18.26 of Chapter 18 of the Second Extra Session, effective July 1, 1996, repeals a number of local laws to allow the local school administrative units in Kings Mountain and in Alleghany, Brunswick, Caldwell, Charlotte-Mecklenburg, Cherokee, Dare, Haywood, Henderson, New Hanover, Pitt, Scotland, and Watauga Counties to set their employee pay dates in accordance with Chapter 115C of the General Statutes. Before 1995, Chapter 115C prescribed the

monthly pay dates for school employees, and these school units had local exceptions to those dates. In 1995, the General Assembly amended Chapter 115C to allow local boards to set their own monthly pay dates for employees, so long as employees are not prepaid.

School Budgets and School Improvement Plans Made Available (Chapter 18, Sec. 18.27; HB 53, Sec. 18.27; Second Extra Session 1996): Effective July 1, 1996, Section 18.27 of Chapter 18 of the Second Extra Session amends G.S. 115C-288 to require each principal to keep copies of the school's current budget and school improvement plan and to allow parents and others to obtain copies in accordance with the Public Records Law.

Alternative Learning Programs/Guidelines, Technical Assistance, Evaluation (Chapter 18, Sec. 18.28; HB 53, Sec. 18.28; Second Extra Session 1996): Section 18.28 of Chapter 18 of the Second Extra Session amends G.S. 115C-12 to direct the State Board of Education to (i) adopt guidelines for assigning students to alternative learning programs; (ii) provide technical assistance to local school units as they develop and implement plans for these programs; (iii) evaluate the effectiveness of these and other programs; and (iv) report annually, beginning in December of 1996, to the Joint Legislative Education Oversight Committee on the results of the evaluation. In addition, the State Board is directed to modify its accounting system so it can account for school resource officers in each local school administrative unit. Local school administrative units are directed to: (i) report to the State Board on how funds in the Alternative Schools/At-Risk Student allotment are spent; (ii) cooperate with the State Board as it conducts its evaluation; and (iii) give first priority to use expansion funds in the Alternative Schools/At-Risk Student allotment for uniformed school resource officers in each high school. Local boards are encouraged not to use funds in the Alternative Schools/At-Risk Student allotment to supplant local funds. Section 18.28 of Chapter 18 of the Second Extra Session took effect July 1, 1996.

Higher Education

Pembroke State Name Change (Chapter 603; HB 1072; Regular Session 1996): Effective July 1, 1996, Chapter 603 changes the name of Pembroke State University to The University of North Carolina at Pembroke.

Higher Education Transfer Plan (Chapter 625; SB 1161; Regular Session 1996): Chapter 625 directs the State Board of Community Colleges to review its policies and rules and, by September 1, 1997, make all necessary changes in order to fully implement the Board of Governors' and the State Board of Community Colleges' system-wide plan for the transfer of credits. Chapter 624 took effect June 21, 1996.

WSSU Residence Sale Proceeds (Chapter 711; HB 1258; Regular Session 1996): Chapter 711 allows the University of North Carolina to keep the proceeds from the sale of the Winston-Salem State University Chancellor's residence and to apply those proceeds against the purchase of a new residence. The act is effective June 21, 1996.

Aid to Students Attending Private Colleges (Chapter 18, Sec. 16; HB 53, Sec. 16; Second Extra Session 1996): Section 16 of Chapter 18 of the Second Extra Session amends Section 15 of Chapter 324 of the 1995 Session Laws to prohibit the distribution of legislative tuition grants to any student who is incarcerated in a State or federal prison for committing: (i) a Class A, B, B1, or B2 felony; or (ii) a Class C through I felony who is not eligible for parole or release within 10 years. The State Education

Assistance Authority is also directed to document information related to: (i) the number of full-time equivalent North Carolina students enrolled in off-campus programs; (ii) the amount of State funds collected by each institution under G.S. 116-19 for those students; and (iii) the number of scholarships and amount of the scholarships awarded under G.S. 116-19 to students enrolled in off-campus programs. The State Education Assistance Authority shall report its findings to the Joint Legislative Commission on Governmental Operations by March 1, 1997.

Facilitate Financing of Fire Warning (Chapter 18, Sec. 16.5; HB 53, Sec. 16.5; Second Extra Session 1996): Section 16.5 of Chapter 18 of the Second Extra Session amends Article 1 of Chapter 116 by adding a new Part that creates a Fire Safety Loan Fund for installing fire safety equipment and fire safety systems in fraternity and sorority housing. The revolving fund will be administered by the Office of the State Treasurer. The interest free loans must be secured by a first or second mortgage or other pledge and may not exceed 10 years. The proceeds from the repayment of prior loans shall be made available for subsequent loans. Section 16.5 also directs The University of North Carolina Board of Governors to use funds from the Reserve for Repairs and Renovations to add central fire alarm and warning systems to residence halls at the constituent institutions and at the North Carolina School of Science and Mathematics. This section took effect July 1, 1996.

Report on Services Provided by Faculty and Student Advisors (Chapter 18, Sec. 16.6; HB 53, Sec. 16.6; Second Extra Session 1996): Section 16.6 of Chapter 18 of the Second Extra Session directs the Board of Governors of the University of North Carolina to report to the Joint Legislative Education Oversight Committee regarding the implementation by each constituent institution of (i) the progress of the institution's initiative to improve academic advising, (ii) the results of each institution's senior survey, and (iii) each institution's plans to address items on the senior survey that received a score of dissatisfaction above thirty-three percent (33%). The Board of Governors must submit this report prior to January 2, 1997.

Parental Savings Trust Fund (Chapter 18, Sec. 16.7; HB 53, Sec. 16.7; Second Extra Session 1996): Section 16.7 of Chapter 18 of the Second Extra Session amends Article 23 of Chapter 116 by adding a new section (G.S. 116-209.25) creating the Parental Savings Trust Fund to enable parents to save funds to meet the costs of postsecondary education for eligible students. The fund shall be administered by the State Education Assistance Authority and the State Treasurer is authorized to invest the funds pursuant to certain statutory provisions. The State Education Assistance Authority is also authorized to develop and administer a loan program to provide loans to qualified parents and interested parties to assist the postsecondary education of eligible students. Section 16.7 took effect July 1, 1996.

Health Insurance for Graduate Assistants (Chapter 18, Sec. 16.13; HB 53, Sec. 16.13; Second Extra Session 1996): Section 16.13 of Chapter 18 of the Second Extra Session allows the special responsibility constituent institutions of The University of North Carolina to provide health insurance for graduate assistants from the funds carried forward to the next fiscal year pursuant to the funding flexibility granted under G.S. 116-30.3.

Funds to Reward Excellence in Teaching (Chapter 18, Sec. 16.14; HB 53, Sec. 16.14; Second Extra Session 1996): Section 16.14 of Chapter 18 of the Second Extra Session directs the Board of Governors of The University of North Carolina to develop policies for distributing an average one-half percent (1/2%) salary increase for teaching faculty

members who demonstrate excellence in teaching. The policy shall not apply to faculty members at the University of North Carolina at Chapel Hill or at North Carolina State University, however, Section 16.11 provides additional funds for academic enhancement for these institutions. Section 16.14 takes effect September 1, 1996.

Computation of FTE Courses Taught in Prisons (Chapter 18, Sec. 17; HB 53, Sec. 17; Second Extra Session 1996): Section 17 of Chapter 18 of the Second Extra Session directs community colleges to compute full-time equivalent student hours on the basis of both contact hours and student membership hours for curriculum education programs that are taught in prison facilities and that comply with the State Board of Community Colleges' correctional course offering matrix. The State Board of Community Colleges shall report both counts to the General Assembly by January 15, 1997.

In-State Tuition for Families Transferred into State (Chapter 18, Sec. 17.1; HB 53, Sec. 17.1; Second Extra Session 1996): Section 17.1 of Chapter 18 of the Second Extra Session amends G.S. 115D-39 to allow a community college to charge in-State tuition to up to one percent (1%), rounded up to the next whole number, of its out-of-state students to accommodate the families transferred by business, industry, or civilian families transferred by the military. Section 17.1 also directs the State Board of Community Colleges to adopt rules to implement the section, effective for the fall 1996 quarter.

Expenditure for New and Expanding Industry (Chapter 18, Sec. 17.4; HB 53, Sec. 17.4; Second Extra Session 1996): Section 17.4 of Chapter 18 of the Second Extra Session amends G.S. 115D-5 by adding a new subsection (i) requiring the State Board of Community Colleges to submit a report twice a year to the Joint Legislative Education Oversight Committee regarding expenditures for the New and Expanding Industry Program. The report shall include (for each company or individual that receives funds) the total amount of funds received, the amount of funds per trainee received, the amount of funds received per trainee by the community college providing the training, the number of trainees trained, and the number of years the company or individual has been funded. The first report, due September 1, 1996, shall include this information for the prior three fiscal years.

Uniform Medical History Form (Chapter 18, Sec. 17.5; HB 53, Sec. 17.5; Second Extra Session 1996): Section 17.5 of Chapter 18 of the Second Extra Session directs the State Board of Community Colleges and the Board of Governors of The University of North Carolina to adopt a uniform student medical history form for use by the State's public institutions of higher education. The State Board of Community Colleges and the Board of Governors shall submit a progress report on the implementation of this section to the Joint Legislative Education Oversight Committee by December 15, 1996. The uniform student medical history form shall be used by all new students who are required to submit health forms and who enroll after July 1, 1997.

Community Colleges/Budget Realignment (Chapter 18, Sec. 17.6; HB 53, Sec. 17.6; Second Extra Session 1996): Section 17.6 of Chapter 18 of the Second Extra Session allows the Department of Community Colleges to realign its budget in accordance with the departmental reorganization plan adopted by the State Board of Community Colleges. Section 17.6 also directs the Department of Community Colleges to prepare a response to the State Auditor's Performance Audit Report of April 1996 regarding the creation of the new Division of System Affairs, and to present its response to the Senate and House Appropriations Subcommittees on Education prior to February 15, 1997.

Clarification of Fund Use (Chapter 18, Sec. 17.7; HB 53, Sec. 17.7; Second Extra Session 1996): Section 17.7 of Chapter 18 of the Second Extra Session amends G.S. 115D-5 by adding a new subsection (j) that clarifies that the State Board of Community Colleges Board Reserve Fund shall be used for feasibility studies, pilot projects, start-up of new programs, and innovative ideas. The State Board shall report to the Joint Legislative Education Oversight Committee on expenditures from the Board Reserve Fund on January 15 and June 15 of each year.

Information Highway Sites/Community Access (Chapter 18, Sec. 17.8; HB 53, Sec. 17.8; Second Extra Session 1996): Section 17.8 of Chapter 18 of the Second Extra Session provides that it is the policy of the State to make all North Carolina Information Highway sites available to all public agencies for public use. Section 17.8 also directs the Education Cabinet to adopt guidelines for ensuring public access to the university, community colleges, and public school information highway sites. The Education Cabinet shall report on these guidelines to the Joint Legislative Education Oversight Committee by January 2, 1997.

Funds to Reward Excellence in Teaching (Chapter 18, Sec. 17.9; HB 53, Sec. 17.9; Second Extra Session 1996): Section 17.9 of Chapter 18 of the Second Extra Session directs the State Board of Community Colleges to develop policies for distributing an average one-half percent (1/2%) salary increase for teaching faculty members who demonstrate excellence in teaching. Section 17.9 takes effect September 1, 1996.

STUDIES

Referrals to Departments, Agencies, Etc.

The **State Board of Community Colleges** shall:

(1) Study ways to encourage **pilot projects for higher education two plus two programs**; (Chapter 17, Sec. 17.2(b); HB 53, Sec. 17.2(b); Second Extra Session 1996)

(2) Study the **funding formula for its distribution of funds to local community colleges** and recommend any changes to the General Assembly by January 31, 1997. (Chapter 17, Sec. 17.3; HB 53, Sec. 17.3; Second Extra Session 1996)

The **Education Cabinet** shall:

(1) Consider the **capacity of the physical facilities of private colleges and universities** as it develops its plan to provide incentive funding for private colleges to increase their enrollment of North Carolina residents; (Chapter 16, Sec. 16.12; HB 53, Sec. 16.12; Second Extra Session 1996)

(2) Study ways to eliminate barriers to **cooperation among public schools, community colleges, and universities in the area of distance learning**; develop a plan for sharing various functions and services; and report this plan to the General Assembly by January 31, 1997. (Chapter 17, Sec. 17.2(a); HB 53, Sec. 17.2(a); Second Extra Session 1996)

The **State Board of Education** shall:

(1) Study **ways to reward teachers and other school personnel** by linking salary increases to student performance and report to the Joint Legislative Education Oversight Committee by January 15, 1997; (Chapter 18, Sec. 18.16; HB 53, Sec. 18.16; Second Extra Session 1996)

(2) Establish the **School Facilities Task Force** to: (i) review the State Board's facilities guidelines and make recommendations to the State Board on new guidelines to be used to assist local school administrative units in the construction, acquisition, renovation, and replacement of facilities, furniture, equipment, apparatus, and spaces for public schools; and (ii) develop and recommend to the State Board (a) a procedure for local school units to follow when they submit their facilities plans to the State Board for review and comments and (b) a proposal for the establishment of a central clearinghouse for prototype designs. The State Board shall adopt revised facilities guidelines, a procedure to review facilities plans, and a plan to establish a central clearinghouse for prototype designs based upon a consideration of the recommendations of the School Facilities Task Force, and report to the General Assembly by April 15, 1997. (Chapter 18, Sec. 18.18; HB 53, Sec. 18.18; Second Extra Session 1996)

UNC Board of Governors shall (i) evaluate university residential facilities for fire detection and safety equipment; (ii) determine the estimated cost to install adequate fire detection and safety equipment; (iii) report the findings to the General Assembly as soon as possible; (iv) begin to address these fire safety needs during the 1996-97 fiscal year by giving top priority to the most egregious fire safety needs; (v) report to the Joint Legislative Commission on Governmental Operations if it finds that insufficient funds from sources other than the General Fund are available to provide for fire safety improvements in campus residential facilities that are not supported by the General Fund; and (vi) include in its budget requests for the 1997-99 biennium the estimated amount needed to address any remaining fire safety needs of residential facilities located on campuses. (Chapter 16, Sec. 16.4; HB 53, Sec. 16.4; Second Extra Session 1996)

Referrals to Existing Commissions

Education Oversight Committee, Joint Legislative shall appoint a subcommittee, including public members, to conduct a comprehensive review of public school laws, identify laws in need of revision, and revise laws. (Chapter 18, Sec. 18.23; HB 53, Sec. 18.23; Second Extra Session 1996)

Governmental Operations, Joint Legislative Commission on, shall contract with a qualified employee benefits consulting organization to conduct a comparative analysis of certified public school personnel compensation and to produce a "regional compensation survey model"; shall award a contract by October 15, 1996; shall submit a progress report by December 31, 1996 and final report by April 1, 1997. (Chapter 18, Sec. 18.20; HB 53, Sec. 18.20; Second Extra Session 1996)

ENVIRONMENT AND NATURAL RESOURCES
(Sherri Evans-Stanton, George F. Givens, Jeff W. Hudson)

Prohibit Shellfish Leases (Chapter 547; HB 1074; Regular Session 1996): Chapter 547 prohibits the Secretary of Environment, Health, and Natural Resources from issuing shellfish leases in the Core Banks area from Cape Lookout to Portsmouth Island east of the Channel. In addition, Chapter 547 imposes a one-year moratorium on new shellfish cultivation leases in the remaining area of Core Sound not described in Section 1 of this act. (NOTE: Chapter 547 originally established the moratorium on the remaining area in Carteret County, but HB 1077 (Chapter 633) subsequently amended Chapter 547 so that the moratorium applies only to the remaining area of Core Sound.) Chapter 547 also requires the Joint Legislative Commission on Seafood and Aquaculture to study the entire shellfish lease program during the moratorium. This act became effective May 1, 1996 and applies to any pending shellfish cultivation application or lease.

Extend Fisheries Moratorium Report Date (Chapter 551; HB 1078; Regular Session 1996): Chapter 551 extends the final report date of the Moratorium Steering Committee to November 1, 1996. In addition, Chapter 551 directs the Joint Legislative Commission on Seafood and Aquaculture to make its final report on its findings, together with any recommended legislation, to the 1997 General Assembly. This act became effective upon ratification on June 5, 1996.

Nitrogen Reduction Goal (Chapter 572; HB 1339; Regular Session 1996): Chapter 572 establishes a goal of reducing the average annual load of nitrogen delivered from point and nonpoint sources to the Neuse River Estuary by a minimum of 30% of the average load for the period 1991 through 1995 by the year 2001 and any further reductions that may be achieved to protect water quality. It directs the Environmental Management Commission to develop and adopt a plan to achieve this goal by 1 November 1996. Chapter 572 further directs the Environmental Management Commission to report to the Environmental Review Commission by 1 November 1996 and on an annual basis thereafter on progress in achieving the nitrogen reduction goal. It also allows the Commission to adopt temporary rules to implement the provisions of this act. This act became effective upon ratification on 19 June 1996.

Wastewater System Improvement Permits (Chapter 585; SB 687; Regular Session 1996): Chapter 585 creates a second category of wastewater system improvement permits. The existing category, improvement permits for which a plat is provided, will remain valid without expiration. The new category of improvement permits, those for which a site plan is provided, will be valid for five years. This act became effective upon ratification on June 20, 1996 and applies to all applications on or after the date.

Remove Endorsement to Sell Sunset (Chapter 586; HB 1075; Regular Session 1996): Chapter 586 removes the sunset from the endorsement to sell program (referred to as the Trip Ticket Program). This program collects commercial fisheries data through individual trip tickets. This act became effective upon ratification on June 20, 1996.

Solid Waste Amendments (Chapter 594; HB 859; Regular Session 1996): Chapter 594 amends the Solid Waste Management Act of 1989 and several related statutes in various ways. Sections 1 through 5 amend G.S. 130A-290 (definitions applicable to solid waste management). Section 6 clarifies the authority of the Department of

Environment, Health, and Natural Resources (DEHNR) to adopt rules for determining whether a facility or equipment qualifies for special tax treatment, since resource recovery facilities or equipment do not involve "waste". Section 7 clarifies requirements for demonstration of financial responsibility by privately owned solid waste management facilities.

Section 8 revises and clarifies the State's solid waste management policy and goals by making a technical change in the wording of the solid waste hierarchy; updating the statewide waste reduction goal by deleting the 25% goal for 1993 and retaining the 40% goal for 2001; deleting the subsection allowing waste reduction by incineration to count toward up to 10% of the state goal (since local governments will be allowed to establish specific goals independently of the statewide 40% goal); adding a new subsection to encourage private/public partnership for recovery of materials and energy from solid waste; and deleting existing language on local solid waste plans. Section 9 clarifies the exemption of recovered materials from regulation as solid waste.

Section 10 amends existing law pertaining to powers and duties of DEHNR to add a requirement that DEHNR cooperate with local governments; to delete the requirement that DEHNR conduct at least one workshop a year in counties served by a council of governments; to change the date of the annual report on the status of solid waste management efforts in the State from 1 May to 1 March; to change the reporting requirements so that the report is presented to the Environmental Review Commission instead of the General Assembly; to allow for any proposed legislation to implement the recommendations in the report; and to require that the report include information on progress in polystyrene recycling. Section 11 requires that the State solid waste management plan include provisions that encourage public/private partnerships that strengthen the demand for recyclables and encourage economic development through recovery of materials. Section 12 deletes obsolete dates and clarifies rulemaking authority.

Section 13 re-writes the existing law regarding local government solid waste management responsibilities by deleting the requirement that "designated local governments" provide solid waste management facilities; requiring all local governments to assess collection and disposal capacity necessary to meet local needs (Local governments are required to take appropriate actions to meet service or capacity deficiencies.); deleting language relating to fees that is recodified elsewhere; modifying the planning requirements for local governments to provide for greater flexibility (Local governments are required to develop a 10-year comprehensive solid waste management plan that includes full cost accounting of solid waste management.); requiring local governments to make a good-faith effort to meet the State's 40% solid waste reduction goal; allowing local governments to set waste reduction goals for the years 2001 and 2006 (The goal may be lower than statewide 40% target.); moving the date by which local governments are to annually report to DEHNR on solid waste management activities from 1 December to 1 September; and modifying reporting requirements to include information on implementation of the local solid waste management plan and on the costs and financing methods of local solid waste management activities.

Section 14 replaces the previous requirement that local governments initiate recycling programs with a requirement that local governments establish and maintain waste reduction programs to meet locally determined waste reduction goals. Section 15 changes the penalties that apply to local governments that do not comply with the Solid Waste Management Act to allow the State to withhold funds from Scrap Tire Disposal Account and White Goods Management Account. (Previously, the State could withhold any funds, including public health funds, under the control of DEHNR.) Section 16 amends requirements applying to generators of municipal solid waste, owners and operators of privately owned solid waste management facilities, and collectors of municipal solid waste.

Section 17 deletes the requirement that a notice of recyclability be printed on each plastic bag provided to a retail customer and repeals the ban on incineration of steel cans; provides that the ban on landfilling whole scrap tires applies to whole pneumatic rubber coverings, but not to whole solid rubber coverings; adds lead-acid batteries to the list of items banned from disposal in landfills and incinerators; and makes changes to labeling requirements for plastic containers to be consistent with nationwide industry standards.

Section 18 clarifies the authority of the Health Services Commission to adopt rules regarding compost. Section 19 changes the deadline for training of solid waste management facility operators from 1 January 1996 to 1 January 1998, since DEHNR has not yet established training standards. Section 20 makes a technical change regarding medical waste so that on-site and off-site treatment of medical wastes can include methods other than incineration. Section 21 adds language concerning the definition of "tires" to exclude bicycle tires and other tires for vehicles propelled by human power. Section 22 provides that the ban on landfilling of whole scrap tires does not apply to whole solid rubber tires. Section 23 establishes 1 October as the deadline for DEHNR to submit the annual report on the Scrap Tire Account to the Environmental Review Commission. Section 24 provides for advance determination of funding availability for a grant from the White Goods Management account for capital expenditures for the management of white goods or costs resulting from improvements to that unit's white goods management program. Sections 25 and 26 make technical changes to reporting requirements.

Sections 27 and 28 add subdivisions setting out the language that authorizes counties and cities to charge reasonable fees for solid waste management services. (This is not new fee authority, but is a recodification of language deleted from G.S. 130A-309.09A(a).) Section 29 repeals a provision that required a one-time report on polystyrene recycling. Section 30 requires local governments to begin implementation of local solid waste plans by 1 July 1996 (Local governments may submit existing plans to meet the requirement.) and provides that a generator of industrial solid waste who is required to develop a 10-year solid waste management plan is not required to complete the plan until 1 July 1996 and is not required to report on the implementation of the plan until 1 August 1997.

Section 31 makes Chapter 594 effective 1 October 1996.

Animal Waste Management Recommendations (Chapter 626; SB 1217; Regular Session 1996): Chapter 626 implements recommendations made by the Blue Ribbon Study Commission on Agricultural Waste.

Part I of Chapter 626 establishes a permitting system for specified animal operations with animal waste management systems, requires annual operations reviews and annual inspections, and establishes fees for animal waste management systems. The permit requirement will be phased in over a five-year period beginning January 1, 1997. New operations and expansions of existing operations will be permitted first. Existing operations will be permitted on the basis of size with the largest operations being permitted first.

Part II of Chapter 626 amends G.S. 143-215.2 (Special Orders) to remove the exemption for agricultural operations to allow the Department of Environment, Health, and Natural Resources to enter into consent special orders, assurances of voluntary compliance, or other similar documents with a person responsible for causing or contributing to pollution of State waters and amends G.S. 143-215(e) to increase the penalties from $5,000 to $10,000 for willfully discharging pollutants to the waters of the State.

Part III of Chapter 626 increases the membership on the Water Pollution Control System Operators Certification Commission from 9 to 11 members, and adds a new

Part 2 to Article 3 of Chapter 90A of the General Statutes to include certification of animal waste management systems. Any person who was certified under Part 9A of Article 21 of Chapter 143 of the General Statutes will continue to be certified without additional preexamination training, examination, or payment of an initial certification fee. A person previously certified will be required to complete approved additional training (6 hours over a three-year period) and pay the annual renewal fee ($10.00) in order to maintain certification.

Part IV of Chapter 626 modifies the Swine Farm Siting Act and increases the siting requirement from 100 to 500 feet from any property boundary.

Part V of Chapter 626 expands the purposes for which funds may be used under the Agricultural Cost Share Program and increases the maximum cap each year from $15,000 to $75,000.

Part VI of Chapter 626 requires numerous reports, development of a comprehensive plan among the agencies, and various studies.

Part VII of Chapter 626 contains miscellaneous provisions and sets out effective date as follows:

G.S. 143-215.10A (Legislative findings and intent) as enacted by Section 1 became effective upon ratification on June 21, 1996.

G.S. 143-215.10B (Definitions) as enacted by Section 1 became effective upon ratification on June 21, 1996.

G.S. 143-215.10C (Permits for animal waste management systems) as enacted by Section 1, becomes effective January 1, 1997. Permits will be phased in over a five-year period. The Department will issue permits for approximately 20% of the animal waste management facilities that are in operation on January 1, 1997 during each of the five calendar years beginning January 1, 1997, and shall give priority to those animal waste management systems serving the largest animal operations. An animal waste management system that is deemed permitted by rule on January 1, 1997 under 15A North Carolina Administrative Code 2H.0217 may continue to operate on a deemed permitted basis as provided in subsection b) of this section. Notwithstanding G.S. 143-215.10C(a) through (d), a dry litter animal waste management system involving 30,000 or more birds will continue to operate on a deemed permitted basis by rule and will comply with the animal waste management plan testing and record-keeping requirements by January 1, 1998.

G.S. 143-215.10D (Operations Review) as enacted by Section 1, becomes effective September 1, 1996.

G.S. 143-215.10E (Violations requiring immediate notification) as enacted by Section 1, became effective upon ratification on June 21, 1996.

G.S. 143-215.10F (Inspections) as enacted by Section 1, becomes effective January 1, 1997.

G.S. 143-215.10G (Fees for animal waste management systems) as enacted by Section 1, becomes effective January 1, 1997.

Sections 3 and 4 of Chapter 626 concerning the Department's authority to issue special orders of consent became effective upon ratification on June 21, 1996 and apply to violations occurring on or after that date.

Section 5 of Chapter 626 concerning the certification of water pollution control system operators became effective upon ratification on June 21, 1996, except that G.S. 90A-47.2(a), as enacted by section 6(b) becomes effective January 1, 1997.

Sections 7 and 8 concerning the Swine Farm Siting Act, became effective upon ratification on June 21, 1996, except that the change in the setback from a property line from 100 feet to 500 feet made in G.S. 106-803(a) by

Section 7 does not apply to swine farms for which a site evaluation was conducted prior to October 1, 1996.
Section 25 of Chapter 626 allows the Environmental Management Commission, the Soil and Water Conservation Commission, and the Water Pollution Control System Operators Certification Commission to adopt temporary rules to implement this act.
Section 26 of Chapter 626 provides that all other sections became effective upon ratification on June 21, 1996.

Change Fisheries Laws (Chapter 633; HB 1077; Regular Session 1996): Chapter 633 makes the following changes to marine fisheries laws: (1) Allows shellfish leaseholders and franchise holders to hire employees without requiring the employees to purchase individual shellfish licenses provided the employee has written proof of employment; (2) Transfers the Fishery Resource Grant Program from the Department of Environment, Health, and Natural Resources (DEHNR) to the Sea Grant College Program at North Carolina State University and allows the Sea Grant Program to use up to $25,000 to administer the Grant Program; (3) Creates an eight-member Scientific Advisory Council to advise DEHNR in developing a statewide interagency comprehensive coordinated water resources and coastal fisheries management program; (4) Requires DEHNR to create a fish kill response team using existing resources to respond to significant fish kill events; and (5) Allows the Marine Fisheries Commission to adopt temporary rules concerning recreational bag and size limits and shrimping closure days. This became effective upon ratification on June 21, 1996.

Underground Storage Tank Amendments (Chapter 648; SB 1317; Regular Session 1996): Chapter 648 directs DEHNR to classify the impact of each known release of a petroleum product as either a Class AB impact or a Class CDE impact on the basis of currently known information. Class AB impacts are the more serious impacts. The following situations will result in a Class AB impact classification:

1. A water supply well is contaminated.
2. Petroleum vapor is present in a confined space.
3. A water supply well is located within 1,500 feet of the release or known extent of contamination resulting from a release and there is a user of water from the well who is not served by a public water supply.
4. The release results in a violation of drinking water standards in a treated surface water supply
5. The release poses an imminent danger to public health, safety, or the environment.

Chapter 648 suspends the cleanup requirement under current law for sites that are classified as having a Class CDE (low) impact, with certain exceptions. A release will be presumed to have a Class CDE impact unless it is classified as having a Class AB impact. (The suspension of the cleanup requirement applies only to underground petroleum storage tanks.) The suspension of the cleanup requirement is coupled to a suspension of access to the Commercial Fund and the Noncommercial Fund (the cleanup funds) for the period of the suspension, with certain exceptions. A party who is responsible for a cleanup for which access to either cleanup fund is suspended may petition DEHNR for continued eligibility if (i) the responsible party has incurred reimbursable costs, (ii) the responsible party has paid or will pay all costs for which he or she is responsible, and (iii) discontinuation of the cleanup will result in a hardship. For purpose of continued eligibility, a hardship exists only where discontinuation of the cleanup will prevent a bona fide sale of the property. To prove hardship, the responsible party must present a contract of sale executed on or before 31 December

1996. Eligibility will be discontinued if the transfer does not take place within 120 days of the date the contract is executed. DEHNR is to give notice of the classification of impacts in the North Carolina Register and, to the maximum extent practical, to the owner, operator, or other responsible party of record by first-class mail to the address of record. The ABCDE impact classification and suspension provisions become effective 30 days after ratification (which occurred on 21 June 1996) and expire when risk assessment rules adopted under G.S 143-215.94V become effective.

Chapter 648 increases the annual operation fee paid by owners and operators of commercial tanks from $150.00 to $200.00 for tanks of 3,500 gallons or less capacity and from $225.00 to $300.00 for tanks of greater than 3,500 capacity. For purposes of the annual operating fee, each compartment of a tank that is designed to independently contain a petroleum product will be considered as a separate tank. These provisions become effective 1 January 1997.

Chapter 648 provides for "innocent landowner" access (in situations where the tank owner and operator cannot be identified or located, or fails to proceed with cleanup as required by law) to the Noncommercial Fund. This provision is similar to existing law regarding landowner access to the Commercial Fund. The Noncommercial Fund will pay 90% of costs in excess of $5,000 up to $1,000,000. These provisions are effective upon ratification on 21 June 1996, apply retroactively to releases discovered or reported on or after 1 January 1992, and expire on 1 October 1997.

Chapter 648 provides that if DEHNR fails to make a determination on a claim for reimbursement within 90 days after the claim is received, the claimant may treat the claim as denied and file a contested case to challenge the denial with the Office of Administrative Hearings; directs DEHNR to study options for privatization of the LUST program and to report it's findings and recommendations to the Environmental Review Commission by 1 November 1996; directs the Environmental Management Commission to publish the text of proposed risk assessment rules required by G.S 143-215.94V by 1 January 1997 and to adopt a rule by 1 October 1997; requires the Revisor of Statutes to print section 1 of the act as a note to G.S. 143-215.94V in the General Statutes; and limits the liability of the State for actions taken under this act.

Except as stated above, Chapter 648 became effective upon ratification on 21 June 1996.

Restructure Forestry Council (Chapter 653; SB 1286; Regular Session 1996): Chapter 653 amends G.S. 143B-308 to redefine the Forestry Council's functions and duties to include: (1) advising the Secretary of Environment, Health, and Natural Resources on matters concerning protection, management, and preservation of State-owned, privately owned, and municipally owned forests in the State; (2) maintaining oversight of monitoring and planning process, providing long-range planning, and reporting on progress of objectives; (3) providing a forum to develop recommendations to resolve conflicts in forest management; and (4) providing additional studies, reports, and advice as directed by the Secretary. Chapter 653 amends G.S. 143B-309 to increase the membership of the Forestry Council from eleven to eighteen members. Chapter 653 amends G.S. 143B-310 to require the Forestry Council to meet annually in October and at least three other times a year. This act became effective upon ratification 21 June 1996.

Environmental Laws/Technical Changes (Chapter 728; HB 934; Regular Session 1996): Chapter 728 makes a conforming change relating to the appeal procedure for an applicant for an air quality permit that is deemed denied. This act became effective upon ratification on 21 June 1996.

DEHNR Restructuring (Chapter 743; SB 1328; Regular Session 1996): Chapter 743 implements the first phase of an organizational restructuring of environmental programs within the Department of Environment, Health, and Natural Resources. The division of Environmental Management is abolished and replaced by two separate divisions, the Division of Water Quality and the Division of Air Quality. The Office of Waste Reduction obtains Division status and is named the Division of Pollution Prevention and Environmental Assistance. The Division of Solid Waste Management is renamed as the Division of Waste Management. Chapter 743 becomes effective 1 July 1996.

Wetlands Restoration Program/Funds (Chapter 18, Section 27.4; HB 53, Section 27.4; Second Extra Session 1996): Section 27.4 of Chapter 18 of the Second Extra Session establishes the Wetlands Restoration Program in the Department of Environment, Health, and Natural Resources as a nonregulatory statewide program for the acquisition, maintenance, restoration, enhancement, and creation of wetland and riparian resources that contribute to the protection and improvement of water quality, flood prevention, fisheries, wildlife habitat, and recreational opportunities.

Under a new G.S. 143-214.11, all compensatory mitigation required by section 404 permits or authorizations issued by the United States Army Corps of Engineers shall be coordinated by the Department consistent with the basinwide plans for wetlands restoration and rules developed by the Environmental Management Commission. All compensatory wetlands mitigation, whether performed by the Department or by permit applicants, shall be consistent with the basinwide restoration plans developed by the Department. The emphasis of mitigation is on replacing functions within the same river basin unless it can be demonstrated that restoration of other areas would be more beneficial to the overall purpose of the program.

Under a new G.S. 143-214.12, a Wetlands Restoration Fund is established as a nonreverting fund to provide a repository for monetary contributions and donations or dedications of interests in real property to promote the purposes of the Wetlands Restoration Program. An applicant may choose to contribute to the Wetlands Restoration Fund in lieu of other compensatory mitigation requirements if the contributions will meet the mitigation requirements of the U.S. Army Corps of Engineers. The Department shall provide an itemized statement that accounts for each payment into the Fund.

The Department must report to the Environmental Review Commission on an annual basis by November 1 on progress in implementing the Wetlands Restoration Program and its use of funds. The report shall document statewide wetlands losses and gains and compensatory mitigation performed. In addition, the Environmental Review Commission shall study private mitigation banks and compare those mitigation banks with the Wetlands Restoration Program and shall report its findings and recommendations to the 1997 General Assembly. (See Private Mitigation Banks in the summary of environmental studies.)

For the 1996-97 fiscal year, $9,200,000 will be transferred from the Clean Water Management Trust Fund to the Wetlands Restoration Fund.

Section 27.4 became effective July 1, 1996.

Clean Water Management Trust Fund (Chapter 18, Section 27.6; HB 53, Section 27.6; Second Extra Session 1996): Section 27.6 of Chapter 18 of the Second Extra Session adds a new Article 13A to Chapter 113 of the General Statutes to establish the Clean Water Management Trust Fund. The Fund will be administered by an independent, statewide Board of Trustees. A detailed summary follows:

G.S. 113-145.1. Purpose. The purpose of the Fund is to help finance projects that address water pollution problems and focus on upgrading surface waters, eliminating pollution, and protecting and conserving unpolluted surface waters,

including urban drinking water supplies. In addition to the environmental and recreational benefits, the General Assembly believes that these efforts will enhance wildlife and marine fisheries habitats in this State.

G.S. 113-145.2. Definitions. This section defines various terms.

G.S. 113-145.3. Clean Water Management Trust Fund. This section establishes the Clean Water Management Trust Fund as a nonreverting fund in the Office of the State Treasurer. Money from the Fund may be used for the following purposes:

1. To acquire land for riparian buffers and to establish a network of greenways for environmental, educational, and recreational use.
2. To acquire conservation easements or other interests in real property.
3. To coordinate with other programs to gain the most public benefit while protecting and improving water quality.
4. To restore previously degraded lands.
5. To repair failing waste treatment systems if an application has been submitted to receive a loan or grant from the Clean Water Revolving Loan and Grant Fund and was denied and the repair is not for the purpose of expanding the system to accommodate future growth with a priority given to economically distressed local governments.
6. To repair and eliminate failing septic tank systems, and illegal drainage connections with a priority in funding to economically distressed local governments.
7. To improve stormwater controls and management practices.
8. To facilitate planning that targets reductions in surface water pollution.
9. To fund operating expenses of the Board of Trustees, not to exceed 2% of the budget or $850,000, whichever is less.

G.S. 113-145.4. Clean Water Management Trust Fund: eligibility for grants; matching funds or property requirement. Applicants for grants may include: State agencies; a local government or political subdivision of the State; or a nonprofit corporation whose primary purpose is the conservation, preservation, and restoration of State environmental and natural resources. The Board of Trustees may require a match of up to 20% of the amount of the grant awarded.

G.S. 113-145.5. Clean Water Management Trust Fund: Board of Trustees established; membership qualifications; vacancies; meetings and meeting facilities. The Board of Trustees shall be composed of 18 members (six appointed by the Governor, six by the President Pro Tempore of the Senate and six by the Speaker of the House of Representatives). Members shall be appointed to staggered four-year terms. Trustees shall meet at least twice a year and shall receive the per diem, subsistence expenses, and travel expenses as provided by statute.

G.S. 113-145.6. Clean Water Management Trust Fund Board of Trustees: powers and duties. The Board of Trustees shall develop criteria for awarding grants that include:

1. The significant enhancement and conservation of water quality.
2. The objectives of basinwide management plans for river basins.
3. The promotion of regional integrated ecological networks.
4. The specific areas targets as being environmentally sensitive.
5. The geographic distribution of funds as appropriate.
6. The preservation of water resources with significant recreational value and uses.
7. The development of a network of greenways bordering and connecting the State's waterways that will serve environmental, educational, and recreational uses.

G.S. 113-145.7. Clean Water Management Trust Fund: Executive Director and staff. The Board of Trustees shall hire an Executive Director, who shall serve at the pleasure of the Board. Subject to approval by the Board, the Executive Director may employ additional clerical and other assistants, as necessary.

G.S. 113-145.8. Clean Water Management Trust Fund: Advisory Council. The Advisory Council is composed of the following: (1) Commissioner of Agriculture; (2) Chair of the Wildlife Resources Commission; (3) Secretary of Environment, Health, and Natural Resources; and (4) Secretary of Commerce. The Advisory Council shall advise the Board of Trustees with regard to allocations made from the Fund.

In addition, a new section has been added to Chapter 143 of the General Statutes. G.S. 143-15.3B will establish the Clean Water Management Trust Fund and will direct the State Controller to reserve 6.5% of any unreserved credit balance remaining in the General Fund at the end of each fiscal year for this Fund.

For the 1996-97 fiscal year only, $9,200,000 of the approximate $39,900,000 shall be transferred to the Wetlands Restoration Fund to implement that program.

Section 27.6 became effective on June 30, 1996.

Lower Neuse River Basin Association Funds (Chapter 18, Section 27.8; HB 53, Section 27.8; Second Extra Session 1996): Section 27.8 of Chapter 18 of the Second Extra Session appropriates $2,000,000 to the Lower Neuse River Basin Association to be allocated as grants to local governments in the Neuse River basin to assist in complying with the Neuse River Nutrient Sensitive Water Management Strategy Plan. Funds are contingent on the adoption of the Plan by the Environmental Management Commission by June 30, 1997.

The Lower Neuse River Basin Association shall report to the Environmental Review Commission by October 15, 1996 and quarterly thereafter on grants awarded for projects and on the effectiveness of these projects in reducing pollution in the Neuse River basin.

Section 27.8 became effective July 1, 1996.

Transfer the Geodetic Survey Section to the Office of State Planning (Chapter 18, Section 27.9A; HB 53, Section 27.9A; Second Extra Session 1996): Section 27.9A of Chapter 18 of the Second Extra Session moves the 22 positions, support, and equipment in the Geodetic Survey Section of the Division of Land Resources, Department of Environment, Health, and Natural Resources to the Office of State Planning in the Office of the Governor. Section 27.9A became effective July 1, 1996.

Hazardous Waste Reports (Chapter 18, Section 27.10; HB 53, Section 27.10; Second Extra Session 1996): Section 27.10 of Chapter 18 of the Second Extra Session provides that, beginning in 1997, the Department of Environment, Health, and Natural Resources shall report on the generation, storage, treatment, and disposal of hazardous waste no more often than is required under federal law. Federal law requires a report every two years; the Department of Environment, Health, and Natural Resources has been reporting annually. This change results in a decrease in recurring appropriations of $69,568 and the elimination of two positions. Section 27.10 became effective 1 July 1996.

Drinking Water Waiver Program (Chapter 18, Section 27.11; HB 53, Section 27.11; Second Extra Session 1996): Section 27.11 of Chapter 18 of the Second Extra Session requires the Department of Environment, Health, and Natural Resources to establish a drinking water waiver program within the Division of Environmental Health. The program will enable the Division to seek and qualify for additional waivers from federal drinking water regulations. The program will also include a study to determine which

drinking water contaminants do not present a significant health risk and which water systems are not susceptible to particular contaminants. The Division will report the progress of the program to the Fiscal Research Division, the Environmental Review Commission, and the Legislative Research Commission Study Committee on Water Issues not later than December 15, 1996. Section 27.11 became effective July 1, 1996.

Reserve for Permitting and Inspecting Animal Waste Management Systems (Chapter 18, Section 27.13; HB 53, Section 27.13; Second Extra Session 1996): Section 27.13 of Chapter 18 of the Second Extra Session appropriates $1,550,766 to the Department of Environment, Health, and Natural Resources to be placed in a reserve to establish and support positions to conduct permitting, inspection, and enforcement activities for animal waste management systems consistent with the regulatory program established under Chapter 626 of the 1996 (Regular Session) Session Laws.

Subsection (b) requires that the Department submit quarterly status reports beginning October 15, 1996 to the Environmental Review Commission and the Fiscal Research Division concerning the following: (1) number of permits for animal waste management systems; (2) number of operations reviews and reinspections of animal waste management systems conducted by the Division of Soil and Water Conservation; (3) number of compliance inspections and follow-up inspections conducted by the Division of Water Quality; (4) the average length of time for each category of reviews and inspections; and (5) the number of violations found during each category of review and inspection.

Section 27.13 became effective July 1, 1996.

Accountability for Certain State Agriculture Cost Share Funding (Chapter 18, Section 27.22; HB 53, Section 27.22; Second Extra Session 1996): See **AGRICULTURE.**

Prohibit Transfer of Positions from Soil and Water Conservation to Water Quality (Chapter 18, Section 27.23; HB 53, Section 27.23; Second Extra Session 1996): Section 27.23 of Chapter 18 of the Second Extra Session prohibits the Department of Environment, Health, and Natural Resources from transferring any positions established in this act for the Division of Soil and Water to the Division of Water Quality. Section 27.23 became effective July 1, 1996.

Adopt-A-Beach (Chapter 18, Section 27.24; HB 53, Section 27.24; Second Extra Session 1996): Section 27.24 of Chapter 18 of the Second Extra Session adds a new Article 69 to Chapter 143 of the General Statutes to create the Adopt-A-Beach Program within the Department of Environment, Health, and Natural Resources. The purpose of the program is to educate citizens and increase their awareness of the need to keep the State's coastline clean and free of trash, while at the same time generating data on the volume and contents of beach pollution. As part of a pilot program, the Department of Environment, Health, and Natural Resources will select five ocean sites and two sound-side sites to be cleaned up and maintained monthly. Each site will be assigned to an organization and each organization will be recognized at its site by an identifying sign. This program will be expanded to accommodate increased participation.

The Department will report to the Environmental Review Commission by March 15, 1997 and annually thereafter on the program's progress. The Department may adopt rules to implement the program. Of the funds appropriated to the Department, $30,000 is allocated to implement the program.

Section 27.24 became effective July 1, 1996.

Straight Pipe Elimination Amnesty Program (Chapter 18, Section 27.26; HB 53, Section 27.26; Second Extra Session 1996) [Note that Chapter 18 contains two sections numbered 27.26.]: Section 27.26 of Chapter 18 of the Second Extra Session requires the Department of Environment, Health, and Natural Resources to establish a program for the elimination of domestic sewage or wastewater discharges from direct (straight pipes) and from overland flow of failing septic systems. The program will initially focus on (1) the identification and elimination of discharges into streams to be used or currently used for public water supplies, (2) an amnesty period to end December 31, 1997, during which violations of State rules and laws regarding domestic sewage and wastewater discharges identified as a result of this program may be reported and addressed without incurring legal consequences; and (3) a public education effort regarding the program and the amnesty period.

Of the funds appropriated to the Department, $117,500 in recurring funds and $12,500 in nonrecurring funds is allocated for two positions responsible for carrying out this program and for other operating costs. The Department will report to the Environmental Review Commission and the Fiscal Research Division beginning October 15, 1996 and quarterly thereafter, regarding the implementation of this program.

Section 27.26 became effective July 1, 1996.

Aboveground Storage Tanks Inspection and Monitoring (Chapter 18, Section 27.30; HB 53, Section 27.30; Second Extra Session 1996): Section 27.30 of Chapter 18 of the Second Extra Session appropriates $200,000 to the Department of Environment, Health, and Natural Resources to continue periodic inspections at major oil terminal facilities, as defined in G.S. 143-215.77, in Mecklenburg County (the facilities located at Paw Creek) to determine whether oil or any other hazardous substance is being discharged into the environment and to monitor air, water, and soil quality.

The Department of Environment, Health, and Natural Resources shall report to the Environmental Review Commission beginning 1 October 1996 and quarterly thereafter on its inspection and monitoring activities.

Section 27.30 became effective 1 July 1996.

Wastewater System Improvement Permits (Chapter 18, Section 27.31; HB 53, Section 27.31; Second Extra Session 1996): Section 27.31 of Chapter 18 of the Second Extra Session makes technical and clarifying changes to Chapter 585 of the 1995 Session Laws (1996 Regular Session) concerning Wastewater System Improvement Permits. Section 27.31 became effective July 1, 1996.

Core Sound/Description of Area A for Shellfish Lease Moratorium (Chapter 18, Section 27.33; HB 53, Section 27.33; Second Extra Session 1996): Section 27.33 of Chapter 18 of the Second Extra Session amends Section 3 of Chapter 633 of the 1995 Session Laws (1996 Regular Session) to provide a metes and bounds description by reference to latitude and longitude of the area of Core Sound in which a moratorium on new shell fish cultivation leases is imposed until July 1, 1997. Section 27.33 became effective July 1, 1996.

Environmental Technical Corrections (Chapter 18, Section 27.34; HB 53, Section 27.34; Second Extra Session 1996): Section 27.34 of Chapter 18 of the Second Extra Session makes conforming and technical changes to legislation enacted during the 1996 Regular Session to reflect the first phase of the restructuring of the Department of Environment, Health, and Natural Resources, specifically the formation of the Division of Water Quality and the elimination of the former Division of Environmental Management. Section 27.34 became effective 1 July 1996.

Ensure Legislative Review of Certain Rules (Chapter 18, Section 27.36; HB 53, Section 27.36; Second Extra Session 1996): Section 27.36 of Chapter 18 of the Second Extra Session provides that G.S. 150B-21.3(c) does not apply beyond 1 January 2000 to a rule that extends the date set in 15A NCAC 13B.1627(c)(10)(A) for the closure of an unlined municipal solid waste landfill. Under the existing rule, unlined landfills are required to close by 1 January 1998. G.S. 150B-21.3(c) allows the Governor to make a permanent rule effective earlier than would otherwise be the case if the Governor finds that the rule is necessary to protect public health, safety, or welfare. The effect of Section 27.36 is to prohibit the Governor from making effective any rule change that would allow operation of unlined landfills beyond 1 January 2000. Section 27.36 became effective 1 July 1996.

Operation of Permit Information Center (Chapter 18, Section 27.37; HB 53, Section 27.37; Second Extra Session 1996): Section 27.37 of Chapter 18 of the Second Extra Session authorizes the Department of Environment, Health, and Natural Resources to operate the Permit Information Center (from available funds) in order to improve permit applications, provide guidance materials, provide applicant and citizen training, and for other purposes. The budget adjustments proposed by the Governor recommended an appropriation to fund the Center. However, the General Assembly did not make such an appropriation. Without the specific legislative approval for the operation of the Center granted by Section 27.37, the operation of the Center would have been prohibited under the Executive Budget Act because the General Assembly had considered, but failed to approve, an appropriation for that purpose. Section 27.37 became effective 1 July 1996.

STUDIES

Legislative Research Commission Studies

Section 2.1 of the Studies Act of 1996 (Chapter 17; SB 46; Second Extra Session 1996) authorizes the **Legislative Research Commission** to study the following **issues related to the Department of Environment, Health, and Natural Resources**:

(1) Reorganization of the Department of Environment, Health, and Natural Resources.
(2) Duplication in or inconsistencies between State and federal environmental regulations.
(3) Alternative permitting and compliance mechanisms.
(4) Other issues relating to the administration and enforcement of State and federal environmental laws, regulations, policies, and programs.

Independent Studies, Boards, Etc.

Fishing Licenses Moratorium Steering Committee (Chapter 551; HB 1078; Regular Session 1996): The Moratorium Steering Committee is continued and shall make its final report to the Joint Legislative Commission on Seafood and Aquaculture by November 1, 1996. The Commission shall report to the 1997 General Assembly.

State Ports Study Commission (Chapter 18, Sec. 26.10; HB 53, Sec. 26.10; Second Extra Session 1996; and Chapter 17; Part XII; SB 46, Part XII; Second Extra Session 1996): The **State Ports Study Commission** is continued and shall make a final report upon the convening of the 1997 General Assembly.

Abandoned Lagoons/Animal Facilities Environmental Impacts (Chapter 18, Sec. 27.12; HB 53, Sec. 27.12; Second Extra Session 1996): A legislative study commission shall study the environmental impacts of animal waste lagoons and animal facilities that have been closed or abandoned or are inactive in order to determine the extent and scope of problems associated with these structures, to identify potential solutions, to identify scientifically and environmentally effective methods of closure of the structures in the future, and to determine the advisability of providing incentives for the proper management of abandoned animal waste lagoons and animal facilities. This study commission shall report to the 1997 General Assembly, Environmental Review Commission, and Fiscal Research Division by 1 January 1997.

Studies Referred to Departments, Agencies, Etc.

The Department of Environment, Health, and Natural Resources shall study options for the **privatization of the leaking petroleum underground storage cleanup program** and shall report to the Environmental Review Commission by 1 November 1996. (Chapter 648, Sec. 5; SB 1317, Sec. 5; Regular Session 1996)

Board of Governors, Agricultural Research Service of North Carolina State University, shall study **economically feasible odor control technologies.** The Board shall report to the Environmental Review Commission and Fiscal Research Division by 1 January 1997. (Chapter 18, Sec. 27.3; HB 53, Sec. 27.3; Second Extra Session 1996)

Board of Governors, Agricultural Research Service of North Carolina State University, shall study the **groundwater impacts of lagoons.** The Board shall report to Environmental Review Commission and Fiscal Research Division by 1 January 1997. (Chapter 18, Sec. 27.7; HB 53, Sec. 27.7; Second Extra Session 1996)

Board of Governors, Agricultural Research Service of North Carolina State University, shall contract with a research institution to study **atmospheric nitrogen reaching the Neuse estuary,** to develop strategies to reduce the most significant sources of nitrogen, and to improve water quality. The Board shall report to Environmental Review Commission and Fiscal Research Division by 1 January 1997. (Chapter 18, Sec. 27.9; HB 53, Sec. 27.9; Second Extra Session 1996)

Section 27.32 of Chapter 18 of the Second Extra Session requires the **Department of Environment, Health, and Natural Resources** to report to the Environmental Review Commission, the Joint Legislative Commission on Governmental Operations, the Scientific Advisory Council on Water Resources and Coastal Fisheries Management, and the Fiscal Research Division on January 1, 1997 and July 1, 1997 on: (1) Departmental reorganization and efficiency; (2) actions taken by the Environmental Management Commission, the Coastal Resources Commission, and the Marine Fisheries Commission to coordinate and consolidate activities; (3) progress on protecting and restoring water quality in the Neuse River Basin and in nutrient sensitive waters, including implementation of animal waste management system permits.

This Section also requires the Primary Investigator or Researcher receiving funding from the State to report to the Environmental Review Commission, the Joint Legislative Commission on Governmental Operations, the Scientific Advisory Council on Water Resources and Coastal Fisheries Management, and the Fiscal Research Division on January 1, 1997 and July 1, 1997 on studies of: (1) odor control technology; (2) sources of nitrogen through isotope markers; (3) groundwater impacts of lagoons; (4)

atmospheric deposition of nitrogen in the Neuse Estuary; and (5) alternative animal waste technologies.

Section 27.32 became effective July 1, 1996. (Chapter 18, Section 27.32; HB 53, Section 27.32; Second Extra Session 1996)

Board of Governors, Agricultural Research Service of North Carolina State University, shall study **alternative animal waste technologies** and report to Environmental Review Commission and Fiscal Research Division by 1 January 1997. (Chapter 18, Sec. 27.35; HB 53, Sec. 27.35; Second Extra Session 1996)

Studies Referred to Existing Commissions

The **Joint Legislative Commission on Seafood and Aquaculture** shall study the **shellfish lease program** and consider the following issues:

1. Preservation of areas used substantially by commercial and recreational fishermen.
2. Establishment of a maximum percentage of available water body for leases.
3. Restrictions on shellfish lease sizes and whether leases may be contiguous.
4. Production requirements.
5. Evaluation of profitability of leases after period of time.
6. Any other related issues.

The Commission shall report to the 1997 General Assembly. (Chapter 547; HB 1074; Regular Session 1996)

The **Environmental Review Commission** shall **evaluate the animal waste permitting, inspection, and enforcement program** created by Chapter 626, including whether to transfer this responsibility to the Division of Soil and Water Conservation. The Commission may report to the General Assembly by the first day of the 1997 Regular Session and shall report before the first day of the 1998 Regular Session. (Chapter 626, Sec. 12; SB 1217, Sec. 12; Regular Session 1996)

The **Joint Legislative Commission on Seafood and Aquaculture** shall study the **feasibility of creating a Fishermen's Disaster Relief Fund** to provide financial assistance to fishermen for damage to fishery resources caused by natural or man-made disasters. The Commission shall report to the 1997 General Assembly upon its convening. (Chapter 17; Part VIII; SB 46, Part VIII; Second Extra Session 1996)

The **Environmental Review Commission** shall study **private mitigation banks** in comparison with the Wetlands Restoration Program. The Environmental Review Commission shall report to the 1997 General Assembly. (Chapter 18, Sec. 27.4(e); HB 53, Sec. 27.4(e); Second Extra Session 1996)

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

Continuing Care Facility Supervision (Chapter 582; HB 1193; Regular Session 1996): See **INSURANCE.**

Long-Term Care Changes (Chapter 583; SB 126; Regular Session 1996): Chapter 583 was recommended to the 1995 General Assembly by the North Carolina Study Commission on Aging. It authorizes the establishment and development of a State long-term care policy and authorizes the Study Commission on Aging to appoint a Long-Term Care Subcommittee and other subcommittees as needed.

The continuum of health services for older adults has widened in recent years to include everything from hospital and nursing home care to home health services and adult day care. There is a growing demand for improvement and expansion of home and community-based long-term care services. Public interest would best be served by a broad array of long-term care services that support persons who need such services at home or in the community whenever practicable, as well as institutional care. Long-term care options should promote autonomy, dignity, and choice, and Chapter 583 provides for the development of such a policy for the State.

Section 1 of the bill rewrites G.S. 120-186.1, which sets out subcommittees of the Study Commission on Aging. Previously, the Commission Cochairs had the express statutory authority to appoint an Alzheimer's Subcommittee, as well as the traditional authority to appoint others. Because of the importance of developing and implementing a State long-term care policy, this specifically authorizes a Long-Term Care Subcommittee with some non-Commission membership and other subcommittees as needed.

Section 2 of the bill, the most significant part, rewrites G.S. 143B-181.5 and G.S. 143B-181.6 incorporating legislative findings and intent and authorizing the establishment and development of a State long-term care policy with the following elements:

1. Long-term care services administered by the Department of Human Resources and other State and local agencies shall include a balanced array of health, social, and supportive services that promote individual choice, dignity, and the highest practicable level of independence;
2. Home and community-based services shall be developed, expanded, or maintained in order to meet the needs of consumers in the least confusing manner and based on the desires of the elderly and their families;
3. All services shall be responsive and appropriate to individual need and shall be delivered through a seamless system that is flexible and responsive regardless of funding source;
4. Services shall be available to all elderly who need them but targeted primarily to the most frail, needy elderly;
5. State and local agencies shall maximize the use of limited resources by establishing a fee system for persons who have the ability to pay;
6. Institutional care shall be provided in such a manner and in such an environment as to promote maintenance or enhancement of the quality of life of each resident and timely discharge to a less restrictive care setting when appropriate; and
7. State health planning for institutional bed supply shall take into account increased availability of other home and community-based services options.

G.S. 143B-181.7, 143B-181.8, and 143B-181.9 are repealed.

Chapter 583 became effective June 20, 1996.

Board of Dental Examiners (Chapter 584; SB 555; Regular Session 1996): See **STATE GOVERNMENT.**

Nursing Home and Adult Care Home Penalty Law Clarification (Chapter 602; HB 332; Regular Session 1996): The 1987 General Assembly established an administrative penalties process for violations of nursing home and adult care facility laws. Chapter 602 amends G.S. 131D-24 and G.S. 131E-129 to add the words "facility's licensee" in place of the word "facility" to assure that the corporation or entity that is licensed to operate the facility is the one assessed the penalty.

Nursing/Rest Home Employee Checks (Chapter 606; SB 1014; Regular Session 1996): Chapter 606 requires all licensed nursing homes, adult care homes, and home care agencies to check the State criminal history record of all individuals who apply to work in positions that do not require an occupational license. Entities shall not employ persons who refuse to consent to the record checks. Information furnished by the record checks shall be used to determine applicants' suitability for employment. Chapter 606 lists a number of relevant offenses, both misdemeanors and felonies, that have a bearing on a person's fitness to be responsible for the safety and care for the aged and disabled. However, the following factors shall be considered in determining suitability for employment:

1. The level and seriousness of the crime.
2. The date of the crime.
3. The age of the person at the time of the conviction.
4. The circumstances surrounding the commission of the crime, if known.
5. The nexus between the criminal conduct of the person and the job duties of the position to be filled.
6. The prison, jail, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed.
7. The subsequent commission by the person of a relevant offense.

Those who comply with this provision in good faith are not held liable for failure to employ someone on the basis of information provided in the record check.

The Department of Justice is authorized to provide a criminal record check upon the individual's consent. The record check may be conducted by using the individual's fingerprint or other information required by the Department. The Department may charge a fee not exceeding fourteen dollars to offset the cost incurred. The order of priority for the Department's providing record checks is established as follows:

1. Administration of criminal justice record checks.
2. Mandatory noncriminal justice criminal history record checks.
3. Voluntary noncriminal justice criminal history records checks.

The act becomes effective January 1, 1997, and applies to applicants who apply for employment on or after that date, except that it becomes applicable to home care agencies effective January 1, 1998. (Chapter 742, Section 42.2, SB 1301, technically corrected the effective date.)

Physician Registration (Chapter 634; HB 1149; Regular Session 1996): See **STATE GOVERNMENT.**

Nursing Home Admin. Fees (Chapter 645; SB 1094; Regular Session 1996): See **STATE GOVERNMENT.**

Tax Free Samples RX Drugs (Chapter 649; SB 1239; Regular Session 1996): See **TAXATION.**

Allow Consolidated Human Services (Chapter 690; SB 709; Regular Session 1996): Under current law, human services are provided in counties through three separate boards. These boards are the county boards of social services, health, and mental health. Each county appoints its own director, who in turn is responsible for appointing appropriate personnel. Each board presents a budget for its service to the board of commissioners. This bill gives counties with a population in excess of 425,000 (Wake and Mecklenburg) the authority to establish a different system of managing human services in the county with the following features: (1) it eliminates the three independent boards and their directors; (2) it gives the county manager the authority to appoint a human services director, who will appoint appropriated personnel upon the approval of the county manager; (3) it establishes a consolidated human services board that is a policy-making body and not a management body; (4) it establishes a consolidated human services agency that has the same powers as the three boards that are eliminated, except that the new agency cannot appoint its director or submit its own budget request directly to the county commissioners; (5) it removes personnel of the consolidated agency from the State Personnel Act; and (6) it requires the secretaries of DHR and DEHNR to adopt rules to allow dedicated funding streams to flow to a consolidated agency and board. The counties that adopt the consolidated agency must report to specified legislative committee by January 1, 1998 and annually thereafter, until January 1, 2001.

Public Hospital Managed Care/Health Care Personnel Registry (Chapter 713; SB 855; Regular Session 1996): Chapter 713 authorizes public hospitals as defined in G.S. 159-39(a) to acquire an ownership interest in a managed care company with which the public hospital is also directly or indirectly a contracting provider. This ownership or acquisition of stock is the exercise of a health care function and is not the investment of idle funds within the meaning of G.S. 159-30 and G.S. 159-39(g). The statute also makes confidential any financial information related to the provision of health care between a hospital and a managed care organization, insurance company, employer or other payor. This provision expires June 1, 1997.

Chapter 713 also requires DHR to establish a health care personnel registry. The registry must contain the names of adult care personal aides, nurse aides, in-home aides, and in-home personal care aides who have been subject to findings or an investigation of neglect or abuse of a health care facility resident, misappropriation of property belonging to a resident of the health care facility, diversion of drugs, or fraud against a health care facility or against a patient for whom the employee is providing services. Adult care homes, hospitals, home care agencies, nursing pools, hospices, and nursing facilities must notify DHR of any allegations of the foregoing acts. These personnel may contest a finding or placement of information in the registry in an APA administrative hearing

Thomas S. Diversion (Chapter 739; SB 859; Regular Session 1996): Involuntary commitment procedures of Part 7 of Article 5 of Chapter 122C are no longer applicable to individuals who are mentally retarded and because of an accompanying behavior, are dangerous to others.

Individuals in a single portal area, who have resources to pay for the cost of inpatient hospital care without the use of Medicaid or other public funds appropriated to the area authority, are free to select a facility for treatment and care which is different from that designated by the area authority in its single portal plan. Single portal plans approved before July 1, 1996 must be reviewed by the area authority and must be reapproved by the Secretary of the Department of Human Resources after July 1, 1996. To be approved, the plans must include procedures for the treatment of mentally retarded individuals with mental illness who are committed to a 24-hour facility. In addition,

approval of plans will require evidence of renewal of cooperative arrangements with local law enforcement, local courts, and the local medical society.

Affiants appearing before a clerk or magistrate to petition for the issuance of a custody order to take a respondent into custody for an examination by a physician or eligible psychologist shall state on the affidavit if the petitioner has knowledge or reasonably believes that the respondent, in addition to being mentally ill, is also mentally retarded. A clerk or magistrate who finds that the petitioner, in addition to probably being mentally ill and dangerous to self or others, is probably mentally retarded, must contact the area authority before issuing a custody order. The area authority must designate the facility to which the respondent is to be taken for the respondent's initial examination by a physician or eligible psychologist. A similar determination must be made by the clerk or magistrate and the area authority when the affiant is a physician or eligible psychologist, and inpatient commitment is recommended for a respondent who is known or reasonably believed to be mentally retarded.

When a petition is filed for an individual who resides in an area authority with a single portal plan, prior to issuing a custody order, the clerk or magistrate must first communicate with the area authority to determine the appropriate 24-hour facility to which the respondent should be admitted according to the area plan or to determine if there are more appropriate resources available though an area plan to assist the respondent. Individuals residing in an area authority with a single portal plan who are presented for commitment to a 24-hour or State facility directly will not be admitted until the facility notifies the area authority and the area authority agrees to the admission. If the area authority does not agree to the admission, it must determine the appropriate 24-hour facility to which the individual should be admitted according to the area plan.

Admissions to State psychiatric hospitals of individuals who are known or reasonably believed to be mentally retarded are limited, even under emergency circumstances where immediate hospitalization is required, to only those individuals (1) charged with a violent crime and found incapable of proceeding, (2) found not guilty by reason of insanity, (3) who are so extremely dangerous as to pose a serious threat to the community and to other patients committed to a non-State hospital psychiatric inpatient unit, and (4) who are so gravely disabled by both multiple disorders and medical fragility or multiple disorders and deafness that alternative care is inappropriate. State facilities for the mentally ill are authorized to transfer individuals who are not admitted to that facility to another appropriate facility that provides psychiatric inpatient care.

Prior procedures prohibited the commitment to a State, area or private facility for the mentally retarded of a respondent who was found to be mentally retarded and dangerous to others. Under the new procedures, no respondent found to be both mentally ill and mentally retarded may be committed to such facilities.

The Mental Health Study Commission is directed to examine the entire mental health commitment process with the goal of placing full responsibility for involuntary commitments on area mental health, developmental disabilities, and substance abuse authorities. The Commission is to report its findings, draft legislation, and cost analysis to the 1997 General Assembly. Effective January 1, 1997.

Area Authority Accountability (Chapter 749; HB 1237; Regular Session 1996): Counties providing mental health, developmental disabilities, and substance abuse services through an area authority may not reduce county appropriations and expenditures for the area authority because of the availability of State-allocated funds, fees, capitation amounts, or fund balance to the area authority.

The Secretary of Human Resources or designee will serve as a non-voting member of a search committee for the appointment of an area director for the area authority.

County commissioners who are authorized to make appointments to the area board are required to declare the office of a board member who does not attend three scheduled meetings without justifiable excuse with a 12-month period as vacant.

The composition of the area board is changed to decrease from two to one physician. That physician must have been certified as having completed a residency in psychiatry. The board shall also include a member who has experience in finance and can understand and interpret audits and other financial reports. The board is required to establish a finance committee that must meet at least six times per year to review the financial strength of the area program.

The Secretary of the Department of Human Resources may withhold funding for particular service or services, assume financial control, and assume control of the delivery of services if it is determined that an area authority is not providing minimally adequate services, in accordance with its annual plan. The area authority must be provided with written notification and an opportunity to be heard before the Secretary may exercise this authority. Further, the Secretary is authorized to appoint a caretaker administrator, a caretaker board of directors, or both when it is determined that an area authority has not complied with a corrective plan developed in response to the assumption of control of service delivery by the Department. The Secretary must first provide written notification to the area board before the Secretary may make such appointments.

The Department of Human Resources must absorb any reductions in fiscal year 1995-96 appropriations as a result of reductions in Social Services Block Grant federal funds. Effective October 1, 1996.

Medicaid Changes (Chapter 18, Sec. 24; HB 53, Sec. 24; Second Extra Session 1996): Section 24 of Chapter 18 of the Second Extra Session amends section 23.14 of Chapter 324, 1995 Session Laws by adding new provisions authorizing the Division of Medical Assistance, Division of Human Resources to 1) provide incentives to counties that successfully recover fraudulently spent Medicaid funds by sharing State savings with counties responsible for the recovery of such funds; 2) use federal funds that are identified to support the cost of development and acquisition of equipment and software through contractual means to improve and enhance information systems that provide management information and claims processing; 3) adopt temporary rules to administer Medicaid estate recovery as mandated by the Omnibus Budget Reconciliation Act of 1993; 4) adopt temporary rules if necessary to maximize receipt of federal funds, to reduce Medicaid expenditures, and to reduce fraud and abuse; and 5) to allow Medicaid payments for physical therapy and speech therapy to be made to qualified providers of such services rather than only to the Children's Special Health Services program.

NonMedicaid Reimbursement Changes (Chapter 18, Sec. 24.1; HB 53, Sec. 24.1; Second Extra Session 1996): Section 24.1 of Chapter 18 of the Second Extra Session changes the name of what was previously known as the "Clozaril Program" in the Division of Mental Health, Developmental Disabilities and Substance Abuse Services to the "Atypical Antipsychotic Medication Program" and makes a technical change in the annual income eligibility standards for those enrollees in the program who are gainfully employed.

Medicaid Subrogation Change/LRC Study (Chapter 18, Sec. 24.2; HB 53, Sec. 24.2; Second Extra Session 1996): Section 24.2 of Chapter 18 of the Second Extra Session amends G.S. 108A-57 by deleting all references to payment of fees for an attorney retained by a beneficiary of medical assistance benefits, including the right of an attorney to keep up to one third of any amount obtained on behalf of a beneficiary in a claim against a third party by reason of injury or death. The prior version of G.S.

108A-57 allowed an attorney's fee up to one-third of the amount obtained or recovered, payable according to an approved schedule. The attorney's fee had priority over payment to the Department of Human Resources to recover the amount of assistance paid by the Department on behalf of or to the beneficiary. The amended statute reverses this order of priority and requires the attorney to distribute, out of the proceeds obtained or recovered on behalf of the beneficiary, the amount of assistance paid by the Department on behalf of or to the beneficiary, as prorated with the claims of all others having medical subrogation rights or medical liens against the amount obtained or recovered, but this amount paid to the Department shall not exceed one-third of the gross amount obtained or recovered. The legislation became effective July 1, 1996, and applies to claims filed on or after August 15, 1996.

Thomas S. (Chapter 18, Sec. 24.4; HB 53, Sec. 24.4; Second Extra Session 1996): Section 24.4 of Chapter 18 of the Second Extra Session amends Section 23.21 of Chapter 321 of the 1995 Session Laws by adding a new subsection allowing Thomas S. funds to be expended to support services for Thomas S. Class members in adult care homes when the service needs of individual Class members in these homes cannot be met via the established maximum adult care home rate.

Section 23.21 of Chapter 321 of the 1995 Session Laws currently requires the Department of Human Resources to make an annual report the General Assembly on the progress achieved in serving members and prospective members of the Thomas S. Class. Section 24.4 of Chapter 18 of the Second Extra Session amends the reporting requirements and adds a provision that requires DHR to include in the report the number of all individuals identified as prospective Class members. No longer is DHR required to include the number of prospective Class members evaluated and the number of prospective Class members awaiting evaluation in the report.

Carolina Alternatives Expansion Limits (Chapter 18, Sec. 24.10; HB 53, Sec. 24.10; Second Extra Session 1996): Section 24.10 of Chapter 18 of the Second Extra Session directs the Department of Human Resources to move forward with the expansion of the Carolina Alternatives Child and Adult Waiver Pilot Program, providing that prior to the implementation of any addition covered population during fiscal year 1996-1997, the Department comply with the following requirements: 1) receive approval from the Health Care Financing Administration; 2) make a determination that each area authority wishing to participate in the pilot program has the capacity to implement the waiver; 3) ensure that the expansion is budget neutral; 4) arrive at a determination that the capitation rates are adequate to provide appropriate services; 5) develop five-year cost estimates; 6) prepare a summary of complaints received concerning Carolina Alternatives during 1996; and 7) submit a report to the 1997 General Assembly and the Fiscal Research Division on items 3-6 above.

Clinical Social Worker Exemption (Chapter 18, Sec. 24.11; HB 53, Sec. 24.11; Second Extra Session 1996): The 1991 General Assembly passed an act that required mandatory certification of clinical social workers by the North Carolina Certification Board for Social Work. The act granted an exemption from certification until January 1, 1997 to clinical social workers who worked for the State, a political subdivision of the State, or a local government. Section 24.11 of Chapter 18 of the Second Extra Session extends the exemption from certification for clinical social workers who work for the State, a political subdivision of the State, or a local government until January 1, 1999.

Foster Care Reporting Repealed (Chapter 18, Sec. 24.12; HB 53, Sec. 24.12; Second Extra Session 1996): Section 23.22 of Chapter 324 of the 1995 Session Laws required

counties receiving funds for foster care to report certain information annually beginning in the 1995-96 fiscal year to the Division of Social Services. Section 24.12 of Chapter 18 of the Second Extra Session repeals this reporting requirement.

AFDC Emergency Assistance Rules Clarified (Chapter 18, Sec. 24.14; HB 53, Sec. 24.14; Second Extra Session 1996): See **CHILDREN AND FAMILIES.**

Review of ACTS (Chapter 18, Sec. 24.15; HB 53, Sec. 24.15; Second Extra Session 1996): See **CHILDREN AND FAMILIES.**

Clarification of Authorized Additional Use of HIV Foster Care Fund (Chapter 18, Sec. 24.16; HB 53, Sec. 24.16; Second Extra Session 1996): Section 24.16 of Chapter 18 of the Second Extra Session clarifies that adoptive families of HIV-infected children are entitled to board payments and other listed services on the same basis as foster families.

Extend Cabarrus AFDC and Food Stamp Pilot (Chapter 18, Sec. 24.16A; HB 53, Sec. 24.16A; Second Extra Session 1996): See **CHILDREN AND FAMILIES.**

Rural Community and Migrant Health Centers' Participation in State Contract Purchasing (Chapter 18, Sec. 24.17; HB 53, Sec. 24.17; Second Extra Session 1996): G.S. 143-49(6) requires the Department of Administration to make available services in the purchase of materials, supplies and equipment to certain nonprofit corporations operating charitable hospitals, community sheltered workshops, child placing and child-care facilities, and governmental and public agencies. Sec. 24.17 of Chapter 18 of the Second Extra Session adds to this list private nonprofit rural community and migrant health centers designated by the Office of Rural Health and Resource Development.

The Department of Human Resources Report on Implementing the Division of Youth Services Study (Chapter 18, Sec. 24.21; HB 53, Sec 24.21; Second Extra Session 1996): The Department of Human Resources shall report to the Joint Legislative Commission on Governmental Operations by October 1, 1996, on its plans for implementing the recommendations of the Comprehensive Study of the Division of Youth Services.

Adult Care Home Reimbursement Rate Increase (Chapter 18, Sec. 24.26A; HB 53, Sec. 24.26A; Second Extra Session 1996): Section 23.10 of Chapter 507 of the 1995 Session Laws made changes to the Adult Care Home reimbursement rate structure in the following ways: (1) for the first time federal Medicaid funds were used to pay for personal care services; (2) from the state and county funds freed up, a 10% rate increase was granted and the maximum monthly rate was set at $844. Section 24.26A of Chapter 18 amends Section 23.10 of Chapter 507 of the 1995 Session Laws to increase the maximum monthly rate from $844 to $874. It also requires the Aging Study Commission to study the issue of staff incentive grants and the issue of mandatory staff/resident ratios and report the results of this to the 1997 General Assembly.

Fire Protection Revolving Loan Fund (Chapter 18, Sec. 24.26B; HB 53 Sec. 24.26B; Second Extra Session 1996): Section 24.26B of Chapter 18 of the Second Extra Session establishes within the Housing Finance Agency an adult Care Home, Group Home, and Nursing Home Fire Protection Fund. This $1 million revolving fund will assist with the purchase and installation of fire protection systems in existing and new adult care homes, group homes and nursing homes. Rules developed by the Housing

Finance Agency in consultation with the Department of Human Resources shall include the following: (1)maximum loan amounts; (2)interest rates from 3% to 6% for a period not to exceed 20 years; (3)documentary verification of reasonable costs for the systems; (4) loan approval priority criteria that considers the frailty levels; and (5)acceleration of a loan when statutory fire protection requirements are not met.

Child Day Care Subsidies (Chapter 18, Sec. 24.26C; HB 53, Sec. 24.26C; Second Extra Session 1996): See **CHILDREN AND FAMILIES.**

Early Childhood Initiatives (Chapter 18, Sec. 24.29; HB 53, Sec. 24.29; Second Extra Session 1996): See **CHILDREN AND FAMILIES.**

AFDC Fraud Control Program (Chapter 18, Sec 24.30; HB 53, Sec. 24.30; Second Extra Session 1996): See **CHILDREN AND FAMILIES,**

Food Stamp Felony and Fraud (Chapter 18, Sec.24.31; HB 53, Sec. 24.31; Second Extra Session 1996): See **CRIMINAL LAW AND PROCEDURE.**

STUDIES

Legislative Research Commission Studies

The **Legislative Research Commission** may study issues related to the **Medicaid subrogation** statute, G.S. 108A-57, including State compliance with federal law as it relates to recovery of Medicaid expenditures, the appropriate amount of attorneys' fees and costs the State should pay for recovery of Medicaid expenditures, and the appropriate amount that should be guaranteed to the client for whom the underlying action is brought. The Commission may report to the 1997 General Assembly. (Chapter 18, Sec. 24.1(b) and (c); HB53, Sec. 24.21(b) and (c); Second Extra Session 1996)

The Studies Act of 1996 (Chapter 17; SB 46; Second Extra Session 1996) authorizes the **Legislative Research Commission** to study the following:

1. **Liability for county departments of social services/negligence**; and
2. **Related and vital issues of education and placement in the training schools** run by the Department of Human Resources, Division of Youth Services, in order to determine how to ensure that education and placement are adequate and appropriate for all training school students, including Willie M. students

Independent Studies, Boards, Etc., Created, Continued or Abolished

North Carolina Study Commission on Aging, Long-Term Care Subcommittee (Chapter 583; SB 126; Regular Session 1996): The NC Study Commission on Aging may appoint a Long-Term Care Subcommittee to develop a long-term care policy for NC with the following elements:

1. Promotes elder independence, choice, and dignity.
2. Provides a seamless, uniform system of flexible and responsive services.
3. Provides single-entry access.
4. Includes a wide range of home and community-based services available to all elderly who need them but targeted primarily to the most frail, needy elderly.

5. Provides care and services at the least expense in the least confusing manner and based on the desires of the elder population and their families.

6. Expands Medicaid income eligibility to allow more services in the home and community;

7. Creates a single agency and budget stream to administer services to the elderly.

8. Approaches long-term care within the context of the entire health care system.

North Carolina Health Care Reform Commission (Chapter 17, Part XVI; SB 46, Part XVI; Second Extra Session 1996): The NC Health Care Reform Commission is abolished effective January 1, 1997.

Legislative Study Commission on Welfare Reform (Chapter 17, Part XVII; SB 46, Part XVII; Second Extra Session 1996): The Legislative Study Commission on Welfare Reform is continued to study the following:

1. The feasibility of having public assistance appropriations and expenditures based on program/performance goals that foster consolidation and collaboration across program and agency lines;

2. Consideration of what consequences will ensue if a program or agency fails to attain its benchmarks or goals, and how those consequences can be handled in a manner that does not penalize families;

3. The feasibility of allowing counties to administer their own public assistance programs rather than the program devised by the State, and what core services, if any, should be part of all programs;

4. The feasibility of using public assistance funds to purchase services through subcontracting grants or otherwise from private and public not-for-profit organizations best able to achieve designated program and performance benchmarks and goals.

In considering these issues, special attention shall be given to:

1. The capacity of not-for-profit organizations in various local areas of the State to provide needed services and meet designated benchmarks and goals;
2. The best way to assure fiscal and program accountability;
3. Identification of a reasonable per-unit cost for administering and delivering specified services in a manner that:
   a. Considers and reflects an understanding of the populations to be served, and ensures that persons most difficult to serve will actually be served; and
   b. Considers the availability of infrastructure in local areas such as transportation, day and evening child care, job-training activities, and job-placement opportunities;
4. The extent to which it is feasible for recipient eligibility standards to be localized or regionalized; and
5. Linking all public assistance, job-training and job-placement program funding to performance, whether the services are being provided by governmental or nongovernmental agencies."

The membership of 12 is amended to provide for six persons appointed by the Speaker including three members of the House and Six appointed by the President Pro Tem including three members of the Senate.

The Commission shall submit a final report to the General Assembly by the first day of the 1997 General Assembly and then terminate.

Legislative Study Commission on Mental Health, Developmental Disabilities, and Substance Abuse Services (Chapter 18, Sec. 24.8; HB 53, Sec. 24.8; Second Extra Session 1996): The Legislative Study Commission on Mental Health, Developmental Disabilities, and Substance Abuse Services is created and shall study systemwide issues affecting the development, administration, and delivery of mental health,

developmental disabilities, and substance abuse services, including issues relating to the governance, accountability, and quality of services delivered.

The Commission shall have 21 members as follows: seven House members appointed by the Speaker including the Chair of the House Appropriations Subcommittee on Human Resources; seven Senators appointed by the President Pro Tem including the Chair of the Senate Human Resources Appropriations Committee; three representatives of Coalition 2001 appointed by the Governor including one representative from mental health, one from developmental disabilities, and one from substance abuse services; two public members appointed by the Speaker including one county commissioner; and two public members appointed by the President Pro Tem including one county commissioner.

The Commission shall report to every regular session of the General Assembly within one week of its convening.

Independent Study Commission on the Reorganization of the Department of Human Resources (Chapter 18, Sec. 24.20; HB 53, Sec. 24.20; Second Extra Session 1996): The Independent Study Commission on the Reorganization of the Department of Human Resources is established to **provide an alternative and improved approach to the organization and delivery of human services** in NC. The Commission shall contract with an independent management consulting firm to develop a reorganization plan.

The Commission consists of 16 members, 15 voting and one nonvoting as follows: five House members, two appointed by the Speaker, one chair of the House Appropriations Subcommittee on Human Resources, one member of the House Appropriations Subcommittee on Human Resources, and one chair or other member of the Subcommittee on Human Resources of Gov Ops; five members of the Senate, two appointed by the President Pro Tem, one chair of the Senate Appropriations Subcommittee on Human Resources, one member of the Senate Appropriations Subcommittee on Human Resources, and one chair or other member of the Subcommittee on Human Resources of Gov Ops; the Secretary of DHR or a designee who shall be a nonvoting member.

The consultant awarded the contract shall make a final report to the Commission by March 1, 1997. The Commission shall report to the General Assembly by April 1, 1997, and terminate.

Medicaid Task Force (Chapter 18, Sec. 24.32; HB 53, Sec. 24.32; Second Extra Session 1996 and Chapter 17, Part XI; SB 46, Part XI; Second Extra Session 1996): The Medicaid Task Force is continued. The Task Force shall report to the 1997 General Assembly within a week of its convening and terminates upon filing the final report.

Referrals to Departments, Agencies, Etc.

The **Department of Human Resources' Task Force on Determining a Minimum Reimbursement Rate for Adult Developmental Activity Programs** is continued and shall report to the Legislative Study Commission on Mental Health, Developmental Disabilities, and Substance Abuse Services in time to be included in the Commission's report to the 1997 General Assembly.
(Chapter 18, Sec. 24.5; HB 53, Sec. 24.5; Second Extra Session 1996)

The **Department of Human Resources** study of **staff vacancy and unbudgeted excess revenues** is continued. DHR shall report to the General Assembly by December 1, 1996. (Chapter 18, Sec. 24.19; HB 53, Sec. 24.19; Second Extra Session 1996)

The **Department of Human Resources, Division of Youth Services and the Administrative Office of the Courts** shall study **county payment of the cost of medical, surgical, psychiatric, psychological, or other treatment of juveniles** ordered pursuant to G.S. 7A-647 when the parents are not able to pay. Report shall be made to the Chairs of the House and Senate Appropriations Committees and the Chairs of the House and Senate Appropriations Subcommittees on the Department of Human Resources and on Justice and Public Safety by December 1, 1996. (Chapter 18, Sec. 24.21A; HB 53, Sec. 24.21A; Second Extra Session 1996)

Studies Referred to Existing Commissions

The **North Carolina Study Commission on Aging** shall study the issue of **adult care home grading** and report to the 1997 General Assembly. (Chapter 17, Part XVIII; SB 46, Part XVIII; Second Extra Session 1996)

The **Study Commission on Aging** shall study **adult care home reimbursement rates**, including staff incentive grants, and mandatory staff/resident ratios and shall report to the 1997 General Assembly.(Chapter 18, Sec. 24.26A(b); HB 53, Sec. 24.26A(b); Second Extra Session 1996)

INSURANCE
(Linwood Jones, Lynn Marshbanks)

Continuing Care Facility Supervision (Chapter 582; HB 1193; Regular Session 1996): Chapter 582 allows the Commissioner of Insurance to commence supervision proceedings for a financially troubled continuing care retirement center rather than petitioning the court for rehabilitation or liquidation of the facility. Supervision is a less drastic measure that does not require the Commissioner of Insurance to take control of the center's assets.

A continuing care retirement center is a facility that provides both lodging and medical or other health services to a resident for the life of the resident or for at least one year. These facilities are regulated by the Department of Insurance. The supervision authority provided under this act with respect to continuing care facilities is the same as that he already has over insurance companies.

Chapter 582 also provides that if a continuing care center is liquidated, the costs incurred by the liquidator in administering the estate of the center have priority over the continuing care agreements in the distribution of the estate's assets.

Coastal Insurance Legislation (Chapter 592; HB 1200; Regular Session 1996)(Chapter 579; HB 1192; Regular Session 1996)(Chapter 740; SB 1148; Regular Session 1996): These three pieces of legislation were enacted to improve insurance availability for both residential and commercial property owners in the coastal areas covered by the "Beach" Plan. The Beach Plan provides insurance coverage on the barrier islands for those who are unable to obtain coverage in the voluntary market. Insurers writing property insurance coverage in North Carolina are required to participate in the Beach Plan, sharing in its profits and losses.

Under Chapter 592 (**Revise Beach Plan Participation Formula**), the statutory formula that determines the extent of each insurer's participation in the Beach Plan is repealed and the Association that administers the Plan is authorized to develop a new formula, effective October 1, 1996. Insurers have always been encouraged to write policies voluntarily in the Beach area rather than letting the Plan write them, but the current statutory formula discourages voluntary policies because of the Plan's profitability. The more an insurer writes voluntarily, the lower its share of profits the Plan generates. Under the new law, the Association will have the necessary flexibility to develop a formula that will address this problem. The Association and the Department of Insurance are also directed to study and report back to the General Assembly on the reasons insurers are not voluntarily writing coverage in the Beach area.

Chapter 579 (**Beach Plan Reserve Fund**) addresses another aspect of the Beach Plan profits: whether they can be used to fund a reserve fund to pay for catastrophic hurricane losses. The new law does not require the creation of a fund but directs the Department of Insurance and the Association that administers the Beach Plan to study the feasibility of a reserve fund. The two groups are directed to review the tax consequences of a reserve fund because of the potential that the fund may adversely affect the Association's tax status. The findings will be reported to the General Assembly.

Chapter 740 (**Beach Plan Additional Coverage**) provides business owners in the Beach area who are insured under the Beach Plan an opportunity to purchase "business income" coverage. Business income coverage provides coverage to a business owner for loss of income when the business is unable to operate because of damage from a hurricane or other insured peril. The business owner must pay an additional premium for this coverage. This act becomes effective January 1, 1997, and applies to policies issued or renewed on or after that date.

Conform Receivership Laws (Chapter 658; SB 1150; Regular Session 1996): Chapter 658 repeals G.S. 58-30-160(b)(4), which provides that there shall not be a premium setoff in favor of a person against an impaired or insolvent insurance company if the person is obligated to pay the insurance company earned premiums. The reason for the repeal is to avoid confusion in the interpretation of G.S. 58-30-175, a more recent law that treats the subject of premium setoffs in a more general matter. The act becomes effective on October 1, 1996.

Insurance Company Investments (Chapter 659; SB 1151; Regular Session 1996): Chapter 659 provides that, in determining an insurer's financial condition, allowable assets include assets up to 5% of the surplus as regards policyholders, or the monetary surplus, before the premiums must be placed in a trust account or the agent must obtain a letter of credit or financial guaranty bond. The act becomes effective on October 1, 1996.

Preneed Sales Clarification (Chapter 665; SB 821; Regular Session 1996): Chapter 665 makes clear that a preneed establishment or preneed sales license is required whenever anyone sells or offers to sell caskets on a preneed basis. A "preneed" sale is a sale of a casket or certain other funeral merchandise before the death of the person for whom it is intended. Persons selling funeral merchandise on a preneed basis must abide by requirements designed to protect the buyer, including escrowing much of the payment price. This act became effective June 21, 1996.

Revise Consent to Rate (Chapter 668; HB 1201; Regular Session 1996): Under current law, an insurer is allowed to charge more than the standard rate on a particular risk if this higher rate is charged with "the knowledge and written consent of the insured." This has been interpreted to require the insured's written consent each time he or she renews the policy at this higher rate. Chapter 668 eases the administrative requirement on obtaining consent by allowing the insurer to obtain written consent just once -- when the policy is issued. This written and signed consent form will be retained by the insured, subject to inspection by the Commissioner. In addition, each policy renewal must contain a statement indicating that the rate is higher than the standard rate. This act takes effect October 1, 1996, and applies to policies issued or renewed on or after that date.

Small Employer Health Plans (Chapter 669; HB 1202; Regular Session 1996): Chapter 669 amends the "portability" clause under the Small Employer Group Health law to make it consistent with similar changes in 1995. Portability clauses were developed several years ago to help persons who have group health coverage through their employers to change jobs without having to satisfy the entire waiting period for preexisting conditions in the health insurance plan offered under their new jobs. The insured is credited under the new insurance plan for time spent satisfying that waiting period under the previous plan. Last year, the portability clause was further broadened by making it applicable even when the previous plan was not a group plan. (The new plan must still be a group plan in order for the portability clause to apply). Chapter 669 makes a similar change in the Small Employer Group Health law so that persons insured under a small employer group policy will be credited for time spent satisfying a waiting period under a previous policy, regardless of whether the previous policy was under a group plan.

Chapter 669 also clarifies a group medical underwriting law enacted last year. Last year's law prohibits insurers writing group policies from restricting or excluding coverage for anyone under that policy because of their medical condition. Chapter 669

clarifies this law to provide that it applies only to employer group policies (i.e., group policies issued through employers).

Regulatory Fee Provision (Chapter 670; HB 1345; Regular Session 1996): Chapter 670 establishes the percentage rate for the insurance regulatory charge at 7.25% for the 1996 calendar year, effective upon ratification, June 21, 1996. It also establishes the percentage rate for the public regulatory fee at 0.10% of each utility's jurisdictional revenues earned during each quarter beginning on or after July 1, 1996, effective on that date.

Child Support Lien (Chapter 674; HB 1280; Regular Session 1996): See **CHILDREN & FAMILIES.**

Loss Costs Cleanup (Chapter 729; HB 1086; Regular Session 1996): Chapter 729 makes a technical correction to the 1995 Workers' Compensation loss costs rating law. The correction involves a reference to the rates used by self-insured groups in setting premiums for their members. This act became effective on June 21, 1996.

Revise Nonfleet Motor Vehicles Definition (Chapter 730; HB 1199; Regular Session 1996): Chapter 730 revises the definition of a "nonfleet motor vehicle" under the insurance laws to clarify a problem that arose from a change in the definition last year. During the 1995 session, the definition was changed to allow more vehicles to be written on a "nonfleet" auto policy. The law had historically allowed only up to four vehicles to be written on a nonfleet policy, but the 1995 change allowed five or more private passenger vehicles to be written on a nonfleet policy if they were owned by an individual, husband and wife, or jointly by two or more people related by blood or marriage or living in the same household. The wording of the 1995 change created potential problems for a small business owner with five or more private passenger vehicles in his name. It essentially required him to forego the fleet policy that he might normally use for those vehicles and instead use a nonfleet policy. A separate fleet policy would be required to insure any additional vehicles of the business owner that were not private passenger vehicles. Chapter 730 addresses this problem by authorizing the North Carolina Rate Bureau, subject to the approval of the Commissioner of Insurance, to specify the instances in which more than four private passenger vehicles can be insured under a nonfleet policy.

Chapter 730 also provides that the exemption from insurance points and Reinsurance Facility recoupment surcharges for accidents sustained by emergency officials while responding to emergencies applies only if the emergency vehicle is operated in accordance with the laws governing the use of warning devices on emergency vehicles. (This includes privately-owned vehicles used by volunteer firefighters and others to respond to emergencies).

The change concerning nonfleet motor vehicle policies becomes effective January 1, 1997, and applies to policies written on or after that date. The change concerning emergency vehicles became effective June 21, 1996.

Premium Tax Collection (Chapter 747; HB 1096; Regular Session 1996): See **TAXATION.**

Repeal Reinsurance Restrictions (Chapter 752; SB 1146; Regular Session 1996): Chapter 752 repeals an obsolete statute that prohibits reinsurers licensed in North Carolina from reinsuring surplus lines insurers doing business in this State. More recent laws on reinsurance and surplus line carriers are available to safeguard against concerns in this area. Chapter 752 also amends a 1995 law on assumption reinsurance. The

1995 law on assumption reinsurance, which prevents an insurer from ceding a policy to a reinsurer without the policyholder's consent, was unclear whether the mere transfer of the policy was sufficient to trigger the protections of this law or whether the policy had to be cancelled and a new one issued by the reinsurer. Chapter 752 makes clear that the transfer itself, in which a new insurer is substituted without the cancellation and reissuance of a policy, triggers the assumption reinsurance law. This act became effective June 21, 1996.

LOCAL GOVERNMENT
(Susan Hayes, Giles Perry, Barbara Riley)

Community Development Loan Guarantees (Chapter 575; HB 361; Regular Session 1996): Last session, the General Assembly enacted legislation authorizing the Department of Commerce to participate in the federal Section 108 loan program. The section 108 loan program allows the State to pledge future federal CDBG appropriations as loan guarantees. During the past year, an advisory committee has reviewed the program requirements and has suggested changes that are incorporated in Chapter 575. Chapter 575 also contains changes relating to industrial revenue bonds.

Briefly, Chapter 575 does the following:

* Authorizes loan pools. Once authorized by HUD, the individual projects financed through the pool would not require HUD approval, thus reducing processing time for these loan packages.
* Lowers the minimum project size for loan pool projects to $250,000. Non-pool projects retain the $750,000 minimum size threshold.
* Lowers the amount of equity required of the project sponsor from 25 percent to 10 percent and defines equity.
* Exempts projects involving certain federal tax credits (Low Income Housing Tax Credits and Historic Tax Credits) from the "personal guarantee" requirement that applies to Section 108 projects.
* Makes clear that local governments that receive CDBG funds directly from HUD have the authority to lend those funds to a third party under applicable CDBG regulations.

Chapter 575 also changes the laws governing industrial revenue bonds to provide for situations in which the initial operator of a project is not expected to be the operator for the term of the bonds that will be issued. Chapter 575 addresses how the Secretary of Commerce and the Local Government Commission are to evaluate projects that fall into this category.

Chapter 575 becomes effective October 1, 1996.

Moore Co. to Dist. 19B (Chapter 589; HB 233; Regular Session 1996): See **STATE GOVERNMENT.**

Allow Consolidated Human Services (Chapter 690; SB 709; Regular Session 1996): See **HUMAN RESOURCES.**

Statewide Gun Regulation (Chapter 727; HB 879; Regular Session 1996): Chapter 727 establishes statewide gun regulation standards and restricts local governments from adopting different regulations in certain areas. Effective June 21, 1996, local governments may only regulate the discharge or display of firearms except as otherwise authorized statewide by statute. Local governments may not regulate the possession, ownership, storage, transfer, sale, purchase, licensing or registration of firearms, firearm parts, ammunition, or the dealers of the same. The new law also prohibits more restrictive zoning against firearms than other commercial sales generally, but does permit zoning against any commercial activity within fixed distances of schools or educational institutions, where special use permits may be issued for commercial activities within the fixed distance found not to pose a danger to persons attending the schools or educational institutions. Gun shows may not be regulated more stringently than other shows. Local governments are permitted to regulate the firearms of their employees while in the course of their employment. The act does not prevent local

governments from exercising their authority related to the regulation of firearms that is specifically authorized to local governments statewide, including authority under the concealed carry law, the prohibition of weapons on school property, at paid assemblies, where alcoholic beverages are served, at courthouses, parades, funeral processions, picket lines or demonstrations. The act does allow local governments to prohibit the possession of firearms in public-owned buildings, on the grounds and parking lots of those buildings, and in public parks and recreation areas, so long as the prohibition does not prevent a person from storing a firearm in a motor vehicle while the vehicle is on public-owned grounds or areas. Local governments powers under the Riot and Civil Disorders statutes are preserved. The act became effective upon ratification on June 21, 1996.

County Remove Registration Block (Chapter 741; SB 1165; Regular Session 1996): See **TAXATION.**

ETJ/Annexation/Zoning Changes (Chapter 746; HB 1083; Regular Session 1996): Chapter 746 amends the law concerning the extraterritorial zoning and planning powers of cities, prohibits a municipality from claiming for lost tax revenue and amends the statute of limitations for appealing zoning ordinances.

Section 1 requires cites to notify property owners to be added to the ETJ by first class mail. The notice is required to include an explanation of the effect of extension of extraterritorial zoning and planning powers by the city, the landowner's right to participate in a public hearing, and the right to apply to serve a an ETJ representative on the planning board or board of adjustment. Effective 10/1/96.

Section 2 requires cites to provide for proportional representation on planning boards and boards of adjustment, and to have a public hearing concerning any new appointments to these boards. Effective 10/1/96.

Sections 3 & 4 prohibit cities from stating a claim for lost property tax revenue caused by a person appealing an annexation and the delay that resulted from the appeal. Effective retroactively to 1/1/96.

Sections 5, 6 & 7 change the statute of limitations for appealing the validity of a zoning ordinance from nine months to two months. Effective 10/1/96.

Reimbursement to Counties for Housing Costs of Inmates (Chapter 18, Sec. 20.2; HB 53; Sec. 20.2; Second Extra Session 1996): Section 20.2 of Chapter 18 of the 1996 Second Extra Session Laws requires the State to reimburse counties for the costs of prisoners awaiting transfer to the State prison system, beginning on the sixth day after sentencing. For the 95-96 fiscal year, the State may reimburse at the rate of $14.50 a day, and for the 96-97 fiscal year, the State may reimburse at the rate of $40 per day.

STUDIES

Legislative Research Commission Studies

The **Legislative Research Commission** is authorized to study the following:

(1) **liability for county departments of social services' negligence**, including the following issues: county immunity from suit; waiver of immunity through the purchase of liability insurance, and State liability for county negligence when a county is deemed immune; (Chapter 17, Sec. 2.1(e); SB 46, Sec. 2.1(e); Second Extra Session 1996)

(2) allowing **property tax refunds for overpayments** due to clerical, measurement, or computational errors in appraisal of property; (Chapter 17, Section 2.1(g); SB 46, Sec. 2.1(g); Second Extra Session 1996) and

(3) **block grant awards by the Small Cities Community Block Grant Program.** (Chapter 17, Sec. 2.1(h); SB 46; Sec. 2.1(h) Second Extra Session 1996)

Referrals to Departments, Agencies, Etc.,

The **Department of Transportation** shall study requiring a **local match to State funds** appropriated for the operations of local visitors centers. (Chapter 18; Sec. 19.11(b); HB 53, Sec. 19.11(b); Second Extra Session 1996)

The **Department of Human Resources, Division of Youth Services** and the **Administrative Office of the Courts** are directed to study **county payment of the cost of medical treatment of juveniles** when parents are not able to pay. (Chapter 18, Sec. 24.12A; HB 53, Sec. 24.12A; Second Extra Session 1996)

PROPERTY

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

High Voltage Line Safety Act (Chapter 587; HB 1233; Regular Session 1996): See STATE GOVERNMENT.

Allow Cancellation by Exhibition (Chapter 604; SB 125; Regular Session 1996): Chapter 604 makes changes in the law relating to discharge and release of mortgages, deeds of trust and other instruments of indebtedness to allow cancellation by exhibition, regardless of the date of endorsement. Last year, Chapter 292 limited cancellation by exhibition to instruments endorsed on or before December 31, 1995. This act restores this method of cancellation. In addition, this act relieves the register of deeds of any responsibility to verify the authority of the person acknowledging the satisfaction or making the endorsement to do so; adds language providing that when the instrument is cancelled by exhibition of a notice of satisfaction or certificate of satisfaction, it must be accompanied by the deed of trust, mortgage or other instrument or a copy thereof for verification and indexing purposes, but not for recording; and adds a line indicating the date of satisfaction to the form for an affidavit of lost note. The act was effective upon ratification on June 21, 1996.

Rental Equipment Liens (Chapter 607; HB 1163; Regular Session 1996): Chapter 607 amends Article 2 of Chapter 44A to provide for liens against real property for persons who provide rental equipment directly utilized on the real property in making improvements. The act places suppliers of rental equipment in the same category as mechanics, laborers, material suppliers, architects, engineers, land surveyors, and landscape architects. The act becomes effective October 1, 1996 and is applicable to lien rights that arise on or after that date.

Good Funds Settlement Act (Chapter 714; SB 470; Regular Session 1996): Chapter 714 adds a new chapter to the General Statutes which would establish requirements regarding closing funds in the settlement of transactions involving one to four-family residential dwellings and lots restricted to residential use. The act provides that the settlement agent shall record the deed and loan documents required to be recorded at settlement, but shall not disburse any of the closing funds prior to recording unless the funds are deposited in the agent's trust or escrow account as collected funds (a defined term); except the settlement agent may rely on specified forms of deposits in the agent's account that are not collected funds, including certified or cashier's checks. The act requires the lender, purchaser, or seller to deliver closing funds to the settlement agent either as collected funds or in one of the specified forms. However, failure to comply with these requirements does not affect the validity or enforceability or any of the closing documents. A penalty is also created for any party violating the act. The act is effective October 1, 1996, and applies to settlements occurring on or after that date.

Mold Lien Act (Chapter 744; HB 1164; Regular Session 1996): Chapter 744 creates a personal property possessory lien under Article 1 of Chapter 44A in a mold, die, form, or pattern (collectively referred to as a mold) for the unpaid charges for preparing the mold, or for the unpaid charges for the products produced by the mold. In order for lien rights to arise, there must be written evidence that the parties understood that a lien could be applied prior to the making or use of the mold. The written evidence must describe generally the amount of the potential lien. This lien

would not have priority over any security interest in the mold perfected prior to the time the lien arises. The procedures for enforcing the lien are the same as for other possessory liens. The act is effective October 1, 1996 and applies to charges incurred on or after that date.

RESOLUTIONS

Joint Resolutions

Authorize Memorial Resolution/Gordon Hanes (Res. 16; SJR 1484; Regular Session 1996).

Authorize Same-Sex Marriage Ban Bill (Res. 17; SJR 1394; Regular Session 1996).

Authorize Chase Memorial Resolution (Res. 18; HJR 1228; Regular Session 1996).

Enabling Resolution to Honor Granville (Res. 19; HJR 1276; Regular Session 1996).

Memorializing Nancy W. Chase (Res. 20; SJR 1489; Regular Session 1996).

Memorializing Gordon Hanes, Jr. (Res. 21; SJR 1485; Regular Session 1996).

Authorize Gov. Morehead Memorial (Res. 22; SJR 1486; Regular Session 1996).

Honoring Granville (Res. 23; SJR 1490; Regular Session 1996).

Authorize Webster Memorial Resolution (Res. 24; SJR 1491; Regular Session 1996).

Authorize Creecy Memorial Resolution (Res. 25; SJR 1492; Regular Session 1996).

Honoring Gov. John Motley Morehead (Res. 26; SJR 1495; Regular Session 1996).

Authorize Resolution Condemning Church Arson (Res. 27; HJR 1451; Regular Session 1996).

Authorize Resolution Church Arson Penalty (Res. 28; HJR 1453; Regular Session 1996).

Condemning Violence/Black Churches (Res. 29; HJR 1459; Regular Session 1996).

1996 Extra Session Adjournment (Res. 1, HJR 3, First Extra Session 1996).

1996 Second Extra Session Adjournment (Res. 1, HJR 46, Second Extra Session 1996).

Simple Resolutions

House of Representatives

Censuring Rep. Ken Miller (HR 1106; Regular Session 1996).

1996 Extra Session Rules (HR 1, First Extra Session 1996).

Second Extra Session Rules (HR 1, Second Extra Session 1996).

Special Rules for Budget Bills (HR 80, Second Extra Session 1996).

Senate

Confirming TSERS Appointees (SR 1398; Regular Session 1996).

1996 Extra Session (SR 1, First Extra Session 1996).

Second Extra Session Rules (SR 1, Second Extra Session 1996).

Allow Administrative Law Bill (SR 44, Second Extra Session 1996).

STATE GOVERNMENT

(Karen Cochrane-Brown, Bill Gilkeson, Linwood Jones, Giles Perry, Steven Rose, Terry Sullivan, Sandra Timmons)

Boards and Commissions

Board of Dental Examiners (Chapter 584; SB 555; Regular Session 1996): Chapter 584 increases the maximum fees that the State Board of Dental Examiners may assess. Chapter 584 became effective upon ratification, June 20, 1996.

Regulation of Barbers (Chapter 605; SB 294; Regular Session 1996): Chapter 605 was originally an agency bill requested by the North Carolina Board of Barber Examiners. It makes several changes in the occupational licensing laws on barbers and cosmetologists.

Fee Changes

Section 14 of the bill makes several fee changes, effective for renewals made in 1997. That section increases the maximum fees for restoration of an expired apprentice barber, barber, or barbershop license, authorizes the Board of Barber Examiners to impose a fee for renewal of a barber school license and for the restoration of an expired barber school license, authorizes the Board to impose a fee for the restoration of an expired barber school instructor license, and exempts barbers who are at least 70 years old from the barber license fees.

All fees paid to the Board of Barber Examiners are used by the Board to operate the Board. The fees are credited to the State treasury and the Board is subject to the Executive Budget Act.

Other Changes

The bill makes the following changes to the regulatory provisions of the barber provisions:

(1) Deletes the requirement that three barbers sign an application for a certificate of registration as a barber and substitutes a requirement that the barber who supervised the applicant while the applicant was an apprentice sign. (Section 1)

(2) Increases the membership of the Board from 4 members to 5 members and prohibits a person who has been removed from employment with the Board for just cause from serving on the Board for five years from the removal. (Section 2)

(3) Requires the holder of a temporary barber permit to work only at the barbershop specified in the permit and prohibits the Board from issuing a temporary permit to a person who has twice failed the barber apprentice exam. (Section 4)

(4) Prohibits the issuance of a permit to operate a barbershop in a location registered as a barber school and vice versa. (Section 5)

(5) Eliminates the requirement that a wall separate the area where a barber works from the area where a cosmetologist works. (Sections 7 and 16)

(6) Requires barber chairs to be covered with a smooth, nonporous surface.

(7) Sets a student/instructor ratio of 20 to 1 for a nonprofit barber school and requires an instructor to be on the premises of a for-profit or nonprofit school during instruction hours. (Section 10)

(8) Deletes the requirement that a student in a barber school furnish a doctor's certificate. (Section 11)

(9) Deletes the Board's authority to test applicants for an instructor's license on any subjects the Board considers necessary. (Section 12).

Chapter 605 becomes effective July 1, 1996, except for the repeal of the requirement for a partition between barbers and cosmotologists, which is retroactive to July 1, 1995.

Physician Licensing and Registration (Chapter 634; HB 1149; Regular Session 1996): Chapter 634 amends G.S. 90-15.1 to require physicians to register annually in January with the North Carolina Medical Board (under prior law, registration was in January of odd-numbered years). G.S. 93B-12(b), passed in 1995, requires health care provider licensing boards to collect and report information relating to the licensees practices on an annual basis to the Health Care Reform Commission. The Board may charge a registration fee of not more than $100 (under prior law, the biennial registration fee was not more than $200). The late registration fee of $20 is continued. The Board is directed to use a simplified registration form that will allow registrants to confirm information already on file. The license of a physician, who fails to register within 30 days of certified notice of failure to register, is automatically suspended (under prior law, the Board may suspend a license after notice and hearing for failure to register continuing for 30 days or more). The Board may reinstate the license upon payment of all accumulated fees and penalties. The rewrite of G.S. 90-15.1 is effective on January 1, 1998, but the 1997 registration fee may not exceed $100.

Chapter 634 also rewrites G.S. 90-12 to add an additional category of limited license to practice medicine to that already allowed by current law to be issued by the Medical Board (to practice within a specific locality by a resident of that locality when the Medical Board deems that the interests of people living in that locality demand it). The Medical Board is directed to issue to an applicant a "limited volunteer license" to practice medicine at clinics for indigents, within 30 days of the applicant providing the Board with the required information. The applicant must have a medical license from another state and produce a letter from that state indicating that the applicant is in good standing, and is authorized to treat personnel U.S. armed forces personnel or veterans. The limited license holder may not receive compensation for the services rendered at those clinics. A limited volunteer licensee who practiced medicine at other than clinics for the indigent is guilty of a Class 3 misdemeanor, subject to a fine of not less than $25 nor more than $50. His or her license can also be revoked. The amended G.S. 90-12 is effective upon ratification. Chapter 634 was ratified on June 21, 1996.

Nursing Home Administrator Fees (Chapter 645; SB 1094; Regular Session 1996): Chapter 645 increases the maximum license and renewal fee for nursing home administrators from $250 to $500. The act also increases from $25 to $100 the maximum fee that the State Board of Examiners for Nursing Home Administrators can assess sponsors of training and continuing education courses for official certification of those courses.

Employee Assistance Professionals (Chapter 720; HB 779; Regular Session 1996): Chapter 720 requires that any person holding himself or herself out as a licensed employee assistance professional must be licensed by the State. (A person can perform the functions of an employee assistance professional without obtaining a license as long as the person does not represent himself or herself as being "licensed" to perform those services). An employee assistance professional is a person who consults with employees to identify and help resolve (subject to referral to other medical authorities) job performance issues that relate to the employee's personal concerns. In order to be licensed, the applicant must have a masters degree, either a masters or undergraduate degree in a human services field, and be certified by the Employee Assistance Certification Commission. The Commission is a national private nonprofit association responsible for certifying employee assistance professionals. The licensee must be

recertified every three years either through examination or continuing education. A person certified by the Commission may apply prior to January 1, 2000, for licensure without meeting these requirements (although the person must have met the Commission's requirements for certification).

Chapter 720 creates a Board of Employee Assistance Professionals to oversee the licensing of those who hold themselves out as "licensed" employee assistance professionals. The Board will consist of five members appointed by the Governor. Except for the public member, all members on the initial board must have five years of experience as employee assistance professionals and must be certified by the Employee Assistance Certification Commission. The Department of Human Resources will provide staff to the Board.

Chapter 720 takes effect January 1, 1997.

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. AN ALTERNATIVE TO SUBMITTING TO THE U.S. ATTORNEY GENERAL IS TO OBTAIN A DECLARATORY JUDGMENT OF SEC. 5 COMPLIANCE FROM THE U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA.)

Religious Holiday/Absentee Voting (Chapter 561; SB 1116; Regular Session 1996): Chapter 561 adds to the reasons a voter may cast an absentee ballot that the voter will be unable to go to the polling place on election day because of observing a religious holiday pursuant to the tenets of the voter's religion. The bill was made effective January 1, 1997 and would apply to all elections on and after that date.

Moore County to District 19B (Chapter 589; HB 233; Regular Session 1996): Chapter 589 transfers Moore County to judicial district 19B and prosecutorial district 19B. As revised, District 19B will consist of Moore, Montgomery, and Randolph Counties. Changes are made in the number of judges assigned to district 19B and to the districts from which Moore County is transferred. Changes are also made to the number of assistant district attorneys in district 19B. A legislative study will determine whether the number of assistant district attorneys in the prosecutorial district from which Moore County is transferred (District 20) should be reduced. This act is subject to preclearance by the United States Department of Justice and does not take effect until approval by the Department of Justice or January, 1997, whichever is later.

Lift ESC Voter Sunset (Chapter 608; HB 1159; Regular Session 1996): Chapter 608 removes the July 1, 1996 expiration date on the designation of Employment Security Commission offices as voter registration agencies for purposes of the National Voter Registration Act. As a voter registration agency, the ESC is required to give all its clients the opportunity to register to vote when they apply for unemployment insurance benefits. The bill also gives ESC the option of covering the costs of its voter registration using either its federal funding or money from the Special Employment Security Administration Fund (supported by penalties and interest). The agency is required to report to the Joint Legislative Commission on Governmental Operations and

to the Election Laws Reform Committee of the LRC. The bill was made effective July 1, 1996.

Friday Canvass (Chapter 553; HB 1158; Regular Session 1996): Chapter 553 moves the county canvass--the official collection of precinct returns for counting and preparing abstracts--from the second day after an election (usually Thursday) to the third day (usually Friday). The bill was made effective upon ratification, June 6, 1996.

Pollworker Split Shifts (Chapter 554; HB 1173; Regular Session 1996): Chapter 554 allows a county board of elections to permit precinct assistants to work less than the full day required of chief judges and judges. The bill was made effective upon ratification, June 6, 1996.

Federal PAC Gifts (Chapter 593; HB 1157; Regular Session 1996): Chapter 593 puts into statute and clarifies a State Board of Elections practice of allowing federal political committees to give to North Carolina campaigns as long as the federal political committee registers with the State Board, appoints a North Carolina resident deputy or assistant treasurer, complies with the State Board's reporting requirements, and gives within North Carolina's contribution limits. The bill was made effective upon ratification, June 20, 1996.

Countywide Pollworkers (Chapter 734; HB 1203; Regular Session 1996): Chapter 734 provides that, if county boards of elections cannot find registered voters who live in a precinct to serve as precinct officials in that precinct, they can appoint voters who live in another precinct in the same county. Several qualifications were put in the bill, however, to prevent what legislators saw as potential abuses. Before appointing outsiders to serve as precinct officials, a county board would be required:

* To seek to find persons inside the precinct before resorting to appointing outsiders;
* To consult, where possible, with county party chairs before appointing outsiders;
* To have a unanimous vote of all three members of the county board before appointing outsiders;
* Never to appoint outsiders to a majority of the 3-person panel of chief judge and judges, or to a majority of the precinct assistants;
* To take care to have representatives of both parties among the precinct officials.

The county board is authorized to appoint a group of emergency election day precinct assistants who can be plugged in to fill vacancies because of emergencies that occur in any precinct within 48 hours before election day.

The bill also allows parties to appoint observers from outside the precinct. The bill was made effective upon ratification, June 21, 1996.

Observers at Polls/Voter Information (Chapter 688; SB 323; Regular Session 1996): Chapter 688 makes one change that is the same as that made in Chapter 734: Allows parties to appoint observers from anywhere in the county. In addition, the bill requires county boards of elections to provide a full range of specified information on registered voters to anyone who is willing to pay for it, and may charge only the actual cost of reproducing the list, or if it is provided on a magnetic medium, may charge a special service charge of no more than $25. The bill was made effective upon ratification, June 21, 1996.

Voter's Testimony (Chapter 694; HB 1162; Regular Session 1996): Chapter 694 prohibits the use in a hearing on a voting irregularity of an ineligible voter's testimony as to how that voter voted. If the number of ineligible voters met or exceeded the margin of victory, the bill would give the person seeking a new election a right to have a new election or to have a tie declared, whichever is appropriate. The bill was made effective upon ratification, June 21, 1996.

Superior Court Judge Elections (Chapter 9; SB 41; Second Extra Session 1996): Chapter 9 of the Second Extra Session makes three basic changes in the method by which Superior Court judges are elected:

1. ***Election by District Rather Than Statewide.*** Beginning with the 1996 election, the Superior Court judges will be elected by judicial district. Current statute requires that Superior Court judges be nominated by their political parties by district, but that the party nominees and any unaffiliated candidates must run in the general election on the statewide ballot. Since 1994, the statewide election feature of the statute has been suspended by order of the U.S. District Court. Judge James C. Fox ruled in the case of Republican Party v. Hunt that statewide elections amounted to an unconstitutional partisan gerrymander against Republican judicial candidates. He issued his order just days before the November 1994 election, and made it effective with that election, so that superior court judges would be elected in that election by the district vote. In light of the likely appeal of his decision, however, he ordered the State Board of Elections to count the votes as well statewide and by judicial division, so that the data would be available for analysis. In the 1994 election, which was a Republican sweep, all Republican candidates for superior court judge won the statewide tally, but not all were elected by district. This unexpected result led counsel for the defense to file the election results with Judge Fox and to ask that he consider his decision in light of them. He agreed to do so, but there the matter had been left. The enactment of Chapter 9, if precleared, removes the election of the judges from this legal limbo and settles that the district electorate will have the final word on Superior Court judges.
2. ***Nonpartisan Election of Judges.*** Beginning with the 1998 elections, all superior court judges will be nominated and elected without regard to political party. Chapter 9 sets up a system under which candidates for superior court judge will run in nonpartisan primaries, held on the same day in May as the party primaries. The primaries would reduce the field to twice the number to be elected, eliminating additional candidates. Then the reduced field (twice the number to be elected) would run in the November general election. The system is patterned after the nonpartisan primary and elections used by some cities (Durham, for example) to elect their mayors and city councils. These nonpartisan primaries and elections would be by district.
3. ***Vacancy Election for Full 8-Year Term.*** Beginning with the 1996 election, certain classes of superior court judgeship vacancies would be filled under a different method. Under prior law, if a vacancy occurred any time during a superior court judge's eight-year term, that vacancy was filled by the Governor. The Governor's appointment served until November of the next even-numbered year, on which an election would be held to fill the remainder of the eight year term. So, under prior law, if someone was appointed to fill a vacancy five years into an eight-year term, the Governor would appoint someone on the fifth year, that person would be up for election on the sixth year to fill the remaining two years of the eight-year

term, and would be up for election again on the eighth year for a full term. Chapter 9 would eliminate one of those elections in cases where either:

* The judge is the only resident superior judge in the district; or
* The district has no counties in it that are covered by Section 5 of the Voting Rights Act.

In those districts, the first election after the Governor's appointment to the vacancy will be for a full eight-year term, regardless of what point in the term the vacancy occurs. In all other districts, the prior law was left in place because of the U.S. Justice Department's prior concern about the effect on minority voting strength of staggering single-seat judgeship elections.

The district election of judges is effective only if Justice gives Voting Rights Act preclearance to both district elections and nonpartisan elections. The bill is generally effective upon ratification.

See also the "Judicial" subsection under **STATE GOVERNMENT** for other bills concerning district and superior court judges.

Judicial

Additional Assistant DAs (Chapter 18, Sec. 22; HB 53, Sec. 22; Second Extra Session 1996): Section 22 of Chapter 18 of the Second Extra Session authorizes 56 new assistant district attorney positions, as follows:

* One for District 1 (Camden, Chowan, Currituck, Dare, Gates, Pasquotank, Perquimans);
* One for District 2 (Beaufort, Hyde, Martin, Tyrrell, Washington);
* One for District 3A (Pitt);
* Two for District 3B (Carteret, Craven, Pamlico);
* Two for District 4 (Duplin, Jones, Onslow, Sampson);
* Two for District 5 (New Hanover, Pender);
* One for District 6A (Halifax);
* One for District 6B (Bertie, Hertford, Northampton);
* Two for District 7 (Edgecombe, Nash, Wilson);
* Two for District 8 (Greene, Lenoir, Wayne);
* One for District 9 (Franklin, Granville, Vance, Warren);
* One for District 9A (Person, Caswell);
* Three for District 10 (Wake);
* One for District 11 (Harnett, Johnston, Lee);
* Two for District 12 (Cumberland);
* Two for District 13 (Bladen, Brunswick, Columbus);
* One for District 14 (Durham);
* One for District 15A (Alamance);
* One for District 15B (Orange, Chatham);
* One for District 16A (Scotland, Hoke);
* One for District 16B (Robeson);
* One for District 17A (Rockingham);
* One for District 17B (Stokes, Surry);
* Four for District 18 (Guilford);
* One for District 19A (Cabarrus);
* One for District 19C (Rowan);
* One for District 21 (Forsyth);
* Two for District 22 (Alexander, Davidson, Davie, Iredell);
* One for District 23 (Alleghany, Ashe, Wilkes, Yadkin);
* One for District 24 (Avery, Madison, Mitchell, Watauga, Yancey);

* One for District 25 (Burke, Caldwell, Catawba);
* Five for District 26 (Mecklenburg);
* Two for District 27A (Gaston);
* One for District 27B (Cleveland, Lincoln);
* One for District 28 (Buncombe);
* Two for District 29 (Henderson, Mcdowell, Polk, Rutherford, Transylvania);
* One for District 30 (Cherokee, Clay, Graham, Haywood, Jackson, Macon, Swain).

The section becomes effective January 1, 1997.

Additional Magistrates (Chapter 18, Sec. 22.4; HB 53, Sec. 22.4; Second Extra Session 1996): Section 22.4 of Chapter 18 of the Second Extra Session authorizes seven new magistrates, allocated to counties as follows:

* One for Northampton;
* One for Bertie;
* One for Vance;
* Two for Randolph;
* One for Lincoln;
* One for Henderson.

Four Special Superior Court Judges (Chapter 18, Sec. 22.6; HB 53, Sec. 22.6; Second Extra Session 1996): Section 22.6 of Chapter 18 of the Second Extra Session authorizes the Governor, effective December 15, 1996, to appoint four special superior court judges to terms expiring December 14, 2001. Their successors would be appointed to five-year terms.

Additional District Court Judges (Chapter 18, Sec. 22.7; HB 53, Sec. 22.7; Second Extra Session 1996): Section 22.7 of Chapter 18 of the Second Extra Session creates three new district court judgeships, one each for Districts 12 (Cumberland), 16A (Scotland, Hoke), and 23 (Alleghany, Ashe, Wilkes, Yadkin). The section directs the Governor to appoint the three judges, and provides that their successors shall be elected in 2000 to four-year terms. The new judgeships are effective December 15, 1996, or 15 days after the date of preclearance under Section 5 of the Voting Rights Act, whichever is later.

District Court Judges (Chapter 18, Sec. 22.8; HB 53, Sec. 22.8; Second Extra Session 1996): Section 22.8 of Chapter 18 of the Second Extra Session amends an act that was ratified during the 1996 Short Session, Chapter 589 of the 1995 Session Laws. Chapter 589 transferred Moore County from District Court District 20 (Stanly, Union, Anson, Richmond, Moore) to District 19B (Montgomery, Randolph). It provided that the two District 20 judgeships held by Moore residents on June 12, 1996 would be transferred to District 19B, with their terms to end in 1998. And it added a new judgeship to District 20, with the Governor to fill that judgeship as a vacancy for the remainder of a term to expire in 2000. Section 22.8 of Chapter 18 of the Second Extra Session changes Chapter 589 by allocating one of the seats (the one held by Michael Earle Beale) to District 20 and the other one (held by Jayrene Russell Maness) to District 19B. The section also adds an judgeship to 19B instead of to 20, and makes that term end in 1998 instead of 2000.

District Court Reporter Option (Chapter 18, Sec. 22.11; HB 53, Sec. 22.11; Second Extra Session 1996): Section 22.11 of Chapter 18 of the 1996 Second Extra Session amends G.S. 7A-198 to authorize a party to a civil trial in district court to request a private agreement with the opposing parties to share the cost of a court reporter, or to

pay for the reporter if the opposing party refuses and recover costs if the opposing party later appeals the case. Section 21.4 became effective July 1, 1996.

Increase Fees in Criminal Cases (Chapter 18, Sec. 22.13; HB 53, Sec. 22.13; Second Extra Session 1996): Section 22.13 of Chapter 18 of the 1996 Second Extra Session increase fees in criminal cases from $41 to $46 in district court and from $48 to $53 in superior court. Section 22.13 becomes effective September 1, 1996.

Legislative

Legislative Services Officer (Chapter 18, Sec. 8; HB 53, Sec. 8; Second Extra Session 1996): Section 8 of Chapter 18 of the Second Extra Session 1996 substitutes the title "Legislative Services Officer" for that of "Legislative Administrative Officer" where the latter appears in the General Statutes. This action conforms the statutes to current practice resulting from the recent appointment of the Legislative Services Officer, the chief administrative officer for the Legislative Branch. This section became effective July 1, 1996.

Legislative Services Office's Access to State Information (Chapter 18, Sec. 8.2; HB 53, Sec. 8.2; Second Extra Session 1996): Section 8.2 of Chapter 18 of the Second Extra Session 1996 amends G.S. 120-32.01 to require all State agencies to provide the Legislative Services Office with:

1. any information requested by it (under the prior law, the requirement was applicable only to that Office's Research, Fiscal Research and Bill Drafting Divisions); and

2. with access to any electronic data base, except where prohibited by State or federal law (under the prior law, only that Office's Fiscal Research Division had that access).

This section became effective July 1, 1996.

Territorial Jurisdiction of the Legislative Services Commission Extension (Chapter 18, Sec. 8.1; HB 53, Sec. 8.1; Second Extra Session 1996): Section 8.1 of Chapter 18 of the Second Extra Session 1996 amends the definition of the term "State legislative buildings and grounds", contained in G.S. 120-32.1, to extend the Legislative Services Commission's territorial jurisdiction to include the surface area of Lane Street, at the rear of the State Legislative Building and bordering the land on which the State Legislative Building is sited. Previously, all of Lane Street was included in the Legislative Services Commission jurisdiction only when the General Assembly was in session or when committee meetings were scheduled and the Legislative Administrative Officer (now the Legislative Services Officer) determined that parking was needed. This section became effective July 1, 1996.

State Agencies and State-Funded Entities

Director of Budget and State Construction May Time Selection of Designers and Release of Design and Construction Funds to Avoid Inflation Due to Market Prices Being Increase by the Number of Contracts (Chapter 18, Sec. 10.1; House Bill 53, Sec. 10.1; Second Extra Session 1996): Section 10.1 of Chapter 18 of the 1996 Second Extra Session allows the Governor (as director of the budget) to waive the requirement that designers on State building projects be selected within 60 days of the date funds are appropriated by the General Assembly for a project in order to minimize project costs through increased competition and improvements in the market availability

of qualified contractors to bid on State building projects. This provision was effective July 1, 1996.

Construction Code Receipts (Chapter 18, Sec. 12; House Bill 53, Sec. 12; Second Extra Session 1996): Section 12 of Chapter 18 of the 1996 Second Extra Session allows the Department of Insurance to use proceeds from the sale of State construction code manuals, which otherwise would revert to the General Fund, to purchase code manuals for sale to the public. This provision was effective July 1, 1996.

Global Transpark Authority Audit/Audit by State Auditor (Chapter 18, Sec. 26; House Bill 53, Sec. 26; Second Extra Session 1996): Section 26 of Chapter 18 of the 1996 Second Extra Session requires the Global Transpark's annual audit to be conducted by the State Auditor. This provision was effective July 1, 1996.

MCNC (Chapter 18, Sec. 26.3; House Bill 53, Sec. 26.3; Second Extra Session 1996): Section 26.3 of Chapter 18 of the 1996 Second Extra Session directs that the $13 million transferred from the Department of Commerce for use by MCNC (Microelectronics Center of North Carolina) to the University of North Carolina Board of Governors be used by the Board of Governors for the purchase of supercomputing and research and education networking services so that these services will continue to be available to North Carolina's colleges and universities. This provision was effective July 1, 1996.

Technological Development Authority Funds/Investment (Chapter 18, Sec. 26.6; House Bill 53, Sec. 26.6; Second Extra Session 1996): Section 26.6 of Chapter 18 of the 1996 Second Extra Session authorizes the State Treasurer to invest up to $25 million of Employment Security Commission Reserve Funds in securities issued by the Technological Development Authority. The proceeds of these securities are used to support venture capital funds. This provision was effective July 1, 1996.

State and Local Employees

Salary Continuation Benefits for DOC Employees (Chapter 18, Sec. 20.7; HB 53, Sec. 20.7; Second Extra Session 1996): Section 20.7 of Chapter 18 extends salary continuation benefits to Department of Correction employees who are injured either while performing supervisory duties over offenders or by the deliberate act of an offender supervised by the Department. This provision was effective July 1, 1996.

State Employees Salary Increases (Chapter 18, Sec.'s 28 - 28.13; HB 53, Sec.'s 28-28.13; Second Extra Session 1996): These sections of Chapter 18 of the Second Extra Session outline provisions for a salary increase of 4.5%, effective September 1, 1996, for the Governor, members of the Council of State and the Governor's cabinet, executive officers, judicial system personnel, legislative employees, and community colleges and university system personnel. Section 28.12 of Chapter 18 provides that State employees subject to the State Personnel Act receive a cost-of-living adjustment in the amount of 2.5% and a career growth recognition award in the amount of two percent (2%), effective September 1, 1996.

Postretirement Benefit Increases (Chapter 18, Sec. 28.21; HB 53, Sec. 28.21; Second Extra Session 1996): Section 28.21 of Chapter 18 of the 1996 Second Extra Session provides a postretirement increase of 4.4% in the benefits of retirees of the Teachers' and State Employees' Retirement System, the Consolidated Judicial Retirement System, and the Local Governmental Employees' Retirement System. The increase commences

on September 1, 1996, and apply to retirees whose retirement began on or before July 1, 1995. Members who retired between August 1, 1995 and June 1, 1996 would receive a prorated amount of the increase based on the number of months they have been retired. The section also provides a 4.4% increase to retirees of the Legislative Retirement System who retired on or before January 1, 1996, and a prorated amount of the 4.4% increase to retirees who retired between February 1, 1996 and June 1, 1996. This increase also would commence on September 1, 1996.

State Employee Health Benefit Plan/Preexisting Health Conditions (Chapter 18, Sec. 28.23; HB 53, Sec. 28.23; Second Extra Session 1996): Section 28.23 of Chapter 18 redefines preexisting condition and specifies how the Teachers and State Employees Comprehensive Major Medical Plan is to administer the 12-month waiting period for such preexisting conditions. It outlines that the State Health Plan must give credit for the time that a person was covered under a previous plan if that plan's coverage was continuous to a date not more than 60 days before the effective date of coverage with the State plan. This provision was made effective July 1, 1995.

State Employee Health Benefit Plan/Skilled Nursing Facility Benefits in Facilities not Medicare-Qualified (Chapter 18, Sec. 28.24; HB 53, Sec. 28.24; Second Extra Session 1996): Section 28.24 of Chapter 18 provides that the Teachers and State Employees Comprehensive Major Medical Plan will pay benefits in a skilled nursing facility which is licensed under applicable State laws. For facilities not qualified for the delivery of services covered by Medicare, neither the Plan nor any of its members shall be billed or held liable by such facilities for charges that otherwise would be covered by Medicare. This provision was made effective July 1, 1996.

Redefine Service for Purposes of Longevity Pay for Public Defenders (Chapter 18, Sec. 28.25; HB 53, Sec. 28.25; Second Extra Session 1996): Section 28.25 of Chapter 18 of the Second Extra Session expands the service definition for public defender longevity pay to also include service as an assistant public defender, justice or judge of the General Court of Justice, or clerk of superior court. This provision was made effective July 1, 1996.

Utilities

High-Voltage Line Safety Act (Chapter 587; HB 1233; Regular Session 1996): Chapter 587 creates the Overhead High-Voltage Line Safety Act, as recommended by the Joint Legislative Utility Review Committee. The act creates a new Article 19A in Chapter 95 of the General Statutes. It provides certain minimum clearances between equipment and other items, and overhead high-voltage power lines. It also provides for warning signs to be affixed to certain equipment. Finally, it provides that persons working closer to high-voltage power lines than the clearances specified in the act must notify the power company so that the power company can take the necessary steps to allow for the safe conduct of the work. Work may not take place under the act until arrangements for the performance of safety precautions are negotiated between the owner or operator of the lines and the person working near the lines.

G.S. 95-229.5 describes the purpose of Article 19A as being to promote safety and protection of persons working in the vicinity of high-voltage overhead lines, and to specify the conditions of such work and the precautions that must be taken.

G.S. 95-229.6 provides definitions. Among the definitions are descriptions of "covered equipment," which includes objects that may be brought within ten feet of a high-voltage line during use, such as cranes, power shovels, dump trucks, pile drivers, and so on. "High-voltage line" means lines in excess of 600 volts. There is also a

description of the warning signs required to be posted on covered equipment. In addition to the description of warning signs under the act, the Commissioner of Labor may prescribe standards for signs which standards will take precedence over the standards in the act.

G.S. 95-229.7 provides that unless danger of contact with high-voltage lines has been guarded against as provided in the act, persons, and tools or materials used by them, may not be brought within six feet of the line, and covered equipment may not be brought within ten feet of the line. Exceptions include covered equipment lawfully driven or transported on public streets and highways in compliance with legal height restrictions, refuse collection equipment, and agricultural equipment. These may be brought within four feet of the line. There are also restrictions for aircraft and storage of material. If a line has been insulated or deenergized by the power company, clearance may be reduced to not less than two feet. If the lines have been moved or raised to accommodate the work, without also being insulated or deenergized, reduced clearance is not permitted.

G.S. 95-229.8 specifies how warning signs are to be posted on or around covered equipment. If the Commissioner of Labor does prescribe additional standards for signs, as he is authorized to do under the act, a period of at least 18 months must be allowed for the replacement of signs.

G.S. 95-229.9 provides that anyone who will be carrying on work or activities in closer proximity to a high-voltage line than is specified in G.S. 95-229.8 must notify the owner or operator of the high-voltage line in advance. Notification must be as early as practical, but not less than 48 hours in advance, excluding Saturdays, Sundays, and legal State and federal holidays. In emergency situations, including police, fire, and rescue emergencies, notification is as soon as possible under the circumstances. This section also specifies the information to be contained in the notice, and the records to be kept of the notice. If the notice is given by telephone, a record of the notice must be kept by the owner of the line and the person giving notice. This section of the act permits the operation of an association of owners and operators of high-voltage lines for central receipt of notification of activities near high-voltage lines. The association must file a list of its members with the clerk of superior court.

G.S. 95-229.10 provides for the power company to take the necessary precautionary measures after arrangements for performance of the work and payment have been negotiated between the power company and the person responsible for the work or activity which is to occur. The owners of the line make the final determination as to the arrangements for performance of the work which are most feasible and the owners may determine that no arrangements can be made which are reasonably safe or cost-effective.

Except as provided in the act, the owner or operator of the line does not have to perform the precautionary safety arrangements until an agreement for payment has been made. If the parties should fail to agree on the amount of payment due for the safety precautions, the power company must commence providing precautionary measures upon payment of the undisputed amount in accordance with the agreement reached. The amount in dispute may be resolved by arbitration or other legal means. The power company must begin the precautionary safety arrangements within five working days after agreement on payment is reached, but no earlier than the agreed construction date. The various types of precautionary arrangements are described in the act. In the case of residential property, the power company, not the home owner, is responsible for the expenses involved in safety precautions, up to $1,000.

G.S. 95-229.11 provides for an exemption to the operation of Article 19A by persons having a preexisting agreement with the power company. These include railroads, telecommunications systems, and other systems including traffic signals.

G.S. 95-229.12 specifies that the act does not relieve a person from complying with other safety requirements. A violation of the act is not negligence or contributory negligence, nor does it give rise to any other cause of action for injury to persons or property. The act does not change any other standards of liability under existing law.

G.S. 19A-229.13 is a severability clause.

The act becomes effective October 1, 1996.

Transfer Rail Safety Operations (Chapter 673; HB 1172; Regular Session 1996): Chapter 673 transfers the Rail Safety Section of the Transportation Division of the North Carolina Utilities Commission to the Department of Transportation. The rail safety program operated by the State of North Carolina is operated in conjunction with the Federal Railroad Administration. The act transfers all personnel, property, records, and unexpended appropriations to the Department of Transportation. The act also requires the Secretary of Transportation to study the provision of rail safety inspection services by the State and the Federal Railroad Administration and recommend to the General Assembly no later than June 1, 1997, whether the State should continue to perform this service. The Department of Transportation is required to implement the provisions of this act within available funds. The act became effective July 1, 1996.

Resale of Water or Sewer Service (Chapter 753; SB 1183; Regular Session 1996): Chapter 753 adds a new subsection (g) to G.S. 62-110. It grants authority to the Utilities Commission to adopt procedures for the purpose of allowing resale of water and sewer service provided to persons occupying contiguous premises, without the necessity of the operator seeking a certificate of public convenience and necessity and establishing rates through a general rate case. The rate charged for the resale of these services may not exceed the actual purchase price of the service to the provider, plus a reasonable administrative charge, as authorized by the Commission. The Commission is given broad authority to determine the extent to which such services shall be regulated, with the intent of protecting the public interest. The act became effective upon ratification.

Miscellaneous

Restructure Forestry Council (Chapter 653; SB 1286; Regular Session 1996): See **ENVIRONMENT.**

Butner Advisory Council (Chapter 667; HB 1144; Regular Session 1996): Chapter 667 does the following: (1) creates the Butner Advisory Council, a seven member elected board composed of residents of the Butner area to advise the Secretary of the Department of Human Resources on the exercise of his powers in Butner, prepare a long-range plan for the area, and submit three names to the Secretary for Town Manager; (2) provides that public safety fees collected in Butner be placed in a special fund to be used by the Department of Crime Control and Public Safety for the Butner Public Safety Division; and (3) extends the Butner Study Commission.

Chapter 667 became effective upon ratification, June 21, 1996. except for the study extension, which becomes effective April 30, 1996.

DEHNR Restructuring (Chapter 743; SB 1328; Regular Session 1996): See **ENVIRONMENT.**

Nonprofits Disclosure (Chapter 748; HB 1166; Regular Session 1996): See **TAXATION.**

Administrative Rules Clarifying and Technical Changes (Chapter 18, Sec. 7.10; HB 53, Sec. 7.10; Second Extra Session 1996): Section 7.10 of Chapter 18 of the Second Extra Session makes several clarifying and technical changes to G.S. 150B, the Administrative Procedure Act, and other changes. Section 7.10, Subsection (c) ensures that temporary rules do not remain in effect indefinitely by adding two more circumstances regarding the expiration of temporary rules which provide that a temporary rule expires (1) on the effective date of a bill specifically disapproving the permanent rule adopted to replace the temporary rule; and, (2) 270 days from the date the temporary rule was published in the North Carolina Register, unless the permanent rule has been submitted to the Rules Review Commission within that time. This legislation becomes effective December 1, 1996 and applies to temporary rules published on or after December 1, 1995; however, temporary rules for which the permanent rules have not been submitted to the Rules Review Commission within 270 days of publication may remain in effect if the permanent rules are submitted to the Rules Review Commission by December 1, 1996.

Additional changes to the Administrative Procedures Act include: (1) permitting statements in a rule which refer to requirements imposed by law and deleting the word "reasonable" when referring to fees and charges to avoid the implication that unreasonable fees and charges are acceptable; (2) eliminating the necessity for repeating the subject matter notice step of a permanent rulemaking proceeding by providing that publication of a temporary rule is not a subject matter notice if a subject matter notice has already been published; (3) clarifying that an agency must always hold a public hearing when it publishes the proposed text of a permanent rule if a person requests a hearing; (4) allowing rules which make technical changes or repeal unauthorized rules to become effective the first day of the month following approval by the Rules Review Commission; and, (5) changing the definition of "contested case" to clarify that the award or denial of a loan cannot be the subject of a contested case. Section 7.10 also amends G.S. 120-70.101(8) clarifying that the Joint Legislative Administrative Procedures Oversight Committee may report to the General Assembly from time to time; amends G.S. 89C-3(6) and G.S. 89E-3(4) regarding the definitions of "engineering" and "geology" to clarify that the assessment of the removal of an underground storage tank from which there has been no discharge or release is not within the practice of engineering or geology; and, amends G.S. 89C-14(b) giving the State Board of Registration for Professional Engineers and Land Surveyors the authority to charge an applicant for registration the amount it costs the Board for the written test which will be given to the applicant. With the exception of Subsection (c), all other subsections of Section 7.10 were effective upon ratification, August 3, 1996.

Changes in the Execution of the Budget (Chapter 18, Sec. 7.4; HB 53, Sec. 7.4; 1996 Second Extra Session 1996): Section 7.4 of Chapter 18 of the 1996 Second Extra Session adds a provision requiring that the Governor consult with the Joint Legislative Commission on Governmental Operations before taking certain actions with regard to the execution of the budget, such as making allocations from the Contingency and Emergency Fund and taking extraordinary measures required for balancing the budget due to a revenue shortfall, and also before making allocations from the Repairs and Renovations Reserve Account. The section also rewrites the conditions under which the Director of the Budget may approve the spending by a department, institution or agency of more than was appropriated, by narrowing the scope of such overexpenditures. Total overexpenditures for unforseen circumstances and changes will now be limited to the lesser of $500,000 or ten percent of the amount appropriated from all sources for the purpose or program unless the overexpenditures are necessary to provide matching federal funds. The Director of the Budget must consult with the Joint Legislative Commission on Governmental Operations before approving such

overexpenditures. Another change made by this section provides that beginning with the next fiscal year, if the unanticipated receipts collected in a fiscal year by an institution, department or agency exceed the receipts certified in the budgeted Special Fund Codes, the Director of the Budget shall decrease the amount he allots to that institution, department or agency by the amount of the excess. For the remainder of this fiscal year, the Office of Budget and Management must report to the Joint Legislative Commission on Governmental Operations, the Fiscal Research Division and the Legislative Services Offices on expenditures of receipts in budgeted Special Fund Codes in excess of the amounts certified in those Codes. The section also directs the Board of Governors of the University to exercise greater oversight of the special responsibility constituent institutions and to include review and consultation with the State Auditor, the Director of the Office of State Personnel, and the Director of the Division of State Purchasing and Contracts in ascertaining whether a constituent institution has the ability to administer the additional authorities. Such review and consultation must take place at least once each biennium. The section also includes several other conforming changes.

Forfeited Reservation Deposits Do Not Escheat (Chapter 18, Sec. 7A; HB 53, Sec. 7A; Second Extra Session 1996): Section 7A of Chapter 18 of the 1996 Second Extra Session adds a new section to G.S. 116B of the General Statutes, Escheats and Abandoned Property, which provides that property or funds withheld by a business, as a penalty or forfeiture in the event a person who has reserved the services of the business fails to make use of and pay for the services, is not unclaimed or abandoned property, regardless of any practice or policy of the business related to the return of withheld funds. The section further directs the Legislative Research Commission to study the implementation and enforcement of Chapter 116B, including relevant policies and procedures of the Office of State Treasurer, and to report its findings and recommendations to the 1997 General Assembly. The new section is made applicable to funds held or collected by a business on or after July 1, 1996, and expires on June 30, 1997, but all funds held or collected before the expiration date shall not escheat.

Fire Warning Financing (Chapter 18, Sec. 16.5; House Bill 53, Sec. 16.5; Second Extra Session): See **EDUCATION.**

Roanoke Island Historical Association (Chapter 18, Sec. 11.1; House Bill 53, Sec. 11.1; Second Extra Session): Section 11.1 of Chapter 18 of the 1996 Second Extra Session authorizes the Board of Directors of the Roanoke Island Historical Association to fill vacancies in the Association's membership. If a vacancy is not filled within 30 days, the Governor is authorized to fill them. This provision became effective July 1, 1996.

Investor Protection and Education Trust Fund (Chapter 18, Sec. 13; HB 53, Sec. 13; Second Extra Session 1996): Section 13 of Chapter 18 of the 1996 Second Extra Session adds G.S. 147-54.5 to the General Statutes. This section creates the Investor Protection and Education Trust Fund. The trust fund is used by the Secretary of State to provide investor protection and education. Expenditures are limited to providing information through the use of the media, including television, radio, and printed materials, and to providing educational seminars. The fund receives its revenues from consent orders resulting from negotiated settlements of securities investigations by the Secretary of State, and from the investment of those assets according to law. The balance of the fund does not revert to the General Fund at the end of each fiscal year. The Secretary of State is required to report annually to the General Assembly's Fiscal Research Division and to the Joint Legislative Commission on Governmental Operations

on the expenditures from the fund and on the effectiveness of investor awareness education efforts. Section 13 of Chapter 18 was effective July 1, 1996.

Office of Economic Opportunity, Support Our Students Programs' Location (Chapter 18, Sec. 24.23; HB 53, Sec. 24.23; Second Extra Session 1996): Section 24.23 of Chapter 18 of the 1996 Second Extra Session provides that the Department of Human Resources shall ensure that the Office of Economic Opportunity remains in the Office of the Secretary of the Department of Human Resources and that the Support Our Students Program remains in the Division of Youth Services. Section 24.23 was effective July 1, 1996.

Consideration of Privatization of Richmond County Boundover Detention Facility (Chapter 18, Sec. 24.28; House Bill 53, Sec. 24.28; Second Extra Session 1996): Section 24.28 of Chapter 18 of the 1996 Second Extra Session authorizes the Department of Human Resources to solicit bids to determine the feasibility of privatizing the operation of the Richmond County Boundover Detention Facility. The Facility houses juveniles that are to be tried as adults. The Department may also privatize if it determines privatization would be in the best interest of the State. If the unit's operation is privatized, the Department must request that the contractor, in hiring for the Facility, give preference to the State employees in the positions that are scheduled to be reassigned from the Pitt County Detention Facility to the Richmond Facility. This provision was effective July 1, 1996.

Historic Properties Acquisitions/Reporting Requirement (Chapter 18, Sec. 7.7; HB 53, Sec. 7.7; Second Extra Session 1996): Section 7.7 of Chapter 18 of the 1996 Second Extra Session requires the North Carolina Historical Commission to report to the Joint Legislative Commission on Governmental Operations information concerning the capital and operational costs of an historic property prior to acquisition or receipt of donation of the historic property by the Department of Cultural Resources. Section 7.7 became effective July 1, 1996.

Motor Fleet Management Modifications (Chapter 18, Sec.10.2; HB 53, Sec. 10.2; Second Extra Session 1996): Section 10.2 of Chapter 18 of the 1996 Second Extra Session repeals G.S. 143-341(8)i7a.(vii). This section eliminates an obsolete reference to hearses in the statute requiring the State to be reimbursed for use of certain vehicles for travel between an employee's home and work station. Section 10.2 became effective July 1, 1996.

Maintain Butner Public Safety Fees as General Availability (Chapter 18, Sec. 21.4; HB 53, Sec. 21.4; Second Extra Session 1996): Section 21.4 of Chapter 18 of the 1996 Second Extra Session repeals G.S. 122C-411.1, enacted in Section 6 of Chapter 667 of the 1996 Regular Session, which would have required public safety fees assessed in the Butner area to be placed in a special fund to be used by the Department of Crime Control and Public Safety to fund the Butner Public Safety Division. Section 21.4 became effective June 21, 1996.

Speaker's Appointments (Chapter 15, HB 61; Second Extra Session 1996): Chapter 15 makes appointments to various boards and commissions by the General Assembly upon the recommendation of the Speaker of the House and allows up to four (previously three) members of the North Carolina Appraisal Board to be members of the same appraisal trade organization. This act was effective on ratification.

STUDIES

Legislative Research Commission Studies

The **Legislative Research Commission** may study the implementation and enforcement of the law concerning escheats including the policies of the Office of the State Treasurer. (Chapter 18, Sec. 7A; HB 53, Sec. 7A; Second Extra Session 1996) (See also **"Miscellaneous"** subsection under **"STATE GOVERNMENT"** for related summary)

The **Legislative Research Commission** may also study the following issues:
(1) **licensing boards;**
(2) **North Carolina's role in global affairs; and**
(3) **North Carolina's role in federally-declared disasters.**
(Chapter 17, Sec. 2.1(c); SB 46, Sec. 2.1(c); Second Extra Session 1996)

Independent Studies, Boards, Etc. Created or Continued

Study Commission on Department of Crime Control and Public Safety Continued (Chapter 18, Sec. 21.1, HB 53, Sec. 21.1; Second Extra Session 1996): Section 21.1 of Chapter 18 of the 1996 Second Extra Session extends the Study Commission on the Department of Crime Control and Public Safety. The Commission must file its final report with the 1997 General Assembly.

State Ports Study Commission (Chapter 18, Sec. 26.10; HB 53, Sec. 26.10; Second Extra Session 1996): Section 26.10 of Chapter 18 of the 1996 Second Extra Session continues the State Ports Study Commission. The Commission must file its final report with the 1997 General Assembly.

State Employee Personnel Compensation Study Commission (Chapter 17, Sec. 13.1; SB 46, Sec. 13.1; Second Extra Session 1996): Section 13.1 of Chapter 17 of the 1996 Second Extra Session creates a State Employee Personnel Compensation Study Commission to study salaries, benefits, longevity, hiring rates, across-the-board salary increases, and related issues affecting State employees. The Commission is to report to the 1997 General Assembly.

Study Commission on the Comprehensive Compensation System (Chapter 18, Sec. 28.18; HB 53, Sec. 28.18; Second Extra Session 1996): Section 28.18 of Chapter 18 created the Study Commission on the Comprehensive Compensation System to evaluate the Comprehensive Compensation System in G.S. 126-7 and to determine a methodology for funding the pay plan. The Commission is to consist of nine members: three Representatives appointed by the Speaker of the House, three Senators appointed by the President Pro Tempore of the Senate, and three members appointed the Governor. The Commission shall submit a final report of its findings and recommendations to the General Assembly on or before the first day of the 1997 Session by filing the report with the Speaker of the House and the President Pro Tem of the Senate. Upon the filing of its final report, the Commission shall terminate.

Referrals to Departments, Agencies, Etc.

Section 7.6 of Chapter 18 of the 1996 Second Extra Session requires the **Office of State Budget and Management** to study the **continuation of performance budgeting**

and report to the Joint Legislative Commission on Governmental Operations by December, 1996. (Chapter 18, Sec. 7.6; HB 53, Sec. 7.6; Second Extra Session 1996)

Section 10 of Chapter 18 of the 1996 Second Extra Session requires the **Department of Administration** to study **utilization of space in State-owned facilities**, including more cost-effective ways to use the space. The Department must report its findings and recommendations to the General Assembly by January 1, 1997. (Chapter 18, Sec. 7.6; HB 53, Sec. 7.6; Second Extra Session 1996)

Section 11.1 of Chapter 18 of the 1996 Second Extra Session requires the **Department of Cultural Resources** to **review admission fees and concession prices at State historic sites** and report to the General Assembly in 1997. (Chapter 18, Sec. 11.1; HB 53, Sec. 11.1; Second Extra Session 1996)

Section 11.4 of Chapter 18 of the 1996 Second Extra Session requires the **Department of Cultural Resources** to study the **historical significance of the Princeville Cemetery and the South Granville Memorial Gardens** and report to the General Assembly in 1997. (Chapter 18, Sec. 11.4; HB 53, Sec. 11.4; Second Extra Session 1996)

Section 15.6 of Chapter 18 of the 1996 Second Extra Session requires the **Office of State Budget and Management** to study the **staff requirements of the Department of Revenue** and report to the appropriations subcommittees on general government by March 1, 1997. (Chapter 18, Sec. 15.6; HB 53, Sec. 15.6; Second Extra Session 1996)

Section 21.2 of Chapter 18 of the 1996 Second Extra Session requires the **Office of State Personnel** to study **salary, classification, and civilianization of sworn law enforcement officers** and to report back to the Criminal Law Study Commission by December 15, 1996. (Chapter 18, Sec. 21.2; HB 53, Sec. 21.2; Second Extra Session 1996)

Section 22.14 of Chapter 18 of the 1996 Second Extra Session requires the **Administrative Office of the Courts** to study **salaries and classifications of personnel in the Offices of Clerk of Superior Court** and report back to the appropriations committees by March 1, 1997. (Chapter 18, Sec. 22.14; HB 53, Sec. 22.14; Second Extra Session 1996)

Section 28.20 of Chapter 18 of the 1996 Second Extra Session requires the **Office of State Budget and Management** to study the current **travel reimbursement of State employees** and determine if it is flexible enough to allow State employees to recover the actual costs (subject to the statutory maximum) of their lodging and meal expenses. The report is due to the Joint Legislative Commission on Governmental Operations by February 1, 1997. (Chapter 18, Sec. 28.20; HB 53, Sec. 28.20; Second Extra Session 1996)

TAXATION
(Cindy Avrette, Sabra J. Faires, Martha H. Harris)

Reduce Unemployment Taxes (Chapter 1; SB 2; First Extra Session 1996) Chapter 1 of the First Extra Session 1996 continues the General Assembly's past efforts to reduce the amount of money in the Unemployment Insurance Fund and to avoid taxing for a surplus. The act reduces unemployment taxes in three ways and benefits almost every employer:

(1) POSITIVE RATED EMPLOYERS. -- Assigns a one-year zero unemployment insurance tax rate for all positive rated employers. Approximately 115,000 employers have positive rated accounts. The tax reduction enacted in 1995 allowed approximately 15% of these employers to earn a zero tax rate. This act gives the remaining 85% of positive rated employers a zero tax rate for 1996, saving them $135 million. In the absence of any change in circumstances, an employer will resume paying unemployment taxes in 1997 at the same rate the employer would have paid taxes in 1996 if the act had not enacted.

(2) NEGATIVE RATED EMPLOYERS. -- Gives overdrawn employers additional time to make contributions to their accounts so that they may qualify for the zero tax rate in 1996. An employer may make voluntary contributions in order to have a lower tax rate the following year. Generally, voluntary contributions must be made before July 31. It is estimated that 1/2 of the 7,000 employers with a negative rating may contribute $18 million and receive $41 million in tax relief, for a net savings of $23.5 million.

(3) NEW EMPLOYERS. -- Permanently reduces the tax rate for new employers from 1.8% to 1.2%. Nationally, the most common tax rate for new employers is 2.7%. This act also reduces the period of time required for new employers to achieve lower rates from 3 years to 2 years. This would save an estimated 24,000 employers who are not rated $5 million for 1996. The rate was last reduced in 1994 from 2.25% to 1.8%.

The Employment Security Commission estimates that the unemployment tax reduction in this act will save employers between $140 million and $163.5 million for 1996. The act became effective January 1, 1996.

The act authorizes the Legislative Research Commission to study issues relating to the State's Employment Security Law. The Commission did not report to the 1996 Session of the General Assembly. The act directs the Commission to report to the 1997 General Assembly. The act also made a change in the State law so that it conforms with the federal law. Under State law, an employer could not move to a lower rate unless it had a chargeable account for more than 13 consecutive months immediately preceding the date for calculating the employer's tax rate. The act changed the requirement of "13 consecutive months" to "at least 12 calendar months". The latter requirement focuses attention on cumulative employment rather than consecutive quarters. The change removed a technical barrier that would have kept a handful of employers from moving from the standard rate to a reduced rate.

The General Assembly cut the unemployment tax rate in 1993, 1994, and 1995. Despite these cuts, the North Carolina Trust Fund in Washington, from which unemployment benefits are paid, was slightly more than $1.5 billion. It is estimated that this act would reduce the State Unemployment Insurance Trust Fund balance from about $1.5 billion to $1.29 billion in 1996. Without the act, the Trust Fund balance

was expected to be reduced to only $1.43 billion in 1996. The 1996 balance in the fund is far more than needed to meet the State's unemployment compensation obligations. North Carolina has the fifth highest Trust Fund balance of any state in the nation relative to the amount of benefits paid out of the Trust Fund in prior years.

Limit Franchise Add-Back for Debt (Chapter 560; HB 1119; Regular Session 1996): Chapter 560 deletes a provision in the corporate franchise tax laws that requires a parent, a subsidiary, or an affiliate of another corporation to include in its franchise tax base the amount of any debt that is owed by the corporation and is endorsed or guaranteed by one of its related corporations. The change is effective for taxable years beginning on or after October 1, 1996. The change is made at the recommendation of the Department of Revenue and is expected to have a revenue loss of no more than $10,000 a year.

Under current law, a corporation that is a parent, a subsidiary, or an affiliate of another corporation is required to add back to its net worth franchise tax base the amount of any debt it has that is payable to its parent, affiliate, or subsidiary or is endorsed or guaranteed by its parent, affiliate, or subsidiary. Debt that is not payable to a parent, affiliate, or subsidiary and is not guaranteed by one of these corporations is not required to be added back to the base. The act deletes the requirement that debt endorsed or guaranteed by a related company be added back and retains the requirement that debt payable to a related company be added back.

The Department of Revenue recommended this change because of the difficulty of enforcing the endorsement provision and the lack of need for the requirement. The existence of endorsed or guaranteed debt is often not readily ascertainable from the financial statements of a corporation. When a corporation endorses or guarantees a debt, it makes no accounting entry, such as the creation of a liability, to acknowledge the endorsement or guarantee. If the amount of debt endorsed or guaranteed is significant, the existence of the debt will be reflected in a footnote of the financial statements.

The franchise tax is a tax on corporations for the right or privilege to exist as a corporate entity and, in the case of foreign corporations, the right or privilege to do business in a corporate capacity in North Carolina. The tax is levied on the assets of a corporation. The tax rate is $1.50 per $1,000 with a minimum of $35. The franchise tax base on which the tax is computed is the largest of the following:

(1) Capital stock, surplus, and undivided profits.
(2) 55% of appraised property tax value of all taxable personal property
(3) The corporation's actual investment in tangible property in North Carolina.

The add-back requirement is imposed to prevent related companies from understating their net worth through means of transactions with each other. A corporation can make capital available to another corporation in several ways. For example, it can buy the corporation's stock or loan the corporation money. The stock purchase would be reflected in the net worth of the company but the debt would be a deduction in computing net worth. To establish the economic reality between the companies, the loan is required to be added back so that it is in effect treated the same as the stock purchase.

Under current law, endorsed or guaranteed debt is required to be added back also even though the corporation making the endorsement or guarantee did not decrease its capital to increase that of the corporation receiving the loan. Endorsed or guaranteed debt is more like third-party debt than a loan from one company to another.

Board of Dental Examiners Fees (Chapter 584; SB 555; Regular Session 1996): See **STATE GOVERNMENT.**

Highway Bond Act of 1996 (Chapter 590; HB 540; Regular Session 1996): See TRANSPORTATION.

1996 School Bonds Act (Chapter 631; HB 1100; Regular Session 1996): See EDUCATION.

Revenue Laws Technical Changes (Chapter 646; SB 1178; Regular Session 1996): Chapter 646 makes numerous technical and clarifying changes to the revenue laws and related statutes. It also amends North Carolina's unemployment compensation law to allow the voluntary deducting and withholding of federal and State income taxes in accordance with federal law. Although unemployment compensation has always been subject to income tax, the deducting and withholding of income tax from unemployment compensation payments has not been allowed because of the restrictive nature of the Unemployment Trust Fund. Congress enacted legislation to allow voluntary deducting and withholding of federal and state income taxes from the payments, effective for payments made on or after January 1, 1997.

The act adds captions to subsections, restores words and references that were inadvertently deleted in prior amendments, repeals obsolete and redundant statutes and provisions, corrects incorrect citations, and removes an unnecessary reference to an effective date. The act also makes the following changes to the revenue laws:

(1) Allows the Secretary of Revenue to assess a negligence penalty for reporting improper adjustments to federal taxable income to the same extent as for understating gross income or overstating deductions. In cases of substantial income tax deficiencies, a 25% penalty is assessed if the deficiency was caused by understating gross income or by overstating deductions, both of which are determined on the federal return. The penalty provisions do not address deficiencies caused by improper adjustments to federal taxable income: adjustments that are made at the State level to determine North Carolina taxable income. The act provides that the same penalty applies whether the deficiency resulted from understating gross income, overstating deductions, or misstating adjustments.

(2) Reinstates an extended period of time for making assessments for income tax due attributable to gains from involuntary conversions or from the sale of a principal residence parallel to federal law. The extension is necessary because the law allows the taxpayer a period of time to replace the converted property or the principal residence with similar property and thereby avoid recognition of the gain. If the taxpayer fails to replace the property, gain is recognized and the assessment may be made within three years after the Secretary is notified that the requirements for nonrecognition will not be met. Before 1989, North Carolina's individual income tax contained a similar provision; when the tax law was rewritten to "piggyback" the federal internal revenue code, that provision was inadvertently not picked up.

(3) Effective July 1, 1996, revises the split inventory tax reimbursement date from an August/April date to a September/April date and changes the 60%/40% split to a 50%/50% split. 1995-96 will be the only year in which the 60/40 August/April split reimbursement occurred. Because these sections become effective July 1, 1996, changing the 1995 languages does not affect the validity of what is being done in 1995-96.

(4) Exempts certain property owners from filing annual applications for property tax exemptions. According to the Institute of Government, by administrative practice, annual applications are not required for exempt

property of veterans' organizations, masonic lodges and shrines, elks and similar fraternal organizations, or disabled veterans. In addition, the Institute of Government suggests that there is no reason to require annual applications for exemption of pollution control and recycling equipment because the exemption is automatic once the Department of Environment, Health, and Natural Resources determines that the equipment qualifies.

(5) Amends existing local acts establishing beautification districts to clarify that the districts are special districts established under Article VII of the North Carolina Constitution and not special tax areas governed by Section 2(4) of Article V of the North Carolina Constitution. The constitution permits local acts establishing special tax districts but not local acts establishing special tax areas.

(6) Clarifies the valuation date to be used for vehicles registered for property taxes under the annual system. In 1995, the General Assembly amended the law concerning the valuation of motor vehicles to eliminate the problem of the correct valuation date when an owner with a registration that expires December 31 renews during the January grace period. In eliminating the problem for vehicles registered on a staggered system, the amendment created a problem for those registered on an annual system. In the latter case, it may result in the same valuation being used for two years. This act corrects this problem.

Tax at Rack Fine Tuning (Chapter 647; SB 1198; Regular Session 1996): Chapter 647 adjusts the motor fuel tax collection system, known as "tax at the rack," that was enacted by the General Assembly in the 1995 Session and became effective January 1, 1996. To date, the 1995 legislation has increased motor fuel tax revenues as predicted. If collections continue at the same level for the remainder of the year, motor fuel tax revenue will increase by about $27 million dollars. The changes made by this act primarily clarify the tax treatment of exports, imports, blended fuel, and the inspection tax on kerosene and fill in gaps discovered in implementing the new law.

Imports: The act makes it clear that a separate importer license is not required if a person is licensed as a distributor and buys motor fuel for import only from an out-of-state supplier that collects the North Carolina tax. These tax-collecting suppliers are known as elective or permissive suppliers. Current law appears to require all importers to have an importer license regardless of other licenses they may have. The act also makes it clear that an importer that buys from an elective or permissive supplier is entitled to the same discount and "float" as if the fuel had been purchased inside the State.

Exports: The act makes it clear that an exporter is not required to have a license and treats licensed exporters differently than unlicensed exporters. An unlicensed exporter must pay tax to North Carolina at the North Carolina rate of tax and then apply for a refund when the fuel is resold out-of-state. A licensed exporter can pay tax at the rate of the destination state of the fuel, thereby eliminating the need for a refund. If exported fuel is to be sold for an exempt use in the destination state, the licensed exporter can buy the fuel tax-free until July 1, 1997, when this privilege sunsets.

Blended Fuel: The act makes it clear that the tax due on fuel-grade ethanol is payable by the supplier of that fuel rather than by the person who buys it and makes the blend of ethanol and gasoline. This ensures that the tax is collected at the highest point in the distribution chain and parallels the collection of the tax on gasoline. The act also requires a blender to post a bond if the blender's average expected annual tax liability is at least $2,000. Prior law required a bond from blenders, so this change reinstates the requirement in a modified form.

Kerosene Inspection Tax: The act sets the due date for payment of the kerosene inspection tax at the date set for payment of motor fuel taxes and eliminates the need for most kerosene distributors to be licensed. It eliminates the need for a license for those distributors that buy kerosene only from in-state suppliers or from elective or permissive out-of-State suppliers. The license is not needed because the kerosene inspection tax is collected by suppliers at the rack along with the motor fuel tax. A kerosene distributor can choose to be licensed and get the payment deferral and float. The only kerosene distributors that must continue to be licensed are airlines that have spur pipelines for kerosene.

Other Changes: The act makes several other changes to the penalty and reporting provisions and adds a tax on unauthorized behind-the-rack transfers to parallel federal law. The penalty changes impose liability on a person who accepts delivery of motor fuel when the shipping document for the fuel shows a different destination state for the fuel. It adds as a Class 1 misdemeanor the failure of a supplier to give a distributor the deferred payment and float. It adds a civil penalty for refusing to allow a sample of motor fuel to be taken, for a terminal operator that has unaccounted for motor fuel losses, and for failure to file a motor fuel informational return.

Underground Storage Tank Amendments (Chapter 648; SB 1317; Regular Session 1996): See **ENVIRONMENT**.

Tax Free Samples Rx Drugs (Chapter 649; SB 1239; Regular Session 1996): Chapter 649 creates a new sales and use tax exemption for prescription drugs that are distributed free of charge by the manufacturer. The sale of drugs bought with a prescription has been exempt from sales tax since 1937. The act defines the term "prescription drug" to be a drug that under federal law is required, prior to being dispensed or delivered, to be labeled with the following statement: "Caution: Federal law prohibits dispensing without prescription." This is the same definition used for the term in the Pharmacy Practice Act, G.S. 90-85.3. The act became effective upon ratification, June 21, 1996. The revenue loss to the General Fund is expected to be less than $400,000 a year.

Pharmaceutical companies often distribute free samples of prescription drugs to physicians to give to their patients. The prescription drugs that are distributed by free samples to the physicians are generally prescribed by them to their patients. Although the prescribed drugs are exempt from sales tax, the Department of Revenue has assessed use tax on the free samples. The use tax, first enacted in 1939, is the complement of the State's sales tax and is imposed on the storage, use, or consumption in this State of tangible personal property. A pharmaceutical manufacturer is not liable for sales or use taxes when it purchases the ingredients used to manufacture the prescription drugs because the products are to be resold. However, when the manufacturer chooses to give the drug samples away rather than sell them, the Department has held the manufacturer liable for the use tax on the drugs.

Last year, Abana Pharmaceuticals, Inc. appealed an assessment of use tax on free samples of prescription drugs distributed to North Carolina physicians. The Tax Review Board reversed the decision of the Assistant Secretary for Legal and Administrative Services and concluded, based on the sales tax exemption for prescription drugs, that the free samples of prescription drugs distributed to physicians are exempt from use tax. The Department is appealing the Tax Review Board's decision. This act exempts the free samples from use tax prospectively. If the Court upholds the Board's decision, then the exemption will apply retroactively to Abana Pharmaceuticals, Inc., and arguably to all other similarly situated pharmaceutical companies.

The free distribution of prescription drugs by physicians is not subject to tax because the taxable use of the samples occurred prior to their distribution by the physician when the manufacturer provided the drugs to its salespersons. Hospitals and other purchasers of drugs without a prescription will still be subject to the sales and use tax. Nonprofit hospitals are entitled to a refund of any sales and use taxes paid under G.S. 105-164.14(b).

Update Code Reference (Chapter 664; HB 1147; Regular Session 1996): Chapter 664 rewrites the definition of the Internal Revenue Code used in State tax statutes to change the reference date from January 1, 1995, to March 20, 1996. This change makes Code changes made during this period effective for any State taxes that are tied to the affected parts of the Code. The impact on the General Fund is expected to be insignificant.

Only four changes were made in the Code from January 1, 1995, until March 20, 1996. The first three of these were made in The Self-Employed Health Insurance Act (Public Law 104-7 (H.R. 831), enacted in 1995, and the last one was part of legislation enacted on March 20, 1996:

(1) The individual income tax deduction for health insurance premiums paid by self-employed individuals was reinstated and made permanent. This includes premiums paid on behalf of the self-employed individual, a spouse, and dependents. The deduction is 30% of the qualifying premiums.

(2) Code section 1033 was amended to make C corporations and certain partnerships ineligible to defer gain on an involuntary conversion under that section when replacement property is purchased from a related person. The change was effective for acquisitions after February 5, 1995.

(3) Code section 1071 was repealed effective for sales or exchanges after January 16, 1995. That section allowed a taxpayer to treat the sale of a broadcast property as an involuntary conversion if the sale was certified by the FCC as necessary to effectuate an FCC ownership and control policy.

(4) The Code was amended to increase the amount of military pay that is exempt from income tax for certain commissioned officers serving in the peacekeeping efforts in Bosnia and Herzegovina, known as Operation Joint Endeavor, and to exclude exempt military pay from withholding requirements.

YMCA/YWCA Exempt from Solicitations Act (Chapter 650; SB 838; Regular Session 1996): Chapter 650 exempts the YMCA and the YWCA from the licensure requirements of the North Carolina Charitable Solicitations Act.

Bosnia Troops Tax Extension (Chapter 691; SB 1179; Regular Session 1996): Chapter 691 gives military personnel deployed in the peacekeeping effort in Bosnia and Herzegovina, known as Operation Joint Endeavor, 90 days after the end of their deployment to pay their 1995-96 or later property taxes without interest and to list property for the 1996-97 tax year or a later tax year. The act applies to those serving in or in support of the armed forces and armed forces reserves, including the national guard. Deployment of military personnel pursuant to Operation Joint Endeavor began December 4, 1995. Approximately two-thirds of the 25,000 military personnel deployed in Operation Joint Endeavor are from North Carolina bases.

Property taxes for the 1995-96 fiscal year would otherwise become delinquent if not paid by January 6, 1996, and interest would accrue at the rate of 2% for the first

month and 3/4% each month thereafter. The regular listing period for property taxes for the 1996-97 year ended on January 31, 1996. Failure to list is punishable as a misdemeanor and also subjects the owner of the property to a tax penalty equal to 10% of the tax due on the property. Automobiles are taxed on a staggered, year-round schedule, so the listing date and the date the taxes become delinquent may fall at any time during the year.

The act is effective retroactively as of December 4, 1995. Any interest and penalties assessed before it is enacted would be refunded.

G.S. 105-249.2 and G.S. 105-158 already provide income tax extensions for military personnel serving in a combat zone and income tax forgiveness for personnel who are killed while serving in a combat zone, to the same extent as federal law (sections 7508 and 692 of the Internal Revenue Code). Our Department of Revenue will automatically follow the federal law. Congress has enacted Public Law 104-117 providing that these sections of the Code apply to personnel deployed in connection with Operation Joint Endeavor.

Revise Failure to Pay Penalty (Chapter 696; HB 1094; Regular Session 1996): Chapter 696 prohibits the imposition of a tax penalty for failure to pay in two circumstances. The first circumstance is when an additional tax is due with an amended return. The second circumstance is when a tax assessed by the Secretary of Revenue is paid within 30 days after it was assessed. The changes become effective for taxes due on or after January 1, 1997. The act should decrease General Fund revenues by no more than $100,000 a year.

The failure to pay penalty is 10% of the amount due, with a minimum penalty of $5.00. The Secretary of Revenue has the authority under G.S. 105-237 to waive the penalty. The decision of whether or not to waive a penalty is made on a case by case basis.

Currently, G.S. 105-236(4) requires the failure to pay penalty to be assessed whenever a tax is not paid when it was due. The due date for additional tax owed on an amended return is considered to be the date the original return was due. Consequently, any time a taxpayer files an amended return and pays additional tax with the return, the taxpayer is assessed the failure to pay penalty. Similarly, the due date for a tax assessed by the Secretary is considered to be the date the tax should have been paid without resort to an assessment. Consequently, any time a taxpayer is assessed for unpaid taxes, the taxpayer is also assessed the failure to pay penalty.

The changes made by this act make the "trigger" for the State failure to pay penalty the same as under federal law. A federal failure to pay penalty is not assessed when additional tax shown on an amended return is paid when the return is filed nor when a tax assessed by the Internal Revenue Service is paid within 10 days after the date on the notice of assessment and demand for payment. The penalty is not assessed under either federal or State law if a return is filed after an extension has been granted and the amount of tax paid when the extension was granted is at least 90% of the amount shown on the return.

In discussing this issue, the Revenue Laws Study Committee concluded that applying a failure to pay penalty to additional tax that is shown due on an amended return and is paid with the return discourages the filing of an amended return and does not make any allowance for reporting errors on tax reporting statements such as 1099 forms issued by banks and brokerage houses and W-2 forms issued by employers that result in the need for an amended return. The Committee further concluded that allowing a grace period after a tax is assessed before applying a failure to pay penalty would encourage prompt payment of the assessed taxes. Finally, the Committee concluded that applying a State failure to pay penalty in the circumstances described

when no federal penalty applies is unnecessarily confusing and makes the State law on this topic harsher than the federal.

A recommendation of the Revenue Laws Study Committee.

County Remove Registration Block (Chapter 741; SB 1165; Regular Session 1996): Since 1993, counties have collected property taxes on motor vehicles that are registered with the Division of Motor Vehicles on a revolving year-round basis. If the taxes are not paid within four months after the date they are due, the tax collector must send a list of the delinquent taxpayers and their vehicle identification number to the Division. The Division must refuse to renew the vehicle's registration until the taxpayer presents it with a paid tax receipt. This act will allow a county to remove the "block" when the delinquent taxes are paid, rather than require the taxpayer to present a paid tax receipt to the Division at the time the vehicle registration is renewed. To remove the "block", the county tax collector must certify to the Division that the delinquent taxes have been paid. The certification must be in the form and contain the information required by the Division.

This change was requested by the Division of Motor Vehicles. There are about four and one-half months between the time the "block" is electronically put on the vehicle's registration and the time the vehicle registration must be renewed. Taxpayers who pay the property tax within this window of time do not always remember to bring a paid tax receipt with them when they go to renew their vehicle registration. This situation upsets taxpayers who have paid their property taxes but cannot renew their vehicle registration until they find, or obtain a copy of, their paid tax receipt. This act will ease the burden on these taxpayers by allowing the county to remove the "block" at the time the tax is paid. The Division will decide what form the certification must take. The act does not require the counties to submit this certification to the Division because not all of the counties have the capacity to electronically communicate with the Division.

Premiums Tax Collection (Chapter 747; HB 1096; Regular Session 1996): Chapter 747 completes a transfer of responsibility from the Insurance Department to the Department of Revenue that was begun in 1995. The transfer that is completed is the responsibility of collecting the various insurance gross premiums taxes. The act becomes effective January 1, 1997. The act also makes technical and clarifying changes to the affected statutes.

The insurance gross premiums taxes are taxes based on the amount of insurance premiums that are paid or, for certain self-insurers, would have been paid during the year. They consist of a 1.9% premiums tax on for-profit insurance companies, a 0.5% tax on nonprofit companies, such as Blue Cross/ Blue Shield and Delta Dental, that provide hospital, medical, and dental coverage, a 2.5% tax on workers' compensation premiums and workers' compensation self-insurers, a 1.33% additional fire and lightning tax on property premiums for coverage of property other than motor vehicles and boats, and another 0.5% fire and lightning tax on all property premiums on business inside a municipality.

The 1995 General Assembly, in Chapter 360 of the 1995 Session Laws, transferred the responsibility of collecting the following gross premiums taxes from the Department of Insurance to the Department of Revenue: the general, for-profit 1.9% tax, the 2.5% tax on workers' compensation premiums but not on workers' compensation self-insurers, and the non-profit 0.5% tax. It did not transfer collection of the 2.5% tax on workers' compensation self-insurers or either of the additional fire and lightning taxes. This act transfers collection of those three taxes effective January 1, 1997. The Department of Revenue is already collecting the additional 1.33% fire and lightning tax pursuant to an agreement with the Department of Insurance.

A workers' compensation self-insurer is an employer that carries its own workers' compensation risk or pools its risk with other employers that belong to the same trade or professional association as the employer. The 2.25% gross premiums tax applies to the amount of premiums the employer would be charged if the employer acquired workers' compensation insurance from an insurance company. Two Department of Insurance employees currently administer collection of this tax based on payroll information supplied by employers. The act transfers one position from the Department of Insurance to the Department of Revenue.

Twenty-five percent of the additional 1.33% fire and lightning tax and all of the additional 0.5% fire and lightning tax are used for special purposes. The rest of the gross premiums taxes are credited to the General Fund. Twenty-five percent of the 1.33% fire and lightning tax is credited to the Volunteer Fire Department Fund in the Department of Insurance. The 0.5% fire and lightning tax is credited to the Department of Insurance and is disbursed to local fire fighters' relief funds.

This act does not affect the collection of three special taxes on insurance companies. The three taxes are: a tax on surplus lines insurance, a tax on risk retention by a company chartered in another state, and a tax on unlicensed insurers.

Nonprofits Disclosure/Accountability (Chapter 748; HB 1166; Regular Session 1996): Chapter 748 contains the House Select Committee on Nonprofits recommendations to reduce government red tape for nonprofits. The act modifies the disclosure requirements currently imposed on organizations that solicit contributions, eliminates duplicative reporting requirements, and modifies the audit requirements for nonprofits receiving State funds to reduce the audit costs for the nonprofits while enhancing accountability to the State.

Changes to the Charitable Solicitations Act: The Charitable Solicitations Act currently requires charitable organizations and sponsors, and those who solicit contributions on their behalf, to print on their documents a phrase notifying the public that information about the soliciting organization can be obtained through the Department of Human Resources. Printing this notification has proven costly for nonprofit organizations. The act makes the following changes to the Act to reduce nonprofits' costs while maintaining the protection provided by the disclosure:

(1) The wording of the disclosure statement is made more concise, reducing the number of words from 44 to 30.

(2) The statement does not have to be in all capital letters. All capital letters are actually harder to read.

(3) The statement can be any of the following: in bold type, underlined, or surrounded by a border. Currently, it must be bold.

(4) The minimum type size is reduced from 10 points to 9 points.

The Charitable Solicitations Act lists the information a charitable organization or sponsor must provide to be licensed. Some of the information is also provided in an organization's Internal Revenue Service form 990. The act simplifies licensing for nonprofits by allowing them to submit a form 990, at the time the application is filed, in substitution for several categories of information required in an application for licensing under the Charitable Solicitations Act. The act requires information about how much money a solicitor has raised for the organization or sponsor to be provided with the application, whether or not a form 990 is also submitted. These changes become effective July 1, 1996.

Modifications to Audit Requirements: G.S. 143-6.1 requires all corporations, organizations, and institutions that receive $25,000 or more in State funds a year (other than for goods and services) to file audited financial statements annually with the Joint Legislative Commission on Governmental Operations and with the State Auditor. This requirement was enacted as part of the budget bill in 1989. The 1995 budget bill

provided that entities receiving domestic violence grants must comply with this audit requirement no matter what size their grant is.

G.S. 143-6.1 also requires every State agency that provides State funds in any amount to these entities (other than for goods and services) to submit to the State Auditor reports on the entities describing standards of compliance and suggested audit procedures. This requirement was enacted as part of the budget bill in 1991.

The statute provides that the State Auditor will prescribe standards for the audited financial statements that must be filed. In accordance with this authority, the State Auditor has prescribed that the financial statements must be prepared in accordance with generally accepted accounting principles (GAAP) and audited in accordance with Government Auditing Standards developed by the Comptroller General of the United States. This latter requirement is known as a "yellow book audit," which, unlike a financial statement audit, reports and gives an opinion on compliance with rules and regulations. The Auditor allows the grantee to choose between an entity-wide audit or a program audit if there is only one program and it involves less than $100,000.

The act changes these requirements as follows, effective July 1, 1996.:

(1) It deletes a requirement that an extra copy of the audit be filed with the Joint Legislative Commission on Governmental Operations. This change should provide a small cost savings to nonprofits.

(2) It limits the requirement of a yellow book audit to those entities receiving $100,000 or more in State funds, including federal funds that flow through the State. Roughly 75% to 80% of State funds going to nongovernmental entities would be covered by the yellow book audit requirement.

(3) It requires all nongovernmental entities that receive between $15,000 and $100,000 in State funds to file with the funding agency an accounting of receipts and expenditures, attested to by the entity's treasurer and another authorizing officer of the entity.

(4) It removes the special rules for domestic violence centers so that these centers will be subject to the same requirements as all other entities. A study is currently being conducted on consolidating the administration of federal and State grants to domestic violence centers, pursuant to Chapter 507 of the 1995 Session Laws.

(5) It requires the State agency making the grant to inform the recipient the funds whether the funds are grants, which are subject to the requirements of G.S. 143-6.1, or payments for goods or services, which are subject to the State's accounts management system administered by the State Controller.

More than 1,800 entities currently receive State funds (including federal funds that flow through the State). More than 600 entities receive $25,000 or more and are thus subject to the audit requirement. The select committee found that the audit requirement creates a significant hardship on smaller nonprofit agencies. It is often difficult to find Certified Public Accountants who will perform the yellow book audit (as opposed to a financial statement audit) and those who will may charge as much as 30% - 66% more for a yellow book audit than for a financial statement audit. For grants in the $25,000 - $50,000 range, the cost of the audit can be 5% to 15% of the amount of the grant. In most cases, the State grant funds cannot be used to pay for the audit, so some smaller nonprofits have to decline grants because they cannot afford to pay for the audit.

Tax Reduction Act of 1996 (Chapter 13; HB 18; Second Extra Session 1996): Chapter 13 of the 1996 Second Extra Session is the William S. Lee Quality Jobs and Business Expansion Act. It represents the major tax reduction legislation passed in 1996 by the

1995 General Assembly. The act cuts taxes by $186.5 million in fiscal year 1997-98. This act, coupled with the 1995 tax cuts, reduce taxes by more than $624 million in fiscal year 1997-98. The act does many things: it reduces the sales tax on food, reduces the corporate income tax, provides tax credits for quality jobs and business expansion, phases out the excise tax on soft drinks, modifies the bundled transaction sales tax, reduces inheritance and gift taxes, creates a nonitemizer charitable contribution tax credit, excludes certain severance pay from income tax, and reduces the sales tax on farm and industry fuel. Other major tax cuts were made in Senate Bill 6, ratified as Chapter 14 of the 1996 Second Extra Session, in House Bill 30, ratified as Chapter 19 of the 1996 Second Extra Session, and in House Bill 53, ratified as Chapter 18 of the 1996 Second Extra Session.

Reduce Sales Tax on Food

Under current law, food stamp items that are purchased with food stamps are exempt from both State and local sales taxes, and food stamp items that are not purchased with food stamps are subject to both the State 4% sales tax and the local 2% sales tax. Effective January 1, 1997, this act reduces the State sales tax on food stamp items from 4% to 3% but does not repeal or reduce the local sales tax on these items. This part of the act reduces General Fund revenues by $36.7 million in fiscal year 1996-97 and by $87 million in fiscal year 1997-98.

Federal law determines what can be purchased with food stamps and, therefore, what would be exempt from State sales tax under this act. Food stamps can be used to purchase the following from a retailer that has decided to participate in the food stamp program: food for humans for home consumption, seeds and plants for use in gardens to produce food for human consumption, and certain meals served by meal delivery services and communal dining facilities.

Examples of food items that would be exempt are fruits, vegetables, bread, meat, fish, milk, snack foods such as candy, gum, soft drinks, and chips, distilled water, ice, tomato plants, fruit trees, and cold prepared food for home consumption. Items that are not considered food items under federal law and would therefore remain subject to tax include alcoholic beverages, tobacco products, pet food, prepared foods that are hot at the point of sale and are therefore ready for immediate consumption, such as a broiled chicken kept in a heated display case, and food, such as a hamburger, a pastry, or soup, that is marketed to be heated on the premises of the retailer in a microwave oven or other heating device.

Food has been subject to sales tax in North Carolina since 1961. From the enactment of the sales tax in 1933 until 1961, either essential food items or food purchased for home consumption was exempt, except during the two years from 1935 to 1937.

Reduce Corporate Income Tax

Part II of the act reduces the corporate income tax rate from 7.75% to 6.9% over a four-year period, beginning with tax year 1997. This part of the act will reduce General Fund revenues by $14.2 million in fiscal year 1996-97, $46.2 million in fiscal year 1997-98, $79 million in fiscal year 1998-99, $103.2 million in fiscal year 1999-2000, and $110.2 million in fiscal year 2000-01. The act also adjusts the percentage of corporate tax revenue that is automatically credited to the Public School Building Capital Fund to keep the amount of revenue that goes to this Fund at its current level.

Until 1987, North Carolina's corporate income tax rate was 6% of a corporation's State net income. In 1987, as part of a tax package that included repeal of the property tax on inventories, the corporate income tax was increased to 7%. One-half of the additional 1% was dedicated to public school capital needs. In 1991, as part of a legislative package that cut spending and raised revenues to make up a $1.2 billion

shortfall, the corporate income tax rate was increased to 7.75% and a 4% surtax was enacted. The surtax was phased out over four years and expired January 1, 1995.

Quality Jobs and Business Expansion Tax Credits

The act establishes several tax incentives to encourage new and expanding businesses and a general business tax credit that will be more beneficial for small and existing businesses. With the exception of the worker training tax credit, the tax credits become effective for taxable years beginning on or after January 1, 1996, and apply to property placed in service and jobs created on or after August 1, 1996, and to research and development expenditures made on or after July 1, 1996. The worker training credit becomes effective January 1, 1997, and applies to training expenses made on or after July 1, 1997.

All of the credits are allowed against either the franchise tax or the income taxes; they may not exceed 50% of the tax against which they are claimed for the taxable year, and any unused credit may be carried forward for the succeeding five years. It is estimated that the credits will reduce General Fund revenues by more than $19 million in fiscal year 1997-98; this loss will increase to more than $72 million by fiscal year 2000-01. Reports will be submitted each year detailing the number of credits claimed, the number of new jobs created, the cost of tangible personal property with respect to which credits were claimed, and the costs to the General Fund of the credits claimed. The credits will expire January 1, 2002.

The tax incentives for new and expanding businesses were part of the Governor's proposals for economic development and were designed and recommended by the Governor's Economic Development Board. They include expansion of the current jobs tax credit and establishment of new tax credits for worker training expenses, for increasing research activities, and for investing in machinery and equipment. To be eligible for the credits, a taxpayer must engage in manufacturing or processing, warehousing or distributing, or data processing and the jobs must pay at least 10% above the average weekly wage in the county where the job is created.

The act expands the current jobs tax credit to include all 100 counties, to include data processing and warehousing and distribution jobs, to include employers with five or more employees, to apply to corporate franchise tax as well as corporate and individual income tax, and to significantly increase the amount of the credit for the most distressed counties. The current credit applies to 50 counties, is limited to manufacturing and processing jobs, is limited to employers with nine or more employees, is limited to corporate and individual income tax, and is a set amount ($2,800) in all 50 counties. The act divides the counties into five "enterprise tiers" based on their per capita income, unemployment rate, and population growth. The ten poorest counties are in tier one and the next fifteen counties are in tier two. The remaining seventy-five counties are divided evenly among tiers three, four, and five. The jobs tax credit is $12,500 for each eligible new job created in an enterprise tier one area, $4,000 in a tier two area, $3,000 in a tier three area, $1,000 in a tier four area, and $500 in a tier five area.

The worker training tax credit applies to expenses to train an employee for whom a jobs tax credit is allowed. The credit is 50% of the eligible training expenses, not to exceed $1,000 per worker in enterprise tier one counties and $500 per worker in other counties. The eligibility of training expenses is certified by the Community College system based on existing requirements for State-funded training for new and expanding industry.

The research and development tax credit uses the federal credit as its starting point. The credit is equal to 5% of eligible expenses incurred in North Carolina. Congress has reenacted the federal research and development credit for the period July 1, 1996, to June 30, 1997.

The credit for investment in machinery and equipment applies to property placed in service in this State and capitalized by the taxpayer for tax purposes under the Code. The credit is 7% of the cost of the taxpayer's net new investment that exceeds the county's threshold amount. The threshold amount varies depending on the county's enterprise tier, as indicated in the following table:

Enterprise Tier	Threshold
Tier One	$ -0-
Tier Two	100,000
Tier Three	200,000
Tier Four	500,000
Tier Five	1,000,000

The credit must be taken in seven equal installments, beginning the year after the equipment is placed in service.

The act also provides a tax credit for investing in tangible personal property that is used by the taxpayer in connection with a business or for the production of income and is capitalized by the taxpayer for tax purposes under the Code. The amount of the credit is 4.5% of the cost of the property placed in service, not to exceed $4,500 per taxpayer per year. The credit must be taken in five equal installments beginning in the year the property is placed in service. This credit is less restricted than the credit for investment in machinery and equipment in that there is no minimum wage requirement, no minimum amount of investment requirement, and no type of business requirement.

The act provides several benefits for the ten poorest counties, which are in enterprise tier one. These counties will have access to a special Utility Account within the Industrial Development Fund of the Department of Commerce. The General Assembly appropriated $2 million to this account in the Current Operations Appropriations Act of 1996. The money in the Utility Account can be used for construction or improvements to new or existing water, sewer, gas, or electrical utility distribution lines or for existing, new, or proposed industrial buildings to be used in manufacturing and processing, warehousing and distribution, or data processing. Enterprise tier one counties will also be exempt from local match requirements for Industrial Development Fund grants and loans and Community Development Block Grants Economic Development grants and loans. To the extent practical, they will receive priority consideration for Community Development Block Grant Economic Development financing.

The act also expands the Industrial Development Fund program in all counties by increasing the maximum grant or loan from $2,400 per job to $4,000 per job, and from $250,000 per project to $400,000 per project. Finally, the act directs the Department of Commerce to annually review the level of development in each of the State's multi-county economic regions and to strive for balance and equality of development within each region.

Phase Out Soft Drink Tax

During the 1995 Regular Session, the General Assembly reduced the excise tax on soft drinks by 25%, effective July 1, 1996. This act continues the reduction started in 1995 by phasing out the tax over a three-year period, beginning July 1, 1997. This part of the act, when fully implemented in fiscal year 1999-2000, will reduce General Fund revenues by $31.8 million.

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. A soft drink is defined as a beverage that is not an alcoholic beverage. An alcoholic beverage is a beverage containing at least 0.5% alcohol.

Modify Bundled Transaction Sales Tax

This part of the act specifies how the amount of State and local sales and use tax due on a "bundled transaction" is to be calculated. Its primary application is in the

taxation of cellular phones transferred at no cost or substantially below cost in conjunction with agreements to obtain cellular phone service for a specified minimum period of time. The provision becomes effective November 1, 1996, and is expected to reduce General Fund revenues by $6.7 million a year and local government revenues by $3.3 million a year.

As defined in the act, a "bundled transaction" is one in which an item, such as a cellular phone, is transferred without charge or below the seller's cost on condition that the purchaser enter into an agreement to purchase services for at least six months and to pay a cancellation fee if the purchaser cancels the service agreement before the end of the minimum period. Under current law, when an item is transferred in a bundled transaction, the seller is liable for use tax computed on the wholesale cost of the item. If, for example, a retailer gives a phone away in conjunction with a service agreement or sells a phone for $1 in conjunction with a service agreement and the wholesale cost of the phone to the retailer is $100, a tax of $6 (6% of $100) is due. To base the tax due on the amount charged for the item would produce the anomalous result that $6 use tax is due if the retailer gives the phone away but only 6¢ sales tax is due if the retailer "charges" $1 for the phone.

Under the act, tax is due on any price, such as $1, charged for the item when the transaction occurs and is due on the difference between the price charged and the normal retail price of the item only if the services the purchaser agrees to receive are not subject to a tax of at least 6%. If the services the purchaser agrees to receive are subject to a tax of at least 6%, no tax is due on the balance of the retail price of the item transferred unless the purchaser cancels the service agreement and is required to pay the cancellation fee. If this occurs, tax is due on the amount of the cancellation fee.

The effect of the act is to exclude part or all of the retail price of a cellular phone from sales and use tax when the phone is transferred in a bundled transaction. This would occur because telephone service is subject to a tax of at least 6% (State sales and use tax combined with State gross receipts franchise taxes). Cellular phones sold in transactions that are not bundled with service agreements would continue to be subject to State sales and use tax based on the retail price and the telephone service acquired to use the phone would also be taxed. Thus, under the act, if a person is charged $1 in a bundled transaction for a cellular phone that has a wholesale value of $100 and a retail value of $160, the person will pay tax of 6¢ (6% of $1). If that person buys the same phone in a transaction that is not bundled, the person will pay tax of $9.60 (6% of $160). Under current law, the person would pay $6 tax in the bundled transaction and $9.60 in the unbundled transaction.

Reduce Inheritance and Gift Taxes

This part of the act increases the Class A inheritance tax credit from $26,150 to $33,150, adopts the federal estate and gift tax provisions on qualified terminable interest trusts, prevents a double deduction for certain administrative expenses, and allows for the installment payment of inheritance taxes on closely held businesses and farms. The inheritance and gift tax changes become effective January 1, 1997, and apply to the estates of decedents dying on or after that date and to gifts made on or after that date. The changes will reduce General Fund revenues by $3.5 million a year beginning in fiscal year 1997-98.

North Carolina inheritance and gift tax rates are based on the relationship of the person transferring the property to the person receiving the property. State law classifies beneficiaries into three classes, Class A, Class B, and Class C, and sets different tax rates for each class. A Class A beneficiary is a lineal ancestor, a lineal descendant, an adopted child, a step-child, or a son-in-law or daughter-in-law whose spouse is not entitled to any of the decedent's property; a Class B beneficiary is a sibling, a descendant of a sibling, or an aunt or uncle by blood; and a Class C

beneficiary is anyone who is not a Class A or Class B beneficiary. Class A beneficiaries have the lowest tax rates, Class B beneficiaries have higher rates, and Class C beneficiaries have the highest rates. Thus, North Carolina's rate structure favors transfers to children and parents by giving these transfers the lowest rates and prefers transfers to other close family members over transfers to more distant relatives or to persons who are not related by giving these transfers the in-between rate.

North Carolina's inheritance and gift tax laws are in contrast to federal law, which has a single rate schedule for gifts and estates. As under federal law, however, all transfers to a spouse are exempt from State inheritance and gift taxes. The Revenue Laws Study Committee recommended to the 1996 General Assembly that the current inheritance tax be phased out over five years and that the federal "pick-up" tax, which is the federal state death tax credit, be retained as the State estate tax.

The 1996 General Assembly did not choose to phase out the tax, but it did increase the Class A beneficiary inheritance tax credit so that the amount exempted by the credit would be the same as the amount that is exempted from federal estate and gift taxes by application of the federal unified credit. The federal unified credit is $192,800, which exempts $600,000 of property from federal estate or gift taxes. The federal credit is unified in that it applies to both federal estate and gift taxes. Any part of the credit that is not used on gift taxes is applied to estate taxes.

The State Class A inheritance tax credit is not a unified credit. It does not apply to State gift taxes. State law provides a separate $100,000 lifetime exemption for gifts made to Class A beneficiaries. Under current law, therefore, the combination of the State gift tax lifetime exemption for Class A beneficiaries and the Class A inheritance tax credit exempts the same amount of property as the federal unified credit. Under this act, the increase in the Class A inheritance tax credit to $33,150 will exempt an additional $100,000 from inheritance tax. If a person fully uses both the State $100,000 gift tax lifetime exemption and the State Class A inheritance tax credit, the person can exempt more property from gift and inheritance taxes under State law than under federal law.

The act further conforms to federal law by exempting from State inheritance and gift tax property that is exempt from federal estate and gift taxes because it is considered qualified terminable interest property (QTIP property). Conforming to federal law on this topic will provide consistent treatment at the federal and State level. Also, because this type of property is more like an outright transfer to a spouse than it is like any other kind of transfer, this act intends to further the State's policy of exempting transfers to spouses from inheritance or gift tax by providing that no inheritance tax will be due until the spouse subsequently dies and passes the property on to the ultimate beneficiaries.

QTIP property is property placed in a trust in which a person's spouse has an income interest for life and the person's children or other designated beneficiaries have a remainder interest. Under federal law, a transfer of property that qualifies as QTIP property is not taxable when the transfer is made. Instead, it is taxed when the spouse who had the lifetime income interest in the property dies. At that time, the value of the QTIP property is included in the spouse's gross estate.

Under current North Carolina law, when property is transferred by means of a QTIP trust, two transfers are considered to have been made. One transfer is the transfer to the spouse of a life estate in the trust income. The transfer of the life estate to the spouse is not taxed because all property that passes to a spouse is exempt from State inheritance and gift taxes. The value of the spouse's life estate is the present value of the stream of income based on the life expectancy of the spouse. The other transfer is a transfer of the remainder interest in the trust property to the transferor's children or other designated beneficiaries. The transfer of the remainder interest is

subject to inheritance or gift tax. The value of the remainder interest is its present value as of the date of death or date of the gift.

Under this act, the remainder interest in QTIP property would no longer be taxable under North Carolina law when the QTIP trust is established. Instead, it would be taxable when the spouse with the life estate in the income died and would be taxed on the basis of the value at the spouse's death. In some cases, taxes would be collected at a later time than under current law, but in other cases less tax would be collected than under current law. Further reductions in tax would occur if the value of the trust property declined over time. No tax would be collected at a later date if the spouse moved out of the State before death and the trust consisted of securities rather than real property located in the State. By the same token, some tax would be collected that is not now collected if a spouse with a QTIP trust moves into the State.

A QTIP trust need not be established before a gift is made or the decedent dies. If the transfer is a gift, the trust can be established any time before the gift tax return is filed. If the transfer is a devise upon death, the trust can be established any time before the estate tax return is due if the will gives the personal representative the option of establishing a QTIP trust. The decision of whether or not to establish a QTIP trust is made after considering tax consequences and other factors.

Current law allows the costs of administering an estate to be deducted when determining the amount of inheritance tax payable on property in the estate. Costs of administration include attorney fees, accountant fees, and executor fees. The law, however, does not limit the inheritance tax deduction to costs that are not deducted on a fiduciary income tax return filed for the estate. If the same cost is deducted on both returns, the taxpayer receives an unintended double deduction for the same item.

A double deduction for the same item of cost is most likely to result when, because of the small size of an estate, no federal estate tax return is filed but a federal fiduciary income tax return is filed. In this instance, all costs will be deducted on the federal fiduciary income tax return.

North Carolina's income tax uses federal taxable income as the starting point in computing North Carolina taxable income. A result of this is that deductions taken on the federal return are automatically passed through on the North Carolina return. Thus, any item that is deducted on the federal fiduciary income tax return is also deducted on the State fiduciary income tax return. To prevent a double deduction, this act prohibits the deduction of an item on an inheritance tax return if the item was deducted on the federal fiduciary income tax return.

Finally, this part of the act allows for the installment payment of inheritance taxes on closely held businesses and farms if the personal representative of the estate elects under section 6166 of the Internal Revenue Code to make annual installment payments of federal estate tax. Payments are due at the same time and in the same proportion to the total tax due as payments due to the Internal Revenue Service under section 6166 of the Code. An acceleration of federal payments will also accelerate the North Carolina payments.

Nonitemizer Charitable Contribution Tax Credit

This part of the act creates an individual income tax credit for charitable contributions made by individuals who do not itemize their deductions. The credit is 2.75% of the amount of charitable contributions that exceed 2% of the individual's adjusted gross income. Two percent is the average percentage of income that North Carolinians contribute to nonprofits. By setting the floor at 2%, the act encourages and acknowledges giving that is above average. It is effective for taxable years beginning on or after January 1, 1997, and will reduce General Fund revenues by approximately $5 million a year.

Under the federal Internal Revenue Code, an individual who itemizes deductions may deduct contributions to nonprofit charitable organizations. Individuals who elect

the standard deduction, however, may not deduct charitable contributions. An individual's North Carolina's income tax is based on the federal calculation of taxable income, with some adjustments. The federal disallowance of charitable deductions for nonitemizers is "piggybacked" by North Carolina tax law, so there is no income tax incentive under federal or North Carolina law for nonitemizers to make charitable contributions. Legislation was introduced in Congress to allow nonitemizers to deduct charitable contributions. If federal legislation were enacted, North Carolina could "piggyback" the federal tax incentive. However, the federal legislation did not pass.

Individuals who elect the standard deduction are those whose total itemized deductions (such as mortgage interest, State and local property and income taxes, medical expenses, and charitable contributions) do not exceed the standard deduction amount. The standard deduction amounts for 1996 are $6,700 for a married couple filing a joint return and $4,000 for a single individual. Approximately 71% of North Carolina taxpayers elect the standard deduction.

This provision was one of the recommendations of the House of Representatives' Select Committee on Nonprofits; it is intended to increase charitable giving. The Committee studied the question of whether tax incentives make a difference in charitable giving and learned that federal tax incentives probably do but State tax incentives probably do not because the State income tax is so low compared to the federal income tax that it does little to influence individuals' economic decisions. The Committee believed, however, and the General Assembly agreed, that State incentives may affect perceptions, and thus behavior, even if the tax is too small to provide a significant economic incentive.

Exclude Certain Severance Pay from Income Tax

This part of the act exempts from State individual income tax severance pay a taxpayer receives due to the permanent closure of a manufacturing or processing plant, not to exceed a maximum of $35,000 for the taxable year. This part is effective for taxable years beginning on or after January 1, 1996. The exemption will reduce General Fund revenues by approximately $4 million a year.

Reduce Sales Tax On Fuel Used By Farmers and Industry

This part of the act reduces the sales tax rate on electricity and piped natural gas used by farmers, manufacturers, laundries, and dry cleaners from 3% to 2.83%, effective August 1, 1996. This change affects General Fund revenue but not local revenue because no local sales tax applies to electricity and piped natural gas. It will reduce General Fund revenue by over $5 million dollars a year.

1996 Tax Reform Act (Chapter 14; SB 6; Second Extra Session 1996): Chapter 14 of the 1996 Second Extra Session contains several different provisions recommended to the 1995 General Assembly by the Revenue Laws Study Committee. It repeals or revises four North Carolina tax provisions that the Committee identified as having the same flaw as the intangibles tax stock deduction that was declared unconstitutional by the United States Supreme Court in the Fulton decision. In addition, it clarifies the tax treatment of refunds of unconstitutional taxes, extends the time a taxpayer has to challenge the unconstitutionality of a tax from 30 days to one year, enables the State to enter into agreements to accept voluntary payments of State and local use tax, directs the Department of Revenue to instruct mail-order companies to obtain the purchaser's county of residence for proper allocation of use tax revenue, clarifies the sales tax treatment of items given away by merchants, exempts from sales and use tax tangible personal property that is donated by a manufacturer or retailer to a nonprofit organization for a charitable purposes, and repeals most State privilege license taxes. The act results in a revenue gain for the General Fund of approximately $18.27 million in fiscal year 1996-97. After the privilege license repeal becomes effective in 1997, the act will increase General Fund revenues by only about $2 million a year.

Unconstitutional Tax Preferences

The tax preferences addressed in Part I of the act are:

(1) The current $300 individual income tax credit for dividends received from North Carolina companies: Effective for the 1996 tax year, the act repeals this credit.

(2) The $15,000 corporate income tax deduction for dividends received from North Carolina companies: Effective for the 1996 tax year, the act repeals this deduction.

(3) The income tax credits for investing in North Carolina Enterprise Corporations and for qualified business investments in North Carolina companies: The act repeals the credit for investing in North Carolina Enterprise Corporations and the corporate income tax credit for qualified business investments, effective for investments made on or after January 1, 1997. It restricts the remaining tax credits for qualified business investments to those made by individuals or small partnerships directly in qualified businesses and removes the requirement that qualified businesses be headquartered and operating in North Carolina, effective for investments made on or after January 1, 1997. It also caps the credits at $6 million a year, effective for investments made on or after January 1, 1996.

(4) The North Carolina income tax credit for distributing North Carolina wine: The act repeals this credit effective for the 1996 tax year.

There is no disagreement on whether these tax preferences are flawed. The Attorney General's Office advised the Department of Revenue that, if the General Assembly did not resolve the constitutional problems with these preferences, the Department of Revenue had the option of either denying the preferences to North Carolina companies or extending the preferences to all out-of-state companies. Enforcing the preferences as written on the books was not an option because of the risk of personal liability on the part of Department of Revenue personnel in enforcing provisions that were so clearly flawed in the wake of the Fulton decision.

One unconstitutional tax preference identified by the Revenue Laws Study Committee that is not addressed in this act is the 100% deduction allowed to North Carolina parent companies for subsidiary dividends received by them with no requirement that expenses be deducted from the tax-free income. Out-of-state parent companies are allowed an exclusion for subsidiary dividends but are required to adhere to the basic tax principle that expenses incurred to generate the tax-free dividend income cannot also be deducted. The Revenue Laws Study Committee recommended revising this preference to apply the basic tax principle to in-state parent companies. However, this provision is omitted from this act. Inaction on this item by the General Assembly will result in a revenue loss of approximately $3.5 million annually because the Department of Revenue will probably extend the current preference for in-state parents to out-of-state parents.

Part I of this act also extends the time a taxpayer has to challenge the unconstitutionality of most taxes from 30 days to one year. The time limit remains at 30 days for excise taxes on alcoholic beverages, soft drinks, tobacco products, and controlled substances. In North Carolina, if a taxpayer believes a tax is unconstitutional, the taxpayer must pay the tax and contest the tax by requesting a refund within 30 days after paying the tax. This procedure is known as "paying under protest". The North Carolina Supreme Court has upheld the constitutionality of the State's 30-day rule and the United States Supreme Court, by deciding not to hear the case, upheld the State court's ruling.

States that require a taxpayer to contest a tax by paying under protest are called "postdeprivation remedy" states. Most postdeprivation remedy states have a statute of limitations that is longer than 30 days. The most common statute of limitations utilized

by the postdeprivation remedy states is known as the "three-year/two-year" rule. Under this rule, in order for a taxpayer to recover a refund of money paid under a tax later declared to be illegal, the taxpayer must have filed for a refund within three years after the date that the taxpayer filed the return, or two years after the date the taxpayer paid the tax, whichever is later. South Carolina recently repealed its 30-day rule and replaced it with a three-year rule.

Finally, Part I of this act clarifies the tax treatment of refunds of unconstitutional taxes and other similar recoveries. Under Section 111 of the Code, if a taxpayer recovers an amount that the taxpayer had previously deducted, the taxpayer must add the amount of the recovery back to gross income. The typical example is a State income tax refund, which must be included in gross income if the taxpayer deducted it as an itemized deduction. The principle is that if the taxpayer received a tax benefit from deducting an expenditure, when the expenditure is refunded to or recovered by the taxpayer, the taxpayer should give back the corresponding tax benefit. This adjustment normally carries through from the Code to North Carolina income tax statutes because North Carolina piggybacks the Code. In some situations, such as the alternative minimum tax, however, North Carolina does not piggyback the Code. A refund or recovery might represent a tax benefit under the Code but not North Carolina law, or vice versa. This part of the act provides consistency in requiring State add-backs of only those refunds and recoveries that represent State tax benefits. It prevents situations in which a taxpayer would receive a double deduction or be subject to double taxation because a refund (of an unconstitutional tax, for example) represented a tax benefit under the Code but not State law, or vice versa.

Sales and Use Tax

Part II of this act makes three changes to the State's sales and use tax laws, effective August 1, 1996:

(1) It enhances compliance and enforcement of existing sales and use tax laws by authorizing the Department of Revenue to enter into agreements to accept voluntary payments of State and local use tax and by directing the Department of Revenue to instruct mail-order companies to obtain the purchaser's county of residence for proper allocation of use tax revenue.

(2) It clarifies the sales tax treatment of items given away by merchants.

(3) It exempts from sales and use tax tangible personal property that is donated by a manufacturer or retailer to a nonprofit organization for a charitable purpose.

The State cannot require a mail-order marketer to collect and remit the use tax owed this State on sales to North Carolina residents unless the marketer has a store in North Carolina or other ties sufficient to give the State jurisdiction over it. If the direct marketer does business with North Carolina residents only through telephone, mail, and freight transactions, it does not have "nexus" with this State and is not required to collect the tax. The United States Supreme Court has held that states' efforts to require these out-of-state marketers to collect sales or use tax on sales to residents violate the interstate commerce clause of the United States Constitution.

As a result of these constitutional restrictions, out-of-state direct marketers have a competitive advantage over in-state merchants, and states lose significant amounts of revenue. Some direct marketers collect and remit use taxes voluntarily as a convenience to their customers. The Direct Marketers Association, the Federation of Tax Administrators, and the Multi-state Tax Commission are currently negotiating a possible agreement under which more direct marketers would voluntarily collect use tax on behalf of customers in states in which the marketers do not have nexus. Under this agreement, tax collection would be simplified by using the same form and payment deadlines in every state. In addition, the direct marketers would collect at only one rate per state; non-uniform county and city rates would be disregarded. If these parties

are able to design a system that would be acceptable to all involved, North Carolina would need authority to enter into such an agreement. The act would provide that authority and set out some of the parameters for the agreement. If the ongoing negotiations result in a viable multi-state program for collection of use taxes by direct marketers and North Carolina enters into agreements pursuant to the program, the Department of Revenue could potentially collect millions of dollars in use taxes that are owed under current law but are not being paid.

The act also clarifies the sales tax treatment of items given away by merchants. It provides that property given away or otherwise used by a merchant is not exempt from use tax, except in the case of restaurants and caterers that give free meals to employees or free bar food to patrons and in the case of retailers that give a free item of inventory to a customer on the condition that the customer purchase similar or related property. As under former law, free books of matches would not be subject to use tax if they are given away along with the sale of cigarettes; matches given away where cigarettes are not sold would remain subject to use tax.

A general sales and use tax principle is that a wholesale merchant or retailer who gives away products free of charge instead of selling them is liable for use tax on the products. The use tax, first enacted in 1939, is the complement of the sales tax and applies to the storage, use, or consumption in this State of tangible personal property. A merchant is liable for the use tax on property it uses in its business, whether furniture, equipment, decor, or promotional giveaways. Items sold by a merchant, however, are not subject to use tax because sales tax will apply when the items are sold at retail.

There are some gray areas in determining whether a product is sold or is given away. For example, if a merchant has a "buy one, get one free" sale, both items are considered sold for the price of the first one. Although the second item appears to be given away, in fact both items are being sold at a discounted price. Another example is paper napkins, catsup, and other items that accompany and are consumed along with meals. These items are considered sold as part of the meal.

Until 1993, the following items were considered used, not sold, and thus subject to use tax: meals provided free to the merchant's employees, food given away to the merchant's patrons, and matches given away to patrons, other than matches given along with the sale of cigarettes. A group of restaurants appealed the assessment of this tax, claiming that in their case these items should be considered sold. The restaurants were selling meals to patrons and, at the same time, giving some of the food to employees as meals and some to patrons as "bar food" such as chips. In addition, free books of matches were provided to patrons for use in the restaurant.

The North Carolina Court of Appeals agreed with the restaurants that these items should be considered sold along with the food the restaurant sold as part of its business. In its opinion, the court reasoned that the cost of these items was recovered by the sale of other items. This rationale could arguably be applied in a very broad way to mean that the the cost of all of a merchant's purchases should be exempt from sales and use tax because they are covered by the price of sold items; a merchant's profits from its sales generate the funds to purchase furniture, equipment, decorations, and other items. Thus, taken literally, the court ruling could be interpreted to eliminate the use tax altogether for merchants.

Finally, Part II of the act includes a new sales and use tax exemption for tangible personal property that is donated to a nonprofit organization by a retailer or a wholesale merchant. Under current law, medicine and certain food donated to a nonprofit organization to be used for a charitable purpose are exempt from sales and use tax. This act repeals these two exemptions since they become redundant in light of the new, and broader, exemption created by it.

Under current law, a wholesale merchant or retailer who donates products to a nonprofit organization instead of selling them is liable for the sales and use tax. A wholesale merchant or retailer does not pay sales or use taxes when purchasing the products or the ingredients used to manufacture the products because the products are to be resold. Sales and use taxes do not apply to property purchased for resale or ingredients purchased to manufacture products for resale. If the wholesale merchant or retailer chooses not to sell the goods, the wholesale merchant or retailer becomes liable for use tax on the goods because the resale exemption no longer applies. This is true no matter what the company chooses to do with the products. The act eliminates this liability for use tax by providing a specific exemption for tangible personal property purchased or manufactured by a wholesale merchant or retailer for resale and then withdrawn from inventory and donated to a nonprofit organization, contributions to which are deductible as charitable contributions for federal income tax purposes.

Repeal of Most Privilege License Taxes

Part III of this act repeals most of the State privilege license taxes imposed under Article 2 of Chapter 105 of the General Statutes, effective July 1, 1997. This Part will reduce General Fund revenues by about $11 million a year. The only privilege taxes retained are the taxes imposed by G.S. 105-37.1 (amusements); 105-38 (circuses and similar shows); 105-41 (professionals); 105-83 (installment paper dealers); 105-88 (loan agencies or brokers); 105-102.3 (banks); and 105-102.6 (newsprint publications). The tax on professionals was retained because its repeal would reduce General Fund revenues by more than $3 million a year. The other taxes were retained because they have a gross receipts or other variable element (amusements, circuses, installment paper dealers, banks), are related to a tax that is retained (loan agencies), or were enacted for a regulatory purpose (newsprint publications).

The act preserves the status quo on privilege license taxation for cities and counties. Cities have general authority to impose privilege license taxes unless limited by Article 2; counties have no general authority to impose these taxes but are authorized by Article 2 to levy some specific taxes. The act provides that the current limitations and authorizations in Article 2 that apply to cities and counties will continue to apply. The act also preserves the itinerant merchant regulatory provisions but moves them to Chapter 66 of the General Statutes, Commerce and Business.

The Revenue Laws Study Committee found that the privilege license tax structure in Article 2 of Chapter 105 of the General Statutes is outmoded, inefficient, and not designed on proper principles of taxation such as tax fairness, ability to pay, responsiveness to growth, or administrative cost. There is no rationale for a tax on the privilege to work that applies only to a limited portion of businesses or the work force and that has a different and inconsistent tax rate for each different class of business. Because the tax is not indexed to any economic parameter, the cost to administer the tax has become increasingly high over time compared to the amount of tax collected. As a result, the tax has become more of a nuisance tax than a properly designed source of revenue for the State. The Revenue Laws Study Committee plans to study the elimination of the remaining State privilege license taxes and reform of the provisions governing local privilege license taxes.

Modify 1996-97 Budget (Chapter 18, Sec.'s 15.1, 15.3, 15.4, 15.7, 25.2; HB 53, Sec.'s 15.1, 15.3, 15.4, 15.7, 25.2; Second Extra Session 1996): The Current Operations Appropriations Act of 1996 contains five tax law changes. It increases the property tax homestead exemption, modifies the State ports tax incentive, exempts milk drinks from the excise tax on soft drinks, allows the University of North Carolina Hospitals at Chapel Hill an annual refund of sales and use tax paid, and makes permanent the quarterly distribution of a portion of the excise tax on wine to the North Carolina Grape Growers Council.

The act expands the homestead exemption amount from $15,000 to $20,000 and increases the income eligibility amount from $11,000 to $15,000, effective for taxes imposed for taxable years beginning on or after July 1, 1997. Under the act, the State will reimburse the counties and cities 50% of the loss they incur as a result of these tax law changes for two years. This reimbursement will cost the General Fund $3 million a year. The increase in the income eligibility amount will allow as many as 34,000 elderly and disabled homeowners to qualify for the homestead exemption who do not currently qualify. The increase in the homestead exemption amount will provide additional property tax relief to at least 155,000 elderly and disabled homeowners who currently qualify for the exemption.

The homestead exemption is a partial exemption from property taxes for the residence of a person who is either aged 65 or older or totally disabled and has an income of less than $11,000. The current exemption amount is $15,000. The exemption amount was last increased in 1993, when it was increased from $12,000 to $15,000. The income eligibility amount was last increased in 1987, when it was increased from $10,000 to $11,000. The income used to determine the income eligibility amount includes moneys received from every source other than gifts or inheritances received from a spouse, lineal ancestor, or lineal descendant. For married applicants residing with their spouses, the income of both spouses is included, whether or not the property is in both names.

The revenue loss associated with this act will be borne equally between the local governments and the State for the first two years. Prior to 1987, local governments absorbed most of the cost of the homestead exemption. From 1987 to 1991, the State reimbursed counties and cities for 50% of their losses from the homestead exemption. In 1991, the General Assembly froze the amount of reimbursements made to local governments to the amount each city and county was entitled to receive in 1991. That amount is approximately $7.9 million. No additional reimbursement was provided when the exemption amount was increased in 1993.

The act expands the State ports income tax credit to include the importing and exporting of forest products at the State-owned port terminal at Wilmington, effective for taxable years beginning on or after January 1, 1996. Forest products are a type of bulk cargo. Under current law, a taxpayer is not entitled to the income tax credit for bulk cargo imported or exported at the Wilmington terminal. This part of the act will reduce General Fund revenues by $180,000 for fiscal year 1996-97.

Bulk cargo is a type of commodity that is loose and usually stock-piled. Examples of this type of commodity include coal, grain, salt, and wood chips. Break-bulk cargo and container cargo are different methods used to ship the same type of commodity. Commodities that are packaged in a metal trailer box that can be locked onto a tractor-trailer chassis and then detached and put on a ship without any other handling are considered "container cargo". Commodities that are packaged and stored on pallets or in cases that must be handled and stacked onto a ship by hand, crane, etc., are considered break-bulk cargo. Break-bulk cargo also includes machinery.

Under prior law, the income tax credit was available only for break-bulk cargo and container cargo imported or exported at the Wilmington terminal. The credit is available for bulk cargo, break-bulk cargo, and container cargo imported or exported at the Morehead City terminal. Since bulk cargo is generally imported and exported only at the Morehead City terminal, there has not been a need to extend the credit to this type of cargo at the Wilmington terminal. The credit is being narrowly extended to forest products because there is a customer at the Wilmington terminal who will be exporting wood chips and the Ports Authority believes all users of the Wilmington terminal should be entitled to the credit. The act does not extend the credit to all bulk products because the Wilmington terminal does not want to be seen as competing

unfairly with other terminals located in the Wilmington area that import or export other types of bulk products.

The amount of the tax credit allowed is equal to the amount of charges paid to the North Carolina Ports Authority in the taxable year that exceeds the average amount of charges paid to the Authority for the past three years. The credit is limited to 50% of the tax imposed on the taxpayer for the current year. Any excess credit may be carried forward and applied to the taxpayer's income tax liability for the next five years. The cumulative credit may not exceed one million dollars per taxpayer. The credit will expire in 1998.

The act also removes the requirement that a flavored milk drink must be registered with the Department of Revenue before it can be exempt from the excise tax on soft drinks and extends the exemption to cover all soft drinks that contain milk. This part of the act is effective retroactively to October 1, 1991. The act does not result in a significant revenue loss because:

(1) Any assessments pending against a dairy that produces a flavored milk drink have not been paid and will not have to be paid under the provisions of this act.

(2) Other registered flavored milk drinks are currently exempt and therefore are not paying any tax.

Under prior law, a flavored milk drink containing at least 35% milk was exempt from the excise tax on soft drinks if it was registered with the Department of Revenue. Natural liquid milk produced by a farmer or a dairy has always been exempt from tax without the necessity of registering the milk product. The Department of Revenue assessed tax on some dairies' chocolate milk products because they were not registered with the Department. The dairies contested the assessments.

As originally introduced, this provision would have exempted from the registration requirement chocolate flavored milk produced by a dairy. This approach raised some legal concerns, however, because it resulted in similarly situated taxpayers being treated differently. For example, one flavored milk drink registered with the Department is produced by three different people: a dairy in North Carolina, a dairy located outside the State, and a packer in North Carolina. Under the original provision, the two dairies would not have to register the milk drink to receive the tax exemption and the packer would. To avoid possible litigation, this provision was revised to exempt all milk products from the tax. Under Chapter 13 of the 1995 Session Laws, Second Extra Session 1996, the excise tax on all drinks will be repealed effective July 1, 1999.

Fourthly, the Current Operations Appropriations Act of 1996 allows The University of North Carolina Hospitals at Chapel Hill to seek an annual refund of State and local sales and use tax they paid on direct purchases of tangible personal property. Sales and use tax liability indirectly incurred by the hospitals on building materials, supplies, fixtures, and equipment that become a part of or annexed to a building used by the hospitals is considered paid on a direct purchase by the hospitals. This part of the act becomes effective January 1, 1997, and applies to taxes paid on or after that date.

Under current law, nonprofit, private hospitals are allowed a semiannual refund of State and local sales and use taxes paid. For-profit hospitals are allowed a semiannual refund of State and local sales and use taxes paid on medicines and drugs. However, neither of these two refund provisions are applicable to hospitals owned or controlled by a governmental unit.

Under current law, local government agencies receive an annual refund of State and local sales taxes they pay but State agencies do not receive refunds of either State or local sales taxes. Local sales taxes paid by State agencies, including State-operated hospitals, are refunded quarterly to the General Fund rather than to the agency. State

agencies do not receive refunds of State sales taxes because the appropriation of State funds for that agency includes the amount of sales tax payable by the agency.

As of the effective date of this act, the local sales taxes paid by the UNC hospitals will no longer be refunded to the General Fund and the State sales taxes paid by the UNC hospitals will no longer remain in the General Fund. These amounts will instead be paid directly to the UNC hospitals. Presumably, the appropriation to the UNC hospitals will be reduced to reflect this new refund.

This provision departs from the traditional policy that State sales taxes are not refunded to State-funded agencies. Refunding State sales taxes to agencies funded from the General Fund merely creates a loop of unnecessary administrative costs and paperwork as funds are paid into the General Fund as sales taxes then refunded by the Department of Revenue out of the General Fund. In all other cases, the same result is reached without the paperwork by including in the agency's General Fund appropriation an amount to cover the sales taxes paid into the General Fund. The latter approach saves the Department of Revenue and the State agency the administrative costs associated with periodic refunds.

This refund applies only to the UNC hospitals and not to other State hospitals and similar facilities. As well as the UNC hospitals, the State operates four psychiatric hospitals: Dorothea Dix Hospital, Broughton Hospital, Cherry Hospital, and John Umstead Hospital. In addition, the State operates various Alcohol and Drug Treatment Centers and Mental Retardation Centers around the State. These centers are in-patient facilities similar to hospitals. In the case of all State-operated hospitals and treatment centers other than the UNC hospitals, the General Assembly appropriates money from the General Fund to pay for sales taxes, rather than reducing the institution's appropriation and requiring the institution and the Department of Revenue to process refunds.

Lastly, the act makes permanent a quarterly distribution of a portion of the excise tax on wine to the North Carolina Grape Growers Council. Under G.S. 105-113.81A, 94% of the net proceeds of the excise tax collected on unfortified wine bottled in North Carolina during the previous quarter and 95% of the net proceeds of the excise tax collected on fortified wine bottled in North Carolina during the previous quarter is credited to the Department of Agriculture. The amount credited may not exceed $90,000 per fiscal year; any funds credited to the Department under this statute that are not expended during the fiscal year do not revert to the General Fund at the end of a fiscal year. The Department of Agriculture allocates these funds to the North Carolina Grape Growers Council to be used to promote the North Carolina grape and wine industry and to contract for research and development services to improve viticultural and enological practices in North Carolina.

This distribution has been in effect since 1987. Under the original legislation, the distribution would have terminated on June 30, 1997, and the funds would have been credited to the General Fund. This part of the act removes the sunset.

In 1973, the General Assembly enacted legislation providing that the tax on wine manufactured in North Carolina would be lower than the tax on other wines. In 1984, the United States Supreme Court decided in the Bacchus case that an unequal tax between in-state and out-of-state wine violated the Commerce Clause of the United States Constitution. As a result of this decision, the State and the local governments, who receive a percentage of the excise tax on wine, realized a revenue increase. In 1987, the General Assembly decided that a portion of this increased revenue should be used to promote and improve the State's grape and wine industry. This part of the act continues this philosophy.

In 1985, the General Assembly enacted an income tax credit for distributing North Carolina wine. Chapter 14 of the 1996 Second Extra Session repealed this credit because it had the same flaw as the intangibles tax stock deduction that was declared

unconstitutional by the United States Supreme Court in the Fulton decision. The United States Supreme Court ruled that the intangibles tax stock deduction violated the interstate commerce clause of the federal constitution.

School Bond Act Technical Corrections (Chapter 18, Sec. 18.25; HB 53, Sec. 18.25; Second Extra Session 1996): See **EDUCATION.**

Refund Federal Retirees (Chapter 19; HB 30; Second Extra Session 1996): Chapter 19 of the 1996 Second Extra Session gives federal retirees income tax credits and partial refunds for the North Carolina income taxes they paid on their federal retirement benefits in 1985, 1986, 1987, and 1988. These credits and refunds will cost the General Fund more than $117 million over three years. The amount a federal retiree may claim as a credit or refund is reduced by any amounts previously credited or refunded to the federal retiree for the same pension taxes. If a federal retiree paid the 1985-88 pension taxes under timely protest, the retiree already received a refund as required by existing law. Under this act, federal retirees who did not make a timely protest and who pay North Carolina income tax may take a State income tax credit in three equal installments beginning with the 1996 tax year. For a taxpayer whose 1996 tax liability is less than 5% of the tax the taxpayer paid on federal retirement benefits during 1985-88, a one-time refund is allowed in lieu of a credit. The taxpayer must claim this refund by April 1, 1997. The refund allowed is the lesser of 85% of the amount claimed or a reduced amount. The reduced amount occurs when the total refunds claimed exceed the $25 million the General Assembly has set aside to pay for the refunds. If the $25 million cap is reached, then the refunds are prorated based on the amount each taxpayer claimed. If a federal retiree who would otherwise be eligible for a credit or refund has died, the retiree's estate may claim the credit or refund.

In 1990, the General Assembly gave to federal retirees who had not made a timely protest an income tax credit for the amount of tax paid on their federal retirement benefits in 1988. This tax credit was not refundable and was not allowed to deceased federal retirees; it was allowed in three installments. This credit was granted as a result of the 1989 United States Supreme Court decision in Davis v. Michigan, which held that the doctrine of intergovernmental tax immunity prohibits a state from taxing federal retirement income at a higher rate than State retirement income. Prior to 1989, North Carolina allowed a full income tax exclusion for State retirement income and a $3,000 annual exclusion for federal retirement income; there was no exclusion for private pension income. To comply with the Davis decision, the General Assembly in 1989 allowed all government retirees (state, local, and federal) a $4,000 annual exclusion. At the same time, it allowed private retirees a $2,000 annual exclusion.

The tax credit for 1988 taxes was enacted in 1990 to equalize the treatment of those who paid under protest for 1988 and those who did not. The Davis decision was issued on March 28, 1989, the middle of the income tax filing period for the 1988 tax year. Those taxpayers who learned about the Davis decision in time paid under protest within the 30-day time limit prescribed by law or refused to pay tax on their federal retirement benefits. Those who had paid their taxes early or did not become aware of the Davis decision until later were not able to make a timely protest.

The State currently faces similar constitutional challenges to several of its other taxes. The United States Supreme Court declared North Carolina's intangibles tax on stocks unconstitutional in the 1996 Fulton decision. Other taxes that were collected until their repeal in the 1996 tax year, such as the individual income tax credit for North Carolina dividends and the corporate income tax deduction for North Carolina dividends, have been identified by the Revenue Laws Study Committee as having the same constitutional flaw as the intangibles tax. Furthermore, State, local, and federal retirees are currently challenging the constitutionality of the income tax levied on their

pensions for the tax years from 1989 to the present. Taxpayers who paid the intangibles tax and other unconstitutional taxes without filing a timely protest will likely seek legislation granting them refunds of three years' back taxes, relief similar to that granted federal retirees by this act. The cost of granting relief to other taxpayers in the same position as the federal retirees aided by this act could cost the General Fund hundreds of millions of dollars.

STUDIES

Legislative Research Commission Studies

The Legislative Research Commission may study whether or not to **allow property tax refunds for overpayments due to clerical, measurement, or computational errors in appraisal of property.** (Chapter 17; SB 46; Second Extra Session 1996)

Referrals to Departments, Agencies, Etc.

The State Budget Office, Management and Productivity Unit with the Department of Revenue, shall assess the **Department's staff requirements,** including a determination of the variety of unit costs related to workload as influenced by existing laws and resulting policies and procedures. (Chapter 18, Sec. 15.6; HB 53, Sec. 15.6; Second Extra Session 1996)

TRANSPORTATION
(Brenda Carter, Bill Gilkeson, Lynn Marshbanks)

Utility Pole Extension (Chapter 573; SB 1181; Regular Session 1996): Chapter 573 provides that a utility pole carried on the side of a self-propelled vehicle at a height of at least five feet may extend up to 10 feet beyond the front bumper of the vehicle if the pole is less than 80 feet long and cannot be dismembered and the front of the pole is marked as specified. The act became effective on July 1, 1996.

Highway Bond Act of 1996 (Chapter 590; HB 540; Regular Session 1996): Chapter 590 authorizes the issuance of $950 million of highway bonds if approved by the voters in November 1996. Of the $950 million, $500 million would be used for urban loops around Asheville, Charlotte, Durham, Greensboro, Raleigh, Wilmington, and Winston-Salem; $300 million would be used for the Intrastate System projects listed in G.S. 136-179; and $150 million would be used to pave unpaved secondary roads on the basis of percentage of unpaved miles. The bonds would be repaid from Highway Trust Fund revenue allocated for the Trust Fund urban loops, the Intrastate system, and secondary road construction. The bonds authorized by the bill would be State general obligation bonds. Sections of the act that are not dependent upon voter approval became effective on ratification, June 20, 1996. Sections that are dependent upon voter approval become effective upon certification of a favorable vote by the State Board of Elections.

Expedite Towed Vehicle Disposal (Chapter 635; HB 1268; Regular Session 1996): Chapter 635 amends various statutes to expedite the disposal of unclaimed vehicles. It does the following: (1) Requires a vehicle towing or storing business where a vehicle remains unclaimed for 10 (currently 30) days, or a landowner on whose property a vehicle has been abandoned for more than 30 (currently 60) days to report the unclaimed vehicle to DMV; (2) Allows a lienor to begin the lien enforcement process on a towed and stored motor vehicle within 10 (rather than 30) days; (3) Requires DMV to respond within 15 days of receipt of a lienor's notice asserting a lien and proposing a sale (currently, no time period for DMV's response is specified); (4) Allows a lienor to begin a special proceeding in the county where the vehicle is being held for authorization to sell the vehicle if DMV cannot ascertain the person with legal title and the fair market value of the vehicle is under $800; (5) Requires a lienor, after an authorized sale, to file a form stating that the lienor has complied with the relevant provisions in G.S. 44A-4 and stating the name, address, and bid of the high bidder if the vehicle is sold at private sale; (6) Eliminates the requirement that notice be published in a newspaper before public sale of a vehicle that is five or more years old and has a market value of under $3,500. The act becomes effective on October 1, 1996.

Joint Airports/Water & Wastewater (Chapter 644; SB 878; Regular Session 1996): Chapter 644 authorizes certain airport boards and commissions to own, operate, and finance the purchase and improvement of water and wastewater systems. It applies to any airport board or commission (created to act along with other such boards or commissions by agreement between two cities) that is located partially but not wholly in the county in which a jointly owned airport is located, and where the board or commission provided water and wastewater services off the airport premises before January 1, 1995. Chapter 644 authorizes such boards and commissions to acquire, construct, establish, enlarge, improve, maintain, own, operate and contract for the

operation of water supply and distribution systems and wastewater collection, treatment and disposal systems of all types, on and off the airport premises. The act specifies that in no event shall the board or commission be held liable for damages to those off the airport premises for failure to provide such water or wastewater services. The act became effective upon ratification on June 21, 1996.

Tax at Rack Fine Tuning (Chapter 647; SB 1198; Regular Session 1996): See **TAXATION.**

Speed Limits (Chapter 652; SB 1270; Regular Session 1996): Chapter 652 authorizes the Department of Transportation to establish speed limits up to 70 miles per hour on designated parts of controlled access highways. The act also provides that if a person drives over 80 miles per hour, that person is guilty of a Class 2 misdemeanor and the person's license is suspended. Current law providing for a Class 2 misdemeanor and license suspension if the driver goes more than 15 miles per hour over the speed limit would not change. However, where the speed limit is 70 miles per hour, the maximum speed before license suspension would be 80, not 85. The act also provides that a person who, while fleeing or attempting to elude arrest or apprehension by a law enforcement officer, either drives over 80 miles per hour (currently "at least 15 miles per hour") over the speed limit or drives over 80 miles per hour is guilty of a Class 1 misdemeanor. The act becomes effective on October 1, 1996.

Transfer Rail Safety (Chapter 673; HB 1172; Regular Session 1996): See **STATE GOVERNMENT.**

Digitized Imagery License Changes (Chapter 675; HB 1141; Regular Session 1996): Chapter 675 would allow DMV to use different color borders on drivers licenses to distinguish ages of license holders. Currently, only different color backgrounds are allowed. The act became effective upon ratification, June 21, 1996.

Delete "L" CDL Endorsement (Chapter 695; HB 1182; Regular Session 1996): Chapter 695 deletes a commercial drivers license endorsement, the "L" endorsement, that is not used by DMV. The act became effective upon ratification, June 21, 1996.

Amber Lights on Stopped Vehicles (Chapter 715; SB 833; Regular Session 1996): Chapter 715 requires that vehicles making frequent stops on highways be equipped with flashing amber lights. The act applies to motor vehicles operated by rural letter carriers or by newspaper delivery persons, while engaged in making deliveries. The act becomes effective October 1, 1996, and applies to offenses occurring on or after that date.

County Remove Registration Block (Chapter 741; SB 1165; Regular Session 1996): See **TAXATION.**

DMV Trucking/Technical Changes (Chapter 756; SB 1294; Regular Session 1996): According to the Joint Legislative Transportation Oversight Committee's report to the 1996 Session, Recent changes in federal law have made many provisions of Chapter 20 of the General Statutes that relate to motor carriers obsolete. The 1994 federal FAA Authorization Act prohibited states from regulating rates, routes, and services of motor carriers, other than household movers. This prohibition ended the authority of the North Carolina Utilities Commission to regulate most intrastate motor carriers. In response, the 1995 General Assembly enacted Chapter 523 (House Bill 941) of the 1995 Session Laws. That Chapter removed the then unenforceable statutory provisions

in the State's public utility law concerning regulation of motor carriers. The 1995 federal ICC Termination Act abolished the federal Interstate Commerce Commission and transferred its remaining duties to the United States Department of Transportation, to be divided between the Federal Highway Administration and a newly created Surface Transportation Board. Chapter 756 changes various provisions in Chapter 20 to conform to the federal changes and makes other technical changes. Chapter 756 became effective upon ratification on June 21, 1996.

DOT Reports on DMV Reorganization (Chapter 18, Sec. 19.1; HB 53, Sec. 19.1; Second Extra Session 1996): Section 19.1 of Chapter 18 of the Second Extra Session requires the Department of Transportation to report to the Joint Legislative Transportation Oversight Committee by December 15, 1996, concerning how it will implement recommendations for restructuring the Division of Motor Vehicles that were provided in the performance audit of that provision. This section became effective July 1, 1996.

DOT Reports to Joint Oversight Committee (Chapter 18, Sec. 19.2; HB 53, Sec. 19.2; Second Extra Session 1996): Section 19.2 of Chapter 18 of the Second Extra Session requires DOT to make the following reports by the following dates to the Joint Legislative Transportation Oversight Committee:

* By Nov. 1, 1996, a report on any changes needed to vehicle salvage laws.
* By Oct. 1, 1996, plans for studying license-process simplification; use of touch-tone technology and credit cards in motor vehicle registration; use of credit cards in customer payment; direct entry of collision reports by officers into an automated database.
* By Dec. 1, 1996, report on possible software changes for motor carrier registration.
* By Nov. 1, 1996, a five-year plan concerning drivers license field offices using a formula developed to determine their number, location and staffing.
* By Dec. 1, 1996, a report on technical support for drivers license and vehicle registration data systems for the 1997-99 biennium.

DMV Enforcement Duties (Chapter 18, Sec. 19.3; HB 53, Sec. 19.3; Second Extra Session 1996): Chapter 18 of the Second Extra Session sets out the enforcement duties of the Division of Motor Vehicles. The primary duty is to enforce vehicle weight restrictions. Other duties include enforcement of the motor carrier safety regulations, enforcement of the emissions inspection program, inspection of salvage vehicles, providing security at rest areas, and any other duties set out in Chapter 20 of the General Statutes. DMV shall not undertake any enforcement duty unless it is authorized by law to do so. This section became effective on July 1, 1996.

DOT Contract Funding (Chapter 18, Sec. 19.4; HB 53, Sec. 19.4; Second Extra Session 1996): Chapter 18 of the Second Extra Session provides that the Department of Transportation may let certain projects funded from the Highway Trust Fund for two (rather than one) biennium after the year in which the contract is let. The provision also states that up to 40% of revenues not required for other budget items may be anticipated for the first year of the second biennium, and up to 20% of revenues not required for other budget items may be anticipated for the second year of the second biennium. DOT must report quarterly to the Joint Legislative Transportation Oversight Committee on all projects to be built with funds obligated using the cash flow provisions of G.S. 143-28.1. This section became effective on July 1, 1996.

Radio Island Railroad Trestle (Chapter 18, Sec. 19.6; HB 53, Sec. 19.6; Second Extra Session 1996): Chapter 18 of the Second Extra Session provides that the N.C. Ports Railway Commission must convey the Beaufort and Morehead Railroad Company to the Department of Transportation, for construction of a replacement trestle and authorized related purposes. The completed bridge will be owned by DOT. DOT must file progress reports every six months with the Joint Legislative Transportation Oversight Committee. This section became effective on July 1, 1996.

Unpaved Secondary Roads on State Lands (Chapter 18, Sec. 19.7; HB 53, Sec. 19.7; Second Extra Session 1996): Chapter 18 of the Second Extra Session provides that when the Department of Transportation proposes to pave an unpaved secondary road that crosses land controlled by a state agency, DOT shall get the agency's approval first. This section became effective on July 1, 1996.

Green Roads Initiative (Chapter 18, Sec. 19.8; HB 53, Sec. 19.8; Second Extra Session 1996): Section 19.8 of Chapter 18 of the Second Extra Session provides that about 700 acres of land shall be planted with trees during the 1996-97 fiscal year. The work shall be done by DOT, the Department of Correction, and the Division of Forest Resources of DEHNR. The goals of this "Green Roads Initiative" are to plant trees to provide additional natural habitat for birds and other wildlife, to reduce roadside maintenance by reducing the roadside areas where the grass needs to be mowed, to beautify the highways, and to maintain public safety. The agencies involved are to report to the Joint Legislative Transportation Oversight Committee by December 31, 1996.

Welcome Center Display Policy (Chapter 18, Sec. 19.10; HB 53, Sec. 19.10; Second Extra Session 1996): Section 19.10 of Chapter 18 of the Second Extra Session clarifies the policy against commercial activities being allowed on highway controlled-access property by specifying that materials may be displayed at welcome centers that are directly related to travel and tourism, and those materials may contain real estate ads.

Visitor Centers (Chapter 18, Sec. 19.11; HB 53, Sec. 19.11; Second Extra Session 1996): Chapter 18 of the Second Extra Session directs the Department of Transportation, with the assistance of the Department of Commerce, to collect data to estimate the extent and type of use the public makes of visitor centers on the State highway system. Chapter 18 authorizes DOT to study and make a recommendation to the General Assembly about requiring a local match for funds appropriated by the State for the operations of local visitor centers, and provides that no new visitor centers shall be approved pending the report. Chapter 18 also provides for an annual appropriation in the amount of $525,000 from the Special Registration Plate Account to provide operating assistance for specified Visitor and Welcome Centers.

Railroad Dividend Uses (Chapter 18, Sec. 19.12; HB 53, Sec. 19.12; Second Extra Session 1996): Chapter 18 of the Second Extra Session amends G.S. 136-16.6 regarding continuing rail appropriations. It provides that 100% of the annual dividends received by the State from its ownership of stock in the North Carolina Railroad Company will be annually credited to the Highway Fund for use by DOT for railroad purposes; 100% of those funds credited will be annually appropriated to DOT for railroad purposes.

Authorization of Fictitious Licenses and Registration Plates on Publicly Owned Motor Vehicles (Chapter 18, Sec. 23; HB 53, Sec. 23; Second Extra Session 1996): Chapter 18 of the Second Extra Session authorizes the Commissioner of Motor Vehicles

to issue up to 100 (previous limited to 50) drivers licenses and registration plates under assumed names for publicly owned vehicles operated by local, State or federal law-enforcement officers on special undercover assignments. This provision expires June 30, 1997.

STUDIES

Referrals to Departments, Agencies, Etc.

The **Secretary of Transportation** must study the provision of **rail safety inspection services** in North Carolina by the state and Federal Railroad Administration and report to the General Assembly by June 1, 1997. (Chapter 17, Part XIV; SB 46, Part XIV; Second Extra Session 1996)

The **Department of Transportation** must study requiring a **local match to State funds appropriated for the operations of local visitor centers.** It shall report by December 31, 1996 to the Joint Legislative Transportation Oversight Committee. (Chapter 18, Sec. 19.11; HB 53, Sec. 19.11; Second Extra Session 1996)

Referrals to Existing Commissions

The **Joint Legislative Transportation Oversight Committee** must study **funding of drivers education** by the Department of Transportation from the Highway Fund and shall report to the 1997 General Assembly. (Chapter 17, Part VII; SB 46, Part VII; Second Extra Session 1996)

The **Joint Legislative Transportation Oversight Committee** must study the **statutory authorization of the use of private, confidential, and fictitious license plates on State-owned motor vehicles** and the administration and enforcement of the applicable statutes. (Chapter 18, Sec. 23(b); HB 53, Sec. 23(b); Second Extra Session 1996)

WORKERS' COMPENSATION
(Linwood Jones)

Workers Compensation/Hospital Reimbursement (Chapter 548; HB 1088; Regular Session 1996): Chapter 548 provides a temporary solution to a recent problem involving hospital reimbursement for workers' compensation cases. Hospitals began getting reimbursed for workers' compensation claims in 1995 on the basis of diagnostic-related groupings ("DRGs"), a departure from the fee-for-service and discounted fee-for-service reimbursement methods used in the past. Because the DRG payment system reimburses the hospital primarily on the basis of the diagnosis of the patient, not his or her length of stay, the amount of reimbursement on a particular claim may be much higher or much lower than the hospital's actual charges for that patient.

Employers that self-insure their workers' compensation pay these bills to the hospitals under the DRG payment system. For some, the bills are lower than the hospitals' actual charges. For others, however, the bills are higher than the actual charges. To address the concerns of these employers, without adversely impacting the hospitals, Chapter 548 provides that from now until July of next year, hospitals will be paid under a modified DRG system. Under this system, when the DRG payment exceeds the hospital's actual charge, the employer will not have to pay any more than the actual charge. On the other hand, when the DRG payment is less than the hospital's actual charges, the hospital is entitled to no less than 90 percent of the actual charges. On July 1, 1997, the hospital reimbursement system reverts back to the original DRG payment system unless changed by the legislature before that time.

Although hospital reimbursement under the workers' compensation system is tied to the same DRG system that is used by the State Health Plan, Chapter 548 does not affect the State Health Plan's DRG system.

Workers' Comp. Paupers Appeals (Chapter 552; HB 1089; Regular Session 1996): G.S. 97-86 governs the process by which an indigent may appeal from a decision of the Industrial Commission to the Court of Appeals without providing security for the appeal. Chapter 552 deletes from G.S. 97-86 the requirements that an indigent: (1) be advised by a practicing attorney that the award of the Commission is in error as a matter of law; and (2) provide a written statement from a practicing attorney that the Commission's decision is contrary to law. Chapter 552 retains the requirement that the indigent make an affidavit that he or she is unable, because of poverty, to provide security for the appeal. The act is effective October 1, 1996 and applies to appeals on or after that date.

Workers' Compensation/Subcontractors (Chapter 555; HB 1090; Regular Session 1996): Although workers' compensation coverage is generally required only for businesses with three or more employees, there are special exceptions to this rule. One of these exceptions involves subcontractors. Whenever a subcontractor is working on a job, the general contractor for whom the sub is working is responsible for ensuring that the sub's employees have workers' compensation coverage even if there are fewer than three employees. The general can put the sub's employees on its own policy or require the sub to obtain a policy to cover them.

In the past, if the subcontractor had no employees, he was able to waive workers' compensation coverage on himself (as long as the general contractor accepted the waiver). During the 1995 session, the General Assembly, in response to concerns from insurers and others about the effects of the waiver, eliminated the ability of subcontractors to waive workers' compensation coverage on themselves. This resulted

in subcontractors with no employees being required to obtain workers' compensation coverage.

Because of concerns expressed about the 1995 change, Chapter 555 was enacted to provide relief to these subcontractors. Chapter 555 eliminates the general contractor's responsibility for ensuring that a subcontractor with no employees has workers' compensation coverage. The effect of this change is that the subcontractor with no employees is no longer required by law to obtain workers' compensation coverage. (The general contractor can still require that the sub have coverage, just as he could reject the waivers in the past. General contractors still have the responsibility, as they have had for decades in this State, to ensure that the subcontractor's employees are covered.

This act became effective on the date it was ratified (June 10, 1996).

Loss Costs Cleanup (Chapter 729; HB 1086; Regular Session 1996): See **INSURANCE**.

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