SUMMARIES OF SUBSTANTIVE RATIFIED LEGISLATION

1997

1997 GENERAL ASSEMBLY
FIRST SESSION 1997

RESEARCH DIVISION
N.C. GENERAL ASSEMBLY
NOVEMBER 1997

November, 1997

To the Members of the 1997 General Assembly:

This publication contains summaries of substantive legislation enacted by the General Assembly during the 1997 Regular Session, except for local bills. Significant appropriations matters related to the subject area specified are also included. For an in-depth review of the appropriations and revenue process, please refer to Overview: Fiscal and Budgetary Actions, prepared by the Fiscal Research Division.

The document is organized alphabetically by subject areas. Where feasible, the subject area is further divided into subgroups. Each subject area also includes a listing of legislative, independent and agency studies. A bill/session law index listing the page number of each summary is at the end of the publication.

This document is the result of a combined effort by the following alphabetical listing of staff members of the Research Division: Linda Attarian, Cindy Avrette, Brenda Carter, Donna Carter, Karen Cochrane-Brown, Sheila Dunn, 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, Giles Perry, Walker Reagan, Barbara Riley, Steven Rose, Mary Shuping, Sandra Timmons, and John Young. Carolyn Johnson of the Research Division served as editor of this document. Also contributing were Martha Harris of the Bill Drafting Division and Martha Walston 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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I. AGRICULTURE AND WILDLIFE

(Barbara Riley)

Ratified Legislation

Agriculture

Agricultural Employer Appeals (S.L. 1997-35: HB 409): S.L. 97-35 amends the appeals process under the Migrant Housing Act, Article 19 of Chapter 95 of the General Statutes. Appeals from citations issued by the Department of Labor under the act were heard by the Office of Administrative Hearings. They will now be heard by the Health and Safety Board within the Department of Labor. The act became effective April 23, 1997.

G.S. 106 Obsolete Laws (S.L. 1997-74; HB 61): S.L. 97-74 repeals eleven sections within the Agriculture statutes, Chapter 106 of the General Statutes, that have become obsolete. The act became effective May 22, 1997.

Promote Llama Breeding (S.L. 1997-84; HB 935): S.L. 97-84 provides for the treatment of llamas as livestock and promotes the development of the llama industry in North Carolina. Specifically, the act amends G.S. 113A-52.01 to provide that llamas are livestock, the breeding and grazing of which are not land-disturbing activities. Llamas also may not be allowed to run at large and are subject to the laws regarding the feeding and care of impounded livestock such as cattle, horses, and sheep. Article 3, Chapter 68 of the General Statutes. The act became effective May 22, 1997.

Production and Sale of Red Deer (S.L. 1997-142; SB 266, as amended by S.L. 1997-456, Sec. 44; HB 115, Sec. 4.4): S.L. 97-142 directs the North Carolina Department of Agriculture and Consumer Services to regulate the production and sale of red deer for food purposes in the same manner as for fallow deer. The meat inspection and packing laws are also amended to provide for the inspection of red deer meat. The act further directs the Wildlife Resources Commission to establish rules governing the transportation and possession of red deer and specifically excludes red deer from the definition of big game and game animals for hunting purposes. The act became effective June 4, 1997.

Alligator/Yellow Perch Production (S.L. 1997-198; SB 816): S.L. 97-198 amends the Aquaculture Development Act to provide that a letter of approval must be obtained from the Wildlife Resources Commission before yellow perch can be raised at a facility located west of Interstate Highway 77. G.S. 106-761(c). The Aquaculture Development Act is further amended by adding a new section, G.S. 106-763.1, to allow the commercial raising of American alligators upon obtaining an Aquaculture Propagation and Production Facility License from the North Carolina Department of Agriculture and Consumer Services. The requirements for such a license include: (1) preparation and implementation of a confinement plan; (2) possession only of hatchlings that have been

permanently tagged and have an export permit from their state of origin; (3) preparation of a disease management plan approved by the State Veterinarian if the facility uses swine, poultry, or other livestock for feed; and (4) compliance with the federal Endangered Species Act and the Convention on International Trade in Endangered Species. Possession of an untagged or undocumented alligator is a Class H felony. Conviction of an operator shall result in the revocation of the facility license for five years and the operator convicted may not operate any other facility required to be licensed under the Aquaculture Development Act for five years. The act became effective June 19, 1997.

Agriculture Department Name Change (S.L. 1997-261; HB 210): S.L. 97-261 changes the name of the North Carolina Department of Agriculture to the North Carolina Department of Agriculture and Consumer Services. The Commissioner of Agriculture's title is established in the North Carolina Constitution, N.C. Const. Art. III, Sec. 7, and remains unchanged. The act became effective July 1, 1997.

Turkey Growers Use Value Exception (S.L. 1997-272; SB 508): See **TAXATION.**

Farm Products Weight Exemption (S.L. 1997-354; HB 463): S.L. 97-354 amends G.S. 20-118(c)(12) to increase the weight exemption for trucks carrying agricultural products from the farm to first market within 35 miles of the farm from 88,000 lbs. to 90,000 lbs. The exemption does not apply to posted bridges. The act became effective August 1, 1997.

Peanut/Strawberry Assessments (S.L. 1997-371; HB 305): S.L. 97-371 amended the provisions for assessments on peanut producers and on strawberry plant sellers. Section 1 of the act affects peanut assessments. G.S. 106-557 is amended to allow peanut assessments of up to 2% of the price paid to producers. The previous limit was ½ of 1% of the value of the year's production. Peanut assessments, however, may not be increased without approval by referendum. The provisions of the Strawberry Assessment Act are amended by Sections 2 and 3 of the act. The amendments provide penalties for failure to pay assessments on plants sold. Section 3 provides that each strawberry plant seller who sells to growers for commercial production, must remit the assessment on plants sold during the quarter no later than the 10th day following the end of each quarter. Failure to remit the assessment for the previous year's sales by January 10 shall result in a penalty of 5% of the unpaid assessment plus 1% of the unpaid assessment for each month after January that the assessment remains unpaid. The act also provides that the North Carolina Strawberry Association may conduct inspections and audits of books of strawberry plant sellers. If the seller has willfully failed to remit assessments when due he must pay the Association the costs of the inspection or audit. The Association also may bring an action against a strawberry plant seller to collect unpaid assessments, penalties, and costs of audits or inspections and, if successful, may recover the costs of the action including attorneys' fees. Section 3 of the act, providing for penalties for failure to remit strawberry assessments, became effective October 1, 1997 and applies to

assessments accruing on or after that date. The remainder of the act became effective August 6, 1997.

Increase Grape Growers Funds (S.L. 1997-443, Sec. 14.4; SB 352, Sec. 14.4): Section 14.4 of S.L. 97-443 increases from $90,000 to $150,000 the amount of money that may be credited to the Department of Agriculture and Consumer Services from the tax collected on unfortified wine bottled in North Carolina. The Department allocates these funds to the North Carolina Grape Growers Council to be used to promote the North Carolina grape and wine industry. This section became effective July 1, 1997.

Farm Loans Reserve (S.L. 1997-443, Sec. 14.5; SB 352, Sec. 14.5): Section 14.5 of S.L. 97-443 amends the Agricultural Finance Act, Chapter 122D of the General Statutes, to allow interest earned on the funds held to be used for administrative expenses. This section became effective July 1, 1997.

Irrigation System Design (S.L. 1997-454; SB 550): See **ENVIRONMENT**.

Southern Dairy Compact (S.L. 1997-494; SB 977): S.L. 97-494 enacts into North Carolina Law the Southern Dairy Compact. The Compact legislation was developed in meetings of 14 Southern states in an effort to address the problems faced by the Southern dairy industry, including declining numbers of dairy farms, processing plants, and declining milk production. Its purpose is to regulate the price for milk received by the farmers, by setting prices for milk above those set by federal marketing orders, in order to assure a stable, local supply of milk and the continued viability of a dairy industry in the Southern region. The legislation establishes a Compact Commission, that would consist of a delegation of 3 to 5 members from each participating state. Each state would have one vote and Commission matters would be decided by majority vote, except for the establishment or termination of an "over-order" price or a commission marketing order, which would require a 2/3 vote of the Commission. A compact "over-order" price shall apply only to Class I milk and shall not exceed $1.50 per gallon in Atlanta. This price may be adjusted to reflect differences in minimum federal order prices in the region. In the event the federal marketing orders are terminated, the Commission has the authority to establish commission marketing orders. A commission marketing order may apply to all classes and uses of milk. The Commission would have the authority to adopt rules using the rule-making procedures of Section 4 of the Federal Administrative Procedure Act. In establishing an over-order pricing order or commission marketing order, the Commission shall conduct a referendum among producers to determine their approval or disapproval of the proposed pricing order. Costs of establishing the Commission may be covered by an assessment on milk handlers who purchase milk from producers in the region of $.015 per hundred weight. The assessment is to be collected monthly for up to one year after the Commission convenes. In addition, the Commission has the authority to borrow funds, however, it may not pledge the credit of any participating state. The Compact takes effect when three States of the listed states have enacted its provisions into law and the consent of Congress has been obtained. To date, Louisiana and Arkansas have enacted this legislation. The act became effective September 11, 1997.

Wildlife

Increase Rabies Tag Fee (S.L. 1997-69; HB 488): See **ENVIRONMENT.**

No Safety Course/Disabled Hunters (S.L. 1997-365; SB 172): S.L. 97-365 exempts those persons who qualify for a totally disabled resident combination hunting-fishing license from the requirements of completing a hunter safety course pursuant to G.S. 113-270.1A in order to obtain a hunting license. To qualify for the exemption, the disabled hunter must be accompanied by an adult who is at least 21 years old and licensed to hunt and the adult hunter must at all times remain close enough to the disabled hunter to take immediate control of the weapon. Under G.S. 113-270.2 totally disabled is defined as "physically incapable of being gainfully employed". The act became effective August 6, 1997.

Wildlife/Rabies Emergency (S.L. 1997-402; HB 302): See **ENVIRONMENT.**

Wildlife Commission/Temporary Rules (S.L. 1997-403; SB 182): S.L. 97-403 adds a new subsection (a1) to G.S. 150B-21.1, procedure for adopting temporary rules, that allows the Wildlife Resources Commission to adopt temporary rules establishing no-wake zones, hunting or fishing seasons, hunting or fishing bag limits, or concerning the management of public game lands as defined in G.S. 113-129(8a). When adopting rules pursuant to this subsection, the Wildlife Resources Commission must submit the reference to this subsection as its statement of need to the Codifier of Rules. The act became effective August 8, 1997.

MAJOR PENDING LEGISLATION

Arbitration of Seed Claims (HB 1055; SB 874): House Bill 1055 would mandate the arbitration of defective seed claims prior to the filing of a legal action. All claims would be required to be filed within a time frame that would allow inspection of the affected seed, crops, or plants.

STUDIES

Legislative Research Commission Studies

The 1997 Studies Bill (S.L. 1997-483; SB 32) authorizes the Legislative Research Commission to study the following issues: (1) Cooperative Extension Service (Sec. 2.1(17)); and (2) Watercraft Safety (Sec. 2.1(21)).

II. CHILDREN AND FAMILIES

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

Ratified Legislation

Dependent Juvenile Definition (S.L. 1997-113; HB 153): S.L. 97-113 changes the Juvenile Code to define a "dependent juvenile" as a juvenile in need of placement or assistance because "the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision or whose parent, guardian or custodian is unable to provide for care or supervision and lacks an appropriate alternative child care arrangement." The act became effective October 1, 1997 and applies to adjudications on or after that date.

Paternity/Parental Support (S.L. 1997-154; SB 554): Prior to the 1995 Session of the General Assembly, an action to establish paternity could be commenced and judgment entered prior to the death of the putative father. During the 1995 Session, the General Assembly only ratified legislation allowing paternity actions to be commenced after the death of the putative father. This act contained a sunset clause causing the changes to expire on October 1, 1998. S.L. 97-154 removes the sunset clause from Chapter 424 of the 1995 Session Laws. The act became effective October 1, 1997.

Equitable Distribution/Retirement Rights (S.L. 1997-212; HB 535): S.L. 97-212 adds a new section to Chapter 50 providing that nonvested pension, retirement and other deferred compensation rights acquired during the marriage are considered marital property and subject to equitable distribution. G.S. 50-20.1, authorizes the award of nonvested benefits by: (1) lump sum payment; (2) periodic payment; or (3) prorated portion of the benefits at the time the benefits are received. The award of nonvested benefits follow the manner in which vested benefits are awarded, except the statute does not permit awards of larger portions of other assets in compensation for nonvested benefits. The award shall be determined by using the proportion of time the marriage existed simultaneously with the employment from which the benefits were earned to the total time of employment. Benefits accrued after separation are not considered marital property, and an award shall not exceed 50% of a person's entitled benefits unless other assets subject to equitable distribution are insufficient or difficult to distribute. In the event of a recipient's death, the award passes to the recipient's beneficiaries. In the event of the death of the person against whom an award is made, the award remains payable to the recipient to the extent allowed by the retirement or pension plan. The act became effective on October 1, 1997 and applies to actions for equitable distribution filed on or after that date.

Mediated Settlement/Family Issues (S.L. 1997-229; HB 907): S.L. 97-229 creates a new section G.S. 7A-38.4 in Article 5 of Chapter 7A that establishes a pilot program of mediated settlement conferences in district court actions involving equitable distribution, alimony, and support. The Dispute Resolution Commission with the AOC Director shall design the pilot program and coordinate it with existing alternative dispute programs.

The Supreme Court may adopt rules to implement this Section. The following organizations are to be involved in the planning and design phase: Conference of Chief District Court Judges, the AOC Child Custody Mediation Advisory Committee, the Court Ordered Arbitration Subcommittee on the Supreme Court's Dispute Resolution Committee, the NC Mediation Network, the NC Association of Professional Family Mediators, the NC Association of Clerks of Superior Court, the NC Association of Trial Court Administrators, the Family Law Section of the NC Bar Association, and the Dispute Resolution Section of the NC Bar Association. The chief district court judge may order a mediated settlement conference. The parties and their attorneys shall attend unless excused by the rules of the Supreme Court or by order of the chief district court judge. Anyone ordered to attend who fails to comply without just cause is subject to a monetary sanction. Parties to a mediated conference have the right to designate a mediator or one will be appointed by the chief district court judge. Other settlement procedures may be ordered by the chief district court judge. Costs shall be borne by the parties, and the Supreme Court shall devise a method for indigent parties to participate at no cost to themselves or the State.

The Supreme Court is authorized to adopt standards for certification and conduct of mediators. The AOC may charge a fee not to exceed $200 annually to certify mediators and mediator training programs and may use fees to offset operating costs of the Dispute Resolution Commission. The AOC may seek private funds and shall evaluate the program and report to the Chairs of the House and Senate Appropriations Committees and the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety by May 1, 1998. This act became effective June 27, 1997.

Equitable Distribution/Divisible Property (S.L. 1997-302; HB 533): S.L. 97-302 amends G.S. 50-20 to: (1) define divisible property and add it as a category of property subject to equitable distribution; (2) create a rebuttable presumption that in-kind distributions of marital or divisible property is equitable; and (3) allow for an interim distribution of marital property, divisible property or debt, or marital debt. The act also amends G.S. 50-21(b) to provide that evidence of preseparation and postseparation occurrences or values is competent corroborative evidence of the value of marital property. The amendment also provides that divisible property and debt shall be valued as of the date of distribution. The amendments are effective October 1, 1997 and apply to motions for interim distribution or actions for equitable distribution filed on or after that date. The amendments relating to divisible property and divisible debt shall apply only in actions for equitable distribution filed on or after October 1, 1997.

Child Welfare Changes (S.L. 1997-390; HB 896): S.L. 97-390 amends various custody and placement provisions of the Juvenile Code to ensure that juveniles removed from their homes are placed in safe and/or permanent homes within a reasonable time period. To that end, the act amends: G.S. 7A-289.32(3) and (7) to provide that parental rights may be terminated when (1) a parent leaves a child in foster care for more than 12 months without making positive efforts to improve the relationship with the child, or (2) when the parent is incapable of providing proper care and supervision for the foreseeable future due to substance abuse, mental retardation or illness, organic brain syndrome or other similar

conditions. G.S. 7A-544 as amended clarifies that directors of social services, upon a report of juvenile abuse, neglect or dependency, shall ascertain whether other juveniles should remain in the home and initiate investigations as appropriate.

Prior to placing juveniles in nonsecure custody, local departments of social services must first consider, pursuant to G.S. 7A-576 as amended, whether there is a relative who is willing and able to provide proper care and supervision in a safe home. Orders authorizing continued nonsecure custody may provide for services or other efforts aimed at returning a juvenile promptly to a safe home. However, if the court finds that such efforts would be futile or inconsistent with a juvenile's safety, the court shall specify that reunification efforts are not required or that such efforts cease as provided in G.S. 7A-577(h) or 7A-651(c) as amended. The court shall also, pursuant to G.S. 7A-577(i), inquire as to: (1) the identity and location of any missing parent; (2) the existence of relatives able to provide proper care and supervision; and (3) the existence of other juveniles remaining in the home and ascertain the status of investigations or actions taken to protect those juveniles.

Cases, in which a juvenile has been removed from the home, shall be reviewed in accordance with G.S. 7A-657 as amended. The court may authorize supervised visitation plans for juveniles placed in the custody of a local department of social services. Within 12 months of placement, a permanency planning hearing must be held to develop a plan to achieve a safe home for a juvenile within a reasonable period of time.

Pursuant to G.S. 108A-74(b), the Department of Health and Human Services may provide technical assistance, establish corrective plans and advise county personnel when it determines a county is failing to provide adequate child welfare services. If the failure continues 60 days after intervention efforts cease, the Secretary shall withhold State and federal administrative funds until service is provided in accordance with applicable law and regulations. If the Department determines a county is failing to provide adequate child protective, foster care or adoption services and the failure poses a substantial threat to the safety and welfare of children eligible to receive such services, the Secretary shall ensure that such services are provided through contract or direct operation by the Department pursuant to G.S. 108A-74(c). In the event that the Secretary assumes control of service delivery, county funding shall continue and efforts shall be made to return service delivery to the county if and when it can be provided for adequately.

The act also establishes the Legislative Study Commission on Children and Youth. Pursuant to G.S. 120-208 et seq., the Commission shall study and evaluate the system of delivering services to children and youth and make recommendations for improving the system.

The juvenile code amendments of this act became effective October 1, 1997. The State intervention amendments become effective January 1, 1998. The remainder of the act became effective August 6, 1997.

Improve Child Protection Records (S.L. 1997-459; HB 949): S.L. 97-459 amends the Juvenile Code to authorize the disclosure of certain records to improve child protection. The act adds a section, G.S. 7A-675.1, which authorizes a public agency to disclose findings and information related to a child fatality or near fatality if a person has been criminally charged in causing the act or the district attorney certifies that a person would

have been charged in causing the act but for their death. Information subject to disclosure must be provided within five working days of a request unless precluded by exceptions set forth in G.S. 7A-675.1(d). A person whose request is denied may apply to the appropriate superior court for an order to compel disclosure. Nothing in the section is deemed to authorize access to confidential records unrelated to the cause of the fatality or near fatality nor to narrow or limit the definition of a public record. A public agency or employee acting in good faith in disclosing or declining to disclose information is immuned from criminal or civil liability.

The act amends G.S. 7A-675(h) to require chief district court judges to designate, by standing order, agencies authorized to share information they possess relevant to cases in which a juvenile is alleged abused, neglected or dependent. Agencies authorized to share information shall continue to do so until the juvenile is no longer subject to jurisdiction of the court. Nothing in the section is deemed to preclude the sharing of any other necessary information among agencies nor to require the disclosure or release of information in possession of a district attorney. The act became effective October 1, 1997.

Domestic Violence Changes (S.L. 1997-471; SB 627): G.S. 50B-1 provides that the domestic violence statutes apply to certain acts between persons in a "familial relationship". S.L. 97-471 changes that term to "personal relationship" and clarifies that the relationship must be either between parent (including person acting in loco parentis) and child, or grandparent and grandchild. It also expands the definition to include current or former household members, and persons involved or previously involved in a "dating relationship" between individuals of different sexes. The act also deletes reference to the clerk of court in circumstances where a magistrate is authorized to hear motions for emergency relief ex parte under the domestic violence statute. The act becomes effective December 1, 1997 and applies to offenses committed on or after that date.

Enhance Child Care (S.L. 1997-506; SB 929, as amended by S.L. 1997-456, Sec. 43.1; HB 115, Sec. 43.1): S.L. 97-506 amends Article 7 of Chapter 110 of the General Statutes relating to child care: (1) redefines "child care"; (2) reduces five categories of child care to two: centers and family care homes; (3) adds definitions for lead teacher and child care administrator; (4) allows the Child Care Commission to develop and adopt voluntary enhanced program standards, adopt rules regulating amount of time child care administrator must be on site, establish minimum standards for developmentally appropriate activities in child care facilities, and adopt rules specifying requirements for nutritious meals in family child care homes; (5) allows the Secretary of the Department of Health and Human Services to issue a permanent rated license that reflects program standards, staff education levels and compliance history; (6) deletes one year limitation on license and is valid until the operator is notified otherwise; (7) requires drop-in and short term child care arrangements to display a notice that they are not licensed; (8) requires verification of children's immunization and health assessments in family child care homes; (9) raises minimum age of a family child care provider from 18 to 21 and effective January 1, 1998 these providers must have a high school diploma or its equivalent; (10) effective March 1, 1998, requires criminal record checks for new family

care homes and unlicensed homes, requires criminal record checks for all household members over age 15 who are present when children are in care and also applies to nonregistered homes approved to receive subsidy; (11) provides that of the children present at any one time in a family child care home, no more than five children may be preschool aged, including the operator's own; (12) adds a number of increased education and training standards for staff, administrators and lead teachers in child care centers; (13) provides that religious sponsored child care centers must be under the direction or supervision of a literate person at least 21 and all staff counted toward meeting the staff/child ratio must be at least 16, provided that people younger than 18 work under direct supervision of a literate person at least 21; and (14) repeals playground rules passed by the Day Care Commission and places new playground provisions in statute and restricts the Department of Health and Human Service's authority to make such rules. The act became effective September 16, 1997 except as otherwise provided in the act.

MAJOR PENDING LEGISLATION

Child Support/Health Coverage (HB 1062): House Bill 1062 would direct the Department of Health and Human Services (DHR) to develop a low-cost health care coverage program for children under the Department's enforcement of child support orders. Non-custodial parents would be eligible to participate.

Child Abuse Report Penalty (SB 228): Senate Bill 228 would make it a Class 3 misdemeanor for a person who has actual knowledge that a child has been physically abused to fail to report the abuse. It would also be a Class 3 misdemeanor for a person who has a custodial, caregiving or professional relationship with a juvenile to fail to report actual or suspected physical abuse or death due to maltreatment. Any person who knowingly and willfully prevents another person from making a required report would be guilty of a Class 3 misdemeanor.

Juvenile Guardians (SB 346): Senate Bill 346 would amend GS 7A-585 and 7A-657 to allow the guardian to consent to the juvenile's enrollment in school and any necessary remedial, psychological, medical, or surgical treatment for the juvenile. It would also amend GS 7A-657(a) to provide that the director of social services must make a timely request to the clerk to schedule a hearing to review a juvenile custody order within six months of the date the order was entered, unless the court orders that the director is not required to do so.

STUDIES

Legislative Research Commission Studies

The Studies Act of 1997 (S.L. 1997-483; SB 32) authorizes the Legislative Research Commission to study the following: (1) Adoption Registry (Sec. 2.1(30)); (2) Guardian Ad Litem Program (Sec. 2.1(8)).

Medical Assistance Program and State-County Special Assistance Program (S.L. 1997-443, Sec. 32.22; SB 352): Section 32.22 of S.L. 1997-443 authorizes the Legislative Research Commission to study the medical assistance program and State-county special assistance program.

Independent Studies, Boards, Etc.

Legislative Study Commission on Child Care (S.L. 1997-596, Sec. 28; SB 929): Section 28 of S.L. 97-596 creates the Legislative Study Commission on Child Care. The Commission shall report to the 1997 General Assembly, 1998 Regular Session, and the 1999 General Assembly upon its convening.

Child Welfare Training Institute (S.L. 1997-483, Part VI, Sec. 6.1(2); SB 32): Section 6.1(2) of Part VI of S.L. 97-483 authorizes the Joint Legislative Education Oversight Committee to study the issue of developing a child welfare training institute in the university and community college system. The Committee may report to the 1997 General Assembly, 1998 Regular Session, or the 1999 General Assembly.

Commission on the Family Abolished (S.L. 1997-443, Sec. 12.15; SB 352): Section 12.15 of S.L. 97-443 abolishes the Commission on the Family.

Recruiting, Training, and Retaining Qualified Child Welfare Staff (S.L. 1997-483, Part VI, Sec. 6.1(3); SB 32): Section 6.1(3) of Part VI of S.L. 97-483 authorizes the Joint Legislative Education Oversight Committee to study the issues of recruiting, training, and retaining qualified child welfare staff. The Committee may report to the 1997 General Assembly, 1998 Regular Session, or the 1999 General Assembly.

III. CIVIL LAW AND PROCEDURE

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

Ratified Legislation

Fast-Track Technical Amendments (S.L. 1997-9; SB 86): S.L. 97-9 makes two technical corrections to the General Statutes which the General Statutes Commission recommended to the General Assembly for immediate ratification. Section 1 of the law amends G.S. 1-597 which addresses the regulations for publication of legal notices. The Postal Service recently changed the name of its "second-class" mail to "Periodicals." S.L. 97-9 removes the reference to newspapers admitted to the United States mails "as second-class matter" and substitutes the language "in the Periodicals class." Section 2 corrects a statutory reference in Section 20.14B of Chapter 18 of the 1996 Session Laws (Second Extra Session). The act became effective March 26, 1997.

Validate Notarial Acts (S.L. 1997-19; SB 95 as amended by S.L. 1997-469; SB 372): S.L. 97-19 amends G.S. 10A-16 to add to the list of notarial acts which are validated those containing an incorrect spelling of the notary's name. The law also extended the time period for validation of notarial acts under G.S. 10A-16 from October 1, 1991 to those acts performed before December 31, 1996. Section 2 of S.L. 97-469amends S.L. 97-19 to further extend this period to acts performed before June 1, 1997.

Courts Supplement Clark's Calendar (S.L. 1997-58; HB 203): S.L. 97-58 amends G.S. 8-48 which recognizes the Clark's Calendar for the purposes of any inquiry or controversy before a court or fact finding board. The Clark's Calendar is a perpetual calendar used to prove the day of the week on which a date fell or will fall. However, this calendar only covers through the year 2002. S.L. 97-58 directs the Secretary of State to prepare and publish a similar calendar covering years beginning with 2003. This calendar is admissible into evidence in the same manner as the Clark's Calendar. The act became effective on May 16, 1997.

Certified Copies/Custody & Wills (S.L. 1997-81; HB 191): S.L. 97-81 amends the law to allow for the filing and enforcement of certified copies of custody decrees and certain wills executed prior to 1875, as well as the exemplified copies currently permitted by statute. Both certification and exemplification are methods used to authenticate copies of official records. Certification merely requires that the official custodian of the record certify by signature and stamp or seal that the copy is a true copy of the original. Exemplification, on the other hand, is an older method of authentication which requires three signatures, including that of the clerk, that of a judge who verifies that the clerk is the clerk, and that of the clerk who verifies that the judge is a judge. The procedure does not exist in many other states. Thus, a custody order from a state which does not exemplify documents cannot be recorded in this State. This act allows such documents to be recorded if they are certified true copies. The act became effective October 1, 1997.

Judicial Timber Sales by Sealed Bid (S.L. 1997-83; HB 197): S.L. 97-83 establishes a procedure for court-ordered sales of timber to be conducted by sealed bid, in addition to the other options of public or private sales. Under this procedure, a confidential appraisal must be obtained prior to soliciting sealed bids. In addition to standard notices for sales, when this method is used notice must be sent to a reasonable number of prospective buyers including timber buyers listed with the local Division of Forest Resources office. Bids must be received during the period specified in the order and must be opened in public. At least three bids must be received or a new order of sale obtained. Before confirming a sale of timber by sealed bid, the law requires that the court determine that the highest bid is adequate for the timber sold and that the sale is in the best interest of the person or estate for whom the timber is being sold. The factors the court may consider include the appraisals obtained by the person conducting the sale. The act becomes effective December 1, 1997 and applies to judicial sales ordered on or after that date.

Increase Minimum Upset Bid Amount (S.L. 1997-119; HB 202): S.L. 97-119 amends the law as it relates to the minimum upset bid amounts in judicial sales and execution sales. Under prior law, an upset bid in either type of sale must exceed the sale price by 10% of the first $1,000 plus 5% of amounts over $1,000, with a minimum increase of $25. S.L. 97-119 changes the upset bid to a minimum of 5% of the previous sale price but the minimum is increased to $750. These changes conform the minimum upset bid amounts in judicial sales and execution sales to the minimum upset bid amounts in foreclosure sales. The law becomes effective January 1, 1998 and applies to judicial sales when the original order was issued on or after that date and to execution sales when the execution was originally issued on or after that date.

Statute of Limitations for Official Bonds (S.L. 1997-297; SB 910): S.L. 97-297 repeals G.S. 1-50(a)(1) and amends G.S. 1-52. The effect is to change the statute of limitations for actions on bonds of public officers from six years to three years. The act became effective October 1, 1997 and applies to actions arising on or after that date. The changes do not affect litigation or actions pending on October 1, 1997.

Time Limits for Foreign Service (S.L. 1997-469; SB 372): Section 1 of S.L. 97-469 amends the time that a civil summons, or an alias and pluries summons, can remain valid when the defendant is located outside of the United States. The law amends the Rules of Civil Procedures, G.S. 1A-1, Rule 4(d), which governs the extension of time to serve summons and alias and pluries summons in civil cases. Under prior law, to extend the time within which a summons may be served, a plaintiff was required to secure an endorsement on the original summons, or sue out an alias and pluries summons, within 90 days of the last summons or endorsement. Under the new law, for service upon a defendant not within the United States, an endorsement may be made or an alias and pluries summons may be sued out at any time within two years of the original summons and every two years thereafter. The summons may then be kept up if within two years of the last preceding summons or endorsement, another summons is sued out. Section 1 became effective October 1, 1997. Section 2 of S.L. 97-469 extends the time period for

validation of certain notarial acts under G.S. 10A-16 from December 31, 1996 to June 1, 1997.

Equine Activity and Roller Skating Rink Liability (S.L. 1997-376; HB 176): S.L. 97-376 enacts a law to define liability arising from equine activities and roller skating rink operation.

Equine Activity Liability

Section 1 of the act creates a new Chapter 99E which provides immunity from liability for personal injury to a participant in equine activities.

G.S. 99E-1 contains various definitions. "Equine activity" is defined to include a broad list of horse-related activities including riding, participating in programs involving horses, training, boarding, inspecting, participating in shows, fairs and other organized activities, hoof trimming and horse shoeing, medical treatment, and agricultural activities, but does not include being a spectator unless the spectator places himself in an unauthorized area and in immediate proximity to the equine activity. An "equine sponsor" includes those conducting activities for profit, as well as nonprofit. "Equine professional" includes instructors, those who rent equines or equine equipment, those who administer medical treatment, and replacing horseshoes on an equine. The definition of "inherent risks of equine activities" includes those dangers which are an integral part of equine activities. "Participant" means any person engaging in equine activity, amateur or professional, regardless of whether a fee is paid.

G.S. 99E-2 provides that an equine activity sponsor, an equine professional, or any other person engaged in an equine activity, is not liable for personal injuries of a participant resulting from inherent risks of equine activity unless the person knew or should have known that equipment was faulty, the ability of the participant was not determined, the person willfully and wantonly disregarded the safety of the participant, or the person committed any other act of negligence or omission that proximately caused the injury, damage, or death. In addition, this section does not prevent or limit liability under the provisions of the product liability laws.

G.S. 99E-3 requires signs designed by the Department of Agriculture be maintained in a clearly visible location where equine activities occur warning that under North Carolina law an equine activity sponsor or professional is not liable for personal injuries of the participant resulting from the inherent risks of equine activities. Written contracts must also contain this notice. Failure to post the signs or provide the notice results in no protection from this act.

Roller Skating Rink Liability

Section 2 of the act creates a new Chapter 99F, known as the Roller Skating Rink Safety and Liability Act, to define the responsibilities and liabilities of roller skating rink operators and roller skaters and creates an assumption of the inherent risks of roller skating.

G.S. 99F-1 defines operator of a roller skating rink, roller skater, roller skating rink, and spectator.

G.S. 99F-2 provides a detailed list of the duties of the operator of a rink. These duties include posting applicable rules and operator's liabilities, complying with safety standards, furnishing supervisory personnel, prohibiting alcoholic beverages, complying

with State and local safety codes, and not engaging in willful or negligent conduct proximately causing injury.

G.S. 99F-3 defines the duties of a roller skater including maintain control, heeding signs and warnings, maintaining a proper outlook, knowing the range of ability, refraining from acting dangerously, commensurate with the person's age.

G.S. 99F-4 establishes an assumption of risk arising from roller skating to risks that are obvious and necessary. These inherent risks include injuries from contact with others, falls, and collisions with structures in the path of travel not otherwise attributable to the operator's breach of duties.

G.S. 99F-5 establishes that assumption of risk under G.S. 99F-4 is a complete defense to suit against an operator by a skater or spectator for injuries resulting obvious and necessary inherent risks, unless the operator has violated the operator's duties.

The act becomes effective January 1, 1998, and applies to causes of action arising on or after that date.

STUDIES

Legislative Research Commission Studies

The 1997 Studies Bill (S.L. 1997-483, Part II, Sec. 2.1; SB 32, Part II, Sec. 2.1) authorizes the Legislative Research Commission to study the following: (1) Dispute Resolution Commission Revision and Expansion of Authority; (2) Future of the Courts; (3) Garnishment of Wages; and (4) Lien Issues.

IV. COMMERCIAL LAW

(Karen Cochrane-Brown, Linwood Jones, Walker Reagan, Steve Rose)

Ratified Legislation

Banking

Establishment of Bank Branches (S.L. 1997-54; HB 1033): S.L. 97-54 amends the Interstate Branch Banking Act to extend the reciprocity requirement, which would have expired on June 1, 1997, until June 1, 1999. In 1995, the General Assembly authorized North Carolina to begin interstate branch banking in accordance with the federal Reigle-Neal Interstate Banking and Branching Efficiency Act of 1994. This act provides for interstate branching by de novo entry, acquisition, and merger, with the approval of the Commissioner of Banks. S.L. 97-54 allows for interstate branching on a reciprocal basis until 1999. The act became effective May 16, 1997.

Savings Bank Name (S.L. 1997-241; SB 329 as amended by S.L. 1997-456, Sec. 39; HB 115, Sec. 39): S.L. 97-241 deletes the requirement that any savings bank chartered by the North Carolina Savings Institution Commission use the letters "SSB" in its legal name. The state law was designed to track many of the provisions of the federal law. Federal law has eliminated the "FSB" designation requirement for federal savings banks. This act similarly eliminates the requirement for state savings banks and also repeals a provision which makes it a misdemeanor for a savings bank to advertise without using the "SSB" designation and the words "savings bank" in a type that is equally prominent with the other terms in the name of the savings bank. The act further amends the North Carolina Reciprocal Interstate Banking Act relating to banks acting as agents for depository institution affiliates. In 1996, the General Assembly added a new section to the Act to clarify that North Carolina banks which are subsidiaries of bank holding companies, may act as agents for the banks affiliated with the bank holding company, without becoming a branch of the affiliate bank. The amendment in this act defines an affiliate for purposes of this section to include the definition of the term contained in the federal Bank Holding Company Act and the Federal Reserve Act. Section 2.1 (relating to the Interstate Banking Act) became effective June 27, 1997. The remainder of the act became effective July 1, 1997.

Bank Assessments (S.L. 1997-285; HB 400): S.L. 97-285 amends the banking law to rewrite the provisions relating to fees and assessments which banks and consumer finance licensees are charged for the maintenance and operation of the office of the Commissioner of Banks. Under current law, banks are assessed $85 for the first $100,000 of assets and $12 per $100,000 for assets in excess of $100,000. Trust assets are currently assessed at the rate of $3.50 for each $100,000 and consumer finance licensees are assessed at $170 for the first $100,000 of assets and $12 per $100,000 for assets in excess of $100,000. This law deletes the current law and creates the following schedule for banks: $6,000 on the first $50 million of assets, $12 per $100,000 on assets

between $50 and $250 million, $9 per $100,000 on assets between $250 and $500 million, $7 per $100,000 on assets between $500 million and one billion, $5 per $100,000 on assets between one and ten billion, and $3 per $100,000 on assets in excess of ten billion. Consumer finance licensees will be assessed at the rate of $18 per $100,000 of assets plus $300 per office with a minimum annual assessment of $500. The Commissioner of Banks is authorized to make special assessments when it is determined that further examinations or increased supervision is necessary. The Commissioner also retains the authority to increase or decrease assessments when warranted to meet the office's operating expenses. The act becomes effective January 1, 1998, and applies to assessments due for years beginning with 1998.

Safe Deposit Boxes (S.L. 1997-311; SB 330): S.L. 97-311 amends the law relating to unpaid rent on safe deposit boxes. Under prior law, if the rent was one year past due, the lessor could send a notice by registered mail to the last known address of the lessee that the safe deposit box would be opened and the contents stored at the lessee's expense unless the rent was paid within 30 days. This act changes the period of time a lessor must wait from one year to 90 days and changes the notice requirement from registered mail to certified mail, return receipt requested. It also changes the requirement that a copy of the law be printed on every contract for rental of a safe deposit box. Now, the contract need only contain an explanation of the contractual provisions pertaining to default, and make reference to the law. The act became effective September 15, 1997.

Business

Commercial Arbitration Amendments (S.L. 1997-141; SB 370): S.L. 97-141 amends the International Commercial Arbitration Act by making international commercial arbitration awards reached outside of North Carolina enforceable in North Carolina under the International Commercial Arbitration Act and by giving every party the right to be represented by an attorney in these arbitrations. The act adds G.S. 1-567.65 to the provisions of International Commercial Arbitration Act which allows the superior court to enter a judgment to enforce an arbitral award made in another place other than North Carolina. The act also adds a new subsection to G.S. 1-567.48 that ensures a party to an international commercial arbitration the right to be represented by an attorney, and that a waiver of this right is ineffective. The act became effective October 1, 1997 and applies to proceedings initiated on or after that date.

Investment Securities Uniform Commercial Code Rewrite (S.L. 1997-181; HB 134): S.L. 97-181 rewrites Article 8 of the Uniform Commercial Code, **Investment Securities**, found in Chapter 25 of the General Statutes, to provide a modern legal structure for a system of holding securities through brokers, banks, and other securities intermediaries. The main change is to codify the "indirect holding system". The act also makes conforming changes to other appropriate UCC sections.

Part 1 of the act contains definitions affecting both direct and indirect security holdings. This Part includes provisions: 1) listing ways in which interests in securities, financial assets, or securities entitlements may be acquired; 2) specifying when a person

has notice of an adverse claim to a security or security entitlement; 3) describing how a purchaser can take control of a financial asset, thereby placing itself in a position where it can have the securities sold, without further action by the owner; 4) describing the warranties given within the direct holding system by a transferor and by a person who originates an entitlement order to a securities intermediary; 5) describing the means by which a creditor may reach a debtor's interest in a certificated security, uncertificated security, or security entitlement to satisfy any claims; 6) abolishing the statutory requirement a contract for sale or purchase of a security be in writing; and 7) ensuring that securities intermediaries will not risk liability to third parties when they act on the instructions from their customers.

Parts 2, 3, and 4 basically restate current law.

Part 5 contains the provisions for the indirect holding system, including the governing rights, obligations, duties, and liabilities of persons who deal in and hold securities and other financial assets indirectly through brokers and other securities intermediaries. It also governs the relationships between securities intermediaries, their customers, and their respective lenders.

The act also adds other conforming changes to other parts of the UCC including new sections to permit the creation of security interest in financial assets held in the indirect holding system.

The act became effective October 1, 1997 but does not affect actions or proceedings commenced before that date.

Corporate Reinstatement (S.L. 1997-200; SB 953): S.L. 97-200 was superseded by Section 1 of S.L. 97-485; SB 157, **Corporate Law Changes**.

Dissenters' Rights (S.L. 1997-202; SB 892): S.L. 97-202 limits the right of certain shareholders to dissent from corporate actions and amends the law of offers to pay dissenters of corporate mergers. Section 1 adds a new section to the corporate law which provides that shareholders in stock listed on a national stock exchange or held by at least 2000 shareholders do not have a right of dissent at a meeting at which a plan of merger or share exchange is to be acted on unless the articles of incorporation provide otherwise or the plan of merger or share exchange requires the shareholder to accept anything other than cash, or shares and cash, for their interest in the corporation. Also, under the previous law, a corporation made an offer of payment to the dissenting shareholder. The payment was not actually made to the dissenter until the offer was accepted or court action was commenced by the dissenter. Section 2 of S.L. 97-202 amends this law to provide that payment is made by the corporation as soon as the proposed corporate action is taken or within 30 days of payment demand by the dissenter. Additionally the payment must be accompanied by an explanation of how the corporation estimated the fair value of the shares being acquired. Sections 3 and 4 provide that, if the dissenter is dissatisfied with the payment made by the corporation, the dissenter may demand payment of an amount in excess of the corporation's payment. If the excess payment remains unsettled, the dissenter may petition a court for the excess payment, but the dissenter must do so within 60 days of the earlier of the corporation's initial payment or the dissenter's demand

for excess payment. The act became effective October 1, 1997 and applies to corporate actions to which shareholders may dissent on or after that date.

Professional Corporation Act Amendment - Engineers (S.L. 1997-244; HB 530): S.L. 97-244 amends the Professional Corporation Act related to licensed engineers to permit certain design services to be performed by certain contracting companies that do not meet the standards for being a professional corporation. The act amends G.S. 55B-15 to exempt corporations from the Professional Corporation Act which render engineering services in conjunction with services authorized under Articles 1 (general contracting), 2 (mechanical, plumbing and fire sprinkler contracting), 4 (electrical contracting), or 5 (refrigeration contracting) of Chapter 87. Under the prior Professional Corporation Act these firms could not offer engineering services unless they are organized as professional corporations. A firm can only organize as a professional engineering corporation if at least two-thirds of the stock is owned by a licensed engineer. This new act allows these firms to offer professional engineering services without meeting this requirement if the engineering services are reasonably necessary and in connection with the primary services performed by the company in the normal course of its business. The act prohibits the professional services from being performed independently from the primary company service Anyone performing professional engineering services must be licensed as an engineer and nothing in this act changes the professional relationship and liability of the engineer to the customer or the professional standards applicable to the work performed. The act became effective June 27, 1997.

Revise Uniform Commercial Code - Crop Liens (S.L. 1997-336; HB 646): S.L. 97-336 amends G.S. 25-9-312 of the Uniform Commercial Code as adopted in North Carolina. Subdivision (2) of G.S. 25-9-312 provided that a perfected security interest in crops for new value given to enable the debtor to produce crops during a production season takes precedence over an earlier security interest provided that (i) the new security interest is given not more than three months before the crops become growing crops, and (ii) the earlier security interest secures obligations due more than six months before the crops become growing crops. The amendments provide that a new security interest for the purpose of allowing the debtor to purchase agricultural supplies to produce crops will take precedence over any perfected security interest in those crops. The amendments require that within five days of perfecting the new security interest in crops the holder must notify in writing the holder of any conflicting security interest. The notice must identify the debtor, describe the types of crops, state the year or years in which the crops will be growing, and describe the land where the crops are growing or to be grown. The amendments specifically provide that creating or perfecting a new security interest in crops to allow the purchase of agricultural supplies shall not operate as a default or an act of acceleration pursuant to any existing instrument. Agricultural supplies includes seeds, soil additives, fertilizer, lime, pesticides, herbicides and curing fuel. The act became effective October 1, 1997 and applies to security interests perfected on or after that date, but shall not affect any contract entered into or security interest or lien perfected prior to that date. In other words, preexisting security interests and contracts will not be affected by the amendments.

International Commercial Conciliation (S.L. 1997-368; SB 371): S.L. 97-368 amends the International Commercial Arbitration statute by adding provisions for conciliation processes to the arbitration processes recognized under North Carolina law for disputes arising in international commercial transactions as defined in the law. Conciliation provides for an informal process directed by a independent impartial person whose job is to help the parties to a dispute reach an amiable settlement. Under this procedure, the discussions can be in any form the conciliator deems appropriate and agreed to by the parties. The act provides protections to the parties insuring that all evidence or admissions made in the conciliation process are inadmissible in any subsequent court proceeding. The act also provides that any applicable time limits, including statutes of limitation, are stayed during the conciliation process and for 10 days beyond the termination. The act specifies that when a conciliation is terminated, the enforceability of any agreement arising from the conciliation and the costs of the process shall be shared between the parties. The act also gives protection against conciliation being deemed consent to jurisdiction. The act became effective October 1, 1997 and applies to international commercial disputes made subject to conciliation on or after that date.

Securities/Investment Advisors (S.L. 1997-419; SB 439): S.L. 97-419 amends the North Carolina Securities Act to conform North Carolina law with the 1996 changes made in federal securities laws involving the registration of securities dealers and sellers, and investment advisers, by conforming those matters still within the control of the State, and exempting those matters on which federal law preempts state law.

Sections 1 through 4 involve amendments to definitions to distinguish matters subject to state regulation and those subject to federal regulation. Section 9 spells out the notice filing registration requirements for securities that are exempt from state regulation, including the fees that the Secretary of State may charge. This section also includes the authority to require the securities issuer to consent to service of process in this State and to suspend the offer and sale of a covered security of an issuer who fails to comply with this section.

Section 14 involves amendments to definitions of investment advisers to make clear which advisers are regulated by state law and which advisers are not. Section 16 specifies that all investment advisers transacting business in the State must register unless they are exempt under federal law and those advisers exempt under federal law must still make a notice filing and pay the appropriate fees. The act became effective October 1, 1997.

Licensed Professional Counselors in Professional Corporations (S.L. 1997-421; SB 597): S.L. 97-421 allows licensed professional counselors to form professional corporations with psychologists and psychiatrists for the purpose of providing psychotherapeutic and related services. This act does not expand the scope of practice of licensed professional counselors. Psychologists and psychiatrists were already allowed under existing law, known as the "collaborative practice act," to form professional corporations with other types of mental health providers. The act became effective October 1, 1997.

Various Corporate Tax Law Changes (S.L. 1997-439; HB 1157): See **TAXATION.**

Securities/Investment Advisers Enforcement (S.L. 1997-462; SB 438): S.L. 97-462 amends the NC Securities Act and the Investment Advisors Act by clarifying when a hearing on an order issued by the Secretary of State may be requested, and making clear that records of criminal investigations conducted by the Secretary under these acts are not public records as any other criminal investigation, and civil investigation records are not public records until the investigations are finished.

Sections 1 through 5 of the act amend parts of the **NC Securities Act**. Section 1 allows the Secretary to deny, suspend, or revoke the registration of a securities dealer when a final order suspending or expelling the dealer from the national securities organizations is entered. Sections 2 and 4 will make the Secretary's order final unless a request for hearing, other responsive pleading, or submission is made within 30 business days of receipt of the notice of the order by the dealer. Section 5 makes it clear that the provisions of G.S. 132-1.4 which exempts criminal investigative records from the public records law applies to investigations under this Act by the Secretary. This section also provides that noncriminal investigation records shall not be subject to public access until the matter is completed and ceases to be active. Additionally, this section makes clear that confidential information obtained from other law enforcement, administrative, or regulatory agencies retains its confidentiality with the Secretary.

Sections 6 through 10 make similar changes to parts of the **Investment Advisers Act**. Section 6 adds a definition of person to the Act. Sections 7 and 9 will make the Secretary's order denying or suspending the investment advisers registration final unless a request for hearing, other responsive pleading, or submission is made within 30 business days of receipt of the notice of the order by the advisor. Section 10 provides the same exemptions from the public records law for investigations under the Investment Advisers Act as does Section 5 of the act.

The act became effective October 1, 1997, and applies to proceedings commenced on or after that date.

Corporate Law Changes (S.L. 1997-485; SB 157): S.L. 97-485 makes several changes to the laws governing corporations and limited liability companies as follows:

- A corporation or limited liability company will have five years after being administratively dissolved to apply for reinstatement. The Secretary of State administratively dissolves corporations and limited liability companies for, among other things, not filing their annual reports. The five year grace period for reinstatement is longer than under previous law. The fee for the reinstatement application is $100.
- The time allotted to a corporation to notify dissenting shareholders that it is taking action that will invoke the dissenters' rights to obtain payment for the fair value of their shares is changed. The notice must be given within 10 days of shareholder approval of the corporate action, or if no shareholder approval was required, within 10 days after approval of the action by the board of directors.

- The law governing a dissenter's filing of a lawsuit to resolve an unsettled claim for payment for shares is changed. The changes require that the suit be brought in superior court. The suit will be tried as any other civil action (except there is no trial by jury if the corporation was a public corporation at the time it took the action creating the dissenter's rights. In addition, for suits commenced on or after October 1, 1997 that involve corporate actions that take place before October 1, 1997, the corporation is given a specific period of time -- 10 days -- in which to pay the dissenter the amount which it has already offered the dissenter.
- The Secretary of State is authorized to review in advance a document to be filed with the Secretary by a corporation, nonprofit corporation, limited liability company, or limited partnership to ensure that the document contains the information necessary for it to be acceptable for filing and to alert the person filing the document of any needed changes. The charge for this service is $200 per document.
- The laws allowing corporations, nonprofit corporations, limited liability companies, and limited partnerships to correct documents is clarified to provide that the document can be corrected only if it is incorrect and was incorrect at the time it was filed.
- Changes are added concerning restatement of limited liability company articles of organization.
- A new provision is added for cancellation of articles of dissolution of a limited liability company.
- The time period after the dissolution of a limited liability company during which no other business can use the dissolved company's name is amended to provide for varying, contingent periods of time (previously two years after effective date of dissolution).
- A provision is added acknowledging faxed signatures on partnership document filings.
- The previous limit on how long a limited partnership could delay its effective date after filing its certificate of partnership with the Secretary of State (20 days) is removed.
- The law requiring the Secretary of State to review a filed limited partnership document to ensure that it conforms to "law" is changed to require that the Secretary ensure that it conform to the Uniform Limited Partnership Act.
- The minimum number of persons required to form a limited liability company is changed from two persons to one person.
- The law allowing a parent owning 90% or more of the outstanding shares of each class of stock in a subsidiary to merge the subsidiary into itself without approval of the parent's or subsidiary's shareholders is amended to provide that the parent can also merge itself into the subsidiary without approval of the subsidiary's shareholders. Approval of the parent's shareholders and directors is required.

The act contains varying effective dates, although many of the provisions became effective when the bill became law on September 10, 1997.

Amend Professional Corporation Act - Audiologists/Optometrists (S.L. 1997-500; HB 853): S.L. 97-500 amends the Professional Corporation Act to authorize professional corporations to be formed among physicians and audiologists licensed under Article 22 of Chapter 90, and among ophthalmologists and optometrists licensed under Article 6 of Chapter 90. In any situation, professional services may only be rendered by those persons licensed, certified, or otherwise approved to provide those services. The act became effective September 11, 1997.

Economic Development

Amend William S. Lee Act (S.L. 1997-277, SB 316): See **TAXATION**.

Miscellaneous

New and Expanded Industry Training Funds (S.L. 1997-38; SB 286): S.L. 97-38 appropriates $4.7 million from the General Fund to the Department of Community Colleges for the past fiscal year (FY 1996-96) to cover a shortfall in the New and Expanded Industry Training Program. Under this program, community colleges provide customized training to new employees in specific job skills needed by new and expanded industries. The $10 million appropriation to the Program for FY 1996-97 fiscal year in last year's budget was insufficient because of the increased demand for the Program's services. The act also requires the State Department of Community Colleges and local community colleges to carefully monitor the expenditure of the funds in this Program to ensure that they are used for appropriate job training purposes. The act became effective April 24, 1997.

Cider and Vinegar Manufacturer Permit (S.L. 1997-134, HB 348): S.L. 97-134 amends Chapter 18B to provide for permits for manufacturers of cider and vinegar to enable them to purchase and transport unlimited quantities of out-of-date unfortified and fortified wines. It amends G.S. 18B-1100 by adding to the list of permits available from the Alcoholic Beverage Commission a permit for a cider and vinegar manufacturer. A new section, G.S. 18B-1114.2, describes the scope of a cider and vinegar manufacturer permit. It specifically allows the permittee to purchase and transport unlimited quantities of out-of-date unfortified and fortified wines from wine wholesalers for the sole purpose of manufacturing a food product item. Any manufacturer of cider or vinegar may apply for the permit. G.S. 18B-902(d) is amended by adding to the permit list the cider and vinegar manufacturer permit with a fee of $100. The act also amends G.S. 18B-1107(a). This subsection deals with the authorization granted to a holder of a wine wholesaler permit. The ability to sell out-of-date unfortified and fortified wine to holders of cider and vinegar manufacturer permits is added. The wholesaler must mark "out-of-date" on the bottles. The act became effective June 4, 1997.

No Race or Gender on Checks (S.L. 1997-149; HB 790): Proof of having met certain conditions, set forth in G.S. 14-107.1, is prima facie evidence that the person charged with passing a worthless check is, in fact, the identified check passer. The conditions

include that the check is delivered to the check taker; that the name and mailing address of the passer are written or printed on the check; that the taker identified the passer by a driver's license or other photographic identification; that the acceptor notifies the passer by certified mail that the check has been dishonored and allows 10 days for the passer to correct any bank error; and that the acceptor has filed an affidavit in accordance with the section setting forth the pertinent facts. This act adds a limitation to this provision in cases in which the check taker in a face-to-face transaction, has written or printed the race or gender of the check passer on the check. In such cases, the check taker would lose the benefit of making a prima facie case by proving that the other conditions had been met. The act became effective October 1, 1997, and applies to checks or drafts made or drawn on or after that date.

Competitive Access for Pay Telephones (S.L. 1997-207; HB 994): S.L. 97-207 amends G.S. 62-110(c). This subsection authorizes competitive pay telephone service to the public. It provided that the pay telephone must be connected to the certificated local exchange telephone company and that the rates approved by the Utilities Commission for the access line must be set on a fully compensatory, measured usage rate basis if possible, or on a fully compensatory message rate basis if a measured basis is not possible. S.L. 97-207 authorizes the pay telephone to be connected to any authorized local exchange provider and eliminates the requirement that the service be on a measured usage rate basis if possible. (Legislation passed by the 1995 General Assembly authorized competitive local exchange telephone service as well as alternative rate making procedures.) The act became effective July 1, 1997.

Uniform Fraudulent Transfer Act (S.L. 1997-291; HB 407): S.L. 97-291 repeals Article 3 of Chapter 39, **Fraudulent Conveyances**, and replaces it with a new Article 3A which enacts the Uniform Fraudulent Transfer Act substantially as adopted by the National Conference of Commissioners on Uniform State Laws.

Under the act a debtor is defined as insolvent if the debtor's debts are greater than all the debtor's assets and is presumed to be insolvent if he or she is not paying debts as the debts become due. "Value" is defined as the transfer of property or the satisfaction of an antecedent debt, but does not include an unperformed promise other than a promise in the ordinary course of the promisor's business. The acquisition of a debtor's interest in property pursuant to a noncollusive (incorrectly enacted as "nonexclusive") foreclosure sale or power of sale pursuant to a mortgage is deemed to be reasonably equivalent value, which, depending on the circumstances, under current law could be considered to be less than fair value.

The act provides that a transfer is fraudulent as to present and future creditors if: (1) the debtor made the transfer with intent to hinder or defraud creditors, or (2) the transfer was made without receiving a reasonably equivalent value and the debtor had unreasonably small remaining assets in relation to the debtor's business, or the debtor believed or should have believed that the debtor would incur debts beyond his or her ability to pay. The act lists several factors which may be used to determine intent to defraud, including two factors not included in the Uniform Act. The first additional factor is whether the debtor made the transfer or incurred the obligation without receiving

reasonable equivalent value in exchange for the transfer and the debtor reasonably should have believed that the debtor would incur debts beyond the debtor's ability to pay as they became due. The second additional factor is whether the debtor transferred assets in the course of legitimate estate or tax planning.

The act provides that a transfer is fraudulent as to present creditors only if the debtor made the transfer without receiving a reasonably equivalent value and the debtor was insolvent at the time of the transfer or became insolvent as a result of the transfer. No intent to hinder or defraud creditors is required. A transfer is also fraudulent as to present creditors if it was made to an insider for an antecedent debt, the debtor was insolvent at the time, and the insider had reasonable cause to believe the debtor was insolvent.

If a transfer is deemed to be fraudulent under the act, a creditor may void the transfer, attach the asset transferred, or apply for an injunction against further transfer of the asset. If a judgment is obtained against the debtor, the creditor may execute on the asset. The act provides for defenses and protections for persons who took from the debtor in good faith and for reasonably equivalent value.

The act changes the statute of limitations for these actions from three years to a provision that a creditor's claim is "extinguished" under this Act if it is not generally brought within four years after the transfer is made. An action resulting from a transfer made by an insolvent debtor to an insider for an antecedent debt is subject to a one year statute of limitation.

The act became effective October 1, 1997 and applies to transfers made on or after that date.

No Competition by School Bus (S.L. 1997-315; HB 617): S.L. 97-315 amends the Umstead Act to clarify that school buses and school activity buses may not compete with the private sector, by adding transportation services as prohibited form of competition. The act exempts public school buses and public school activity buses which are used in accordance with law, from the act. Lawful uses of school buses include transportation of students and employees to and from school, emergency transportation of students or employees to a doctor or hospital, transportation of students with special needs to receive vocational or occupational services, and use for emergency management purposes during a declared disaster or local emergency. The act became effective July 21, 1997.

Increase Fees for Returned Checks (S.L. 1997-334; SB 562): S.L. 97-334 amends the Uniform Commercial Code to increase the fee that can be charged for checks on which payment is refused because there are insufficient funds or for which there is no account at the time the consumer presented the check. This act increases the fee from $20 to $25. The fee can be charged by anyone who accepts a check in payment for goods or services, so long as certain notice requirements are met. The fee was last raised from $15 to $20 on October 1, 1991. The act became effective October 1, 1997 and applies to checks written on or after that date.

Clarify Perfection of Security Interest In After Acquired Property (S.L. 1997-386; SB 250): See **PROPERTY**.

Regulate Check Cashing (S.L. 1997-391; SB 312): S.L. 97-391 authorizes the Commissioner of Banks to regulate the business of check cashing and requires all persons engaged in the business of check cashing to obtain a license from the Commissioner of Banks. Applicants for licenses must pay a $250 application fee and a $500 one-time investigation fee. Licenses must be renewed annually at a fee of $250 plus a $50 fee for each branch operated under the license. The act exempts: (1) banks, savings institutions, credit unions or farm credit systems; and (2) retailers who occasionally cash checks and charge a fee of no more than two dollars for the service. The maximum fees which may be charged are the greater of $5 or one of the following amounts: 3% for government checks, 10% for personal checks and 5% for all other checks or money orders. The act also allows licensees to cash postdated or delayed deposit checks so long as the face amount does not exceed $300. The customer and the licensee must enter a written agreement which states the fees charged, both as a dollar amount and as an effective annual percentage rate, and the deposit may not be deferred for more than 31 days. A licensee may not charge a fee in excess of 15% for cashing a postdated or delayed deposit check and checks cashed under this section may not be repaid by the proceeds of another check cashed by the same licensee or an affiliate of that licensee. The Commissioner of Banks is directed to report to the 2001 General Assembly on the practices of licensees with regard to the provision relating to postdated and delayed deposit checks. The act became effective October 1, 1997 and the provisions relating to postdated and delayed deposit checks shall expire on July 31, 2001.

Update and Revise Trademark Act (S.L. 1997-476; SB 864): S.L. 97-476 amends the North Carolina Trademark Registration Act in part to conform North Carolina law to the model State Trademark Act and to eliminate the necessity of showing use of a trademark in North Carolina for registration purposes. The act adds a definition for when a mark is deemed abandoned to include when its use is intended not to be resumed (nonuse for three consecutive years prima facie evidence of abandonment) or when the conduct of the owner causes the mark to lose its significance as a mark. It also adds a purpose to the statute to state the legislature's intent to create a system of registration and protection substantially consistent with federal law, and provides that court interpretations of federal law should be applied when interpreting this state law. The act amends the trademark registration application process to require a statement that the mark is in use and not registered to other persons, but eliminates the requirement of proof of use or distribution in this State. The Secretary of State may also require the applicant to indicate whether an application to the register the mark has filed with the U.S. Patent and Trademark Office, and if so what the status of the application is. Also, the Secretary may require a drawing of the mark accompany the application. The act adds a new section to provide for the Secretary to examine the application for registration for conformity with the requirements of the statutes, establishes procedures for requesting additional information, grants a disapproved applicant the right to seek a writ of mandamus in court, and to give priority for duplicate applications to register the same mark to be granted in the order filed. The act provides for the filing of a certificate of name change for the owner of the registration and allows for the filing of a security interest in the mark. The act adds provisions to

permit the Secretary to cancel, in whole or part, a trademark registration when a court finds the mark has become a generic name for the goods and services it was registered for, that the registration was obtained by materially false statements in the application, or the mark is so similar as to be likely to cause confusion with another mark registered in the U.S. Patent Office and the other mark has not been abandoned, unless the registrant proves they also are the owner of a mark register in the Patent Office covering an area including the entire State and that registration has not been canceled. The act eliminates the statutory classification of marks and permits the Secretary to establish classifications by rule. The Secretary may establish classes to conform with federal trademark classifications. The act became effective October 1, 1997 and applies to acts on or after that date, but it does not affect any action pending on that date.

Exempt Audiovisual Masters From Sales Tax (S.L. 1997-521; HB 1057): See **TAXATION**.

STUDIES

Legislative Research Commission Studies

The Studies Act of 1997 (S.L. 1997-483; SB 32) authorizes the Legislative Research Commission to study a variety of issues affecting commercial law including the following: (1) Bingo Regulation (Sec. 2.1(1)): (2) Financial Institutions (Sec. 2.1(6)) including: (a) Branch Banking Law in N.C., (b) Consumer Finance Industry Issues, (c) Robbery Witness Protection for Employees of Financial Institutions, and (d) Allowing Mortgage Bankers to Make Loans and Charge Related Fees: (3) Lien Issues (Sec. 2.1(10)) icluding: (a Medical Provider Liens for Medical Services and Assignment of Proceeds, and (b) Statutory Liens for Commercial Real Estate Brokers; (4) Pharmacy Practice Act Revision (Sec. 2.7); (5) Rail Service to the State Ports (Sec. 2.1(19)); (6) Small Business Development (Sec. 2.1(28)); and (7) Venture Capital and Business Financing (Sec. 2.1(29)).

V. CONSTITUTION AND ELECTION LAWS

(Bill Gilkeson)

Ratified Legislation

Veto Procedural Changes (S.L. 1997-1; SB 27): S.L. 97-1 amends G.S. 120-33(d2) to provide that a bill is not to be presented to the Governor until the next business day after the bill was ratified. Prior law was that it should not be presented until the time had expired for moving for reconsideration of bill. The change defines "business day" as a weekday other than one on which there is both a state employee holiday and neither the House or the Senate is in session. The change provides that no bill required to be presented to the Governor shall be recalled from the enrolling clerk or Governor after it has been ratified but before it has been acted upon by the Governor except by joint resolution. In calculating the period under Section 22(7) (time for action on bill by Governor) of Article II of the N.C. Constitution, the day on which the bill is presented to the Governor shall be excluded and the entire last day of the period is included. The act became effective February 27, 1997.

Congressional Redistricting (S.L. 1997-11; HB 586, as amended by S.L. 1997-456, Sec. 52; HB 115, Sec. 52): S.L. 97-11 enacted a new congressional redistricting plan for the 1998 and 2000 elections. The previous plan, enacted in 1992, was held unconstitutional by the U.S. Supreme Court in the 1996 decision of *Shaw v. Hunt.* The Court said in *Shaw* that the 12th congressional district, a majority black district created by linking together black precincts in the cities of the Piedmont, was a racial gerrymander unjustified by a compelling state interest. Earlier in the same lawsuit, the U.S. Supreme Court had made new law by enunciating the doctrine that citizens have the right to participate in a color-blind electoral system. Only in exceptional circumstances, the Court said, may race be the predominate factor in drawing electoral districts. Another majority black district in the 1992 plan, the mostly rural 1st congressional district, was also challenged under the *Shaw* doctrine, but was not at issue in the Supreme Court's opinion. The 3-judge panel in U.S. District Court, enforcing the Supreme Court's opinion, gave the General Assembly until April 1, 1997, to enact a new plan. On March 31, the day before that deadline, the General Assembly enacted S.L. 97-11. (Congressional redistricting bills are not subject to the Governor's veto.) The new plan left the 12th and 1st districts in approximately the same parts of the State, but made both considerably more compact. It also reduced the minority percentages in both districts. The new 1st was just over 50% black, and the new 12th was actually 51.59% white. The plan was given approval by the U.S. Justice Department under Section 5 of the Voting Rights Act. The *Shaw* plaintiffs criticized the new plan, but petitioned the 3-judge panel to dismiss the suit so that a new one could be filed. The 3-judge panel ruled on September 12 that the new plan adequately remedied the constitutional violation found by the U.S. Supreme Court, and dismissed the lawsuit.

Limit Relatives on Election Boards (S.L. 1997-211; HB 277): S.L. 97-211 expands the list of relatives of a candidate who may not serve on a county board of elections. The act

prohibits the following relatives of a candidate from serving: parents-in-law, children-in-law, brothers-in-law, sisters-in-law, aunts, uncles, nieces, or nephews. Spouses, parents, children, brothers, and sisters were prohibited from serving already. The change also specifies that a candidate's relative is only forbidden to serve on the board while the candidate is running. The act became effective June 19, 1997 and applies to board appointments beginning on June 24, 1997.

Current Operations and Capital Budget Act (S.L. 1997-443, Sec. 31; SB 352): S.L. 97-443, Section 31, requires the State Board of Elections to establish a statewide data elections management system. The system is to include voter registration, campaign reporting, and election night returns. The State Board shall establish the system by November 1, 1997. Counties shall adhere to the system's standards by August 1, 1998. The act directs the State Board to use $150,000 to hire a project manager for the system, to determine local needs, and to develop a needs assessment report. The State Board would be able to use the remainder of $5 million appropriated in 1995 for developing the system, after developing an implementation plan with the Information Resource Management Commission and with the IRMC jointly presenting that plan to the Joint Legislative Commission on Governmental Operations. The section became effective July 1, 1997.

Legal Notices/One-Stop (S.L. 1997-510; SB 553): S.L. 97-510 requires the State Board of Elections to reimburse county boards of elections for the cost of any statewide referendum that the State requires counties to conduct. Another part of the chapter deals with One-Stop absentee voting, that form of in-person absentee voting that is conducted in the county board office during the three weeks before an election. The chapter gives any county board of elections the discretion to conduct One-Stop absentee voting on its regular election-day equipment – if that system allows for the retrievability of a ballot, and if the county's plan for doing so is approved by the State Board of Elections. The bill also contains a local provision for Catawba County. The act became effective September 17, 1997.

Full Disclosure Act (S.L. 1997-515; SB 1): S.L. 97-515 makes several changes in the campaign finance regulation laws:

- Provides for quarterly reporting by campaign treasurers during an election year, semi-annual reporting during the off year, and 48-hour reporting by political parties or political committees that receive more than $1,000 during the time after the final report but before the election. The State Board of Elections is required to study the feasibility of monthly reporting during election years, with weekly reporting during the month before the election. Effective January 1, 1998.
- Requires that treasurers list a contributor's job title or profession and that contributor's employer's name or employer's specific field of business activity. The State Board of Elections is to provide a system of classifications for specific fields of business activity, using as a model IRS or other relevant classifications. The State Board is also to come up with a "best efforts rule," modeled on the federal rule, which if followed by treasurers in seeking the required information

from contributors, will relieve those treasurers of liability if they do not succeed. Effective February 1, 1998.

- Requires that political parties that spend to benefit a candidate or group of candidates (such as paying their consultants' fees or media bills) must report which candidate is benefited. Effective February 1, 1998.
- Removes the exemption from reporting for candidates in local elections in cities and counties smaller than 50,000. Effective for 1998 elections.
- Removes the exemption from reporting for local referendum committees. Effective for 1998 elections.
- Increases the financial activity threshold for reporting from $1,000 to $3,000. Effective for 1998 elections.
- Requires electronic filing for spending that exceeds $5,000 affecting statewide races. Effective for reports due in 1998.
- Requires the State Board to put data from campaign reports on the Internet as soon as feasible. Effective upon ratification.
- Increases civil penalties for late filing and makes the method of enforcement civil, by the State Board with the help of the Attorney General, rather than criminal through the local District Attorney. The old penalty for late filing was $20 a day with a maximum of $100. The new penalties are two-tiered: $250 a day with a $10,000 cap for statewide treasurers, and $50 a day with a $500 cap for nonstatewide treasurers. Effective January 1, 1998.
- Provides that the $4,000 a treasurer can receive from a donor for an "election" does not apply to a second primary with respect to a candidate unless the candidate is on the ballot in a second primary. Effective January 1, 1998.
- Expands and clarifies the limit on contributions related to lobbyists while the General Assembly is in session. Existing law prohibited fundraising by legislators and Council of State members from lobbyists or at their behest or recommendation while the General Assembly is in regular session. But it exempted the legislators and Council of State members while they are filed candidates (in practice removing the Short Session from the limitation). And it exempted party committees and caucus committees as recipients of the money. The act makes these changes to existing law:

-- Removes the "filed candidate" exemption, so that the prohibition applies during the Short Session as well as the Long. A special exception is made for candidates who are in a second primary while the legislature is in session,

-- Extends the prohibition to candidates for legislator and Council of State, as well as incumbents,

-- Specifies that political committees whose parent entities have lobbyists are covered by the prohibition on in-session giving,

-- Sets out rules for when a contribution is "made" and when "accepted."

Effective January 1, 1998.

- Allows taxpayers to designate on their State income tax return which political parties they wish to receive $1 designation to the Political Parties Financing Fund. Existing law only allowed taxpayers to designate a dollar to the Fund, distributing

the proceeds to the parties according to their percentage of the State's registered voters. Effective for the 1997 taxable year.

- Requires any entity, not just political committees, to report spending to the Board of Elections for ads or printed material that names candidates or prospective candidates who have political committees. Exempted from this requirement is material that is solely information and not intended to advocate the election or defeat of the candidate, and media owners that are not the parent entities of political committees. Effective December 1, 1997.
- Prohibits a declared candidate for the Council of State from using State funds during the calendar year before the election for ads or public service announcements that use that candidate's name, picture, or voice. An exception is made for relevant messages during a State or national emergency. Effective January 1, 1998.
- Requires parties and political committees to identify themselves in at least 12 point type on print ads they sponsor that oppose a candidate. Effective December 1, 1997.

Except as specifically provided in each section, the act became effective September 17, 1997.

MAJOR PENDING LEGISLATION

Shorter Election Year (SB 2) - would abolish the second primary and move the first primary from May to September. The bill passed the Senate and is in the House Rules Committee.

N.C. Clean Election Act (SB 381) - would provide full public funding for the campaigns of statewide and legislative candidate who agree to spending limits. The bill was given a favorable report by the Senate Judiciary Committee and referred to the Appropriations Committee.

Local Option Homestead Relief (SB 421) – would amend the Constitution to authorize the General Assembly to allow every county to increase the property tax homestead exemption for low-income elderly and disabled persons in that county. The General Assembly would also be authorized to allow each county to raise the maximum income threshold to qualify for the exclusion in that county. The bill passed the Senate and is in the House Ways and Means Committee.

Session Length Limits (SB 905) – would amend the Constitution to limit legislative sessions to 135 days in the odd year and 60 days in the even year. It would also amend the Constitution to provide for 4-year terms for Senators. The bill passed the Senate and is in the House Rules Committee.

Election Law Reform (SB 573) – Originally a bill to make changes to ballot access laws for new parties, the bill passed the Senate in that form but was changed by the House Elections and Campaign Reform Committee into an omnibus election-law bill. Among

other things, it would set up a Campaign Standards Code to be enforced with letters of reprimand by a Commission, would make major changes designed to put new party candidates on an equal footing with existing-party candidates, would require that voters display an identification document at the polls, and would rotate the party columns on the general election ballot. The House Elections and Campaign Reform Committee gave the omnibus bill a favorable report, but the bill was rereferred to that committee on the final day of the 1997 Session.

Absentee Voting Changes (SB 663) – would remove the "excuse" requirement for absentee voting, allow multiple sites in a county for in-person absentee voting (One-Stop), and would streamline the processing of counting and approving absentee ballots. The bill passed the Senate. That form of the bill was given an unfavorable report by the House Elections and Campaign Reform Committee, which at the same time gave a favorable report to a committee substitute authorizing a study of the issue. If that committee action were reported to the full House, then the contents of Senate-passed SB 663 would be ineligible for consideration in 1998. But the committee action had not been reported out when the 1997 Session adjourned.

Stand by Your Ad (SB 708) – would require personal appearances in radio and TV ads by sponsoring candidates, political party leaders, or political committee leaders. They would have to personally claim responsibility in the ad for sponsoring it. The bill passed the Senate and is in the House Elections and Campaign Reform Committee.

Candidate Accountability (SB 825) – would provide a procedure through the State Board of Elections for a candidate to request another candidate running for the same office to approve or disapprove of an ad that deals with the race. The bill passed the Senate and is in the House Elections and Campaign Reform Committee.

Campus Satellite Polling Places (SB 1049) – would set up special voting sites on college campuses, separate from the regular polling place for the precinct. The bill passed the Senate and is in the House Rules Committee.

VI. CRIMINAL LAW AND PROCEDURE

(Brenda Carter, Karen Cochrane-Brown, Susan Hayes,
Tim Hovis, Walker Reagan, Steve Rose)

Ratified Legislation

Corrections

Clarify Community-Based Corrections (S.L. 1997-57; SB 16): S.L. 97-57 implements recommendations of the N.C. Sentencing Commission regarding community-based corrections. The act modifies statutory language defining certain intermediate punishments, including: 1) renaming the Intensive Probation Program as Intensive Supervision; 2) amending intensive supervision to require multiple contacts each week by a probation officer, curfew restrictions; 3) requiring offenders to be employed or pursuing a course of study or vocational training; and (4) redefining the intermediate sanction of "electronic monitoring" as "house arrest with electronic monitoring". The act also changes judicial authority to delegate certain responsibilities - including the authority to impose additional requirements on an offender who violates probation - to the Division of Adult Probation and Parole; this authority is now automatic unless the presiding judge finds that it is not appropriate. The act further modifies the target population for community penalties and expands the Community Penalties statute to allow programs to develop plans for persons charged with misdemeanors and felonies but not yet convicted. Finally, the act prohibits community service as a condition of post-release supervision. The act becomes effective December 1, 1997, and applies to offenses committed on or after that date.

Notice of Execution of Capital Defendant (S.L. 1997-289; SB 885): The act amends G.S. 15-194 to provide that notification to the warden of an event requiring that an execution date be set must be written and must be from the Attorney General or the district attorney who prosecuted the case. Under existing law, the date of execution of a death sentence is set by the Warden of the State Penitentiary and is to be not less than 30 days nor more than 45 days from the date of receiving notification of the completion, or failure to undertake, post conviction relief actions enumerated in the statutes. The statute did not previously state from whom the notification was to come or that it must be written. The act became effective July 10, 1997.

Increase Compensation for Erroneous Conviction (S.L. 1997-388; HB 611): S.L. 97-388 amends the law concerning individuals seeking monetary damages for erroneous convictions. The law would allow individuals who have been erroneously convicted of a felony, imprisoned and thereafter pardoned because of innocence to seek damages from the State within five years of their pardon. Under prior law, a petition to recover damages for erroneous conviction was presented to the Department of Correction for hearing before the Parole Commission. The law as amended requires that such petition be presented to the Industrial Commission rather than the Department of Correction. The act

increases the amount of money which may be recovered in such an action from a maximum of $500 for each year of imprisonment to $10,000 for each year, or portion of a year, of imprisonment. The total recovery allowed under the statute is increased from $5,000 to $150,000. Initially the act became effective August 13, 1997, and applied only to persons pardoned on or after July 1, 1995. Subsequently, S.L. 97-443; SB 352, Section 7.2 (b) provided that notwithstanding the five year limitation, the petition of any person who received a pardon of innocence prior to July 1, 1995 may be presented at any time prior to July 1, 1998. If the petitioner has received any compensation pursuant to a prior claim, the Industrial Commission shall consider the amount of the award received by the petitioner and may deduct that amount, plus interest from the date the award was made, from any subsequent amount awarded under the new provision. See Taxation.

Juvenile Recidivism Rates (S.L. 1997-443, Sec. 18.15(a); SB 352, Sec. 18.15 (a)): A new G.S. 7A-675.3 requires the Administrative Office of the Courts to compute, on an annual basis, the recidivism rate of juveniles who are adjudicated delinquent for offenses that would be Class A-E felonies if committed by adults and who subsequently are again adjudicated delinquent or convicted. AOC is to report the statistics to the Joint Legislative Commission on Governmental Operations by December 31 each year. The section became effective July 1, 1997.

Reimburse Counties Certain Costs for Inmates (S.L. 1997-443, Sec. 19(a); SB 352, Sec. 19(a)): G.S. 148-29 is amended to provide that the Department of Correction shall pay a county extraordinary medical costs incurred by prisoners awaiting transfer to the State prison system. The act also provides for payment of housing and medical costs for parolees or post-release supervisees who are in the custody of the sheriff pending transfer to the State prison system beyond five days after preliminary hearing. The section became effective July 1, 1997.

Criminal Justice Partnership Act Amendments (S.L. 1997-443, Sec. 19.8; SB 352, Sec. 19.8): The act eliminates a redundancy in G.S. 143B-273.12, governing Community-Based Corrections Plan, by deleting the language regarding the target population and by referencing an identical provision in G.S. 143B-273.4. The section became effective July 1, 1997.

IMPACT Defendants in Department Of Correction Facilities (S.L. 1997-443, Sec. 19.11; SB 352, Sec. 19.11): The act amends the law governing special conditions of probation to provide that the court may require that the defendant submit to a period of confinement in a facility operated by the Department of Correction, and to provide that the special condition of probation may also include a period of supervision through the Post-Boot Camp Probation Program. The section became effective July 1, 1997.

Crimes

Increase Raffle Limits (S.L. 1997-10; HB 29): S.L. 97-10 amends G.S. 14-309.15(d) by raising the maximum value of raffle prizes offered by non-profit entities from $5,000 to

$10,000 in cash and from $25,000 to $50,000 in merchandise. It adds a provision that the total cash prizes offered or paid by a non-profit organization may not exceed $10,000 in a calendar year, and the fair market value of all prizes offered by a non-profit organization may not exceed $50,000 in a calendar year. The act became effective March 18, 1997.

Outlaw Dog Fights (S.L. 1997-78; HB 147): S.L. 97-78 creates a new G.S. 14-362.2 to increase the penalty for any person who instigates, promotes, conducts, is employed at, provides a dog for, allows property to be used for, gambles on or profits from a dog fight from a Class 2 misdemeanor to a Class H felony. The new statute also increases the penalty for any person who owns, possesses, or trains a dog with the intent that the dog be used in fighting or any person who participates as a spectator from a Class 2 misdemeanor to a Class H felony. Under previous law, these offenses were contained in G.S. 14-362.1. S.L. 97-78 also amends G.S. 14-362.1 to remove dog fights from that statute. The act becomes effective December 1, 1997 and applies to offenses committed on or after that date.

Amend Stalking Law (S.L. 1997-306; SB 667): S.L. 97-306 amends G.S. 14-277.3 to redefine the criminal offense of stalking as "willfully on more than one occasion following or being in the presence of another person without legal purpose and with the intent to cause death or bodily injury or with the intent to cause emotional distress by placing that person in reasonable fear of death or bodily injury." The intent to cause death or bodily injury was not previously an element of the offense. S.L. 97-306 removes the requirements that the actions occur after reasonable warning to desist and that the actions constitute a pattern of conduct over a period of time evidencing a continuity of purpose.

S.L. 97-306 increases the penalty for a stalking offense to a Class 1 misdemeanor (previously Class 2). The penalty for stalking while a court order is in effect prohibiting similar behavior is increased to a Class A1 misdemeanor (previously a Class 1).

The act becomes effective December 1, 1997 and applies to offenses committed on or after that date.

Amend Law Banning Tobacco Sale to Minors (S.L. 1997-434; SB 143): S.L. 97-434 tightens the laws prohibiting the sale or distribution of tobacco products to persons under the age of 18 and tightens the requirements for retailers to check for proof of age. The act requires that proof of age be based on photographic identification that includes date of birth by retailers and other documentary or written proof of age for nonretailers. It eliminates the requirement that the prohibited sale or gift be done to a person known to be a minor. The act requires retailers to display a sign stating that the law prohibits the purchase of tobacco products by person under age 18 and makes it an infraction for failing to post the sign, with a $25 fine for the first offense, and a $75 fine for each succeeding offense. The act makes it a Class 2 misdemeanor to fail to demand proof of age only if the person is in fact under age 18. The act requires retailers to train their sales employees in the requirements of this law. The act increases the penalty to a Class 2 misdemeanor for a person under age 18 accepting or purchasing tobacco products or cigarette wrapping papers or using false identification to purchase tobacco products or

cigarette wrapping papers. The act also makes it a Class 2 misdemeanor for a person to aid and abet a person under age 18 purchasing or attempting to purchase tobacco products. The control of tobacco vending machines is tightened by prohibiting the distribution of tobacco products from vending machines except those located in establishments only open to persons over age 18, or under the continuous control of the owner or the owner's employees. The act makes it a Class 2 misdemeanor to fail to check the identification of a person purchasing tobacco products from a vending machine who is under age 18 and to distribute tobacco products through a vending machine in violation of this law. The act requires that a first offender of this law be given deferred prosecution. The act becomes effective December 1, 1997 and applies to offenses committed on or after that date.

Establish the Offenses of Trespass on Pine Straw Production Land and Larceny of Pine Straw (S.L. 1997-443, Sec. 19.25; SB 352, Sec. 19.25): The act makes it a Class 1 misdemeanor to enter land posted with notices prohibiting raking or removing of pine straw. It also creates the offense of larceny of pine straw as a Class H felony. The act becomes effective December 1, 1997, and applies to offenses occurring on or after that date.

Intimidation to Influence Legislator (S.L. 1997-443, Sec. 19.27; SB 352, Sec. 19.27): The act amends G.S. 120-86 to make it a Class F felony for any person, directly or indirectly, to threaten economically another person in order to compel the threatened person to attempt to influence a legislator in the discharge of the legislator's duties. The act becomes effective December 1, 1997 and applies to offenses committed on or after that date.

Motorized All Terrain Vehicle Trespass (S.L. 1997-487; HB 1087, as amended by S.L. 1997-456, Sec. 56.8; HB 115, Sec. 56.8): S.L. 97-487, as amended by S.L. 97-456, Section 56.8, makes it a trespassing offense for the unauthorized operation of a motorized all terrain vehicle on the property of another. Under the act it is a Class 2 misdemeanor to operate a motorized all terrain vehicle without the consent of the owner either on any private property not owned by the operator or within the banks of a stream or waterway, but excluding a sound or the Atlantic Ocean, where the adjacent lands are not owned by the operator, or outside the restrictions imposed by the owner. A motorized all terrain vehicle is defined as a two or more wheeled vehicle designed for recreational off-road use. The act also makes a conforming change to G.S. 14-134.2 which makes it an offense to trespass on utility easements with certain motor vehicles. The act becomes effective December 1, 1997 and applies to acts committed on or after that date.

Public Assistance Fraud - Illegal Use of Food Stamps (S.L. 1997-497; HB 431): See **HUMAN RESOURCES**.

Audits (S.L. 1997-526; HB 652): S.L. 97-526 makes it a Class 2 misdemeanor to make a false report for the purpose of interfering with an audit or investigation or to otherwise hinder or obstruct the State Auditor or his designated representatives in the performance

of their duties. A Class 2 misdemeanor, assuming no prior convictions, is punishable by 1-30 days community punishment and/or a fine up to $1,000. The act became effective September 17, 1997.

Criminal Procedure

Expunge Certain Infractions (S.L. 1997-138; HB 402): S.L. 97-138 amends G.S. 15A-146(a) to allow a person age 19 or 20 who is charged with an infraction for underage purchase or possession of beer, wine, or liquor to have the infraction expunged if the charge is dismissed, or a finding of not guilty or not responsible is entered. The act became effective June 4, 1997.

Method of Appointing Public Defender in District 16B (S.L. 1997-175; HB 615): S.L. 97-175 amends G.S. 7A-466(a) to change the method by which the Public Defender for Defender District 16B is appointed. The Public Defender for District 16B is appointed from a list of not less than three names nominated by the attorneys in that defender district. The person making the appointment from the list was the Resident Superior Court Judge of Superior Court District 16B other than the Senior Resident Superior Court Judge. The amendment changed the appointing officer to the Senior Resident Superior Court Judge of Superior Court District 16B. The act became effective June 12, 1997.

Voluntary Dismissal/Notify Defendant (S.L. 1997-228; HB 465): S.L. 97-228 amends G.S. 15A-931 to require a prosecutor to serve notice of a written dismissal of the charges against a defendant. Notice is made by personal delivery or by mail to the defendant's attorney of record or to the defendant if he is not represented by counsel. The prosecutor need not serve notice if the dismissal is made in open court in the presence of the defendant or the defendant's attorney. If the defendant is in custody, the dismissal must also be served on the chief officer of the custodial facility. The act becomes effective December 1, 1997.

Clarify Post-Release Supervision (S.L. 1997-237; HB 195): S.L. 97-237 makes clarifying changes to post-release supervision.

G.S. 15A-1368.6(e) is amended to clarify that the 45 day period, within which a hearing to revoke post-release supervision must be held, begins to run when the preliminary hearing is held or seven working days have passed since arrest, whichever is sooner.

G.S. 15A-196.1, -196.3 and -196.4 are all amended by adding post-release supervision to each of these statutes. These statutes deal with credit for time served awaiting hearing of the case. This is purely a technical change.

G.S. 15A-1368.4 is amended in Subsection (c) by adding language that indicates that the Post-release Supervision and Parole Commission will consult with the Division of Adult Probation and Parole in determining what conditions are appropriate for a supervisee under post-release supervision. Subsection (e) is amended by adding two new conditions which may be imposed on a supervisee under post-release supervision. Subsection (e)(13) allows the supervisee to be required to remain in one or more specified

places for a specific period each day and to be monitored by an electronic device. Subsection (e)(14) allows the supervisee to be required to submit to supervision by the Intensive Post-Release Supervision Program.

G.S. 15A-1368.2(e) is repealed. This Subsection allowed the Post-Release Supervision and Parole Commission to choose the level of supervision for a releasee, including electronic monitoring, intensive supervision, or regular supervision, but did not specify that electronic monitoring and intensive supervision were controlling conditions.

The act becomes effective December 1, 1997 and applies to offenses committed on or after that date.

Initial Appearance By Video (S.L. 1997-268; HB 221): S.L. 97-268 extends the use of two-way audio and video proceedings for initial appearances in non-capital cases before a magistrate. In districts with a limited number of magistrates or satellite jail facilities, this change is expected to allow for a more efficient use of a magistrate's time and reduce the transportation of inmates. It also authorizes the use of two-way audio and video proceedings in a showing of probable cause for an arrest warrant. The legislation requires the approval of the Administrative Office of the Courts before a district may implement such a system. The act became effective July 3, 1997.

Admissibility of Drug Lab Reports/Optometrist-Patient Privilege/Superior Court Sessions in Thomasville and Mooresville (S.L. 1997-304; HB 1122): S.L. 97-304 amends the law to facilitate the use of laboratory reports in drug cases, conforms the doctor-patient privilege between optometrist and their patients to the privilege between most other medical professionals and patients, and authorizes superior court sessions to be held in courtrooms located outside the county seat in Davidson and Iredell Counties.

Sections 1 and 2 of the act amend the law related to the admissibility in criminal and juvenile proceedings of laboratory reports of drug analysis when the reliability and chain or custody are not challenged by the defendant. G.S. 90-95 is amended to allow the introduction of the report of chemical analysis without a full foundation showing provided that the State notifies the defendant of its intent to introduce the report into evidence at least fifteen days prior to trial and provides a copy of the report to the defendant, and the defendant fails to object to introduction at least five days prior to the trial. G.S. 90-95 is also amended to add a new section which provides that when material is analyzed for the purpose of determining whether it is a controlled substance, a statement signed by each successive person in the chain of custody may be introduced in lieu of the personal appearance at trial of each person involved where the State notifies the defendant at least fifteen days prior to trial of its intent to introduce the statement, provides a copy to the defendant and the defendant fails to object to introduction at least five days prior to the trial. Any party may call witnesses to support or rebut the evidence contained in the reports or statements.

Section 3 amends the privileged communications statute for optometrists enacted in S.L. 97-75 to require that in order for information given to an optometrist to be privileged and therefore not generally admissible into evidence in a trial, the information communicated had to be necessary to perform optometric services.

Section 4 allows superior court to be held outside the county seats of Davidson and Iredell Counties in Thomasville and Mooresville, when ordered by the Senior Resident Superior Court Judge after consultation with the Chief District Court Judge. Court facilities may be furnished by the municipality and any facility fees collected as part of the court costs assessed from cases tried in those municipal facilities are to be paid to the municipality by the clerk of court.

Sections 1 and 2 become effective December 1, 1997 and apply to offenses committed on or after that date. Section 3 became effective July 16, 1997 and applies to information acquired on or after that date. Section 4 became effective July 7, 1997.

Discontinue Telecommunications Services Used for Unlawful Purposes (S.L. 1997-372; SB 919): S.L. 97-372 authorizes the discontinuation of telecommunications services that are used for unlawful purposes. It adds a new Article 16A to Chapter 15A of the General Statutes. Article 16A contains a finding by the legislature that some persons use telecommunications services to violate the law and to avoid detection or arrest and that a customer of a telecommunications company within the State may use such services only for lawful purposes. A law enforcement officer (local, State, or federal) acting within the scope of the officer's duties who obtains evidence that telecommunications services are, or have been, used by a customer or an employee or agent of a customer to violate the law, may request the District Attorney or Attorney General to apply to the District Court for an order requiring the telecommunications company to discontinue service to the customer. Notice of the hearing must be delivered to the address where the services are furnished or to the billing address, as well as to the registered agent of the telecommunications company, at least 48 hours prior to the hearing. If the court finds clear and convincing evidence that the telecommunications services are, or have been, used to violate State or federal law the court may order the telecommunications company to discontinue service immediately. Discontinued services may only be reinstated by court order, and call forwarding or message referral may not be provided to a discontinued service until reinstatement is ordered. The telecommunications company shall be held harmless from liability to any person when complying with the court order. The act becomes effective December 1, 1997, and applies to offenses committed on or after that date.

Amend Electronic Surveillance Law (S.L. 1997-435; SB 897): The act makes technical amendments to the electronic surveillance law, and adds a new subsection to the statute regarding authorization for disclosure and use of intercepted wire, oral, or electronic communications. Under existing law, within 90 days after the filing of an application for an electronic surveillance order (ESO) or the termination of the period of an order, the issuing judicial review panel must serve on the persons named in the order an inventory that includes notice of the fact of the entry of the order or the application, the date of the entry and the period of the authorized interception, and the fact that during that period wire, oral, or electronic communications were or were not intercepted. The act provides that the required notification may be delayed if the judicial review panel has probable cause to believe that notification would substantially jeopardize the success of an electronic surveillance or a criminal investigation. The act requires that application for ex

parte order be made by the Attorney General pursuant to the procedures in G.S. 15A-291. The bill became effective August 28, 1997 and applies to all applications for ESOs filed on or after that date.

Bad Check Pilot Program (S.L. 1997-443, Sec. 18.22; SB 352, Sec. 18.22): The act creates a new G.S. 14-107.2 which authorizes a district attorney to establish a program for the collection of worthless check cases that would be punished as a Class 2 misdemeanor ($2,000 or less, no more than two prior convictions, and not on a closed or nonexistent account). The stated purpose of the program is to collect worthless checks in a more timely manner, to alleviate the need to prosecute each worthless check, and to provide an opportunity for the check passer to avoid criminal prosecution. G.S. 7A-308 is amended to provide that a person who participates in a program for the collection of worthless checks must pay a fee of $50. The Administrative Office of the Courts is directed to establish procedures for remitting the fee and providing restitution to the check taker. The bad check collection pilot program applies only in Columbus, Durham, and Rockingham counties. The act became effective October 1, 1997 and expires June 30, 1998.

Drugs

Controlled Substance/Schedule II (S.L. 1997-385; SB 571): S.L. 97-385 adds the drug Remifentanil to the list of Schedule II controlled substances. Remifentanil is an analgesic (produces insensibility to pain) and anesthetic that is available under the trade name Ultiva. The act became effective August 11, 1997.

Increase Criminal Penalty for Sale of Certain Controlled Substances (S.L. 1997-443, Sec. 19.25(b); SB 352, Sec. 19.25(b)): Section 19.25(b) of S.L. 97-443 raises the felony offense class for the sale of a Schedule I or II controlled substance from Class H to Class G. Schedule I and II controlled substances include heroin, morphine, opium, LSD, and cocaine. The section also raises the felony offense class for the sale of a Schedule III - Schedule VI controlled substance from Class I to Class H. Schedule III, IV, V, and VI controlled substances include barbiturates, narcotics, anabolic steroids, and marijuana. The act becomes effective December 1, 1997, and applies to offenses committed on or after that date.

Lower Marijuana Trafficking Amounts (S.L. 1997-443, Sec. 19.25(ii); SB 352, Sec. 19.25(ii)): Section 19.25(ii) of S.L. 97-443 lowers the amount of marijuana that would be considered trafficking from 50 pounds to 10 pounds. The penalty for trafficking increases depending upon the amount of marijuana involved. An amount in excess of 10 pounds, but less than 50 pounds is a Class H felony; and amount of 50 pounds or more, but less than 2,000 pounds is a Class G felony; punishment levels for higher amounts are not changed by this act. The section becomes effective December 1, 1997, and applies to offenses committed on or after that date.

Date Rape Drugs (S.L. 1997-501; HB 1132): S.L. 97-501 adds Gamma Hydroxybutyric Acid (GHB) to the list of Schedule IV Controlled Substances. Classifying GHB as Schedule IV makes it a Class I felony to manufacture, sell or deliver, or possess with intent to manufacture, sell or deliver the drug, and makes simple possession a Class 1 misdemeanor. The act makes it a criminal offense to knowingly contaminate food or drink with any substance that would render a person mentally incapacitated or physically helpless with the intent of causing another person to be mentally incapacitated or physically helpless. The act also makes it unlawful to manufacture, sell, deliver, or possess with intent to manufacture, sell or deliver such a substance for the aforementioned purpose; violation is a Class H felony, which, at prior record level I, has a presumptive sentence of 5-6 months community, intermediate or active punishment. However, if the offender violates the law with the intent of committing second degree rape or second degree sexual offense, the violation is a Class G felony, with a sentence of 10-13 months of intermediate or active punishment. The act becomes effective December 1, 1997, and applies to offenses committed on or after that date.

Firearms

Concealed Weapon and Concealed Handgun Permit Law Amendments (S.L. 1997-238; HB 958): S.L. 97-238 amends the law regarding concealed weapons and concealed handgun permits in several ways. The act exempts federal law enforcement officers from the concealed handgun statute while discharging their official duties. The act also exempts from the prohibition of carrying weapons on school premises under G.S. 14-269.2, on certain State property and in courthouses under G.S. 14-269.4, and at parades under G.S. 14-277.2, person exempt from the concealed weapon prohibition, thereby adding off-duty law enforcement officers authorized to carry concealed weapons to the list of person permitted to carry concealed weapons under these circumstances. The act also amends the concealed handgun permit law to clarify that the concealed handgun permit law does not apply to a person who may otherwise lawfully carry a concealed weapon or handgun and also clarifies that a notice posted prohibiting a concealed handgun to be brought on the premises does not apply to a person exempt from the concealed weapon statute. Additionally, the act clarifies that state-owned rest areas and state-owned rest stops along the highways may not be posted to prohibit the carrying of a concealed handgun under the concealed handgun permit law. The act became effective June 27, 1997.

Concealed Handgun Permit Law Enforcement Training Exemption (S.L. 1997-274; HB 433): S.L. 97-274 would exempt certain current and recently retired law enforcement officers from the training requirement required for a conceal handgun permit. This exemption applies to a person who has retired from a North Carolina State or local law enforcement agency for reasons other than mental disability, who has been retired two years or less and who immediately before retirement was a qualified law enforcement officer in NC, has nonforfeitable rights to benefits as a retired law enforcement officer, and who is not prohibited by State or federal law from receiving a firearm, or a person who is currently employed by a local or State law enforcement agency who is authorized

to carry a handgun while on duty, is not subject to disciplinary action which could prevent the carrying of a handgun, and who meets the requirements of the agency regarding handguns. The act becomes effective December 1, 1997.

Confiscated Gun/Law Officer Use (S.L. 1997-356; HB 523): S.L. 97-356 restores a section of the law repealed in 1994 to permit a judge to order that a confiscated deadly weapon be turned over to a local law enforcement agency for the agency's official use. The act amends G.S. 14-269.1 by allowing a judge, when requested by the head or chief of a local law enforcement agency, to order that the weapon be turned over to a local law enforcement agency for the official use of the agency. The weapon must have a legible unique identification number and the receiving agency must maintain a record and inventory of the confiscated weapon received. This act became effective August 1, 1997.

Company Police/ Concealed Weapons and Handguns (S.L. 1997-441; SB 561): S.L. 97-441 amends the Company Police Act and the Concealed Handgun Permit law to permit company police officers to carry concealed weapons while off-duty when authorized by their superior officer the same as other sworn law enforcement officers, amends the concealed carry permit law to include company police and certain retired company police in the exemption from the training requirements for a concealed handgun permit, and clarifies that lacking mental capacity or being mentally ill for concealed handgun permitting purposes requires a judicial determination and that receipt of previous consultative services or outpatient treatment alone does not disqualify a person from receiving a permit. The training requirement exemption becomes effective December 1, 1997. The remainder of the act became effective August 28, 1997. The clarification for determinations of lack of mental capacity or mental illness applies to permit applications made since December 1, 1995.

Shooting Range Protection Act (S.L. 1997-465; HB 1012): S.L. 97-465 enacts a law to provide protection for existing shooting ranges from certain future governmental regulation. G.S. 14-409.46(a) prohibits civil or criminal prosecution of a shooting range owner, operator, or user for noise or noise pollution arising from the operation of the range if the range had been in existence three years prior to September 1, 1997 and the range was in compliance with any noise control laws or ordinance at the time of the range began operation. G.S. 14-409.46(b) exempts an owner, operator, or user of a shooting range from a nuisance action based on noise or noise pollution and a court is prohibited from enjoining the use of the range on the basis of noise or noise if the range was in existence three years prior to September 1, 1997 and the range was in compliance with existing noise control laws at the time the range began operation. G.S. 14-409.46(c) exempts shooting ranges, exempt from liability under this act, from noise limit rules adopted by a State department or agency. G.S. 14-409.46(d) prohibits a person who buys real estate adversely affected by a permanent range from bringing a nuisance action on the basis of noise or noise pollution if the range was constructed and initially operated prior to the time the person acquired the title to the property adversely affected, unless there has been a substantial change in the use of the range after the person acquires title, in which case the person must bring a nuisance action within one year of the substantial

change in use. G.S. 14-409.46(e) permits shooting ranges in existence, not in violation of the law at the time an ordinance is adopted, and which was in existence at least three years prior to September 1, 1997, to continue to operate even if the range does not conform to any new or amended ordinance, provided there has been no substantial change in use. G.S. 14-409.47 states that this law does not otherwise prohibit a local government from regulating the location or construction of a shooting range after September 1, 1997. G.S. 14-409.45 defines "substantial change in use" as "the current primary use of the range no longer represents the activity previously engaged in at the range." The act became effective September 1, 1997.

Handgun Fee Reallocation (S.L. 1997-470; SB 441): See **TAXATION**.

Law Enforcement

Increase Number of Fictitious License and Registration Plates (S.L. 1997-443, Sec. 20.10; SB 352, Sec. 20.10): The act increases from 100 to 125 the number of fictitious licenses and registration plates that may be issued to local, State, or federal law-enforcement officers on special undercover assignments. The plates can only be used on publicly owned or leased vehicles. The act, which became effective June 29, 1997, removed the sunset on prior increases in the number of fictitious plates.

Standards for Telecommunicators (S.L. 1997-443, Sec. 20.11; SB 352, Sec. 20.11): The act amends the definition of a justice officer in G.S. 17E-2(3) to include a person who serves as a telecommunicator under the direct supervision and control of the sheriff, or who is presented to the Training and Standards Commission for purposes of certification for appointment as a telecommunicator by an employer. It also amends G.S. 17E-7(c1) to require that any justice officer appointed as a telecommunicator at the entry level after March 1, 1998 meet all the requirements of Chapter 17E. Any person employed in that capacity on or before that date shall not be required to meet any entry-level requirements but must be reported to the Commission for certification. The section became effective July 1, 1997.

Corrections and Crime Control Oversight Committee (S.L. 1997-443, Sec. 21.4; SB 352, Sec. 21.4): The act amends Article 12J of Chapter 120 of the General Statutes, which governs the Joint Legislative Corrections Oversight Committee. The act changes the title to the Joint Legislative Corrections and Crime Control Oversight Committee, and directs the Committee to study law enforcement systems as well as the correctional system. It directs the Committee to study the budget, programs, and policies of the Department of Crime Control and Public Safety and to examine the effectiveness of the Department of Crime Control and Public Safety in implementing the duties and responsibilities charged to the Department, as well as the overall effectiveness and efficiency of law enforcement in this State. The provision became effective August 28, 1997.

Motor Vehicle Offenses

Limit, Modify, and Enhance Attempting to Elude Arrest Statutes (S.L. 1997-443, Sec. 19.26; SB 352, Sec. 19.26): The act repeals the existing law on speeding to elude arrest, and adds a new G.S. 20-141.5 which makes it unlawful for any person to operate a motor vehicle while fleeing or attempting to elude a law enforcement officer who is in the lawful performance of his duties. Violation is a Class 1 misdemeanor, except where two or more of the enumerated aggravating factors are present. If two or more of the aggravating factors are present, the offense is a Class H felony. Aggravating factors include: (1) speeding in excess of 15 miles over the legal limit; (2) driving while impaired; (3) reckless driving; (4) negligent driving leading to an accident; (5) driving with a revoked license; (6) speeding in a school zone or work zone during restricted times; (7) passing a stopped school bus; and (8) driving with a child under 12 in the vehicle. Evidence that a vehicle was operated in violation of the statute is prima facie evidence that the vehicle was operated by the registered owner at the time of the violation; if the vehicle is rented, proof of the rental is prima facie evidence that the vehicle was operated by the renter of the vehicle at the time of the violation. Upon a misdemeanor conviction, DMV is required to suspend the drivers license of the offender for up to one year. If the person is convicted on the basis of the presence of two aggravating factors, DMV is required to revoke the license of the offender for two years. The presence of three or more aggravating factors will result in a three year revocation. A limited driving privilege may be granted in certain instances. Each law enforcement agency is required to adopt a policy applicable to the pursuit of fleeing or eluding motorists. The Attorney General is directed to develop a model policy or policies for use by law enforcement agencies. The act makes additional conforming changes. The section becomes effective December 1, 1997 and applies to offenses committed on or after that date.

Speeding In A Work Zone (S.L. 1997-488; SB 30): The act changes the penalty for the infraction of speeding in a work zone from $100 to an amount not less than $100 nor more than $250. It also requires the Secretary of Transportation to ensure that work zones are only posted with penalty signs when, after an engineering review, the Secretary determines that posting is necessary to ensure the safety of the traveling public. The act became effective October 1, 1997 and applies to violations which occur on or after that date.

Sentencing

Allow Active Sentence for Time Awaiting Trial (S.L. 1997-79; HB 174): S.L. 97-79 amends G.S. 15A-1340.20 to allow a judge to impose an active sentence for a class of offense and prior conviction level that would ordinarily only allow Community Service or Intermediate punishment if the active sentence is equal to or less than the actual time the offender has already spent confined due to the charges for which the sentence is given. This act became effective May 22, 1997.

Structured Sentencing/Technical and Clarifying Amendments (S.L. 1997-80; HB 175): S.L. 97-80 was a recommendation of the North Carolina Sentencing and Policy Advisory Commission. The law makes the changes explained below.

Under Structured Sentencing, there is a rule known as the one-fourth rule [G.S. 15A-1351(a)]. Under the one-fourth rule, a sentence may be suspended only if the period of incarceration imposed as a condition of special probation does not exceed one-fourth of the suspended sentence. A defendant who commits a third or subsequent shoplifting offense, under G.S. 14-72.1, is guilty of a Class 1 misdemeanor for which the longest sentence in Prior Record Level II is 45 days. Based upon the one-fourth rule, the longest suspended sentence as a condition of special probation in this case should be 11 days. However, G.S. 14-72.1(e) provides for a minimum period of 14 days. Section 1 changes the minimum number of days from 14 to 11 to conform with the one-fourth rule.

Section 2 deletes from G.S. 15A-1021 language referring to a prison term outside of the presumptive sentence. Under Structured Sentencing, there can be no prison term outside of the presumptive sentence. In addition, the statute referenced in this provision, G.S. 15A-1340.4(f), was repealed with the enactment of Structured Sentencing.

Section 3 clarifies that, for Class A offenses, a life sentence means life imprisonment without parole.

As a part of Structured Sentencing, G.S. 15A-1444 was amended to add subsection (a2) to give an appeal as of right for the imposition of an incorrect sentence under Structured Sentencing. However, subsection (e) of this statute, which denies an appeal as of right, was not amended to reflect the addition of subsection (a2). Section 4 adds "(a2)" as an exception in subsection (e).

G.S. 113-136(j) addresses the enforcement authority of wildlife inspectors. However, the language used in the statute is not consistent with Structured Sentencing. Section 5 makes the offense a Class 3 misdemeanor.

Section 6 clarifies that community punishment may not include any of the conditions of probation listed as intermediate punishments. Some judges have been imposing these conditions under community punishment, even though the conditions are listed under intermediate punishment and are intended solely for intermediate punishment.

In determining prior record level under Structured Sentencing, only the most serious conviction in each court session is assigned points. However, Structured Sentencing does authorize an additional point if the elements of the current offense are included in **any** prior offenses. Section 7 clarifies that, when imposing this additional point, the court may compare the offense to **all** prior convictions, not just the most serious conviction in each court session. This section also provides that if the offense was committed while the defendant was on post-release supervision, the defendant may receive an additional point.

Section 8 provides that only felonies and misdemeanors may count toward prior record level. An offense which is an infraction at the time of the current offense may not be included.

Section 9 clarifies that conspiracy to commit drug trafficking offenses fall under mandatory drug trafficking laws. Conspiracy to commit other drug offenses are punished according to the Structured Sentencing grid.

Section 10 repeals G.S. 15-48, Outlawry for Felony. This statute authorizes a judge, upon a written affidavit that a felony has been committed, to empower a sheriff or any citizen to apprehend and slay an individual. The statute has been declared unconstitutional.

Sections 11 and 12 make technical changes to the statutes authorizing the issuance of nontestimonial identification orders for a juvenile. A nontestimonial identification order is an order for fingerprints, palm prints, blood and urine specimens, saliva samples, etc. The statute fails to contain language consistent with Structured Sentencing. The sections delete language allowing such orders for offenses "punishable by imprisonment for more than two years" and substitute the words "a felony offense".

Section 13 makes technical changes to G.S. 15A-263 dealing with the issuance of ex parte orders authorizing a pen register or a trap and trace device. These are devices used to identify numbers dialed on a telephone line. Again, the statute fails to reflect language consistent with Structured Sentencing. This section deletes language authorizing such orders for "an offense punishable by imprisonment for more than one year" and substitutes "a felony offense, or a Class A1 or Class 1 misdemeanor".

Sections 14 and 15 make technical changes to the statutes authorizing the issuance of nontestimonial identification orders for adult defendants. To reflect language consistent with Structured Sentencing, the sections delete language allowing such orders for "an offense punishable by imprisonment for more than one year" and substitute "a felony offense, or a Class A1 or Class 1 misdemeanor offense".

The act becomes effective December 1, 1997 and applies to offenses commuted on or after that date.

Fail Community Service/Revoke License (S.L. 1997-234; SB 393) - See **TRANSPORTATION**.

Make Sentencing Commission Permanent (S.L. 1997-443; SB 352, Sec. 18.6): The N.C. Sentencing and Policy Advisory Commission, scheduled to expire on June 30, 1997 was made permanent when the sunset date was removed. The terms of existing members expired on June 30, 1997 and new appointments or reappointments will be for two-year terms. The Commission will make annual reports to the General Assembly.

Current Operations and Capital Budget Act (S.L. 1997-443, Sec. 19.25; SB 352, Sec. 19.25): The following provisions to enhance criminal penalties will become effective December 1, 1997, and apply to offenses committed on or after that date:

Increase Criminal Penalty for Certain Embezzlement Offenses (Sec. 19.25 (d through o)): Under existing law, offenses of larceny by employees and obtaining property by false pretenses were classified as Class H felonies, and various other embezzlement offenses were classified as either Class F or Class H felonies. In general, this act makes embezzlement of property valued at $100,000 or more a Class C felony.

Reclassify Offense of Accessory After the Fact (Sec. 19.25(p)): The act relates the offense of accessory after the fact to the seriousness of the principal offense by classifying the offense of accessory after the fact two classes lower than the underlying felony itself. The act provides that accessory after the fact to a Class A or B1 felony (1st

degree murder, 1st degree rape, or 1st degree sexual offense) is a Class C felony. Accessory after the fact to a Class B2 felony (for example, 2nd degree murder) is a Class D felony. Accessory after the fact to a Class C felony would be a Class E, and so on - D/F, E/G, F/H, G/I. The act provides that accessory after the fact to a Class H felony is a Class 1 misdemeanor, and accessory after the fact to a Class I felony is a Class 2 misdemeanor.

Increase Penalty for Voluntary Manslaughter (Sec. 19.25(p)): The act raises the felony offense class for voluntary manslaughter from Class E to Class D.

Increase the Penalty for Certain Offenses Committed While a Person Is Incarcerated (Sec. 19.25(r through t)): The act makes it a Class 1, rather than a Class 3 misdemeanor for a prisoner who is on work detail for a county to escape from custody. The act makes it a Class H felony (previously Class I) for a prisoner to break out of a county or city jail if the person has been convicted of a felony. It makes it a Class 1 misdemeanor (previously a Class I felony) for a first offense of escape if the person is a misdemeanant, but a felon or a person previously convicted of escaping or attempting to escape would be punished as a Class H felon (previously Class I). The act makes possession of a controlled substance on the premises of a prison or jail a Class H (previously Class I) felony, and makes it a Class H (previously Class I) felony for a prisoner to intentionally injure himself in order to avoid work or other assigned duties.

Aggravating Factor that Certain People Seriously Injured (Sec. 19.25(v)): In felony sentencing, the fact that the offense proximately caused serious injury to any of the following is an aggravating factor: a law enforcement officer, Department of Correction employee, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant clerk or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of that person's official duties or because of the exercise of that person's official duties.

Increase the Penalty for the Establishment of Pyramid Distribution Plans (Sec. 19.25(x)): The act makes it a Class H felony to establish or operate a pyramid distribution plan. The penalty for participating in or otherwise promoting such a plan remains a Class 2 misdemeanor.

Increase Penalty for False Bomb Report (Sec. 19.25(cc) and (dd)): The act increases the penalties for the offenses of falsely reporting a bomb and of perpetuating a hoax by using a false bomb. Under prior law, a false bomb threat or planting a false bomb was a Class 1 misdemeanor. This act reclassifies the offenses as Class H felonies.

Criminal Street Gang Involvement Is Aggravating Factor (Sec. 19.25(ee)): The act provides that in felony sentencing, the fact that the offense was committed in association with any criminal street gang is an aggravating factor.

Felony to Use Certain Devices in Shoplifting Offenses (Sec. 19.25(ff)): The act increases the penalty for shoplifting to a Class H felony when the merchandise is concealed by using a lead-lined or aluminum-lined bag or other device to prevent activation of an anti-shoplifting control device.

Increase Penalties for Certain Assaults (Sec. 19.25(gg) and (hh)): The act increases the penalties for assault on a probation officer, parole officer, or state or county corrections employee by reclassifying the offenses from misdemeanors to Class E felonies, thereby placing the assaults in the same classification as assault on a law officer.

DWI/Felony Prior Record Level (S.L. 1997-486; HB 183): S.L. 97-486 provides that in felony sentencing, convictions for DWI will be included in the calculation of the offender's prior record level. A conviction for impaired driving in a commercial vehicle will also be included in felony prior record calculation. The act also provides for an indefinite civil suspension of a drivers license if the driver has, at the time of the offense, one or more pending DWI offenses. The civil suspension will remain in effect until a final judgment has been entered for all of the offenses. The act provides for the issuance of a limited driving privilege in the event of an indefinite civil suspension, when a judge finds that the limited driving privilege is necessary to overcome undue hardship. The defendant's license must be suspended for a minimum of 10 days before the limited driving privilege may be issued. The provisions regarding felony prior record level calculation become effective December 1, 1997. Provisions regarding administrative license revocations and limited driving privileges become effective July 1, 1998.

Littering/Require Community Service (S.L. 1997-518; HB 1140): S.L. 97-518 provides that the court may order at least 8 but not more than 24 hours of community service for a first offense involving littering up to 15 pounds; for a second or subsequent offense within 3 years the court may order community service of at least 16 but not more than 50 hours. For a conviction of littering in an amount more than 15 pounds, but less than 500 pounds, the court must order community service of at least 24 but not more than 100 hours. The community service required is to pick up litter, if feasible. Littering in an amount exceeding 500 pounds, or in any quantity for commercial purposes, is a Class I felony and is not affected by this act. The act becomes effective December 1, 1997 and applies to offenses committed on or after that date.

Sex Offenders

Clarify Sex Offender Registration (S.L. 1997-15; HB 139): S.L. 97-15 amends G.S. 14-208.6 to make it clear that a person convicted of a sex offense in federal court or in a state other than North Carolina is required to register in this State. The definition of "penal institution" is amended to clarify that a detention facilities operated by another state, the federal government, or by a local government in this or another state are included. The definition of "reportable conviction" is amended to clarify that a conviction in a federal jurisdiction, of an offense similar to the North Carolina reportable offenses, is included. The act became effective April 3, 1997 and applies to all persons convicted on or after that date and to all persons released from a penal institution on or after that date.

Sex Offender Registration/Federal Compliance (S.L. 1997-516; SB 676): S.L. 97-516 amends the North Carolina Sex Offender Registration Program. The majority of the amendments are required to bring the North Carolina statute into compliance with federal law.

S.L. 97-516 expands the registration program's application to persons who commit certain types of offenses against minors, when the offender is not the parent or legal

guardian of the minor. Specifically, kidnapping, abduction of children, felonious restraint and false imprisonment are added as offenses for which registration is required when they are committed against a minor.

Three types of registration programs are created by this act: 1) Sex Offender Registration; 2) Sexually Violent Predator Registration; and 3) Juvenile Registration.

Sex Offender Registration

All persons convicted of an offense against a minor, a sexually violent offense, or an attempt to commit any of those offenses must register with the sheriff of the county where the person resides. The sheriff must forward the information to the Division of Criminal Statistics of the Department of Justice (Division) where it will also be maintained in a statewide registry. The offender is required to maintain registration for a period of 10 years following release from a penal institution, or if no active sentence is imposed, a period of 10 years following the conviction. The offender must notify the sheriff of any change of address during that period, and the information will be verified annually. Failure to register, notify the sheriff of a change of address, to return a verification notice or for forgery or submission of information under false pretenses is a Class F felony. Previously, failure to register was a Class 3 misdemeanor for a first offense and a Class I felony for a subsequent offense. The registration requirements automatically terminate 10 years after the initial registration, provided the offender has not been convicted of a subsequent offense requiring registration under this act.

The sheriff of each county will maintain a countywide registry of all offenders registered in that county. Additionally, the Division will maintain a statewide registry of all offenders registered in the state. The following information from each registry is public record: name, sex, address, physical description, picture, conviction date, offense for which registration was required, the sentence imposed as a result of the conviction and registration status. Any person may obtain a copy of an individual's registration form, a part of the county or state registry, or all of the county or state registry, by submitting a written request to the sheriff or to the Division. A reasonable fee for duplicating and mailing costs may be charged. Additionally, the Division will provide free public access to automated data from the statewide registry, including photographs, via the Internet.

Under the previous law there was a process for obtaining an exemption from registration. This act deletes that provision and provides that all persons committing one of the offenses must register.

Sexually Violent Predator Registration

When a person is charged with a sexually violent offense, the District Attorney may decide to seek classification of the offender as a "sexually violent predator". A "sexually violent predator" is defined as "a person who has been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in sexually violent offenses directed at strangers or at a person with whom a relationship has been established or promoted for the primary purpose of victimization". Prior to sentencing a person as a sexually violent predator, the court must order a presentence investigation and a study of the defendant must be conducted by a board of experts selected by the Department of Correction. If the court reviews the presentencing report and makes written findings that the defendant is a

sexually violent predator, then the offender must maintain registration under the provisions of the Sexually Violent Predator Registration program.

A sexually violent predator must follow the same requirements and procedures as other sex offenders, with a few changes. A sexually violent predator is required to maintain registration for a minimum of 10 years and indefinitely after that time until a determination is made that the person no longer suffers from a mental abnormality or personality disorder that would make the person likely to engage in a predatory sexually violent offense. Ten years from the initial date of registration, a person classified as a sexually violent predator may petition the superior court to review the classification provided there has not been a subsequent conviction of any offense that would require registration. If the court grants the review, another study, such as the one done at presentencing, is conducted and the court will hold a hearing to determine if the offender's classification as a sexually violent predator should be terminated.

Sexually violent predators must provide additional information to the sheriff, including: identifying factors, offense history, and documentation of any treatment received by the person for the person's mental abnormality or personality disorder (no information regarding medical records or treatment are to be released as part of the public record). Verification of registration information for sexually violent predators will be conducted every 90 days by the sheriff (other offenders' information is verified once per year). All other procedures and requirements are the same as under the Sex Offender Registration program.

Registration of Certain Juveniles Adjudicated for Committing Certain Offenses

If a juvenile is adjudicated delinquent for committing first degree rape, second degree rape, first degree sexual offense, second degree sexual offense, or attempted rape or sexual offense, and the juvenile was at least 11 years old at the time of the commission of the offense, the court shall consider whether the juvenile is a danger to the community. If the juvenile is determined to be a danger to the community, then the court shall consider whether the juvenile should be required to register with the sheriff of the county in which the juvenile resides. If the juvenile is found to be a danger to the community and is required to register, the juvenile must provide the same registration information that an adult offender is required to provide to the sheriff. This information will be maintained in a separate registry by the sheriff and will be forwarded to the Division for placement on the Police Information Network. The registry information of a juvenile is not public record, is not available for public inspection, and is only available to law enforcement agencies.

Juveniles required to register must notify the sheriff of any change of address. Verification of the registration information of a juvenile will be conducted annually until the juvenile is no longer required to register. The registration requirement of a juvenile automatically terminates on the juvenile's eighteenth birthday or when the jurisdiction of the juvenile court with regard to the juvenile ends, whichever occurs first.

Juveniles 13 years old or older who are tried and convicted as an adult in superior court are not subject to these requirements and must register under the provisions of the adult registration programs.

S.L. 97-516 provides for the appointment of a committee to study whether a juvenile adjudicated delinquent for committing a sexually violent offense or an offense

against a minor should be required to register under this act. The committee is directed to study what the procedures, requirements, termination of requirements, accessibility of registration records by law enforcement officials and by the general public, should be if a juvenile is required to register. The committee shall consist of 12 members appointed by the Secretary of the Department of Crime Control and Public Safety, six each from a list of nominations provided by the Speaker of the House of Representatives and the President Pro Tempore of the Senate.

The provisions of this act providing for the registration of certain juveniles for the commission of certain offenses become effective October 1, 1999. The remainder of this act becomes effective April 1, 1998.

Victims Compensation and Victims Rights

Victim's Family Witness Execution (S.L. 1997-70; HB 336): S.L. 97-70 amends G.S. 15-190, which deals with the carrying out of executions when there has been a sentence of death, and which sets out who is permitted or required to attend such executions. The new law reduces the number of citizen witnesses from six to four and adds two members of the victim's family to those who may witness the execution if they so desire. Executions remain under the general supervision and control of the warden of the penitentiary. The act became effective May 22, 1997.

Modify Victims Compensation Act (S.L. 1997-227; HB 374): S.L. 97-227 amends the Crime Victims Compensation Act, which compensates crime victims for economic loss, including lost wages, medical care, rehabilitation, funeral and burial expenses. The act increases the maximum compensation for funeral and burial expenses from $2,000 to $3,500; makes a victim of a hit and run accident eligible for compensation, when the victim is a pedestrian or is in a wheelchair or similar device; and extends coverage under the act to a victim of an act of terrorism (as defined in 18 USC 2331) committed outside of the U.S. against a N.C. citizen. The terrorism provision is required under federal law if the State is to continue to receive federal funds. The act became effective June 27, 1997 and applies to claims arising from criminally injurious conduct that occurs on or after April 1, 1997.

Nurses' Training (S.L. 1997-375; SB 320): S.L. 97-375 amends the law to allow licensed registered nurses who have successfully completed a training program approved by the North Carolina Board of Nursing to conduct medical examinations and collect evidence from victims of rape and sexual offenses, and would allow these nurses to be paid directly for these services by insurance companies and the Victims Assistance Program. The act also authorizes the education and training of licensed registered nurses in skills, procedures and techniques for conducting medical examinations of and collecting evidence from victims of rape and sexual offenses in accordance with standards established by the Board. Entities desiring to establish an approved program must apply to and meet standards set by the Board. This act became effective August 6, 1997.

Assistants for Administrative and Victim and Witness Services (S.L. 1997-443, Sec. 18.7; SB 352, Sec. 18.7): Along with a provisional appropriation for personnel to support the implementation of the Victims' Rights Amendment, the act rewrites the law regarding victim and witness assistants. The victim and witness assistants, who are employed in the district attorneys' offices, are now called assistants for administrative and victim and witness services. The positions will have the added responsibility of providing administrative and legal support to the district attorney's office. Persons currently serving as legal assistants or as victim and witness assistants are to be appropriately trained to serve in the new position. The section became effective July 1, 1997.

MAJOR PENDING LEGISLATION

Crime Victims Rights Act (SB 763, HB 665) SB 763 and HB 665 would create the Crime Victims Rights Act, would provide for assistance for victims of domestic violence, would provide for orders of restitution in sentencing of criminal defendants, and would allow for the enforcement of orders of restitution in criminal cases in the same manner as in civil judgments.

STUDIES

Legislative Research Commission Studies

The Studies Act of 1997 (S.L. 1997-483, Sec. 2.1)) authorizes the Legislative Research Commission to study: (1) Robbery Witness Protection for Employees of Financial Institutions; and (2) the Rights of Victims of Crime and to Implement the Victims Rights Constitutional Amendment.

VII. EDUCATION

(Kory Goldsmith, Robin Johnson, Sara Kamprath)

Ratified Legislation

Public Schools

Repeal Obsolete School Laws (S.L. 1997-18; SB 70): S.L. 97-18 repeals a number of laws considered to be obsolete or redundant: (i) G.S. 115C-15, requiring an annual report from the State Board of Education (Board) on the implementation of the School Improvement and Accountability Act of 1989; (ii) G.S. 115C-21.1, which required the Department of Public Instruction to report annually to the General Assembly on class size waivers granted by the Board; (iii) G.S. 115C-22, which established the Alcohol and Drug Defense Program; (iv) G.S. 115C-83, which directed the State Superintendent to provide to public schools materials for the observance of special days; (v) G.S. 115C-102.8, which referred to a one-time appropriation for the 1993-94 fiscal year; (vi) Part 4 of Article 9 of Chapter 115C of the General Statutes, which established the Regional Educational Training Centers, which were envisioned as centers that would provide assistance to public schools in their identification of and programs for exceptional children, but which were never established or funded; (vii) G.S. 115C-144, which directed the Departments of Human Resources and Correction to provide their budget requests for programs of special education and related services to the Board before those agencies submitted them to the Governor; (viii) Part 6 of Article 16 of Chapter 115C of the General Statutes, which established the Project Genesis Program as a pilot program designed to give greater flexibility to a few school units; (ix) G.S. 115C-298, which allowed colleges and universities to assist teachers in certification; (x) Part 4 of Article 22 of Chapter 115C of the General Statutes, which created the Personnel Administration Commission to make recommendations to the Governor and the Board on personnel policies for public school personnel; (xi) G.S. 115C-472, which was a 1984 requirement to establish the Prospective Teacher Scholarship Loan; and (xii) Part 9 of Article 9 of Chapter 115C of the General Statutes, which continued to 1987 the Central Orphanage, which the General Assembly chartered in the 1800's.

The act also moves the statutes establishing the State Schools for the Hearing Impaired from Chapter 115C (Public Schools) to Chapter 143B (Human Resources), and moves and reorganizes the statutes establishing the Governor Morehead School from Chapter 115C (Public Schools) to Chapter 143B (Human Resources).

S.L. 97-18 adds a new subdivision (25) to G.S. 115C-12 (duties of the Board) to require the Board to examine and evaluate issues, programs, policies, and fiscal information, at the request of the Joint Legislative Education Oversight Committee. Effective April 11, 1997, the following reports the Board has been required to make to that Committee or to the General Assembly are eliminated: (i) Basic Education Program (annual report); (ii) salary schedule for State-allotted office support personnel, teacher assistants, and custodial personnel; (iii) extended services; (iv) school technology plans; and (v) State Literary Fund. The following reports are to be eliminated on July 1, 1999:

(i) alternative programs evaluation; (ii) reading; and (iii) charter schools. G.S. 115C-472.5(d) also is amended to eliminate the annual reports to the Joint Legislative Commission on Governmental Operations, the Fiscal Research Division, and the State Government Performance Audit Committee on loans made from the Computer Loan Revolving Fund; the Board will continue to make these reports to the Information Resource Management Commission. S.L. 97-18 also adds a new section to Chapter 120 to enumerate the authority of the Joint Legislative Education Oversight Committee to compel attendance, obtain documents and other evidence, and hold hearings. Except as noted, the act became effective April 11, 1997.

School Administrators Standards Exam (S.L. 1997-20; HB 78): Effective January 1, 1998, S.L. 97-20 amends G.S. 115C-290.8 to clarify that persons who were employed in a North Carolina college or university as an instructor while in possession of an active State administrator/supervisor certificate and whose major responsibilities included the preparation or supervision of individuals enrolled in a public school administration program are exempt from having to take the new school administrators examination.

Special Education Mediation (S.L. 1997-115; HB 1098) S.L. 97-115 requires an informal and nonadversarial mediation of special education disputes before a formal request for an administrative review is filed if both the local educational agency and the parents agree. The parents and the local educational agency must jointly select the mediator. The Exceptional Children Division of the Department of Public Instruction shall keep a list of mediators who are certified or trained in resolving this type of dispute, but the parties may choose a mediator who is not on that list. The local educational agency shall pay any fees for the first mediation session. The parties may jointly agree to continue the mediation, and the local educational agency shall pay any mediation fees unless the parties agree otherwise. Until the mediation is completed or the mediator declares an impasse, the 60-day time period for filing a request for the formal administrative review is tolled. Statements made and conduct occurring in the mediation are not subject to discovery and are inadmissible in any proceeding or action on the same claim. Mediators may not be compelled in any civil proceeding to testify or produce evidence concerning these statements or conduct. Parties also may participate in a mediated settlement conference after a request is filed for an administrative review and before the hearing. Parties may agree to use other dispute resolution methods or mediation in other circumstances, including after the request for administrative review is filed, to the extent permitted under State and federal law. The act became effective May 29, 1997.

Parents on School Improvement Teams (S.L. 1997-159; HB 977): S.L. 97-159amends G.S. 115C-105.27 to provide that parents must be elected to a school improvement team in an election conducted by that school's parent and teacher organization, unless the local board has a policy for electing parents to school improvement teams. If no parent and teacher organization exits in a school, the parents shall be elected by the largest organization of parents formed for the purpose of holding an election. The act became effective June 6, 1997.

Time For Initial Entry Into Kindergarten (S.L. 1997-204; SB 1011) S.L. 97-204 amends G.S. 115C-364 to change the admission requirements for kindergarten enrollment. A child shall be enrolled in kindergarten during the first 120 days of the school year, if:

1. the child turned five years old on or before October 16 of that school year, or
2. the child did not turn five years old on or before October 16 of that school year but had been attending school in another state in accordance with that state's laws or rules before moving to North Carolina.

After the first 120 days of the school year, a local board may allow a child to enroll in kindergarten if the same conditions are met. The act became effective June 19, 1997.

The Excellent Schools Act (S.L. 1997-221; SB 272) S.L. 97-221 makes numerous changes in the law regarding professional standards for teachers and substantially rewrites the teacher dismissal process. The stated purpose of the Excellent Schools Act is to improve student performance and reduce teacher attrition. The legislation requires clear evidence of specific progress towards these goals as a condition of continued implementation.

A. Improving Student Performance.

Preservice Training - G.S. 115C-296(b) is amended to require that beginning in the 1998-99 school year, all North Carolina institutions of higher education offering degree programs in teacher education, Masters in Education, or Masters in School Administration must provide performance reports to the State Board of Education. The performance reports shall include information such as the quality of students entering schools of education; average scores on certification examinations; percentage of graduates hired as teachers; percentage of graduates remaining in teaching after four years; and graduate and employer satisfaction.

Initial Certification, Continuing Certification, Certificate Renewal, Professional Development - G.S. 115C-296(a) is amended and the State Board is encouraged to continue making the initial certification exams more rigorous. G.S. 115C-286(b) is amended to provide that beginning July 1, 1998, continuing certification will require three, instead of two, years of teaching experience. The State Board shall enhance the requirements for continuing certification and certificate renewal to reflect more rigorous standards aligned with quality professional development programs that reflect State priorities for improving student achievement. Professional development programs offered through the University of North Carolina also shall reflect State priorities for improving student achievement. G.S. 115C-12 is amended by adding a new subsection which makes the State Board responsible for: (1) monitoring professional development programs offered by UNC institutions, and (2) submitting, to the Board of Governors, recommendations regarding alignment of professional development programs with State priorities. G.S. 116-11 is amended by adding a new subsection that directs the Board of Governors to: (1) submit annual reports to the State Board regarding professional development programs, and (2) implement the State Board's recommendations regarding those programs.

Evaluations and Career Status - G.S. 115C-326(a) is amended to provide that the State Board shall revise performance standards for evaluating professional public school employees to include standards and criteria reflecting student achievement, employee skills, and employee knowledge. The State Board shall develop performance standards for evaluating school administrators that include unit performance for increasing student performance and providing a safe learning environment. All probationary teachers shall be observed at least three times annually by a school administrator and at least once annually by a teacher. All probationary teachers shall be evaluated at least once annually by an administrator. G.S. 115C-325(c) is amended to provide that beginning July 1, 1998, the probationary period for a teacher is extended from three to four years.

Dismissal Procedure - G.S. 115C-325, which governs the employment and dismissal of teachers and school administrators, is substantially rewritten and the time it takes to dismiss an employee is reduced almost by half. The changes apply to dismissals initiated after September 1, 1997. The same dismissal procedure applies to: (1) teachers with career status (2) school administrators with career status; (3) probationary teachers during the term of their 1 year contracts; and (4) school administrators during the term of their multiple-year contracts. The legislation creates a new definition, the "career employee", which brings together under one term these four types of employees for purposes of the dismissal procedure. The Professional Review Commission is abolished, as well as the procedure that allowed a teacher to request that a Professional Review Panel review the superintendent's recommendation of dismissal. Instead, if a superintendent notifies a career employee that the superintendent intends to recommend that the employee be dismissed, the employee may request either a hearing before the local board or a hearing before a case manager. The State Board of Education shall select and maintain a list of individuals with experience in alternative dispute resolution who also receive special training to conduct dismissal hearings. If a career employee requests a case manager hearing, the career employee and the local superintendent may each strike up to one third of the names from the State-maintained list. The State Superintendent then selects a case manager from the remaining names. The career employee and the local superintendent may agree to have someone not on the State list serve as a case manager. The purpose of a case manager hearing is to hear evidence so that the case manager can make a recommendation regarding whether the findings of fact substantiate the superintendent's grounds for dismissal. The hearing is private and the case manager is charged with deciding all procedural issues. The case manager also may subpoena witnesses, documents, and records. After the hearing, the case manager must prepare a report for the superintendent. The report must include findings of fact as to each ground for dismissal and all matters related to the superintendent's recommendation. After the case manager submits the report, the superintendent must decide whether to proceed with the dismissal recommendation. If the superintendent does proceed with the recommendation, the career employee may request a hearing before the local board. That board hearing is private, and based upon the case manager hearing record. The local board has very limited authority to receive new evidence. The board may reject the superintendent's recommendation, or accept or modify the recommendation.

The changes also create a procedure that allows a local board to impose a disciplinary suspension without pay for up to 60 days. The procedure for suspending the

employee differs according to the length of the suspension and also the alleged conduct. The career employee may request a board hearing if the suspension is for more than 10 days, or for intentional misconduct such as inappropriate sexual or physical conduct, immorality, insubordination, habitual or excessive alcohol or non-medical use of a controlled substance. The procedure for this type of hearing is similar to a case manager hearing. If the suspension is for less than 10 days and for conduct not otherwise covered, the employee may request a board hearing that is limited to documentary evidence.

The changes also create a new procedure for the demotion of a career school administrator. The administrator is not entitled to a case manager hearing but may request a hearing before the local board based upon documentary evidence.

General Knowledge Tests, Student Performance Standards - Part 3 of Article 8B of Chapter 115C is amended by adding a new section, G.S. 115C-105.38A, which provides that all certified staff members employed in low performing schools that receive assistance teams must take a general knowledge test. The first test shall be administered in the Spring of 1998. Staff members who do not pass the test shall engage in a program of study and remediation. If the staff member fails the general knowledge test three times, the State Board shall begin dismissal proceedings. By the year 2000, certified staff members in all low performing schools shall take either a general knowledge test or an area of certification competency test. The State Board also shall develop a plan to create rigorous student performance standards for grades K-8 and courses in grades 9-12 that align, whenever possible, with the National Assessment of Educational Progress (NAEP) standards. The plan shall also include clear and understandable methods of reporting individual student performance to parents.

B. Reducing Teacher Attrition.

Mentor Program - The State Board shall develop a mentor and orientation program so that each newly certified teacher will have a qualified mentor. The State Board also shall develop guidelines for local boards of education which address issues related to working conditions for new teachers.

Plan to Attract and Retain High Quality Teachers - It is the goal of the General Assembly to increase the starting salary for teachers almost 20% over the next four fiscal years and thereby bring the starting salary to a minimum of $25,000 by the year 2000. The proposed salary schedule includes significant increases after the third year (when continuing certification is attained), and the fourth year (when career status is attained).

"Masters/Advanced Competencies" Certification - The State Board shall develop a "Masters/Advanced Competencies" certificate to replace the Master's degree certificate by September 1, 2000.

Salary Differential Plan for "Masters/Advanced Competencies" and NBPTS Certification - It is the goal of the General Assembly to enact, for the 1997-98 school year, a salary schedule to give a 12% salary increase to teachers who obtain National Board for Professional Teaching Standards certification. It is also the goal of the General Assembly to enact, by the year 2000, a salary schedule to give teachers an 10% salary increase for obtaining a "Masters/Advanced Competencies" certification.

School Based Incentive Awards Under the ABCs Plan - It is the goal of the General Assembly to expand the school-based incentive awards under the ABC's program. Larger financial awards will be available to staff in schools where student achievement is

higher than expected. For the first time, financial awards will be available to staff in schools that meet the expected goals for student achievement.

Extra Teacher Pay - It is the goal of the General Assembly to: (1) provide extra pay for mentor teachers; (2) pay each newly certified teacher for three extra days of orientation and classroom preparation; (3) provide funds for teacher participation in professional development programs that are aligned with State educational goals and improved student achievement; (4) provide funds to pay teachers for working on vacation days; and (5) provide funds to pay teachers for additional assignments and additional workdays.

Except as noted, the act became effective June 24, 1997.

Revise School Board/County Commissioner Mediation (S.L. 1997-222; SB 366): S.L. 97-222 makes revisions to the mediation process between school boards and boards of county commissioners when disputes arise over the local school budget. The Senior Resident Superior Court judge must appoint a mediator to preside as a neutral facilitator at the joint meeting of the two boards. If the joint meeting does not result in a resolution, a mediation process begins. The individuals that will serve on the working groups that represent each board include: 1) the chair of each board or the chair's designee; 2) the superintendent and the county manager or their designees; 3) the finance officer for each board; and 4) each board's attorney. The boards may mutually agree to modify the membership of the working groups. August 1 is the ending date for the mediation, but a mediator may declare an impasse at an earlier time and the boards may mutually agree to continue the mediation. If the mediation is continued after August 1, the board of county commissioners must appropriate the same amount of money to the local current expense fund as was appropriated in the previous year. If there has been no mediated agreement, the local board of education may file an action in Superior Court. G.S. 143-318.11(a)(3) is amended to provide that a public body's consultation with its attorney concerning the handling of a mediation or arbitration may be held in closed session and is not subject to the open meetings law. G.S. 115C-521(c) is amended to provide that the State Board shall review, but not approve school facility construction plans when State funds, grants, or loans are used. The act became effective June 18, 1997.

School Board Leases of School Buildings (S.L. 1997-236; SB 71): S.L. 97-236 amends G.S. 115C-521(d) to allow school boards to enter into contracts for the repair of property not held in fee simple by the board. County commissioner approval is required if the term of the lease is for three years or longer, including any options to renew or extend. If the board of county commissioners approves a lease, they must appropriate sufficient funds to meet the obligation during the ensuing years. School boards would also be able to enter into contracts for the repair or renovation of leased property. Renovation contracts would be subject to county commissioner approval if the contract is for more than $100,000, or if some portion of the work or payment would be made in the following fiscal year. The Local Government Commission (LGC) must approve operational leases and contracts for repair or renovation if a contract or lease is for five or more years and also exceeds $500,000. The act became effective June 27, 1997.

Adequate Funding/Alternative Schools (S.L. 1997-239; SB 765): S.L. 97-239 amends G.S. 115C-12(24) to direct the State Board of Education to adopt guidelines requiring local school administrative units to use: (1) teachers allocated for students in alternative learning programs according to the regular teacher allotment, and (2) teachers allocated for students in alternative learning programs only to serve those students' needs. The act became effective June 27, 1997.

Identify/Remediate At-Risk Students (S.L. 1997-243; SB 1066): S.L. 97-243 directs the State Board to analyze the results of end-of-grade and end-of-course tests by gender, race, and economic status to identify those groups of students who are statistically performing below the State benchmark on those tests. The State Board also shall consider ways to focus resources to address the needs of those students. The act became effective June 27, 1997.

Kindergarten Entry/Gifted Students (S.L. 1997-269; HB 1099): S.L. 97-269 amends G.S. 115C-364 to allow a child who turned four years old on or before April 16 of that school year to enter kindergarten if:

1. the child is enrolled no later than the end of the first month of the school year, and
2. the school principal determines that the child is gifted and is mature enough to justify admission to the school.

The principal's determination is based on information supplied by the child's parent or guardian. The State Board of Education is directed to establish guidelines for the principal to use when making this determination. The act became effective July 3, 1997.

Students Eligible to Attend School (S.L. 1997-271; SB 958): S.L. 97-271 allows a student who is not a domiciliary of a local school administrative unit to attend public school in that unit without the payment of tuition. In order to qualify the following conditions must be satisfied.

1. The student must reside with an adult who is a domiciliary of the unit.
2. The student must reside with the adult as the result of: (a) the death, serious illness, or incarceration of the parent or legal guardian; (b) the parent or legal guardian relinquishing complete control of the student; (c) the parent or legal guardian abused or neglected the student; (d) the parent or legal guardian cannot provide adequate care and supervision for the student; or (e) the loss or uninhabitability of the student's home by natural disaster.
3. The student is not under a term of suspension or expulsion that would constitute grounds for suspension or expulsion in the unit.
4. The adult with whom the student resides and the student's parent or legal guardian each complete an affidavit that confirms the student's qualifications, attests that the student's claim of residency is not primarily for the purpose of attending a particular unit, and attests that the adult with whom the student resides has been given and accepts responsibility for educational decisions related to the child.

Once the local board receives the required information, it must admit the student pending the results of any further investigation of the information provided. The board may remove the student from school if the board finds that any of the information contained in

either affidavit is false. The board must provide an appeal of the decision to remove the student. A person that knowingly and willfully provides false information on the affidavit is guilty of committing a Class 1 misdemeanor and must pay the local board the local cost of educating the student during the period of enrollment. The act became effective July 3, 1997.

Students Learn CPR (S.L. 1997-273; SB 457): S.L. 97-273 amends G.S. 115C-81(e1)(1) to provide that CPR and the Heimlich maneuver training are part of the School Health Education Program. Students shall have hands-on training with mannequins to reach a level of proficiency needed to pass a test approved by the American Heart Association or the American Red Cross. The act became effective July 3, 1997.

No Competition by School Bus (S.L. 1997-315; HB 617): See **COMMERCIAL LAW.**

State Board Subpoena Power (S.L. 1997-325; HB 88): S.L. 97-325 amends G.S. 115C-296(d) to clarify that the State Board must adopt rules for the suspension and revocation of teacher certificates and to authorize the Board to issue subpoenas for the purpose of obtaining documents or the testimony of witnesses in connection with proceedings to suspend or revoke teaching certificates. The act became effective July 25, 1997.

Speeding on School Grounds (S.L. 1997-341; SB 625) See **TRANSPORTATION.**

Teacher Certification Policy (S.L. 1997-383; HB 510): S.L. 97-383 amends G.S. 115C-296 to direct the State Board of Education to adopt policies that set the minimum scores for the measurements used to assess the qualifications of professional school personnel. These policies are exempt from the rulemaking procedures of Chapter 150B of the General Statutes, but the State Board must provide written notice along with a copy of the proposed policies at least 30 days before it adopts them to the schools of education and the local boards of education. Upon adoption of these policies, all rules concerning minimum certification scores that the Board had adopted earlier are immediately repealed. The Board must notify the Codifier of Rules when it adopts these policies, and the Codifier, upon receipt of this notification, must enter the repeal in the North Carolina Administrative Code. The act became effective August 11, 1997.

American History Act (S.L. 1997-422; SB 442): S.L. 97-422 amends G.S. 115C-81(g) to require local boards to allow teachers and administrators to read or post certain enumerated materials that reflect the history of the United States and to prohibit local boards, superintendents, principals, and supervisors from allowing content-based censorship of American history, including that of religious references, in the public schools. However, local boards and school personnel may develop curricula and use materials that are limited to specific topics and that are aligned with the standard course of study or are grade level appropriate. The act also clarifies that high school curriculum-based tests must include questions related to the Declaration of Independence, the United States Constitution, and the most important Federalist Papers. S.L. 97-422 also directs the State Board to adopt a policy by November 30, 1997, that ensures that its adopted

textbooks have no content-based censorship of American history. The State Board also must provide a copy of this act to each superintendent, who must ensure that the personnel within the school unit are informed of the act. The act became effective August 22, 1997.

Amend Charter School Laws (S.L. 1997-430; SB 297; as amended by S.L. 1997-456, Sec. 55.4; HB 115): S.L. 97-430, as amended by S.L. 97-456, makes the following changes to the laws governing charter schools: (1) eliminates the requirement that charter schools must elect to be subject to control and supervision of a local board in order to participate in the State Retirement System; (2) directs the Board of Trustees of the Retirement System, through the Office of the Attorney General, to obtain a private letter ruling from the IRS on whether charter school employees can participate in the System without jeopardizing its status as a governmental plan, and makes charter school employees eligible to participate in the System on the first day of the calendar month following the State's receipt of a favorable ruling; (3) allows current members of the Retirement System who become employed in a charter school to continue making contributions to the System for up to six years as if they are on an approved educational leave of absence; (4) directs the State Board to adopt rules to set a reasonable amount and types of liability insurance that a charter school must be required by contract to obtain; (5) provides that any sovereign immunity of a charter school is waived to the extent of indemnification and clarifies that chartering entities are not liable for the acts or omissions of charter schools; (6) creates a new G.S. 115C-238.29C1 to direct the State Board to adopt a uniform policy on whether and under what circumstances it will require members of the boards of directors, employees, and independent contractors of charter schools who have significant access to students or who have responsibility for the fiscal management of the schools to be subject to a criminal history check and fingerprinting, so long as they are done for purposes of deciding whether to grant final approval of a charter and for the State Board to make employment recommendations to charter schools; (7) prohibits the State Board from requiring members of boards of directors or employees of charter schools from paying for the criminal history checks or fingerprinting; (8) requires charter schools to dismiss or refuse to employ any person upon the recommendation of the State Board, based on the results of the criminal history check or fingerprinting; (9) provides that a charter school is accountable to the local board for purposes of ensuring compliance with applicable laws and their respective charters if that board granted preliminary approval and provides that any other charter school is accountable to the State Board, unless the charter school chooses to be accountable to the local board; (10) removes the requirement that the State Board may sign on behalf of the local board the contract under which the school is to be operated; (11) deletes all references to a contract and specifies that a charter school will operate under a written charter signed by the school and the entity to which it is accountable; (12) prohibits charter schools from being required to sign any other contract and prohibits any terms, other than those in the charter and those imposed on the school by the State Board, from being imposed on a charter school as a condition for the receipt of local funds; (13) removes the restriction on leasing from sectarian organizations; however, if a school leases from a sectarian organization, the name of the organization cannot appear in the name of the school, the classes and

students of the charter school must be physically separated from any parochial students, and there can be no religious artifacts, symbols, iconography, or materials on display in the charter school's entrance, hallways or classrooms; (14) requires local boards to lease any available building or land to the charter school, upon its request, unless it is not "economically or practically feasible" or the local board does not have adequate classroom space to meet its enrollment needs; (15) allows local boards to provide a facility free of charge, so long as the charter school maintains and insures the facility; (16) allows the local board of education of the local school administrative unit in which the charter school is proposed to be located to offer any information or comment concerning an application for a charter; however, the applicant cannot be required to obtain or deliver this information; (17) requires the State Board to consider the local impact statement provided by the local board and to consider the impact on the local board's ability to provide a sound basic education to its students when determining whether to grant preliminary or final approval of a charter; (18) removes the requirement that students who reside in a local school administrative unit other than the one where the charter school is located must have the approval of both local boards; (19) directs the charter school to develop a transportation plan so that transportation is not a barrier to any student who resides in the local school administrative unit in which the school is located; (20) does not require the charter school to provide transportation to any student who lives within 1-1/2 miles of the school; (21) allows the local board of the unit in which the school is located to contract with the school, upon the school's request, for the provision of transportation in accordance with the transportation plan for students who reside at least 1-1/2 miles away from of the school in that school unit, and allows the board to charge a reasonable fee to cover the cost of providing the transportation; however, the board may refuse to provide the transportation if it demonstrates there is no available space on buses it intends to operate during the term of the contract or it would not be practically feasible; (22) limits the assets to "net assets" that are considered property of the local school administrative unit upon dissolution of the school or upon nonrenewal of the charter; (23) provides that any indebtedness incurred or created by the board of directors is not an indebtedness of the State or its political subdivisions and shall not involve or be secured by the faith, credit, or taxing power of the State or its political subdivisions, and requires this language to appear in any contract into which a charter school enters; (24) allows funds allocated by the State Board to be used to enter into operational and financing leases for real property or mobile classroom units for use as school facilities for charter schools and for loan payments; (25) requires charter schools to return a prorata amount of additional funds allocated for any child with special needs who returns to the public schools within the first 60 days of the school year, and requires the prorata amount of additional funds for children with special needs to be allocated to a charter school for each child with special needs who enrolls in the charter school within the first 60 school days; (26) allows the State Board to establish an alternative timeline for the application, approval, and appeals process, so long as final approval occurs by March 15 of each calendar year; (27) allows charter schools to increase their enrollment in years following the first year of operation (without obtaining State Board approval) by 10% annually or as is otherwise provided in the charter; (28) allows a charter school to give enrollment priority to: (a) siblings of students currently enrolled in the school who

were admitted in an earlier year; (b) children of the charter school's teachers, teacher assistants, and principals; and (c) children of the initial members of the school's board of directors, during the school's first year of operation only and so long as these children are limited to no more than 10% of the school's total enrollment or 20 students, whichever is less, and so long as the school is not a conversion school; (29) clarifies that, once enrolled, students are not required to reapply in subsequent enrollment periods; (30) requires the grievance procedure implemented by the State Board also address disputes between charter schools and local boards or the State Board; (31) requires local boards to allow teachers, during the first year of a charter school's operation, to make a request for a leave of absence up to 45 days before the teacher would otherwise have to report for duty; however, in subsequent years, teachers can be required to make this request up to 90 days before they would otherwise have to report for duty; (32) prohibits charter schools from charging fees; (33) requires the application to include the names of the proposed initial members of the board of directors and the name of the local school administrative unit in which the charter school proposes to be located; and (34) makes numerous technical and conforming changes.

The act became effective August 22, 1997.

Loss of Budget Flexibility Under Certain Circumstances/Prohibition on Use of State Funds to Buy Out Superintendents' Contracts (S.L. 1997-443, Sec. 8.7; SB 352): Section 8.7 of S.L. 97-443 amends G.S. 115C-451 to allow the State Board of Education to suspend a local board's budget flexibility at the same time the Board issues a warning to and notifies the local board that it must take remedial action to comply with State laws and rules governing the budgeting, management, and expenditure of funds. The Board also may require that local board to use funds during the period of suspension only for the purposes for which they were allotted or for other purposes with the Board's specific approval. Section 8.7 also rewrites G.S. 115C-271 to allow local boards to buy out superintendents' contracts so long as: (1) no State funds are used; (2) local funds appropriated for teachers, textbooks, or classroom materials, supplies, or equipment are not transferred or used for that purpose; (3) the funds transferred or used for this purpose are made public; (4) the State Board is notified of the funds to be transferred or used for this purpose; and (5) no funds acquired through donation or fund-raising are used, except for funds raised specifically for this purpose and funds donated by private, for-profit corporations. The act requires the State Board to review the accounts of any local school administrative unit when the Board is notified by a local board of the funds to be transferred or used to buy out a superintendent's contract. If the Board finds the local board failed to meet the conditions listed above, then the Board must issue a warning to the board as provided under G.S. 115C-451 and must order the board to take action to comply with these conditions. The section became effective July 1, 1997.

Delete Report on Guaranteed Energy Savings Contracts (S.L. 1997-443, Sec. 8.8; SB 352): Section 8.8 of S.L. 97-443 repeals Section 9 of S.L. 93-775, which required local government units that entered into a guaranteed energy savings contract to report the contract and its terms to the Local Government Commission. The Local Government Commission was required to compile the information, including the expected savings and

an evaluation as to whether expected savings were in fact realized, and to report biennially to the Joint Legislative Commission on Governmental Operations. The section became effective July 1, 1997.

ABC's Performance Recognition (S.L. 1997-443, Sec. 8.14; SB 352): Section 8.14 of S.L. 97-443 amends G.S. 115C-105.36(a) to clarify that school personnel eligible to receive financial rewards under the ABC's program include those who serve students in one or more of grades, kindergarten through 12, and those who are assigned to a public school prekindergarten program that is located within a public elementary school and is designed to prepare students for kindergarten in that school. The section became effective July 1, 1997.

Charter School Requirements (S.L. 1997-443, Sec. 8.19(a); SB 352): Section 8.19(a) of S.L. 97-443 amends G.S. 115C-238.29F(f) to clarify that the financial audit requirements to which charter schools are subject may include the requirements of the School Budget and Fiscal Control Act. The section became effective July 1, 1997.

Civil Penalty and Forfeiture Fund Established (S.L. 1997-443, Sec. 8.20; SB 352): Section 8.20 of S.L. 97-443 adds a new Article 31A, Civil Penalty and Forfeiture Fund, to Chapter 115C of the General Statutes. Article 31A creates the Civil Penalty and Forfeiture Fund, which is to consist of the clear proceeds of all civil penalties and civil forfeitures collected by State agencies and payable to the County School Fund under the State Constitution. The clear proceeds include the full amount of all penalties and forfeitures, but may be diminished by the actual costs of collection, so long as this does not exceed 10% of the amount collected. The officer having custody of the funds in each agency must submit them to the Office of State Budget and Management, which will administer the Fund, within 10 days after the close of the calendar month in which the revenues were collected or received. The Office of State Budget and Management must transfer funds accruing to the Fund to the State School Technology Fund. These funds then must be allocated to local school administrative units on the basis of average daily membership. The section became effective September 1, 1997.

Availability of Staff Development Funds (S.L. 1997-443, Sec. 8.21; SB 352): Section 8.21 of S.L. 97-443 amends G.S. 115C-417 to allow funds allocated for staff development to become available July 1 of each fiscal year and to remain available until December 31 of the next fiscal year. Prior to this change, these funds became available September 1 of a fiscal year and remained available until August 31 of the next fiscal year. The section became effective July 1, 1997.

Tuition of Certain Teachers (S.L. 1997-443, Sec. 8.22(c); SB 352): Section 8.22(c) of S.L. 97-443 adds a new G.S. 116-143.5 to allow teachers and other personnel paid on the teacher salary schedule to pay the in-State tuition rate for courses relevant to teacher certification or to professional development as a teacher, so long as the personnel have established legal domiciles in the State and are employed full-time in North Carolina public schools. The section became effective July 1, 1997.

Legislators on School Technology Commission (S.L. 1997-443, Sec. 8.26; SB 352): Section 8.26 of S.L. 97-443 amends G.S. 115C-102.5 to add four members to the Commission on School Technology and to clarify that of the members appointed by the President Pro Tempore of the Senate and the Speaker of the House of Representative, two shall be senators and two shall be representatives. Also, instead of recommending members to serve as cochairs, the President of the Senate and the Speaker of the House of Representatives each must appoint one of their appointments to serve as cochair. Section 8.26 also amends G.S. 115C-102.6B to remove the requirement that the State Board of Education must approve modifications to the State School Technology Plan after they are reviewed by the Joint Legislative Education Oversight Committee and the Joint Legislative Commission on Governmental Operations and are approved by the Information Resources Management Commission. Finally, Section 8.27 repeals G.S. 120-123(6) in order to remove the School Technology Commission from the list of boards and commissions on which service by legislators is prohibited. The section became effective August 28, 1997.

Rigorous Academic Content Standards (S.L. 1997-443, Sec. 8.27; SB 352): Section 8.27 of S.L. 97-443 amends G.S. 115C-12 (Duties of the Board) to add a new subdivision requiring the Board to develop a comprehensive plan to revise content standards and the standard course of study in reading, writing, mathematics, science, history, geography, and civics. The Board is to survey parents, teachers, and the public to help determine priorities and usefulness of the standards. This section directs the Board to develop and implement a plan for end-of-course tests for the minimum courses required for admission to UNC institutions and to align all end-of-course tests with the revised content standards. The Board also must develop and implement an ongoing process to align State programs and materials with the revised standards for each of the above listed subjects every five years. The first cycle of alignment must be completed by December 31, 2002. Textbook criteria, support materials, State tests, teacher and school administrator preparation, and professional development programs are to be aligned with the new standards. Support materials are to be available for parents and teachers. The Board is directed to collaborate with the Board of Governors to ensure that teacher and school administrator degree programs, ongoing professional development, and other university activity in the public schools align with the State Board's priorities. The Board must report by December 15, 1998, on its plan to revise content standards and the standard course of study and on the proposed timetable for the alignment of programs and materials with the revised standards.

Section 8.27 also repeals Article 8A of Chapter 115C of the General Statutes, which established the North Carolina Standards and Accountability Commission, and creates a new Committee on Standards and Accountability to advise the Board on student performance standards. G.S. 115C-12 is amended to add a subdivision that directs the Board to develop high school exit exams, grade-level proficiency benchmarks, student proficiency benchmarks for courses necessary for admission to the UNC constituent institutions, and student proficiency benchmarks for the knowledge and skills necessary to enter the workforce. The high school exit exams and the student proficiency

benchmarks must align with the new academic content standards and may contain elements of the school-based accountability annual performance goals. The State Board must implement the high school exit exams by the Spring semester of the 1999-2000 school year, except the date may be extended if the Board determines it is not practically feasible to implement them by 2000. The Board must provide a progress report on the plan to implement exams and benchmarks by December 15, 1998, to the Joint Legislative Education Oversight Committee.

Finally, the Board is directed to study the feasibility of requiring as a condition of graduation; two high school courses in United States history and two high school courses in economic, legal, and political systems in action. The Board must report to the Joint Legislative Education Oversight Committee by December 15, 1998.

Safe Schools (S.L. 1997-443, Sec. 8.29; SB 352): Section 8.29 of S.L. 97-443 makes the following changes:

Subsection (a) creates a new G.S. 115C-105.28 to authorize the State Board to provide assistance teams to schools to promote or restore safety and orderly learning environments. School improvement teams or parent organizations must ask the local board to provide this assistance first. If the local board fails to provide adequate assistance, then they may ask the State Board to provide an assistance team for their school. Also, local boards and superintendents may ask the State Board to provide an assistance team. If the State Board assigns a team to the school, the team must spend time with the school to assess the school's problems, assist personnel with resolving those problems, work with personnel to develop a long-term plan to restore and maintain order and discipline at the school, and make recommendations to the local board and superintendent on actions they should take. The recommendations must be in writing and are public records. The team may recommend dismissal of any teacher or administrator to the local board and to the State Board.

Subsection (b) adds a new Article 27A to Chapter 115C – Management and Placement of Disruptive Students. This Article allows a teacher to refer a student to a school-based committee after the teacher has asked for assistance from the principal at least two times due to the student's disruptive behavior and the behavior continues to interfere with the academic achievement of that student or other students. The committee must notify the student's parents, guardians or custodians and encourage their participation in any proceedings. The committee must review the matter and take at least one of the following actions: (i) advise the teacher on effective management of student behavior, (ii) recommend to the principal a transfer of the student, (iii) recommend to the principal a multidisciplinary diagnosis and evaluation of the student, (iv) recommend to the principal that the student be placed in an alternative learning program, or (v) recommend to the principal additional services for the student. If the principal fails to implement the recommendations, the principal must provide written explanations and reasons to the teacher, committee, and superintendent. Committee recommendations are final and cannot be appealed.

Subsection (d), which takes effect November 1, 1997, amends G.S. 115C-366 to allow a local board to determine whether a transfer student is under a term of suspension or expulsion from another school or has been convicted of a felony. Parents, guardians,

or custodians must provide a statement made under oath or an affirmation before a qualified official (i.e., a notary) before any student can be admitted to a public school. This statement or affirmation must indicate whether student is, at the time, under suspension or expulsion from any other school or has been convicted of a felony. If the board learns that a student is currently suspended from another school, the board may deny admission to or place reasonable conditions on that transfer student for the time remaining in the period of suspension or expulsion. If the board learns that a student has been expelled from another school or has been convicted of a felony, the board may deny admission to or place reasonable restrictions on the admission of that student. A student who is denied admission because the student has been expelled or convicted of a felony must be allowed the opportunity to request the local board reconsider its decision to deny admission at any time after the first July 1 that is at least 6 months from the decision to deny admission.

Subsection (e), which becomes effective November 1, 1997, amends the Juvenile Code by adding a new section (G.S. 7A-675.1) to require the juvenile court counselor to deliver verbal and written notice to a principal of a public or private school when a petition is filed alleging delinquency for a felony offense (other than a motor vehicle offense), the case is transferred to superior court where the juvenile will be tried as an adult, the petition is dismissed, the judge issues ANY dispositional order (including probation with school attendance required as a condition of probation), or the judge modifies or vacates any order or disposition. Currently, there is no provision requiring the court to notify schools when juveniles (who are under 16) are alleged or found delinquent. Verbal notice must be delivered before the beginning of the next school day. Written notice is to be delivered as soon as practicable but no later than five days either in person or by certified mail. If the court counselor learns that the juvenile is transferring to another school, the counselor shall deliver the required notification to the principal of that school.

Subsection (f), effective November 1, 1997, adds a new G.S. 115C-404 to provide for the school's confidential treatment of juvenile records received from court counselors under the previous subsection. The principal must share the information with individuals who have direct guidance, teaching, or supervisory responsibility for the particular student and have a specific need to know in order to protect the safety of the student or others. The documents may be used only to protect the safety of or to improve the educational opportunities for the student or others. Failure to maintain confidentiality is grounds for dismissal. The principal must keep the records in a safe place, separate from other records, and must destroy the information when the principal learns that the judge has dismissed the petition, transferred jurisdiction to superior court, or ordered the records be expunged. If the student graduates, withdraws from school, is suspended for the rest of the school year, is expelled, or transfers to another school, the principal must return the documents to the court counselor. If applicable, the principal also shall provide the counselor with the name and address of the school to which the student is transferring.

Subsection (g), which becomes effective November 1, 1997, amends G.S. 15A-505 to require law enforcement officials to notify the appropriate principal (of a public or private school) as soon as practicable, but within five days, when a student is charged

with a felony, except for a motor vehicle offense. Notification must be made by phone or in person. This subsection applies to students who are at least 16.

Subsection (h) directs the Board of Governors to develop a plan to ensure that school administrator and teacher preparation and continuing education programs provide students and school personnel with the training and experience they need to maintain safety and order in school. The Board must report to the Joint Legislative Education Oversight Committee by February 15, 1998.

Subsection (i) directs the State Board to review and consider modifications to school facilities guidelines to take into consideration factors that would improve school climate and order. The Board must report to the Joint Legislative Education Oversight Committee by February 15, 1998.

Subsection (j) directs the State Board, by November 15, 1997, to review policies and procedures on data kept and reports made on acts of violence in school and on students suspended or expelled from school. The Board is to report by March 15, 1998, to the Joint Legislative Education Oversight Committee.

Subsection (k) amends G.S. 115C-307(a) to require teachers, student teachers, substitute teachers, voluntary teachers, and teacher assistants to report to principals, as required by State Board policies, acts of violence in school and students who are suspended or expelled.

Subsection (l) establishes a task force, under the State Board of Education, consisting of the Board's chair, the Superintendent of Public Instruction, the President of the Community College System, the Secretary of Human Resources, the State Health Director, and the Director of the Administrative Office of the Courts. The task force is directed to develop a plan for interagency agreements between school units and other agencies to provide cooperative services to students who are at risk of school failure or at risk of participation in juvenile crime, or both. The task force must report to the Joint Legislative Education Oversight Committee by January 15, 1998.

Subsection (m) amends G.S. 143B-152.5 to provide that information to applicants for S.O.S. grants must include examples of the design and types of S.O.S. programs that are shown to be successful in improving academic performance or reducing disruptive or illegal behavior in participants.

Subsection (n) amends G.S. 143B-152.7 to require the system designed by DHR to evaluate the efficiency and effectiveness of the S.O.S. program to develop information for dissemination to grant applicants on the design of successful programs.

Subsection (o) amends G.S. 115C-12(24) to direct the State Board of Education to recommend to local boards ways to measure the academic achievement of students while they are in alternative learning programs or in remedial learning programs.

Subsection (p) directs the State Board of Education and Secretary of Human Resources to appoint an advisory committee to consider the advisability of and to develop a proposal for creating regional residential schools for students with emotional and behavioral problems so severe that the public schools cannot serve them. The committee is to report to the State Board and Secretary of Human Resources by January 15, 1998, and the State Board then shall report to the Joint Legislative Education Oversight Committee by February 15, 1998.

Subsection (q), which becomes effective November 1, 1997, amends G.S. 115C-391, which governs the discipline, suspension, and expulsion of students, as follows:

1. To allow school personnel to use reasonable force to maintain order on school property, in the classroom, or at a school-related activity on or off school property.
2. To require local boards to remove to an alternative setting any student who is at least 13 and who physically assaults and seriously injures a teacher or other school personnel on school property or at a school-sponsored or school-related activity. This does not apply if the student acted in self-defense. If the conduct occurred on or before the 90th school day, the student will be removed to the alternative setting for the remainder of the current school year and the first 90 days of the following school year; if the conduct occurred after the 90th school day, the student will be removed to the alternative setting for the remainder of the current school year and the entire subsequent year. Local boards may modify these time requirements if it would be more appropriate based on the recommendations of the principals of the alternative school and the school to which the student will return. If there is no available alternative program, the board must suspend this student for at least 300 days, but not more than 365 days. If the student is suspended, the board may assign the student to an alternative setting at the end of the suspension.
3. To allow local boards to remove to an alternative educational setting any student who is at least 13 and who: (a) physically assaults a teacher or other adult who is not a student; (b) physically assaults another student if the assault is witnessed by school personnel; or (c) physically assaults and seriously injures another student. The conduct must occur on school property or at a school-sponsored or school-related activity. This does not apply if the student acted in self-defense. If no alternative setting is available, the board may suspend this student for up to 365 days. If the student is suspended, the board may assign the student to an alternative setting at the end of the suspension.
4. To prohibit the return of a student to the classroom of the teacher who was physically assaulted or injured and as a result the student was removed to an alternative setting or suspended, unless the teacher consents.
5. To provide that no officer or employee of the State Board or a local board of education may be found civilly liable for using reasonable force (including corporal punishment) in conformity with State law, State or local rules, or State or local policies concerning the control, discipline, suspension, and expulsion of students. The burden of proof is on the student to show that the amount of force was not reasonable.
6. To make a number of technical changes.

Subsection (r) creates a new Article 8C in Chapter 115C that directs the State Board of Education to adopt guidelines for local safe school plans and authorizes sanctions if plans are not implemented (including withholding the salary of any administrator or employee, and revocation of the certificate of the superintendent). Each local board must adopt a safe school plan, which must include statements of the standard of behavior expected of students and school personnel and the consequences of violations; the responsibilities of the superintendent, principal, administrators, and teachers; procedures for identifying and meeting the needs of at risk students and students

engaging in disruptive and disorderly behavior; measures for assessing the effectiveness of plans; plans for working with law enforcement and court officials; and plans for providing access to information about plan implementation. Plans may be amended as often as the board considers necessary or appropriate. The board must submit its plan to the State Board and make it available and accessible to parents and the school community. Article 8C also requires boards to provide annually to the State Board information that shows how the At-Risk Student Services/Alternative Schools Funding Allotment has been used to prevent academic failure or promote school safety. This subsection amends G.S. 115C-105.27 to direct each school improvement plan to include a school safety and discipline plan in accordance with the local safe school plan. The provision directs the State Board to develop a plan to reward school principals for improving school safety and to report to the Joint Legislative Education Oversight Committee by April 15, 1998. Finally, the subsection requires local boards to begin implementing safe school plans by the beginning of the 1998-99 school year.

Subsection (s) amends G.S. 115C-402 to require each student's official record to include notice of any suspension of more than 10 days or of any expulsion and the conduct for which the student was suspended or expelled. This information shall be removed from the record if the student graduates or is not expelled or suspended again during the two-year period beginning on the date of the student's return to school after the suspension or expulsion. The information in the student's official record is what is transferred to a receiving school when the student transfers.

Subsection (t), effective November 1, 1997, amends G.S. 115C-288(g) to make a principal's failure to report to law enforcement certain enumerated violent acts on school property a Class 3 misdemeanor, for which the maximum punishment is 30 days imprisonment or a fine. This subsection also amends the standard for when a principal must make this report from when he or she has "a reasonable belief" that such an act occurred to when the principal has "personal knowledge or actual notice" that it occurred. Finally, the subsection provides that the General Assembly's intent is for the principal to notify the superintendent and the superintendent to notify the local board whenever the principal makes a report to law enforcement.

Subsection (u) amends G.S. 115C-112 to prohibit the State Board from including students who are expelled in the Board's calculation of the dropout rate and to maintain a separate record of the number of expelled students.

Subsection (v) directs the UNC Board of Governors, in collaboration with the State Board of Education, the Administrative Office of the Courts, the Department of Crime Control and Public Safety, and other State agencies, to develop a program for ongoing training of school officials, local law enforcement officials, and local court officials. This training will be designed to promote local collaboration on school safety and discipline issues. The Board of Governors shall report by January 15, 1998, to the Joint Legislative Education Oversight Committee on the development of this training program.

Excepted as noted otherwise, the section became effective July 1, 1997.

Public School Calendar Changes/Extra Pay (S.L. 1997-442, Sec. 8.38; SB 352, Sec. 8.38) Section 8.38 of S.L. 97-442 rewrites the laws related to the school calendar and

revises certain laws related to teachers' salary payments and benefits. Effective July 1, 1997, G.S. 115C-302 is repealed. It is replaced with G.S. 115C-302.1 which reorganizes portions of G.S. 115C-302 as well as deleting obsolete provisions. G.S. 115C-302.1 also makes substantive changes including: (1) allowing teachers to be prepaid provided they make up the work day within the fiscal year; (2) allowing teachers with more than 30 accumulated vacation days to be paid for additional vacation days that were forfeited in order to attend required workdays; (3) allow retiring teachers with more than 30 accumulated vacation days to be paid for additional vacations days that were forfeited in order to attend required workdays; and (4) the codification of State Board rules regarding Personal Leave.

Effective July 1, 1998, G.S. 115C-84 is repealed and replaced with G.S. 115C-84.2. G.S. 115C-84.2 completely rewrites the way the school calendar is constructed. The school calendar shall consist of 220 days all falling within the fiscal year. Of those days, local boards shall schedule at least 180 instructional days and at least 1000 instructional hours. The amount of time in each instructional day may vary according to local board rule. Of the remaining 40 days, 10 shall be scheduled as teacher vacation days, 10-11 shall be scheduled as holidays, 10 shall be scheduled by the local board for any lawful purpose, and the remainder shall be scheduled for any lawful purpose by the principal in consultation with the school improvement team. Local boards must develop a plan for making up days lost due to inclement weather. The following limitations apply to the calendar:

1. teachers employed for 10 months can not be required to work more than 200 days;
2. Veteran's Day shall be a holiday for all students;
3. the calendar shall include at least 30 consecutive days when teachers are not required to report to work; and
4. school shall not be taught on Sundays.

G.S. 115C-84.1 is amended for the 1997-98 school year to allow all school administrative units to extend the school day in order to off-set days lost due to inclement weather. This exemption had previously applied to a limited number of school units. G.S. 115C-84.1 is repealed effective July 1, 1998.

Allocation of Investment Earnings on School Bonds (S.L. 1997-443, Sec. 8.44; SB 352): Section 8.44 of S.L. 97-443 amends Section 5 of S.L. 95-631, which governs the use of the school bonds authorized in 1995. Once the State Budget Officer determines uncommitted funds are available, then this amendment allows the State Board of Education to allocate from investment earnings the following grants: (1) Avery County - $1,440,821; (2) Alleghany County - $1,393,069; (3) Currituck County - $1,357,835; and (4) Polk County - $1,471,917. These counties are to receive these grants because they have small county school systems, did not receive a small county school system grant allocation under S.L. 95-631, and have school construction needs that were not met by the primary bond allocations. The section became effective August 28, 1997.

Low-Performing Schools Clarification (S.L. 1997-443, Sec. 8.45; SB 352): Section 8.45 of S.L. 97-443 amends G.S. 115C-105.37(a) to make it clear that low-performing schools are those in which there is a failure to meet minimum growth standards as set by

the State Board and in which a majority of students tested in accordance with the Statewide Annual Testing Program are performing below grade-level. The section became effective July 1, 1997.

Dropout Prevention/Drivers License (S.L. 1997-507; HB 769): S.L. 97-507 seeks to encourage students to stay in school by making school enrollment a prerequisite to obtaining and keeping a permit or license to drive. The requirements of the act are coordinated with the graduated drivers' license program, which will go into effect on August 1, 1998, and do not apply to a person who holds a valid North Carolina limited learners' permit, a learner's permit, or a provisional drivers' license issued before December 1, 1997.

S.L. 97-507 amends G.S. 20-11 to provide that a person under the age of 18 must have a driving eligibility certificate or a high school diploma or its equivalent before the person may obtain a limited learner's permit, a limited provisional license, or a full provisional license. A driving eligibility certificate must be on a form approved by the Division of Motor Vehicles, must be dated within 30 days of the date when the person applies for a permit or license, and must be signed by an appropriate educational entity who indicates that he or she has determined that: (i) the person is currently enrolled in school and is making progress towards graduation; (ii) a substantial hardship would be placed on the person or the person's family if the person does not receive the certificate; or (iii) the person cannot make progress towards graduation.

G.S. 115C-12 is amended to add a new subdivision (27) to direct the State Board of Education to adopt rules applicable to public schools, charter schools, and accredited nonpublic schools that define what requirements a person must meet to be considered "making progress towards obtaining a high school diploma or its equivalent." The Board also must adopt rules for the procedures a person who was or is enrolled in one of these schools must follow and the requirements that person must meet in order to obtain a certificate. These rules also must provide for an appeal to an appropriate educational entity because the issue of whether a certificate was properly issued or improperly denied cannot be appealed to the Division of Motor Vehicles. G.S. 115D-5 is amended to direct the State Board of Community Colleges to adopt similar rules for students who were or are enrolled in a community college. Similarly, a new G.S. 115C-566 is created to direct the Secretary of Administration, upon consideration of the advice of the Division of Nonpublic Education in the Office of the Governor and representatives of nonpublic schools, to adopt similar rules for students who were or are enrolled in home schools or nonpublic schools that are not accredited by the State Board of Education. In addition, the State Board must adopt rules defining "what is equivalent to a high school diploma" for the purposes of receiving a drivers license or permit under this act; these rules would apply to public schools, charter schools, nonpublic schools, and community colleges. The State Board of Education must initiate and coordinate meetings with the Board of Community Colleges and the Division of Nonpublic Education so that the rules, procedures, and guidelines needed to implement the act are coordinated. In addition, Section 8 of S.L. 97-507 gives temporary rulemaking authority to the agencies that must adopt rules to implement this act.

S.L. 97-507 also amends G.S. 20-13.2 to direct the Division of Motor Vehicles to revoke the permit or license of a person under the age of 18 if the Division is notified by the appropriate school authority that the person has quit school. The revocation would last until the person's eighteenth birthday or until the Division restores the permit or license. (The general law is that revocation is for one year.) The person's license or permit must be restored if the person submits to the Division a high school diploma or its equivalent or a driving eligibility certificate. The restoration fee is set by statute at $25.

Section 7 of the act directs the State Board of Education to study the effectiveness of this act on dropout rates and graduation rates. The report must be completed and submitted to the Joint Legislative Education Oversight Committee and the Fiscal Research Division by November 15, 2002.

The changes to G.S. 20-11 and G.S. 20-13.2 become effective August 1, 1998; the remainder of the section became effective September 17, 1997.

Higher Education

UNC Flexibility Procedures (S.L. 1997-71; SB 265): Effective May 22, 1997, S.L. 97-71 amends G.S. 116-30.1 regarding special responsibility constituent institutions. The changes expand the scope of information that the President of the University may review to determine whether a special responsibility institution needs to revise its financial management. It also amends the law to provide that the President of the University, rather than the State Auditor, is responsible for determining whether an institution is making satisfactory progress towards resolving issues related to any significant findings.

Campus Law Enforcement (S.L. 1997-194; SB 376): Effective June 19, 1997, G.S. 116-40.5 is amended to allow the board of trustees of any teaching hospital affiliated with but not part of any constituent institution of The University of North Carolina to establish a campus law enforcement agency and employ campus police officers. The board of trustees of any teaching hospital affiliated with any constitution institution also may enter into joint agreements with a municipality or county to extend the law enforcement authority of the hospital's police officers into any of the municipality's or county's jurisdiction.

Nursing Scholars Program (S.L. 1997-214; HB 945): Effective June 19, 1997, S.L. 97-214 amends G.S. 90-171.61(b) to allow the North Carolina Nursing Scholars Commission to offer to registered nurses scholarship loans for part-time study leading to a baccalaureate degree in nursing.

Higher Education Admission Requirements (S.L. 1997-240; HB 746): S.L. 97-240 directs the Board of Governors of The University of North Carolina to review the admissions procedures, practices, and requirements of the constituent institutions regarding applicants from lawfully operated nonpublic schools. The Board must report its findings and recommendations to the Joint Legislative Education Oversight Committee by September 15, 1997. The Board of Governors shall adopt a policy

regarding uniform admissions requirements for applicants from nonpublic schools prior to November 21, 1997. The act became effective June 27, 1997.

UNC Contracts Negotiations (S.L. 1997-412; SB 862): S.L. 97-412 amends Chapter 116, Article 1, Part 3, of the General Statutes by adding two sections. G.S. 116-31.10 requires that the Board of Governors (BOG) establish an expenditure benchmark and a bid value benchmark for a special responsibility constituent institution at no greater than $250,000. G.S. 116-31.11 provides that if the estimated cost of a design, construction or renovation of buildings, utilities, and other property developments is less than $500,000, the BOG may: (1) conduct the fee negotiations for all design contracts and supervise the letting of all construction and design contracts; (2) develop procedures governing the responsibilities of the University and its institutions to perform the duties of the Department of Administration and the Director of the Office of State Construction relating to architecture and engineering; and (3) develop procedures and reasonable limitations governing the use of open-end design agreements and the approval of the State Building Commission. The BOG may delegate this authority to a constituent or affiliated institution if the institution is qualified under guidelines approved by the BOG and the State Building Commission and the Director of the Budget. The University shall use Office of State Construction standard contracts for design and construction projects and contracts may not be split in order to be less than the benchmark. Both G.S. 116-31.10 and G.S. 116-31.11 become effective January 1, 1998. G.S. 116-31.11 expires July 1, 2001.

Effective January 1, 1998, G.S.143-52 is amended to direct the Secretary of Administration to include printing among those items to be examined for consolidation of estimates of services. Effective January 1, 1998, G.S. 143-53(a) is amended relating to the Secretary of Administration's duty to prescribe the routine for securing bids on items under the benchmark value and to detail the procedure for delegation of this authority. Effective January 1, 1998, the benchmark for competitive bids is increased from $10,000 to $25,000, except the University benchmarks set by the BOG pursuant to G.S. 116-31.10.

The following provisions become effective January 1, 1998, and expire July 1, 2001. G.S. 143-64.34 is amended to exempt University capital improvement projects and individual projects having an estimated public expenditure of $300,000 or less from the jurisdiction of the State Building Commission if the architectural, engineering, and surveying services are included under publicly announced, open-end agreements that comply with applicable procedures. G.S. 143-135.3 is amended to add the University of North Carolina to the list of State entities against whom a contractor may submit a claim for non-payment to the Director of the Office of State Construction. G.S. 143.3.3 is amended to allow payroll deduction for UNC employees for discretionary privileges. G.S. 143-135.1 adds projects built pursuant to G.S. 116-31.11 to the list of State buildings exempt from county and municipal building requirements and inspection.

The Office of State Budget and Management and the State Building Commission are directed to evaluate the process and quality of construction completed under G.S. 116-31.11 and shall report their findings and recommendations to the BOG and the General Assembly by April 15, 2001. The BOG shall report to the Joint Legislative Commission

on Governmental Operations, the State Building Commission, and the Director of the Budget no later than December 1, 1997, on the procedures it intends to implement under this act. The Office of State Budget and Management shall evaluate the effectiveness and efficiency of the increase of the purchasing benchmark and shall report its findings and recommendations to the General Assembly by April 15, 2001.

New and Expanding Industry Report (S.L. 1997-442, Sec. 9.5; SB 352, Sec. 9.5): Section 9.5 of S.L. 97-442 amends G.S. 115D-5(i) to change from September 1 to October 1 the semi-annual New and Expanding Industry Program reports that the State Board of Community Colleges must submit to the Joint Legislative Education Oversight Committee. The section became effective July 1, 1997.

New and Expanding Industry Guidelines (S.L. 1997-442, Sec. 9.6; SB 352, Sec. 9.6): Effective July 1, 1997, Section 9.6 of S.L. 97-442 amends G.S. 115D-5 by adding a new subsection providing that the New and Expanding Industry Training Program Guidelines adopted by the State Board of Community Colleges shall apply to all funds appropriated for the program after June 30, 1997. Any project approved as an exception to the Guidelines shall be approved for one year only.

Establishment of a New Multicampus Community College to Serve Anson and Union Counties Authorized (S.L. 1997-442, Sec. 9.7; SB 352, Sec. 9.7): Section 9.7 of S.L. 97-442 directs Anson and Union Counties to act under G.S. 115D-59 to jointly propose and submit to the State Board of Community Colleges a contract for the establishment of a new institution to serve the multiple-county administrative area of Anson and Union Counties. The new community college shall be established and Anson Community College shall be abolished effective upon the State Board of Community Colleges approving the terms of the contract. The section is effective upon approval of the contract by the State Board of Community Colleges.

Military Residency/UNC Tuition (S.L. 1997-442, Sec. 10.2; SB 352, Sec. 10.2): Section 10.2 of S.L. 97-442 amends G.S. 116-143.3(b) to provide that any member of the armed services who does not receive any tuition reimbursement from the member's employer shall be eligible to be charged the in-State tuition rate and shall pay the full amount of the in-State tuition rate. The section became effective July 1, 1997.

Distinguished Professors Endowment Fund (S.L. 1997-442; Sec. 10.6; SB 352, Sec. 10.6): Section 10.6 of S.L. 97-442 amends G.S. 116-41.18(a) to provide that a Distinguished Professorship chair may be established for a limited period of time if so designated by the University of North Carolina Board of Governors and the trustees at the institution at the time the chair is originally established or vacated. The section became effective July 1, 1997.

UNC Overhead Receipt Flexibility (S.L. 1997-442; Sec. 10.8; SB 352, Sec. 10.8): Section 10.8 of S.L. 97-442 amends G.S. 116-30.2 to provide that special responsibility constituent institutions may expend monies from the overhead receipts special fund

budget code in a manner deemed by the Chancellor to be calculated to maintain and advance the programs and services of the institutions, consistent with the directives and policies of the Board of Governors. This section became effective July 1, 1997.

University Fire Safety Cost Limited (S.L. 1997-442; Sec. 10.14; SB 352, Sec. 10.14): Section 10.14 of S.L. 97-442 provides that water services that provide water for a fire safety protection system to a residence hall, or fraternity or sorority residence shall not charge a fee in excess of the marginal cost to the water system. The section became effective July 1, 1997.

UNC Management Flexibility (S.L. 1997-442; Sec. 10.19; SB 352, Sec. 10.19): Section 10.19 of S.L. 97-442 amends G.S. 116-30.3 by adding two subsections. Under G.S. 116-30.3(a), a certain percentage of the General Fund current operations appropriations credit balances remaining at the end of each fiscal year must revert to the General Fund. The percent varies according to whether the institution is a special responsibility constituent institution or an Area Health Education Center. Under the enacted provisions, one-half of those reversions would return to the General Fund credit balance at the end of the year, and one-half would be available to each special responsibility constituent institution for use at the campus level. The section became effective July 1, 1997.

Tuition Waivers/Emergency Workers (S.L. 1997-505; HB 1124): S.L. 97-505 amends Chapter 115B to provide that State-supported institutions of higher education shall permit certain individuals to attend classes without paying tuition. In order to be eligible, the person must be a spouse or child of a law enforcement officer, firefighter, volunteer firefighter, or rescue squad worker who is permanently and totally disabled or killed in the line of duty. The law enforcement officer, firefighter, volunteer firefighter, or rescue squad worker must have been a North Carolina resident at the time of the injury or death. The tuition waiver is available to children between the ages of 17 and 22 years old. The act became effective October 1, 1997 and applies to deaths or injuries occurring on or after that date.

Centennial Campus/Umstead Exemption (S.L. 1997-527; HB 87; amended by S.L. 97-456; HB 115, Sec. 552A): S.L. 97-527, as amended by S.L. 97-456, exempts the Centennial Campus of North Carolina State University at Raleigh from the provisions of the Umstead Act. The act became effective September 17, 1997.

MAJOR PENDING LEGISLATION

Public Schools

Evolution Not Taught as Fact (HB 511): House Bill 511 would provide that public schools do not teach evolution as proven fact. Passed the House.

School Personnel/Class Experience (SB 587): Senate Bill 587 would require professional public school employees who do not have daily instructional contact with

students to substitute teach a minimum of 2 days during each school year, for which they would earn renewal credit. The bill also would direct the Board of Governors to examine the extent to which faculty members who teach instructional methods to students in schools of education are involved with the public schools. Passed the Senate.

Limit Appeals to School Boards (SB 616): Senate Bill 616 limits the appeals that may be made to a local board from the decisions of school personnel. Under current law, there is no limit. Passed the Senate.

Higher Education

Military Job Interviews (HB 628): House Bill 628 would require any North Carolina institution of higher education that receives State funds to allow representatives from the United States armed forces to recruit on campus. The bill would also require that law schools at those institutions allow military recruiters access to the law school facilities. Passed the House.

Deduct Elementary/Secondary Tuition (HB 942): House Bill 942 would allow students and parents of students enrolled in grades 1-12 to deduct from taxable income, tuition paid to an elementary, middle, or high school. The bill is currently in the House Education Committee.

Deduct Postsecondary Tuition (HB 952): House Bill 952 would allow students and parents of students to deduct, from taxable income, tuition paid to a North Carolina college or university. The bill is currently in the House Education Committee.

Postsecondary Education Program (SB 468): Senate Bill 468 would create a prepaid tuition program. The purpose would be to provide a program through which the cost of higher education could be paid in advance of enrollment at a State postsecondary institution. The bill is currently in the Senate Education/Higher Education Committee.

STUDIES

Legislative Research Commission Studies

The 1997 Studies Bill (S.L. 1997-483; SB 32) authorizes the Legislative Research Commission to study the following: (1) DHR Schools; Community Colleges; and (2) the Relationship of the Open Meetings Law and Public Records Law to Institutions of the University of North Carolina.

Independent Studies, Boards, Etc.

Legislative Study Commission on Public Schools (S.L. 1997-483, Part VII; SB 32, Part VII): The Commission shall study issues relating to equity of funding in K-12 and higher education, the results of the ABCs program and various safe schools initiatives, the distribution of higher education scholarships, the uneven distribution of children with special needs, English as a second language, and funding and programs for the schools for the deaf.

Referrals to Departments, Agencies, Etc.

A variety of studies and reports have been requested from the State education governing boards.

The **Board of Governors of The University of North Carolina** shall: develop a plan for ensuring that teachers and school administrator training programs prepare teachers and principals to maintain and restore safety and order in public schools; review and revise the Masters in Education programs; make recommendations regarding the reorganization and consolidation of public school professional development programs; study of costs of graduate and professional programs and tuition; and study the impact of budget cuts on UNC Hospitals at UNC-CH.

The **State Board of Community Colleges** shall: assess and make recommendations regarding the occupational extension formula; report on the expenditure of funds for the New and Expanding Industries Program; and review and make recommendations regarding the continuation of certain courses in order to increase the efficiency of the Community College System.

The **State Board of Education** shall: implement a plan to revise content standards and student performance standards; implement a plan for high school exit examinations; examine raising teacher certification standards; revise the criteria for evaluations of professional public school personnel; study lateral entry programs and the certification of out-of-state teachers; develop and made recommendations regarding school safety and alternative schools; conduct a teacher and school administrator supply and demand study; and develop a plan to implement the ABCs program for residential DHR schools.

Referrals to Existing Commissions

The Joint Legislative Education Oversight Committee - Section 10.12 of S.L. 97-442 directs the Joint Legislative Education Oversight Committee to conduct, with the Board of Governors, a joint review and study of the role, funding, personnel resources, programs, and other aspects of the Cooperative Extension Services of the University of North Carolina. The 1997 Studies Bill (S.L. 1997-483, Part VI; SB 32, Part VI) provides that the Committee may study the gap in student academic achievement between racial and socioeconomic groups; pupil assignment options; developing a child welfare training

institute; issues related to recruiting, training, and retaining qualified child welfare staff; noninstructional duties of teachers; the role of the student member of the Board of Governors; real and perceived conflicts of interest by members of the Board of Governors; salary schedules for noncertified public school employees; the impact on small school systems of large losses of administration due to increases in charter school enrollment; and student discipline. Section 8.15 of S.L. 97-442 provides that the Committee chairs may appoint a subcommittee to revise the public school laws.

VIII. EMPLOYMENT

(Bill Gilkeson, Sandra Timmons)

Ratified Legislation

Agricultural Employer Appeals (S.L. 1997-35; HB 409): S.L. 97-35 makes procedural changes with regard to appeals concerning OSHA, migrant housing, and agricultural employees. Existing law provided that certain provisions of the N.C. OSHA law apply with respect to enforcement of the Migrant Housing Act, but that other provisions of the OSHA law, including G.S. 95-137(b)(4), do not apply. This bill deletes reference to G.S. 95-137(b)(4) thereby making its provisions with respect to contesting citations applicable in cases involving the Migrant Housing Act. Also amends G.S. 150B-1(e)(9) to provide that contested cases involving agricultural employers decided by Occupational Safety and Health Review Board are not subject to the contested case review procedures of the Administrative Procedure Act. The act became effective April 23, 1997.

Unemployment Benefits/Severance Pay (S.L. 1997-120; HB 414): S.L. 97-120 removes the disqualification from unemployment benefits that severance pay usually creates for any week that the claimant in enrolled in certain kinds of educational or job-training programs. The act became effective May 29, 1997 and applies to new initial claims filed on or after September 1, 1997.

Wage and Hour Amendments (S.L. 1997-146; HB 871): S.L. 97-146 ties the North Carolina minimum wage to the federal minimum wage. The immediate effect was that the North Carolina minimum wage went up from $4.25 to $4.75 on August 1, when the bill went into effect, and rose to $5.15 on September 1 when the federal was scheduled to go up to $5.15. The long-term effect is that there will no longer be a debate in the General Assembly whenever Congress raises the federal minimum wage about whether the State should follow suit – the State wage will simply go up automatically. The federal minimum wage covers all employers grossing $500,000 or more in annual sales and employers grossing less than that with respect to those of their employees whose work affects interstate commerce. The Chapter allows State-covered employers to take the same tip credit as federally covered employers. And the Chapter exempts computer professionals from minimum wage and overtime provisions. The act became effective August 1, 1997.

National Guard Mobilization Lessons (S.L. 1997-153; HB 432): S.L. 97-153 prohibits employers from disadvantaging any employee because of membership or service in the North Carolina National Guard. The Chapter gives any such employee the right to take leave without pay, rather than exhausting vacation or other accrued leave. The Chapter also requires that legal and court proceedings be stayed to accommodate a plaintiff or defendant who has National Guard duty. The act became effective December 1, 1997.

Veterans Employment Assistance Priority (S.L. 1997-171; SB 936): S.L. 97-171 requires that veterans be given priority to participate in employment and job training assistance programs funded by the State or by federal funds provided to the State. "Veteran" is defined to mean anyone on active duty (other than for training) in any component of the U.S. Armed Forces for 180 days or more, unless released earlier for service connected disability, and who was released under honorable conditions. "Priority" is defined to mean that veterans must be offered the opportunity to participate in the programs before other applicants are. The N.C. Commission on Workforce Preparedness is given the duty to enforce the change. The act became effective June 12, 1997.

Equitable Distribution/Retirement Rights (S.L. 1997-212; HB 535): See **CHILDREN AND FAMILIES.**

Workers' Comp/ Non-Resident Aliens (S.L. 1997-301; SB 263): S.L. 97-301 amends the law for the payment of death benefits under Workers' Compensation to treat payments to the survivors of nonresident aliens the same as residents. Under existing law, workers' compensation benefits were paid to the survivors of a non-resident alien residing in another country are limited to certain beneficiaries and could be limited to an amount of one-half the present value of all future payments due and paid in a lump sum. This Chapter eliminates any difference in the amount of benefits paid to survivors of workers' covered by workers' compensation based residence status, but limits the next of kin that are eligible for payments to surviving spouses, children or parents. The act became effective July 16, 1997 and applies to awards of compensation entered on or after that date.

Workers Comp Medical Care (S.L. 1997-308; SB 764): S.L. 97-308 provides that an employer, making workers' comp payments to a medical provider, has the right to see the employee's medical records without the employee's permission. The Industrial Commission is directed to write rules for enforcement of this right that protect both the employee's right to a confidential relationship and the need to release information to facilitate the administration of the claim. The act became effective July 17, 1997.

Genetic Information/No Discrimination (S.L. 1997-350; HB 254): See **HEALTH AND INSURANCE.**

Workers Compensation Fraud (S.L. 1997-353; HB 618): S.L. 97-353 raises from a Class 1 misdemeanor to a Class H felony any workers' compensation fraud that involves $1,000 or more, felonies involving less than $1,000 continue to be a Class 1 misdemeanor. The act became effective December 1, 1997.

Workers' Compensation Self-Insurance (S.L. 1997-362; SB 975): See **HEALTH AND INSURANCE.**

Employment Security Commission Law Changes (S.L. 1997-398; SB 974): S.L. 97-398 does five things:

1. Makes clear that the Employment Security Commission (ESC) may grant to tax-delinquent employers not only waivers of late penalties but also waivers of interest. Existing law required employers to pay unemployment insurance contributions (taxes) on their employees. If they did not pay them, the employers were charged late penalties at the rate of 10% of the taxes due and interest of ½ of 1% per month. G.S. 96-10(j) grants ESC the power to reduce or waive the penalty. ESC may do so for one of the reasons listed in the statute. But the statute said nothing about reducing or waiving the interest. ESC reportedly had assumed it had the power to waive the interest as well. The change adds language to the statute giving ESC the power to reduce or waive the interest payments on late taxes. It could waive the interest for good cause shown.
2. Ties the rate of interest charged for late unemployment taxes to the rate set by the Secretary of Revenue for other late taxes, rather than simply setting the rate statutorily at ½ of 1%.
3. Modifies the calculation of unemployment insurance taxes. Experience Rating is used to determine an employer's tax rate. Existing law said that no employer's tax rate would be reduced below the standard rate for any calendar year until its account had been chargeable with benefits for at least 12 calendar months ending July 31 immediately preceding the computation date. The change specifies that the condition of being "chargeable with benefits for at least 12 calendar months" is satisfied if the employer has properly reported wages paid in four completed calendar quarters.
4. Modifies the statute of limitations on the bringing of suits for collection of unpaid unemployment taxes. Existing law said that no suits could begin more than five years after the taxes become due. The change suspends that five-year limitation during any time when ESC is prohibited by federal law from collecting a tax because of a pending case. The change further suspends the limitation for one year after that prohibition on ESC is removed.
5. Allows the ESC more flexibility in scheduling when claimants must report to local ESC offices. Existing law said claimants must report at regular intervals no more than four weeks apart. The change broadens the timing so that ESC may schedule the claimants to report at regular intervals of not less than three and not more than six weeks apart.

The ESC law changes became effective August 14, 1997 except for the redefined interest rate change which becomes effective January 1, 1998.

Redefine Unemployment Base Period (S.L. 1997-404; SB 382): S.L. 97-404 gives changes two of the hurdles an unemployed person must cross to qualify for unemployment benefits:

- Floating Base Period. Under old law, the claimant would have to have received six times the average state weekly wage during that claimant's "base period," defined as the first four of the five completed calendar quarters before the claim was filed. The Chapter changes that so that if the claimant did not meet the

threshold in the first four of the five quarters, that person's base period would become the last four of the five quarters.

- The 1.5 Times Test. Under old law, the claimant would have to have met the income threshold for the Base Period in such a way that the entire amount was 1.5 times the amount earned in the high quarter. That rule is changed so that at least some earnings come from more than one quarter.

The act became effective August 18, 1997 and applies to new initial claims filed on or after September 1, 1997. The Employment Security Commission is directed to study the effect of the change and report to the General Assembly by January 1, 2001. The act expires September 1, 2001.

Liability for Job References (S.L. 1997-478; SB 264): S.L. 97-478 immunizes any employer from civil liability who discloses information about the job history or job performance of a current or former employee to a prospective employer at the request of either the prospective employer or the applicant. "Job performance" is defined to include:

- The suitability of the employee for re-employment;
- The employee's skills, abilities, and traits as they may relate to suitability for future employment; and
- The reason for a former employee's separation.

The immunity does not apply if the employer gives out false information that the employer knew or reasonably should have known was false.

Private personnel services and job listing services may enjoy the immunity only if they stick to certain identified sources for the information they provide. The act became effective October 1, 1997.

Public Hospital Personnel Act (S.L. 1997-517; SB 1055): S.L. 97-517 creates a new Article in Chapter 131E of the General Statues which protects the privacy of the personnel records of public hospital employees and states the specific information that may be considered/treated as public in accordance with similar statutory provisions covering the records of state and local government employees. Public hospitals are further authorized to determine employee compensation and personnel policies and to establish employee benefit plans. The act became effective September 17, 1997. In addition, effective October 1, 1997, the act requires any hospital, medical facility, or research laboratory to dispose of the remains of a recognizable fetus only by burial or cremation.

Exempt Severance Pay (S.L. 1997-525; SB 1065): See **TAXATION.**

State Employees

Amend Law Enforcement Officer Retirement Definition (S.L. 1997-144; SB 673): S.L. 97-144 amends provisions relating to the Local Governmental Employees' Retirement System to change the definition of a law enforcement officer. Under present law, a law enforcement officer is one whose "primary duties and responsibilities are the prevention and detection of crime, the general enforcement of the criminal laws of the

State and the serving of civil process". They also possess the power of arrest. This act amends the definition to provide that a law enforcement officer would be any employee who possesses the power of arrest, who has taken an oath, and been certified as a law enforcement officer by the Justice Education and Training Standards Commission or the Sheriff's Education and Training Standards Commission. The number of law enforcement officers cannot exceed the number authorized by the local governing board. The act became effective July 1, 1997 and applies to all persons enrolled in the Local Governmental Employees' Retirement System on or after that date.

Decentralize Some Office of State Personnel Functions (S.L. 1997-349; HB 275): S.L. 97-349 amends the State Personnel Act by adding provisions which authorize the Office of State Personnel to move toward a decentralized system of personnel administration, where such is appropriate, and without additional cost to the State. S.L. 97-349 also requires a designated person in the agency to be accountable to the State Personnel Director for the compliance of all personnel actions taken pursuant to the agency's delegated authority. The act becomes effective January 1, 1998.

Working Hours of Employees in State Institutions (S.L. 1997-443, Sec. 19.14; SB 352, Sec. 19.14): Section 19.14 of S.L. 97-443 repeals G.S. 95-28 which made it unlawful for any person in authority in Dorothea Dix Hospital, Broughton Hospital, Cherry Hospital, or any correctional institution of the State – with the exception of the State prison and institutions under the control of the Board of Transportation – to require any employee to work for more than 12 hours during any 24-hour period or more than 72 hours during any one week. The section became effective July 1, 1997.

Attorney General Opinion Required for All State Settlements (S.L. 1997-443, Sec. 20.14; SB 352, Sec 20.14): See **STATE GOVERNMENT**.

Salaries and Benefits (S.L. 1997-443; Part XXXIII SB 352, Part XXXIII): Part 33 of S.L. 97-443 contains a number of provisions which authorize increases and other changes in salary for the various categories of State government employees. Sections 33 through 33.5, 33.7, 33.9 through 33.19 outline provisions for annual average salary increases of amounts varying from an additional $1000 up to four percent of salary. Affected employee groups include: Governor and Council of State, nonelected department heads, certain executive branch officials, Chairman of the Employment Security Commission, members and chairs of the Industrial and Utilities Commissions, judicial branch officials, superior court clerks and assistant clerks, magistrates, legislative employees, community college personnel, and UNC system employees. These sections became effective July 1, 1997.

Administrative Law Judge Salary (S.L. 1997-443, Sec. 33.8; SB 352, Sec. 33.8): Section 33.8 of S.L. 97-443 amends G.S. 7A-751 to provide that the salary of the Chief Administrative Law Judge shall be the same as that fixed for district court judges while that of other administrative law judges will be 90 percent of the salary of the Chief Administrative Law Judge. Further, in lieu of merit and other increment raises,

administrative law judges will receive longevity pay on the same basis as those employees who are subject to the State Personnel Act. The section became effective July 1, 1997.

Most State Employees Salaries Increases (S.L. 1997-443, Sec. 33.18; SB 352, Sec. 33.18): Section 33.18 of S.L. 97-443 increases the salaries of most State employees paid from the General Fund. In accordance with the Comprehensive Compensation System eligible, full time permanent employees receive career growth recognition awards of two percent in addition to a cost-of-living adjustment in the amount of two percent. Section 33.18 provides that permanent full-time State officials and persons in exempt positions shall receive a salary increase of four percent. In all cases, the authorized increase is applied to salaries in effect June 30, 1997, and became effective July 1, 1997.

Extend Sunset on FICA Savings Use (S.L. 1997-443, Sec. 33.20; SB 352, Sec. 33.20): Section 33.20 of S.L. 97-443 extends the sunset clause from December 31, 1997 to December 31, 1999 to allow State entities to continue to use the savings in employer FICA contributions to pay the administrative expenses for the flexible benefits programs for State employees. The section became effective July 1, 1997.

Retirement Benefits Act (S.L. 1997-443, Sec. 33.22; SB 352, Sec. 33.22): Section 33.22 of S.L. 97-443 amends the law to enhance benefits payable from the four major public retirement systems. Effective July 1, 1997, the act provides a 4% increase in the retirement allowances paid to beneficiaries of the Teachers' and State Employees' Retirement System, the Consolidated Judicial Retirement System, the Local Governmental Employees' Retirement System, and the Legislative Retirement System. The act also increases the accrual rate for active members of the Teachers' and State Employees' System from 1.75% to 1.80% of average final compensation multiplied by the number of years of service, and makes an adjustment to retirees' allowances on account of the increase in the accrual rate of 2.2%. Also, for members of the Local Governmental Employees' System, a similar increase is made in the accrual rate from 1.72% to 1.76% of average final compensation, and the allowance paid to retirees is increased on account of the accrual rate change by 2.3%. The act also includes several conforming changes.

Salary Equity for SBI Law Enforcement (S.L. 1997-443, Sec. 20.9; SB 352, Sec. 20.9) Section 20.9 of S.L. 97-443 appropriates $2.7 million for each fiscal year of the 1997-99 biennium to adjust the salaries of law enforcement positions in the State Bureau of Investigation. The section became effective July 1, 1997.

State Employees' Communications with Legislators (S.L. 1997-443, Sec. 22.2; SB 352): Section 22.2 of S.L. 97-443 establishes a new Article 15 in the State Personnel Act to emphasize that a State employee's right to speak to a member of the General Assembly, at the member's request will not be limited, either directly or indirectly, by the employee's supervisor or any agency policy. This article applies to all State employees, public school employees, and community college employees. The section became effective July 1, 1997.

State Employees Incentive Bonus (S.L. 1997-513; SB 725): S.L. 97-513 adds several provisions concerning a State employee's filing of a deferred charge with the Equal Employment Opportunity Commission or the Office of Administrative Hearings. The changes establish that the date a deferred charges is filed with either agency is considered to be a commencement of proceedings and that such filing of a deferred charge automatically tolls the time limit until the completion of the investigation and of any informal methods of resolution. These provisions became effective September 17, 1997, and apply to charges pending or filed on and after that date; they will expire on December 31, 1998. S.L. 97-513 also establishes a State Employee Incentive Bonus Program by adding a new Article 36A to G.S. 143-345.10. A State employee or a team of State employees may receive incentive bonus(es) in reward for suggestions or innovations resulting in monetary savings or increased revenues to the State or improved quality of services delivered to the public. Funds realized from monetary savings or increased revenues will be distributed according to an established scale. These provisions became effective on July 1, 1997 and apply to all pending suggestions and innovations that were submitted under the former State Employee Suggestion Program before June 30, 1997.

Hire Among Most Qualified (S.L. 1997-520; SB 886): S.L. 97-520 defines "most qualified persons" and specifies that the State's policy is that State departments and agencies hire from among the pool of the most qualified persons, without regard to political affiliation or political influence. The State Personnel Commission is instructed to adopt rules to assure proper advertisement, recruitment and selection, require timely notification to unsuccessful applicants, establish an effective monitoring system, and to otherwise implement the State's policy of nonpolitical hiring. S.L. 97-520 further outlines the process and possibilities for remedies, when a violation of these provisions occurs. S.L. 97-520 redefines the term "policymaking position" and changes the total number of exempt positions designated by the Governor and found in Council of State departments. In addition, S.L. 97-520 outlines and defines the grounds for being able to file a contested case under the State Personnel Act. S.L. 97-520 provides additional situations under which an employee would be protected from retaliation. G.S. 120-86.1 is amended to make it unethical for a legislator to take, promise, or threaten any legislative action for the purpose of influencing or in retaliation for any action regarding State employee hirings, promotions, grievances, or disciplinary actions under the State Personnel Act. The act became effective on September 17, 1997.

IX. ENVIRONMENT AND NATURAL RESOURCES

(George F. Givens, Jeff Hudson, Mary Shuping)

Ratified Legislation

Solid Waste Permit Requirements (S.L. 1997-27; SB 126): S.L. 97-27 authorizes the Department of Environment and Natural Resources (DENR) to require an applicant for a solid waste management permit to demonstrate that the applicant (and its parent, subsidiaries, and affiliates) is financially qualified to carry out the permitted activity and has substantially complied with the requirements applicable to solid waste management activities in which the applicant has previously engaged and with federal and state environmental protection laws. S.L. 97-27 also requires a permittee to remain financially qualified in order to continue holding a solid waste management permit and to provide any information requested by DENR to demonstrate that the permittee continues to be financially qualified. These provisions apply to any application for a permit submitted on or after April 17, 1997, except that an applicant for renewal, modification, or expansion does not have to demonstrate a history of compliance with federal and state solid waste management requirements and environmental protection laws if the applicant has demonstrated compliance with North Carolina solid waste management requirements. The act became effective April 17, 1997.

Inactive Hazardous Sites Reports (S.L. 1997-28; SB 150): S.L. 97-28 requires the Secretary of Environment and Natural Resources (Secretary) to present the report on inactive hazardous sites to the Environmental Review Commission rather than to General Assembly, requires the Secretary to present the first of these reports on or before November 1, 1998, and reduces the reporting frequency of this report from annually to once every two years. S.L. 97-28 also clarifies that the 45 day period for receipt of written comment on a proposed remedial action plan begins when the notice requirement (newspaper notice for three consecutive weeks) is satisfied. The act became effective April 17, 1997.

Drinking Water Amendments (S.L. 1997-30; HB 189): S.L. 97-30 amends the definition of "public water system" in the North Carolina Drinking Water Act so that it conforms with the federal Safe Drinking Water Act Amendments of 1996. Specifically, the definition of "public water system" is amended to include systems that provide water through constructed conveyances as well as pipes. The act became effective April 17, 1997.

Increase Environmental Review Commission Membership (S.L. 1997-31; SB 140): S.L. 97-31 increases the membership and quorum requirements of the Environmental Review Commission. The appointments of the President Pro Tempore of the Senate are increased from five to six Senators and the appointments of the Speaker of the House of Representatives are increased from five to six Representatives. The total membership of the Environmental Review Commission is increased from 12 to 14 members (six

Senators appointed by the President Pro Tempore of the Senate, six Representatives appointed by the Speaker of the House of Representatives, the Chair of the Senate Committee on Environment and Natural Resources, and the Chair of the House Committee on Environment). The quorum requirement of the Environmental Review Commission is increased from seven to eight. The act became effective April 17, 1997.

Inactive Hazardous Sites Information (S.L. 1997-53; SB 151): S.L. 97-53 simplifies the inventory of inactive hazardous substance or waste disposal sites by allowing records on contamination and potential and actual damage to public health and natural resources to be maintained separately from the inventory itself. S.L. 97-53 also clarifies that the duty of an owner, operator, or responsible party to report the existence of an inactive hazardous substance or waste disposal site is continuing and is not limited to those sites that were known of at the time the Commission for Health Services presented its format and checklist (within six months of July 1, 1987). This continuing reporting requirement applies to an owner, operator, or responsible party who knows or should know of the existence of an inactive hazardous substance or waste disposal site. Furthermore, S.L. 97-53 amends G.S. 130A-310.1 by adding four new subsections, (f) through (i). Subsection (f) authorizes the Secretary to require a person to furnish information, documents, or records that relate to (1) the nature and quantity of the material involved at a site; (2) the nature and extent of a release or threatened release; and (3) information relating to the ability of a person to pay or perform cleanup. Subsection (g) sets out how information, documents, or records are to be provided to the Secretary. Subsection (h) authorizes the Secretary to subpoena the testimony of witnesses and the production of documents, records, reports, answers to questions, and any other information the Secretary deems necessary to administer the Inactive Hazardous Sites Program. Subsection (i) requires a person owning or controlling an inactive hazardous substance or waste disposal site to grant the Secretary access to the site at reasonable times and, if the person fails to grant access, the Secretary may obtain an administrative search and inspection warrant as provided by G.S. 15-27.2. The act became effective May 16, 1997.

Increase Rabies Tag Fee (S.L. 1997-69; HB 488): S.L. 97-69 authorizes the Secretary of Environment and Natural Resources to increase the fee for a rabies vaccination tag purchased from the Veterinary Public Health Program by an amount not to exceed 5 cents. The act became effective May 22, 1997.

Sanitary District Staggered Terms (S.L. 1997-117; HB 771): S.L. 97-117 authorizes a sanitary district board to stagger its terms if its members serve unstaggered four-year terms by providing for some of the members to be elected to two-year terms at the next election for municipal and special district officers. This change is effective for any election where the filing period opens at least 30 days after the approval of the staggering of the terms. The act became effective May 29, 1997.

Soil and Water Commission/Inspection (S.L. 1997-173; HB 999): S.L. 97-173 authorizes the Soil and Water Commission to conduct inspections reasonably necessary to carry out its duties and to enter, at reasonable times, on any property to determine

compliance with its programs or the programs of the Department of Environment and Natural Resources. Effective December 1, 1997, refusal to allow an authorized representative of the Commission entry is a Class 1 misdemeanor and is punishable by imprisonment not to exceed 90 days or by a fine not to exceed $5,000. The act became effective June 12, 1997.

State Revolving Water Fund Account (S.L. 1997-206; HB 194): S.L. 97-206 establishes the State Revolving Water Fund as a special account within the Clean Water Revolving Loan and Grant Fund to receive federal funds allocated under the federal Safe Drinking Water Act Amendments of 1996. The act became effective June 19, 1997.

Scrap Tire Disposal Tax Amendments (S.L. 1997-209; SB 153): See **TAXATION**.

Conservation Easements/Tax Credits (S.L. 1997-226; HB 260): See **TAXATION**.

Abolish Aquariums Commission (S.L. 1997-286; HB 460): S.L. 97-286 repeals the North Carolina Aquariums Commission and transfers its one remaining duty, the setting of aquarium fees, to the Secretary of Environment and Natural Resources. The act became effective July 10, 1997.

Record Notices of Open Dumps (S.L. 1997-330; HB 484): S.L. 97-330 provides that when DENR determines an open dump exists, it may record a notice of an open dump in the office of the register of deeds in the county or counties where the dump is located. S.L. 97-330 also allows the property owner to appeal the decision by DENR to file a notice; prescribes the form to be used by DENR in filing the notice; and requires DENR to file a Cancellation of the Notice when the owner has satisfactorily removed all solid waste from the dump site. The act became effective July 25, 1997.

Coastal Area Management Act/Urban Waterfront Redevelopment (S.L. 1997-337; HB 1059, as amended by S.L. 1997-456, Sec. 55.2B; HB 115, Sec. 55.2B): S.L. 97-337 allows a person to obtain a permit to use public trust areas for a nonwater dependent use that would otherwise be prohibited by CAMA under certain conditions. To be eligible for the permit the development must:

- Be located in a municipality;
- Have a history of urban-level development as evidenced by recognition as a historic place or be a historical, archaeological or other site involving the State, or the land must have a commercial business district designation;
- Have a determination by the municipality that the use would not have a significant adverse environmental impact; and
- Have a development plan consistent with a local waterfront development plan, local development regulations, public access plans and other local authority.

S.L. 97-337 became effective July 25, 1997. S.L. 97-456 amended S.L. 97-337 so that S.L. 97-337 expires on July 1, 2000 and applies to permits granted and applications submitted prior to July 1, 2000. S.L. 97-456 also amended S.L. 97-337 to provide that any permits granted or applications issued prior to July 1, 2000 will be transferable.

Brownfield Property Reuse Act (S.L. 1997-357; HB 1121): S.L. 97-357 establishes the Brownfields Property Reuse Act as follows:

Brownfields Agreement: This act authorizes the Department of Environment and Natural Resources (DENR) to enter into a brownfields agreement with a prospective developer. The developer must demonstrate:

1. The compliance history of itself and its parents, subsidiaries, and affiliates;
2. That the property is suitable for the proposed uses while protecting public health and the environment;
3. That the benefit to the public is commensurate with the liability protection afforded under this act;
4. The financial, managerial, and technical means to implement the agreement and assure safe use of the property; and
5. Current and prospective compliance with procedural requirements.

The brownfields agreement must include:

1. A legal description of the property;
2. A description of any remediation to be conducted on the property;
3. Any land use restrictions that will apply to the property;
4. The desired results of remediation;
5. The guidelines within which the desired results are to be accomplished; and
6. The consequences of achieving or not achieving those results.

Liability Protection: A developer who enters into an agreement with DENR and is complying with the agreement will not be held liable for cleanup of areas of contaminants identified in the agreement, so long as the activities conducted on the property do not increase the risk of harm to public health or the environment and the developer has not violated land-use restrictions under the agreement. This liability protection is extended to parties who are not otherwise liable for remediation who are:

1. Agents of the developer involved in redevelopment or remediation;
2. Future owners of the property;
3. Persons who develop or occupy the property;
4. Successors or assigns to any other person with liability protection; or
5. Parties providing financing for remediation or redevelopment of the property.

Conducting an environmental assessment or transaction screen will not subject a person to liability unless the person increases the risk to public health or the environment by failing to exercise due diligence or reasonable care.

If a land-use restriction under the agreement is violated, the owner at the time of violation, the owner's successors and assigns, and the owner's agents will be liable for remediation to current standards. A developer who completes the remediation required by an agreement will not be required to undertake additional remediation of the property unless any of the following apply:

1. The developer knowingly or recklessly gives false information in the formation of the agreement or in demonstration of compliance with the agreement;
2. New information indicates the existence of unreported contamination associated with the property;

3. The level of risk becomes unacceptable in the vicinity of the property due to changes in exposure conditions;
4. DENR obtains new information about a contamination or exposure that makes the risk unacceptable in a manner not anticipated in the agreement;
5. The owner fails to file a timely and proper Notice of Brownfields Development.

In the case of new information indicating the existence of unreported contamination, further cleanup will only be required if the original agreement set target concentrations for contaminants and the levels of unreported contaminants exceed these target concentrations or the unreported contaminants raise the risk to public health or the environment.

Public Notice and Community Involvement: A developer desiring to enter into an agreement will notify the public and community in which the property is located of the planned remediation and redevelopment. Notice will be given by means of a Notice of Intent to Redevelop a Brownfields Property and a summary of the Notice of Intent. The Notice of Intent will state the location of the property, a map of this location, a description of contaminants and their concentrations, a description of intended future use, and any proposed investigation and cleanup measures. The proposed Notice of Intent and summary of Notice of Intent will be submitted to DENR for approval. The summary of Notice of Intent will also be given to local governments with jurisdiction over the property and published in a newspaper of general circulation serving the area in which the property is located and in the North Carolina Register. The developer will also conspicuously post a summary of the Notice of Intent on the property. The public and local governments will have 60 days within which to provide input into the cleanup and redevelopment plans. DENR will receive written requests for a public meeting during a 30-day period and will hold a public meeting after giving 30 days notice if it determines that there is significant public interest. DENR will incorporate public comment into the agreement to the extent practicable and will give particular consideration to written comment that is supported by valid scientific information.

Notice of Brownfields Property; Land-use Restrictions: A person who enters into an agreement with DENR will submit to DENR a proposed Notice of Brownfields Property that will include:

1. A survey plat prepared by a certified professional land surveyor of areas designated by DENR;
2. A legal description of the property;
3. The location and dimensions of areas of potential environmental concern;
4. The type, location, and quantity of contaminants on the property; and
5. Any restrictions on current or future use of the property.

After DENR approves and certifies the notice, the developer will file a certified copy of the notice in the register of deeds' office in the county or counties in which the property is located. The register of deeds will record the notice and index it in the grantor index under the names of the property owners and, if different, also under the name of the person conducting the redevelopment. When the property is transferred, the instrument of transfer will contain a statement that the property has been classified and, if appropriate, cleaned up as a brownfields property. A property owner may request that a notice be canceled by the Secretary of Environment and Natural Resources (Secretary)

after the remediation of a property has eliminated the hazards. If the Secretary concurs with the written request, the Secretary will send to the register of deeds a statement that the hazards have been eliminated and a request that the notice be canceled. The register of deeds will record the Secretary's statement and index it in the grantor index.

Restrictions on the current or future use of a property will be enforced by the owner of the property, and may be enforced by DENR, any unit of local government having jurisdiction over the property, or any person eligible for liability protection. A restriction will not be declared unenforceable due to lack of privity of estate or contract, lack of benefit to particular land, or lack of any property interest in particular land. Any person who owns or leases a property subject to a restriction will abide by the restriction.

Appeals: A decision by DENR as to whether or not to enter into an agreement, including any terms of an agreement, is reviewable under the contested case provisions of the Administrative Procedure Act.

Brownfields Property Reuse Act Implementation Account: The Brownfields Property Reuse Act Implementation Account is created as a nonreverting, interest-bearing account in the Office of the State Treasurer and consists of fees collected under this act, moneys appropriated by the General Assembly, moneys received from the federal government, moneys contributed by private organizations, and moneys received from any other source. Funds in the Account will be used to defray a portion of the costs of implementing this Part. DENR will collect $1,000 from a developer who submits a proposed agreement and $500 from a developer who submits a final report certifying completion of remediation under an agreement. These fees will be credited to the account.

Legislative Reports: DENR will report to the Environmental Review Commission on the Brownfields program concurrently with every report on the Inactive Waste Sites Program (made on November 1 of even-numbered years). The report will evaluate the effectiveness of the Brownfields Program in facilitating the remediation and reuse of existing industrial and commercial properties, include any recommendations for additional incentives or changes to improve effectiveness, and include information on receipts by and expenditures from the account.

Enforcement: S.L. 97-357 makes it a Class I felony, which may include a fine of up to $100,000 per day of violation (not to exceed a cumulative total of $500,000 for each 30 day period of continuing violation), to provide false or incomplete information relevant to an agreement or relevant to a determination that remediation has been completed.

Notification of Completed Remedial Action: S.L. 97-357 authorizes DENR to issue a written notification that no further remediation will be required where clean up has been completed to current standards at permitted hazardous waste treatment, storage, and disposal facilities; inactive hazardous sites; groundwater remediation sites; and oil or hazardous substance discharge remediation sites.

The act became effective October 1, 1997.

Well Contractors Certification (S.L. 1997-358; HB 251): S.L. 97-358 establishes the Well Contractors Certification Commission within the Department of Environment and Natural Resources. The seven member Commission is authorized to adopt rules for the certification of well contractors, make final agency decisions regarding civil penalties

assessed for violations of well contractor certification laws, and adopt rules to secure federal aid for well contractor certification programs.

The Commission may discipline well contractors through written reprimand, certificate suspension, or certificate revocation in cases of fraud or deception, failure to use reasonable care, gross negligence, or failure to complete continuing educational requirements. Furthermore, the Secretary of Environment and Natural Resources may request the Attorney General to seek injunctive relief to restrain a well contractor from committing a violation or require a well contractor to take corrective action to remedy a violation.

The Commission may set a fee for examination not to exceed $100, annual certification not to exceed $200, and temporary certification not to exceed $100. These fees will be credited to the Well Construction Fund, a nonreverting fund within DENR, to be used for the costs of administering the Well Contractors Certification Program.

S.L. 97-358 also establishes the Well Contractors Certification Act. The act requires certification for a well contractor engaging in the construction, installation, repair, alteration, or abandonment of any well. Certification is not required for the performance of these activities by a person (i) who is working for and under the personal supervision of a certified well contractor or (ii) who constructs, repairs, or abandons a well located on land owned or leased by that person. S.L. 97-358 also contains a grandfather provision requiring the Commission to issue a certificate, without examination, to any person who, since July 1, 1992, has been engaged in well contractor activity and who has been individually registered or employed by a corporation that has been registered with DENR. The act became effective August 4, 1997.

Amend Natural Heritage Trust Fund (S.L. 1997-366; SB 178): S.L. 97-366 permits the Trustees of the Natural Heritage Trust Fund to authorize the establishment of a special stewardship account for the management of lands acquired by the Fund. The special stewardship account will be used for the management of land acquired by the Natural Heritage Trust Fund under the direction of the trustees. S.L. 97-366 also adds the Secretary of Cultural Resources to the list of officials that may propose to the trustees lands to be acquired with moneys from the Fund and provides that the trustees may authorize expenditures from the Fund to pay for conservation and protection planning and educational programs for owners of natural areas that are dedicated as nature preserves under the Nature Preserves Act. Furthermore, S.L. 97-366 authorizes a State agency with management responsibility for any lands acquired with funds from the Fund to enter into a management agreement with a qualified private non-profit organization to aid in managing the land. The act became effective August 6, 1997.

Authorize Landfill Liner (S.L. 1997-374; HB 1032): S.L. 97-374 directs the Commission for Health Services to adopt a rule regarding design criteria for municipal solid waste landfills that complies with federal law and that provides for alternate landfill liners that are at least as protective as the liner currently authorized by Commission rules. S.L. 97-374 directs the Commission for Health Services to adopt this rule as a temporary rule no later than July 1, 1998. The act became effective August 6, 1997.

Environmental Management Commission Membership (S.L. 1997-381; HB 239): S.L. 97-381 amends the current membership requirements of the Environmental Management Commission to provide that one member, at the time of appointment, shall be actively employed by or recently retired from an industrial manufacturing facility and knowledgeable in the field of industrial air and water pollution control. Prior law provided that this member must be actively connected with industrial production or have had experience in the field of industrial air and water pollution control. The act became effective August 11, 1997.

Dry-Cleaning Solvent Cleanup Act of 1997 (S.L. 1997-392; HB 225): S.L. 97-392 establishes the Dry-Cleaning Solvent Act of 1997 (Act) as follows:

Dry-Cleaning Solvent Cleanup Fund: The Act creates the Dry-Cleaning Solvent Cleanup Fund (Fund) to be administered by the Environmental Management Commission (EMC). The principal source of revenue for the Fund is a new tax on dry-cleaning solvent established by the Act. The tax is imposed as a privilege tax on dry-cleaning solvent retailers at a flat rate of $5.85 for each gallon of chlorinated dry-cleaning solvent and $0.80 for each gallon of hydrocarbon-based solvent. Monies in the Fund are to be used to pay costs for the assessment and remediation of dry-cleaning solvent contamination not covered by insurance or for which insurance coverage is inadequate and that otherwise qualify for the cleanup program created by the Act.

Insurance Requirements: Beginning April 1, 1998, the Act requires an owner or operator of any dry-cleaning facility or dry-cleaning solvent distribution facility operating in North Carolina to maintain a minimum of $1,000,000 of pollution and remediation legal liability insurance for the facility or post an equivalent bond with the EMC. The insurance must provide coverage regardless of when the contamination actually occurred. If the owner or operator of a facility can show that the owner or operator cannot obtain insurance for a facility, the EMC must issue a determination of uninsurability that exempts the facility from the Act's insurance requirement

Dry-cleaning Solvent Handling Regulations: The Act authorizes the EMC to adopt rules establishing minimum management practices for dry-cleaning solvent at dry-cleaning and wholesale distribution facilities. The EMC is also authorized to adopt other rules governing solvent-handling practices that it finds necessary to minimize the risk of contamination at dry-cleaning facilities and wholesale distribution operations.

Risk-Based Remediation Standards: The Act directs the EMC to develop rules establishing a "risk-based approach" to the assessment and remediation of dry-cleaning solvent contamination. Under the rules, the EMC will be permitted to consider site-specific factors in determining the level of remediation necessary for a particular contamination site. In determining the appropriate level of cleanup, the EMC will be allowed to consider owners' voluntary agreements to restrict the future use of the property where the contamination has occurred. The EMC is also authorized to adopt rules governing the prioritization of contamination sites for the purpose of allocating Fund monies for assessment and remediation. The prioritization rules must provide for consideration of the:

1. Degree of harm or risk the contamination poses to public health and the environment;

2. Relative cost of the assessment or remediation activities; and
3. Date on which the facility that caused the contamination was certified into the cleanup program.

The objective of the prioritization process must be to maximize the reduction of harm or risk posed by dry-cleaning solvent contamination in the State.

Dry-Cleaning Solvent Assessment and Remediation Agreements: After January 1, 1999, any person who is potentially responsible for assessment or remediation of dry-cleaning solvent contamination believed to have resulted from operations at a dry-cleaning or solvent distribution facility may petition the EMC to certify the facility as eligible for participation in the cleanup program established by the Act. Once a site is certified, the petitioner may either conduct an assessment and remediation of the contamination, or enter into assessment and remediation agreements with the EMC. If a petitioner elects to conduct assessment and remediation activities, the petitioner may not recover any related costs from the Fund. This petitioner may, however, ask the EMC to approve risk-based cleanup standards for the site, so long as the standards do not require restrictions on the future use of the property where the contamination is located.

Assessment Agreements: Once a site is certified, any person who is potentially responsible for cleanup of the site may petition the EMC to enter into a dry-cleaning solvent assessment agreement. All assessment agreements must specify when remediation of the contamination site is expected to begin and provide for the prompt reimbursement of costs payable from the Fund.

Remediation Agreements: If assessment shows that a contamination site does not require remediation, the EMC may determine that no further action is required in connection with the site. Otherwise, one or more of the persons potentially responsible for the site may petition the EMC to enter into an agreement with the parties for remediation of the contamination site. Remediation agreements must contain the following provisions:

1. A description of the contamination site;
2. A description of the remediation activities to be undertaken pursuant to the agreement;
3. A description of any land use restrictions that will apply to the contamination site after the remediation is completed; and
4. The desired results of the remediation program and the consequences of achieving and not achieving these results.

The remediation agreement must also specify the site's final priority ranking for the purposes of funding the remediation activities.

The EMC may require any person petitioning for a remediation agreement to show that:

1. The petitioner has complied with the terms of any previous assessment or remediation agreements;
2. The petitioner has or can obtain the financial, managerial and technical means to implement the proposed remediation;
3. The projected schedule for funding remediation activities, including any reimbursements from the Fund;

4. As a result of the proposed remediation, the site will be suitable for the future uses proposed in the remediation agreement while fully protecting the public health and environment;
5. The public benefit of the proposed remediation will be commensurate with the liability protection afforded the petitioner by virtue of entering into the agreement;
6. The expenses to be incurred in remediating the site are reasonable and necessary; and
7. The remediation agreement will not cause the State to violate any of its obligations under environmental enforcement agreements with the federal government.

Petitioners may also be required to provide any information necessary to confirm or reestablish the site's priority for funding under the program.

The EMC may refuse to enter into a dry-cleaning solvent remediation agreement with any petitioner who:

1. Will not accept financial responsibility for funding the proposed remediation in the required amount;
2. Will not accept responsibility for conducting, supervising, or otherwise undertaking the remediation activities described in the agreement; or
3. Fails to provide any of the information specified above.

The EMC may also refuse to enter into a remediation agreement if the owner of the property on which the contamination is located refuses to accept limitations on future uses of the contamination site.

Termination of Agreements: The EMC is authorized to decertify any facility or terminate any assessment or remediation agreement in any of the following circumstances:

1. The owner or operator of the facility violates minimum solvent management practice rules adopted by the EMC;
2. A petitioner fails to given notice of any land use restrictions established in a remediation agreement;
3. The parties to an assessment agreement fail to reach agreement regarding remediation arrangements;
4. A petitioner who is the owner of operator of a dry-cleaning facility fails to maintain insurance for the facility or pay solvent taxes when due; or
5. An assessment or remediation agreement jeopardizes the State's compliance with its federal environmental enforcement obligations.

The EMC will also be permitted to terminate agreements that are breached by any of the petitioning parties.

Liability Protection: As a general rule, any potentially responsible party who enters into a dry-cleaning solvent assessment or remediation agreement with EMC and who is complying with the agreement will not be liable in any action to compel further action to assess or remediate the contamination described in the agreement. The liability protection afforded petitioners will also extend to:

1. Persons under the direction and control of the petitioner;
2. Future owners of the contamination site;
3. A person who develops or occupies the contamination site; and

4. Any lender of fiduciary who provides financing for the assessment, remediation, or redevelopment of the contamination site.

The liability protection for parties to assessment and remediation agreements remains in effect only so long as activities at the contamination site do not increase the risk of harm to the public health and environment. The liability protection will also be lost if a land use restriction required by a remediation agreement is violated.

Once the parties to an assessment or remediation agreement complete any required remediation of a site, the parties will continue to have liability protection from actions to compel further assessment or remediation unless one of the following circumstances occurs:

1. The parties are found to have failed to provide relevant information, or knowingly or recklessly provided false information that was part of the basis for the remediation agreement;
2. New information indicates the existence of previously unreported contamination at the site;
3. The level of risk that the site poses to public health and the environment becomes unacceptable due to changes in land use or failure of the remediation activity;
4. The EMC obtains new information about contaminants or exposures at the site that raise the risk to public health or environment to a degree not anticipated in the remediation agreement; or
5. The State receives notification from the federal government that failure to further assess or remediate the site will result in a breach of the State's federal environmental enforcement obligations.

Land Use Restrictions: In order to reduce the level of risk associated with a contamination site, the owner of the site may create a permanent restriction on the future use of the contaminated property. The Act requires that any land use restriction that is used to reduce the remediation requirements for a site must be subjected to public notice and comment and properly recorded in the land records of the county where the site is located.

Reimbursement of Assessment and Remediation Costs: Assessment and remediation costs that exceed available insurance coverage and the financial resources pledged by petitioners pursuant to the Act's requirements are reimbursable from the Fund. Reimbursement is only payable after insurance and financial responsibility funds are exhausted. Costs are only reimbursable for activities undertaken pursuant to a dry-cleaning solvent assessment or remediation agreement at a certified site. Reimbursements are limited to $200,000 per year ($400,000 if the site poses an immediate threat to human life, an immediate threat of serious bodily injury or adverse health effects, or a serious risk of irreparable damage to the environment).

Remediation of Uncertified Sites: If the owner or operator of a facility believed to have caused dry-cleaning solvent contamination cannot be found or unreasonably refuses to enter into assessment or remediation agreements with the EMC, the EMC may use monies from the Fund to undertake its own assessment or remediation of the contamination site. In the event of a cleanup, the State may institute a civil action against responsible parties to recover the costs of cleanup. Any recovery must be paid to the Fund.

Enforcement: The Secretary of Environment and Natural Resources is authorized to assess civil penalties of up to $25,000 for the following violations of the act:

1. Failure to provide insurance for a dry-cleaning or wholesale distribution facility or demonstrate to the satisfaction of the EMC that the facility is uninsurable;
2. Engaging in dry-cleaning operations using solvent for which the solvent tax has not been paid;
3. Failure to comply with rules adopted by the EMC pursuant to the Act;
4. Failure to provide information required by the Act;
5. Failure to comply with EMC orders issued in connection with enforcement of the Act; or
6. Refusal to allow the EMC or its representatives access to a premises to conduct lawful inspections authorized by the Act.

Civil penalties may also be imposed for providing false information to the EMC in connection with any activities related to the Act. For continuous violations, the EMC may levy a civil penalty of up to $25,000 for each day of the violation, not to exceed $200,000 for any 30 day period. Persons who negligently commit violations for which civil penalties may be assessed are also subject to criminal prosecution. These criminal violations are Class 2 misdemeanors and are punishable by fines of up to $15,000 per day, not to exceed $200,000 over 30 days for a continuous violation. Knowing or willful violations are Class1 misdemeanors punishable by fines of up to $100,000 per day, not to exceed $500,000 over 30 days for a continuous violation. Felony penalties are assessable against any person who knowingly places other persons in imminent danger of death or serious bodily injury through their violations of the Act. The EMC is also authorized to seek injunctive relief against persons violating or threatening to violate provisions of the Act. Persons aggrieved by the EMC's decisions under the Act can appeal by filing a contested case in the Office of Administrative Hearings. The final agency decision in any appeal is made by the EMC.

Agency Reporting Requirements: The EMC is required to report on or before October 1 of each year, beginning October 1, 1998, to the Environmental Review Commission concerning implementation of the Act.

Effective Dates, Sunsets, and Transition: The solvent tax created by the Act takes effect on October 1, 1997. The EMC may adopt and begin enforcing rules governing minimum solvent handling practices at dry-cleaning and wholesale distribution facilities as early as January 1, 1998. The Act's insurance requirements take effect on April 1, 1998. The Department of Environment and Natural Resources is directed to adopt rules, forms, strategies, and other procedures required to implement the cleanup provisions of the Act before January 1, 1999. The EMC's authority to certify facilities and enter into dry-cleaning solvent and assessment agreements begins January 1, 1999. The dry-cleaning solvent tax imposed by the Act sunsets on January 1, 2010, and DENR's authority to certify sites or enter into new assessment or remediation agreements ends on January 1, 2012. Assessment and remediation agreements remaining in force after 2012 will continue to be governed by the terms of the Act as if it had not expired. The minimum solvent handling rules authorized by the Act also are not subject to the sunset provisions. Any person who is required by a specific order of the EMC to undertake assessment or remediation of dry-cleaning solvent between October 1, 1997, and January 1, 1999 may

apply to the EMC for reimbursement of the related costs exceeding $50,000. Persons who are in the process of undertaking assessment or remediation activities at a dry-cleaning solvent contamination site on January 1, 1999, will be eligible at that time to petition the EMC to enter into assessment or remediation agreements governing the site. Costs incurred for these sites prior to January 1, 1999, will be creditable toward the financial responsibility requirements of the petitioners.

Brownfields/Property Use Restrictions (S.L. 1997-394; SB 125, as amended by S.L. 1997-456, Sec. 55.6; HB 115, Sec. 55.6): S.L. 97-394 allows the Secretary of Environment and Natural Resources, within the Secretary's discretion, to approve property use restrictions for inactive hazardous substance or waste disposal sites and oil or hazardous substance discharge sites. These use restrictions may be enforced by responsible parties, the Department of Environment and Natural Resources or any unit of local government having jurisdiction over any part of the inactive hazardous substance or waste disposal site. The act became effective October 1, 1997.

Fisheries Reform Act-2 (S.L. 1997-400; HB 1097, as amended by S.L. 1997-456, Sec. 55.7; HB 115, Sec. 55.7): S.L. 97-400 establishes the Fisheries Reform Act of 1997.

Part I directs the State Auditor to conduct a performance audit of the Division of Marine Fisheries (Division) and to assess the capacity of the Division to effectively implement the licensing provisions of this act. The State Auditor is to report to the Joint Legislative Commission on Seafood and Aquaculture (Seafood and Aquaculture) by February 1, 1998, and Seafood and Aquaculture is to review the performance audit and make a specific recommendation to the 1998 General Assembly as to whether the licensing provisions of this act should be implemented. Part I also directs Seafood and Aquaculture to study the following issues and report to the 1998 Regular Session of the General Assembly:

- If and how a recreational saltwater fishing license should be implemented;
- Whether a crew license should be established;
- Development of a comprehensive approach for the enhancement and management of shellfish;
- Whether a limited shellfish license or an exemption from shell fish license requirements should be established to allow students under the age of 18 to take and sell shellfish during the summer months;
- Establishment of a comprehensive State program to acquire, preserve and restore critical habitats; and
- Procedures and rules used by the License Appeals Panel.

Part II establishes a new Marine Fisheries Commission (MFC), effective September 1, 1997, as follows:

The MFC is to be composed of 9 members as follows:

- two persons actively engaged in, or recently retired from, commercial fishing;
- one person actively connected with, and experienced as, a licensed fish dealer or seafood processor;
- two persons actively engaged in recreational sports fishing;
- one person actively engaged in the sports fishing industry;

- two persons having general knowledge of and experience related to subjects and persons regulated by the MFC; and
- one person who is a fisheries scientist.

Appointments to the MFC are to be made by the Governor and at least five of the members must be residents of a coastal region of the State. The MFC will be assisted by four standing advisory committees (Finfish Committee; Crustacean Committee; Shellfish Committee; Habitat & Water Quality Committee) comprised of commercial and recreational fishermen, scientists, and other experts as well as by four regional advisory committees representing the different regions of the State.

Part III directs DENR to coordinate the preparation of draft Coastal Habitat Protection Plans (CHPPs) for critical fisheries habitats. The goal of the Plans will be the long-term enhancement of coastal fisheries. A CHPP will: (i) describe and classify biological systems in habitats; (ii) evaluate the function, value to coastal fisheries, status, and trends of habitats; (iii) identify existing and potential threats to habitats and impacts on coastal fishing; and (iv) make recommendations to protect and restore critical fisheries habitats. Once a draft CHPP has been prepared, the MFC, Environmental Management Commission (EMC), and Coastal Resources Commission (CRC) will review and revise the draft CHPP. The final CHPP will consist of the provisions concurrently agreed upon by all three commissions. Each commission must, to the maximum extent practicable, ensure that its actions are consistent with the CHPPs and must provide a written explanation of any action it takes that is inconsistent with a CHPP. The Secretary of Environment and Natural Resources (Secretary) must report to the Environmental Review Commission (ERC) and Seafood and Aquaculture within 30 days of the completion, or substantial revision of the CHPPs, and the ERC and Seafood and Aquaculture have 30 days to concurrently review and comment. The CHPP provisions are effective July 1, 1998 and all CHPPs must be adopted by July 1, 2003.

Part III also directs DENR to prepare proposed Fishery Management Plans (FMPs) for all commercially or recreationally significant species or fisheries that comprise State marine or estuarine resources. The FMPs are to be developed in accordance with a Priority List, Schedule, and guidance criteria established by MFC. The FMPs must incorporate fishery habitat and water quality considerations consistent with CHPPs, recommend management actions, and conservation and management measures. Advisory Councils composed of experts on each particular fishery will assist in the development of the FMPs. The Secretary of Environment and Natural Resources (Secretary) will monitor progress of development and adoption of FMPs and will report annually to the ERC and Seafood and Aquaculture on this progress. The Secretary will also report to Seafood and Aquaculture and the ERC within 30 days of the completion or substantial revision of the FMPs and Seafood and Aquaculture and the ERC will have 30 days to concurrently review and comment on the FMP. The FMP provisions are effective July 1, 1998.

Part IV provides for marine fisheries law enforcement, effective September 1, 1997, as follows:

- Increases the penalties for violation of general fisheries laws;
- Increases the penalties for the unlawful sale or purchase of fish;

- Authorizes the Secretary of Environment, Health, and Natural Resource to assess a civil penalty up to $10,000 for illegal sale or purchase of fish;
- Authorizes the Fisheries Director to determine, on a case-by-case basis and within the Director's sole discretion, that a proclamation does not apply to a licensee who is without notice due to an act of God or unforeseeable circumstance; and
- Directs the MFC to develop a Violations Points System and implementation schedule.

Part V establishes new marine fisheries licenses, effective July 1, 1999, and to expire September 1, 2003, as follows:

Standard Commercial Fishing License (SCFL)

- Entitles holder to sell fish;
- Fees: $200 for residents; $800 for nonresidents or the amount charged to a NC resident in the nonresident's state, whichever is less; however, a nonresident's fee may never be less than $200;
- SCFL is assignable and vessel endorsements may be assigned independently of SCFL to another SCFL holder;
- SCFL may be transferred under certain circumstances to a member of the SCFL holder's estate; a third-party purchaser of the SCFL holder's fishing vessel; or as authorized by the MFC;
- Vessel endorsement required for an additional fee based on length of vessel; and
- Eligibility
- SCFLs are available to any person who holds an Endorsement to Sell on July 1, 1999;
- 500 SCFLs will be available for distribution by lot to persons not otherwise eligible for a SCFL.

Other commercial fishing licenses

- Retired SCFLs available to persons 65 and older for an annual fee of $100 for residents; $800 for nonresidents or the amount charged to a NC resident in the nonresidentss state; however, a nonresident's fee may never be less than $100;
- Shellfish license for NC residents not holding a SCFL available for $25; and
- Fish dealer license available for various fees.

Recreational Commercial Gear License (RCGL)

- RCGL holder may use limited amounts of commercial gear (limitations to be established by the MFC);
- License holder is not entitled to sell fish; and
- Fees: $35 for residents; $250 for nonresidents.

Part VI extends moratorium on issuance of licenses from July 31, 1997, to July 1, 1999, and alters the moratorium on licenses to include all Endorsements to Sell (vessel and non-vessel), effective July 31, 1997. Part VI also directs the Cochairs of Seafood and Aquaculture to appoint an Advisory Committee to aid Seafood and Aquaculture in the development of recommendations on issues related to marine fisheries. Furthermore, Part VI extends the moratorium on new shellfish cultivation leases in a portion of Core Sound from August 1, 1997 to July 1, 1998.

Wildlife/Rabies Emergency (S.L. 1997-402; HB 302): S.L. 97-402 authorizes a local health director to petition the Wildlife Resources Commission, through and with the concurrence of the State Health Director, to suspend or liberalize the restrictions on taking foxes, raccoons, skunks, or bobcats in the local health director's county or district when there has been a positive diagnosis of rabies in any wild animal, other than a bat, in the local health director's county or district within the past year. The State Health Director will concur in the local health director's petition only if the State Health Director determines, in consultation with the Public Health Veterinarian, the State Agriculture Veterinarian, and other sources of veterinary expertise, that a rabies emergency exists.

When the Executive Director of the Wildlife Resources Commission receives a petition from a local health director, with the concurrence of the State Health Director, the Executive Director will develop a plan to reduce the threat of rabies to humans and domestic animals. The plan will be based on the best available veterinary and wildlife management information and may involve the suspension or liberalization of regulations on the taking of foxes, raccoons, skunks, or bobcats. The Executive Director will publicize the plan in the major news outlets serving the county or district affected by the plan. The act became effective August 16, 1997.

Water Authority Powers (S.L. 1997-436; HB 847): S.L. 97-436 authorizes an authority created under G.S. 162A-3.1 (Alternative Procedure for Creation) to enter into contracts with members that require members to make payments for treated water whether or not the water is actually delivered or made available. If payments are used to help pay the authority's debt service, they may not be made from proceeds of the members' taxing power. The authority does not have to fix rates, fees, and other charges at a uniform rate throughout the service area. Any agreements under this act may not be longer than 50 years. An authority that holds a certificate issued after December 1, 1991, by the Environmental Review Commission under G.S. 162A-7 (Prerequisites to Acquisition of Water, Etc., by Eminent Domain.) (repealed) may acquire property by eminent domain or any other lawful method to:

1. Relocate a road or construct a road necessitated by construction of a water supply project;
2. Establish, extend, enlarge, or improve storm sewer and drainage systems and works, or sewer and septic tank lines and systems;
3. Establish drainage programs and programs to prevent obstructions to the natural flow of streams, creeks, and natural water channels or to improve drainage facilities; or
4. Acquire property for wetlands mitigation.

The act became effective August 28, 1997.

Clean Water Trust Fund (S.L. 1997-443, Sec. 7.9; SB 352, Sec. 7.9): Section 7.9 of S.L. 97-443 amends G.S. 143-15.3B to provide that the State Controller shall reserve to the Clean Water Management Trust Fund six and one-half percent (6.5%) of any unreserved credit balance remaining in the General Fund at the end of each fiscal year *or thirty million dollars ($30,000,000), whichever is greater* (new language in italics). Section 7.9 of S.L. 97-443 defines the term "unreserved credit balance" to mean the credit

balance amount, as determined on a cash basis, before funds are reserved by the State Controller to the Savings Reserve Account, the Repairs and Renovations Reserve Account, or the Clean Water Management Trust Fund. Section 7.9 of S.L. 97-443 also specifies that if there are insufficient funds in the unreserved credit balance for the Savings Reserve Account, the Repairs and Renovations Reserve Account, and the Clean Water Management Trust, then the requirements of the Savings Reserve Account will be complied with first and any remaining funds will be reserved to the Repairs and Renovations Reserve Account and the Clean Water Management Trust Fund. The section became effective June 30, 1997.

Clean Water Trust Fund Reports (S.L. 1997-443, Sec. 7.10; SB 352, Sec. 7.10): Section 7.10 of S.L. 97-443 directs the Chair of the Trustees of the Clean Water Management Trust Fund to report, by November 1 of each year, to the Joint Legislative Commission on Governmental Operations, the Environmental Review Commission, and the Subcommittees on Natural and Economic Resources of the House of Representatives and the Senate Appropriations Committees regarding implementation of the Fund. A written copy of this report is to be submitted to the Fiscal Research Division of the General Assembly by November 1 of each year. Section 7.10 of S.L. 97-443 also directs the Chair of the Trustees of the Clean Water Management Trust Fund to submit, no later than November 1, 1997, and quarterly thereafter, to the Joint Legislative Commission on Governmental Operations, the Environmental Review Commission, and the Subcommittees on Natural and Economic Resources of the House of Representatives and the Senate Appropriations Committees a list of the projects awarded grants from the Fund during that quarter. A written copy of this report is to be submitted to the Fiscal Research Division of the General Assembly by November 1, 1997, and for each subsequent quarter. The section became effective July 1, 1997.

Department of Environment and Natural Resources/Department of Human Resources Changes (S.L. 1997-443, Part XIA; SB 352, Part XIA): Part XIA of S.L. 97-443 transfers public health functions from the Department of Environment, Health, and Natural Resources to the Department of Human Resources. The Department of Environment, Health, and Natural Resources is renamed the Department of Environment and Natural Resources and the Department of Human Resources is renamed the Department of Health and Human Services. Environmental health programs will remain within the Department of Environment and Natural Resources pending a study of these programs by the Environmental Review Commission. These changes became effective August 28, 1997 except that, for the purposes of budget and financial records, this Part became effective July 1, 1997.

Animal Waste Management Permit (S.L. 1997-443, Sec. 15.3; SB 352, Sec. 15.3): Section 15.3(a) of S.L. 97-443 directs the interagency group created in Section 18 of Chapter 626 of the 1995 Session Laws (consisting of representatives from Division of Soil and Water Conservation, Department of Environment and Natural Resources; the Division of Environmental Management, Department of Environment and Natural Resources; the Department of Agriculture; and the Cooperative Extension Service) and

the Department of Environment and Natural Resources to cooperatively revise the general permits that were previously developed by the Department and accordingly revise the proposed time schedule for these general permits. These general permits will be more flexible for the farmer and more practical for the farmer to implement and will not conflict with site-specific certified animal waste management plans. The interagency group and the Department may refer to House Bill 357, as introduced in the 1997 General Assembly, in determining issues to be addressed. The interagency group and the Department will submit a joint report of the revised general permits and time schedule to the Environmental Review Commission by October 1, 1997. Section 15.3(b) of S.L. 97-443 provides that an animal waste management system for a dairy facility that is in operation before January 1, 1998 shall continue to be permitted by rule rather than permitted according to animal waste management system statutes if: (i) the facility obtains a certified animal waste management plan by December 31, 1997 or the operator of the facility and the Environmental Management Commission enter into a special agreement, and (ii) the facility remains in compliance with the certified animal waste management plan or the special agreement. The section became effective July 1, 1997.

Pilot Program for Animal Operations Annual Inspections (S.L. 1997-443, Sec. 15.4; SB 352, Sec. 15.4): Section 15.4 of S.L. 1997-443 directs the Department of Environment and Natural Resources (DENR) to develop and implement a pilot program to begin no later than November 1, 1997, and to terminate October 31, 1998, regarding the annual inspections of animal waste management systems that serve animal operations. DENR will select two counties located in a part of the State that has a high concentration of swine farms to participate in the pilot program. Notwithstanding G.S. 143-215.10F, which requires the Division of Water Quality of the Department of Environment and Natural Resources to conduct the annual inspections, the Division of Soil and Water Conservation of the Department of Environment and Natural Resources will conduct the annual inspections of all animal waste management systems that serve animal operations in the two selected counties. The Division of Soil and Water Conservation inspectors will be located in an office in the county in which that person will be conducting the inspections for quick response to complaints and reported problems. Section 15.4 of S.L. 1997-443 also directs the Division of Soil and Water Conservation and the Division of Water Quality to jointly submit an interim report no later than April 15, 1998, and a final report no later than December 1, 1998 to the Environmental Review Commission and to the Fiscal Research Division. The Environmental Review Commission may recommend to the 1998 Regular Session of the 1997 General Assembly or to the 1999 General Assembly whether to continue or expand the pilot program.

Monitor Coastal Water Quality (S.L. 1997-443, Sec. 15.17; SB 352, Sec. 15.17): Section 15.17 of S.L. 97-443 directs the Department of Environment and Natural Resources to develop and implement a program to monitor the State's coastal fishing waters for contaminants in order to protect the health of persons who use these waters for recreational activities. The section became effective July 1, 1997.

National Park, Parkway and Forests Council (S.L. 1997-443, Sec. 15.36; SB 352, Sec. 15.36): Section 15.36 of S.L. 97-443 transfers the North Carolina National Park, Parkway and Forests Development Council from the Department of Commerce to the Department of Environment and Natural Resources. The section became effective August 28, 1997.

Multi-County Water Conservation/Infrastructure (S.L. 1997-443, Sec. 15.48; SB 352, Sec. 15.48): Section 15.48 of S.L. 97-443 provides that revenues of the Multi-County Water Conservation and Infrastructure District will be paid to all of the counties in the Roanoke River Basin. The counties in the Roanoke River Basin include: Bertie, *Caswell*, *Forsyth*, Granville, *Guilford*, Halifax, Martin, Northampton, Person, *Rockingham*, *Stokes*, *Surry*, Vance, Warren, and *Washington* (counties added for purposes of payment by S.L. 97-443 are in italics). These revenues will be distributed according to the following formula: (i) one-half pro-rata based on the population located within the Roanoke River Basin area of each county; and (ii) one-half pro-rata based on the land area located within the Roanoke River Basin of each county. Section 15.48 of S.L. 97-443 also defines the term river basin, for purposes of North Carolina's interbasin transfer statutes, to include any portion of a North Carolina river basin that extends into another state. Furthermore, Section 15.48 of S.L. 97-443 provides that substantive restrictions and conditions upon surface water transfers authorized by North Carolina's statute regulating surface water transfers may be imposed pursuant to any federal law that permits the State to certify, restrict, or condition any new or continuing transfer or related activities licensed, relicensed, or otherwise authorized by the federal government. The section became effective July 1, 1997.

Solid Waste Operator Exemption (S.L. 1997-443, Secs. 15.49(a) and (b); SB 352, Secs. 15.49(a) and (b)): Section 15.49(a) of S.L. 97-443 provides that the training requirements for operators of solid waste management facilities do not apply to any operator of a solid waste management facility who has five years continuous experience as an operator of a solid waste management facility immediately preceding January 1, 1998, provided that the operator attends a course and completes the continuing education requirements approved by the Department of Environment and Natural Resources (DENR). Section 15.49(b) authorizes DENR to use funds in the Scrap Tire Disposal Account to provide regulatory assistance to local governments to develop programs to prevent scrap tires from outside the State from being presented for free disposal and to complete the cleanup of nuisance tire collection sites. Subsection (a) became effective August 28, 1997, and subsection (b) became effective July 1, 1997.

Irrigation System Design (S.L. 1997-454; SB 550): S.L. 97-454 provides that the following two types of activities are exempt from regulation as "engineering" under the North Carolina Engineering and Land Surveying Act (Chapter 89C):

1. The planning or design of best management practices on agricultural lands by employees of the Natural Resources Conservation Service is exempt from regulation as engineering.

2. The design of land application irrigation systems for an animal waste management plan that is required under G.S. 143-215.10C if the person has at least 3 years relevant experience in soil science and basic hydraulics and is thereby designated as an Irrigation Design Technical Specialist by the North Carolina Soil and Water Conservation Commission. (An animal waste management plan under G.S. 143-215.10C is a system designed to collect, treat, store, or land apply waste from animal operations.)

The act became effective March 1, 1997.

Clean Water/Environmentally Sound Policy Act (S.L. 1997-458; HB 515): S.L. 97-458 establishes the Clean Water Responsibility and Environmentally Sound Policy Act.

Part I establishes a statewide moratorium, beginning March 1, 1997 and ending March 1, 1999, on the construction or expansion of swine farms, lagoons, and animal waste management systems for swine farms (250 or more swine). It does not prohibit:

- Construction to repair or replace a component of an existing swine farm or lagoon;
- Construction or expansion to meet the projected population or design capacity or to comply with animal waste management rules;
- Construction or expansion if the person undertaking the construction has been issued a permit for that construction prior to the date this act became effective;
- Construction or expansion if, prior to March 1, 1997, the person undertaking the construction has laid a foundation for the component being constructed, entered into a bona fide written contract for construction, or been approved for a line of credit for the construction and has obligated or expended funds from the line of credit; or
- Construction or expansion of an innovative animal waste management system that does not employ an anaerobic lagoon and has been approved by DENR.

Part I also establishes a moratorium, beginning January 1, 1997 and ending March 1, 1999, on the construction or expansion of swine farms and lagoons in a county that has a population of less than 75,000, has over $150 million on expenditures for travel and tourism, and is not in the coastal area.

Part II authorizes counties to adopt zoning regulations for swine farms served by an animal waste management system having a design capacity of 600,000 pounds steady state live weight (SSLW) or more. These zoning regulations, however, may not exclude these large swine farms from the entire zoning jurisdiction. Part II also provides that, with respect to swine farms in existence at the time the zoning ordinance is adopted, zoning regulations will not prohibit the continued existence of the swine farm, require the amortization of the swine farm, or prohibit the repair or replacement of the swine farm.

Part III authorizes the EMC to adopt economically feasible standards to control the emission of odors from animal operations (swine, cattle, horses, sheep, and poultry) and directs the EMC to adopt a temporary rule to regulate odor emission by March 1, 1999.

Part IV does the following with regard to swine farm siting:

- Establishes additional setbacks for a swine house or lagoon that is a component of a swine farm as follows:

- At least 2,500 feet from any outdoor recreational facility, national park, State park, historic property, or child care center;
- At least 500 feet from any well supplying water to a public water system; and
- At least 500 feet from any other well that supplies water for human consumption. This setback does not apply to a well located on the same property on which the swine house or lagoon is located and that supplies water only for use on that property or adjacent property under common ownership.
- Increases the setback for a sprayfield from at least 50 feet to at least 75 feet from any property boundary on which an occupied residence is located or from any perennial stream or river, other than an irrigation ditch or canal.
- Prohibits the construction of any component of a liquid animal waste management system serving an animal operation, other than a land application site, on land that is located within the 100-year floodplain.
- Adds to current notice provisions the requirement that any person intending to construct a swine farm must notify the county manager or chair of the board of commissioners of the county or counties in which the farm is to be located and the local health director of those counties.
- Provides that the new and increased setback requirements apply to any new liquid animal waste management system for which construction or expansion commences on or after the date this act becomes effective.

Part V adds the following factors to the current priority criteria for receiving a loan or grant under the Clean Water Revolving Loan and Grant Fund: existence of a comprehensive land-use plan; the comprehensive land-use plan exceeds minimum State water quality standards; and the comprehensive land-use plan is implemented. Part V also directs the EMC to establish priority criteria for modifications to wastewater treatment facilities that must meet new nitrogen and phosphorous limits.

Part VI adds five new subsections relating to nitrogen and phosphorous limits to G.S. 143-215.1 as follows:

Subsection (c1) prohibits facilities that discharge into Nutrient Sensitive Waters from discharging more than an amount of nitrogen than would result from a discharge of the permitted flow (set at the time the EMC finds that those waters are experiencing excessive growths of vegetation) with a concentration of 5.5 milligrams of nitrogen per liter.

This limit applies only to facilities placed into operation prior to July 1, 1997 (or for which an authorization to construct was issued prior to July 1, 1997) and that have a design capacity to discharge 500,000 gallons per day or more and facilities for which an authorization to construct is issued on or after July 1, 1997.

Subsection (c2) prohibits facilities that discharge into nutrient sensitive waters where phosphorous is a nutrient of concern from discharging more than an amount of phosphorous than would result from a discharge of the permitted flow (set at the time the EMC finds that those waters are experiencing excessive growths of vegetation) with a concentration of 2.0 milligrams of phosphorous per liter.

This limit applies only to facilities placed into operation prior to July 1, 1997 (or for which an authorization to construct was issued prior to July 1, 1997) and that have a

design capacity to discharge 500,000 gallons per day or more and facilities for which an authorization to construct is issued on or after July 1, 1997

Subsection (c3) allows facilities subject to the nitrogen/phosphorous discharge limits to form approved cooperative agreements in order to satisfy those limits.

Subsection (c4) allows a facility subject to the nitrogen/phosphorous discharge limits to request from the EMC approval of a discharge concentration that is greater than the general nitrogen/phosphorous discharge limits set by this section at a decreased permitted flow so long as the total amounts of nitrogen/phosphorous are equal to or less than the amount discharged under the standard nitrogen and phosphorous limits.

Subsection (c5) allows the EMC to adjust nitrogen and phosphorous discharge limits according to the results of calibrated nutrient response modeling.

Part VI also adds violation of the nitrogen/phosphorous discharge limits to the list of water quality violations for which the Secretary of Environment and Natural Resources (Secretary) may assess a civil penalty of up to $10,000 per violation per day. Furthermore, Part VI directs the EMC to develop a schedule of dates between January 1, 1998 and January 1, 2003 during which existing facilities must come into compliance with the nitrogen/phosphorous discharge limits.

Part VII directs the EMC to develop model stormwater management programs that may be implemented by State agencies and units of local government. It also authorizes State agencies to adopt rules and units of local government to adopt ordinances to establish and enforce stormwater control programs to be approved by the EMC. Furthermore, Part VII directs the Department of Transportation (DOT) to work with the Division of Water Quality, DENR, to complete the development of a Statewide stormwater management permit to govern all programs administered by DOT by October 1, 1997.

Part VIII directs the EMC to develop and implement a basinwide water quality management plan for each of the State's 17 major river basins. In the development and implementation of these plans, the cumulative impacts of all activities across a river basin and all point and nonpoint sources of pollutants will be considered. Effective January 1, 1998, each plan will provide that all point and nonpoint sources share responsibility in reducing pollutants in the State's waters in a fair, reasonable, and proportionate manner and establish a nutrient reduction goal in Nutrient Sensitive Waters so that the designated uses of these waters are not impaired. Part VIII also directs the EMC to adopt total maximum daily loads of pollutants for impaired waters as required by federal law and to incorporate those total maximum daily loads into the Commission's continuing basinwide water quality planning process.

Part IX clarifies that a person must obtain a permit under either Part 1 (individual permits) or Part 1A (general permits) of Article 21 (Water and Air Resources) in order to construct or operate an animal waste management system. Part IX also expresses the intent of the General Assembly that most animal waste management systems be permitted under a general permit issued under this Part. The Commission, in its discretion, may require that an animal waste management system be permitted under an individual permit issued under Part 1 of this Article if the Commission determines that an individual permit is necessary to protect water quality, public health, or the environment. This Part became effective January 1, 1997.

Part X directs the EMC to develop a Violation Points System applicable to permits for animal waste management systems for swine farms. Part X also directs DENR to develop a recommended system of civil penalties applicable to integrators of swine operations.
Part XI directs the Secretary of Environment and Natural Resources to refer to the State Bureau of Investigation for review any discharge of waste by any person or facility in any manner that violates State law related to water and air resources that involves the possible commission of a felony. Effective January 1, 1998, Part XI also authorizes the EMC to require that applicants for a permit for a privately owned treatment works that serves 15 or more service connections or that regularly serves 25 or more individuals demonstrate that the applicant is and will remain financially qualified to carry out the activity for which the permit is required.
Part XII provides for the study of certification and training of persons who apply soil enriching nutrients onto land; development of guidelines for best management practices for golf courses; development of a plan to phase out the use of anaerobic lagoons and sprayfields as primary methods of disposing of animal waste at swine farms; and study of issues relating to publicly owned treatment works that persistently fail to comply with State and federal water quality laws.
Part XIII repeals a residual "Hardison" amendment that prohibits the adoption of effluent standards for animal feeding operations more stringent that those adopted by the federal government. Part XIII also provides for the severability of any unconstitutional provision and contains effective dates. Except as otherwise provided, the act became effective August 27, 1997.

Local Water Quality/Leaking Underground Storage Tanks Cleanup (S.L. 1997-493; SB 114): S.L. 97-493 establishes a framework for voluntary development and implementation of cooperative State-local water resources management and water quality protection plans for river basins and segments of river basins. The act authorizes the Environmental Management Commission (EMC) to approve water quality plans proposed by coalitions of local governments whose territorial areas collectively include the affected river basin or segment of river basin. If the EMC determines that a jurisdiction within a coalition of local governments is not making good faith progress toward attaining a desired water quality outcome, the EMC may revoke or suspend its approval of that jurisdiction's participation in the plan, revoke or suspend its approval of the entire plan, or both.

S.L. 97-493 also clarifies that cleanup is not required for discharges or releases from leaking petroleum underground storage tanks having a class CDE impact until the EMC adopts a temporary rule that will replace the AB/CDE classification system with a risk-based cleanup approach as required by G.S. 143-215.94V(b) and this act. S.L. 97-493 directs the EMC to adopt a temporary rule no later than September 11, 1997 to establish a risk-based approach for the cleanup of discharges and releases from petroleum underground storage tanks. The act became effective August 28, 1997.

Amend Environmental Laws-2 (S.L. 1997-496; HB 211): S.L. 97-496 amends and makes clarifying, conforming, and technical changes to various laws related to environment, health, and natural resources as follows:

- Provides that a water pollution control system operator's certificate expires on December 31st of the year in which it is issued or renewed;
- Provides that the Water Pollution Control System Operators Certification Commission may establish minimum continuing education requirements that an applicant must meet in order to renew a certificate;
- Provides that the Water Pollution Control System Operators Commission must renew a certificate if the applicant meets the continuing education requirements and pays any applicable fees;
- Provides that an application for a permit required under the Coastal Area Management Act, is contingent upon the applicant's compliance with the rules or laws of all states, not just North Carolina;
- Clarifies that the Environmental Management Commission, in reviewing an application for a permit under the water quality program, hold a public hearing rather than a public meeting;
- Allows the Environmental Management Commission to delegate its powers through resolution rather than through rule;
- Allows the Environmental Management Commission to hold a public meeting on any matter within the scope of its authority;
- Provides that if any action or failure to act that constitutes a violation of local air pollution control programs is continuous, the violator may be assessed a maximum penalty of $10,000 per day as long as the violation continues;
- Provides that if any action or failure to act that constitutes a violation of statewide air quality standards is continuous, the violator may be assessed a maximum penalty of $10,000 per day as long as the violation continues;
- Re-establishes a schedule of six-year staggered terms for the members of the North Carolina Mining Commission;
- Establishes term expiration dates for appointees to the to the Mining Commission for appointments made in 1997 and who represent the mining industry in order to achieve the six-year staggered terms;
- Re-establishes a schedule of two-year staggered terms for the members of the North Carolina Parks and Recreation Authority;
- Establishes term expiration dates for appointees to the North Carolina Parks and Recreation Authority for appointments made in 1997 and 1998 in order to achieve the two-year staggered terms;
- Removes an inadvertent reference to the Department of Environment and Natural Resources in G.S. 106-802(4);
- Corrects the citation to basinwide restoration plans in the Wetlands Restoration Program in G.S. 143-214.12(a);
- Adds the word "steady" so that the correct term, "steady state live weight," is used in G.S. 143-215.10G;
- Clarifies that it is the Soil and Water Conservation Commission that has the authority to establish priority designations for inclusion in the agriculture cost share program

- Clarifies that the Environmental Management Commission has all of the powers and duties listed under G.S. 143B-282(a)(1);
- Corrects a statutory citation referenced in Section 17 of Chapter 626 of the 1995 Session Laws (1996 Regular Session); and
- Corrects a statutory citation referenced in Section 2 of Chapter 627 of the 1995 Session Laws (1996 Regular Session).

The act became effective August 28, 1997.

Amend Interbasin Transfer (S.L. 1997-524; SB 947): S.L. 524 modifies the burden of proof that must be satisfied to obtain an interbasin transfer certificate so that a certificate will not be granted unless the Environmental Management Commission concludes, by a preponderance of the evidence based on its findings of fact, that: (i) the benefits of the proposed transfer outweigh the detriments and (ii) the detriments have been or will be mitigated to a reasonable degree. S.L. 97-524 directs the Environmental Review Commission (ERC) to study issues relating to the transfer of surface waters between river basins in the State. The ERC is directed to specifically consider what an appropriate benchmark would be with regard to limiting the volume of water that flows out of a river basin through interbasin transfer and whether the EMC should be authorized to issue special orders to remedy violations of laws regulating transfers. The ERC will report its recommendations to the 1998 Regular Session of the General Assembly. S.L. 97-524 also imposes a moratorium on new transfers and on increases in the volume of existing transfers. It prohibits the EMC from issuing a certificate for a new transfer or from approving an increase in the volume of an existing transfer. The moratorium does not apply to an existing transfer that, on May 1, 1997, is registered with the Department of Environment and Natural Resources, but is not a permitted transfer. S.L. 97-524 also authorizes the EMC to hold public meetings or hearings, gather information, and analyze data relevant to any interbasin transfer application. The moratorium on new transfers and increases in the volume of existing transfers imposed by this act expires on the date of the sine die adjournment of the 1997 General Assembly's 1998 Regular Session. The act became effective August 28, 1997.

Inactive Hazardous Sites Recordation (S.L. 1997-528; HB 227): S.L. 97-528 provides that recordation is not required for any inactive hazardous substance or waste disposal site that is undergoing voluntary remedial action unless the Secretary of Environment and Natural Resources determines that:

1. A dangerous concentration of hazardous substance or waste will remain after the voluntary remedial action is implemented; or
2. The voluntary remedial action is not implemented in a manner satisfactory to the Secretary and in compliance with the agreement between the Secretary and the responsible party.

S.L. 97-528 also authorizes the Secretary to waive recordation for any residential property contaminated due to migration of a hazardous substance or waste through groundwater flow if disclosure of the contamination is required by the Residential Real Property Disclosure Act (Chapter 47E of the General Statutes). An owner whose recordation requirement is waived and who fails to disclose the contamination, as required by the

Residential Real Property Disclosure Act, is subject to the penalties of G.S. 130A-22 (Administrative penalties), G.S. 130A-25 (Misdemeanor), and the Residential Real Property Disclosure Act. The act became effective August 28, 1997.

MAJOR PENDING LEGISLATION

Notice of Hazardous Discharge (SB 918): Senate Bill 918 would amend G.S. 143-215.85 to require a person to notify the Department of Environment and Natural Resources of a discharge of:

1. Any amount of oil discharged into the waters of the State;
2. Five gallons or more of oil discharged in any manner that makes it reasonably likely for any amount of the oil to reach the waters of the State; or
3. Any amount of a hazardous substance discharged in a quantity equal to or greater than a reportable quantity as defined by federal regulations or rules of the Environmental Management Commission.

The Senate failed to concur in the House Committee Substitute for Senate Bill 918 on the final day of the 1997 Regular Session. No action relating to the appointment of a conference committee was taken at that time.

STUDIES

Legislative Research Commission Studies

The 1997 Studies Bill (S.L. 1997-483; SB 32) authorizes the Legislative Research Commission to study the following environmental and natural resource issues: (1) Coastal Beach Movement Issues including, but not limited to, Beach Renourishment and Storm Hazard Mitigation; and (2) Storm Hazard Mitigation and Wastewater System Permits.

Referrals to Departments, Agencies, Etc.

The 1997 Studies Bill (S.L. 1997-483; SB 32) directs the Environmental Management Commission and the Division of Air Quality of the Department of Environment and Natural Resources, with the assistance and cooperation of the Division of Motor Vehicles of the Department of Transportation, to study whether the emissions inspection and maintenance program for motor vehicles should be expanded to include all metropolitan counties.

Neuse River Basin Septic Tanks (S.L. 1997-443, Sec. 15.16; SB 352, Sec. 15.16): Section 15.16 of S.L. 97-443 directs the Department of Environment and Natural Resources to evaluate septic tanks in the Neuse River Basin including the number of septic tanks, their condition, any potential groundwater contamination from malfunctioning septic tank systems, the impact of hurricane damage and flooding on septic tank systems, the cost to repair or replace failing septic tank systems, and any viable alternatives to septic tanks. No later than October 1, 1998, the Department will

report its findings on septic tanks to the Environmental Review Commission, the Fiscal Research Division, and the Joint Legislative Commission on Governmental Operations. The Environmental Review Commission shall report its findings and recommendations to the General Assembly on the first day of the 1999 Regular Session of the 1999 General Assembly.

Reorganization of Department of Environment and Natural Resources (S.L. 1997-443, Sec. 15.35; SB 352, Sec. 15.35): Section 15.35 of S.L. 97-443 directs the Office of State Budget and Management to review the programs, divisions, boards, commissions, councils, and committees currently within the Department of Environment and Natural Resources and to conduct a study to determine the desirability of reorganizing the Department so as to create two separate departments, one that would manage and protect the State's natural resources and one that would protect the environment and contain regulatory programs. By March 15, 1998, the Office of State Budget and Management will report on the reorganization issue to the Joint Legislative Commission on Governmental Operations, the Environmental Review Commission, and the Fiscal Research Division.

Brownfields Property Reuse Act (S.L. 1997-357; HB 1121): S.L. 97-357 directs the Department of Environment and Natural Resources to prepare an evaluation of the effectiveness of the Brownfields Property Reuse Act in facilitating the remediation and reuse of existing industrial and commercial properties. The Department will submit its report, concurrently with the report on the Inactive Hazardous Sites Response Act of 1987, to the Environmental Review Commission on February 15 of each year, beginning February 15, 1998.

Clean Water/Environmentally Sound Policy Act (S.L. 1997-458; HB 515):

- Section 10.2 of S.L. 97-458 directs the Department of Environment and Natural Resources to develop a recommended system of civil penalties applicable to integrators of swine operations. The Department will report its findings and recommendations to the Environmental Review Commission no later than March 1, 1998. Based on the recommendations, the Environmental Review Commission will determine whether to submit a legislative proposal to the 1997 General Assembly, 1998 Regular Session.
- Section 10.2 of S.L. 97-458 directs the Environmental Management Commission to study the issue of liability for cleanup costs and appropriate penalties for integrators of swine operations if an operator commits a willful, wanton, or grossly negligent violation that results in significant environmental damage. The Department will report its findings and recommendations to the Environmental Review Commission no later than March 1, 1998. Based on the recommendations, the Environmental Review Commission will determine whether to submit a legislative proposal to the 1997 General Assembly, 1998 Regular Session.
- Section 12.4 of S.L. 97-458 directs the Department of Agriculture to develop a plan to phase out the use of anaerobic lagoons and sprayfields as primary methods

of disposing of animal waste at swine farms. No later than May 1, 1998, the Department will present the plan in a written report to the 1998 Regular Session of the 1997 General Assembly and to the Environmental Review Commission.

- Section 12.5 of S.L. 97-458 directs the Utilities Commission, the Local Government Commission, and the Environmental Management Commission, with the assistance of other State agencies to jointly study issues relating to publicly owned treatment works that persistently fail to comply with State and federal laws, rules, and regulations for the protection of public health and the environment. These commissions will jointly present their findings and recommendations to the 1998 Regular Session of the 1997 General Assembly.

Referrals to Existing Commissions

The 1997 Studies Bill (S.L. 1997-483; SB 32) authorizes the Environmental Review Commission to study the following:

1. The impact of air pollutant emissions from asphalt plants on public health and the environment;
2. The remediation and reuse of brownfields property;
3. The administration of the emissions inspection and maintenance program for motor vehicles and whether that program should be transferred from the Division of Motor Vehicles of the Department of Transportation to the Environmental Management Commission and the Division of Air Quality in the Department of Environment and Natural Resources;
4. The transfer of surface waters between river basins in the State. The Environmental Review Commission may consider whether, and on what basis, the total volume of water that may be transferred from any river basin should be limited and whether the Environmental Management Commission should be authorized to issue special orders to remedy violations of laws or rules regulating transfers;
5. The feasibility and desirability of establishing a voluntary education program designed to educate members of the public who maintain residential lawns or gardens concerning the impact nutrients and pesticides have on the environment of the State, the responsible use of nutrients and pesticides, and ways to reduce excessive inputs of nutrients and pesticides into the surface and groundwaters of the State. The Environmental Review Commission may consider the feasibility of directing the North Carolina Cooperative Extension Service to develop and implement this voluntary education program;
6. The preliminary evaluation of proposed sites for wastewater systems, including whether local health departments should conduct preliminary evaluations of proposed sites for wastewater systems, how preliminary evaluations conducted by local health departments might be made more reliable, the extent to which an applicant may rely on a preliminary evaluation, and liability for instances where the State fails to issue an improvement permit for a site for which a local health department has concluded that the site is appropriate for construction of a wastewater system; and

7. Evaluate all State-funded water quality studies conducted since 1992.

Environmental Review Commission Studies (S.L. 1997-443, Sec. 11A.128; SB 352, Sec. 11A.128): Section 11A.128 of S.L. 97-443 directs the Environmental Review Commission to study the following issues:

1. The appropriate roles and financing of local and State agencies in reviewing, permitting, inspecting, and monitoring private wells, community wells, municipal wells, and municipal surface water supplies;
2. The appropriate roles and financing of local and State agencies in reviewing, permitting, inspecting, monitoring, and maintaining septic tanks, package wastewater treatment plants, municipal wastewater treatment plants, industrial treatment plants, and animal waste operations;
3. The appropriate roles and financing of local and State agencies in administering the various environmental health programs;
4. The integration of State's review of the financial integrity of applicants for drinking water and wastewater discharge permits;
5. Policies to monitor the quality and prevent and reduce pollution of groundwaters;
6. Consistent State policies for cleaning up contaminated groundwater and soils;
7. Coordination of adoption and development of policies by the Coastal Resources Commission, Environmental Management Commission, Commission on Health Services, Marine Fisheries Commission, and other commissions having roles in water quality or wastewater issues;
8. Policies to monitor the quality and prevent and reduce pollution of surface waters;
9. Organization of the State's water planning agencies;
10. Technical and financial assistance to business, industry, local governments, and citizens;
11. Policies to encourage water conservation;
12. Policies to encourage regional water supply and wastewater treatment planning; and
13. The role of the North Carolina Cooperative Extension Services, North Carolina Department of Agriculture, and the North Carolina Department of Transportation in the protection of water supplies.

The Environmental Review Commission will report its findings to the 1997 General Assembly, Regular Session 1998.

Best Management Practices for Septic Tank Systems (S.L. 1997-443, Sec. 15.16; SB 352, Sec. 15.16): Section 15.16 of S.L. 97-443 directs the Environmental Review Commission to study the development of guidelines for best management practices for septic tank systems for both the installation of new septic tank systems and the replacement or improvement of existing septic tank systems. The Environmental Review Commission will consider the use of incentives, including tax credits, that could be implemented to encourage the use of best management practices for septic tank systems. The Environmental Review Commission will submit its legislative recommendations resulting from this study to the 1997 General Assembly, 1998 Regular Session.

Fisheries Reform Act of 1997 (S.L. 1997-400; HB 1097): S.L. 97-400 directs the Joint Legislative Commission on Seafood and Aquaculture to:

1. Review the performance audit of the Division of Marine Fisheries of the Department of Environment and Natural Resources conducted by the State Auditor and recommend whether the licensing provisions of the Fisheries Reform Act of 1997 should be implemented;
2. Study issues relating to licensing coastal recreational fishing and to make a specific finding as to whether a licensing system should be adopted for coastal recreational fishing and, if so, what that system should be and how it should be implemented;
3. Study issues related to the establishment of a crew license for persons working aboard a vessel engaged in the taking of fish for sale;
4. Study issues relating to the enhancement and management of shellfish resources and to develop a set of comprehensive recommendations for the enhancement and management of the shellfish resources of the State;
5. Study issues relating to whether either a limited shellfish license or an exemption from shellfish license requirements should be established to allow students under the age of 18 to take and sell shellfish during the summer months;
6. Study the establishment of a comprehensive State program to acquire, preserve, and restore habitats critical to marine and estuarine fisheries; and
7. Study procedures and rules used by the fishing license Appeals Panel in the review of fishing license applications.

The Joint Legislative Commission on Seafood and Aquaculture will reports its findings and recommendations on these issues to the 1998 Regular Session of the 1997 General Assembly.

Clean Water/Environmentally Sound Policy Act (S.L. 1997-458; HB 515): S.L. 97-458 directs the Environmental Review Commission to:

1. Study the feasibility and desirability of requiring persons who apply fertilizers or other soil-enriching nutrients onto land to be certified under a certification program that requires training and passing an examination; and
2. Study the development of guidelines for best management practices for golf courses.

The Environmental Review Commission will submit its legislative recommendations resulting from this study to the 1997 General Assembly, 1998 Regular Session.

Amend Interbasin Transfers (S.L. 1997-524; SB 947): S.L. 97-524 directs the Environmental Review Commission to study issues relating to the transfer of surface waters between river basins in the State. The Environmental Review Commission will consider whether, and on what basis, the total volume of water that may be transferred from any river basin should be limited and whether the Environmental Management Commission should be authorized to issue special orders to remedy violations of laws or rules regulating transfers. The Environmental Review Commission will report its findings, recommendations, and legislative proposals to the 1998 Regular Session of the General Assembly.

X. HEALTH AND INSURANCE

(Linda Attarian, Linwood Jones)

Ratified Legislation

Health

Remove Sunset/Health Contract Confidentiality (S.L. 1997-23; SB 247): S.L. 97-23 removes the June 1, 1997 sunset on G.S. 131E-99 to continue a narrow exemption of certain provisions of health care contracts by public hospitals and medical schools and certain other private parties from the Public Records Law. G.S. 131E-99 makes a narrow exception to the Public Records Law which generally otherwise provides that contracts of public hospitals and medical schools are public records. Prior to the enactment of SB 247, G.S. 131E-99 provided that those provisions of contracts public hospitals enter into with managed care organizations, insurance companies, employers, or other payers related to financial terms or other competitive health care information related to the provision of health care are both confidential and not a public record. The other provisions of the contract would be a public record. S.L. 97-23 expands the scope of the statute to include contracts that medical schools enter into with managed care organizations, insurance companies, employers, or other payers. S.L. 97-23 narrows the scope of competitive health care information covered by the statute to include only competitive health care information that is directly related to the financial terms in the contract. The new law allows an elected public body which has responsibility for the hospital or medical school to have access to such information, not withstanding its confidential status. However, if disclosure of the information is made to such body, the information shall remain confidential, and the members of the body have the duty not to further disclose the information. The act became effective when it became law on May 29, 1997. The act does not affect any litigation pending as of that date, but it does apply to contracts entered into before, on, or after May 29, 1997.

Optometry Changes (S.L. 1997-75; HB 527, S.L. 1997-304, HB 1122): S.L. 97-75 removes the requirement that a physician participate in the prescribing of pharmaceutical agents; permits hospital privileges to be granted to optometrists; authorizes peer review for optometrists; and provides for confidentiality of communications between optometrists and patients. The act became effective May 22, 1997.

Prescription Refill Safety Act (S.L. 1997-76; SB 945): S.L. 97-76 requires a pharmacist to refill a prescription for a "narrow therapeutic index drug" with the same drug by the same manufacturer as the previous prescription unless: (1) the prescriber and patient consent, and (2) the pharmacist contacts the prescriber in advance. A narrow therapeutic index drug is one with a narrowly defined range between risk and benefit. The Secretary of the Department of Environment, and Natural Resources will identify this limited class of drugs, with advice from the State Health Director, the Medical Board, and the Board of Pharmacy. The act became effective July 1, 1997.

Office of Women's Health (S.L. 1997-172; SB 626): S.L. 97-172 establishes a new Office of Women's Health within the Department of Health and Human Resources. The primary purpose of the Office is to prevent disease and improve the quality of life for women. The Office is directed to:

1. Develop a strategic plan to improve public services and programs for women.
2. Conduct policy analyses on women's health issues.
3. Facilitate communication with various health groups and organizations.
4. Build an awareness of women's public health issues.
5. Develop public/private partnerships to modify and expand services.
6. Study the feasibility of establishing initiatives for early intervention services for women with HIV.
7. Study the feasibility of establishing initiatives for outreach, treatment, and follow-up services for women at high risk for contracting sexually transmitted diseases.
8. Study the feasibility of establishing initiatives for the development and expansion of shelter programs for victims of domestic violence.

The Department must report to the 1997 General Assembly, 1998 Session, upon convening, on the implementation of the Office. The act became effective July 1, 1997.

Pharmacy Rehabilitation Program (S.L. 1997-177; HB 948): S.L. 97-177 authorizes the Board of Pharmacy to establish a substance abuse recovery program for pharmacists. The act became effective June 12, 1997.

Organ Donation/Procurement, as amended by HB 115, Sec. 48 (S.L. 1997-192; HB 1051): S.L. 97-192 changes current law pertaining to a hospital's duty to identify potential organ and tissue donors by requiring all hospitals in North Carolina to have a signed agreement with their federally designated organ procurement organization (OPO). Pursuant to this agreement, the hospital will: (1) notify the OPO of all deaths or impending brain deaths meeting the OPO's criteria for potential organ donors; and (2) provide the OPO and tissue banks reasonable access to patients' medical records for the following purposes: (a) to determine a patient's organ or tissue donation potential; (b) to review deceased patients' records to determine the hospital's organ and tissue donation potential; (c) to assess the educational needs of the hospital with respect to the organ and tissue donation process; and (d) to provide documentation to the hospital to evaluate the effectiveness of the hospital's efforts. The hospital and its personnel are not subject to criminal or civil liability for actions taken in good faith to comply with the law, and will be held harmless for any damages arising out of the OPO's or tissue bank's failure to comply with the requirement of the law.

Once the hospital provides the OPO notification of the potential availability of an organ or tissue donation, the act requires the OPO to evaluate the organ's donation potential. The OPO or tissue banks must make sure that families of potential organ or tissue donors are made aware of the option of organ and tissue donation. In collaboration with the hospital, the OPO or tissue bank shall have trained staff available around the clock to ask for consent for any donation. The act became effective October 1, 1997.

Increase Pharmacy Fees (S.L. 1997-231; HB 933): S.L. 97-231 increases the fees collected by the Board of Pharmacy. The fee for the examination of an applicant for a license increases from $150 to $160. The fee for renewing a license increases from $65 to $110. The fee for an original license without examination as provided in G.S. 90-85.20 increases from $300 to $400. The fee for an original registration of a pharmacy increases from $250 to $350, and the fee to renew the registration of a pharmacy increases from $125 to $175. In addition, the act authorizes the Board of Pharmacy to collect new annual registration fees for dispensing professionals, and a new fee of $25 for a duplicate of any license, permit or registration issued by the Board. The act became effective October 1, 1997.

Medicaid False Claim Act (S.L. 1997-338; SB 943): See **HUMAN RESOURCES**.

Lodging Establishments (S.L. 1997-367; SB 208): Under prior law, certain lodging establishments were required to sanitize re-usable cooking and eating utensils when those utensils were provided in the lodging unit for guests to use in preparing their food (G.S. 130A-248). Condominiums and private homes that are rented to guests and that also provide re-usable cooking and eating utensils for guest use are exempt from regulation (G.S. 130A-250). Thus, although the service provided by both regulated and nonregulated establishments is the same, as is the risk of public exposure to disease, the application of law was more burdensome on the regulated establishments than on the nonregulated establishments. S.L. 97-367 exempts multiuse utensils and surfaces provided in the guest room of a regulated lodging unit for guests to prepare food while staying in the guest room from the cleaning and bactericidal treatment otherwise required for eating and drinking utensils and other food-contact surfaces. The act became effective August 6, 1997.

Chiropractor Supplements Exempt (S.L. 1997-369; SB 374): S.L. 97-369 exempts from the NC sales and use tax sales of nutritional supplements to patients by a chiropractor in the chiropractor's office if the supplements are a part of the patient's plan of treatment. The chiropractor is required to keep records of such sales, and the records must comply with G.S. 105-164.24, but they may not disclose the name of the patient. The act became effective August 6, 1997.

Increase Nurses Fees (S.L. 1997-384; SB 168): S.L. 97-384 doubles the fee schedule for most of the items listed in G.S. 90-171.27(b), which covers examinations, certification, reinstatement and renewal fees for registered nurses and licensed practical nurses. Any future annual increase exceeding 20 percent of any of the fees listed in the schedule are prohibited. The act became effective August 11, 1997.

Dispensing Opticians (S.L. 1997-424; SB 861): S.L. 97-424 adds the requirement that an applicant must be of good moral character to the list of qualifications an applicant must meet before the North Carolina State Board of Opticians is authorized to issue the applicant a license as a registered licensed optician, or to waive the applicant's examination requirement.

S.L. 97-424 clarifies that the Board must allow a person who has worked as an optician in a state that does not license opticians to take the North Carolina examination if the applicant has worked in opticianry for four years immediately preceding the person's application to the Board, was performing tasks and taking the curriculum equivalent to the North Carolina optician apprenticeship requirements, and meets all other application requirements. The new law deletes a prior provision which authorized the Board to grant a temporary license in such cases.

S.L. 97-424 provides that a license will (was may) be reinstated without penalty from January 1 through January 15 immediately following its expiration. However, after January 15, an expired license will be reinstated by the payment of a renewal fee and a penalty of $50. Licenses that remain expired for two or more years will (was may) not be reinstated. Prior law provided for a $5 per month penalty, but did not assess a renewal fee, and the penalty was not to exceed the cost of the license.

S.L. 97-424 raises all fees established by the Board except the application fee for opticianry apprentice or intern, deletes the fee for a temporary license since the Board will no longer issue such a license, and sets forth two new fees: 1) a $25 fee to register a training establishment, and 2) a $10 fee to verify each license.

S.L. 97-424 adds a new section to the Dispensing Opticians Act that authorizes the Board to take disciplinary action against a licensed optician for certain actions. This new section supersedes prior law and provides more specific circumstances in which an applicant may have his or her license revoked. The new section also authorizes the Board to assess a civil penalty of not more than $1,000 against a licensed optician for violation of any section of the Article. The act became effective August 22, 1997.

Permit Fees (S.L. 1997-479; HB 469): G.S. 130A-248 establishes regulation of food and lodging establishments in the State including setting annual fees for operation and late payment fees. The annual fee for an establishment that prepares or serves food is $25. An "establishment that prepares or serves food" means a business or other entity that cooks, puts together, portions, sets out, or hands out food in unpackaged portions for human consumption. S.L. 97-479 changes the law as follows:

1. Increases the late payment fee from $25 to $250 for an establishment that fails to pay the fee within 45 days of billing by Department of Environment and Natural Resources (DENR).
2. Authorizes DENR to suspend the permit of an establishment that fails to pay the required fee within 60 days of billing. (Prior law authorized DEHNR to suspend or revoke permits.)
3. Establishes a reinstatement fee of $50 for establishments that cease operation upon notification of permit suspension and pay all fees within 10 days of notification by DENR of the permit suspension; and $900 for establishments that do not cease operation or do not pay required fees within 10 days.

The act becomes effective on July 1, 1998.

Physician Education and Registration (S.L. 1997-481; SB 583): S.L. 97-481 requires physicians licensed to practice medicine in the State to complete a maximum of 150 hours of continuing medical education during any three consecutive calendar years

pursuant to rules adopted by the North Carolina Medical Board. S.L. 97-481 also amends G.S. 90-14.13 concerning reports of disciplinary actions by health care institutions against physicians by inserting a provision that allows a hospital to choose not to report the suspension of a physician's hospital privileges for failure to timely complete medical records. However, if the suspension is the third within the calendar year for failure to complete medical records, the hospital must report all three suspensions.

Effective January 1, 1998, S.L. 97-481 requires every person licensed to practice medicine in North Carolina to register each year within 30 days of their birthdays with the North Carolina Medical Board. Since 1958, all physicians have been required to register in January, putting a strain on the Board.

S.L. 97-481 also amends Article 2 of Chapter 90 pertaining to the practice of dentistry. The new law authorizes the North Carolina State Board of Dental Examiners and the State Health Director to approve nonprofit health care facilities serving low-income populations as practice sites for dental students and faculty. If a facility is approved, the new law authorizes the employment of dentists, dental students, and dental interns by the facility. The act became effective September 4, 1997.

Public Health Authority (S.L. 1997-502; SB 636): S.L. 97-502 provides local governments an alternative mechanism to provide public health services by establishing a public health authority. The authority is governed by a board comprised of county commissioners, health professionals, and members of the public. The authority, its board and the authority director assumes the powers and duties held by the local health board, health director and the district or county health department. In addition to these governmental powers, the law authorizes the board to contract to the extent necessary to operate as a business entity.

A public health authority may be created by the county board of commissioners by the adoption of a resolution finding that it is in the interest of the public's health and welfare to do so. Public health authorities comprising more than one county may be formed and counties may join existing public health authorities upon joint resolution by the boards of county commissioners and local boards of health of each of the counties involved. A public health authority may be dissolved whenever the board of county commissioners of each county constituting the authority directs it to be dissolved and the Department of Health and Human Resources is notified in writing. In addition, a member county of a multi-district authority may pull out of the authority if that county's board of commissioners directs it to.

An authority consisting of a single county shall have a board of no fewer than seven and no more than nine members. The composition of the board must include a member of the board of county commissioners and representatives of various professional groups, all of whom are jointly appointed by the county board of commissioners. An authority comprising two or more counties shall have a board with no fewer than 7 and no more than 11 members.

As the governing body for the authority, the board will absorb the functions of the county or district board of health, and that board is dissolved. The authority board is a public body and a corporate body, and is authorized under the law to exercise all powers necessary and appropriate to carry out and effectuate the purposes and provisions of the act. The board's power includes power to establish and operate public health facilities and explicit power to establish and operate health care networks. It will also have all the powers traditionally

exercised by local board of health, and power to appoint a public health authority director, to serve at the pleasure of the board. The act becomes effective January 1, 1998, and applies to contracts and agreements entered into on or after that date.

Physicians Services Fee (S.L. 1997-508; SB 483): G.S. 97-72 authorized the Industrial Commission to establish an advisory medical committee for the purpose of conducting examinations of employees who file claims for benefits for asbestosis or silicosis. Under prior law, the members of this committee were paid $10 for each X-ray film the physicians studied in performing the duties of the Committee. S.L. 97-508 increases this maximum payment to $40, and specifies that the Secretary of Environment and Natural Resources must use the current Medicaid/Medicare reimbursement schedules as they apply to North Carolina as a guide when setting the actual fee per film. The act became effective September 17, 1997.

Physician Assistant Licensure (S.L. 1997-511; SB 595): S.L. 97-511 authorizes the North Carolina Medical Board to issue a license to a qualifying applicant to perform acts, tasks, and functions as a physician assistant. The Board is also authorized to issue a limited volunteer license to a physician assistant if the applicant meets certain requirements. This act became effective September 17, 1997.

Telemedicine By Licensed Doctors (S.L. 1997-514; SB 780): S.L. 97-514 makes it clear that when a person, whether that person resides in North Carolina or out of state, performs acts constituting the practice medicine or surgery by the use of any electronic or other mediums, that person must be registered and licensed to practice medicine in this State, and is subject to the rules and regulations set forth by the North Carolina Medical Board. However, if a nonregistered physician or surgeon comes into North Carolina, either in person or by the use of electronic or other mediums, on an irregular basis for the purposes of consulting, the physician or surgeon does not need to be licensed under the laws of this State and is not subject to the regulations of the North Carolina Medical Board. S.L. 97-514 provides that a patient may bring a medical malpractice claim in a North Carolina court against a nonresident physician who practices medicine in North Carolina through the use of telemedicine. The act became effective September 17, 1997.

Lead-Based Paint Management (S.L. 1997-523; SB 516): In an effort to reduce childhood lead poisoning nationally, the Residential Lead-Based Paint Hazard Reduction Act of 1992 was passed by Congress. This act requires individuals that conduct lead-based paint activities to be certified. It also directed the Environmental Protection Agency (EPA) to develop certification regulations. The EPA has published final lead certification regulations that became effective October 28, 1996. Both the act and the regulations establish a framework for a state to administer a lead certification program. Currently, 33 states have legislatively established lead certification programs. S.L. 97-523 establishes a lead certification program for the State in lieu of a federal program. The program does not require inspection, risk assessment, or abatement of a child-occupied facility or target housing to be certified. However, G.S. 130A-131.5 and its

implementing rules authorize the Department to order an abatement to eliminate a lead poisoning hazard.

Specifically, S.L. 97-523 amends Chapter 130A of the General Statutes by adding a new Article 19A, Lead-Based Paint Hazard Management Program. The new article does the following:

1. Provides for definitions related to lead-based paint hazard management that meet the requirements of federal certification regulations.
2. Requires individuals performing lead-based paint activities to be certified and establishes certification categories.
3. Generally exempts an individual who performs an abatement in the individual's home from certification requirements.
4. Requires firms performing lead-based paint activities to be certified and to use only certified individuals in their operations.
5. Authorizes the Commission for Health Services to establish education, training, and experience requirements for certification.
6. Provides for annual certification renewal by individuals and firms. Renewal is based on meeting standards and payment of a renewal fee.
7. Requires training providers and training courses be accredited by the Department of Environment, and Natural Resources.
8. Authorizes the Commission to establish fees to be used in support of the program for examinations, certification, and accreditation. This section also provides fee exemptions for certain governmental regulatory personnel and training providers.
9. Establishes a requirement to obtain a permit prior to conducting a lead abatement. The permit fee is 2% of the contract price to perform the corrective action, not to exceed $500. A homeowner residing in the home to be abated is exempt from the permit fee requirement.
10. Authorizes the Commission to establish standards to ensure that activities performed by certified individuals and firms result in the elimination of lead hazards. This section also requires the preparation and distribution of a fact sheet explaining lead abatement and its relative costs.
11. Directs the Commission to adopt rules to implement the program. This provision became effective on September 17, 1997.

S.L. 97-523 authorizes the Secretary of Environment, and Natural Resources to impose an administrative penalty of up to $1,000 per day on persons who are required to be certified under Article 19A and who violate the article or its implementing rules.

The act becomes effective July 1, 1998 if federal lead-based paint hazard regulations are scheduled to become effective on or before September 1, 1998. If the federal regulations are scheduled to become effective after September 1, 1998, then the rest of the act becomes effective when the federal regulations become effective. The act does not affect interim certification program requirements.

Health Insurance and Managed Care

Update Mortality Tables (S.L. 1997-133; HB 312): S.L. 97-133 updates the mortality tables (previously known as the "mortuary tables"). These tables list the life expectancies

for persons of any age from birth to 109. Courts may use the information in the mortality tables, along with the health and habits of a person, to determine a person's life expectancy. The mortality tables are only evidence of life expectancy; they are not conclusive. The bill increases the life expectancy for each age, and sets the last entry at "85 and over", rather than listing each age up to 109. The tables were last updated in 1971, and before that, in 1955. The act became effective June 4, 1997.

Direct Reimbursement for Advanced Practice Nurses and Clinical Social Workers (S.L. 1997-197; SB 785): In 1993, the General Assembly enacted legislation (Chapters 347 and 464 of the 1993 Session Laws) allowing advanced practice registered nurses and certified clinical social workers to receive direct reimbursement from insurance companies for services rendered within their respective scopes of practice. Additional restrictions were placed on the advanced practice registered nurses' right to direct reimbursement to ensure that only those practicing independently would be entitled to direct reimbursement. An "advanced practice" nurse is one who is licensed or certified as a nurse practitioner, clinical specialist in psychiatric and mental health nursing, or nurse midwife. The 1993 legislation also provided that the right to direct reimbursement would expire for advanced practice registered nurses on October 1, 1998, and for the clinical social workers on June 30, 1999. S.L. 97-197 removes both sunsets, thus allowing the advanced practice registered nurses and the certified clinical social workers to continue receiving direct reimbursement from insurers.

Health Coverage/Diabetes (S.L. 1997-225; HB 5): S.L. 97-225 requires certain insurers to provide coverage for medically appropriate and necessary services for the treatment of diabetes. The coverage must include equipment, supplies, medication, laboratory procedures and diabetes outpatient self-management training and educational services. The legislation requires the North Carolina Commission for Health Services to develop voluntary standards or guidelines for the self-management training and educational services. The guidelines must be based on clinical practice recommendations and guidelines established by the Center for Disease Control and the American Diabetes Association.

The act became effective when it became law, and applies to accident and health insurance policies, any hospital or medical service plan, every preferred provider on or after October 1, 1997. The act does not affect policies, plans, or contracts otherwise subject to exemptions under State or federal law.

Chiropractic Licensure Amendments (S.L. 1997-230; HB 1008): S.L. 97-230 amends the law governing licensing of chiropractors to require an applicant of a chiropractor's license to have at least 4200 hours of accredited chiropractic education from an educational institution accredited by the Council on Chiropractic Education or an equivalent institution. The new law also allows the Board to grant a license to a person whose scores on all parts of the National Board of Chiropractic Examiners examination equal or exceed the passing scores set by the North Carolina State Board of Chiropractic Examiners for its exam, if the person also satisfies all the other requirements for licensure. The act became effective July 1, 1997.

Federal Health Insurance Changes (S.L. 1997-259; HB 434): Congress passed the Health Insurance Portability and Accountability Act of 1996 last August. The legislation is more popularly known as the "Kassebaum-Kennedy" bill. The Health Insurance Portability and Accountability Act requires each state to ensure that its laws conform to the requirements of the new federal law. Among other things, these requirements limit how long preexisting conditions can be used, give credit to individuals for satisfying preexisting condition waiting periods under one plan when they move to another plan, and require all small employer group market plans be "guaranteed issue" plans. Over the past five years, North Carolina had already adopted many of the features such as portability and guaranteed-issue products in the small employer market, but some changes were needed to bring State laws into compliance with the federal law.

S.L. 97-259 makes the necessary conforming changes to our State insurance laws so that they comply with the federal requirements. All of the changes in the bill that are required by the Health Insurance Portability and Accountability Act took effect on July 1, 1997. The new State law is nearly a verbatim copy of the federal law. The major features are as follows:

Increases portability. "Portability" refers to a person being able to get credit at a new job for the time he or she spent satisfying the waiting period for preexisting condition exclusions under the health insurance policy at the previous job. Without portability, the employee would likely encounter a new 12-month waiting period for coverage of preexisting conditions each time he or she changed jobs. North Carolina enacted its first portability law several years ago and has liberalized its applicability in the years since. These existing portability laws were similar to the Kennedy-Kassebaum requirement. The changes in S.L. 97-259 ensure that existing State portability laws conform to the federal law. For example, our current law allows a lapse of up to 60 days between policies before an individual loses his or her "credit" for portability purposes. S.L. 97-259 increases this to the 63-day lapse period required under federal law.

Limits the duration of preexisting conditions in group policies. A few changes were made to conform North Carolina's existing restrictions on the use of pre-existing conditions to the federal requirements. State law already limited preexisting conditions on timely enrollees to 12 months – the same period required by federal law. This 12-month period is retained by S.L. 97-259. S.L. 97-259 also adopts the 18-month preexisting condition exclusion for late enrollees and the 6-month "look-back" period, both required by federal law for group plans. The "look-back" period, which had been 12 months under existing State law, refers to how far back, prior to the insured's enrollment in the health benefit plan, the preexisting condition clause reaches. The look-back period remains at 12 months for individual health insurance policies.

Prohibits insurers from excluding someone from group coverage because of their health status. North Carolina already had laws prohibiting the use of evidence of individual insurability and the use of riders to exclude a person from coverage in employer group plans. These laws were replaced in S.L. 97-259 with the federal language. Although the effect of the new law is essentially the same as the existing law, the new law is more specific about what factors cannot be considered in underwriting. For example, the new law prohibits the use of past claims experience, genetic

information, and medical problems stemming from domestic violence in deciding whether to underwrite a person who is otherwise eligible under a group plan. (Note: A separate bill, Senate Bill 254, was also enacted this session to provide more detailed restrictions on the use of genetic testing information for medical underwriting purposes).

Guaranteed renewability in the group market (both large group and small group) and the individual market. Federal law requires the insurer to renew the coverage if the group or individual wants to continue the coverage. The insurer is not required to renew if the premiums have not been paid, if there has been fraud, or for similar reasons that are unrelated to the health status of the group or individual. S.L. 97-259 makes these provisions applicable to North Carolina. (Guaranteed renewability was already available under existing law for small employer groups).

Guaranteed issuance of policies for eligible individuals. This is generally referred to as "group to individual portability." An eligible individual is a person who has at least 18 months worth of past health insurance coverage, the most recent of which was under a group plan; who is not eligible for group health insurance, Medicaid, or Medicare; who has no other insurance coverage; who did not lose coverage under the group plan for nonpayment of premium or similar reasons; and who has elected (if eligible) and exhausted COBRA coverage or State continuation coverage (Article 53 of Chapter 58 of the General Statutes). This special provision is aimed primarily at those who have had insurance under a group plan but lost their coverage after losing their job (and exhausting their COBRA coverage). These eligible individuals are entitled to a guaranteed issue policy. However, there is nothing in the federal law or the new State law that provides for guaranteed issuance of policies to all individuals; only those who meet the criteria discussed above are guaranteed.

Guaranteed issue for the small group market. North Carolina's existing small group reform laws, applicable to self-employed individuals and to employers with up to 49 employees, required guaranteed issue of two types of plans: basic and standard (G.S. 58-50-130). The federal law requires all small group plans to be guaranteed-issue plans, and S.L. 97-259 changes North Carolina law accordingly. S.L. 97-259 also increases the definition of a small employer as one with up to 50 employees (existing North Carolina law was "up to 49 employees"). Although federal law allows states to exclude self-employed individuals from the small employer laws, S.L. 97-259 continues existing North Carolina law that treats self-employed individuals as small employers, with one exception: only the basic and standard plans are guaranteed-issue to self-employed persons; for all other employers in the small group market, all plans are guaranteed-issue.

There is no guaranteed issue requirement under the federal law or State law for the large group market. However, the federal government will monitor access to insurance in the large group market.

One of the most significant impacts that the federal Health Insurance Portability and Accountability Act may have in North Carolina is on employers who self-fund their employees' health insurance. These employers have been exempt from regulation by the State under the federal ERISA law. However, the federal HIPAA law amended ERISA so that the new health insurance requirements also apply to self-funded employers. It is estimated that as much as 50% of the employees in North Carolina that have health insurance through their employer are in these self-funded plans.

Maternity stay and limited mental parity. S.L. 97-259 also includes a couple of other changes required by federal law that were not part of the original Health Insurance Portability and Accountability Act passed by Congress. These other changes – relating to mental parity and maternity stay – were enacted as riders to a congressional appropriations bill about a month after Congress passed HIPAA. They were included in S.L. 97-259, because like the other health insurance changes in the bill, they are required by federal law:

Maternity stay. North Carolina was one of the first states (1995) to adopt a requirement that insurers provide at least 48 hour inpatient maternity coverage to mothers (96 hours for C-section births). As a result, it was already in compliance with federal law. However, the federal maternity stay law contained several other restrictions designed to strengthen the maternity stay law. These additional restrictions are included in S.L. 97-259. One of the restrictions prohibits insurers from trying to induce a doctor to discharge a mother earlier than the minimum coverage period against the wishes of the mother.

Mental parity. S.L. 97-259 also adopts the limited mental parity provisions required by federal law. These provisions state that when an insurer offers mental health benefits as part of a plan, it cannot impose lower annual or lifetime caps on those benefits than it imposes on benefits generally under the policy. For example, if the policy has a $1 million lifetime limit on all benefits, it cannot have a lower lifetime limit on mental health benefits. The insurer can, however, apply the $1 million to all benefits in the aggregate. It can also avoid the mental parity requirement altogether either by not offering mental health benefits as part of the policy or by proving that offering them will raise policy costs by more than one percent. Consistent with federal law, this provision applies only to employer group plans with more than 50 employees, and the provision expires in the year 2001. (Note: This version of mental parity is much more limited than the comprehensive mental parity legislation that was under consideration during the session as part of Senate Bill 400).

State continuation coverage. One of the changes not required by federal law, but which makes State law more consistent with federal law, is the extension of continuation coverage under State law from 12 months to 18 months. This makes the State continuation coverage law more consistent with the federal COBRA continuation coverage laws. (COBRA coverage is typically 18 months but can be longer under certain circumstances). COBRA applies only to employers with 20 or more employees; the State law is not restricted as to employer size.

Most of the bill's provisions became effective July 1, 1997. The additional maternity stay restrictions and the mental parity requirements take effect January 1, 1998.

Breast Reconstruction Insurance Coverage (S.L. 1997-312; SB 714): S.L. 97-312 requires insurers, HMOs, and hospital and medical service corporations (Blue Cross) to provide coverage for breast reconstruction resulting from a mastectomy (if the policy covers mastectomies). The standard health plan offered in the small employer group market must also include this coverage. In addition, there cannot be different deductibles or coinsurance amounts for breast reconstruction than for similar services.

"Reconstructive breast surgery" means surgery performed as a result of a mastectomy to re-establish symmetry between the two breasts, including reconstruction of the mastectomy site, creation of a new breast mound, and creation of a new nipple areolar complex. The term also includes reduction mammoplasty, augmentation mammoplasty, and mastopexy of the nondiseased breast. Coverage must also be provided for surgery on the nondiseased breast when necessary to establish symmetry with the reconstructed diseased breast. In addition, coverage for the nipple reconstruction following the mastectomy is to be performed without regard to the lapse in time between the mastectomy and the nipple reconstruction.

S.L. 97-312 also places other restrictions on insurers to prevent circumvention and abuse of the law. The restrictions, which are similar to restrictions the General Assembly adopted earlier this session to strengthen its 1995 maternity-stay law, prohibit insurers from doing any of the following:

1. Denying coverage for reconstruction after mastectomy on grounds that it is cosmetic surgery.
2. Discontinuing or denying coverage for the purpose of avoiding these requirements.
3. Providing rebates or other financial incentives that encourage a woman to accept less coverage than is required.
4. Penalizing a medical provider, financially or otherwise, for providing care under this law.
5. Providing incentives to the medical provider to induce the provider to provide care inconsistent with this law.

The bill also requires the State Health Plan to cover reconstructive breast surgery that results from a mastectomy. Coverage extends to the nondiseased breast to the extent necessary to establish symmetry with the reconstructed diseased breast.

The coverage is required in all insurance policies that cover mastectomies and that are issued or renewed on or after January 1, 1998. The coverage in the State Health Plan also begins January 1, 1998.

Genetic Testing (S.L. 1997-350; SB 254): S.L. 97-350 prohibits insurers from doing the following:

1. Refusing to issue an individual health insurance policy to an individual because of genetic information obtained about that individual or to a group because of genetic information about one or more individuals in that group.
2. Raising the premiums or contribution rates paid by a group for a group plan because of genetic information about an individual in that group.
3. Charging an individual higher insurance premiums because of genetic information obtained about that individual.

"Genetic information" means "information about genes, gene products, or inherited characteristics that may derive from an individual or a family member." However, it does not include the results of routine physical measurements, blood chemistries, blood counts, urine analysis, tests for drug abuse, and HIV tests.

S.L. 97-350 also prohibits public and private employers from firing or refusing to employ a person because of genetic information about the person or the person's family or

because the person has requested genetic tests or counseling and protects these persons or others acting on their behalf under the retaliatory employment discharge provisions of the law. The act became effective August 1, 1997.

Mastectomy Patient Insurance Coverage (S.L. 1997-440; SB 273): S.L. 97-440 ensures that mastectomy patients are not discharged from the hospital on the same day of the surgery if the patient's doctor feels that the patient is not ready for discharge. Unlike the maternity stay bill enacted two years ago, the mastectomy legislation does not guarantee a minimum stay time; instead, it ensures that the decision on discharge is made by the physician, not by the insurer, after taking into consideration the patient's health and medical history. (Note: This law does not apply to employers' self-funded insurance plans that are exempt from State regulation under federal ERISA law.) This act became effective August 28, 1997, and applies to health plans issued or renewed on or after that date.

Emergency Coverage Under Managed Care Plans (S.L. 1997-474; SB 455): S.L. 97-474 enhances the rights of patients under managed care plans with respect to emergency care coverage and prohibits the use of "gag orders" by managed care plans. Gag orders are provisions in the contracts between managed care plans and their participating physicians and other health providers that prevent the providers from discussing with their patients all of the medical options, risks, and recommendations with respect to a particular treatment or condition. However, the plan may prohibit the provider from releasing financial trade secret information that does not affect the patient's care.

Managed care plans must provide the following to their members, effective January 1, 1998:

- Coverage for emergency services must be provided to the extent necessary to screen and stabilize the person covered under the plan. If the emergency services are obtained from a hospital or other provider outside the managed care plan's network, they must still be covered if a prudent layperson would have believed that a delay in seeking treatment would have worsened the emergency or if the patient went outside the plan network for emergency treatment for reasons beyond his or her control.
- Prior approval of emergency treatment is not required if a prudent layperson acting reasonably would have believed an emergency existed. The managed care plan will retrospectively review the symptoms the patient had when he or she came to the emergency room in determining whether a prudent layperson would have thought it was an emergency. If prior approval has been given by the health benefit plan for emergency treatment, that approval cannot be retracted after the services have been rendered unless the provider or the patient (or the person covered by the HMO acting on behalf of the patient) materially misrepresented the patient's condition.
- A managed care plan cannot impose different deductibles and copayments on emergency treatment than it does for other treatment, nor can it reimburse at lesser rates for going outside the network for emergency services under the circumstances described above (i.e., failure to use in-network provider was

beyond the person's control or further delay in treatment would have worsened the patient's condition).

- The emergency department and the health benefit plan must make a good faith effort to communicate with each other promptly on post-evaluation and post-stabilization services following an emergency in order to avoid deterioration of the patient (including the unborn child of a pregnant woman) within a "reasonable clinical confidence."
- Managed care plans must provide information to their enrollees on coverage of emergency medical services, the use of those services, cost-sharing provisions for emergency medical services, and accessibility and availability of those services.

The bill also reduces from 60 to 45 the number of days that the Commissioner has to disapprove proposed HMO rates before they are deemed approved and requires HMOs to cooperate with local health departments, within available resources, on health promotion and disease prevention efforts that affect the public's health. The emergency care provisions become effective January 1, 1998. The remainder of the bill became effective September 3, 1997.

Health Plan Reporting and Disclosure Requirements (S.L. 1997-480; SB 973): S.L. 97-480 imposes new reporting and disclosure requirements on HMOs and preferred provider benefit plans. These reports and disclosures are designed to provide consumers and plan members more information about the quality, availability, and accessibility of care under these managed care plans and related information.

Managed care plans must report annually to the Commissioner of Insurance on the following. These requirements were rewritten by S.L. 97-519 (SB 932) to provide more detail on what is to be reported. The reported information will not include the names of the providers or their group practices, thus allowing their identities to remain confidential:

- The number of and reasons for grievances filed by plan members against the plan concerning medical treatment;
- The number of participants who terminated coverage under the plan;
- The number of provider contracts terminated under the plan;
- Utilization data concerning the quality, availability, and accessibility if health care services under the plan; and
- Aggregate data on the financial compensation of plan providers.

Managed care plans must also disclose the following information to plan participants and prospective participants upon request:

- The insurance policy or other evidence of coverage;
- An explanation of the utilization review criteria for a specified treatment;
- Written explanation for the denial of a treatment and the treatment protocols or utilization review criteria upon which the denial was based;
- The restrictive formularies or prior approval requirements for obtaining prescription drugs; and
- The procedures and criteria for determining when a specified treatment or procedure is experimental.

The act became effective October 1, 1997, although the changes made by S.L. 97-519 (SB 932) become effective January 1, 1998.

Blue Cross Conversion Moratorium (S.L. 1997-483; Part XII, SB 32, Part XII): Part XII of S.L. 97-483 (the omnibus study bill) imposes a moratorium until August 1, 1998, on the conversion of any nonprofit hospital, medical, or dental service corporation to a for-profit entity. Currently, there are only two entities in the State that operate as service corporations: BlueCross BlueShield (a hospital and medical service corporation) and Delta Dental (a dental service corporation). The conversion moratorium will give a special legislative study panel time to examine conversion issues and recommend any necessary legislation to the 1998 session of the General Assembly. This provision became effective July 1, 1997.

Strengthen Managed Care Regulation (S.L. 1997-519; SB 932): S.L. 97-519 is a major managed care reform bill that addresses numerous concerns about the quality, availability, and accessibility of health care that is delivered through managed care. The bill, perhaps the biggest single regulatory bill on managed care ever in North Carolina, culminates years of legislative and administrative efforts to enact a comprehensive package of managed care reform laws. S.L. 97-519 is divided into four major parts that relate, respectively, to: (1) reporting and disclosure requirements by HMOs and preferred provider plans; (2) standards required of all managed care entities; (3) standards required of preferred provider plans; and (4) utilization review and grievance procedure standards.

Part I of the bill amends the reporting and disclosure law that was enacted earlier in the session (SB 973, S.L. 97-519) to provide more detail on the type of information that managed care entities must report to the Commissioner of Insurance. In particular, the bill requires more detail on the availability and accessibility of medical providers to the participants of HMOs and preferred provider plans. The HMOs and preferred provider plans must report to the Commissioner on how they are ensuring that their members have access to a sufficient number of plan providers, including primary care physicians and specialists, and how accessible these providers are to the members. They must also report on how they arrange for care for their members by providers who do not participate in their plans (for those situations in which the participating providers are unavailable). Additional reports are required on the utilization review activities of managed care plans, the number and type of grievances filed against the plans by members and the procedures for handling those grievances, the number of members that left the plan, changes in the plan's provider network (including how many providers have been terminated from the plan and how many have been added), and the methods used by the plan to compensate its providers.

The bill imposes additional requirements on HMOs. HMOs must provide cost, outcome and other data for employer groups that they insure, with group specific-information required of larger employer groups (1,000 or more members) and plan-wide information for other employer groups. HMOs seeking to be licensed in North Carolina must also file with their license application information that reflects on the HMO's ability to have an adequate number of providers to serve it members, to validate its providers' credentials, to ensure quality care is provided, and to properly operate its utilization

review program. In addition, HMOs will be subject to the same insurance examination laws that apply to other insurance companies. The Commissioner of Insurance can revoke or suspend the license of an HMO that knowingly or repeatedly files false data with the Department of Insurance, refuses to comply with an order of the Commissioner, or files false information or a false report.

Part II of the bill establishes standards for certain managed care plan operations. First, each plan that limits benefits to "medically necessary" supplies and services must adhere to the uniform definition of "medically necessary" that is set out in the bill. "Medically necessary" means that the supplies or services are provided for the diagnosis or treatment or relief of a condition (and not for experimental, investigational, or cosmetic purposes), are necessary for and appropriate to the diagnosis or treatment, are within the accepted community standard of medical care, and are not solely for the convenience of the plan member, the plan member's family , or the provider. Second, the bill provides that if a managed care plan determines that a particular service or supply is covered under the plan, it cannot retract that determination once the service or supply has been provided, unless its determination was based on a material and knowing misrepresentation by the plan member or the provider. Third, it prohibits managed care plans from imposing higher non-network coinsurance rates on plan members who visit out-of-network providers if the out-of-network visit was due to the plan's inability to make a network provider reasonably available without unreasonable delay. Fourth, when a managed care plan is selecting providers to participate in its plan or deciding which ones to keep in the plan, it cannot base its decision on the fact that a provider is located in an area with a high-risk population or otherwise has a high-risk patient population, although the provider can still be rejected or terminated for not meeting the plan's other selection criteria. Fifth, when a continuing care retirement community resident's physician determines that it is medically necessary for that resident, upon discharge from an acute care facility, to go to a skilled nursing facility, the insurer must allow the resident (if covered by Medicare or a similar health plan for federal retirees) to use a skilled nursing facility within the continuing care retirement community if the community is a Medicare-certified skilled nursing facility, agrees to the reimbursement rates paid to similar providers, agrees not to balance bill, and meets certain other requirements. The continuing care retirement community is not required to accept patients that are not residents of the community. (Requirements for emergency room care are covered by other legislation enacted this session – see S.L. 97-474; SB 455).

Part III of the bill rewrites the existing laws governing preferred provider organizations ("PPOs"). PPOs are health plans in which members can choose to see either the providers that are under contract with the plan or a provider of their choice. The bill retains the existing requirement that all providers be allowed to submit proposals to a PPO for participation in the PPO. The bill will also continue to allow the PPO to decide which providers it will accept into the plan. (Except for pharmacies, North Carolina does not have nor does this bill enact an "any-willing provider" law). The bill also retains the current restriction that prevents a PPO from prohibiting its providers from participating in other PPO plans. The Commissioner of Insurance is authorized to adopt rules on the accessibility, availability, and adequacy of providers in the PPO plan and

rules to ensure the financial solvency of the plan. Summary data on the financial terms of the contracts between PPOs and their providers must be provided to the Commissioner.

PPOs provide less reimbursement to a participant who visits a provider outside the PPO network. The law currently sets the maximum reduction in reimbursement for an out-of-network visit at 20%. By contrast, HMO point-of-service plans, which are conceptually similar to PPO plans, can currently reduce reimbursement up to 30%. The HMO percentage is established by rule of the Commissioner of Insurance, not by law. Part III of the bill repeals the 20% statutory limitation on PPOs and enacts a provision requiring the Commissioner to set the maximum allowable reduction in reimbursement for both PPOs and HMOs. Although the allowable percentage reimbursement is not required to be the same for both, they must be substantially similar.

Part III also makes it an unfair insurance trade practice for an insurer to intentionally misrepresent to a provider that it is entitled to a discount on the provider's fee when the insurer is not so entitled (or is entitled to a lesser discount than it claims). This provision also applies to anyone who knowingly and substantially assists the insurer in making this misrepresentation.

Part IV of the bill establishes procedures and rights for members of managed care plans in the utilization review decisions by their plans and set outs procedures for member grievances against those plans. "Utilization review" refers to prior approval, second opinions, case management, and similar programs commonly used by managed care plans to determine whether particular treatment or medical care is necessary and appropriate for the patient.

All HMOs and insurers operating managed care plans must monitor all utilization review activities. HMOs and insurers often contract with other organizations known as utilization review organizations ("UROs") to perform utilization review on their behalf. The bill imposes several requirements to ensure that HMOs and insurers monitor their UROs and that the URO's duties and responsibilities are clearly spelled out. All utilization review programs must be administered by qualified health care personnel under the supervision of a medical doctor. Persons involved in utilization review cannot be financially rewarded or penalized based on the number or type of noncertifications they make.

HMOs and insurers must also provide their members and providers with telephone access to the utilization review staff if prior certification of a procedure is required, and the HMO or insurer is entitled, in reviewing a request for prior certification, only to that information that is necessary to determine prior certification. HMOs and insurers are required to make the determination on prior approval within three business days of the time they receive all necessary information. The same time limit applies to a concurrent review by the HMO or insurer. (A concurrent review is one conducted during the patient's hospital stay or course of treatment). In a concurrent review, an insurer remains liable for health care services provided to one of its enrollees until it notifies the enrollee of the noncertification. A longer time period (30 days to make a determination plus 5 days to notify) applies when the review is done after the treatment has already been rendered ("retrospective review").

When an HMO or insurer denies prior approval for a particular treatment, it must disclose its reasons for denial, including the clinical rationale and how the member can

appeal the decision. The member may request a written statement of the clinical review criteria that the HMO or insurer used to make its determination. The appeals process may include an opportunity for an informal appeal involving the member's physician or other provider and a medical doctor designated by the insurer. Additional appeals by the member, both on an expedited basis and a nonexpedited basis, must be provided for. The expedited appeal is designed for members whose life, health, or ability to regain maximum function would be seriously jeopardized by pursuing a nonexpedited appeal. The utilization review process, the appeals process, and the insured's appeal rights must be disclosed to the insured in the certificate of coverage and the plan handbook. Prospective insureds must be provided a summary of its utilization review procedures.

Part IV of the bill also requires HMOs and insurers with managed care plans to establish grievance procedures so that plan members can have their grievances reviewed by the plan. The HMO or insurer may have an informal grievance level; if not or if the informal review does not resolve the grievance, there are two additional levels of review to which an insured is entitled. At the first level, the insured is entitled to review of the grievance by someone other than the person who was involved in the matter that gave rise to the grievance. The member has the right to submit written material at the review, but it is up the HMO or insurer whether the member can appear in person. A decision must be made at this first level of review within 30 days. The HMO or insurer must explain the reason for its decision and refer to any evidence or documentation that it used as the basis for the decision. A second level of review must be made available for plan members who are dissatisfied with the results at the first level. At the second level of review, the member has the right to a hearing before a review panel. The panel must consist of persons who were not involved in the matter that gave rise to the grievance, who are not employees of the HMO or insurer (or a utilization review organization with whom they contract), and who do not have a financial interest in the outcome of the grievance. (An employee involved at the first level may, however, participate on a second-level panel if that panel has three or more members and a clinical peer was used at the first level). The panel must meet within 45 days of the second-level appeal and must issue a decision within seven business days after that meeting.

The bill provides that a member of a medical review committee, formed for the purposes of evaluating the quality of, cost of, or necessity for health care services in a managed care plan, is immune from liability for statements without malice or fraud made during the medical review proceedings. The records of the medical review committee are confidential.

The act becomes effective January 1, 1998.

Insurance Regulation

Foreign Insurer Licensing (S.L. 1997-179; HB 1024): S.L. 97-179 allows some subsidiaries of foreign insurance companies to be licensed in North Carolina. Prior law prohibited insurance entities that are financially owned or controlled by a foreign government from doing business in North Carolina. This legislation would allow an operating subsidiary of such an insurance company to be licensed in North Carolina if the

subsidiary is domesticated in and licensed by another state as an insurer or reinsurer and as a separate subsidiary. The act becomes effective October 1, 1997.

Expand Use of Insurance Regulatory Fund (S.L. 1997-443, Sec. 26.1; SB 352, Sec. 26.1): Section 26.1 of S.L. 97-443 expands the allowable uses of the Insurance Regulatory Fund. The Fund is used primarily to reimburse the General Fund for the appropriations to the Department of Insurance for its operating expenses. The funds in the Insurance Fund are generated primarily through a surcharge on insurance companies. Section 26.1 of S.L. 97-443 will allow the Insurance Regulatory Fund to reimburse the General Fund for appropriations to the Department of Revenue for the collection of premium taxes from insurance companies. The provision became effective July 1, 1997.

Property Insurance

Increase Threshold for Insurance Points for Accidents (S.L. 1997-332; SB 234): S.L. 97-332 increases the monetary thresholds for major, intermediate, and minor accidents under the Safe Driver Incentive Plan (SDIP) law by $500 each. These monetary thresholds relate to the amount of damage caused by a driver in an accident for which that driver is responsible and are used to determine how many insurance points are assessed against the driver for the damage. The current thresholds, the new thresholds under the bill, and the number of insurance points ("SDIP points") currently assigned to those thresholds by the North Carolina Rate Bureau are shown below:

Classification	Damage (Current)	Damage (New)	SDIP Points*
Minor	Up to $1,000	Up to $1,500	1
Intermediate	$1,000 to $2,000	$1,500 to $2,500	2
Major	Over $2,000	Over $2,500	3

S.L. 97-332 also provides that the Rate Bureau will assign varying SDIP points (and accompanying surcharges) for bodily-injury in at-fault accidents that are commensurate with the severity of the injury, up to a maximum amount. Under the current law, any bodily injury caused by a driver places the driver in the "major accident" category – the highest surcharged category of the three categories of accidents. The bill will allow the Rate Bureau to set a range of surcharges that recognizes different levels of bodily injury. The maximum surcharge for bodily injury that can be set by the Rate Bureau is capped essentially where it is under the current law – at the major accident level (currently three insurance points). These provisions become effective January 1, 1998, and apply to accidents that occur on or after that date.

* The SDIP insurance points and the premium surcharge that accompanies the points are determined by the North Carolina Rate Bureau with the approval of the Commissioner of Insurance and are subject to change.

Exclusion of UM/UIM Coverage; Covenants Not to Enforce (S.L. 1997-396; HB 1052): Section 1 of House Bill 1052 allows an insurer to limit or exclude uninsured (UI)

and underinsured (UIM) coverage from policies that provide excess liability coverage. The bill does not prohibit an insurer and the policyholder from agreeing to UI or UIM coverage in an excess liability policy (for which the insurer will charge additional premium). This section addresses a recent Supreme Court decision, *Isenhour v. Universal Writers Insurance Company (478 S.E.2d 197 (1996))*, in which the Court ruled that the statutory requirement that an insurer must provide its policyholder UI/UIM coverage in the same amount as the liability limits under the policy unless rejected in writing by the policyholder applied not only to auto liability policies, but to excess liability insurance policies as well. In Isenhour, the excess policy provided $2 million in liability coverage, leading the court to rule that the policy was also responsible for $2 million in UM/UIM coverage.

Sections 2 and 3 of the bill make clear that a person injured in a motor vehicle accident can sign a covenant not to enforce judgment against a liable third party above that party's liability insurance limits and still retain rights to any UM (uninsured) or UIM (underinsured) motorist coverage. For example, if the injured person has $200,000 in damages as a result of the accident and the third party responsible for the accident has only $25,000 in liability insurance coverage, the injured party can execute an agreement with the third party that it will only seek $25,000 in damages from the third party. The injured party is then free to seek recovery for the remaining damages from any UM or UIM benefits that might be available. By law, because these benefits, if available, are contingent upon the third party's liability, any agreement between the injured party and the third party that extinguishes that liability also extinguishes the UM/UIM claim. The bill makes clear that a true covenant not to enforce does not operate like a general release from liability and thus does not extinguish the injured party's rights to any available UM/UIM benefits. The covenant does not prevent the insurer that provides the UM or UIM coverage from pursuing any right of subrogation. The bill essentially codifies existing common law on the use of covenants not to enforce to keep UM/UIM claims alive (see *N.C. Farm Bureau v. Bost,* 483 S.E.2d 452 (1997)).

Church Property Insurance Cancellation and Nonrenewal (S.L. 1997-438; HB 1115): S.L. 97-438 prohibits insurers from canceling or refusing to renew property insurance on buildings owned by religious organizations solely because of arson or threats of arson, if the religious organization reports all incidents and threats of arson to and cooperates with law enforcement authorities and the insurer and implements loss control, mitigation, and fire control measures recommended by local law enforcement and fire officials and by the insurer. The act becomes effective January 1, 1998, and expires January 1, 2000.

Coastal Insurance Changes (S.L. 1997- 498; HB 452): S.L. 97-498 expands the Beach Plan wind pool into eighteen coastal area counties and makes other changes that are primarily designed to encourage insurance companies to write homeowners' insurance policies and other property insurance policies in the beach communities and other coastal areas of the State. These changes address growing concerns in the coastal area about the availability of property insurance coverage through the voluntary insurance market. Many insurers do not write property insurance in the coastal area because of concerns about hurricanes and the potential catastrophic losses. Of the insurers issuing coverage in

the coastal area, many have begun restricting their writings in an effort to limit their exposure.

A study panel that examined this problem last year recommended several changes to improve the availability of insurance coverage in the "Beach" area. The Beach area is the strip of land that runs east of the intracoastal waterway and includes such communities as Sunset Beach, Ocean Isle Beach, Atlantic Beach, and Nags Head. Because the Beach area is the area most exposed to hurricanes, it has suffered from insurance availability problems for many years. A "Beach Plan" was created nearly three decades ago as a market of last resort for policyholders in the Beach area who could not find property insurance coverage in the voluntary market. The Beach Plan is an insurance pool that allows all property insurance companies in the State to underwrite risks that no single company wants to underwrite. (No State funds are involved in the pool).

Based on the work of last year's study panel and an ad hoc insurance industry group looking at Beach Plan issues, the Association that administers the Beach Plan and the Commissioner of Insurance developed (at the direction of 1996 legislation) a revised participation formula that is designed to encourage insurers to write more business voluntarily in the Beach area. The participation formula determines each insurer's proportionate liability for losses and credit for gains in the Beach Plan. Although the formula has always credited insurers who voluntarily write insurance coverage in the Beach area, the revised formula creates a new credit system that provides a stronger incentive for insurers to write insurance voluntarily in that area. The new credit system provides proportionately higher credits for insurers who write more than their proportionate share of the coastal property market, gives insurers credit for all of the homeowners premiums written by the insurer (not just a portion of that premium as in the past), and withholds credit for policies that exclude wind and hail coverage. These three changes to the credit system are intended to stimulate the writing of homeowners and property insurance in the Beach area by insurers voluntarily rather than through the Beach Plan. The framework on which this credit system is based is authorized by and incorporated into S.L. 97-498.

Problems with property insurance availability in the voluntary insurance market have spread during the past year or two into the coastal region of the State. S.L. 97-498 also addresses the problem in this region. Currently, homeowners and others in the coastal area of the State (other than the actual beach area) who are unable to obtain property insurance coverage in the voluntary market are generally forced to obtain the insurance through a plan known as the FAIR Plan. The FAIR Plan, like the Beach Plan, is an insurance pool underwritten by all property insurance companies in the State. It covers all of the State except for the barrier islands (which are covered by the Beach Plan). However, the FAIR Plan lacks one of the major features of the Beach Plan: it cannot issue a "wind-only" policy. By contrast, in the Beach area, an insurer can write all of the policy except for the wind coverage and allow the Beach Plan to write the wind coverage. Thus, the insurer is able to shed to the Beach Plan its biggest exposure in that area of the State: hurricane loss. The FAIR Plan cannot issue a wind-only policy. Thus, insurers must either write the entire policy or none of it.

To encourage insurers to write more coverage voluntarily in the coastal region of the State, S.L. 97-498 authorizes the Beach Plan to begin writing wind-only policies in

the coastal area. The coastal area consists of the following 18 counties (excluding the portions of land that are east of the intracoastal waterway in those counties bordering the Atlantic Ocean): Beaufort, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Hyde, Jones, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, and Washington. By allowing insurers to shed the undesirable wind risk to the Beach Plan, the bill seeks to encourage insurers to write the rest of an insurance policy – a policy they might otherwise not have been written at all. In addition, the new credit formula also applies to policies written in the coastal area, giving insurers incentive to write the entire policy (including wind coverage) in the coastal area. An insurer is not legally obligated, and for constitutional reasons, cannot be required to write an insurance policy (with or without wind coverage) to persons in the beach or coastal areas. S.L. 97-498 is designed to encourage them to write in these areas. When an insurer does offer to write a coastal area homeowner a policy without wind coverage, the bill limits the amount that the Beach Plan can charge for the wind-only coverage. The purpose of this limitation, which will be in effect for two years, is to ensure that the homeowner is not substantially impacted financially by this legislation. It does not guarantee that the homeowner's rates will be the same as he or she has paid in the past.

S.L. 97-498 also makes the following changes with respect to insurance in the coastal and beach areas:

- Coverage is made available in the Beach Plan for travel trailers that are tied down at a fixed location.
- The bill makes clear that independent agents are not acting as the Association's (the Association that administers the Beach Plan) agents when insuring property through the Beach Plan.
- Short-term policies are authorized to be issued in the Beach Plan.
- Require insurers who write the basic coverage without wind to adjust the wind-related losses incurred by their policyholders who obtain their wind coverage through the Beach Plan. Under this provision, an insurer, not the Beach Plan Association, would handle the wind loss claim of its policyholder even though the Association, not the insurer, insured the wind loss. However, the insurer would be reimbursed by the Association for the expenses it incurs in adjusting these claims.
- Make "extra expense" coverage available through the Beach Plan. The legislature added "business income" coverage to the Beach Plan last year.
- Authorize the Legislative Research Commission to study the Beach Plan and FAIR Plan and to look at additional options to improve property insurance availability in the State.
- Authorize the Commissioner of Insurance and the Association that administers the Beach Plan to consider any changes in the Beach Plan participation formula in order to encourage insurers to write property insurance voluntarily in the coastal and beach areas. Although a new formula is set to take effect in the beach area on January 1, 1998, the Commissioner and the Association might decide that a different participation formula is called for in the coastal area or that the new beach formula should be adjusted.

- Require the Association that administers the Beach Plan to use its "take-out" program that was recently developed for the beach area in the coastal area also. The "take-out" program is a voluntary program through which insurance companies that do not write property insurance in the beach or coastal areas can indicate to the Beach Plan their willingness to consider writing a limited amount of coverage in the beach and coastal areas.
- Officially recognize the FAIR and Beach Plans as the markets of last resort. This is in keeping with the legislative intent to encourage insurance companies to voluntarily write property coverage in the beach and coastal areas of the State. Consistent with this intent, the Association may include hurricane deductibles in the Beach Plan, if approved by the Commissioner, to help manage the Plan's exposure to hurricane losses. The act becomes effective in accordance with the dates set forth in Section 15 of the act.

State Health Plan

State Health Plan Exempt From APA Rule-making (S.L. 1997-278; HB 184): S.L. 97-278 makes it clear that the State Health Plan is exempt from the rule-making requirements and procedures under the Administrative Procedures Act. However, the Plan must report quarterly to the legislative panel that oversees the administration of the Plan on any medical or administrative policies it adopts as "rules." The act became effective July 9, 1997.

Long Term Care Benefits (S.L. 1997-468; SB 299): S.L. 97-468 establishes a long-term care benefits option for qualified state employees, retired employees, and their dependents under the Teachers' and State Employees' Comprehensive Major Medical Plan. The benefits may be offered either on a self-insured basis or through a contract of insurance. The benefits include nursing home benefits and custodial benefits (assisted living, adult day care, home care) and may be used where there is a need for assistance from the loss of functional capacity from: (1) a chronic illness, disease, or disabling injury resulting in a physical incapacity to perform the activities of daily living, or (2) an irreversible organic mental impairment resulting in mental incapacity.

If the benefits are administered on a self-insured basis, a Public Employee Long-Term Care Benefit Fund shall be created and separate premium rates for long-term care benefits will be set. The Executive Administrator and Board of Trustees of the Plan establishes the payment percentages, maximum daily payment rates, benefit periods, elimination periods, and maximum lifetime benefits payable. Also, upon cessation of group coverage, a covered person is entitled to a conversion to a nongroup plan of long-term care benefits, and the Executive Administrator and Board of Trustees shall determine how to administer those conversion rights. The act becomes effective January 1, 1998,

State Health Plan Technical Changes (S.L. 1997-512; HB 435): S.L. 97-512 makes several changes concerning the Teachers and State Employees' Comprehensive Major Medical Plan ("State Health Plan"). Among the changes are the following:

- The definition of experimental and investigational procedures is revised to include specific criteria that the Plan will examine in determining whether a procedure is investigational or experimental. In addition, the determination of whether surgical procedures and organ transplants are experimental will be made by the Plan's Executive Administrator and Board of Trustees, not by the claims processor.
- The act makes clear that no surgical procedures used to correct vision in lieu of the use of corrective lenses are covered as benefits under the Plan.
- The patient's coinsurance for hospital charges is to be based under the DRG system on the lower of the DRG amount or actual charges.
- The act revises the penalty for failure to obtain precertification for inpatient hospitalization. Failure to obtain precertification results in a 50% penalty, up to $500 per admission, as well as the nonpayment of any treatment deemed medically unnecessary.
- The act provides that chemical dependency will be covered as a benefit and lists the providers authorized to be reimbursed for providing chemical dependency services.
- The act defines when dependents are covered without being subject to pre-existing conditions and specifies when former members of the General Assembly must apply in order to retain coverage under the Plan.

Most of the provisions of the act became effective October 1, 1997.

Workers' Compensation Insurance

Workers Compensation Hospital Reimbursement (S.L. 1997-145; SB 914): S.L. 97-145 revises the method by which hospitals are reimbursed for treatment and care rendered to workers' compensation patients. The bill addresses a problem that arose last year with self-insured employers and the impact of the hospital reimbursement methodology on those employers. A temporary solution addressed the problem until June 30, 1997.

When the Workers' Compensation Reform Act of 1994 was enacted, it tied hospital reimbursement for workers' compensation payments to the same reimbursement those hospitals received under the State Health Plan. When the State Health Plan went to a diagnostic related grouping (DRG) reimbursement system for hospital reimbursement in 1996, the workers' compensation reimbursement system was also switched to a DRG system. Under the DRG system, a hospital is reimbursed primarily on the basis of the diagnosis of the patient, not the actual itemized charges that are calculated based on how long the patient stays in the hospital. The reimbursement is reduced some for each unusually short inpatient stay, and it is increased some for each unusually long inpatient stay. Most insurers have a large enough mix of cases so that the DRG system does not adversely effect them. However, self-insured employers who must pay their injured employees' medical bills under workers' compensation may not have this type of case mix and may end up with bills that exceed the hospital's actual itemized charges.

Legislation enacted last year addressed this by creating a "risk corridor" under which the self-insured employers would not pay more under the DRG system than the actual charges and the hospitals would not be reimbursed less than 90% of those charges. However, this legislation expired June 30, 1997. S.L. 97-145 re-established this 90/100

risk corridor for the remainder of 1997. The corridor will be adjusted in future years by the Industrial Commission to produce a discount for the payors (insurers and self-insured employers) that is equal to the discount received under the State Health Plan, although payments will never exceed 100% of actual charges. When modifying the risk corridor, the Industrial Commission will follow more formal requirements for giving notice of its proposed modification. The Commissions' modification is subject to judicial review. The act creates a permanent solution that became effective June 30, 1997.

Workers Compensation Self-Insured Regulation (S.L. 1997-362; SB 975): S.L. 97-362 revises the laws governing employers and groups of employers that self-insure for workers' compensation. The bill expands on laws concerning self-insured employers that were first enacted in 1995 and codifies many of the existing Department of Insurance regulations that regulate the self-funded employer groups. The purpose of the bill is to ensure that self-insured employers and groups of employers are financially solvent and can pay their claims under the Workers' Compensation Act. The bill also regulates the third party administrators and service companies that handle claims for the employers and employer groups.

Self-insured employer groups must be licensed by the Commissioner of Insurance. They must also prove that they have the financial capacity to pay workers' compensation claims. The bill sets out the information required for a license, restricts how funds are invested, requires a minimum surplus to be maintained, and requires excess loss coverage through insurance or reinsurance. The bill also allows self-insured groups to use the loss costs methodology for workers' compensation rates that was adopted in 1995 for insurance companies.

The bill also regulates individually self-insured employers to ensure that they have the financial capacity to pay their workers' compensation claims. The employer must have at least $500,000 in assets to apply to become self-insured. The bill sets out requirements for bonds or deposits, excess insurance, and record-keeping for these entities.

The act becomes effective January 1, 1998.

MAJOR PENDING LEGISLATION

Mental Health Parity (SB 400): Senate Bill 400 would provide for comprehensive parity for mental health benefits in health insurance policies. Subject to some limitations, case management practices, and a year 2001 expiration date, the bill would require health insurance policies to provide mental health coverage and to provide it to the same extent that they cover physical illness generally. The bill has passed the Senate and is pending in the Health Subcommittee of the House Insurance Committee. (A more limited version of mental health parity was enacted this session -- see the summary for House Bill 434 under this section).

Supervising Dental Hygienists (HB 464): House Bill 564 would allow dental hygienists to perform certain acts within their scope of practice without the on-site supervision of a licensed dentist, and would allow dentists to supervise three (currently only two) dental

hygienists at one time at the same location. The bill passed the House in its fourth version and is pending in the Senate Children and Human Resources Committee.

STUDIES

Legislative Research Commission

The Studies Act of 1997 (S.L. 97-483; SB 32) authorizes the Legislative Research Commission to study the following: (1) Administration of Rabies Vaccine; (2) Dental Hygienist Regulation, Supervision, and Scope of Practice; (3) Health Care Information Privacy Issues; (4) Health Care Issues; (5) Pharmacy Practice Act Revision; and (6) Substance Abuse Aftercare.

Section 2.1(13) of S.L. 97-483 authorizes the Legislative Research Commission to study the issue of the Availability of Homeowners' and Property Insurance in the Coastal Region of the State.

Independent Studies

Blue Cross Study (S.L. 1997-483, Part XI; SB 32, Part XI): Part XI of S.L. 97-483 establishes an independent study commission to study issues relating to the conversion of nonprofit medical, hospital, and dental service corporations to for-profit corporations. BlueCross BlueShield of North Carolina is a nonprofit medical and hospital service service corporation.

Health Care Oversight Committee (S.L. 97-443, Sec. 22.1; SB 352): S.L. 97-443, Section 22.1 establishes a new Joint Legislative Health Care Oversight Committee. The Committee will consist of 14 members, including seven members of the Senate, at least three of whom are of the minority party, and seven members of the House, at least three of whom are of the minority party. The President Pro Tempore and the Speaker of the House of Representatives shall each designate a cochair for the committee. Terms on the Committee are for two years, and begin on the convening of the General Assembly in each odd-numbered year, except the terms of the initial members begin upon their appointment. The Committee is assigned the general duty to review the provision of health care and health care coverage to the citizens of North Carolina. Specific studies must be conducted of the delivery, availability and cost of health care in this State. Aside from these specific topics, the Committee is authorized to study other matters related to health care and health care coverage in this State. The Committee is expected to make ongoing recommendations to the General Assembly and may make interim reports on matters for which it may report to a regular session of the General Assembly. The Committee shall meet at least once per quarter and may meet at other times upon the joint call of the cochairs.

XI. HUMAN RESOURCES

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

Ratified Legislation

Adult Care Homes (Rest Homes)

Adult Care Home Cost Reporting Changes (S.L. 1997-73; HB 143): S.L. 97-73 amends the laws regarding annual reporting requirements of adult care homes to the Department of Health and Human Services. G.S. 131D-4.2(e) is rewritten to change the due date for all adult care homes to submit annual cost reports from March 1 to December 31. The annual reporting period for facilities not licensed pursuant to Chapter 122C of the General Statutes, remains October 1 through September 30. The reporting periods for Chapter 122C facilities is changed to July 1 through June 30. The Department may extend the deadline for filing a report for up to an additional 30 days if it finds good cause for delay. G.S. 131D-4.2(g) is rewritten to authorize the Department to suspend admissions to facilities that fail to submit reports when due. The act became effective May 22, 1997.

Criminal Checks/Contract Agencies (S.L. 1997-125; SB 876): In 1996, the General Assembly passed legislation requiring criminal background checks (CBC) on unlicensed applicants for employment at nursing homes, adult care homes, and home care agencies. If the CBC shows that the applicant has a criminal history, the employer is not precluded from hiring the applicant, but must consider factors listed in the law in deciding whether to disqualify the applicant. Effective January 1, 1998, S.L. 97-125 expands the scope of coverage of the CBC law to include contract agencies of adult care homes, nursing homes, and home care agencies to also obtain CBCs on their own unlicensed applicants for employment.

Nursing Home/Rest Home Advisory Committee (S.L. 1997-176; HB 897): Over the period from 1977 to 1983, the General Assembly enacted the Nursing Home and the Adult Care Home Patients' Bill of Rights. This law contains elaborate statutory provisions for establishing, appointing, and organizing community advisory committees at the county level. S.L. 97-176 makes the following changes in the number of members of advisory committees of nursing homes and adult care homes:

1. For nursing homes - In a county with four or more nursing homes, the advisory committee may have up to five additional members, at the discretion of the county commissioners. (Previously, the advisory committee could have one additional member for each nursing home in excess of three).
2. For adult care homes - The county advisory committee for adult care homes will have one additional member for each adult care home in excess of three and may have up to five additional members at the discretion of the county commissioners, up to a maximum of 25 members. (Previously 20)

The act became effective June 12, 1997.

Residency Requirement for Special Assistance (S.L. 1997-210; HB 81): S.L. 97-210 amends G.S. 108A-41(b) and establishes an additional eligibility requirement for new residents of the State who apply for State-County Special Assistance. The Special Assistance Program provides funds for residents in adult care homes for North Carolina residents who need assistance in paying for their care. Previously, an applicant was eligible for assistance if the person met the following three requirements: (1) was 65 years of age and older, or between the ages of 18 and 65 and permanently and totally disabled; (2) had insufficient income or other resources to provide a reasonable subsistence compatible with decency and health as determined by the rules and regulations of the Social Services Commission; and (3) was a resident of North Carolina.

Under the new provisions, an applicant must additionally meet one of the following criteria: (1) be a resident for at least 90 days immediately prior to receiving assistance; (2) be coming into the State to join a close relative who has resided in the State for at least 180 consecutive days immediately prior to the person's application; or (3) be discharged from a State facility as defined under G.S. 122C-181, and have been a patient in the facility as a result of an interstate mental health compact.

This act became effective June 19, 1997, and applies to residents making application for assistance on or after that date.

Adult Care Home and Nursing Home Violations and Penalties (S.L. 1997-431; SB 53): S.L. 97-431 amends G.S. 131D-34 and G.S. 131E-129 and adjusts administrative penalties for adult care homes and nursing homes which violate applicable State and federal laws and regulations. Violations are classified as Type A and Type B.

Type A means that the violation results in death or serious physical harm, or results in substantial risk that death or physical harm will occur. The range of civil penalties is doubled to "not less than $500 or more than $10,000". Violations by homes licensed for nine or fewer beds would not be increased. Type A violations require an immediate plan of correction. The Departmental personnel or local DSS personnel making the finding must: (1) orally inform the administrator immediately of the violations, what must be done to correct them, and set a date for when the violations must be corrected, and (2) confirm the same in writing within 10 working days.

Type B violations no longer carry a monetary penalty but require plans of correction. (Previously, they carried a civil penalty of up to $250.)

The statutes continue to provide additional penalties for failure to correct violations and for repeat violations. For the purpose of determining repeat violations, the time period is increased from 6 months to 12 months. The Department continues to have several enforcement remedies available as follows: provisional license, suspension of admissions, temporary management, revocation of license, and summary suspension of license.

S.L. 97-431 rewrites and increases the factors to be considered in determining the amount of an initial penalty and specifies that the penalty be submitted within 45 days to the Department. The Secretary must document findings and make written record available to all affected parties including: the penalty review committee, the local DSS

responsible for oversight of the facility, the licensee involved, the residents potentially affected, and the family members or guardians of those affected.

Previously, the statutes allowed for recovery of unpaid penalties through the administrative hearing process. S.L. 97-431 sets the following specific issues for review during the process: (1) reasonableness of the amount of the penalty assessed; and (2) degree to which each factor has been evaluated. A hearing officer may recommend an adjusted penalty based on the findings.

S.L. 97-431 further provides that the Secretary may order a facility to conduct staff training in lieu of assessing a penalty if: (1) the cost does not exceed $1,000; (2) the penalty is the only violation by a facility within a 12-month period while under the same management; and (3) the training specifically addresses the violation, is approved by DHR, and is taught by someone other than the provider.

The Secretary is directed to administer the work of the Penalty Review Committee and to ensure notification of all parties involved. Each member of the Committee is required to complete a training program provided by the Department

The act became effective August 1, 1997, and applies to violations committed on or after that date.

Adult Care Home Bed Vacancies (S.L. 1997-443, Sec. 11.69; SB 352): Section 11.69 of S.L. 97-443 directs that the Department of Health and Human Services shall not approve the addition of any adult care home beds for a 12-month period beginning August 28, 1997, with the following exceptions: (1) plans submitted prior to May 18, 1997; (2) plans submitted after May 18 if the plan demonstrates that on or before August 15, 1997, certain binding agreements were entered into for establishing or expanding a facility; (3) beds in facilities for the developmentally disabled with six beds or less; (4) if the Department determines that a county's bed vacancy rate is 15% or less; or (5) if a county board of commissioners determines there is a substantial need in that county. The Department is directed to study the issue of high vacancy rates and the availability of beds for Special Assistance clients and related issues and to report to the Chairs of the House and Senate Appropriations Subcommittees on Human Resources by February 1, 1998.

Adult Care Homes Reimbursement Rate (S.L. 1997-443, Sec. 11.70; SB 352): Section 11.70 of S.L. 97-443 sets the maximum monthly adult care homes reimbursement rate as follows: (1) $893 effective July 1, 1997, and (2) $915 effective July 1, 1998.

Adult Care Homes Staffing (S.L. 1997-443, Sec. 11.72; SB 352): Section 11.72 of S.L. 97-443 requires adult care homes with 13 or more beds to have adequate staff to meet the personal care needs of residents. "Adequate staff" is defined as personal care staff sufficient to meet the needs of each resident as specified in the resident's care plan. "Heavy care resident" is defined as an individual residing in an adult care home who needs extensive assistance or is totally dependent on another person for eating, toileting, or both, or any other type of heavy care resident as defined by Medicaid. "Personal care service" includes any task identified by Medicaid which has the primary purpose of providing needed assistance to residents. The Department is directed to withhold payment for any home that has not provided adequate staff to meet the personal care

needs required under this provision until the staffing requirements are met. This section becomes effective October 1, 1997, and expires June 30, 1998.

Adult Care Homes Provisional License (S.L. 1997-522, SB 851): S.L. 97-522 amends G.S. 131D-2(b) and applies to adult care homes licenses. It permits the Department of Health and Human Services to reduce a full license to a provisional license when a licensee fails to comply with the provisions of Chapter 131D and there is reasonable probability that the licensee can remedy the deficiencies within a reasonable length of time and thereafter remain in compliance. It also permits the Department to revoke a license when: (1) a licensee fails to comply with regulations and it is not reasonably probable that the licensee can remedy the deficiencies within a reasonable length of time; (2) a licensee fails to comply with regulations and may be able to remedy the deficiencies within a reasonable time, but it is not reasonably probable that the licensee will remain in compliance; or (3) a licensee fails to comply with regulations and endangers the health, safety, or welfare of the residents in the facility. The act became effective Spetember 17, 1997.

Welfare Reform

Child Support Options/Fees (S.L. 1997-223; HB 363): S.L. 97-223 directs the Department of Health and Human Services not to elect any child support distribution options for which federal funds are not provided to exercise the options. Effectively, the amendment modifies the child support payment distribution to families on public assistance by eliminating the $50 disregard and excess payments. The act also amends G.S. 110-130.1(a) to increase to $25 the fee for providing child support services to individuals not receiving public assistance. The fee remains $10 for indigent persons. The directive pertaining to unfunded child support options became effective on June 25, 1997. The fee provision became effective on July 1, 1997.

Child Support/Federal Requirements (S.L. 1997-433; HB 301): This act amends the State's child support enforcement and paternity statutes to comply with recent changes in federal law and implements the requirements of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The act does the following: (1) establishes the State Directory of New Hires and requires the Department of Health and Human Services to develop and maintain it. Employers are required to report information on new employees hired on or after October 1, 1997 to the State Directory within 20 business days of date of hire; (2) the Department of Health and Human Services is given statutory authority to implement the requirements of the federal law. The Department of Health and Human Services is authorized to issue subpoenas without a court order for relevant documents needed for child support enforcement or paternity establishment. The Department of Health and Human Services is given access to information, data storage and retrieval systems at the Department of Transportation and law enforcement agencies; (3) implements federal requirement by requiring judges to impose work activities under appropriate circumstances; (4) implements federal health care coverage requirements, and also provides that upon notice from the obligee (non custodial parent or State agency) the

new employer must enroll the child in the employer's health plan; (5) conforms the State income tax law intercept law to conform with the new federal distribution requirements; (6) amends the pertinent General Statutes to ensure that social security numbers are provided. This part clarifies that social security numbers must be received as part of the drivers license application before the license can be issued; (7) establishes paternity establishment procedures that are in accordance with and do not exceed federal requirements allowing temporary support orders pending a paternity determination upon genetic test results with a 97% or higher probability and the right to subpoena information without a court order; (8) decreases the time that employers have to withhold income from the obligor from 7 to 10 days and also allows for collection and disbursement of support to be made by the State collection and disbursement unit; (9) provides that in IV-D cases where the obligor is not currently subject to withholding and fails to make one month of child support payments, the obligor becomes subject to withholding immediately; (10) establishes a procedure for obtaining a lien when an obligor is in arrears three months or $3,000, whichever occurs first. The procedure provides for verification of information, filing, executing, and discharging the lien, and imposes a penalty for failure to discharge; (11) directs DHR to take the necessary steps to comply with the federal requirements for an automated system, and for a collection and disbursement unit and by October 1, 1999 establishes the collection and disbursement unit as the single agency for collecting and disbursing child support payments; (12) implements federal requirements for protecting the privacy rights of parties when there is the danger that disclosure of information regarding the whereabouts of a person may result in physical or emotional harm to the person; and (13) authorizes DHR and financial institutions to enter into agreements to establish the data match system. The act also directs DHHS to apply for an exemption from federal requirements regarding abolishing the right to a jury trial in paternity actions. The act directs the Attorney General to explore the feasibility of a law suit to challenge federal authority requiring states to conform to federal law as a condition of receiving federal child support enforcement funds. The act became effective October 1, 1997 and expires June 30, 1998.

Welfare Reform (S.L. 1997-443, Part XII; SB 352, as amended by S.L. 1997-456, Sec. 55.10; HB 115, Sec. 55.10): This Part of S.L. 97-443 combines the House and Senate welfare reform proposals by allowing counties to apply to become either Electing Counties or Standard Counties. The purpose of the act is to establish the Work First Program which is not an entitlement. Those counties that become Electing Counties would develop and administer their own Work First programs, but with monitoring and reporting requirements that would provide the State with the status of the operation of Work First in those counties. Any number of counties can become part of the experiment so long as the total combined caseload for the Electing Counties does not exceed 15.5 percent of the State's families on welfare. All boards of county commissioners must vote by three-fifths to become either an Electing County or a Standard County.

The board of county commissioners in Electing Counties have the duty to set the eligibility criteria, time limits, outcome and performance goals, method of calculating benefits, develop their own Mutual Responsibility Agreements, provide community service work, make payments for cash assistance, adopt a county plan, and monitor and

evaluate the Work First Program and report to the Department of Health and Human Services. In Standard Counties all of the above functions would be developed by the Department and the county department of Social Services would be responsible administrating Work First in the county.

Each Electing County's allocation for Work First Family Assistance shall be based on the percentage of each Electing County's total expenditures for cash assistance to statewide actual expenditures for cash assistance in 1995-96. The resulting percentage shall be applied to the total budgeted funds for Work First Family Assistance. The State shall transmit the federal funds contained in the county block grants to Electing Counties as soon as practical after they become available to the State. The Department shall transmit one-forth of the State funds contained in county block grants to Electing Counties at the beginning of each quarter. Once paid, the county block grant funds will not revert. The Department shall maintain the State's maintenance of effort at one hundred percent of the amount the State budgeted for these programs. During the first year a county operates as an Electing County, the county's maintenance of effort shall be no less than ninety percent of the amount the county budgeted for programs during 1996-97. If, during the first year of operation, the Electing County achieves one hundred percent of its goals set forth in its Electing County Plan, then the Electing County may reduce its maintenance of effort to eighty percent.

Other requirements of the act include: (1) establishment by the Department of a uniform identification system by October 1, 1998 which will identify all Work First, food stamp, medical assistance, and child care program recipients using multiple biometrics to ensure greater than ninety-nine percent accuracy; (2) establishment of a Office of Inspector General within the Department of Justice to provide a central point for activities related to detection, prosecution, and prevention of fraud, abuse and waste in public assistance programs; (3) establishment within the Department the office of Internal Auditor to provide independent reviews and analysis of various functions; (4) establishment within the Department of Commerce a program called First Stop Employment Assistance and provides that all provisions other than mandated employment registration are optional for counties; and (5) creation of the Joint Legislative Public Assistance Commission. The act became effective July 1, 1997.

Public Assistance Fraud (S.L. 1997-497; HB 431): S.L. 97-497 adds a new section, G.S. 108A-25.1, which authorizes the garnishment of wages to recoup fraudulent payments from recipients or former recipients of public assistance. Garnishment may be sought only after all administrative remedies are exhausted. The district court may enter a garnishment order after the 10th day following a judgment entered for a sum certain pursuant to a petition in the action filed in accordance with the statute. Not more than 20% of the person's monthly disposable income may be garnished, and garnishment is not a remedy if the person is required to pay restitution for fraudulent payment pursuant to a criminal court order. The court also may not enter a garnishment order if it jeopardizes the person's ability to become or remain self-sufficient, or results in a likelihood of increased or recurring dependency on public assistance.

The act also adds a new section, G.S. 108A-53.1, which creates offenses for the illegal possession or use of food stamps. Persons who knowingly buy, sell, distribute or

possess with intent to sell or distribute food stamp coupons, authorization cards or access devices in any manner contrary to law or regulations shall be guilty of a Class H felony. Persons who knowingly use, transfer, acquire, alter or possess food stamp coupons, authorization cards or access devices in any manner contrary to law or regulations shall be guilty of a: (1) Class 1 misdemeanor if the value is less than $100; (2) Class A1 misdemeanor if the value is more than $100 but less than $500; (3) Class I felony if the value is equal to $500 but less than $1,000; and (4) Class H felony if the value equal or exceeds $1,000.

The act becomes effective on December 1, 1997 and applies to actions for garnishment or food stamp offenses on or after that date.

Miscellaneous

Dissolve Certain Mental Health Authority (S.L. 1997-7; HB 77): S.L. 97-7 authorized the dissolution of area mental health authorities comprised three counties, at least two of which have a population of 90,000 or more according to the most recent decennial federal census. The act provides that dissolution shall take effect not later than June 30, 1997.

The only area authority meeting these requirements was the Tri-County Area Mental Health consisting of Davie, Rowan and Iredell counties. These counties may now provide services as a single county area authority or align with another single-county or multicounty area authority. The act became effective March 26, 1997.

Broughton Hospital Security Force (S.L. 1997-20; SB 248): The act authorizes the Secretary of the Department of Health and Human Services to appoint one or more special police officers to enforce laws, ordinances, and regulations on the property of Broughton Hospital, Western Carolina Center, North Carolina School for the Deaf, Western Regional Vocational Rehabilitation Facility and the surrounding grounds, and adjacent land held by the Department of Agriculture and Consumer Affairs, in Burke County. It also makes conforming changes to the statute creating the Black Mountain Joint Security Force. This grant of authority is similar to that granted to other individual State mental health facilities, the Global Transpark Authority, Butner Public Safety, and the Black Mountain Joint Security Force. The act became effective July 23, 1997.

Butner Planning Council (S.L. 1997-59; SB 428): The State, through the Department of Health and Human Services, has historically provided services to the Butner citizenry that are normally carried out by municipal authorities. Chapter 667 of the 1995 Session Laws created the Butner Advisory Council. The Council consisted of seven members to be elected by the residents of Butner with the responsibility to devise a long-range plan for the development and governance of Butner. S.L. 97-59 revises the 1995 act by changing the name to the Butner Planning Council. The membership of the Council remains at seven but three are to be appointed by the Secretary of the Department of Human Resources and four are to be appointed by the Board of Commissioners of Granville County. The Planning Council has the same duties as the Advisory Council. This act became effective May 16, 1997.

Family Foster Home Standards (S.L. 1997-110; SB 1023): Under North Carolina law, a family foster home may not care for more than seven children at any one time. This "cap" includes the foster parent's own children, any foster children, day care children or any other children in the home at any time. The law allows for an issuance of an exception or waiver to the cap if the county department of social services can show that the foster home is safe for more than seven children, and the foster parents are capable of caring for more than seven children at one time. However, the cap may not be lifted until the Division of Social Services has reviewed and granted the waiver petition. The child placement problem often begs for an immediate solution, and the unavoidable delay between the submission of the petition and the issuance of the exception may jeopardize the county's ability to respond effectively to immediate needs. S.L. 97-110 responds to the problem by directing the Commission to develop a standardized form for counties to use to request the waiver, to grant or deny a request for the waiver within 10 days of its receipt and to undertake a study of the existing procedures for granting and denying a request for a waiver. The Commission is to report to the General Assembly on or before May 1, 1998. The act became effective July 1, 1997.

Dependent Juvenile Definition (S.L. 1997-113; HB 153): See **CHILDREN AND FAMILIES.**

Department of Social Services Board Change (S.L. 1997-135; HB 28): S.L. 97-135 changes the selection procedure for the fifth member of a five member county board of social services. G.S. 108A-3(b) requires the four appointed members to the board to select the fifth member. Under prior law, if the four could not *unanimously* agree on the fifth, the superior court judge would be called upon to select the fifth member. S.L. 97-135 provides that if a *majority* of the four appointed members are unable to agree upon the selection of the fifth member, the senior regular superior court judge of the county must make the selection. The act became effective June 4, 1997, and applies to elections taking place on or after that date.

Register of Deeds No Longer to Distribute Drug Abuse Info (S.L. 1997-136; HB 456): S.L. 97-136 amends G.S.161-11.1 and repeals the mandate for county registers of deeds to distribute a drug abuse pamphlet with each marriage license issued. The pamphlets that were being distributed were supplied to the registers of deeds by the Department of Environment, Health, and Natural Resources and contained information on the prevention of fetal alcohol syndrome, cocaine exposure, and other potential harm to a fetus from drug and alcohol abuse by the mother. The act became effective June 4, 1997.

Glaucoma Program Repealed (S.L. 1997-137; HB 455): S.L. 97-137 amends G.S. 130A-221 to allow, but not require, the Department of Health and Human Resources to establish a program for the prevention and detection of glaucoma and diabetes and to allow, but not require, the Department to provide services to care for and to treat people with glaucoma and diabetes. The act become effective June 4, 1997.

Foster Care Criminal Record Check Corrections (S.L. 1997-140; SB 207): S.L. 97-140 corrects ambiguity in a provision of the child foster care licensing statute requiring a criminal history record check to be conducted on all persons providing child foster care and any adult member of the foster family household. The ambiguity arose from the law's definition of "foster parent", which included adult members of the foster family household who were not actually providing foster care, but merely residing in the home. S.L. 97-140 corrects the ambiguity by clarifying that the definition of "foster parent" only applies to a person licensed or seeking to be licensed as a foster parent. The legislative intent to require criminal background checks on all adult members of the foster family household was maintained by the new law by requiring that as a condition of licensure or relicensure as a family foster home, all persons, age 18 or older, residing in the family foster home, must have their national and State criminal history record checked to determine if they are unfit for a foster child to reside with them.

S.L. 97-140 amends G.S. 131E-265(a) to provide that an offer of employment for a position that requires the applicant to enter a patient's home is conditioned on consent to a criminal history check. The act became effective June 4, 1997.

Adoption Technical Amendments (S.L. 1997-215; SB 162): This act makes several technical, clarifying and other changes to the Adoption Law as rewritten in 1995 as follows: (1) Sections 1 and 2 address confusion over certification of one of the documents that must be filed with an adoption petition and notice required in the adoption of an adult; (2) Sections 3 and 5(a) allow the clerk of court to send orders for a report to the court to the designated agency by first-class mail rather than certified mail, return receipt requested, and make a conforming change in the way the agency's reporting deadline is computed; and (3) Section 4 clarifies that in an agency adoption the report to the court must not contain any identifying information about the minor's former family; (4) Section 5 (a) and (b) clarify that agencies that identify a concern in the report to the court must file a follow-up report; (5) Section 6 brings forward the former law's more detailed procedures for the clerks of court to follow in denying an adoption petition; (6) Section 7 removes a requirement that agencies send a representative with a parent or guardian to have a relinquishment notarized; (7) Section 8 treats revocations sent by overnight delivery service in the same manner as those sent by mail; (8) Section 9(a) restores the clerk of court's index entry to its original, unsealed status, correcting an inadvertent error; (9) Section 9 (b) and (c) standardize the procedure for obtaining new birth certificates; (10) Section 10 clarifies that the statutes allowing hearings to be waived applies only to the adoption of minors; (11) Section 11 amends the Adoptions Law to take standby guardians into account; (12) Section 12 removes the requirement of a report to the court in stepparent adoptions; (13) Section 13 allows adopted foreign-born adults to obtain certificates of identification, which the current statute makes available to adopted foreign-born minors; (14) Section 14 establishes a process for determining whether a biological father is required to consent to an adoption prior to the birth of the child. (Sections 16 and 17 make conforming changes arising from Section 14); (15) Section 15 clarifies that if a prospective adoptive parent cannot obtain an assessment at the fee, the county department will have to do the assessment at that fee; (16) Section 18 conforms the law on who is permitted to obtain a copy of a birth certificate of an adopted person to

the law on who is permitted to obtain a copy of a birth certificate in a non-adoptive situation by permitting the children of an adoptee to get a copy; and (17) Section 19 amends G.S. 48-3-705 to delete the provision that relinquishment terminates the duty to support the minor and becomes void if the agency and person relinquishing the minor agree to rescind the relinquishment before placement with a prospective adoptive parent occurs. Sections 1-4, 11 and 13 through 18 are effective when they become law. Sections 6, 9, 12 and 19 have varying effective dates and Sections 5 and 7 through 10 have specific application dates. The act became effective June 19, 1997, except as otherwise provided.

Mediated Settlement/Family Issues (S.L. 1997-229; HB 907): See **CHILDREN AND FAMILIES.**

Criminal Record Checks by Department of Human Resources (S.L. 1997-260; SB 924): S.L. 97-260 creates G.S.114-19.6 which provides for the Department of Justice to provide criminal history checks of Department of Health and Human Services employees and applicants for employment when requested. "Criminal history" is defined as a State or federal history of conviction of a crime, whether a misdemeanor or felony, that bears upon a covered person's fitness for employment. The statute includes a list of crimes that bear upon a person's suitability for employment. DHHS shall keep all information confidential, and it is to be used by the Department exclusively. If the record check reveals one or more convictions, it can be just cause for not employing the person or for removing the person from current employment. A conviction does not automatically prohibit employment, and there are other factors outlined in Subsection (c) to be considered. Employment may be denied to someone who refuses to consent to a record check, and an employee who refuses to consent to a record check may be let go. The act became effective October 1, 1997.

Extend Tri-County Administration (S.L. 1997-280; HB 101): S.L. 97-280 required the Secretary of the Department of Health and Human Services to dissolve by June 30, 1997 the Tri-County Area Mental Health Authority. S.L. 97-280 further allowed the Department of Health and Human Services to administer the services of Tri-County Area Mental Health Authority for up to three calendar months beginning July 1, 1997. This administration must be at the request of the board of county commissioners of at least one or more of the counties that constitute the Authority. The sole purpose of the grant of authority is to allow one or more county in the Authority to assess the feasibility of combining with another existing area authority. The act became effective July 9, 1997.

Medicaid False Claims Act (S.L. 1997-338; SB 943): This act provides a remedy for the recovery of Medicaid payments made based upon false claims. These provisions parallel the false claim recovery provisions of federal law and provide for civil remedies and civil penalties. The provisions of the act do the following: (1) makes it unlawful for a provider of medical assistance under the Medicaid program to present a false or fraudulent claim for payment or to use a false record or statement to get a claim approved; (2) provides for two levels of civil penalties; (3) sets forth the investigative authority of

the Attorney General and the statute of limitations on claims under the act; (4) gives the Attorney General the authority to compel evidence as part of a civil investigation through both sworn written interrogatives and depositions; and (5) grants immunity from liability to a person who furnishes information to officials investigating false claims violations. It also gives protection to employees who provide investigative information against their employer who is provider under investigation from retaliation by the employer. The act becomes effective December 1, 1997 and applies to violations committed on or after that date.

Advance Instructions/Mental Health (S.L. 1997-442; SB 757): S.L. 97-442 provides statutory authority and a standard format for a person with mental illness to provide advance instructions that will allow the person to control decisions relating to the person's medical care, and provide an additional method for person's to exercise their right to consent to or refuse mental health treatment when the person lacks sufficient understanding or capacity to make or communicate mental health treatment decisions. The advance instruction is triggered when a physician or psychologist determines that the person is incapable of making the treatment decision. The advance instruction may provide or withhold consent to the use of psychoactive medications, convulsive treatment or the admission to and retention in a treatment facility.

A person may also use the advance instruction to appoint an attorney-in-fact (validly appointed under G.S. 122C-75) to make treatment decisions for them under the advance instruction if they are incapacitated by their mental illness. The advance instruction may also provide details of a person's preferences or instruction concerning who to contact during a crisis, what treatment helps to stabilize the crises, and it may be used to nominate a guardian of the person, if guardianship proceedings are commenced.

The advance instruction may be revoked at any time, and unless revoked, it expires after two years. The advance instruction becomes a part of the patient's medical record, and the physician or provider must comply with it to the fullest extent possible when the patient is found to be incapable of providing informed consent. However, compliance is not required if, to do so, would be inconsistent with the best medical practice to benefit the patient, or the treatments requested are not available, or compliance would be in violation of law. Also, a physician or provider may treat the patient contrary to the advance instruction if the patient has been involuntarily committed to a mental health facility or in cases of emergencies that endangers the life or health of the patient or another person.

The act becomes effective January 1, 1998 and includes a standard format to use in the creation of an advance instruction and appointment of attorney in-fact and if used, it will be construed to be in compliance with the law.

Department of Environment, Health and Natural Resources/Department of Human Resources Changes (S.L. 1997-443, Part XIA; SB 352): Part XIA of S.L. 97-443 combines the State's health and social services agencies and does the following: (1) creates a new department and transfers the functions of the Department of Human Resources into the newly created Department of Health and Human Services and makes conforming changes throughout the General Statutes; (2) transfers the public health

functions of the Department of Environment, Health and Natural Resources, including the Commission for Health Services into the newly created Department of Health and Human Services, but pending a study by the Environmental Review: (a) maintains the Division of Environmental Health in DENR, including sanitation and mosquito vector control, (b) provides that the responsibility for enforcement of the North Carolina Drinking Water Act and Wastewater Systems are retained by DENR, and (c) directs DENR not to consolidate the on-site wastewater or drinking water in the Division of Water Quality; (3) creates a new Department of Environmental and Natural Resources; (4) changes the term "ambulance attendant" to "medical responder" and changes the statutes relating to medical responder; and (5) requires a number of reports to the General Assembly on the progress of reorganization and a number of other issues. This Part became effective August 28, 1997.

Reorganization Plan for Department of Health and Human Services (previously Department of Human Resources) (S.L. 1997-443, Sec. 11.2; SB 352): Section 11.2 of S.L. 97-443 directs DHHS to develop and begin implementing a plan to reorganize the previous DHR using the March 20, 1997 report of KPMG Peat Marwick, L.L.P. The section became effective July 1, 1997.

Increase in Medical Records Copy Fees (S.L. 1997-443, Sec. 11.3, SB 352): Section 11.3 of S.L. 97-443 increases the fees health care providers may charge for copies of medical records. G.S. 90-411 provides for charging fees to cover costs incurred in searching, handling, copying, and mailing medical records to patients and patients' representatives. The statute is amended to increase the maximum fee that shall be charged for each request to 75¢ per page for the first 25 pages, 50¢ for pages 26 through 100, and 25¢ for each page over 100 pages. These charges do not apply to the Department's requests for copies for Social Security or Supplemental Security Income disability needs. The section became effective July 1, 1997.

Special Alzheimer's Units to Serve the Unserved Only (S.L. 1997-443, Sec. 11.40; SB 352): Section 11.40 of S.L. 97-443 specifies that the Special Alzheimer's Units in Wilson and Black Mountain shall serve only those who cannot be served by a similar private facility. The Department shall collect information from private providers including costs of operations and shall report a comparison of that information to the cost of operations by the Units to the House and Senate Appropriations Subcommittees on Human Resources and the Fiscal Research Division by March 1, 1998. The section became effective July 1, 1997.

Early Childhood Education and Development Initiatives Program Expansion (S.L. 1997-443, Sec. 11.55; SB 352): Section 11.55 of S.L. 97-443 provides for expansion of the Early Childhood Education and Development Initiatives Program. The DHHS and the North Carolina Partnership for Children, Inc., are directed to jointly continue to implement the recommendations of the Smart Start Performance Audit, and the Partnership is to expand and incorporate all aspects of its new role as determined in the audit. Budget matches are required from the Partnership and all local partnerships to

match no less that 50% of the total amount. Failure to obtain a 20% match by May 1 annually shall result in a reduction in the appropriation for the Program for the next year. The Partnership shall establish guidelines and reporting requirements for local partnerships. The Frank Porter Graham Child Development shall continue its evaluation of the Program and tracking children in current and previous initiatives. Of total allocations to all local partnerships, at least 70% shall be used in activities and programs to improve access to child care services, to develop new child care services, or to improve the quality of child care services. The Partnership may increase each local partnership's direct services allocation used to expand child care subsidies up to a maximum of 50% based upon the local waiting list or percentage of children eligible for subsidized child care. $22,258,625 is allocated for FY 97-98 and $25,298,838 for FY 98-99 for the Partnership and local partnerships. $850,000 for FY 97-98 and $850,000 for FY 98-99 is allocated for the Frank Porter Graham Child Development Center. The section became effective July 1, 1997.

Performance Audit of Division of Services for Blind (S.L. 1997-443, Sec. 11.61; SB 352): Section 11.61 of S.L. 97-443 directs the Office of the State Auditor to conduct a performance audit of the Division of Services for the Blind including the Governor Morehead School. Results are to be reported to the Senate and House Appropriations Subcommittees on Human Resources by January 1, 1998. The section became effective July 1, 1997.

Improve Child Protection Records (S.L. 1997-459; HB 949): See **CHILDREN AND FAMILIES.**

Allow Nursing Interstate Compacts (S.L. 1997-491; SB 445): This act amends the Nursing Practice Act by adding to the powers of the Board of Nursing the ability to enter into interstate compacts to facilitate the practice and regulation of nursing. The primary purpose is to facilitate the Board's ability to respond to the need to regulate nursing practice in new interstate telehealthcare settings. The act became effective September 10, 1997.

Substance Abuse Specialists (S.L. 1997-492; SB 712): S.L. 97-492 amends the North Carolina Substance Abuse Professionals Certification Act to provide for the certification of substance abuse counselors, clinical addiction specialists, clinical supervisors and residential facility directors. Each classification of substance abuse professionals must meet, at a minimum, the certification requirements for substance abuse counselors in addition to other education, experience or examination requirements set forth in G.S. 90-113.40. The act authorizes deemed status pursuant to G. S. 90-113.41A, to recognize certifications granted by other professional disciplines which substantially meet the standards set forth. Upon receiving deemed status, individuals may apply for certification as clinical addiction specialists in lieu of the requirements set forth in G.S. 90-113.40. Also notwithstanding, G.S. 90-113.40(c), clinical addiction specialists may be certified during a three year period beginning October 1, 1998 if they meet the criteria set forth in Section 18 of the act. The act amends the powers and duties of the North Carolina

Substance Abuse Professional Certification Board, G.S. 113.32-.33, to reflect changes necessary to implement certifications for the various classifications of substance abuse professionals. The act amends the fee structure for certification in G.S. 90-113.38, and makes other conforming amendments. The act became effective October 1, 1997.

Voc. Rehab. Council Chair (S.L. 1997-509; SB 488): Currently, the Governor appoints the chair of the Vocational Rehabilitation Advisory Council. This act changes this process so that the chair is elected from one of the voting members of the Council. The act became effective July 1, 1997.

MAJOR PENDING LEGISLATION

Ban Partial-Birth Abortions (HB 303): House Bill 303 would ban some late-term abortions, also known as partial-birth abortions in North Carolina. The bill places criminal and civil penalties on a physician, osteopath, or any other person legally authorized to perform abortions in North Carolina for performing the "partial birth" procedure to abort a fetus, except when the procedure is the only medical procedure that could save the life of the mother.

Abortion-Right to Know (HB 536): House Bill 536 would prohibit anyone from performing an abortion without first obtaining the woman's voluntary and informed consent. It would define what constitutes voluntary and informed, and would prescribe the subject matter of required communications that must be delivered to the woman and other conditions that must be met.

STUDIES

Legislative Research Commission Studies

The Studies Act of 1997 (S.L. 97-483; SB 32) authorizes the Legislative Research Commission to study the following: (1) Adoption Registry (Sec. 2.1(30)); (2) Guardian Ad Litem Program (Sec. 2.1(8)); (3) DHR Schools (Sec. 2.1(20)); and (4) Substance Abuse Aftercare (Sec. 2.10).

Medical Assistance Program and State-County Special Assistance Program (S.L. 1997-443, Sec. 32.22; SB 352): Section 32.22 of S.L. 97-443 authorizes the Legislative Research Commission to study the Medical Assistance Program and State-County Special Assistance Program.

Independent Studies, Boards, Etc.

Legislative Study Commission on Child Care (S.L. 1997-596, Sec. 28; SB 929): Section 28 of S.L. 97-596 creates the Legislative Study Commission on Child Care. The Commission shall report to the 1997 General Assembly, 1998 Regular Session, and the 1999 General Assembly upon its convening.

Child Welfare Training Institute (S.L. 1997-483, Part VI, Sec. 6.1(2); SB 32): Section 6.1(2) of Part VI of S.L. 97-483 authorizes the Joint Legislative Education Oversight Committee to study the issue of developing a child welfare training institute in the university and community college system. The Committee may report to the 1997 General Assembly, 1998 Regular Session, or the 1999 General Assembly.

Commission on the Family Abolished (S.L. 1997-443, Sec. 12.15; SB 352): Section 12.15 of S.L. 97-443 abolishes the Commission on the Family.

Recruiting, Training, and Retaining Qualified Child Welfare Staff (S.L. 1997-483, Part VI, Sec. 6.1(3); SB 32): Section 6.1(3) of Part VI of S.L. 97-483 authorizes the Joint Legislative Education Oversight Committee to study the issues of recruiting, training, and retaining qualified child welfare staff. The Committee may report to the 1997 General Assembly, 1998 Regular Session, or the 1999 General Assembly.

Adult Care Home Monitoring (S.L. 1997-443, Sec. 11.20; SB 352): Section 11.20 of S.L. 97-443 authorizes the North Carolina Study Commission on Aging to study the effectiveness and efficiency of State and county monitoring and regulation of adult care homes. The Commission shall report its findings to the 1997 General Assembly, 1998 Regular Session, upon its convening.

Legislative Study Commission on Job Training Programs (S.L. 1997-443, Sec. 16.1; SB 352): Section 16.1 of S.L. 97-443 creates the Legislative Study Commission on Job Training Programs. The Commission shall report to the 1997 General Assembly, 1998 Regular Session; the Joint Legislative Commission on Governmental Operations; and the Joint Legislative Education Oversight Committee by May 1, 1998.

Legislative Study Commission on Mental Health, Developmental Disabilities, and Substance Abuse Services (S.L. 1997-443, Sec. 11.46; SB 352): Section 11.46 of S.L. 97-443 changes the membership of the Legislative Study Commission on Mental Health, Developmental Disabilities, and Substance Abuse Services by adding an additional member appointed by the Governor who is a representative of the North Carolina Hospital Association.

Joint Legislative Public Assistance Commission (S.L. 1997-443, Sec. 12.18; SB 352): Section 12.18 of S.L. 97-443 creates the Joint Legislative Public Assistance Commission. The Commission shall monitor implementation of the provisions of Part XII, Welfare Reform Initiatives and Conforming Changes, of The Current Operations and Capital Improvements Appropriations Act of 1997, and shall make any necessary recommendations to the General Assembly regarding any further changes to law or rule. The Commission shall first convene within 30 days of becoming law.

Surrogate Consent for Health Care for Adults in Health Care Facilities (S.L. 1997-443, Sec. 11.19; SB 352): Section 11.19 of S.L. 97-443 authorizes the North Carolina

Study Commission on Aging to study and recommend a procedure for determining which person or persons may make health care decisions for adult individuals in nursing homes and other health care facilities who lack sufficient understanding or capacity to make or communicate health care decisions for themselves and for whom there is no authorized health care agent, guardian of the person, or attorney-in-fact to make the decision. The Commission shall report to the 1997 General Assembly, 1998 Regular Session, upon its convening.

Adult Day Health Care Medicaid Waiver/Study and Comparison of Eligibility Requirements (S.L. 1997-443, Sec. 11.71; SB 352): The Division of Medical Assistance is required to consider alternatives for providing adult day health care services, including requesting a waiver from HCFA that would allow Medicaid to pay for adult day health care services for those not participating in the CAP. The Division of Medical Assistance and the Division of Aging are required to study the eligibility criteria for Medicaid coverage for institutional and in-home care services, including a comparison of the requirements, the reasons for the differences in the requirements, and any inequities identified in the requirements which may cause recipients to choose institutionalization over in-home care. The findings and recommendations shall be reported to the House and Senate Appropriations Subcommittees on Human Resources and the Study Commission on Aging by March 1998.

Alternative Living Arrangements (S.L. 1997-443, Sec. 11.73; SB 352): Section 11.73 of S.L. 97-443 directs DHHS to study ways to provide assistance to low income elderly or disabled adults who are eligible for Medicaid or Special Assistance for the purpose of supporting a range of living arrangements. The findings and recommendations shall be reported to the Chairs of the House and Senate Appropriations Subcommittees on Human Resources, the Study Commission on Aging and the Fiscal Research Division by May 1998.

XII. LOCAL GOVERNMENT

(Susan Hayes, Giles Perry, Barbara Riley)

Ratified Legislation

Account for 911 Surcharges (S.L. 1997-8; HB 149): S.L. 97-8 amends the statutes governing public safety telephone service to require local governments to deposits 911 surcharges they receive in a "special revenue fund." Records of the disposition of all special revenue funds are required to be included in the annual financial statement of a local government. The act became effective July 1, 1997.

Town Managers/Dual Office Holding (S.L. 1997-25; SB 199): S.L. 97-25 amends G.S. 160A-147 to provide that a city manager may hold elective office if: (1) the population of the city employing the city manager does not exceed 3,000, and (2) the city manager is an elected official of a city other than the city by which the city manager is employed. This act became effective April 17, 1997.

Facility Authorities (S.L. 1997-68; HB 1107): S.L. 97-68 amends the Facilities Authority Act to add four members to a thirteen member facilities authority. Of the members appointed by the General Assembly on the recommendation of the President Pro Tempore of the Senate, one shall have been recommended by the Board of Trustees of the constituent institution of the University of North Carolina whose main campus is located within the county. One of the members appointed on the recommendation of the Speaker of the House of Representatives, shall also have been recommended by the Board of the local constituent institution of the University of North Carolina. Two of the new members shall be appointed by the board of county commissioners for the county and two new members shall be appointed by the city council of the city with the largest population in the county. One of the appointments by the county commissioners shall be a resident of the second largest municipality in the county. S.L. 97-68 also amends the Facilities Authority Act to provide that county's may not discontinue or decrease a room occupancy tax while previously issued bonds or notes secured by the receipts from the tax are still outstanding. Those portions of the act dealing with changes in membership on facilities authorities become effective January 1, 1999. The remainder of the act became effective May 20, 1997.

Adjust City Receipts Tax Share (S.L. 1997-118; SB 34): See **TAXATION**.

Law Enforcement Cooperative Agreements (S.L. 1997-143; SB 409): S.L. 97-143 amends G.S. 160A-288(d) to provide that airport law enforcement agencies operated or eligible to be operated by a municipality under G.S. 63-53(2) are to be considered the equivalent of a municipal police department. The act became effective June 4, 1997.

Amend LEO Retirement Definition (S.L. 1997-144; SB 673): See **EMPLOYMENT.**

Local Government Contracting (S.L. 1997-174; SB 891): S.L. 97-174 makes several revisions to the laws governing local government contracting. Article 8 of Chapter 143 governs the conditions under which a local government must use formal bid and contracting procedures. Article 12 of Chapter 160A governs the conditions under which a local government may sell or dispose of property.

Section 1 amends G.S. 143-129(a) by increasing the threshold for contracting for the purchase of apparatus, supplies, materials, or equipment to $30,000 (from $20,000). This section also specifically grants a local governmental unit the authority to delegate their contracting power, for apparatus, supplies, materials or equipment, to a city manager or other chief purchasing officer.

Section 2 amends G.S. 143-129(b) to allow the governmental unit to waive the requirement of a bid bond for purchase of apparatus, supplies, materials or equipment in any amount (previously did not allow waiver for contracts over $100,000). This section also provides that all formal bids must be sealed even if the invitation to bid does not specifically request it.

Section 3 amends G.S. 143-129(f) to create an exception from the requirements of this Article, subject to prior approval of the governmental unit before the contract is awarded, when purchasing apparatus, supplies, materials or equipment where performance or price competition for a product are not available; when a needed product is available from only one source of supply; or when standardization or compatibility is the overriding consideration.

Section 4 creates a new subsection G.S. 143-129(g) to allow a governmental unit to disregard the requirements of G.S. 143-129, with prior approval of the governmental unit, when purchasing apparatus, supplies, materials or equipment from vendors that have contracted with the federal, state or other state or local governments or agencies AND will provide the items at the same or more favorable prices, terms and conditions.

Section 5 amends G.S. 143-131 to provide that submitted informal bids are not part of the public record until after the contract is awarded.

Section 6 amends G.S. 160A-266 to increase the maximum value of personal property that a municipality may dispose of by private negotiation and sale to $30,000 (from $10,000). Also amends this statute to make clear that real property of any value may not be disposed of by private negotiation or sale, except under certain circumstances. This section increases to $5,000 (from $500) the threshold for disposing of personal property under informal, city adopted regulations and removes the requirement that the authorized city official report twice a year regarding what property has been disposed of and how.

Section 7 creates a new G.S. 143-129.7 to specifically authorize bidders for contracts for apparatus, supplies, materials or equipment, to purchase "trade-ins", to allow the value of the trade-in to be included in determining the best bid and exempts the sale of the trade-in from the regular provisions regarding sale of personal property.

Section 8 clarifies that this act prevails over any local act containing a threshold amount lower than one in this act.

The act became effective July 1, 1997.

Curfew for Persons Under 18 (S.L. 1997-189; HB 406): S.L. 97-189 expressly provides that cities and counties may adopt appropriate ordinances that impose a curfew on persons under the age of eighteen. The act became effective June 18, 1997.

Service in Housing Code Cases (S.L. 1997-201; HB 833): S.L. 97-201 amends the statutes governing service of process in municipal housing code enforcement cases to provide that: (1) service by regular mail that is not returned within 10 days is sufficient, if service is also made by registered or certified mail that was unclaimed or refused; and (2) service by publication and posting is sufficient, if the owners are known but have refused service by registered or certified mail. The act became effective June 19, 1997 and applies to complaints or orders served on or after that date.

Municipal Lease/Venture (S.L. 1997-233; HB 597): S.L. 97-233 broadens the authority of municipalities and hospital authorities regarding leases and joint ventures. Section 1 of the bill rewrites the definition of "hospital facility" in the Municipal Hospital Act, and adds a definition for "hospital land." Section 2 of the bill amends G. S. 131-13, which currently provides for the lease or sale of hospital facilities to for-profit corporations by municipalities and hospital authorities. It would allow a hospital authority or a municipality to lease or sublease hospital land to a corporation or a business entity (for profit or non-profit), and to participate with a corporation or other business entity for the development, construction, and operation of medical office buildings and other facilities, so long as the municipality or hospital authority continues to maintain hospital facilities. The bill would also allow a municipality or hospital authority to permit or consent to the pledge of hospital land to facilitate the development, construction, and operation of medical office buildings and other facilities. The act became effective June 27, 1997.

County Consent Before Acquisition (S.L. 1997-263; SB 535): S.L. 97-263 amends G.S. 153A-15(c) by adding Alamance, Cabarrus, Camden, Cherokee, Clay, Craven, Currituck, Edgecombe, Greene, Guilford, Halifax, Macon, Nash, Pamlico, Pasquotank, Perquimans, Pitt, Polk, Richmond, and Stanly counties to this subsection. The effect of this amendment is to apply G.S. 153A-15 to these counties. G.S. 153A-15 requires a unit of local government located wholly or primarily outside of a county to obtain the consent of the county before they may acquire or condemn land located in that county. The act became effective July 2, 1997.

County Orthophotography Boundaries (S.L. 1997-299; HB 265): S.L. 97-299 removes restrictions on G.S. 153A-18(c) and makes it apply statewide. This change allows all counties of the state to use orthophotography to set boundaries. Orthophotography is photography that has been corrected so that it is true to scale and that distance can be measured accurately from the photograph. This practice was previously restricted to certain counties. The act became effective July 15, 1997.

Bond Payment Change (S.L. 1997-307; SB 249): See **TAXATION.**

Revise Records Laws (S.L. 1997-309; SB 875): See **STATE GOVERNMENT.**

County Tax Information Recipient (S.L. 1997-340; HB 1044): S.L. 97-340 authorizes counties to designate an official other that the chair of the board of county commissioners to receive information on sales tax refunds made by the State of taxes paid to that county. The act became effective July 25, 1997.

Baseball Park District (S.L. 1997-380; SB 389): S.L. 97-380 adds a new Chapter 160C to the General Statutes entitled "Baseball Districts". The act allows the General Assembly to create baseball districts as political subdivisions of the State. The act provides that a city or county or joint city-county agency extending water or sewer lines to serve a major league baseball park shall not assess property owners, except for the baseball park district, or hold such assessments in abeyance, until the property owner connects to the system. The act also amends G.S. 160A-20(h) to allow baseball park districts to use installment financing contracts and amends G.S. 159-148(a) to reflect that change. The act became effective August 7, 1997.

Regional Transportation Authorities (S.L. 1997-393; HB 993): See **TRANSPORTATION.**

Local Transit Revenue Options (S.L. 1997-417; HB 1231): See **TRANSPORTATION.**

Water Authority Powers (S.L. 1997-436; HB 847): See **ENVIRONMENT & NATURAL RESOURCES.**

STUDIES

Legislative Research Commission Studies

The Studies Act of 1997 (S.L. 97-483; SB 32) authorizes the Legislative Research Commission to study the following: (1) Municipal Annexation and Incorporation Issues (Sec. 2.1(12)); and (2) State and Local Government Fiscal Reform and Intergovernmental Relations (Sec. 2.6).

XIII. PROPERTY

(Carolyn Johnson, Steve Rose)

Ratified Legislation

No Tax on Intangible Property (S.L. 1997-23; HB 295): See **TAXATION.**

Foreclosure Filing Fees (S.L. 1997-114; HB 204): S.L. 97-114 amends G.S. 7A-308(1) to increase to $30 the fee for filing foreclosures under the power of sale in deeds of trust or mortgages. For property sold under the power of sale, an additional fee will be charged as determined by the following formula: thirty cents per one hundred dollars, or major fraction thereof, of the final sale price. The minimum and maximum amounts collectible pursuant to the additional fee formula is $10 and $200 respectively. The act became effective October 1, 1997.

Sale of Property for Unpaid Taxes (S.L. 1997-121; SB 106): See **TAXATION.**

Donation of Unclaimed Bicycles (S.L. 1997-180; HB 1050): S.L. 97-180 amends G.S. 15-12 to allow law enforcement agencies to donate unclaimed bicycles to charitable organizations after 60 days. The act repeals previous local acts that allowed law enforcement in certain counties to do the same and makes the law applicable statewide. The act became effective June 12, 1997.

Property Tax Interest/Study (S.L. 1997-205; SB 1064): See **TAXATION.**

No Tax Rollback on Condemnation (S.L. 1997-270; HB 529): See **TAXATION.**

Revise Property Record Laws (S.L. 1997-309; SB 875): See **STATE GOVERNMENT.**

Escheat Sunset Removed (S.L. 1997-279; HB 311): S.L. 97-279 removes the June 30, 1997 sunset on G.S. 116B-23, which was enacted during the Second Extra Session of 1996. The intention of G.S. 116B-23 was to provide that forfeited reservation deposits would not be considered unclaimed or abandoned property and thus escheat to the State. S.L. 1997-279 rewrites G.S. 116B-23 to clarify the original intent that this provision applies to forfeited reservation deposits. The act became effective July 9, 1997. Property or funds held as forfeited reservation deposits prior to this date pursuant to G.S. 116B-23 do not escheat.

Equitable Distribution/Divisible Property (S.L. 1997-302; HB 533): See **CHILDREN AND FAMILIES.**

Clerk's/Year's Allowance (S.L. 1997-310; SB 132) S.L. 97-310 amends various provisions of Chapter 30 of the General Statutes. The amendments authorize clerks of

court, in addition to magistrates, to allocate the year's allowance from a decedent's estate to the surviving spouse or children in absence of administration or action by a personal representative. The act amends G.S. 30-24 to provide that the issues raised at an appeal hearing shall be decided de novo. The act also amends G.S. 7A-307(b1) to authorize clerks to assess a four dollar fee for hearing allowance petitions in cases not assigned to magistrates. The act became effective October 1, 1997, and applies to applications for allowances filed on or after that date.

Creation of Easements by Landowner (S.L. 1997-333; SB 251): S.L. 97-333 permits landowners to record easements, restrictions and covenants against their own property even when the property owners own the entire interest in all the property effected. This act is a recommendation of the Real Property Section of the North Carolina Bar Association and is intended to overturn a ruling by the North Carolina Court of Appeals in *Tower Development Partners v. Zell*, 120 NC App 136 (1995) which reaffirmed the common law of North Carolina that a person cannot have an easement (or presumably restrictions or covenants) on their own land under a doctrine of merger where the owner holds both the dominant and servient interest in the property. Prior to this case it had been presumed that the law in North Carolina was that property conveyed subject to prior recorded easements, restrictions, or covenants were subject to those covenants. This is the typical way that easements and restrictive covenants in subdivisions, townhouse and condominium developments, and planned unit developments are created in this state. The *Tower* decision put these types of arrangements and conveyances in doubt, resulting in considerable uncertainty as to the state of title to a great amount of real property and the effectiveness of security interests held by lending institutions.

This act would overturn the *Tower* decision and the common law and permit property owners to subject their real property to easements, restrictions, and covenants prior to conveying a part of their property to another person. This would allow these conditions to run with the land and apply to all subsequent owners, subjecting them to these recorded burdens and giving them the benefit of common restrictions. The act affirms that the doctrine of merger would apply if the subjected property were recombined and the title to the affected tracts merged again into a common owner.

Because the owner of an undivided tract owns all the property that might be subject to these types of burdens, the owner would always have the right to change or remove any recorded easements, restrictions, or covenants before any of the land subject to these matters is conveyed to another person. Also, because all such easements, restriction, or covenants must be recorded in the Register of Deeds office prior to becoming effective, all subsequent owners of the land will have record notice of these burdens and will buy the property such to these matters.

The act became effective October 1, 1997 and applies to easements, restrictions, conditions or interests created before, on, or after the effective date but will not apply to pending litigation on the effective date, to instruments involved in pending litigation, and it will not affect judgments previously entered.

Clarify Perfection of Security Interest In After Acquired Property (S.L. 1997-386; SB 250): S.L. 97-386 clarifies that a security interest in after acquired real property can

be created even if the instrument granting an interest in after acquired property is registered subsequent to the acquisition and registration of property in which the interest is being acquired. The act amends G.S. 47-20.5(c) by permitting the original recording, in addition to re-recording, of the instrument containing an "after acquired property" clause in order to effect a security interest in property acquired after the execution of the granting document, but before its recordation. The law provided that such a clause is valid as against lien creditor and purchasers for value after the instrument granting the after acquired interest is reregistered. The statute made no provision for circumstances where the "after acquired property'" is acquired before the security instrument is recorded or registered. The language in this change is consistent with subsection (g) of this same section which refers to the registering or reregistering of the security instrument. The act became effective August 11, 1997 and applies to instruments registered before, on, and after the effective date, but will not apply to litigation or instruments involved in litigation that was pending on the effective date.

Church Insurance Coverage (S.L. 1997-438: HB 1115): See **HEALTH AND INSURANCE**.

Residential Property Disclosure Act (S.L. 1997-472; HB 899): S.L. 97-472 amends the Residential Property Disclosure Act. The act amends G.S. 47E-4 by eliminating the statutorily prescribed content and form for disclosure statements. In lieu thereof, the amendment requires the North Carolina Real Estate Commission to develop a standard disclosure statement to include information pertaining to characteristics and conditions of property set forth in subdivisions (b)(1)-(6). The statement must provide the option for owners to indicate whether they have actual knowledge of or make no representation pertaining to characteristics or conditions of the property.

The act amends G.S. 47-E-5 to provide that a purchaser may cancel any resulting purchase contract if a disclosure statement is not delivered prior to or at the time the purchaser made an offer. Generally, the right to cancel will expire upon the first of the following occurrences: (1) the end of the third calendar following statement's receipt; (2) the end of the third calendar day following the contract date; (3) settlement or occupancy by the purchaser; or (4) settlement of a lease with purchase option. Failure to exercise the right to cancel as prescribed is a conclusive waiver of the right.

The act amends G.S. 47E-8 to clarify the real estate agent's duty to inform each real estate transaction client of their rights and obligations pursuant to the Residential Property Disclosure Act. G.S. 47E-4, as amended, became effective October 1, 1997. G.S. 47E-5 and G.S. 47E-8, as amended, becomes effective December 1, 1997.

XIV. RESOLUTIONS

Joint Resolutions

Inviting Governor (Res. 1; SJR 18).

Inviting Chief Justice (Res. 2; HJR 320).

Inviting President Clinton (Res. 3; SJR 334).

Honor James Lambeth Jr. (Res. 4; HJR 371).

Honoring Basil Duke Barr (Res. 5; HJR 398).

Honor Joy Joseph Johnson (Res. 6; HJR 683).

Inviting Billy Graham (Res. 7; SJR 340).

Honor Billy Graham (Res. 8; SJR 211).

Invite Sen. Helms (Res. 9; SJR 1072).

Bd. Comm. College Election Date (Res. 10; HJR 1152).

Confirm Bd. Educ. Appointments-2 (Res. 11; HJR 1054).

Honor Russell Swindell (Res. 12; HJR 664).

Honor Wesley Davis Webster (Res. 13; SJR 164).

Commemorate Goldsboro Anniversary (Res. 14; SJR 871).

Honor Gordon Hicks Greenwood (Res. 15; HJR 1227).

Honoring Edgar M. McKnight (Res. 16; HJR 1235).

Honor Charles Dunn (Res. 17; SJR 1080).

Honor Loyd Edward Auman (Res. 18; HJR 1191).

Confirm Util. Comm'n Members (Res. 19; SJR 1078).

Honor Franklin/Franklinville (Res. 20; HJR 1153).

Honor Mazie Woodruff (Res. 21; HJR 1237).

Confirm Bd. Educ. Appointments (Res. 22; HJR 1004)

Invite John Hope Franklin (Res. 23; HJR 1241).

Honor Barney Paul Woodard (Res. 24; HJR 1239).

Honor "Bo" Thomas (Res. 25; SJR 707).

Honor David E. Reynolds (Res. 26; HJR 1240).

Honor Thomas B. Sawyer, Sr. (Res. 27; SJR 1082).

Honor Dean Smith (Res. 28; SJR 414).

Honor "Buck" Leonard (Res. 29; SJR 1081).

Honor Calvin Lee Koonce, Jr. (Res. 30; HJR 1236).

Honor Charles Kuralt (Res. 31; SJR 1087).

Confirm Robert Owens (Res. 32; HJR 1238).

Adjournment Resolution-2 (Res. 33; HJR 306).

Simple Resolutions

1997 House Rules (HR 1).

Honoring John Shortridge (HR 21).

Elect UNC Bd. Gov.-2 (HR 323).

Commemorate Museum of Art (HR 520).

Honor Haywood Allen, Sr. (HR 1202).

Commemorate Indian Independence (HR 1244).

1997 Senate Rules (SR 17).

UNC Bd. Gov. Election (SR 88).

Honor St. Augustine Basketball (SR 293).

Commemorate Museum of Art (SR 416).

American Dance Festival (SR 745).

XV. STATE GOVERNMENT

(Linwood Jones, Giles Perry, Barbara Riley, Steve Rose, Sandra Timmons)

Ratified Legislation

Administrative Procedure Act

Administrative Procedure Act Technical Changes (S.L. 1997-34; SB 187): S.L. 97-34 makes several technical and clarifying changes to the Administrative Procedure Act (APA), Chapter 150B of the General Statutes, and related laws. The bill is a recommendation of the Joint Legislative Administrative Procedure Oversight Committee.

Section 1 deletes an obsolete exception to the declaratory rulings statute relative to the Department of Correction. In 1995, the General Assembly exempted from the APA all of the Department's rules that apply to inmates, therefore, the exception is no longer needed.

Section 2 revises the section on petitions for rule-making to accommodate the two notices that must be published before a permanent rule can be changed. This section conforms to the changes made by the General Assembly in 1995 to require a notice of rule-making proceedings, also known as subject matter notice, and then a notice of text. This statute was not changed in 1995 and still refers to only one notice.

Section 3 clarifies that a rule changed in response to an objection by the Rules Review Commission (RRC), other than technical types of changes, follows the normal effective dates set in the APA and does not become effective on the first day of the month following the change.

Section 4 makes it clear that neither a notice of rule-making proceedings nor a notice of text is needed for the rule changes listed in the subdivision. It also deletes the requirement of not changing the substance of the rule because this requirement cannot be met for some of the listed changes, such as when a rule is changed to respond to an objection by RRC. The substance of the rule may change in that circumstance. These changes were recommended by the RRC.

Section 5 deletes the authorization to adopt by reference material that has been adopted to meet a requirement of the federal government. It is deleted because it is not clear what is covered by this authorization and subdivision (2) of that subsection allows an agency to adopt by reference a code, standard, or regulation adopted by a State or federal agency or a generally recognized association. This change was recommended by the RRC.

Section 6 gives the Codifier of Rules the authority to omit graphics, such as diagrams and charts, from the published version of a rule when the Office has no ability to publish the graphics or publication of the graphics is impracticable. This change was recommended by the Office of Administrative Hearings (OAH).

Section 7 gives agencies that are exempt from the APA additional time to file their rules with OAH for publication in the Code and makes it clear that these agencies must submit their rules in the format requested by OAH. This change was requested by OAH. Agencies that are exempt from the rule-making provisions of the APA must

nevertheless file their rules with OAH for publication in the Code so that the Code contains all the administrative rules of all state agencies.

Section 8 eliminates a conflict between G.S. 150B- 21.9(a) and 150B-21.22 on the effect of including a rule in the Code. G.S. 150B- 21.9(a) states that approval by the RRC is conclusive evidence that a rule was adopted in accordance with the APA and G.S. 150B-21.22 states that entry in the Code is prima facie evidence of compliance. This change provides that G.S. 150B-21.9(a) controls. When RRC was given the authority to determine if a rule was adopted in accordance with the procedural requirements, the provision was added that approval was conclusive evidence of compliance with the procedural requirements. G.S. 150B-21.22 was not changed accordingly, however. The time for disputing procedural compliance is before the rule becomes part of the Administrative Code. Once it is in the Code, the substance of the rule can be contested but not the procedure. This parallels the treatment for legislation. A clarification of this matter was requested by both OAH and RRC.

Section 9 clarifies that the rule manual is to include instructions on both types of rule notices. The two types are a notice of rule-making proceedings and a notice of text. Sections 10 and 12 add references that serving as a member of the RRC is grounds for obtaining a continuance in civil and criminal court cases. Lawyers are frequently members of the RRC.

Section 11 clarifies the rule-making authority of the Office of Administrative Hearings.

Section 13 specifies that the bill becomes effective April 23, 1997.

Alcoholic Beverage Control

In-Stand ABC Sales (S.L. 1997-167; SB 814): S.L. 97-167 allows the sale of beer in the stands at Ericsson Stadium in Charlotte for Carolina Panthers games or during other professional sporting events held at the stadium. The ABC permittee who does in-stand sales must notify the ABC Commission of its intent to offer beer for sale in the stands, make food and nonalcoholic beverages available in the stands, and train its employees to identify underage and intoxicated persons. Vendors cannot verbally "hawk" beer in the stands. The act became effective June 11, 1997 without the Governor's signature.

Lumberton Economic Development District (S.L. 1997-182): S.L. 97-182 amends the ABC laws to allow under G.S. 18B-1006 the issuance of mixed beverage permits to qualified businesses in an economic development and tourist district. Such a district must have been established by an act of the General Assembly prior to July 1, 1997 that specifically designates the area as an "economic development and tourist district. The remainder of the bill establishes the Lumberton Economic Development and Tourist District. The act became effective June 13, 1997.

No Direct ABC Shipments-Consumers (S.L. 1997-348; SB 994): S.L. 97-348 makes it unlawful for an out-of-state retail or wholesale dealer of alcoholic beverages to ship alcoholic beverages directly to North Carolina residents not holding a wholesaler's permit. Persons violating this section shall be mailed a cease and desist notice, and shall

have 30 days to produce a receipt showing that wholesale taxes have been paid on the shipped alcohol. Failure to provide such a receipt shall be presumptive evidence of intent to ship alcoholic beverages directly to a North Carolina resident. Violation of the act is a Class I felony and punishable by a fine of not more than $10,000. The act becomes effective December 1, 1997.

Interstate Economic Development Zone (S.L. 1997-395: HB 651): S.L. 97-395 adds a new subsection to G.S. 18B-1006 that would allow the issuance of mixed beverage permits, without approval in an election, to qualified establishments located within one mile of an interstate highway located in a county that: (1) has approved the sale of malt beverages and fortified and unfortified wines but not mixed beverages; (2) operates an ABC store; (3) borders on another state; and (4) lies north and east of the Roanoke River. The act became effective August 14, 1997.

Recreation District/ABC Permits (S.L. 1997-443, Sec. 16.27; SB 352, Sec. 16.27): Section 16.27 of S.L. 443 expands the definition of a recreation district for ABC purposes to include an area located in a county that borders a county which has held elections pursuant to G.S. 18B-600(f) and borders on another state and which contains: (i) a facility of at least 225 acres where 4 or more public auto racing events are held annually; or (ii) a facility of at least 140 acres where 80 or more motor sport events are held each year. The section became effective July 1, 1997.

Guest Room Cabinets for Certain Private Clubs (S.L. 1997-443, Sec. 16.28; SB 352, Sec. 16.28): Section 16.28 of S.L. 97-443 amends G.S. 18B-1001(13) to allow certain private clubs holding mixed beverage permits and management contracts for the rental of living units to be issued guest room cabinet permits. To obtain a guest room cabinet permit the private club must be located in a county: (1) where ABC stores have been established but the sale of mixed beverages has not been approved; (2) that borders on a county that has approved the salve of alcohol countywide and contains an international airport; and (3) borders on a county where ABC stores have been established by petition pursuant to law. G.S. 18B-101(13a)b.2. The section became effective July 1, 1997.

Brew on Premises (S.L. 1997-467; HB 1108): S.L. 97-467 authorizes the Alcoholic Beverage Control Commission to issue a "brew on premises" permit. The permit would allow businesses located in jurisdictions allowing the sale of malt beverages to sell ingredients and rent the equipment, time, and space to customers to brew malt beverages for personal use in amounts allowed under the Code of Federal Regulations. The statute sets forth the specific activities the customer must take and allows the permittee to transfer ingredients from the fermentation room to the cold room as well as assist the customer in all the brewing steps. Any malt beverage produced under this permit may not contain more than 6% alcohol by volume. The act became effective September 1, 1997.

Building Code

Building Code Changes (S.L. 1997-26; HB 95): S.L. 97-26 establishes a three-year cycle for revisions and updates to the State Building Code beginning in 1999. The purpose of this change is to reduce the frequency of changes to the State Building Code. Once the three-year cycle begins in 1999, the State Building Code Council (the agency that adopts and enforces the State Building Code) can still adopt changes during the cycle if necessary to address a threat to the public's safety. For example, if an approved building material is later found to be structurally unsafe, the Council would not have to wait until the end of the three-year cycle to revise the Code to eliminate or modify the use of this material; it could act immediately because of the threat to the public's safety.

The Chair of the Building Code Council must establish ad hoc revision committees that include persons in the building industry and the general public to consider and prepare revisions to the Code. The Department of Insurance, the agency that administers the State Building Code, must provide an explanatory handbook on the Building Code by January 1, 2000, and it must update the handbook at least every three years. The Department must provide instruction in new Code changes prior to the effective date of any changes. A fee may be charged by the Department to cover the cost of an instructional course.

In addition, S.L. 97-26 makes the following changes concerning the State Building Code:

- The standard for judicial interpretation of the Building Code is changed from "liberal construction" to "reasonable construction." In addition, the Building Code Council and local enforcement officers must base their interpretations of the Code on "reasonable construction" of its provisions. These changes are designed to emphasize a flexible, yet responsible, approach to Building Code enforcement.
- Language is added to clarify that the Building Code Council may use the various national construction standards listed in the statutes for guidance in preparing the North Carolina Building Code, but it is not required to adopt them as the standard in the Code.
- In order to ensure uniformity throughout the State, the authority of local jurisdictions to adopt building codes, rules and regulations is eliminated. Existing law had allowed the adoption of local building codes more stringent than the State Code when approved by the State Building Code Council. However, there were reportedly no such local codes in effect in the State. The prohibition on more stringent local codes does not apply to the Fire Code provisions within the State Building Code. Thus, local jurisdictions still have the authority to adopt more stringent fire code provisions than the State Fire Code.

The bill became effective April 17, 1997, although the phase-in towards the three-year Code cycle became effective September 1, 1997.

Courts

Supreme Court Sessions (S.L. 1997-56; HB 954): S.L. 97-56 amends G.S. 7A-10 to provide that the North Carolina Supreme Court may, by rule, hold two sessions annually in the Old Chowan County Courthouse in Edenton. The bill notes that the facility is designated as a National Historic Landmark. The act became effective May 16, 1997.

Judicial Standards Executive Secretary (S.L. 1997-72: SB 800): S.L. 97-72 transfers the authority to employ an executive secretary for the Judicial Standards Commission from the Commission to the Chair of the Commission. The act became effective October 1, 1997.

Courts Commission Membership (S.L. 1997-82; HB 192): S.L. 97-82 adds four additional members to the North Carolina Courts Commission, one each to be appointed by the Governor, Chief Justice of the Supreme Court, the President Pro Tempore of the Senate and the Speaker of the House, all to be public members who are not attorneys or officers or employees of the Justice Department. The act became effective May 15, 1997.

Court Information Remote Access (S.L. 1997-199; SB 855): S.L. 97-199 amends G.S. 7A-109, regarding the record keeping procedures for clerks of court, to permit the Director of the Administrative Office of the Courts to enter into non-exclusive contracts with third parties to provide remote electronic access to records by the public. The act became effective June 19, 1997.

Additional Assistant District Attorneys/Reestablish Assistant District Attorney Positions in Districts 19B and 20 (S.L. 1997-443, Sec. 18.11; SB 352, Sec. 18.11): Section 18.11(a) of S.L. 97-443 adds a number of new assistant district attorney positions in various prosecutorial districts throughout the State. Subsection (b) of the bill restores an assistant district attorney position in Districts 19B and 20 that were eliminated in 1996. Subsection (a) becomes effective December 1, 1997. The remainder of the section became effective July 1, 1997.

Additional District Court Judges (S.L. 1997-443, Sec. 18.12; SB 352, Sec. 18.12): Section 18.12 of S.L. 97-443 sets forth the increases by district, the number of District Court judges in the State. The additional judges will be appointed by the Governor. Their successors shall be elected in the 2000 election for four year terms. The increases become effective December 1, 1997, unless a county is subject to Section 5 of the Voting Rights Act in which case the section becomes effective December 1, 1997 or 15 days after the date Section 5 approval is obtained.

Authorize Additional Magistrates (S.L. 1997-443, Sec. 18.13; SB 352, Sec. 18.13): Section 18.13 provides for an increase in the maximum number of magistrates in certain counties in the State. The section became effective July 1, 1997.

Licensing Boards and Commissions

CPA Exam and Records (S.L. 1997-157; HB 477): S.L. 97-157 authorizes the State Board of Certified Public Accountant Examiners to administer computer-based examinations; and requires the Board to keep confidential any records related to a complaint against an applicant for examination, or concerning a certificate holder's ethics and conduct. The act became effective June 6, 1997.

Industrial Hygienists (S.L. 1997-195; SB 430): S.L. 97-195 prohibits any person from practicing as a Certified Industrial Hygienist or Industrial Hygienist in Training, or to advertise as such, unless the person is certified by the American Board of Industrial Hygiene. S.L. 97-195 also authorizes the issuance of a restraining order against illegal use of the titles; and makes clear that nothing in this act restricts the practice of engineering by professional engineers, nor does it permit a certified industrial hygienist to practice engineering without being licensed as a professional engineer. Violation of any of these new provisions constitutes a Class 2 misdemeanor. The act becomes effective December 1, 1997 and applies to violations that occur on or after that date.

CPA Education Requirements (S.L. 1997-284; SB 668): S.L. 97-284 amends the education requirements for certified public accountants to require completion of 150 semester hours and a bachelors degree with a concentration in accounting; and one of the following: one year's experience supervised by a CPA, four years teaching accounting, or four years experience in accounting. Prior law allowing an advanced degree to substitute for one year of experience has been eliminated. The act became effective July 10, 1997, and applies to applications for certificates of qualification received after December 31, 2000.

Plumbing Exemption for Manufactured Home Drain Lines (S.L. 1997-298; SB 996): S.L. 97-298 exempts from the plumbing license requirement a person who performs the on-site assembly of a factory-designed drain line system for a manufactured home as long as the person: (1) is licensed as a manufactured home retailer or set-up contractor or is an employee of one of these licensees; and (2) assembles the system according to factory instructions. The assembly must be approved by the local building inspector. (See Section 4 of S.L. 97-382, HB 408, concerning the inspection requirement).

The Board that regulates plumbing interprets this legislation to mean that the installer can connect the drain line to the pipe stub underneath the manufactured home but cannot make connections to the water/sewer system or septic tank. Only a licensed plumber can make the latter connections. The act became effective July 15, 1997.

Burial Commission Abolished (S.L. 1997-313; SB 930): S.L. 97-313 abolishes the North Carolina Mutual Burial Association Commission effective January 1, 1998. The Commission and the Burial Administrator were created decades ago to supervise burial associations in North Carolina and to ensure that they are financially solvent and can pay the benefits owed to their members. Many of the mutual burial associations have either merged or sold out to insurance companies, making it unlikely that the remaining associations can financially support the Mutual Burial Association Commission and Burial Administrator. The responsibility for overseeing the remaining burial associations is transferred to the Board of Mortuary Science. The fee that has been assessed against these associations in the past to financially support the oversight work of the Commission and the Burial Administrator will presumably continue to be assessed for the support of the Board of Mortuary Science in performing these oversight duties. The act becomes effective January 1, 1998.

Plumbing/Heating Contractors (S.L. 1997-382; HB 408): S.L. 97-382 makes several amendments to the plumbing and heating contractor licensing law. Section 1 directs the State Board of Examiners of Plumbing, Heating, and Fire Sprinkler Contractors to create a fuel piping license by April 15, 1998; and authorizes the Board to create other restricted license classifications, effective October 1, 1997. Section 2, effective October 1, 1997, restricts the fee for one of these new license to the fee for a plumbing or heating license. Section 3, effective October 1, 1997, authorizes revocation or suspension of a license for failure to comply with the Board's rules. Section 4, effective August 11, 1997, clarifies that a person performing an on-site assembly of a factory designed drain system for a manufactured home is not required to have a plumbing license.

License Athletic Trainers (S.L. 1997-387; SB 660): S.L. 97-387 requires athletic trainers to be licensed and creates the North Carolina Board of Athletic Trainer Examiners to license and regulate athletic trainers. Athletic trainers are involved in the care, prevention, and rehabilitation of athlete's injuries under the written protocol of a licensed physician (M.D.). The protocol, which must be filed with the North Carolina Medical Board, must adhere to requirements that will be developed jointly by a committee representing both the Medical Board and the Board of Athletic Trainer Examiners. The legislation vests the Board with regulatory powers typical of other licensing boards.

To become licensed, an applicant must have graduated from a four-year college or university in a course of study approved by the Board and pass the Board examination. The Board examination is not required of a person who is already certified by the National Athletic Trainers Association or who has been actively engaged in practice as an athletic trainer (including an affiliation requirement with an educational, athletic or other institution) since August 1, 1994. In addition, certain persons, such as physicians, are exempt from the licensure requirement, and local schools may hire unlicensed persons to serve as athletic trainers as long as those persons do not represent themselves as being licensed and do not perform outside work as athletic trainers.

Although the legislation took effect when it became law on August 13, 1997, the prohibition on practicing as an athletic trainer does not take effect until January 1, 1998.

Funeral Establishments (S.L. 1997-399; HB 485): S.L. 97-399 makes various amendments to Chapter 90 of the General Statutes that affect the regulation of the practice of funeral service, cremations, and funeral and burial trust funds. It also amends Article 16, Chapter 130A, with regard to disposition of bodies.

Section 1 amends G.S. 90-210.20(e1) by amending the definition of "funeral chapel" to make it inclusive of funeral chapels operated by licensees other than funeral homes. The effect is to place these other funeral chapels under the control of the Board of Mortuary Science.

Section 2 amends G.S. 90-210.23(d) to allow the Board of Mortuary Science to inspect embalming facilities other than those contained in funeral homes. Those contained in funeral homes can already be inspected because the funeral homes themselves are subject to inspection.

Section 3 amends G.S. 90-210.23(e) to add embalming facilities to those facilities subject to regulation and inspection by the Board. It also grants the Board power to enforce compliance with the Federal Trade Commission Funeral Rules.

Section 4 amends G.S. 90-210.24(b)(1) to conform it to the amendments contained in Sections 2 and 3 of the bill dealing with the regulation of embalming facilities.

Sections 5, 6, and 7 of the bill amend G.S. 90-210.25(a)(1), (2), and (3). These subdivisions of G.S. 90-210.25(a) deal with the examinations given for licenses to practice funeral directing, embalming, and funeral service. The amendments change the content of the examinations. The intent is to change the examinations to agree with those currently being given throughout the United States.

Section 8 of the bill amends G.S. 90-210.25(a)(5) to allow licensees to carry over a maximum of five hours of continuing education to be used for the following year's requirement. It also adds a provision that a licensee issued an initial license on or after July 1 does not have to satisfy the continuing education requirement for that year. Finally, it changes the standard for waiver of the continuing education requirement. The present waiver of continuing education requirements for 25 year licensees shall only apply to licensees who, before January 1, 1998, are licensed, begin a course of study in a mortuary science college or trainee program, or make an application for a license.

Section 9 amends G.S. 90-210.25 by adding a new subsection (a1) allowing the issuance of "inactive licenses." Holders of inactive licenses are limited to only voting in elections for members of the State Board of Mortuary Science. The new subsection also establishes the criteria for reactivation of a license.

Section 10 amends G.S. 90-210.25(b)(3) to allow the Board to grant special permits to nonresidents for purposes of teaching continuing education programs and for the purpose of doing work in connection with disasters.

Section 11 amends G.S. 90-210.25(d) to add limited liability companies to the list of business entities that may operate funeral establishments and clarifies that permits may be revoked or suspended for violations by various persons in charge of the operation.

Section 12 amends G.S. 90-210.25 by adding a new subsection (d1) that requires embalming facilities to register with the Board of Mortuary Science. This conform to the changes made in Sections 2, 3, and 4 of the bill.

Section 13 of the bill amends G.S. 90-210.25(e). The amendments allow the board to enforce the Federal Trade Commission Funeral Rule (conforming to Section 3 of the bill), and change the provisions concerning who has authority to direct disposal of a body to conform with new, specific provisions found in Section 34 of the bill.

Section 14 of the bill amends G.S. 90-210.27A by deleting subsection (d) which presently provides that a convicted felon may not be in the funeral business. Subsection (e) is amended to recognize the existence of limited liability companies.

Section 15 of the bill is a technical correction to G.S. 90-210.28, which deals with fees. No fees are changed in this section of the bill.

Section 16 of the bill makes various changes in the definitions applicable to cremations. Certain definitions are eliminated because the term does not appear anywhere in the cremation article. The definition of "human remains" is amended to include a human fetus. References to the order of authorizing agency to authorize

cremation are eliminated because this is now dealt with in another statute created in Section 34 of the bill.

Section 17 of the bill amends G.S. 90-210.43 which deals with licensing and inspection of cremation establishments. A crematory license year is established. License renewal procedures and late fees are established. The amendment to subsection (e) acknowledges that the remains of terminated pregnancies may be disposed of by approved hospital type incineration. The amendments grant the Board authority to accept a monetary penalty as a compromise in an enforcement action. Fees for reinspection of crematories not meeting proper standards are authorized.

Section 18 amends G.S. 90-210.44 to authorize the Board to establish requirements for cremation reports.

Section 19 amends G.S. 90-210.45 to require that a body be enclosed in a container when cremated. This does not require an actual casket. The description of a crematory holding facility that was eliminated in the amendments contained in section 16, is moved to this statutory section.

Section 20 amends G.S. 90-210.46(a) to specifically authorize a crematory operator to store cremated remains as directed by the authorizing agent.

Section 21 amends 90-210.47(b) to clarify that a crematory operator must have a signed cremation authorization form before cremating a body.

Section 22 amends 90-210.48(a) to add late fees for late payment of cremation fees and for late filing of cremation reports. The fees authorized are the maximum amounts.

Section 23 amends 90-210.60(3) to recognize existence of limited liability companies in the definition of an insurance company.

Section 24 amends G.S. 90-210.63(a)(2) to provide that when the purchaser or beneficiary of a preneed contract changes funeral homes, the first funeral home may keep its 10% retention except where the first funeral home is divested of its preneed contracts as provided in section 28 of the bill.

Section 25 of the bill amends G.S. 90-210.64(a) to require a funeral home to mail proof of its performance of a preneed contract to the Board within 10 day after receiving payment.

Section 26 amends G.S. 90-210.66(b) to eliminate the referenced to a specific preneed funeral contract fee since the fee is established elsewhere (see Section 27 of the bill).

Section 27 of the bill amends G.S. 90-210.67 which deals with licenses to sell preneed funeral contracts. Limited liability companies are recognized as a licensable entity. A preneed license year is established as well as renewal procedures and late fees. Copies of preneed contracts are required to be filed with the Board. Other fees and late fees are established.

Section 28 of the bill amends G.S. 90-210.68. The amendments establish reinspection fees for preneed licensees, require a preneed funeral establishment to divest itself of all unperformed preneed contracts and transfer the funds if its license lapses or is terminated, and make the substitute licensee responsible to the purchaser for the money it receives from the assigning preneed licensee.

Section 29 clarifies that disciplinary action is in accordance with the provisions of Chapter 150B (Administrative Procedure Act), allows for monetary offers in compromise of violation proceedings, and specifically authorizes the Board to enforce the Federal Trade Commission Funeral Rule within its preneed regulatory authority.

Section 30 amends G.S. 90-210.69(e) to eliminate the requirement that the Board use administrative law judges for administrative hearings involving funeral trust funds.

Section 31 amends G.S. 90-210.70(c). This is a conforming amendment recognizing the existence of limited liability companies.

Section 32 of the bill amends G.S. 90-210.70(d) to eliminate the requirement that the Board report misdemeanor violations of this section (dealing with fraud and embezzlement) to the district attorney. Felony violations must be reported.

Section 33 adds a new section, G.S. 90-210.73, to the Funeral Trust Fund article. It provides that the names and addresses of purchasers and beneficiaries of preneed funeral contracts filed with the Board are not public records.

Section 34 of the bill amends Article 16 of Chapter 130A by adding a new Part 7 dealing with the disposition of bodies and body parts. The new Article allows a person 18 years of age or older to authorize disposition of their body. Where there is no written authorization, an order of priority is established to indicate who may authorize disposal of the body. The list showing the order of priority for authorization is found on page 23, lines 21 through 34 of the bill. The provision specifically provides that it does not affect authorizations for anatomical gift nor does it affect the statutes relating to autopsies.

Section 35 provides that the Board adopt temporary rules to implement the provisions of this act. Section 36 provides that the act became effective October 1, 1997.

Landscape Architects (S.L. 1997-406; HB 1110): Under current law, a person may not use the title "landscape architect" unless the person is registered with the North Carolina Board of Landscape Architects. S.L. 97-406 provides that effective October 1, 1997, no person may engage in the practice of landscape architect without first being registered with the Board. To be registered with the Board, the person must meet all of the following conditions:

- Be at least 18 years of age.
- Be of good moral character.
- Be a graduate of a college curriculum in landscape architecture accredited by the Landscape Architect's Accreditation Board and approved by the North Carolina Board of Landscape Architects.
- Have at least four year's experience in landscape architecture.
- Pass an examination given by the Board.
- Pay the $450 examination fee and the $100 application fee.

A person who practices landscape architecture without first being registered with the Board is guilty of a Class 2 misdemeanor and is subject to a civil penalty assessed by the Board. The penalty may not exceed $2,000.

The practice of landscape architecture means "the preparation of plans and specifications and supervising the execution of projects involving the arranging of land and the elements used thereon for public or private use and enjoyment, embracing

drainage, soil conservation, grading and planting plans and erosion control, in accordance with the accepted professional standards of public health, safety and welfare."

The bill makes several other changes to the law concerning landscape architects:

- Requires a firm, partnership, or corporation that engages in the practice of landscape architect to be registered with the Board and to pay the $100 annual registration fee. Any landscape architecture performed by the firm, partnership, or corporation must be done under the direct supervision of an individual registered with the Board.
- Provides that people licensed to practice architecture, engineering, or land surveying do not need to be registered with the Board so long as they do not use the title "landscape architect", "landscape architecture", "landscape architectural".
- Expands the exemptions to the registration requirements to include the following: (1) the drafting of plans related to the location of plants on a site; (2) the preparation, sale, or furnishing of plans, and the supervision of the construction of the plans, if the project is a single family residential site, a site of one acre or less, a site of more than one acre where only planting and mulching is required; and (3) the preparation of plans, and the supervision of construction of the plans, for a person's own building site.
- Gives the Board a specified list of powers and duties that include: (1) the power to examine applicants for registration and registration renewal; (2) the power to determine the qualifications of businesses applying for registration; (3) the power to establish and approve continuing education requirements; and (4) and conduct administrative hearings.
- Specifies that an acceptable college curriculum is one accredited by the Landscape Architect's Accreditation Board.
- Increases the years of experience a person must have to be registered as a landscape architect from one year to four years.
- Increases the minimum number of years of education and experience a person must have to be a landscape architect from 7 years to 10 years.
- Gives the Board the authority to grant an "honorific title" to persons who have been registered in landscape architect for a minimum of 20 years. A person with this title may use the title "landscape architect" but the person may not practice landscape architecture.
- Removes the Board's authority to issue temporary permits pending examination.
- Reduces the criminal offense for violating the registration requirements from a Class 1 misdemeanor to a Class 2 misdemeanor.
- Authorizes the Board to assess civil penalties.
- Provides that the Attorney General must assign an attorney on his staff to serve as advisor to the Board.

The act became effective October 1, 1997.

Architectural Exemption (S.L. 1997-457; SB 842): S.L. 97-457 exempts a person who is renovating or altering a building from the requirement of having an architectural license if the alteration or renovation does not affect the structural system of the building,

change its exit pattern, or change the live or dead load on the building's structural system. The act became effective August 29, 1997.

Boxing Law Amendments (S.L. 1997-504; SB 992): S.L. 97-504 makes several changes to the laws regulating boxing, primarily to conform to the federal Professional Boxing Safety Act of 1996. The act requires that members of the North Carolina Boxing Commission must meet the membership requirements under the federal Act (i.e., no conflicts of interest) and allows the Cherokee to appoint a tribal member to the Commission in exchange for Commission regulation of boxing on tribal lands. The act also makes clear that sanctioned amateur events, such as the Golden Gloves, are not regulated by the Boxing Commission (although they must adhere to the rules of their respective sanctioning bodies). The act gives the Executive Director of the Boxing Commission authority to hire independent contractors to monitor boxing events and allows the Director to run criminal background checks on these contractors before hiring them. The act also gives to the Secretary of State the power to levy civil penalties and seek injunctions for violations of the boxing laws. This power was previously vested in the Boxing Commission, which is administratively housed in the Secretary of State's Office. The act became effective September 11, 1997, and expires August 1, 1998.

Office of State Budget and Management

Information/Requests for Nonstate Funds (S.L. 1997-443, Sec. 7(c); SB 352, Sec. 7(c)): Section 7(c) of S.L. 443 amends G.S. 143-34.2 to require the Office of State Budget and Management to furnish the Fiscal Research Division of the General Assembly a list of projects or purposes and the current and future financial impact of those projects or purposes for which nonstate funding has been requested. The section became effective July 1, 1997.

Modifications to the Executive Budget Act (S.L. 1997-443, Sec. 7.8; SB 352, Sec. 7.8): Section 7.8 of S.L. 97-443 makes a number of amendments to the Executive Budget Act. Subsection (a) amends G.S. 143-16.3 to add funds allocated from the Repair and Renovation Account as an exception to the prohibition against expenditure of funds for any new or expanded purpose the General Assembly considered but did not appropriate funds. That section is also amended to provide that in the event that the Director of the Budget determines that it is necessary to deviate from this prohibition, he may do so after consultation with the Joint Legislative Commission on Governmental Operations.

Subsection (b) provides that the limitations of G.S. 143-16.3 do not apply to the Blue Ridge Parkway-Scenic Vistas Parkway.

Subsection (c) amends G.S. 143-23 to define the required consultation with the Joint Legislative Commission on Governmental Operations for expenditures on a purpose or program in excess of the amount appropriated. Whether a consultation is required is determined by the size of the certified budget of the program and the percent of the proposed overexpenditure. Subsection (b) also clarifies that lapsed salary funds may not be used to for new permanent positions or salary increases and provides that transfers

between objects or line items in the budget of the Office of the Governor may be made by the Governor and in the Office of the Lieutenant Governor, by the Lieutenant Governor.

Subsection (d) changes the term "Special Fund Codes" to "Wildlife Fund Codes" under G.S. 143-27.

This section became effective July 1, 1997.

Capital Improvement Planning and Budgeting (S.L. 1997-443; Sec. 34.9; SB 352, Sec. 34.9): Section 34.9 of S.L. 97-443 adds a new article to Chapter 143 of the General Statutes, the Capital Improvement Planning Act. The article addresses the need for a comprehensive process for capital improvement planning integrated with the State's financial planning and debt management. The planning process has four elements: (1) an inventory of state-owned facilities; (2) criteria to assess capital improvement needs; (3) a six year capital improvement needs inventory; and (4) a six year capital improvement plan. The Office of State Budget and Management has responsibility for the planning process. On or before September 1 of each even numbered year, each State agency is to submit to the Office of State Budget and Management and to the Fiscal Research Division a six year capital improvement needs estimate. On or before December 31 of each even numbered year the Director of the Budget shall present to the General Assembly a six year State capital improvement plan addressing the long-term capital improvement needs of all State government agencies, excluding transportation infrastructure projects. This section became effective July 1, 1997.

Uniform Financial Accountability (S.L. 1997-443, Sec. 34.11; SB 352, Sec. 34.11): Section 34.11 of S.L. 97-443 amends G.S. 143-6.1(c) and (d) on reports on use of state funds by non-State entities. The section raises the ceiling on the filing of receipt and expenditure reports and audit reports from $100,000 to $300,000. This section became effective July 1, 1997.

Open Meetings/Public Records

Geographic Information Systems Records Exception (S.L. 1997-193; HB 499): S.L. 97-193 adds another exemption to the general prohibition against reselling (or otherwise using for trade or commercial purposes) geographical information developed by counties and cities, to allow resale of this data by real estate trade associations and multiple listing services. G.S. 132-10, amended by this Session Law 1997-193, was added to the public records law in 1995. This statute makes the geographic information systems databases and data files developed and operated by counties and cities public records and requires that the public have access to public terminals to retrieve the information contained in these databases. Under this statute when a person requests an electronic copy of the database the person must agree in writing that the copy will not be resold or otherwise used for trade or commercial purposes. The statute makes an exception from this requirement that publication or broadcast by the news media does not constitute resale, trade or commercial use. The statute also currently makes clear that use of the data by a licensed professional in the course of practicing the professional's profession is not use for a commercial purpose. S.L. 97-193 adds real estate trade associations and multiple

listing services to the news media as entities that may resale this information. The act became effective June 19, 1997.

Handicapped Person Signature (S.L. 1997-208; HB 482): S.L. 97-208 amends G.S. 22A-1 to allow *any* handicapped person to use a registered signature facsimile as a mark of their legal signature. Under prior law, this statute only applied to *visually* handicapped persons. The act became effective June 19, 1997.

Vital Records Access (S.L. 1997-242; HB 476): S.L. 97-242 : (1) amends G.S. 130A-93(b) to provide that individual-specific birth records (those showing names of parents and children, parents' addresses and social security numbers) are not public records within the meaning of G.S. Chapter. 132; (2) amends G.S. 130A-93 to provide that a certified copy of a birth or death record may be issued to a person's direct ancestor or descendent, stepparent or stepchild, or funeral director or funeral service licensee; (3) amends G.S. 130A-93(e) to provide that copies or abstracts of any database that contains individual-specific health or medical birth data may be provided only to an individual requesting his or her own data, a person authorized by that individual, or a person who intends to use the information for medical research purposes; and (4) amends G.S. 130A-93.1 to provide that when a local agency issues a certificate from or searches for a record in a database maintained by the State Registrar, the local agency must charge a fee of $10, of which $5 shall be forwarded to the State Registrar for creation and maintenance of a fully automated vital records database. The act became effective June 27, 1997.

911 Database Confidentiality (S.L. 1997-287; HB 852): S.L. 97-287 adds a new section to the public records law, Chapter 132 of the General Statutes, providing that information in a 911 database obtained from a telephone company is confidential and not a public record if that information is required to be confidential under the agreement with the telephone company by which such information was obtained. Dissemination of the information contained in the 911 automatic number and automatic location database is prohibited except on a call-by-call basis for the purpose of handling emergency calls or for training. The act became effective July 10, 1997.

Strengthen Open Government (S.L. 1997-290; SB 844): S.L. 97-290 amends the Open Meetings Law by requiring more detailed minutes or recordings of closed sessions and by clarifying what matters related to offers of economic incentives may be discussed in closed session and what matters must be voted on in open session. Section 1 amends G.S. 143-318.10(e) by requiring that a general account of a closed session must be kept so that a person not in attendance would have a reasonable understanding of what transpired. The account may be a written narrative, or a sound or video recording. These accounts are to be treated in the same as minutes of a closed session and are public records that may be withheld from public inspection so long as public inspection would frustrate the purpose for a closed session. Section 2 amends G.S. 143-318.11(a)(4) which permits a closed session by a public body to discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body. This section allows a public body to agree in a closed meeting on a tentative list of economic development

incentives that may be offered by the public body in negotiations, but specifically requires that any action approving the signing of an incentive contract or commitment or authorizing the expenditures of money for these purposes be done in open session. The act became effective on October 1, 1997.

Native Americans

Indian Cultural Center Fund Raising (S.L. 1997-41; HB 517): S.L. 97-41 makes several changes affecting the North Carolina Indian Cultural Center. Section 1 extends the deadline from December 1, 1997 to June 1, 2001 for the Indian Cultural Center, Inc., a non-profit corporation, to raise funds or pledges for the Center in order to retain its lease on state owned property; and reduced the pledges it must receive to $3 million. Section 2 requires the Board of the Indian Cultural Center to be reorganized; authorizes commencement of the Henry Berry Lowry House as soon as sufficient funds are raised, and upon approval of the Department of Administration; requires the cultural center board to consult with the N.C. Commission of Indian Affairs on the fund raising and construction process; and authorizes the cultural center board to appoint an advisory committee to assist in the fund-raising and construction. The act became effective April 30, 1997.

Restore Person Indian Name Recognition (S.L. 1997-147; HB 988): S.L. 97-147 amends the General Statutes to add official recognition to the "Indians of Person County." S.L. 97-147 also adds a representative of the Indians of Person County to the North Carolina State Commission of Indian Affairs. The act became effective June 4, 1997.

Haliwa Name Change (S.L. 1997-293; SB 1074): S.L. 97-293 changes the statutory name of the Haliwa Tribe to the Haliwa Saponi Tribe. The Haliwa Saponi reside in the area of Halifax and Warren Counties. The act became effective July 10, 1997.

Public Utilities

Study of Electric Utility Restructuring (S.L. 1997-40; SB 38): S.L. 97-40 establishes the Study Commission on the Future of Electric Service in North Carolina. The Commission consists of twenty-three members as follows:

1. Six members each from the Senate and the House, appointed by the President Pro Tempore of the Senate and the Speaker of the House respectively;
2. The Chief Executive Officers of the N.C. Electric Membership Corporation, ElectriCities of North Carolina, Duke Power Company, and Carolina Power and Light (or their designees);
3. Two residential consumers of electricity, one each appointed by the President Pro Tempore and the Speaker;
4. One commercial consumer of electricity, appointed by the President Pro Tempore;
5. Two industrial consumers of electricity, one each appointed by the President Pro Tempore and the Speaker;
6. One member of the environmental community, appointed by the Governor; and

7. One representative of a national electric power marketer, appointed by the Speaker.

The President Pro Tempore and the Speaker will each appoint a Cochair from the General Assembly members of the Commission. The Commission will determine whether legislation is needed to ensure an adequate and reliable source of electricity and economical, fair, and equitable rates for all consumers of electricity. The Commission will review electric utility restructuring experiments conducted in other states. In addition, the Commission is to address other specific issues as outlined in the act. These include equity among customer classes, service reliability, stranded investments and costs, environmental impact, effect on municipals and cooperatives, and other issues. The Commission is specifically directed to seek input and advise from the Attorney General, the North Carolina Utilities Commission, and the Public Staff of the Utilities Commission. The Study Commission is authorized to contract for consultant services, and may also have assigned professional and clerical staff through the Legislative Services Officer. The Commission is required to report the results and recommendations of the study to the 1999 General Assembly. It is also required to make a report to the 1998 Regular Session. The Commission terminates upon filing its final report. The act became effective April 22, 1997.

No funding was allocated in S.L. 1997-40. However, the Studies Act of 1997, S.L. 1997-483 does allocate funds for the study the Utilities Commission and Public Staff Fund. The initial amount is $100,000, but additional funds may be transferred upon certification by the study cochairs if needed.

Municipal Electric Amendments (S.L. 1997-346; SB 848): S.L. 97-346 makes changes in Chapter 160A and Chapter 117 dealing with the furnishing of electric utility service to annexed areas of municipalities and dealing with the operation of electric membership corporations. The act amends G.S. 160A-331 which provides the definitions for Part II of Article 16 of Chapter 160A, dealing with electric service in urban areas. It adds a definition for "assigned area" and for "assigned supplier." An assigned area means any portion of an area annexed by or incorporated into a city which had previously been assigned by the North Carolina Utilities Commission to a specific electric supplier. An assigned supplier is the entity to which the Utilities Commission had assigned a specific area for electric service, which area is subsequently annexed by or incorporated into a city. The act amends G.S. 160A-332(a), which specifies how electrical service areas within city limits are determined between potentially competing suppliers. The amendment adds a new subdivision (6a) to provide that a secondary supplier, with the written consent of the city, will be the exclusive supplier of electric service within the newly annexed territory if it had been assigned that territory by the North Carolina Utilities Commission prior to April 20, 1965, or if the area had previously been unassigned. Rights of electric suppliers that existed in the area prior to the determination date continue unimpaired. The act amends G.S. 117-10.2, which deals with restrictions on municipal service by electric membership corporations. The amendments delete obsolete statutory references and substitutes current statutory references. The act also amends G.S. 117-20 which deals with the encumbrance or sale of electric membership corporation and telephone membership corporation property. Prior to the passage of this

act, in order to sell or encumber property, except that which lies within the limits of a municipality, or represents ten percent or less of the corporation's assets, or is deemed not useful to its operation, authorization was required by at least two-thirds of the total membership voting in person. The amendment permits proxies. Finally, the act amends G.S. 117-24 which deals with the dissolution of electric membership corporations. The statute provided that dissolution may only take place with the approval of a two-thirds vote of the membership voting in person. The amendment permits the use of proxies. The act became effective July 31, 1997 and applies only to annexations or incorporations occurring on or after that date. It expires on the date of adjournment sine die of the 1999 General Assembly.

State Phone Systems (S.L. 1997-351; SB 531): S.L. 97-351 provides that automated telephone systems operated by State government agencies must minimize the number of menus a caller must go through to reach the desired extension, and must allow the caller to reach an operator from the first menu when calling during regular business hours. The necessary reprogramming must be done by September 1, 1997 and must be implemented with no additional cost to the State. The act became effective August 1, 1997.

Exempt Certain Non-profit Water and Sewer Utilities (S.L. 1997-437; HB 990): S.L. 97-437 amends Chapter 62 of the General Statutes to raise the minimum number of residential customers required to be served with water before a person is considered a public utility and to provide a method of exemption from regulation for non-profit and consumer owned water and sewer utilities. The act amends G.S. 62-3(23). This is the definition of a public utility, and falling within this definition means that an entity is regulated under Chapter 62. Under the previous law, a person providing water to less than 10 residential customers was not included in the definition. The number of residential customers has been raised to not less than 15. In addition, the act amends G.S. 62-3(23) to remove the exemption that existed for non-profit water membership or consumer owned corporations. This was done because the conditions of exemption could not be met by any of the non-profit and consumer owned water or sewer utilities the statute was intended to cover. The act adds a new G.S. 62-110.5 giving the Utilities Commission the authority to exempt water or sewer utilities owned by non-profit membership or consumer-owned corporations from regulation if the members or consumer-owners elect the governing board and the Utilities Commission find that the organization and the quality of service are adequate to protect the public interest. In applying this exemption, the Utilities Commission may impose whatever conditions it deems appropriate. These water or sewer utilities will be considered on a case by case basis. The act also amends G.S. 62-300(a) to provide for a $100 fee for each application for exemption filed by a non-profit or consumer-owned water or sewer utility. The act was effective August 28, 1997.

State Purchase & Contract and Construction

State Capitol Improvement Projects (S.L. 1997-314; HB 1006): S.L. 97-314 increases the threshold for exemption from the requirements for engineering and design services for

State Capital Improvement projects under the jurisdiction of the State Building Commission from $50,000 to $100,000. The act became effective October 1, 1997 and only applies to projects for which designers or consultants are selected for approval on or after that date.

Purchase/Contract and Construction Exemptions for Certain Entities (S.L. 1997-331; SB 141): S.L. 97-331 exempts the following three entities from various purchase and contract and construction requirements:

- The State Ports Authority can exempt itself from certain laws to the extent necessary to expedite delivery of a port facility. The laws from which it may exempt itself are as follows:
  1. The law requiring the facility plans to include the color schedule of any job-installed finishes.
  2. The laws governing the use of separate-prime, single-prime, and alternative contracts (except for the minority goals provisions)
  3. The laws governing designer selection and other laws enforced by the State Building Commission
  4. The law requiring a minimum of three bids on a construction contract.
- The North Carolina Seafood Industrial Park Authority is exempt from certain purchasing and construction oversight requirements by the Department of Administration but is otherwise still subject to the general laws governing purchasing and construction.
- Davie County is exempt from certain construction requirements in building a jail and law enforcement facility.

The act became effective July 25, 1997, and expires July 1, 1999.

UNC Construction and Purchasing Contracts (S.L. 1997-412; SB 862): S.L. 97-412 gives the University of North Carolina system more autonomy over construction and design of University projects and the purchasing of supplies and equipment and allows employees of the University to payroll deduct for the costs of athletic passes, parking, campus concert admissions, and related expenses if the employees choose to do so. The bill also provides additional autonomy in purchasing and construction to other State agencies. The major provisions of S.L. 1997-412 are as follows:

- The purchasing "benchmark" – the level that determines whether a purchase of supplies or equipment must go through the Department of Administration for competitive bidding (instead of being handled by the State agency) – is increased for all State agencies and the University. The increase for State agencies is from the current $10,000 to a maximum of $25,000 (which may be adjusted in the future for inflation). The increase for "special responsibility constituent institutions" of The University of North Carolina (i.e., those campuses given management flexibility by the Board of Governors – currently all 16 campuses) is increased from $35,000 to $250,000. The Secretary of Administration must establish procedures for the agencies and the universities to use when they advertise for bids and handle bid and contract disputes under the applicable threshold amount.

- The Secretary of Administration will no longer have to solicit bids by mail from vendors. However, the Secretary must continue to advertise the bids either by a newspaper or newspapers widely distributed throughout the State, electronic means, or both.
- The public bid records language is clarified to provide that after the bidding is completed, information on the actual contract awarded becomes a public record only after the contract is awarded, thus protecting the confidentiality of any negotiations involved in reaching the terms of the contract until those terms are finalized.
- The threshold at which a design contract must be publicly announced is raised for all State agencies from $50,000 to $100,000 to be consistent with the bidding law change for construction contracts that was made in 1995. In addition, the University will be able to use open-end design contracts for any project of $300,000 or less, but the use of these contracts is subject to limitations imposed by the State Building Commission. This authority expires in the year 2001.
- The University, rather than the Department of Administration, will now handle the contracting for projects valued at $500,000 or less. However, all contract disputes will still be handled by the Office of State Construction and the Department of Administration.
- This greater flexibility for the University on design and construction will be monitored, and it will expire July 1, 2001. The University must report to the legislature on how it will implement this flexibility prior to it taking effect in January of 1998. The University's ability to delegate design and construction responsibilities down to individual campuses is subject to oversight by the State Building Commission and the Governor.
- The greater flexibility for purchasing will be monitored by the State Budget Office. Although this flexibility does not automatically sunset, the Budget Office will report to the legislature by April, 2001 on how it is working. The State Budget Office will provide a similar report on the design and construction flexibility.

Public Construction Contracts (S.L. 1997-489; SB 122): S.L. 97-489 adds two new provisions to the law governing public construction contracts. The first expressly authorizes "pass-through" claims – i.e., a contractor can file a contractual claim against the owner of the project on behalf of a subcontractor, even though there is no privity of contract between the subcontractor and the owner. This allows the subcontractor's claim to pass through the contractor to the owner. For example, when the actions of the project owner damage the contractor and one or more of his subcontractors, the contractor might submit the subcontractor's portion of the damages along with his own to the owner. The bill allows the contractor to pass-through the claims of first tier subcontractors, second tier subcontractor, and so on down the line. This is designed to address recent uncertainty in the courts about the validity of pass-through claims.

Under the second provision in the bill, public owners (the State, local governments, etc.) cannot prevent contractors from recovering damages for project delays caused solely by the owners or their agents. ("Agents" does not include other contractors

on the project.) In the past, some public owners have inserted clauses in their contracts that prohibited contractors from recovering damages for delays caused by the owner. These clauses are no longer enforceable. The act became effective October 1, 1997.

Miscellaneous

Raise Housing Bond Limit (S.L. 1997-13; SB 289): S.L. 97-13 deletes the former $1.5 million limit on bonds that may be issued by the North Carolina Housing Finance Agency, and specifies in greater detail the conditions under which the Agency may invest in repurchase agreements for direct obligations of the United States government or obligations the principal of and the interest on which are guaranteed by the United States government. The act became effective April 3, 1997.

Repeal More Antiquated Laws (S.L. 1997-14; SB 79): S.L. 97-14 deletes two obsolete references to oaths for "entry takers," and corrects a statutory reference to the definition of "public vehicular areas." The act became effective April 3, 1997.

Increase ERC Membership (S.L. 1997-31; SB 140): See **ENVIRONMENT & NATURAL RESOURCES.**

State Building Evacuation (S.L. 1997-112; HB 122): S.L. 97-112 authorizes the Director of the State Capitol Police to exercise the means necessary to protect State buildings and the persons within them, including ordering and controlling any emergency evacuations. The Chief of the General Assembly Police is given the same authority over the Legislative Building and grounds. The act became effective May 29, 1997.

State Fire and Rescue Commission (S.L. 1997-116; HB 522): S.L. 97-116 adds a 15th voting member to the State Fire and Rescue Commission. The member shall be appointed by the Commissioner of Insurance from nominations submitted by the Professional Firefighters of North Carolina Association and shall serve a three year term. The act became effective May 29, 1997.

Solicitor's Security Option (S.L. 1997-124, SB 305): S.L. 97-124 amends the laws concerning charitable solicitation to allow any organization required to be licensed as a solicitor to submit a certificate of deposit instead of a security bond. The act became effective May 29, 1997.

Reg. Deeds/No Abuse Info. (S.L. 1997-136; HB 456): See **HUMAN RESOURCES.**

Transfer Information Technology to Commerce (S.L. 1997-148; SB 869): S.L. 97-148 transfers the following three technology-related agencies from the Office of the State Controller to the Department of Commerce: Information Resource Management Commission (IRMC), the State Information Processing Services (SIPS), and the State Telecommunications Services (STS). The act also requires that the Department of Commerce provide local governments access to SIPS' services (subject to the same

charges assessed State agencies for those services). The act became effective June 4, 1997.

Emergency Management Compact (S.L. 1997-152; HB 410): S.L. 97-152 enacts into North Carolina law the Emergency Management Assistance Compact. The purpose of the Compact is to provide for mutual assistance among the party states in managing emergencies and disasters, natural disasters, technological hazards, resource shortages, insurgency, or enemy attack. The Compact also provides for mutual cooperation in planning and training for such emergencies. The act became effective June 6, 1997.

National Guard Mobilization Lessons (S.L. 1997-153; HB 432, as amended by S.L. 443, Sec. 7.12; SB 352, Sec. 7.12): S.L. 97-153 amends Chapter 127A, governing person called into North Carolina National Guard service by the Governor. Section 1 prohibits employment discrimination based on North Carolina National Guard membership and service. This section is to be enforced by the Commissioner of Labor. Section 2 increases the minimum pay for persons called into state militia service from 12 times the minimum wage (as set out in G.S. 95-25.3(a)) per day to 18 times the minimum wage per day. Section 3 increases the minimum pay for persons called into North Carolina National Guard or naval militia service from 12 times the minimum wage [as set out in G.S. 95-25.3(a)] per day to 18 times the minimum wage per day. Section 4 authorizes any member of the North Carolina National Guard called into service by the Governor to take leave without pay, and not be forced to exhaust vacation or other leave from his or her civilian employment. This section grants the employee the sole discretion to make a choice between leave without pay and use of accrued vacation or other leave. Section 5 requires the suspension ("stay") of any legal proceeding involving a person called into service by the Governor, during the period of service and 60 days following the period of service. The stay could be initiated by the court on its own motion, by the person called into State military service, or by his or her representative. The stay could be denied by the Court if the absence of the person called into State service would not materially affect the case, as determined by the Court. Section 6 clarifies that State service pay shall include payment for any leave earned as a result of more than 30 days of continuous service. Section 1, 4, 5, and 7 of the act become effective December 1, 1997. Sections 2, 3, and 6 became effective July 1, 1997.

Southeastern Regional Commission Staff (S.L. 1997-155; SB 811): S.L. 97-155 allows the Commission, within available funds, to hire necessary personnel, and contract with consultants and with State and federal government agencies for services. The act became effective June 6, 1997.

Legal Representation/Corporations (S.L. 1997-203; SB 896): S.L. 97-203 clarifies the prohibition against corporations practicing law to make it clear that an attorney retained or employed by a corporation is not prohibited from representing the corporation or any of its officers for claims arising out of the scope and course of their work for the corporation. The bill amends G.S. 84-5 which prohibits corporations from practicing law and clarifies what types of representation are permitted by corporations. The bill adds a

new subsection which clarifies that the prohibition against a corporation practicing law does not apply to an attorney retained or employed by a corporation to represent the corporation or an affiliate, or an officer, director, or employee of the corporation in matters arising in connection with the course and scope of employment of the officer, director, or employee. The act became effective October 1, 1997 and applies to acts from which claims, demands, or actions arise on or after that date.

Ignore Emergency Warning (S.L. 1997-232; SB 997): S.L. 97-232 adds a new section to Chapter 166A providing that in a disaster, a person who willfully ignores a warning regarding personal safety issued by a law enforcement or government agency responsible for emergency management is civilly liable for the cost of any rescue effort on the endangered persons behalf. The act becomes effective December 1, 1997 and applies to acts committed on or after that date.

Ports User on Ports Board (S.L. 1997-235; SB 142): S.L. 97-235 requires that at least one of the appointees of the Governor to the State Ports Authority be a person affiliated with a major exporter or importer currently using the State Ports. The State Ports Authority, an 11-member board, oversees the operations of the State ports. The bill also prohibits Authority members from discussing or voting on Authority business if they have a conflict of interest. The act became effective June 27, 1997.

Permissible Sales at Zoo (S.L. 1997-258; HB 430): S.L. 97-258 provides an exemption for the North Carolina Zoological Park from Article 11 of Chapter 66 of the General Statutes, prohibiting State Government from engaging in the sale of goods in competition with private enterprise. Pursuant to the exemption, the Department of Environment, Health, and Natural Resources may lease up to 50 acres within the Zoo to the N.C. Zoological Society for the maintenance or operation of an exhibition center, theater, conference center, and associated restaurants and lodging facilities. The act also authorized the Department to adopt rules governing the issuance of special use pyrotechnics in State parks in connection with public exhibitions. The act became effective July 1, 1997.

Addition to State Parks System (S.L. 1997-276; SB 537): S.L. 97-276 authorizes the Department of Environment, Health, and Natural Resources to add lands currently owned by the Duke Power Company in Transylvania County adjacent to Jocassee Lake to the State Parks System. The act became effective July 1, 1997.

Abolish Aquarium Commission (S.L. 1997-286; HB 460): See **ENVIRONMENT & NATURAL RESOURCES.**

Department Of Corrections Pilot/Sexual Assault (S.L. 1997-288; SB 521): S.L. 97-288 directs the Department of Corrections to establish pilot programs on sexual assault at three units in the State Prison System. The Department is directed to report its findings by May 1, 1998 to the Joint Legislative Corrections Oversight Committee, the Chairs of the Senate and House Appropriations Committees, and the Senate and House

Appropriations Subcommittees on Justice and Pubic Safety. The act became effective August 1, 1997.

Illicit Liquor Tax (S.L. 1997-292; HB 754): See **TAXATION.**

Revise Property Records Laws (S.L. 1997-309; SB 875): S.L. 97-309 makes several changes concerning the recordation of plats, birth certificates, and death certificates at the register of deeds office. The act requires the board of commissioners of each county to designate one or more persons as a plat Review Officer and requires certain plats to be reviewed and certified by this officer before they can be recorded. The Review Officer can be an existing local government employee. The person appointed must, if reasonably feasible, be certified as a property mapper. All plats must be approved by this officer before they can be recorded except plats of existing parcels that do not involve street changes, plats of existing man-made or natural features, and control surveys. The act also: deletes the notary requirement for surveyor certificates on plats; increases the fee for recording a plat from $19 to $21; authorizes the register of deeds to remove birth and death records of persons who were born or died in counties other than the county in which the register of deeds office is located; and authorizes the Legislative Research Commission to study the procedures for land title registration and make recommendations on improving these procedures. Changes in the act affecting land records became effective October 1, 1997. The remainder of the act became effective July 17, 1997.

Disabled Sportsman Licenses (S.L. 1997-326; HB 1061): S.L. 97-326 authorizes a lifetime resident sportsman license for any resident of the State who is a 50% or more disabled veteran, or a totally disabled non-veteran, for a $100 fee; combines and increases the fee for new lifetime combination hunting and fishing licenses for 50% or more disabled resident veterans and totally disabled residents from $7.50 to $10, with the proceeds going to the Wildlife Endowment Fund.; and makes knowing, improper use of facilities and activities provided by the Wildlife Resources Commission for disabled sportsmen a Class 3 misdemeanor (1-10 days community penalty, fine of up to $200, if no prior record). The act became effective October 1, 1997, except for the misdemeanor offense, effective December 1, 1997.

Charitable Solicitations Exemptions (S.L. 1997-329; SB 921): S.L. 97-329 exempts nonprofit continuing care facilities from the licensure requirements of the North Carolina Charitable Solicitations Act. The act became effective July 25, 1997.

NC Museum of History Techs (S.L. 1997-411; SB 327): S.L. 97-411 makes technical amendments to the statutes governing the North Carolina Museum of History to reflect its status as a Division within the Department of Cultural Resources. The act became effective August 20, 1997.

Attorney General Opinion Required for All State Settlements (S.L. 1997-443, Sec.10.14; SB 352, Sec. 20.14): Section 20.14 of S.L. 97-443 adds a new section 114-2.4

to Article 1 of Chapter 114 of the General Statutes requiring an Attorney General Opinion for all State settlements in excess of $75,000. The written opinion shall be kept in the official file of the final settlement agreement. The Attorney General shall report all such settlement agreements to the Joint Legislative Commission on Governmental Operations. This section became effective July 1, 1997 and applies to settlements entered into on or after that date.

Fire Protection Grant Fund (S.L. 1997-443, Sec. 23; SB 352, Sec. 23): Section 23(a) of S.L. 97-443 creates a new Article 85A in Chapter 58 of the General Statutes establishing the State Fire Protection Grant Fund. The purpose of the fund is to compensate local fire districts and governments for providing local fire protection to State-owned buildings. The Office of State Budget and Management is to establish a uniform statewide method for distributing funds available. Subsection (b) repeals G.S. 143-3.7 (Transfer from General Fund for Local Fire Protection). The remainder of the act consists of transfers of funds to the State Fire Protection Grant Fund. The section became effective July 1, 1997.

Information Resources Management Commission (S.L. 1997-443, Sec. 24; SB 352, Sec. 24): Section 24 of S.L. 97-443 adds the Secretary of State and the State Controller to the membership of the Information Resources Management Commission. The section became effective July 1, 1997 and expires June 30, 2001.

Advice of Gov. Ops. on Prioritizing Requests for Assistance (S.L. 1997-443, Sec. 25; SB 352, Sec. 25): Section 25 of S.L. 97-443 provides that the State Auditor may request the advice of the Joint Legislative Commission on Governmental Operations in prioritizing requests by Committee of the General Assembly, the Governor, and other State officials, to undertake specific audits or investigations and in determining whether the requests are practicable and can be undertaken within the resources provided. The section became effective July 1, 1997.

Fees for Use of State-Owned Office Space (S.L. 1997-443, Sec. 27.4; SB 352, Sec. 27.4): Section 27.4 of S.L. 97-443 amends G.S. 143-342.1 adding the Department of the State Treasurer and the Department of Insurance to those agencies that are to be assessed for use of State-owned office space. The section became effective July 1, 1997.

Modify Areas of Responsibility/Roanoke Island Commission (S.L. 1997-443, Sec. 30.1; SB 352, Sec. 30.1): Section 30.1 of S.L. 97-443 amends G.S. 143B-131.2(b)(1) by modifying the areas on which the Commission is to advise the Department of Transportation regarding restoration, preservation and enhancement of appearance. The amendment adds the U.S. 64/264 Bypass and strikes Ice Plant Island, replacing it with Roanoke Island Festival Park. The section became effective July 1, 1997.

North Carolina Postal History Commission (S.L. 97-443, Sec. 30.5; SB 352, Sec. 30.5): Section 30.5 of S.L. 97-443 establishes a new Article 71 in Chapter 143 of the General Statutes creating the North Carolina Postal History Museum. The purpose of the

Commission is to advise the Secretary of Cultural Resources on the collection, preservation, and exhibition of material associated with North Carolina's postal history. The Commission shall consist of 16 members: four appointed by the Governor, four appointed by the President Pro Tempore of the Senate, four appointed by the Speaker of the House of Representatives, and four appointed by the Secretary of Cultural Resources. Of each group of appointees, two shall be recommended by the President of the North Carolina Postal History Society. The Commission shall have the power to advise the Secretary, adopt bylaws and accept grants and gifts for the purpose of providing support for the Commission. It may secure supplies, services, and property and may enter into contracts for such. The Department of Cultural Resources is to provide office space in Raleigh for the Commission and the head of any State agency may assign property, equipment, and personnel to assist the Commission. Such office space and services shall be without reimbursement by the Commission to Department of Cultural Resources or State agency assisting the Commission. The Commission shall file an annual report with the General Assembly before July 1, 1998 and a final report no later than June 30, 2000. The provisions of Article 1 of Chapter 121, Archives and History shall apply to the Commission. The section became effective July 1, 1997.

Housing Authority Amendments (S.L. 1997-473; HB 1064): S.L. 97-473 amends G.S. 157-29 to allow a housing authority to terminate or fail to renew a lease if a tenant engages in activity that threatens the health and safety of housing authority tenants or threatens the tenants' right to peaceful enjoyment of the housing authority premises, or engages in illegal drug activity on or near the housing authority premises. This bill also allows housing authorities to bring summary ejectment proceedings based on an allegations of criminal activity or illegal drug activity under Article 7 of Chapter 42. Current federal law already requires a public housing agency lease to include an obligation on the tenant to "assure that the tenant, any member of the household, a guest, or another person under the tenant's control" shall not engage in any criminal activity or illegal drug activity. Additionally, State summary ejectment statutes already provide for the ejectment of a tenant when the "tenant, lessee, or other person under him" has violated any provision of the lease. Section 2 clarifies that it is not necessary for a defendant in a summary ejectment action to post a bond before filing an answer to the suit. This change is expected to result in a more expedient resolution of summary ejectment actions and is necessary to qualify North Carolina for the "due process exemption" from other federal requirements which requires a grievance process before commencing eviction proceedings. The act became effective October 1, 1997 and applies to acts committed on or after that date.

Telephone Consumer Protection (S.L. 1997-482; SB 253): S.L. 97-482 requires telephonic sellers and solicitors to register with the Secretary of State. A telephonic seller is a person who solicits others by telephone to purchase goods or services, enter contests, or contribute to charities. There are numerous exemptions from the registration requirements, including such sellers and solicitors as licensed charitable solicitors, insurance agents, banks, realtors, utilities, securities sellers, and airlines. Certain types of telephonic soliciting, such as isolated commercial transactions and solicitations of

commercial establishments. The registration process includes the filing of required information and payment of a $100 fee.

In addition to registering, a telephonic seller engaged in a promotion involving gifts or prizes of $500 or more must notify the Secretary of State of the details of the promotion and file a bond covering the value of gifts and prizes offered. All promised gifts and prizes must be awarded. It is unlawful to request or demand payment to or require the calling of a pay-per-call number as a condition of claiming a gift. It is also unlawful to knowingly solicit anyone under 18 years of age. A person who is entitled to a gift or prize and does not receive it within 30 days may file a claim under the posted bond for the market value or represented value of the gift or prize or the amount of consideration paid, whichever is greatest.

A violation is an unfair and deceptive trade practice under the Unfair and Deceptive Trade practices law. If the violation involves a victim age 65 or older, the court may impose a civil penalty of up to $25,000.

The new law also prohibits telephone sales recovery services. These are services provided by persons who, for a fee or other consideration, offer to recover money paid to a telephonic seller for prizes or gifts that were never received. Attorneys, private detectives, and licensed collection agents are exempt. A violation of this law is a Class H felony if a fee or other consideration is collected for the services; otherwise, the violation is a Class 1 misdemeanor.

The requirements concerning telephone solicitation take effect October 1, 1997. The prohibition on telephone sales recovery services takes effect January 1, 1998.

Hire Among Most Qualified (S.L. 1997-520; SB 886): See **EMPLOYMENT.**

State Audit Interference or Obstruction (S.L. 1997-526; HB 652): See **CRIMINAL LAW AND PROCEDURE.**

STUDIES

Legislative Research Commission

The 1997 Studies Bill (S.L. 1997-483; SB 32) authorizes the Legislative Research Commission to study the following issues: (1) Cemetery Commission and Cemetery Regulation (Sec. 2.1(15)); (2) Competition to Improve State Government Services (Sec. 2.3); Dental Hygienist Regulation, Supervision, and Scope of Practice (Sec. 2.1(26)); (3) Information Technology (Sec. 2.1(24)); (4) Lobbying and Conflict Issues (Sec. 2.1(11)) (5) National Guard Buy-In to State Health Plan (Sec. 2.1(27)); and (5) State and Local Government Fiscal Reform and Intergovernmental Relations (Sec. 2.6).

XVI. TAXATION

(Cindy Avrette, Martha H. Harris, and Martha Walston)

Ratified Legislation

Revenue Laws Technical Changes (S.L. 1997-6; SB 33): S.L. 97-6 makes numerous technical and clarifying changes to the revenue laws and related statutes. These changes were recommended to the 1997 General Assembly by the Revenue Laws Study Committee. Substantively, the act:

1. Repeals an obsolete statute that requires gun owners to list their guns for property taxes. This statute is not needed because nonbusiness personal property is exempt from property taxes and the listing requirements for business personal property are contained in the Machinery Act;
2. Increases the inheritance tax return filing threshold for Class A beneficiaries from $450,000 to $600,000 to conform to the increased credit enacted in 1996. This change became effective January 1, 1997, and applies to estates of decedents dying on or after that date;
3. Deletes the definition of "fiduciary" from the with-holding tax Article because the term is not used in the Article;
4. Makes it clear that the per gallon motor fuel tax refunds do not apply to the inspection tax;
5. Repeals three obsolete subsections concerning taxes payable by electric membership corporations for 1965 and 1966; and
6. Makes it clear that a motor fuel supplier that sells kerosene is not required to have a separate license as a kerosene supplier.

The act became effective March 21, 1997.

No Back Intangibles Tax Assessment (S.L. 1997-17; SB 388): On February 10, 1997, the North Carolina Supreme Court held that the taxable percentage deduction in the North Carolina intangible tax on stock violated the commerce clause by discriminating against out-of-state companies. The deduction reduced a taxpayer's liability for the tax in proportion to the amount of business the corporation did in North Carolina. The court did not order refunds. Instead, it allowed the possibility of curing the past discrimination by the assessment of intangibles tax on those who did not pay in reliance on the unconstitutional taxable percentage deduction. Upon the advice of the Attorney General's Office, the Secretary of Revenue began preparing to assess the intangibles tax on those who did not pay the tax in reliance on the unconstitutional taxable percentage deduction.

In response to the Secretary's preparations, the General Assembly ratified this act. This act directs the Secretary of Revenue to take no action to collect or assess back intangibles tax for tax years 1990 through 1994. In effect, this act foreclosed the possibility of assessments on those who relied on the taxable percentage deduction. The passage of this act made the State liable for refunds to those intangibles taxpayers who paid tax on shares of stock and who protested the payment of the tax within 30 days of

payment. The General Assembly enacted House Bill 96, S.L. 97-318, on July 21, 1997. S.L. 97-318 directs the Secretary of Revenue to make refunds of the intangibles tax to taxpayers who filed a timely protest.

The General Assembly repealed the intangibles tax in 1995. The potential for the Department of Revenue to assess and collect the intangibles tax on those taxpayers who did not pay intangibles tax prior to 1995 in reliance on the unconstitutional taxable percentage deduction resulted from the North Carolina Supreme Court's decision in the *Fulton* case. In 1995, the Department estimated that eliminating the taxable deduction in the North Carolina intangibles tax on stock would generate $55 to $75 million dollars. As a practical matter, however, it would be difficult for the Department to discover and value taxable shares in those North Carolina corporations that are not publicly traded because there is no public information on these holdings.

No Tax on Intangible Property (S.L. 1997-23; HB 295): S.L. 97-23 exempts from local property taxes all intangible property except leasehold interests in exempted real property. The act became effective July 1, 1997, and applies to taxable years beginning on or after that date. The act is not expected to result in a significant decrease in local government property tax revenues.

Intangible personal property has been subject to property taxes for over 100 years. The property is taxable unless specifically excluded. Although cash and bank deposits have been excluded from property tax since 1985, it was not until 1995 that the General Assembly excluded other forms of financial intangibles, such as stocks, bonds, accounts receivable, and beneficial interest in trusts, from property tax. These financial intangibles were taxed by the State and the revenues generated by the tax were distributed to local government units. The intangibles tax repeal in 1995 repealed the tax on intangible property that was levied by the State; it did not affect the local governments' power to tax intangible property that had not been taxed by the State and was not otherwise excluded from local property taxation.

This act exempts most of the remaining forms of intangible personal property, such as franchise rights, patents, copyrights, trademarks, and goodwill, from property taxation. The tax situs of a business intangible is generally the location of the company's headquarters. Most counties have never taxed this type of property even though it was clearly subject to tax. Two recent developments raised county tax assessors' awareness of this potential revenue source. First, the Uniform State Abstract for listing business personal property, prepared by the Department of Revenue, was revised for use beginning in tax year 1997 to include a specific schedule D for intangible property. The memorandum accompanying the new abstract advised that the appraisal of intangible property would be a first time endeavor for many appraisers across the State. At the beginning of the 1997 tax year, 23 counties asked taxpayers to list intangible assets, such as patents, copyrights, secret processes, formulae, goodwill, trademarks, trade brands, and franchises, on their 1997 business personal property tax form. Before 1997, only a few counties were listing this type of property. Second, a recent case before the North Carolina Court of Appeals, Edward Valves, Inc., highlighted both the potential and the difficulties of taxing intangible personal property. In that case, Wake County levied a property tax on a set of exclusive engineering drawings. The drawings were valued at

more than $12 million. The court found that the county's methodology for taxing self-created intangible property was unconstitutional and that it violated the statutory requirement that property taxes be levied uniformly.

The act also clarifies that the exclusion of intangible property from property tax does not affect the appraisal of real property or tangible personal property. One of the most commonly used methods of valuing commercial property is the income approach to value. Under the income approach, the contribution of intangible assets to a business' income is an inherent part of the valuation process. The act will allow counties and cities to continue considering intangible personal property, such as trademarks and goodwill, when they assess other real property and tangible personal property.

The act discourages counties and cities from discovering prior years' taxes on intangible personal property excluded by this act on or after January 1, 1997. It does so by reducing the annual State reimbursement to a county or municipality for the repeal of the intangibles tax on money, accounts receivable, bonds, stock, and beneficial trust interests by the amount of taxes collected in that year on intangible property for a year prior to the 1997 tax year. This part of the act is repealed effective September 1, 2002, because the five-year discovery period will have expired then.

Lastly, the act seeks to preserve the legislature's authority to classify property for taxation by providing a non-severability clause in the current software property tax exemption. If any part of the exemption is ever ruled unconstitutional, then the entire exemption will be defeated. Consequently, all computer software will be subject to property tax unless the General Assembly acts to re-classify it for exemption. In 1994, the General Assembly carefully crafted an across-the-board property tax exemption for all computer software other than embedded software and software that is required by generally accepted accounting principles to be treated as a capital asset. This exemption was the result of a compromise between the North Carolina Association of County Commissioners and a taxpayer group called the North Carolina Software Coalition.

Update Internal Revenue Code Reference (S.L. 1997-55; HB 59): S.L. 97-55 rewrites the definition of the Internal Revenue Code used in State tax statutes to change the reference date from March 20, 1996, to January 1, 1997. It was recommended by the Revenue Laws Study Committee. Updating the Internal Revenue Code reference makes recent amendments to the Code applicable to the State to the extent that State tax law previously tracked federal law. This update generally has the greatest effect on State corporate and individual income taxes because these taxes are based on federal taxable income and are therefore closely tied to federal law. The franchise tax, gift tax, highway use tax, inheritance tax, and insurance company premiums tax also determine some exemptions based on the provisions of the Code.

Congress made significant changes to the Code in 1996 that will affect federal taxable income. Because federal taxable income is the starting point for calculating State corporate and individual income taxes, these federal changes adopted by this act will affect State policies and revenues. The act is expected to reduce General Fund revenues by approximately $8.5 million in 1997-98, $16.8 million in 1998-99, $11.5 million in 1999-2000, $13 million in 2000-01, and $17 million in 2001-02.

The federal Small Business Job Protection Act made two tax changes that will

affect the General Fund proportionally more than the other tax changes: the amount of property that may be expensed under Code section 179 is increased from $17,500 to $25,000 over a period of 5 years and the amount a self-employed person may deduct for health insurance costs is increased from 30% to 80% over a period of 10 years. The Small Business Job Protection Act made major changes to the S Corporation rules, introduced a new type of retirement plan (SIMPLE), and narrowed the exclusion for punitive damages received on account of personal injury or sickness. It also created a new adoption credit and exclusion and increased the amount a nonworking spouse could contribute to an IRA.

The federal Health Insurance Portability and Accountability Act created a pilot test program for tax-favored medical savings accounts (MSAs) and added two new exceptions to the 10% penalty for premature withdrawals from IRAs. It provided that costs of long-term care services and some long-term care insurance premiums will be considered medical expenses for itemized deduction purposes. The Health Insurance Portability and Accountability Act also allowed an income tax exclusion for long-term care benefits to chronically ill insureds and extended the income tax exclusion for life insurance death benefits to benefits paid during life to the terminally ill.

This act provides that the federal tax law changes that could increase an individual's or corporation's North Carolina taxable income for the 1996 tax year will not become effective for 1996 tax years but will instead apply only to taxable years beginning on or after January 1, 1997. Under Section 16 of Article 1 of the North Carolina Constitution, the legislature cannot pass a law that will retroactively increase the tax liability of any taxpayer. There are a few provisions in the federal tax law changes that could increase taxable income for the 1996 tax year. Because this act could not be ratified until after the 1997 General Assembly convened, theses changes were given a delayed effective date.

Since the State corporate income tax was changed to a percentage of federal taxable income in 1967, the reference date to the Internal Revenue Code has been updated periodically. In discussing bills to update the Code reference, the question frequently arises as to why the statutes refer to the Code on a particular date instead of referring to the Code and any future amendments to it, thereby eliminating the necessity of bills like this one. The answer to the question lies in both a policy decision and a potential legal restraint.

First, the policy reason for specifying a particular date is that, in light of the many changes made in federal tax law from year to year, the State may not want to adopt automatically federal changes, particularly when these changes result in large revenue increases or decreases. By pinning references to the Code to a certain date, the State ensures that it can examine any federal changes before making the changes effective for the State.

Secondly, and more importantly, however, the North Carolina Constitution imposes an obstacle to a statute that automatically adopts any changes in federal tax law. Section 2(1) of Article V of the Constitution provides in pertinent part that the "power of taxation ... shall never be surrendered, suspended, or contracted away." Relying on this provision, on the North Carolina court decisions on delegation of legislative power to administrative agencies, and on an analysis of the few federal cases on this issue, the Attorney General's

Office concluded in a memorandum issued in 1977 to the Director of the Tax Research Division of the Department of Revenue that a "statute which adopts by reference future amendments to the Internal Revenue Code would ... be invalidated as an unconstitutional delegation of legislative power."

Tax at Rack Improvements (S.L. 1997-60; SB 98): S.L. 97-60 makes changes to the method of collecting motor fuel taxes commonly referred to as "tax at the rack", that was enacted by the General Assembly in the 1995 Session and became effective January 1, 1996. The method bears this name because it imposes the per gallon excise tax when motor fuel is delivered to a transport truck or railroad tank car by means of a "rack" at a refinery, terminal, or bulk plant. This act changes the licensing requirements for exporters and makes several conforming changes as described below.

Section 1 of the act ensures that the State's motor fuel tax will be considered a "pass-through" tax, by expressly stating that the tax is collected from the supplier or importer of the fuel but that the tax becomes part of the cost of the fuel and is consequently paid by the consumer. This statutory language was added in order to protect the State from a challenge to its motor fuel tax laws similar to that in the U.S. Supreme Court case of Oklahoma Tax Commission v. Chickasaw Nation (decided June 14, 1995). There the Oklahoma gas tax was held not to apply to Native American retailers because of tribal sovereign immunity, even though the tax was collected by the fuel distributor and passed through the chain of distribution on to the ultimate consumer. The Court emphasized that the Oklahoma statute imposing this tax did not expressly identify the party that bears the burden of the tax, and more importantly, did not contain a pass-through provision requiring distributors and retailers to pass the tax on to consumers.

Sections 2 and 4 of the act require exporters to be licensed. Under prior law, an exporter could have been but was not required to be licensed. A licensed exporter paid tax at the destination state rate, while an unlicensed exporter had to pay tax at the North Carolina rate. This difference in treatment resulted in the unlicensed exporter paying both the North Carolina tax and the tax of the destination state and then having to apply to North Carolina for a refund. The requirement under this act, that all exporters be licensed, parallels the existing requirement that all importers be licensed.

Section 3 of the act makes the following changes to the importer licensing provisions for a bulk-end user, such as a trucking company:

1. Allows bulk-end users to be bonded importers and thereby buy fuel at an out-of state terminal that does not precollect the North Carolina motor fuel tax. Prior law prohibited a bulk-end user from obtaining a bonded importer license.
2. Relieves bulk-end users of the importer licensing requirement if they buy all their imported fuel at an out-of-state terminal that precollects the North Carolina tax. Prior law required an occasional importer license in this circumstance. This change parallels the existing treatment of distributors, i.e., a distributor that imports only from a terminal that precollects the North Carolina tax is not required to have an importer license.

Section 5 of the act deletes the requirement that an exporter file a bond. This change was made because the act requires all exporters to be licensed. The purpose of licensing is primarily to track cross-border shipments of fuel, and the bonding

requirement is not necessary for this purpose. Prior law required an exporter who chose to be licensed to pay a bond or provide an irrevocable letter of credit in an amount not less than $2,000 or more than $250,000.

Section 6 of the act deletes all references to unlicensed exporters, since sections 2 and 4 of the act require all exporters to be licensed.

Section 7 of the act imposes potential liability on an unlicensed exporter for the North Carolina tax on the fuel exported. If an unlicensed exporter buys fuel, the Department of Revenue can assess tax on the fuel purchased at the North Carolina rate.

Sections 8 and 22 of the act reduce the marking requirements for dyed diesel storage tanks so that they only apply to a person who is a retailer of dyed diesel fuel or who stores both dyed fuel and undyed diesel fuel for use by that person or another person. Prior law required all dyed diesel storage tanks to be labeled "For Nonhighway Use" unless the fuel in the tank was for home heating, drying crops, or manufacturing and the tank was installed so that use of the fuel for any other purpose was made improbable.

Section 9 of the act clarifies the tax liability concerning the use of exempt cards and exempt access codes. A supplier is not liable for any tax due on fuel sold to a distributor or importer who represented that the fuel would be resold to an exempt governmental entity but who did not resell the fuel to a tax-exempt entity. Distributors and importers make this representation by using a card or access code issued by the supplier when getting the fuel at the terminal, and this card or code allows the distributor or importer to buy the fuel tax-free. If a distributor or importer in this circumstance sells tax-free fuel to a person who is not exempt, the distributor or importer is liable for any tax due on the fuel. The act also makes clear that a supplier that issues a card or code, enabling a person to buy fuel at retail without being charged the tax already paid on the fuel, has a duty to determine if the person is actually tax-exempt. A supplier is responsible for any tax due if the person to whom the supplier issued the card is not an exempt entity.

Section 10 of the act requires an out-of-state bulk-end user that buys fuel at a North Carolina terminal, as opposed to a bulk plant, to be licensed as a distributor or exporter. This change accompanies the changes made by Sections 2 and 4 of the act that require all exporters to be licensed. Unless the bulk-end user falls within the grandfather group of users that can get distributor licenses, the user will need to be licensed as an exporter.

Section 11 of the act changes the due date of a tax return of an occasional importer from the first of each month to the third of each month. This change was made at the request of sellers of racing gasoline who pointed out that if they buy fuel on the last day of a month it is difficult to prepare the return and send it in the next day. G.S. 105-449.66 defines an "occasional importer" as any of the following that imports motor fuel by any means outside the terminal transfer system:

1. A distributor that imports motor fuel on an average basis of no more than once a month during a calendar year.
2. A bulk-end user that is not a distributor.
3. A distributor that imports motor fuel for use in a race car.

Section 12 of the act deletes references to unlicensed exporters.

Section 13 of the act deletes references to an exporter.

Section 14 of the act adds imports to the categories of information contained on a supplier's return. It does this by replacing references to specific license holders in some

places with the generic reference to "person receiving the fuel" and by adding references to "importer" in others.

Section 15 of the act allows a supplier to take a deduction on the supplier's return for taxes paid by the supplier on fuel that was subsequently sold at retail to a person who is exempt from tax and who used a card issued by the supplier to indicate his or her tax-exempt status when buying the fuel.

Section 16 of the act adds importers to the groups of license holders that must receive certain information from suppliers and about whom the suppliers must notify the Department of Revenue.

Section 17 of the act clarifies that anyone who pays tax on fuel that is exempt from tax can apply for a refund of the tax paid.

Section 18 of the act adds a civil penalty for failure to get an importer confirmation number. The penalty is the same as the penalty for transporting motor fuel without a shipping document or with a false or incomplete document or for delivering motor fuel to a destination state other than as shown on the document. Prior law contained no penalty.

Section 19 of the act clarifies that the penalty for using dyed diesel or other non-tax-paid fuel in a highway vehicle applies to all fuel used in the vehicle. Prior law applied the penalty to fuel used "for highway use". This language could have been construed to mean that a vehicle that is parked at a rest area or the parking lot of a business and that had dyed diesel in its tanks was not subject to the penalty, because the fuel was not at that moment being used for a highway use.

Section 20 of the act clarifies that failure to pay a tax under the prior motor fuel tax laws is to be treated the same as a failure to pay under the revised laws. When tax at the rack was implemented, the existing motor fuel tax laws were repealed and replaced by the new provisions. Many assessments for taxes owed under the prior laws have not been paid.

Section 23 of the act requires a retailer or bulk user of alternative fuel that will be the taxpayer for the fuel to file a bond or irrevocable letter of credit with the Secretary of Revenue.

Section 24 of the act changes when the liability for tax on certain alternative fuel accrues. The section allows those retailers and users that use the same storage tank for highway and nonhighway alternative fuel to pay tax on the highway alternative fuel when it is metered from the tank. Prior law required taxes on alternative fuel to be paid when the fuel was delivered to the retailer of the fuel or the bulk user of the fuel. This created a problem when alternative fuel was used for a dual purpose, since the provider of the fuel did not know how much fuel would be used for a highway purpose when the fuel was delivered to the retailer or user.

Section 25 of the act allows retailers and bulk-end users of alternative fuel to store the fuel in a tank that holds both highway and nonhighway alternative fuel if the tank has separate metering devices to measure the fuel that is used for a highway use and fuel that is used for some other purpose.

All sections of the act, except three clarifying changes, became effective October 1, 1997. The clarifying changes became effective when the act became law (May 16, 1997).

Consumer Use Tax Returns (S.L. 1997-77; HB 36): S.L. 97-77 establishes an annual

filing period for the payment of use taxes owed by consumers on mail-order purchases. The annual filing period relieves consumers of the need to file either monthly or quarterly returns. The act became effective May 15, 1997, and applies to purchases made on or after January 1, 1997.

In 1991, the Department of Revenue began including an annual use tax return (Form E-554) on the individual income tax booklets. Under the State sales and use tax law, a person is responsible for paying use tax on their out-of-state purchases. Prior law specified only two reporting periods – a quarterly period if the tax owed was less than $50, and a monthly period if the tax owed was more. Arguably, therefore, North Carolina customers of mail-order catalog companies should have been filing either monthly or quarterly returns.

The act improves the collection of the use tax by minimizing the compliance burden. Individuals who owe use tax on goods purchased out-of-state for a non-business purpose are now able to file an annual return. The return and the tax are due at the same time as the individual income tax return. In theory, residents who are subject to use tax for out-of-state purchases are more likely to comply if the reporting and payment procedure is not unduly burdensome.

The use tax complements the sales tax by taxing transactions that are not subject to the sales tax because of movement in interstate commerce. Like the sales tax, the use tax is imposed on the purchaser. Unlike the sales tax, the responsibility for remitting the tax to the Department is also on the purchaser. In the 1980s, states around the country became increasingly aware of the revenue loss from taxpayer avoidance of the use tax. The Department estimated in 1995 that the potential increase in State and local revenue for North Carolina, if full taxpayer compliance were achieved, would be $71.1 million.

The most cost-effective manner to collect the tax, from a state's point-of-view, is to require the out-of-state retailers to collect and remit the use tax. However, in 1967, the U.S. Supreme Court ruled in Bellas Hess that a state cannot require an out-of-state retailer to collect its use tax unless the retailer has enough contacts with the state to subject it to the state's taxing jurisdiction. The Supreme Court reaffirmed this decision in 1992 in Quill Company v. North Dakota.

The Direct Marketers Association, the Federation of Tax Administrators, the Multi-state Tax Commission, and the National Governors' Association have been 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. The group is likely to have a final agreement by July 1, 1998. If a final proposed agreement is reached, it will then be up to the states and the marketers to enter into the agreement.

In an effort to collect a larger percentage of this tax, North Carolina has entered a cooperative agreement with other southeastern states called the Southeastern States Exchange Agreement. The member states to this agreement exchange information gained through tax audits of businesses, such as the names and addresses of North Carolina customers to whom untaxed sales were made. The Department of Revenue may then contact these customers for the collection of the use tax, plus penalties and interest.

Tax Withholding for Nonresidents (S.L. 1997-109; HB 57): S.L. 97-109 makes two changes concerning the collection of taxes owed to North Carolina. First, it requires

withholding from compensation paid to nonresident individuals and nonresident entities for personal services performed in North Carolina. Second, it conforms State law to the federal law regarding agricultural employees' wages (both withholding from the wages and unemployment insurance tax on the wages).

The changes made by the act become effective at different times. The requirement to withhold from compensation paid to nonresident individuals and from compensation for athletic, entertainment, and construction services paid to nonresident partnerships, corporations, or limited liability companies becomes effective January 1, 1998. The requirement to withhold from all other compensation paid to these nonresident entities for personal services becomes effective January 1, 1999. This phase in of the withholding requirement was requested by North Carolina Citizens for Business and Industry. The nonresident withholding provisions of the act were suggested by the Department of Revenue and recommended by the Revenue Laws Study Committee. It is anticipated that the collection of income taxes owed by nonresident companies and individuals to the State will increase by $8 to $10 million a year as a result of these provisions.

The requirement to withhold from agricultural wages to the same extent as is required under federal law becomes effective January 1, 1998. Conformity to the federal unemployment tax exemption for certain aliens performing agricultural labor, as requested by the Farm Bureau, becomes effective immediately.

North Carolina taxes the income of its residents and also that income derived by nonresidents from businesses, trades, and occupations carried on in this State. Most other states that have an income tax apply the tax to nonresidents' income in this way. Like North Carolina, these states generally give their residents a credit for income tax paid to other states on income derived from those states.

Many nonresidents who derive income from North Carolina do not pay the North Carolina tax due on this income. This problem is particularly troublesome with respect to single event performers such as athletes or entertainers who may be paid large amounts for their work in North Carolina. It is difficult, expensive, and inefficient for the Department of Revenue to trace and pursue these nonresidents who do not pay the tax they owe.

This act imposes a withholding requirement on payments made to nonresidents for services performed in this state. This requirement is similar to the existing law which requires employers to withhold taxes from wages paid their employees. The new requirement will not apply to wages, which are already covered under the existing law; the new requirement applies to payments to independent contractors.

Examples of nonresidents targeted by the new withholding requirement are musicians, actors, and individual athletes. Because these individuals may be paid through a partnership, limited liability company, or corporation that does not have ties to this State, the withholding requirement applies to payments to these entities as well. If the entity is registered in this State or maintains a permanent office in this State, payments to it are not subject to withholding. Payments it makes to nonresidents for their services will, however, be subject to withholding, under either the new requirement for contract payments or the existing requirement for wages.

Under this act, a person or entity who, in the course of a trade or business, pays a nonresident more than $600 for personal services in this State will be required to

withhold 4% of the payment and deposit the withheld taxes with the Department of Revenue. The withholding agent must register with the Department of Revenue. The withheld taxes are due by the last day of the first month after the end of the calendar quarter in which the withholding agent paid the nonresident. As is the case with employers who withhold from employees' wages, the withholding agent will be required to give each nonresident a statement similar to a W-2 form in January and to provide a compilation of these statements to the Department of Revenue. Filing these documents relieves the agent of the existing information reporting requirement of G.S. 105-154.

The withheld taxes will be credited to the nonresident individual or entity from which they were withheld. If the entity is a pass-through entity such as a partnership, Subchapter S corporation, or limited liability company, the credit will pass through to the partners or other owners of the entity. The nonresident will receive credit for the withheld taxes by filing a North Carolina income tax return; any excess will be refunded to the taxpayer.

A number of other states have instituted withholding programs and special audit programs to close the loophole that allows nonresidents to avoid paying state income taxes they owe. California, Connecticut, Minnesota, New Jersey, and South Carolina have withholding requirements. Michigan, Missouri, and New York have special audit programs.

Industrial Revenue Bonds (S.L. 1997-111; HB 474): S.L. 97-111 clarifies the Department of Commerce's current policy of what costs may be reimbursed with Industrial Revenue Bond proceeds. The policy is derived from federal tax law. Under federal law, two types of expenditures may be reimbursed from bond proceeds:

1. An expenditure that is incurred or paid within 60 days of the date the Financing Authority took some action indicating its intent that the expenditure would be financed or reimbursed from bond proceeds.
2. Incidental expenditures that are incurred prior to the commencement of the acquisition, construction, or rehabilitation of a project. Examples of this type of expenditure include architectural costs, engineering costs, surveying costs, soil testing costs, and bond issuance costs.

Industrial Revenue Bonds offer manufacturing companies long-term debt financing at interest rates substantially below the current prime rate. Under the program, a local Financing Authority may enter into a financing agreement with a company to provide revenue bond proceeds to the company to be used to finance capital expenditures, such as fixed assets, land, buildings, new equipment, existing equipment, etc. The amounts payable by the company to the authority under the financing agreement must be sufficient to pay all of the principal and interest on the bonds.

Bond proceeds cannot be used to refinance existing debt or as venture capital. Current law does not define the term "refinance." Under federal law, bond proceeds may be used to reimburse certain expenses the company incurs prior to any action of the authority indicating its intent that the expenditure would be financed or reimbursed from bond proceeds. The act allows North Carolina the full flexibility available under federal law to reimburse certain preinducement expenditures.

Adjust City Receipts Tax Share (S.L. 1997-118; SB 34, as amended by S.L. 1997-456, Sec. 55.5, HB 115, Sec. 55.5): S.L. 97-118 increases the amount of State franchise tax that is distributed to 40 cities. The cities whose distributions are increased are those whose 1995-96 distributions were less than 95% of their 1990-91 distributions. The act increases the distributions for these cities by reducing the "hold-back amount" that is deducted from a city's share. The act applies to distributions made for fiscal year 1995-96 and subsequent years. The act increases the annual distribution to the affected cities by a total of $194,841. The annual distribution to the other 500 cities is reduced by the same amount, so that the State share of the franchise tax is not reduced under this act. This act was recommended by the Revenue Laws Study Committee.

The State distributes part of the State franchise tax imposed on utilities to the cities. The franchise taxes that are distributed are the taxes on electricity, piped natural gas, and telephone service. The State imposes a franchise tax on these utilities at the rate of 3.22%. The State distributes to cities the amount of tax collected from service provided inside the cities that equals a tax of 3.09%. Thus, the cities receive the majority of these taxes.

The amount to be distributed to a city is reduced by that city's "hold-back" amount. The "hold-back" amount is the amount by which the city's distribution of these franchise taxes increased from fiscal year 1990-91 to fiscal year 1994-95. During this period, the total amount distributed was frozen but the relative share of each city changed based on the proportion of that city's receipts compared to the total of all cities' receipts. When the freeze was lifted in 1995-96, a requirement was imposed to calculate and deduct a "hold-back" amount. The effect of the deduction of a hold-back amount from the cities' distribution is the retention by the State of the growth that occurred in the franchise tax base during the freeze years. The hold-back amount is considered the cities' contribution to the State budget crisis in the early 1990s.

The "hold-back" amount reduced the amount distributed in fiscal year 1995-96 to some cities below the amount that was distributed to them in 1990-91. This occurred to cities that experienced a temporary franchise tax base growth in the freeze years (1990-91 through 1994-95) and then a reduction of the base in 1995-96. The hold-back deduction requires these cities to deduct taxes attributable to growth that is no longer in their tax base.

The act adjusts for this loss of tax base growth by reducing the hold-back amount. The amount distributed to a city in 1995-96 is compared to the amount distributed in 1990-91. If the 1995-96 amount is less than 95% of the 1990-91 amount, the hold-back amount is reduced in accordance with the formula in the act to the greater of zero or the amount that would have caused the city's 1995-96 distribution to equal the 1990-91 amount.

In the course of developing this proposal, a number of reporting errors from utilities were discovered. To address this concern, the act amends the tax secrecy provisions to allow the Department of Revenue to give finance officials of a city a list of the utility taxable gross receipts that were derived from sales within the city and used to determine the franchise tax distribution to the city. This provision will allow cities to verify the data that determines their share of the State franchise tax distribution.

Sale of Property for Unpaid Taxes (S.L. 1997-121; SB 106): S.L. 97-121 gives the Department of Revenue the ability to sell in any county in this State personal property the Department has seized for payment of delinquent State taxes, effective immediately. Current law requires this property to be sold in Wake County or the county in which the property was seized. It was recommended to the 1997 General Assembly by the Revenue Laws Study Committee.

G.S. 105-242(a)(2) authorizes the Secretary of Revenue to levy on a taxpayer's personal property to collect delinquent unpaid taxes and to sell the property either in Wake County or in the county in which it was seized. This statute is used almost exclusively by the Controlled Substance Tax Division, which collects the tax on illegal drugs. The 1997 General Assembly expanded the tax on illegal drugs to include a tax on illegal liquor. Vehicles and other property are often seized for these taxes pursuant to G.S. 105-113.111 and sold at auction. Seventy-five percent of the proceeds of these sales are distributed among the law enforcement agencies whose investigation led to the assessment and the remaining 25% is credited to the General Fund.

The current practice of the Department is to store and sell all seized property in Wake County. The Department does this because it is too costly to store and sell property in all 100 counties. The Department contracts to have seized property hauled from the counties in which it is seized to Wake County where it is stored until an auction site is available. Rental of auction sites in Wake County is expensive and, because of delays due to waiting for a site, the Department incurs extra costs for storing the property.

The Department plans to implement this act by establishing regional sites in Eastern, Central, and Western North Carolina for the sale of seized property. Expanding the permissible locations for sales will reduce costs because the property will not have to be hauled as far and there will be less storage time waiting for an auction site to become available. In addition, more companies will be able to compete for the transportation, storage, and sale business because they will no longer have to have Statewide operations in order to qualify, and this increase in competition could yield a lower contract price. The Department estimates that it will be able to reduce expenses incurred in selling seized property by at least $39,000 a year.

Historic Rehabilitation Tax Credit (S.L. 1997-139; SB 323): S.L. 97-139 expands the current State income tax credit for rehabilitating an income-producing historic structure, effective beginning in the 1998 tax year. It is expected to reduce General Fund revenues by approximately $56,000 in 1998-99, $965,000 in 1999-2000, $2 million in 2000-01, and $3.5 million in 2001-02.

The act increases the credit for rehabilitating income-producing structures from 5% to 20% of the rehabilitating expenditures and allows a new 30% credit for rehabilitating non-income producing structures. The 20% credit will yield a combined federal and State credit equal to 40% of the rehabilitating expenditures for income-producing historic structures. A taxpayer is allowed the 30% State tax credit for rehabilitating non-income producing historic residential structures only if the taxpayer does not qualify for the federal tax credit for income-producing historic structures.

The act also provides that the credits may not be taken in one year but must be spread out in installments over five years after the historic structure is placed in service.

Any unused portion of a credit may be carried forward for a five-year period.

Federal law provides a federal income tax credit equal to 20% of qualified rehabilitation expenditures for certified historic structures that are used in connection with a trade or business or held for the production of income. This credit is available for both residential rental buildings and nonresidential buildings that are listed in the National Register or that are located in a registered historic district and certified as being of historic significance. Former State tax law provided an individual and corporate income tax credit for rehabilitating a certified historic structure for which the taxpayer was allowed a credit under federal law if the historic structure was located in North Carolina. Federal tax law does not provide an income tax credit for rehabilitating an historic structure that is used as the owner's residence and thus is not income-producing. This act expands the existing State credit to include certified historic structures that are not otherwise eligible for the federal tax credit because they are not income-producing. To be eligible for the credit for rehabilitating a non-income producing historic structure, a taxpayer must attach a copy of the certification received from the State Historic Preservation Office verifying that the improvements made are consistent with the Secretary of the Interior's Standards for Rehabilitation. In addition, the costs of the improvements must exceed $25,000 over a 24-month period.

Property Tax Interest/Study (S.L. 1997-205; SB 1064): S.L. 97-205 allows a taxpayer who has prevailed in a property tax appeal to receive interest on the overpayment of property taxes, effective for appeals made to the Property Tax Commission on or after July 1, 1997. The Property Tax Commission hears and decides appeals from decisions concerning the listing, appraisal, or assessment of property made by county boards of equalization and review and boards of county commissioners. Any property owner who is dissatisfied with the decisions of these county boards may appeal to the Commission. Under prior law, if the Property Tax Commission determined that a taxpayer's property had been overvalued and that the taxpayer had therefore paid more tax than was owed on the property, there was no payment of interest on the overpayment. The act provides that the overpayment will bear interest at the rate borne by all other assessments of tax. Under current law this rate is determined in accordance with G.S. 105-241.1(i). The statute permits the Secretary of Revenue to set interest paid on State taxes semiannually after giving due consideration to current market conditions and to the rate that will be in effect on that date pursuant to the Internal Revenue Code.

The act authorizes the Legislative Research Commission to study methods used by counties to develop the schedules of value for a general reappraisal of real property, the process for appealing the value or listing of property, and the octennial revaluation schedule. In conducting this study, the Commission may determine whether the procedures used in developing schedules of value produce unrealistic values on nonresidential real property, whether representatives of the Department of Revenue should be given more authority in resolving taxpayer appeals, and whether the Property Tax Commission should be replaced with a State Tax Court. The Commission may assign these property tax issues to a tax study committee or create a separate study committee to study these issues. The Commission may make an interim report of its

findings to the 1998 Regular Session of the 1997 General Assembly and a final report to the 1999 General Assembly.

Scrap Tire Disposal Tax Amendments (S.L. 1997-209; SB 153): S.L. 97-209 makes a number of changes to the scrap tire tax and the use of the tax proceeds. It was recommended by the Environmental Review Commission. The scrap tire disposal tax was enacted in 1989 and applies to tires sold at retail and tires sold for placement on vehicles to be sold or leased at retail. The tax generates almost $10 million a year in revenue.

The act moves the sunset date on the 1993 increase in the tax from June 30, 1997, to June 30, 2002. Therefore, the 1993 tax increase will expire five years later than it would have if this act had not been enacted. Effective October 1, 1993, the tax rate was increased from 1% to 2% for tires with a bead diameter of less than 20 inches. Bead width is the width of the inside opening of the tire. Tires for cars, vans, and pick-up trucks have a bead width of less than 20 inches. When the tax increase sunsets, the tax on these tires will revert back to 1%.

The scrap tire tax proceeds are distributed as follows: 27% to the Scrap Tire Disposal Account, 5% to the Solid Waste Management Trust Fund, and 68% to the counties on a per capita basis. This act repeals a provision that, effective June 30, 1997, would have sunset the Scrap Tire Disposal Account and discontinued the 27% earmarking to the Account, increased from 5% to 10% the earmarking to the Solid Waste Management Trust Fund, and increased from 68% to 90% the percentage distributed to counties.

The act increases from 25% to 50% the maximum amount in the Scrap Tire Disposal Account that may be used for grants to local governments to assist in the disposal of scrap tires, and allows up to 40% of the amount in the Account to be used for grants to encourage the use of processed scrap tire materials. The remaining funds in the Account will continue to be used to clean up nuisance scrap tire collection sites. Under prior law, the Department of Environment and Natural Resources (DENR) could use up to 25% of the funds in this Account to make grants to counties for scrap tire disposal and was required to use the remaining funds in the Account to clean up nuisance scrap tire collection sites.

The act adds a factor for DENR to consider when making grants to local units from the Scrap Tire Disposal Account to assist them in disposing of scrap tires. That factor is the effort made by the local unit to prevent out-of-state tires from being disposed of for free. G.S. 130A-309.58(e) prohibits counties from charging a fee for scrap tire disposal unless the tires are defective new tires or tires that have a certificate indicating they came from outside the State and therefore were not replacements for tires on which the scrap tire tax was paid. Despite the certificate requirement, many out-of-state tires are being disposed of for free in this State's disposal sites.

Conform Tax on Restored Income (S.L. 1997-213; HB 15): S.L. 97-213 conforms North Carolina's income tax law to the Internal Revenue Code with respect to the tax treatment of "restored income." Restored income is $3,000 or more of income that a taxpayer receives from a person in one year but then has to pay back in a later year. It

was recommended by the Revenue Laws Study Committee. The act applies retroactively to the 1995 tax year to address a specific situation that was brought to the attention of the Revenue Laws Study Committee.

A taxpayer may receive a substantial amount of income in year one and pay tax on the income for that year. Then, in year two, for example, the taxpayer may be required to pay back some of the income that was received in year one and taxed. If this occurs and the amount given back is at least $3,000, the taxpayer may deduct in year two the amount of income that was paid back. The deduction in year two of the "restored" income offsets the inclusion of the income in year one if the taxpayer's income in year two is large enough to be able to take the deduction.

If the taxpayer's income in year two is smaller than the amount to be deducted, the taxpayer is in the position of having paid taxes on income that, as it turns out, did not belong to the taxpayer. Even with individual net loss deductions, the taxpayer may never have enough income to deduct the amount the taxpayer had to pay back. The taxpayer is not allowed to file an amended return for year one to subtract the restored income because the taxpayer did in fact receive the income in year one. If the taxpayer had restored the income in year one rather than year two, however, the two events would have offset one another and there would have been no tax consequence.

For federal purposes, the Internal Revenue Code provides relief in these cases if the amount restored is at least $3,000 and there is insufficient income in the later year to offset the deduction and thus reduce the taxpayer's tax by the amount it was increased in year one because of the inclusion of the restored amount. Section 1341 of the Code gives the taxpayer, in effect, instead of a deduction in year two, a credit for the amount by which the taxpayer's tax would have been reduced in year one if the restored amount had not been included in taxable income for that year. The credit is treated as a payment of tax made by the taxpayer, which can then be refunded.

North Carolina's individual and corporate income taxes piggyback the federal Code to a large extent but, under prior law, did not conform to Section 1341 because that section is structured as an alternative tax rather than as a reduction in taxable income. Because there was no corresponding provision in the North Carolina income tax law, a taxpayer would end up paying North Carolina income tax on income the taxpayer later had to repay to another. This act conforms the North Carolina law to the federal on this issue by allowing the excess tax paid to be refunded.

The circumstances addressed by this act are rare and its fiscal impact is minimal. The situation sometimes occurs with taxpayers who receive employer disability payments while an application for federal disability payments is pending. A federal disability application may take a year or two to process and, if federal benefits are approved retroactively, the taxpayer is usually required to pay back to the employer the amount of employer disability payments received while the federal case was pending.

The case that was brought to the attention of the Revenue Laws Study Committee involved an individual who invented a formula for producing a chemical product and sold the formula to a manufacturer for nearly $2 million in 1994. The inventor's former employer sued the inventor claiming that the employer had licensing rights to the formula. The inventor settled the suit by paying the employer more than $400,000 of the $2 million sales proceeds in 1995. The inventor paid tax on the full $2 million in 1994;

in 1995, the inventor had little income to offset the $400,000 deduction for the amount restored to the employer. Thus, without this act, the inventor would have forfeited the more than $25,000 in North Carolina income tax paid on the remainder of the $400,000 in 1994.

Conservation Easements/Tax Credit (S.L. 1997-226; HB 260): S.L. 97-226 directs the Department of Environment and Natural Resources (DENR) to develop a program to encourage a Statewide network of protected natural areas, riparian buffers, and greenways. The success of the program lies in the voluntary donation by property owners of conservation easements in land that is important to the ecological system of the State. A conservation easement is a written agreement between a landowner and a qualifying conservation organization or public agency. The landowner agrees to keep the property covered by the easement in its natural condition, without extensive disturbance. The organization or agency is granted the right to enforce the covenants of the easement and to monitor the property.

The act provides two different methods of carrying out its purpose. First, it increases the tax credit for certain real property donations where the land is useful for land conservation purposes. Second, it creates a Conservation Grant Fund to stimulate the use of conservation easements, to improve the capacity of private nonprofit land trusts to successfully accomplish conservation projects, to better equip real estate related professionals to pursue opportunities for conservation, to increase citizen participation in land and water conservation, and to provide an opportunity to leverage private and other public monies for conservation easements. The fiscal impact of the act from the increase in tax credits is estimated to be a loss of $3.2 million a year. The increase in tax credits was effective beginning on or after January 1, 1997. The Conservation Easements Fund became effective July 1, 1997.

Under prior law, a taxpayer could receive a tax credit equal to 25% of the fair market value of a property interest donated to the State, a unit of local government, or a body organized to receive and administer lands for conservation purposes. The act increases the $25,000 cap on this credit to $100,000 for individual income taxes and $250,000 for corporate income taxes.

The act also makes a conforming change to ensure that a taxpayer who chooses to claim the State credit does not also claim and receive a deduction for federal income tax purposes. This is necessary since federal taxable income is the starting point for calculating State taxable income.

The act further provides that county property tax assessors shall take into account changes in the property's value resulting from conservation or preservation agreements.

The act directs DENR to develop a nonregulatory program, known as the Conservation Easements Program, that uses conservation tax credits as a prominent tool to accomplish conservation purposes and that creates the Conservation Grant Fund to be administered by DENR. Grants from the Fund may be used only to pay for one or more of the following costs and may not be used to pay the purchase price for any interest in land:

1. Reimbursement for all or part of the transaction costs associated with a donation of property.

2. Management support.
3. Monitoring compliance with conservation easements, the related use of riparian buffers, natural areas, and greenways, and the presence of ecological integrity.
4. Educational materials that will encourage conservation purposes.
5. Stewardship of land.
6. Transaction costs, including legal expenses, closing and title costs, and unusual direct costs, such as overnight travel.
7. Administrative costs for short-term growth or for building capacity.

The grant money under the Conservation Grant Fund is available for land that possesses or has a high potential to possess ecological value, is reasonably restorable, and qualifies for the conservation tax credits. A private nonprofit land trust organization is eligible for grant money if it qualifies for the conservation tax credits and is certified under section 501(c)(3) of the Internal Revenue Code.

The Conservation Grant Fund consists of any monies appropriated from the General Fund and any monies received from public or private sources. Any unspent General Fund money appropriated to the Fund reverts at the end of the fiscal year unless the General Assembly provides otherwise. Unexpended monies in the Fund from other sources do not revert at the end of the fiscal year. No money was appropriated to the Fund by this act, nor was any money appropriated in the 1997 General Assembly's budget bill.

No Tax Rollback on Condemnation (S.L. 1997-270; HB 529): S.L. 97-270 amends G.S. 40A-6 and G.S. 136-121.1. The amendments provide, with respect to general condemnations and transportation-related condemnations, that property owners are entitled to reimbursement for deferred taxes paid pursuant to G.S. 105-277.49 (c) as a result of the condemnation. The entitlement to reimbursement is conditioned upon the following: (1) the owner must be a natural person and have property taken in fee simple by a condemnor exercising a statutory power of eminent domain; and (2) the owner also must own actively producing agricultural land, horticultural land or forestland contiguous to the condemned property. Potential condemnors, seeking to acquire property by gift or purchase, must give property owners written notice of these provisions. The act became effective July 3, 1997 and applies to transfers made on or after August 1, 1997.

Turkey Grower Use Value Exception (S.L. 1997-272; SB 508): S.L. 97-272 allows agricultural land used in the production of turkey growing within the preceding two years to continue to qualify for present-use value for property tax purposes, even if the property has been taken out production because of an infectious, transmissible disease known as Poult Enteritis-Mortality Syndrome. This disease is characterized by growth depression and high mortality among turkeys. To eradicate the disease, turkey farmers must suspend their production of turkeys. The act is effective for taxes imposed for taxable years beginning on or after July 1, 1997.

Many turkey farmers participate in the use value deferment program. Under this program, agricultural land, forestland, and horticultural land are valued for property tax purposes based upon their present use value rather than fair market value. The difference between the taxes due on the property's use value and its fair market value is deferred

until the property loses its eligibility for the program. At that time, taxes for the preceding three fiscal years which have been deferred, together with interest which accrues on the deferred taxes as if they had been payable on the dates on which they originally became due, become immediately due and payable.

To qualify for use value treatment, property must meet certain ownership, use, and income requirements. Besides being individually owned, agricultural land must be in actual production and it must have produced an average gross income of at least $1,000 for the three years preceding January 1 of the year for which the tax benefit is claimed. When turkey farmers must suspend their production of turkeys in an effort to eradicate the disease, they may lose their eligibility for the use value deferment program because the land is no longer in actual production or because the agricultural income is reduced below the $1,000 threshold. This act provides that these farmers will not lose their eligibility for the program solely on the grounds that the land is being held out of production for the purposes of eradicating the disease of Poult Enteritis-Mortality Syndrome. This exception, however, lasts for only two years. The two-year period should allow farmers to remain in the use value deferment program until they recover.

Amend Bill Lee Act (S.L. 1997-277; SB 316): S.L. 97-277 began as an agency bill requested by the North Carolina Department of Commerce. It amends several of the business tax credits that were expanded or enacted by the 1996 General Assembly. As part of the 1996 William S. Lee Quality Jobs and Business Expansion Act, the General Assembly extended the jobs tax credit to all 100 counties, enacted a new tax credit for worker training expenses, enacted a new tax credit for increasing research activities, and enacted two new tax credits for investing in machinery and equipment. To be eligible for the jobs credit, the worker training expense credit, the credit for research activities, and one of the investment credits, the taxpayer had to be engaged in manufacturing or processing, warehousing or distributing, or data processing and the wages of the jobs affected had to be at least 10% above the average weekly wage in the county where the job was created or the business claiming the credit was located, as appropriate.

This act expands the types of businesses eligible for the credits to include air courier services, effective January 1, 1998. Air courier services are businesses primarily engaged in furnishing over-night delivery of individually addressed letters, parcels, and packages. Examples of air courier services include UPS and Federal Express.

This act expands the types of businesses eligible for the credits to include central administrative offices, effective October 1, 1997. Central administrative offices are businesses engaged in providing management and general administrative functions for other businesses of the same enterprise. They may perform such services as general management, accounting, computing, tabulating, or data processing, purchasing, engineering and systems planning, advertising, public relations or lobbying, and legal, financial, or related managerial functions. For a business to qualify for these credits as a central administrative office, it must create at least 40 new full time jobs (not including jobs transferred from elsewhere in the State).

The act also creates a new tax credit for taxpayers who purchase or lease real property to be used as central administrative office property, effective October 1, 1997. The amount of the credit is equal to 7% of the eligible investment amount. The eligible

investment is the lesser of: (1) the cost of the property, or (2) the cost of the taxpayer's total North Carolina property used as central administrative offices on the last day of the taxable year minus the cost of the taxpayer's total North Carolina property used as central administrative offices on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer was using the most property as central administrative offices in this State. This calculation prevents a taxpayer from receiving a credit for an office moved from one part of the State to another. For leased property, the cost of the property equals the lease payments over a seven-year period, plus any expenditures made by the taxpayer to improve the property before it is used as the taxpayer's central administrative office if the expenditures are not reimbursed or credited by the lessor. The tax credit for investing in central administrative office property may not exceed $500,000, and is taken in seven equal installments over the seven years following the taxable year in which the property is first used as a central administrative office. If the property ceases to be used as a central administrative office during the seven-year period, then the credit expires and the taxpayer may not take any remaining installment of the credit. The credit also expires if the total number of the taxpayer's employees at all of its central administrative offices drops by 40 or more.

The act expands the credit for investing in machinery and equipment and the business property credit to include leased personal property. This change is effective for taxable years beginning on or after January 1, 1997.

The act changes the formula for determining a county's ranking and tier designation for several of the tax credits in two ways. First, it changes the factors in the formula. Under prior law, the Secretary of Commerce assigned an enterprise factor to each county each year based on the county's rank in a ranking of counties by unemployment (from lowest to highest), by per capita income (from highest to lowest), and by population growth (from highest to lowest). The act changes the unemployment and per capita income components from a one-year standing to a standing based on the average of the most recent three years. Second, the act guarantees that a county that obtains Tier 1 status cannot lose that status for two years regardless of what the annual rankings would otherwise require. The first of these changes is effective when the act becomes law and applies to designations for the 1998 and later calendar years. The guarantee of at least a two-year Tier 1 status applies retroactively to 1997 and subsequent years.

The act changes the wage standard that applies to all but one of the investment credits in two ways. The prior wage standard was 110% of the average weekly wage in the county. The wage standard for Tier 1 counties now equals the lower of three figures: the average private sector weekly wage in the county; the average private sector weekly wage in the State; and the average private sector weekly wage in the county multiplied by the "county income/ratio wage adjustment" factor. The "county income/wage adjustment" determines a single county's ratio per capita income to its annualized private sector wages, and compares this ratio to the same measure for the State as a whole. The act also replaces the prior wage standard for the other tier areas with a standard 10% above the lower of the three figures described above. These changes are effective for the 1997 tax year and later years. The purpose of these changes is to provide an appropriate standard for counties that have unusual situations, such as a single, large employer.

The act allows a taxpayer to specify the tax (income or franchise) against which the credit is claimed when filing a tax return rather than when applying for the credit with the Department of Commerce. This change is effective retroactively to the 1996 tax year and applies to all future years. This change was needed because, when initially applying for the credit, the company may not yet know which tax it will claim the credit against.

The act amends the credit for investing in machinery and equipment by providing that a taxpayer that signs a letter of commitment to place specific machinery and equipment in service in an area within two years after the date the letter is signed, and in fact does so, may calculate the credit based upon the tier the county was in when the taxpayer signed the letter. This same provision is already allowed for purposes of the jobs tax credit. This change, which allows companies to plan major investments without risking a possible tier redesignation for the location of the planned investment, becomes effective for taxable years beginning on or after January 1, 1998.

The act directs the Department of Commerce to study tax incentives for new and expanding businesses enacted in 1996, including their effects on tax equity, their distribution across new and existing businesses, the patterns of business development before and after their enactment, and their costs and benefits, and to study the use of tax incentives by other states. The Department of Commerce must report the results of its study to the General Assembly by April 1, 1999.

The fiscal impact of the act is estimated to be a loss to General Fund revenues beginning at $ .2 to $ .5 million for fiscal year 1997-98, and growing to a maximum of $14.5 million for fiscal year 2001-02.

Illicit Liquor Tax (S.L. 1997-292; HB 754): S.L. 97-292 expands the excise tax on controlled substances to include a tax on illicit spirituous liquor, mash, and illicit mixed beverages, effective October 1, 1997. Mash is a fermentable starchy mixture from which spirituous liquor can be distilled. Illicit spirituous liquor and illicit mixed beverages are primarily non-tax-paid liquor and mixed beverages that contain non-tax-paid liquor. The new tax is expected to generate between $300,000 and $500,000 annually, of which approximately 75% will be distributed to State and local law enforcement agencies and 25% will be credited to the General Fund.

The tax rate on illicit spirituous liquor is $31.70 for each gallon or fraction thereof sold by the drink and $12.30 for each gallon or fraction thereof not sold by the drink. The tax rate on mash is $1.28 for each gallon or fraction thereof. The tax rate on illicit mixed beverages is $20 on each four liters and a proportional sum on lesser quantities. These tax rates are equivalent to the mixed beverage taxes that would be due on the liquor or mixed drinks or on liquor made from the mash. Failure to pay the tax due triggers a penalty equal to 50% of the tax due, the same as the tobacco tax.

The General Assembly enacted the excise tax on controlled substances in 1989 as a means of generating revenue for State and local law enforcement agencies and for the General Fund. Under the law, a person who acquires illegal drugs is required to pay tax on them within 48 hours of acquiring possession if the tax has not already been paid as evidenced by a tax stamp. A person paying the tax is not required to disclose his or her identity and any information obtained in assessing the tax is confidential and cannot be used in a criminal prosecution other than a prosecution for failure to comply with the tax

statute itself. Seventy-five percent of the revenue generated by assessments of the tax is distributed to the law enforcement agencies whose investigation led to the assessment. The remainder of the revenue is credited to the General Fund. The excise tax on illicit liquor, mash, and illicit mixed beverages will be administered and distributed in the same manner as the excise tax on controlled substances.

The North Carolina Court of Appeals upheld the constitutionality of the State's excise tax on controlled substances in 1996 and the North Carolina Supreme court affirmed March 7, 1997. The case, *State v. Ballenger*, was based on the United States Supreme Court's 1995 opinion holding Montana's illegal drug tax unconstitutional because it was a second punishment, not a true tax, and thus violated the double jeopardy clause of the Fifth Amendment. The United States Supreme Court decision was based on two key aspects of Montana's tax: it was at an unusually high rate when applied to certain low-value drugs and it did not apply until a person was arrested for a drug violation. Our Attorney General's office reviewed the Montana case and concluded that our drug tax is not unconstitutional because it applies whether or not a person is arrested for a drug violation. The General Assembly enacted several changes to the law in 1995 to further clarify that the tax is not a punishment, but is in fact a true tax designed to raise revenue.

Conform Tax Extension Rules (S.L. 1997-300; SB 784): S.L. 97-300 conforms the State tax law on filing extensions for certain taxes with federal law by authorizing an extension for filing a return whether or not the tax is paid. The filing extension is not an extension of time for paying the tax, however. The act becomes effective for returns due on or after January 1, 1998.

Under current State law, to obtain an extension of time for filing an income tax return, a corporate franchise tax return, or a gift tax return, the taxpayer must pay the amount expected to be due. If the taxpayer does not pay the tax, the filing extension is not granted and the taxpayer faces penalties for both late filing and late payment. This law was enacted in 1990 to bring State law in conformity with federal law. The federal law has since changed, however. The Internal Revenue Service recently adopted a rule granting a filing extension whether or not the tax is paid. The filing extension is not an extension of time to pay the tax, however. If the tax is not paid by the original due date, a taxpayer who pays when filing the return on the extended date still faces a late payment penalty but not a late filing penalty.

The purpose of granting a filing extension whether or not the tax is paid is to obtain a record of the taxpayer. A taxpayer who could not pay the tax by the due date and thus could not obtain a filing extension under prior law had no incentive to file a request for an extension or to file a return by the extended date. In fact, the accumulated filing penalties could have made the taxpayer less likely to file at all. If a taxpayer does not request an extension or file a return, the Department of Revenue might have no record of the taxpayer and thus might not be able to pursue the unpaid taxes. If the taxpayer requests an extension but does not pay the tax, the Department can contact the taxpayer and try to collect the unpaid taxes, perhaps through an installment agreement.

Conforming the State law to the federal law will simplify tax compliance for taxpayers, who will not have to track separate State and federal rules for obtaining a filing

extension. The proposed change will result in some nonrecurring computer programming costs for the Department of Revenue. The Department is authorized to draw these one-time costs from 1997-98 fiscal year income tax collections.

Bond Payment Changes (S.L. 1997-307; SB 249): S.L. 97-307 changes the law on special obligation bonds issued by a unit of local government for a solid waste project, such as a landfill or an incinerator, in the following ways:

1. It allows a local unit that has issued a solid waste special obligation bond to pledge additional nontax revenue in payment of the bond after the bond has been issued.
2. It applies the terms and conditions that apply under G.S. 160A-20 to security interests granted in installment financing agreements to security interests in property to be financed by a local solid waste special obligation bond. Applying these criteria makes it clear that the security interest may extend to land already owned as well as the building to be financed, requires the local government to hold a public hearing before granting the security interest, and requires approval by the Local Government Commission before granting the security interest.
3. It clarifies that local solid waste special obligation bonds are secured by the nontax funds that are pledged for their payment but can be paid from other funds.

In 1989, the General Assembly authorized local governments to issue special obligation bonds to finance solid waste management projects. A special obligation bond does not require a vote of the people. A solid waste special obligation bond must be secured by a pledge of designated nontax revenues. The nontax revenues can be fees or can be taxes that are levied by another unit of government and shared with the local government that proposes to issue the special obligation bonds. For example, a city can pledge its share of local sales and use taxes because the county levies those taxes. A county can pledge landfill fees or State-shared tax revenue, such as franchise tax revenue.

Intangibles Tax Remedy (S.L. 1997-318; HB 96): S.L. 97-318 provides a refund of the intangibles tax on stock, with interest, to taxpayers who made a timely protest for the 1990 through 1994 tax years. The State obligated itself to pay protesters their refunds when the General Assembly enacted S.L. 1997-17. In that act, the General Assembly directed the Secretary of Revenue to take no action to collect or assess back intangibles tax for tax years 1990 through 1994 from those taxpayers who did not pay the intangibles tax on North Carolina stock in reliance on the unconstitutional taxable percentage deduction.

On February 10, 1997, in *Fulton Corp. v. Faulkner*, the North Carolina Supreme Court held that the taxable percentage deduction in the North Carolina intangible tax on stock violated the commerce clause by discriminating against out-of-state companies. The deduction reduced a taxpayer's liability for the tax in proportion to the amount of business the corporation did in North Carolina. The court did not order refunds. Instead, it allowed the possibility of curing the past discrimination by the assessment of intangibles tax on those who did not pay in reliance on the unconstitutional taxable percentage deduction. The General Assembly prohibited the assessment of the tax from taxpayers who benefited from the taxable percentage deduction in S.L. 1997-17.

This act does not provide relief to nonprotesters. The Attorney General's office issued an opinion in April 1997 that it would be unconstitutional for the General Assembly to refund intangible taxes not filed under protest. Because the State has no legal obligation to these taxpayers, any payments would be an exclusive emolument prohibited by Article I, Section 32 of the North Carolina Constitution. The exclusive emoluments provision of the State Constitution prohibits the legislature from extending special privileges to a select group of individuals except in consideration of public services.

Prior to the ratification of this act, the Wake County Superior Court certified *Smith v. State* as a class action case representing all taxpayers who paid intangibles tax under timely protest. On June 11, 1997, the court entered judgment in favor of the protesters, awarding them full refunds with interest. The attorneys for the protesters requested attorneys fees equal to 16% of the total amount to be paid to protesters. Any such award will be deducted from the interest paid on refunds to the protesters who are members of the class.

In late June and early July of 1997, the court published a notice of the lawsuit and the possibility of opting out in the classified section of the newspapers. The deadline for opting out was July 28, 1997. By opting out, a taxpayer could avoid having attorneys fees deducted from the taxpayer's intangibles tax refund. A taxpayer who opted out will still receive a refund for any of the tax years from 1992 through 1994 for which the taxpayer was a timely protester. Most taxpayers who protested did so only for 1993, 1994, or both. If a taxpayer paid under protest for 1991 but did not "preserve" the protest by filing suit, the taxpayer will not receive a refund for that year unless the taxpayer remained in the class. Most taxpayers did not pay under protest for the 1991 tax year, however.

The Department of Revenue and the State of North Carolina are opposing any award of attorneys fees on the grounds that the Department of Revenue would pay all protesters for the 1992 through 1994 tax years anyway, whether or not there is a court order. To ensure that as many affected taxpayers as possible received actual, complete information before the deadline set by the court for taxpayers to make a decision regarding the class action lawsuit, the General Assembly directed the Secretary of Revenue to mail a copy of the court's notice to as many affected taxpayers as possible.

Tax Exempt Parental Savings Trust (S.L. 1997-328; SB 466): S.L. 97-328 excludes two types of income from State individual income tax. The items excluded are the annual earnings on amounts contributed to the Parental Savings Trust Fund for the future payment of room or board at an institution of higher education and the earnings distributed to a beneficiary of the Fund that are used to pay for higher education expenses. The act is effective for taxable years beginning on or after January 1, 1998. The revenue loss to the General Fund is expected to be a little over $3,000 in fiscal year 1998-99. The revenue loss will increase to as much as $819,000 by the year 2007.

The Parental Savings Trust Fund is part of the State Education Assistance Authority. The Fund is authorized by G.S. 116-209.25, which was enacted by the 1996 General Assembly. A person can contribute amounts into the Parental Savings Trust Fund for a child who is less than 16 years old. The amount contributed in the account, along with its interest and investment earnings, can be used to pay the expenses of the

beneficiary at any accredited public or private college or community college. Either the child or the person making the contributions must be a resident of this State. The Authority plans to begin the Fund in the fall of 1997. The Parental Savings Trust Fund is a kind of qualified state tuition program under section 529 of the Internal Revenue Code.

Section 529 of the Code excludes some of the amounts earned by contributors to a qualified state tuition program from federal tax and, therefore, North Carolina tax as well. Under federal law, earnings on amounts contributed for the payment of tuition, fees, books, supplies, and equipment at an institution of higher education are excluded from tax but not the earnings on amounts contributed for room and board. Earnings on amounts contributed for room and board are taxable. The taxation of amounts contributed for room and board is consistent with section 117 of the Code concerning the taxation of scholarships. Under that section, an amount received as a scholarship is excluded from taxable income to the extent the amount is for tuition, fees, books, supplies, and equipment required for courses of instruction. The amount of a scholarship that is intended for living expenses (room and board) is subject to tax.

Also under federal law, the amount distributed to a beneficiary of the Parental Savings Trust Fund for tuition, fees, books, supplies, and equipment that exceeds the amount contributed is taxable. Thus, under federal law, the tax on the investment earnings is simply deferred until a distribution is made, at which time the earnings are taxable to the beneficiary rather than the contributor.

The two exclusions allowed by the act will result in a lack of conformity with federal income tax law on these items and with the State and federal law on the subject of income received for the payment of room and board at an educational institution. Because federal taxable income is the starting point for determining State taxable income and the two exclusions in the act differ from federal law, the new exclusions will require new deduction calculations to be made on the State income tax return and necessitate the revision of the form.

County Tax Information Recipient (S.L. 1997-340; HB 1044): S.L. 97-340 authorizes a board of county commissioners, in a resolution adopted by the board, to designate a county official to receive certain sales tax refund information from the Secretary of Revenue. Prior law provided for only the chair of the board of county commissioners to receive this information. If the board does not adopt a resolution, then the Secretary will continue to send the requested information to the chair of the board of county commissioners.

In 1995, the General Assembly gave counties access to information regarding local sales tax refunds paid to certain nonprofit entities and governmental entities. Under G.S. 105-164.14, these entities may seek a refund of State and local sales taxes they pay on their purchases by filing a written request for refund with the Department of Revenue and naming the counties where the purchases were made. The Secretary of Revenue then deducts the claimed refunds of local sales taxes from tax revenue distributed to the counties. Prior to 1995, counties did not have access to information regarding local sales tax refunds because the local sales tax is collected by the State and the tax secrecy statute, G.S. 105-259, prevented the Department of Revenue from disclosing information about individual taxpayers. Without this information, counties were not able to audit claims for

refunds against them. The counties had to rely on the Department of Revenue to audit the claims, but the Department did not have enough resources to provide the level of audit some counties wished to provide for themselves.

To obtain information concerning local sale tax refunds, a county must request the information in writing from the Secretary of Revenue. The Secretary has 30 days to provide the designated county official with a list of each nonprofit entity or governmental entity that received a refund of at least $1,000 of that county's local taxes within the last 12 months. The county uses the list it receives from the Department of Revenue to identify entities whose refund claims the county may wish to audit. Upon the written request of the county, the entity that has received a refund must provide the county with a copy of the request for refund, along with supporting documentation requested by the county in order to verify the request. If an entity determines that a refund it has received has been charged to the wrong county, it must file an amended return for the refund. The amended return enables the Department to make the appropriate adjustments in the subsequent quarterly distribution of local sales tax revenue.

The act makes a conforming change to the local sales tax exception to the tax secrecy statute, set out in G.S. 105-259(b)(6a), by providing that a list of claimants that have received a refund may be furnished to a designated county official.

Reduce Property Tax/Antique Planes (S.L. 1997-355; HB 1158): S.L. 97-355 grants property tax relief to owners of antique airplanes similar to the relief that the 1995 General Assembly gave to owners of antique automobiles. The act provides that antique airplanes that are not used for the production of income will be assessed at the lower of their true value or $5,000, effective for taxable years beginning on or after July 1, 1998. The act is expected to reduce local government property tax revenues by less than $100,000 a year.

An airplane qualifies for this property tax reduction if it meets all of the following conditions:

- It is registered with the Federal Aviation Administration.
- It is a model year 1954 or older.
- It is maintained primarily for use in exhibitions, club activities, air shows, and other public interest functions.
- It is used only occasionally for other purposes.
- It is used by the owner for a purpose other than the production of income.

Non-business property has been exempt from property taxes since 1987. Non-business property means personal property that is used by the owner of the property for a purpose other than the production of income and that is not used in connection with a business. Non-business personal property includes household furnishing, clothing, pets, and lawn equipment. The term includes collectibles such as antique furniture, coins, and paintings. However, the term does not include aircraft. In 1995, the General Assembly granted property tax relief to owners of antique automobiles. Like the non-business personal property tax exemption, the antique automobile tax relief applied only to individuals, not other entities, and applied only if the automobile is not used in connection with a business. This act is not limited to non-business aircraft; it reduces property taxes on antique airplanes even if they are owned by a corporation or other entity

and even if they are used in connection with a business.

Chiropractor Supplements Exempt (S.L. 1997-369; SB 374): S.L. 97-369 creates a new State and local sales and use tax exemption. The new exemption is for "nutritional supplements sold by a chiropractic physician at a chiropractic office to a patient as part of the patient's plan of treatment." The exemption became effective October 1, 1997, and applies to sales made on or after that date. The exemption will not result in a significant loss of revenue to either the State or the local governments.

The act does not define a nutritional supplement. The federal Dietary Supplement Health and Education Act of 1994 defines a dietary supplement as a product that meets the following three criteria: (i) is intended to supplement the diet and contains a vitamin, mineral, herb, or other botanical, amino acid, or other dietary substance (or a concentrate, metabolite, constituent, extract, or combination of any such ingredient); (ii) is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form; or if not in such form, is not represented as conventional food or as the sole item of a meal or of the diet; and (iii) is labeled as a dietary supplement.

There are no laws that require any dietary supplements to be sold only by health care providers. The dispensing of dietary supplements does not require a prescription. As a marketing tool, vendors of dietary supplements sell some of their products only to health care providers.

Tax on Custom Computer Software (S.L. 1997-370; HB 14): S.L. 97-370 modifies the sales tax definition of custom computer software to make a clear distinction between software that is subject to State and local sales and use taxes and software that is not subject to these taxes. The act is based on a recommendation of the Revenue Laws Study Committee and reflects an agreement between the Department of Revenue and the North Carolina Electronic & Information Technologies Association on the definition of custom computer software. The act became effective October 1, 1997, and is expected to cause a General Fund revenue gain of approximately $700,000 a year. Local governments will experience a local sales tax revenue gain of approximately $350,000 a year.

Canned software is subject to sales and use taxes and custom software is not subject to these taxes. The North Carolina sales and use tax law excludes custom computer software from tax to implement the policy that computer services are not subject to sales and use taxes. The cost for custom computer programs is attributable to the programming services provided rather than the cost of producing a tangible form of the program on a cd rom or tape. The definition of custom software in the prior law was very broad, however, and could include off-the-shelf "shrink-wrap" programs and programs that had been modified only slightly by the vendor. Under that definition, custom computer software included all software recommended to the purchaser by the seller after performing an analysis of the purchaser's needs. Thus, under prior law, a common product such as Microsoft's Word program became exempt from sales and use tax if the seller of the program analyzed the customer's needs and decided that Word was better for the customer than WordPerfect or another competing product. This act deletes an analysis of a customer's needs as a determining factor in whether a program is custom (exempt) or canned (taxable).

The definition of custom software in the prior law also included all programs adapted by the seller of the program to be used in a particular computer and its associated input/output devices such as printers. This type of adaptation can be slight, such as the completion of a "fill-in-the-blank" series in which the particular hardware to be used with the program is designated, or it can include extensive changes to the lines of source code in the software. Under the prior law definition, any slight adaptation of a program made the entire program exempt from State and local sales and use taxes. This act changes the law by providing that custom software does not include prewritten software that can be installed and executed with no changes to the software's source code other than changes made to configure hardware or software.

Increase Compensation for Erroneous Conviction (S.L. 1997-388; HB 611): See **CRIMINAL LAW AND PROCEDURE.**

Dry-Cleaning Solvent Clean-Up Act (S.L. 1997-392; HB 225): S.L. 97-392 requires owners and operators of dry-cleaning facilities to maintain financial responsibility for liability arising from dry-cleaning solvent pollution and creates a Dry-Cleaning Solvent Cleanup Fund to be used to reimburse persons who clean up sites polluted by dry-cleaning solvents that have contaminated the water or surface or subsurface soils of the State. The Fund will be administered by the Department of Environment and Natural Resources. No more than 20% of the amount of revenue in the Fund may be used by the Department for the costs of administering the Fund. The act is a recommendation of the Environmental Review Commission.

The major source of revenue for the Fund is the imposition of a dry-cleaning solvent tax on in-State retailers that sell solvent to dry-cleaning facilities and on dry-cleaning facilities that purchase solvent outside the State. The solvent tax is a per gallon privilege tax equal to $5.85 per gallon of chlorine-based solvents and 80¢ per gallon of hydrocarbon-based solvents. The tax is effective October 1, 1997, and expires January 1, 2010. The Department of Revenue will collect the tax in the same manner as a sales tax. The Secretary of Revenue may retain the Department's cost of collection, not to exceed $125,000 a year. After subtracting these costs and the Department of Environment and Natural Resources administration costs, the tax is expected to generate about $1 million a year for the Dry-Cleaning Solvent Cleanup Fund.

If the amount of claims exceeds the amount of revenue in the Fund, the claims with the highest priority will be paid first. The Department of Environment and Natural Resources must adopt rules to implement the act, including rules for the prioritization of sites and scheduling of funding for assessment and remedial response activities. A petitioner for money from the Fund must meet certain requirements and make a financial contribution. The amount a petitioner may receive from the Fund is capped at $200,000 a year unless the contamination poses an immediate threat to human health or a serious risk of irreparable damage to the environment, in which case a cap of $400,000 applies. See Environment and Natural Resources.

No Sales Tax on Reuseable Containers (S.L. 1997-397; SB 847): S.L. 97-397 provides a sales and use tax exemption for containers that are used as packaging to enclose

property delivered to a purchaser and must then be returned to the owner. Under prior law, packaging items were exempt from sales tax only if they constituted part of the property being sold and were delivered with the property to the customer. The act became effective October 1, 1997. It is not known how much the act will reduce General Fund revenues and local government sales tax revenues.

The act applies to barrels used to transport chemicals and tanks used to transport gases, such as oxygen, acetylene, and propane. In a typical situation, barrels are leased by the barrel company to the chemical company, which fills them with chemicals that are then sold to the customer. The customer returns the barrel, which can then be reused. Under prior law, the chemical company (lessee) was required to pay sales tax to the barrel company (lessor) on the lease price of the barrel. If the barrels had been purchased by the chemical company and sold to the customer, however, they would have been tax exempt. The prior law was, therefore, a disincentive for recycling. The customer would likely discard a purchased barrel and buy a new one when buying more chemicals.

The act does not apply to railroad tank cars or to truck trailers because motor vehicles are not packaging. The act does not apply to railroad palettes because they do not enclose the property being delivered.

Local Transit Revenue Options (S.L. 1997-417; HB 1231): S.L. 97-417 has four parts that provide local governments with revenue options to finance local public transportation systems, as follows:

I. It authorizes Mecklenburg county to levy a ½ cent local sales tax if approved by the voters of the county.

II. It authorizes most cities that have public transportation systems to levy an additional $5 motor vehicle tax.

III. It authorizes regional public transportation authorities to levy a gross receipts tax of up to 5% on short-term motor vehicle rentals.

IV. It authorizes the new Triad regional transportation authority to levy the same $5 vehicle registration tax that the existing Triangle regional public transportation authority levies. It also authorizes public transportation authorities organized under existing law and comprised of two or more counties to levy this same $5 vehicle registration tax.

Part I of the act authorizes Mecklenburg County to levy a ½ cent sales tax only if the tax is approved by the voters of the county. The tax does not apply to food. In other respects, it will be administered in the same way as the existing local sales and use taxes.

The proceeds of the tax must be used to finance, construct, operate, and maintain local public transportation systems. A public transportation system is defined broadly in the act to include any combination of real and personal property established for purposes of public transportation. It does not include, however, streets, roads, and highways not dedicated to public transportation or related parking.

Mecklenburg County may not levy the sales tax authorized by Part I of this act unless it has developed a financial plan for equitable allocation of the proceeds it receives based on the identified needs of local public transportation systems in the county and planned expansion of public transportation to unserved areas. The sales tax authorized for Mecklenburg County will be distributed between the county and other local

government units in the county that operate local public transportation systems, on a per capita basis. The county must allocate the tax proceeds it receives based on its financial plan.

Part II of the act authorizes most municipalities that operate public transportation systems to levy an additional $5 motor vehicle tax, to be used only to finance, construct, operate, and maintain local public transportation systems. Current law already authorizes municipalities to levy a $5 annual motor vehicle tax that may be used for any public purpose. Many municipalities already have local legislation authorizing them to levy an increased amount. This act adds an extra authorization for $5 more. If that $5 would cause the municipality's total local motor vehicle tax to exceed $30, however, the additional $5 tax may not be levied. The City of Charlotte and the Town of Matthews are authorized by local act to levy annual motor vehicle taxes of $30. These local units are the only ones that would currently be affected by the $30 limitation. The City of Durham and the cities and towns in Gaston County are specifically prohibited from levying this additional $5 for local transportation authorities.

Part III of the act authorizes a regional public transportation authority to levy a gross receipts tax of up to 5% on retailers within the region engaged in the business of renting private passenger motor vehicles and motorcycles. The tax applies only to short-term rentals, i.e., rentals for a period of less than one year. The tax will be collected by the authority but is otherwise administered in the same way as the optional highway use tax on gross receipts from vehicle rentals. This optional highway use tax is 8% on short-term rentals, so the combined tax within the jurisdiction of the authority would be 13%. Each authority may use the proceeds of the tax for its public transportation purposes. Before levying or increasing the tax, the authority must obtain approval from each county in the region.

A regional transportation authority is an entity created under either Article 26 or Article 27 of Chapter 160A of the General Statutes to provide a public transportation system for the region it represents. The authority created under Article 26, the Triangle Transit Authority for Wake, Durham, and Orange Counties, is governed by a board of trustees appointed by the counties creating the authority and larger cities within the counties. The 1997 General Assembly authorized the creation of a second regional transportation authority for the Triad region, in S.L. 1997-393. The Triad Transit Authority may be created by the four largest cities of the five counties served by the Authority in order to promote the development of sound transportation systems in the area served by the Authority. The Authority would be governed by a board of trustees consisting of the mayors of the four largest cities and the chair of each Metropolitan Planning Organization in the area. The counties served by the Authority would be Forsyth, Guilford, Randolph, Davidson, and Alamance. The four major cities involved in the creation of the Authority are Greensboro, High Point, Winston-Salem, and Burlington.

Part IV of the act authorize the proposed Triad regional transportation authority and any multi-county public transportation authorities organized under current law to levy a $5 vehicle registration tax identical to the tax already authorized for, and levied by, the existing Triangle Transit Authority. A public transportation authority is an entity created by one or more local government entities under Article 25 of Chapter 160A of the

General Statutes to provide public transportation. There are three multi-county public transportation authorities. The Choanoke Public Transportation Authority consists of Bertie, Halifax, Hertford, and Northampton Counties. The Kerr Area Transportation Authority consists of Franklin, Granville, Person, Vance, and Warren Counties. The Inter-County Public Transportation Authority consists of Camden, Chowan, Currituck, Pasquotank, and Perquimans Counties.

An authority must obtain the approval of each county within its jurisdiction before it can levy the $5 vehicle registration tax. The Division of Motor Vehicles will collect the tax in counties that are entirely located within the authority's jurisdiction. If the authority's jurisdiction includes just a part of one or more counties, the authority will collect the registration tax in those parts of counties. The authority may contract with local governments to collect this tax. Authorization for authorities to levy this tax is organized into a new Article in Chapter 105 of the General Statutes; accordingly, the Triangle Transit Authority's tax is recodified from Chapter 160A to the new Article in Chapter 105.

Conform Sales/Fuel Tax Refund Period (S.L. 1997-423; HB 35): S.L. 97-423 extends the time for claiming sales tax refunds for certain nonprofit entities, certain governmental entities, and drugs purchased by hospitals. A late application for a sales tax refund may now be filed with the Department of Revenue after 30 days but within three years after the due date, subject to a 50% penalty. The penalty for a late filing within 30 days after the due date is 25%. The Secretary of Revenue has the authority to waive penalties for good cause, but once a refund is barred the Secretary may not revive it. Prior law required that the application for a refund filed after 30 days be filed within six months after the due date in order to receive a refund subject to the 50% penalty. The due date for nonprofit entities and certain hospitals is October 15 following the first six months of a calendar year and April 15 following the second six months. The due date for governmental entities is six months after the end of each fiscal year. The Department of Revenue had suggested to the Revenue Laws Study Committee that the statute of limitations for late filings of applications for sales tax refunds for these nonprofit entities, governmental entities, and hospitals be extended from six months to three years in order to bring them in line with the due date for applications for tax refunds for all other taxes, except those on property, as set out in G.S. 105-266 and G.S. 105-266.1. In past years, bills have been introduced for refunds for nonprofit entities and State agencies whose refunds have been barred because their applications were filed six months after the due date. The Department of Revenue informed the Revenue Laws Study Committee that by increasing the filing deadline to three years, most of the refund legislation could be eliminated. The extension of sales tax refunds for these nonprofit entities, governmental entities and hospitals is effective January 1, 1998. However, notwithstanding the three-year extension, the act provides that an application for a refund of sales taxes paid by a nonprofit entity or hospital is timely filed if it is filed within four years after the due date and before July 1, 1998. This one-time provision is effective immediately, but the Department of Revenue will not issue a sales tax refund for these nonprofit entities or hospitals until July 1, 1998.

The act also extends the time for filing an application for a refund on motor fuel taxes and alternative fuel taxes from six months to three years. The act further amends the tax laws affecting motor fuel and alternative fuel by assessing sales and use tax on (1) motor fuel for which a refund of the motor fuel tax is allowed because the motor fuel is accidentally mixed with some other type of fuel or the motor fuel is used in a boat, and (2) alternative fuel and motor fuel for which a refund of the fuel tax is allowed for fuel used for other than to operate a licensed highway vehicle or for fuel used in certain vehicles with power attachments. Prior law exempted motor fuel and alternative fuel from sales tax, regardless of whether the fuel was taxed or a refund of the tax paid was allowed.

The act provides that any sales and use tax due on motor fuel used other than to operate a licensed highway vehicle or used in certain vehicles with power attachments, is to be subtracted from any refund a taxpayer receives on motor fuel tax paid on that fuel. Prior law allowed a refund on motor fuel tax paid on fuel used for off-highway purposes or in certain vehicles with power attachments and no sales tax was deducted or payable. This refund was for the flat cents per gallon rate less one cent. The one cent was retained to liquidate highway bonds. The act sets out a formula for determining the sales and use tax to be deducted from the motor fuel tax refund. This formula provides that the price of motor fuel subject to sales tax is the average of the wholesale prices used to determine the fuel tax rates in effect for the two six-month periods of the year for which the refund is claimed. The one cent holdback is eliminated by the act, because the highway bonds have been paid off. The changes to the tax laws effecting motor fuel and alternative fuel taxes become effective January 1, 1998, and apply to taxes paid on or after that date.

The maximum loss to the General Fund from extending the refund period from six months to three years is not expected to exceed $200,000 annually. The gain in General Fund revenues from changes made to the sales tax on motor fuels is estimated to be $797,525 annually. The net revenue loss to the Highway Fund from the elimination of the one-cent holdback is $200,000 annually.

Extend and Modify Ports Tax Credit (S.L. 1997-443, Sec. 29.1; SB 352, Sec. 29.1): Section 29.1 of S.L. 97-443 extends the sunset of the State ports income tax credit from February 28, 1998, to February 28, 2001, and increases the maximum cumulative credit from $1 million to $2 million per taxpayer. This increase is effective for taxable years beginning on or after January 1, 1998. The act is expected to reduce General Fund revenues by $500,000 in 1998-99. 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 taxable year. Any excess credit may be carried forward and applied to the taxpayer's income tax liability for the next five years.

The 1992 General Assembly enacted the State ports income tax credit to encourage exporters to use the two State-owned port terminals at Wilmington and Morehead City. When enacted, the credit applied to amounts paid by a taxpayer on cargo exported at either port. In 1994, the General Assembly expanded the credit to include all amounts assessed on exported cargo, regardless of who paid the shipping costs. In 1995, the

General Assembly expanded the credit to include imports and allowed a credit for break-bulk cargo and container cargo imported at either Wilmington or Morehead City and for bulk cargo imported at Morehead City. It did not allow a credit for bulk cargo imported at Wilmington. The credit for bulk exports was also limited to bulk exports at the Morehead City terminal. The 1996 General Assembly expanded the State ports income tax credit to include the importing and exporting of forest products at the Wilmington terminal. Forest products are a type of bulk cargo.

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.

Food Tax Reduction/Fee Changes (S.L. 1997-475; SB 727, as amended by S.L. 1997-456, Sec. 55.3; HB 115, Sec. 55.3): S.L. 97-475 reduces the State sales tax on food, sets the insurance regulatory charge and the public utility regulatory fee, clarifies the basis for calculating the insurance regulatory charge, provides that most corporate annual reports will be filed with the Department of Revenue rather than the Secretary of State, and makes other changes not related to the tax law.

Part I of the act reduces the State sales tax on food from 3% to 2%, effective July 1, 1998, and is expected to reduce General Fund revenues by about $90 million a year. In 1996, the General Assembly reduced the State sales tax on food from 4% to 3%, effective January 1, 1997. This act does not repeal or reduce the local 2% sales tax on food. The reduced State sales tax rate applies to food that may be purchased with food stamps. Federal law determines what can be purchased with food stamps and, therefore, what food is subject to the reduced State sales tax.

Examples of food items that are subject to the reduced State sales tax rate 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 therefore remain subject to the 4% State sales 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.

Part II of the act increases the insurance regulatory charge from 7.25% to 8.75% for the 1997 tax year and is expected to generate an additional $3 million in revenue. The insurance regulatory charge was first imposed in 1991 in order to make the Department of Insurance receipt-supported and thereby eliminate General Fund support of the Department. The regulatory charge is imposed on insurance companies that pay the gross premiums tax, other than service corporations such as BlueCross BlueShield and Delta Dental Corporation. Health maintenance organizations do not pay the regulatory charge

because they do not pay the gross premiums tax. The charge is a percentage of the insurance company's premiums tax liability.

In 1995, the General Assembly eliminated the insurance audit and examination fees for insurance companies, HMOs, medical corporations, and guaranty associations. The revenue generated by these audit fees was an estimated $4.5 million annually. Consequently, the costs of the audits is now paid for by the insurance regulatory charge as part of the costs of regulating the insurance industry. The increase in the regulatory charge proposed by this act will not fully compensate the General Fund for the 1995 change in the audit fee provisions. The regulatory charge will need to be increased another 0.35% to 9.10% in 1998-99 to fully fund the action taken by the General Assembly in 1995.

Part II of this act also clarifies that the premiums tax liability upon which the charge is levied is not reduced by any tax credits allowed a taxpayer for guaranty or solvency fund assessments. It also makes two technical changes. It deletes the reference to insurance companies regulated under Article 66 of Chapter 58 because no insurance company is regulated under that Article. That Article is the Hospital, Medical and Dental Service Corporation Readable Insurance Certificates Act. It also deletes references to tax paid under G.S. 97-100. Self-insurers pay premiums tax under Article 8B of Chapter 105 of the General Statutes.

Part III of this act decreases the public utility regulatory fee levied in G.S. 62-302 from 0.10% to 0.09% for the 1997 tax year and is expected to reduce the fee revenue by $870,000. The utility regulatory fee was imposed in 1989 in order to defray the State's cost in regulating public utilities. This act reduces the fee because the lower rate, combined with other available revenues, will generate sufficient funds for the estimated costs of operating the North Carolina Utilities Commission and the Public Staff. The regulatory fee is imposed on all utilities that are subject to regulation by the Utilities Commission. The fee is a percentage of the utility's North Carolina jurisdictional revenue. In general, jurisdictional revenue is revenue derived from providing utility service in North Carolina.

Parts IV and V of this act make changes that are not related to the tax law. Part VI of this act provides that most business corporations will file their corporate annual report with the Department of Revenue at the same time that they file their corporate income and franchise tax returns, and raises the annual report filing fee from $10 to $20. Increasing the fee will generate an additional $1.25 million in revenue each year and transferring the corporate report filing to the Department of Revenue will increase the Department's operating costs by about $112,000 a year. Under prior law, the corporate annual reports were filed with the Secretary of State on the anniversary of the business' incorporation. This Part becomes effective January 1, 1998, but reports filed with either the Department of Revenue or the Secretary of State during the 1998 calendar year will be considered filed with the correct agency.

This Part of the act is one of the recommendations of the General Statutes Commission. The change is designed to make filing annual reports easier for corporations, to set the due date for the annual report at the due date for filing tax returns (which is a more familiar deadline than the current due date), to allow corporations the benefit of making a single filing with one agency rather than multiple filings with

different agencies, and to reduce inadvertent failures to file the annual report. Any amendments to annual reports will continue to be filed with the Secretary of State.

Insurance companies will continue to file their annual reports with the Secretary of State, but on a day set with reference to tax filing dates rather than on the anniversary of their incorporation. The Secretary of State and the Secretary of Revenue are required to prescribe a form jointly for annual reports. The contents of the annual report are being changed to delete the requirement that the names of directors be included in the report because this information is considered not useful to the public. This Part also authorizes a corporation to certify that there are no changes from the previous annual report in order to eliminate the burden of filling out repetitious reports.

Modify Setoff Debt Collection (S.L. 1997-490; SB 39): S.L. 97-490 modifies the Setoff Debt Collection Act, Chapter 105A of the General Statutes. Under that Act, the Department of Revenue sends the income tax refund of an individual who owes money to a State agency to that agency in payment of the debt rather than to the individual. The individual's income tax refund is therefore set off against the debt the individual owes the State agency .

The Revenue Laws Study Committee recommended this act to the 1997 General Assembly. The modifications made to the Setoff Debt Collection Act apply to tax refunds determined on or after January 1, 2000. The act expands and streamlines the setoff program as follows:

1. It requires all State agencies not given a waiver by the State Controller to use the setoff program to collect debts owed the agency. Under existing law, the State agencies that are included in a list in the statute must use the setoff program to collect debts and those that are not listed cannot use the setoff program.
2. It extends the setoff program to local units of government and their agencies and establishes the procedures local units and their agencies must follow to use the setoff program. The act allows, but does not require, local entities to use the setoff program.
3. It streamlines the setoff program by eliminating several unnecessary notices between the Department of Revenue and the claimant agencies. It accomplishes this by allowing the Department to place refunds of debtors of State agencies in escrow while the State agency finalizes the setoff.
4. It shifts the cost of the program from the agencies whose debts are collected to the debtors who owe the debts, sets a $15 cap on the fee imposed for collection through setoff, and shifts the cost of collecting child support debts from all the State agencies that use the setoff program to an earmarking of income tax collections.
5. It clarifies and reorganizes some of the provisions in the Setoff Debt Collection Act.

Expansion to All State Agencies: The Setoff Debt Collection Act currently requires certain named State agencies to participate. Other State agencies may not participate, even on a voluntary basis. The act extends the mandatory State program to all State agencies, as recommended by the State Controller's Office, which administers the Statewide accounts receivable program pursuant to G.S. 147-86.22. If a State agency's

use of the program would not be practical or cost effective in certain cases, the State Controller could waive the requirement.

Expansion to Local Governments: The idea to expand the setoff program to local entities originated with Senate Bill 761 of the 1995 Session, introduced by Senator Conder. The act authorizes local governments to submit their debts for collection by setoff only after providing the debtor with notice, an opportunity to be heard before the local government, and an appeal process pursuant to the Administrative Procedure Act. After completing this process, the agency can submit the debt through the League of Municipalities, the Association of County Commissioners, or another clearinghouse. Funneling the debts through a clearinghouse rather than having each local government submit its own debts will avoid placing an undue administrative burden on the Department of Revenue.

Streamlining of Program: Under existing law, the setoff process requires three notices to the Department by the claimant agency, two notices by the Department to the agency, and two notices to the taxpayer. The act eliminates two of the notices to the Department by claimant agencies and one of the notices by the Department to claimant agencies.

Before the effective date of this act, the procedure is as follows: A State agency notifies the Department of a debt. The Department checks to see if the debtor will be receiving a tax refund. If so, the Department notifies the agency that the debtor is entitled to a refund. The agency then sends the Department and the debtor a notice of intent to apply the refund to the debt. After any hearing requested by the debtor, the agency sends the Department a notice of certification of the debt. The Department then applies the tax refund to the debt and notifies the taxpayer and the agency of the setoff. If the debt is less than the refund, the Department sends the balance of the refund at the same time.

Under the act, a claimant agency sends the Department notice of the debt and the Department immediately sets off the debt against the refund and notifies the taxpayer and the claimant agency. A local agency cannot notify the Department of a debt until after the debt has been established through notice to the debtor and a hearing, if requested. A State agency can notify the Department of a debt, have the refund placed in an escrow for the agency, notify the debtor and hold any hearing requested, and then disburse the escrowed amount accordingly.

The act gives a debtor the same procedural and substantive rights as under existing law, including the right to interest on any part of the refund found not to be a valid debt. Under existing law, a debtor is notified of a potential setoff and the right to contest the setoff. The debtor receives the same notifications under this act. Also, under the act, if an agency fails to give the debtor the required notice, the agency must return the entire refund to the debtor even though a debt is owed.

Collection Assistance Fee Changes: Before the effective date of this act, the cost of administering the setoff debt collection program was paid by the State agencies whose debts were collected by setoff. Under both existing law and this act, each year, the Department of Revenue determines its costs of running the program and recovers these costs by charging a collection assistance fee as a percentage of each debt collected. The act caps this fee at no more than $15 per debt. The actual fee is expected to be less.

The act shifts the burden of paying the administrative costs of most setoffs from participating State agencies to the debtors. Under existing law, except in the case of child support debts, the Department of Revenue retained the collection assistance fee from each setoff and reduced the amount paid to the agency by the amount of the fee. The agency therefore absorbed the cost of collecting the debt by receiving less than the full amount of the debt. Under the act, the Department of Revenue still retains the collection assistance fee but the fee is added to the debt and paid by the debtor from the refund rather than subtracted from the amount payable to the agency. As a result, the debtor will pay the fee out of the tax refund that was set off. This change shifts approximately $270,000, which is the cost of collecting about 39,000 debts, from State agencies' budgets to debtors.

Under existing law, the Department of Human Resources and their county counterparts use the debt setoff program to collect child support arrearages pursuant to the federal Child Support Enforcement Program. Since January 1, 1996, rather than deducting its administrative costs from amounts collected for child support arrearages, the Department of Revenue has been required to spread among other State agencies the portion of the Department's administrative costs attributable to child support collections. That change shifted child support setoff administrative costs from child support collections to other setoff collections, resulting in an increase in the percentage deducted from those other collections. The act directs the administrative costs of collecting child support arrearages to be drawn from income tax collections rather than deducted from the amounts collected on behalf of other State agencies. The General Fund bears the cost in either case, but under the act the cost does not come from amounts appropriated to State agencies for other purposes.

Relief for Federal Retirees (S.L. 1997-499; HB 537): S.L. 97-499 provides the following additional relief to federal retirees who paid unconstitutional North Carolina income tax on their federal retirement benefits in 1985, 1986, 1987, and 1988, but did not protest or request a refund within 30 days as required by law:

1. It allows federal retirees to carry forward for two years the unused portion of their tax credit for payment of these unconstitutional taxes if they cannot claim the entire credit because the credit exceeds their tax liability.
2. It allows the surviving spouse of a deceased federal retiree to claim the decedent's tax credit, including the two-year carryforward. If there is no surviving spouse, the decedent's estate may take the credit, but not the two-year carryforward.

The act is effective retroactively to the 1996 tax year. It requires the Secretary of Revenue to reimburse the General Fund for the costs of the additional tax relief by transferring $8 million of excess funds in a reserve account created in 1996.

In 1996, the General Assembly enacted legislation giving 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. If a federal retiree paid these 1985-88 pension taxes under timely protest, the retiree already received a refund as required by existing law. The 1996 legislation, estimated to cost the General Fund $117 million over three years, provided relief to nonprotesters, who were not legally entitled to a refund or credit.

The 1996 legislation allowed partial refunds and credits as follows: federal retirees

who did not make a timely protest and who would owe North Carolina income tax were authorized to take a State income tax credit equal to the amount of pension taxes they paid. The tax credit was allowed in three equal, annual installments, one for the 1996 tax year, one for the 1997 tax year, and one for the 1998 tax year. For a taxpayer whose 1996 tax liability was less than 5% of the pension taxes the taxpayer paid during 1985-88, a one-time refund equal to 85% of the pension taxes was allowed in lieu of the credit. The taxpayer was required to claim this refund by April 1, 1997. The 1996 legislation provided that if a federal retiree who would otherwise be eligible for a credit or refund had died, the retiree's estate could claim the credit or refund.

After the 1996 legislation was enacted, legislators began receiving complaints that this legislation did not provide sufficient relief for surviving spouses or for retirees who did not have enough current tax liability to claim the entire credit. If a retiree eligible for the first installment of the credit for the 1996 tax year died in 1996 or thereafter, the surviving spouse could not claim any of the remaining installments of the credit. The 1996 legislation authorized the estate to claim the credit, but estates often have little or no tax liability against which a credit could be claimed. This act addresses this complaint by allowing surviving spouses to claim the credit. The other complaint received was from taxpayers who were ineligible for the 85% refund because their tax liability equaled 5% or more of the amount of pension taxes they paid for 1985-88. Those taxpayers might receive a credit equal to anywhere from 15% to 100% of the pension taxes, depending upon whether they had enough tax liability against which to claim the credit. The credit allowed is nonrefundable, i.e., to the extent it exceeds the taxpayer's tax liability, it is lost. Taxpayers with lower liability would receive credit for less than 100% of their pension taxes. This act addresses this complaint by allowing taxpayers to carry the unused portion of the credit forward to the following two tax years: 1999 and 2000.

The legislative history of the 1996 legislation indicates that the General Assembly intended that some taxpayers would not receive 100% credit, either because they died in 1996 or later or because their potential credit exceeded their tax liability against which it could be claimed. In the 1996 Second Extra Session, the Senate and the House of Representatives had different approaches to granting relief to nonprotesters for the taxes they paid on their federal pensions from 1985 through 1988. The House passed House Bill 30, which would have provided a full refund of all taxes paid, through a refundable credit payable over four years. If the retiree died, the surviving spouse or estate was entitled to the refund. The estimated cost of the proposal was a total of $142.8 million. In contrast, the Senate passed a Senate Committee Substitute for House Bill 30 that provided only partial relief for an estimated total cost of $117.7 million. This version of the bill provided only nonrefundable credits and did not provide relief for surviving spouses of deceased retirees. The matter went to conference and the Senate plan prevailed. The two limitations now complained of are the reason the Senate plan cost less than the House plan in 1996.

Revenue Officers' Police Powers (S.L. 1997-503; SB 853): S.L. 97-503 authorizes the Secretary of Revenue to appoint employees of the Criminal Investigations Division and the Unauthorized Substances Tax Division as revenue law enforcement officers. An employee must be certified as a criminal justice officer under the N.C. Criminal Justice

Education and Training Standards Commission to serve as a revenue law enforcement officer.

The Unauthorized Substances Tax Division officers will have subject-matter jurisdiction to enforce the excise tax on unauthorized substances. The Criminal Investigations Division officers will have subject-matter jurisdiction to enforce the felony tax violations in G.S. 105-236 and to enforce any of the following criminal offenses when they involve a tax imposed under Chapter 105 of the General Statutes: embezzlement of State property, embezzlement of funds, obtaining property by false pretenses, forgery, and uttering forged paper. A revenue law enforcement officer has Statewide jurisdiction within the officer's subject-matter jurisdiction. The officer may serve and execute notices, orders, warrants, or demands issued by the Secretary of Revenue or the courts, and may use the powers of arrest in executing these papers.

As law enforcement officers, these Department of Revenue employees will be entitled to increased pension benefits such as a 5% contribution to a 401(k) plan, early retirement, enhanced compensation for work-related disability, and a separation allowance that increases benefits for an officer who retires before becoming eligible for social security (the allowance ends when the officer begins receiving social security). The act requires the Department of Revenue to use $67,503 of its operating appropriations for the 1997-98 fiscal year to pay for the increased costs.

Exempt Audiovisual Masters (S.L. 1997-521; HB 1057): S.L. 97-521 creates a new State and local sales and use tax exemption, effective October 1, 1997. The new exemption is for audiovisual masters. An audiovisual master is the film, tape, or other storage device that is made or used by a production company to make more copies of the film or tape. The act will reduce State sales tax revenues by approximately $1 million in fiscal year 1997-98 and by approximately $1.59 million in fiscal year 1998-99. The act will reduce local sales tax revenues by approximately $500,000 in fiscal year 1997-98 and by approximately $800,000 in fiscal year 1998-99.

Because it is levied on the retail price, the tax at issue in this act applies to the value of all production and post-production work that goes into creating a film, video, or commercial. Assume, for example, that a politician contracts with an advertising agency to have a political commercial made. The agency then films or contracts with others to film the politician in action. When the filming is completed, the agency contracts with a company to edit the film and put it in a finished form with sound and any narration. When the finished product (the audiovisual master) is delivered by the agency to the politician, a sales tax applies to the sale of that finished product. The tax is computed on the value of all the services that went into the finished product, such as acting fees or other charges.

According to the North Carolina Film Office, most post-production work on films is done in California or New York but the post-production work on commercials and videos is done in many other places. South Carolina and Virginia do not tax audiovisual masters, so a lot of production companies choose to do post-production work on commercials and videos is done in those states. The exemption provided by this act should remove a disincentive for production companies to work in North Carolina.

Exempt Severance Pay (S.L. 1997-525; SB 1065): S.L. 97-525 expands the income tax exclusion for severance pay received due to the closing of a manufacturing plant and modifies the cap on the exclusion, effective beginning with the 1998 tax year. It is expected to reduce General Fund revenues by a little more than $2 million in fiscal year 1998-99.

In 1996, the General Assembly enacted an income tax exemption for 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. The exemption was expected to reduce General Fund revenues by approximately $4 million a year. This act expands the tax exemption to include severance pay received due to any involuntary termination through no fault of the employee. The expanded exemption would include being fired without cause, being laid off due to a reduction in force, as well as being terminated due to a plant closure. It would not include voluntary early retirement or being fired for cause. The act also expands the tax exemption to cover any type of job in the private or public sector, not just a job at a manufacturing plant.

Some taxpayers were able to avoid the $35,000 cap by arranging to receive part of the severance pay in December and the rest in January. The act closes this loophole by clarifying that the $35,000 cap applies to the total amount paid to an employee by an employer for the same termination, regardless of when the taxpayer receives the money.

MAJOR PENDING LEGISLATION

Simplify and Reduce Inheritance Tax (HB 13): The original bill phased out the inheritance tax over a five year period and retained a State estate tax that was equivalent to the federal state death tax credit allowed on a federal estate tax return. The Senate amended the bill to provide for an across-the-board cut in the inheritance tax of 9% beginning July 1, 1998, and ending October 1, 2000. The bill is in the House Rules Committee.

School District Sales Tax Refunds (HB 271): This bill would add local school administrative units to the list of governmental entities that may obtain an annual refund of the State and local sales and use taxes paid by them. The bill is in the Senate Finance Committee.

No Sales Tax on Pay Phones (HB 1126): This bill would exempt from sales tax pay telephone calls that are paid for by coin. The bill is in the Senate Finance Committee.

Clean Water Bond Bill (SB 232): The Senate version of the bill authorizes the issuance of $1 billion Clean Water Bonds if approved by the voters in a referendum on the issue. The House amended the bill to provide a 10% reduction in inheritance tax for the fiscal year 1997-98 and a 20% reduction in 1998-99. The bill has been received in the Senate for concurrence.

Local Government Debt Changes (SB 317): This bill gives all counties the same authority that 52 counties now have to acquire and improve property to be used by their

local boards of education, it requires certain nonvoted local debt to be included in determining whether the net debt of the local unit meets the statutory debt limitation of 8% of the assessed value of property in the local unit, and it establishes a new 1% debt limit for nonvoted debt and allows the limit to be exceeded only by a vote of the people. The bill is in the House Finance Committee.

Modify Corporate Dividend Taxation (SB 841): The Senate version of the bill extends the deduction for subsidiary dividends to corporations domiciled in other States and it clarifies that dividend income can be either business income or non-business income. The House amended the bill to allow local school administrative units to obtain a refund of sales and use taxes paid by them. The bill is in the Senate Finance Committee.

STUDIES

Legislative Research Commission

The 1997 Studies Bill (S.L. 1997-483; SB 32) authorizes the Legislative Research Commission to study the following issues related to taxation: (1) Dedicated Sources of Revenue (Sec. 3, (2.4)); and (2) Venture Capital and Business Financing (Sec. 3, (2.1)(29)).

Independent Studies, Boards, Etc.

Revenue Laws Study Committee (S.L. 1997-483, Part XIV; SB 32, Part XIV): S.L. 97-483, Part XIV, establishes a permanent, statutory Revenue Laws Study Committee to study the revenue laws of North Carolina and the administration of those laws and to review the State's revenue laws to determine which laws need clarification, technical amendment, repeal, or other change to make the laws concise, intelligible, easy to administer, and equitable. Section 14.2 specifically direct this Committee to study the franchise tax structure, income tax deductions and credits for health care and property tax issues. The act also directs the Committee to evaluate the effectiveness of the State's tax incentives for economic development.

XVII. TRANSPORTATION

(Brenda Carter, Giles Perry

Ratified Legislation

Division of Motor Vehicles

Modify Emissions Inspection Laws (S.L. 1997-29; SB 260): This act, which was recommended by the Joint Legislative Transportation Oversight Committee, modifies the penalty schedule for violations of the vehicle emission inspection program, clarifies the procedure for imposing the penalties, and make other changes to the vehicle emission inspection law as recommended by the Environmental Review Commission. Under existing law, a motor vehicle is subject to an emissions inspection if it is a 1975 or later model, and it is required to be registered in an "emissions county" as indicated in the statute. An emissions county is one in which the State either is required by federal law to conduct emissions testing or has agreed to conduct emissions testing. Emissions inspections are currently required in Cabarrus, Durham, Forsyth, Gaston, Guilford, Mecklenburg, Orange, Union, and Wake counties. The act made forgery of an inspection sticker and related acts a Class I felony, effective for offenses committed on or after November 1, 1997, and made all other changes effective July 1, 1997. A technical change to correct a statutory citation was subsequently made by S.L. 97-456; HB 115, Section 35.

Two Year Driver Instructor License (S.L. 1997-33; HB 178): S.L. 97-33 increases from one year to two years the duration of a license issued by the Division of Motor Vehicles for a commercial driver training school or a commercial driver training instructor under Article 14 of Chapter 20. The fee rate for the license remains the same. The act became effective July 1, 1997.

Fail Community Service/Revoke License (S.L. 1997-234; SB 393): This act requires the revocation of a person's drivers license or limited driving privilege for willful failure to complete court-ordered community service, and provides that the limited driving privilege granted a person convicted of impaired driving will be revoked until any delinquent community service requirement has been met. On the basis of information provided by the clerk of court, DMV will revoke the license of any person who has willfully failed to complete court-ordered community service when the court has issued a revocation order. The revocation continues in effect until DMV receives certification from the clerk of court that the person has completed the court-ordered community service. The act also amends G.S. 20-179.4 and 143B-475.1, to provide that community service coordinators will be appointed in consultation with the chief district court judge. Prior law provided that the judge must be consulted with and must approve the appointments. The act became effective October 1, 1997 and applies to any person hired or to any person notified of a hearing to determine if the person has willfully failed to perform community service on or after that date.

Branch Agent Reimbursement Rate (S.L. 1997-443, Sec. 32.7; SB 352, Sec. 32.7): Sec. 32.7 of S.L. 97-443 sets the reimbursement rate for Division of Motor Vehicle commission contractors at $1.35 or $1.20 per transaction, specifically describes those tasks that constitute a transaction, and specifies the rate that applies to each. The section became effective July 1, 1997.

Federal Drivers Privacy Protection Act (S.L. 1997-443, Sec. 32.25; SB 352, Sec. 32.25): Sec. 32.25 of S.L. 97-443 requires the Department of Transportation to restrict access to personal information in motor vehicles records in accordance with the Federal Driver's Privacy Protection Act of 1994. The federal act authorizes but does not require States to establish a procedure to ask any persons applying for a license or registration if they will allow the disclosure of personal information in their record for marketing, or for any other purpose. Section 32.25 of S.L. 1997-443 authorizes DMV, on and after July 1, 1998, to establish a procedure to ask any person applying for a title, or filing application for a leased vehicle, if they will allow personal information in their records to be disclosed. The section became effective July 1, 1997.

Salvage Vehicles Inspections (S.L. 1997-443, Sec. 32.26; SB 352, Sec. 32.26): Since 1989, the Enforcement Section of the Division of Motor Vehicles has been required by G.S. 20-71.3 to do preliminary and final inspections of all vehicles that have been damaged in collisions, and are to be retitled. This generally means vehicles that have been totaled and are being repaired for resale. Section 32.26 of S.L. 1997-443 reduces the number of these inspection by about half, by requiring DMV to only inspect vehicles *up to six model years old.* This section became effective July 1, 1997.

Department of Motor Vehicles Medical Information Immunity (S.L. 1997-464; HB 231): The act creates G.S. 20-9.1, which provides civil and criminal immunity to a North Carolina licensed physician or psychologist for disclosing to the Commissioner of Motor Vehicles a mental or physical disability that the physician or psychologist believes impairs a patient's ability to safely operate a motor vehicle. Disclosures authorized under the new provision may only include the patient's name, address, date of birth, and diagnosis. The information must be kept confidential by the Commissioner, and may only be used to determine whether the person is competent to operate a motor vehicle. In any liability proceeding brought as a result of a disclosure or nondisclosure under this section, the person bringing the action would have to show lack of good faith and the existence of malice on the part of the physician or psychologist. The bill also provides immunity for physicians providing medical information and testimony regarding a pilot to a government agency responsible for licensing pilots or to a government agency responsible for air safety. The bill became effective September 1, 1997.

Drivers Licenses/Vehicle Registration

Motorcycle License Changes (S.L. 1997-16, Secs. 8 and 9; HB 248, Secs. 8 and 9; as amended by S.L. 1997-456, Secs. 32, and 33; HB 115, Secs. 32 and 33): Sections 8 and 9

of S.L. 97-16, as amended by Sections 32 and 33 of S.L. 97-456, authorize DMV to issue a motorcycle learner's permit to a person with a full provisional license or a regular drivers license who passes a vision, road sign, and written test. In addition, these sections provide that a person may obtain a motorcycle endorsement if they pass a road test and a written or oral test, and they have a full provisional drivers license or a regular drivers license. These sections become effective December 1, 1997.

Graduated Drivers Licenses (S.L. 1997-16; HB 248, as amended by S.L. 1997-443, Sec. 32.20; SB 352, Sec. 32.20 and S.L. 1997-456; Secs. 32 and 33; HB 115, Secs. 32 and 33): S.L. 97-16, as amended, changes the statutes governing licensing of new drivers to institute a graduated licensing system. Beginning December 1, 1997, any person under the age of 18 who does not already have a learner's permit or license will be required to be licensed by level, as described below.

Level 1 A person who is at least fifteen years old and who has completed an approved drivers education course may apply for a Level 1 limited learner's permit. A Level 1 driver must be supervised at all times by a parent or guardian seated next to the driver, every person in the vehicle must be retrained by a seat belt or child seat, and, for the first six months under this level, the driver is restricted to driving between 5 a.m. and 9 p.m.

Level 2 At age 16, a person who has completed one year with a Level 1 limited learner's permit with no moving or seat belt violations may apply for a Level 2 limited provisional license. A Level 2 driver may drive without supervision *only* between the hours of 5 a.m. and 9 p.m., to and from work, or as a member of a volunteer fire or rescue squad. The driver and every person in a vehicle operated by a Level 2 driver must be restrained by a seat belt or child seat.

Level 3 If the Level 2 limited provisional license holder completes six months of driving with no moving or seat belt violations, the driver may apply for a Level 3 full provisional license. A Level 3 full provisional license is not subject to the additional restrictions of Level 1 and 2.

Other provisions S.L. 97-16 contains additional provisions governing licensing persons between 16 and 18 who move into North Carolina; setting a $10 fee for a Level 1 limited learner's permit and a Level 2 limited provisional license; clarifying that approved drivers education must include six hours of actual driving, and authorizing a motorcycle learner's permit.

The act becomes effective December 1, 1997.

Sixty Days to Change Department of Motor Vehicle Info (S.L. 1997-122; SB 167): S.L. 97-122 establishes 60 days as the standard time period in which a new resident of this State must obtain a drivers license, a special identification card, or a vehicle registration and in which a current resident of this State must notify the Division of a change of address or name. It also makes standard a requirement that a person whose name changes notify the Division of the change within 60 days. Further, it establishes a standard requirement that a person who has not moved but whose address has changed must notify the Division of the change. Finally, it makes clarifying changes to the affected statutes. Under current law, some of these time periods are 30 days, some are 60

days, and some are unlimited and no notice is required in some instances for a change of name. The act becomes effective December 1, 1997.

Increase Amount for Insurance Point (S.L. 1997-332; SB 234): See **HEALTH AND INSURANCE.**

Dropout Prevention/Drivers License (S.L. 1997-507; HB 769): See **EDUCATION.**

Driving While Impaired

UNC Alcohol Studies Fund (S.L. 1997-377; HB 524): The act raises the cap on the amount of drivers license restoration fees that will be deposited in a fund for alcohol studies endowment at UNC-Chapel Hill. The restoration fee is paid to DMV before a new license is issued to a driver whose license has been revoked, and is in addition to any other fees that may be required by law. Under existing law, except for persons convicted of impaired driving, any person whose drivers license has been revoked must pay a restoration fee of $25 in order to receive a new license. A person whose license has been revoked for an impaired driving offense must pay a restoration fee of $50 until the end of the fiscal year in which the cumulative total amount of such fees deposited in the General Fund reaches $10 million *(formerly $5 million).* The additional $25 restoration fee imposed on impaired driving offenders is deposited in the General Fund, with the intention that it be appropriated to the Board of Governors of UNC to be used for the Center for Alcohol Studies Endowment at UNC-Chapel Hill. The act became effective August 7, 1997.

Governor's D.W.I. Initiative (S.L. 1997-379; HB 448, as amended by S.L. 1997-456, Sec. 34; HB 115, Sec. 34): S.L. 97-379 strengthens the law which allows seizure of vehicles when used in driving while impaired offenses when the license has been revoked for an impaired driving offense, increases the penalty for driving while impaired, increases the mandatory administrative license revocation period for driving while impaired, strengthens the punishment for habitual impaired driving, and makes other changes related to the enforcement of DWI laws.

Seizure of Vehicles Used in DWI Offenses

S.L. 97-379 amends the laws regarding the forfeiture of vehicles that are used in DWI offenses. A vehicle is subject to forfeiture if the judge determines, at the sentencing hearing for a driving while impaired offense, that the defendant was driving with a revoked license at the time of the offense, and that the revocation was a result of an impaired driving offense. The prosecutor is required to determine who owns the car and whether there are any security interests noted on the title. The State must then notify the holder of each security interest, and if the defendant is not the owner, notice must be served on the owner.

If the defendant is a registered owner of the vehicle, the judge must order that the vehicle be forfeited. If the defendant is not a registered owner, the judge must order forfeiture unless the registered owner establishes by the greater weight of the evidence that the owner is an innocent party. If the registered owner establishes that they are an

innocent party, the judge may order the vehicle released to the registered owner under specific conditions. An innocent party is defined as a registered owner that did not know and had no reason to know that the defendant's license was revoked, or knew that defendant's license was revoked, but the defendant drove the vehicle without the innocent party's express or implied permission.

If the vehicle is forfeited the judge may authorize the school board to sell the vehicle at judicial sale after notice to the registered owner and lienholders or to retain the vehicle for the board's own use. The judge may also release the vehicle to an innocent party lienholder under certain circumstances.

S.L. 97-379 also adds provisions requiring a law enforcement officer to seize and impound a vehicle when the officer has probable cause to believe that the vehicle is subject to forfeiture. Provisions are included for review of the impoundment by a magistrate and release of the vehicle pending trial if certain conditions are met. If a vehicle is impounded and no probable cause is found or the defendant is found not guilty the vehicle is returned to the registered owner.

Increase Penalty for Driving While Impaired Offenses

S.L. 97-379 amends G.S. 20-179 to change the punishment for DWI offenses as follows:

1. Level I Punishment - Any term of imprisonment may only be suspended if a condition of special probation is imposed that requires the defendant to serve a minimum of 30 days imprisonment. (Previous law required a minimum of 14 days or at least 4 consecutive days and house arrest for twice the number remaining of the 14 days.)
2. Level II Punishment - Any term of imprisonment may only be suspended if a condition of special probation is imposed that requires the defendant to serve a minimum of 7 days imprisonment. (Previous law required a minimum of 7 days or at least 2 consecutive days and house arrest for twice the number remaining of the 7 days.)
3. Levels III, IV and V Punishment - Removes the requirement in the previous law that an active sentence be suspended, therefore the law now allows active time for these levels of punishment.
4. Amends all levels of punishment to require all defendants placed on probation to obtain a substance abuse assessment. Also requires any defendant given active time to obtain a substance abuse assessment before becoming eligible for parole.
5. Amends G.S. 20-179(k1) regarding credit for inpatient treatment, to allow the trial judge to order that costs of treatment be absorbed by the State.

Increase Administrative License Revocation Period

S.L. 97-379 amends G.S. 20-16.2 and G.S. 20-16.5 to increase the immediate civil revocation period from 10 days to 30 days. There is a provision to allow a limited driving privilege after 10 days if: (1) at the time of the offense, the defendant held either a valid driver's license or a license that had been expired for less than one year; (2) the defendant has no other unresolved pending DWI offenses or intervening DWI convictions; and (3) the defendant obtains a substance abuse assessment and registers for and agrees to participate in any recommended training or treatment program.

Make Alcohol Screening Tests Admissible to Prove Offense of Driving after Drinking by a Person Under 21

S.L. 97-379 amends G.S. 20-138.3 (driving by a person under 21 after consuming alcohol or drugs) to allow the results of an alcohol screening test or a refusal to test to be used by law enforcement, the court or an administrative agency in determining if alcohol was present in the driver's body. There is also a provision that states that the odor of alcohol is not sufficient evidence to prove beyond a reasonable doubt that alcohol was present in the driver's body, unless the driver was offered an alcohol screening test and refused to provide the required samples.

Allow Drug Testing for Driving While Impaired

S.L. 97-379 amends G.S. 20-139.1 to provide that a person may be requested, under G.S. 20-16.2, to submit to chemical analysis of blood or other bodily fluid in addition to or in lieu of breath analysis. A refusal of such testing is "willful refusal" under G.S. 20-16.2.

Habitual Impaired Driving

S.L. 97-379 amends G.S. 20-138.5 by increasing habitual impaired driving to a Class F felony and required that a minimum active sentence of 12 months, which may not be suspended, be imposed. This offense was previously classified as a Class G felony.

The act becomes effective December 1, 1997 and applies to offenses committed on or after that date.

DWI/Felony Prior Record Level (S.L. 1997-486; HB 183): See **CRIMINAL LAW.**

Highways

NC Department of Transportation Engineering/Design Contract (S.L. 1997-196; SB 465): The act authorizes the Department of Transportation to establish fiscal policies for engineering and design contracts which will promote engineering and design quality and ensure maximum competition among competing professional firms. The act amends G.S. 136-28.1(f), and provides that the Department is permitted to solicit, under rules adopted by the Department for all contracts, proposals for professional engineering services and other kinds of professional or specialized services necessary in connection with highway construction, maintenance, or repair. The act became effective June 19, 1997.

Department of Transportation Infrastructure Bank Program (S.L. 1997-428; SB 884): S.L. 97-428 authorizes the Department of Transportation to establish, in conjunction with the State Treasurer, an infrastructure banking program to distribute available federal funds, as authorized by the Intermodal Surface Transportation Efficiency Act of 1991, as amended. The program will use available funds for loans or other financial assistance to other governmental units in the State to finance transportation projects authorized by the federal act. The act became effective August 22, 1997.

Department of Transportation Infrastructure Program (S.L. 1997-428; SB 884): The act grants the Department of Transportation authority to establish, administer, and receive federal funds for a state transportation infrastructure banking program, under the

Intermodal Surface Transportation Efficiency Act of 1991 and the National Highway System Designation Act of 1995. The act authorizes the use of federal and state funds to provide loans through the infrastructure bank to governmental units, including toll authorities, to finance eligible transportation projects. It also requires DOT and the State Treasurer to establish a separate infrastructure banking account with necessary fiscal controls and accounting procedures, and authorizes DOT to establish rules necessary to implement the program. The act provides that the infrastructure banking program will not modify the regional distribution formula for distribution of funds under the Intrastate System and Transportation Improvement Program. The act became effective August 22, 1997.

Highway Fund Allocations (S.L. 1997-443, Sec. 32.3; SB 352, Sec. 32.3): Sec. 32.3 of S.L. 97-443 requires the Controller of the Department of Transportation to allocate at the beginning of each fiscal year from appropriations made to the Department sufficient funds to eliminate all overdrafts on State maintenance and construction projects. This section became effective July 1, 1997.

Unreserved Highway Fund (S.L. 1997-443, Sec. 32.5; SB 352, Sec. 32.5): Sec. 32.5 of S.L. 97-443 provides that if the unreserved credit balance in the Highway Fund on the last day of a fiscal year is greater than the amount estimated for that date in the Current Operations Appropriations Act, the Director of the Budget may allocate part or all of the excess to reserves for: access and public roads, unforeseen events requiring prompt action, or other urgent needs. Any amount not credited to these reserves shall be credited to the reserve for maintenance. In addition, this section requires the Board of Transportation to report monthly to the Joint Legislative Transportation Oversight Committee on the use of funds in the maintenance reserve. The section became effective July 1, 1997.

Resurfaced Roads May be Widened (S.L. 1997-443, Sec. 32.12; SB 352, Sec. 32.12): Sec. 32.12 of S.L. 97-443 authorized DOT to use up to 15% of contract maintenance resurfacing program funds to be used to widen existing narrow pavements that are scheduled for resurfacing. The section became effective July 1, 1997.

Biennial Report on Maintenance Requirements (S.L. 1997-443, Sec. 32.19; SB 352, Sec. 32.19): Sec. 32.19 of S.L. 97-443 requires the Department of Transportation to prepare a biennial state wide survey and report on the maintenance condition and costs of the state highway system, and a state wide maintenance program based on the survey. The Department is directed to present the report to the Joint Legislative Transportation Oversight Committee by November 30 of each even-numbered year. The section became effective July 1, 1997.

License Plates

82nd Airborne Division Plates (S.L. 1997-156; HB 53): S.L. 97-156 authorizes the Division of Motor Vehicles, after receipt of 300 applications, to issue an 82nd Airborne

Division Association license plate to members of the Association. The plate would cost $10, plus the regular registration fee. The act became effective June 6, 1997.

Sheriff's Registration Plates (S.L. 1997-158; HB 704): The act authorizes DMV to issue special registration license plates to current sheriffs and to retired sheriffs who served for at least 10 years before retiring. The initial December 1, 1997 effective date was subsequently amended by SL 97-461; SB 426, Sec. 4, so that the act became effective June 6, 1997.

Dealer/Transporter Plate Changes (S.L. 1997-335; SB 1059): S.L. 97-335 amends the dealer and transporter plate laws. Section 1 rewrites the dealer plate law to require the driver of a vehicle with a dealer plate to: (1) have a demonstration permit to test-drive the vehicle, and have the permit in the vehicle, (2) be an officer or sales representative of the dealer, and be driving for a business purpose, or (3) be an employee of the dealer and be driving in the course of employment. Section 2 limits the number of *transporter* plates a dealer may obtain to the number of *dealer* plates the dealer can obtain; requires transporter plates issued to dealers to bear the words *dealer-transporter*; sets out new sanctions for misuse of dealer-transporter plates; and requires dealer-transporter plates to be issued on a fiscal year basis. The act becomes effective January 1, 1997.

Vietnam Veterans Plates (S.L. 1997-339; HB 299): S.L. 97-399 authorizes the Division of Motor Vehicles to issue a Vietnam Veterans license plate to a veteran who served in Vietnam, upon receipt of at least 300 applications. The plate would cost $10, plus the regular registration fee. The act became effective July 25, 1997.

Smoky Mountains Special Plate (S.L. 1997-427; SB 812): The act authorizes the Division of Motor Vehicles to issue a special registration plate for supporters of the Great Smoky Mountains National Park. The plate would be issuable only if DMV receives at least 300 applications for the plate. A portion of the receipts from sales of the plate will go to The Friends of the Great Smoky Mountains National Park, and will be used for educational materials, preservation programs, capital improvements for the N.C. portion of the park, and operating expenses of the park. The act became effective August 22, 1997.

Magistrates/Truck Special Plates (S.L. 1997-461; SB 426): S.L. 97-461 makes several changes to the law governing special license plates. Sections 1 and 2, effective January 1, 1998, authorize DMV to issue special registration plates for commercial vehicles that are not registered under the international registration plan. Section 3, effective September 1, 1997, authorizes DMV to issue a special registration plate for magistrates. Section 5, effective September 1, 1997, authorizes the Legislative Research Commission to study the special plates laws of the State, and states the intent of the General Assembly to place a moratorium on new special plate authorizations until completion of the study of the issue, and a report to the 1998 Session.

Soil and Water Conservation Plates (S.L. 1997-477; HB 1137): This act creates a special license plate to promote water and soil conservation and provides that a portion of the sales revenue goes to fund water quality and environmental education. The act became effective September 4, 1997.

Special Plates (S.L. 1997-484; HB 1156): This act authorizes the development of special license plates for supporters of the March of Dimes, School Technology, and Scenic Rivers; it also authorizes the development of a registration plate for combat veterans. The Combat Veteran plate is issuable to anyone who served in the armed forces in a combat zone or in waters adjacent to a combat zone during a period of war (W.W.I or II, Korean Conflict, Vietnam, Persian Gulf, etc.) and who was separated from the armed forces under honorable conditions. The Division of Motor Vehicles must receive 300 applications for either of the special plates before commissioning that particular plate. A portion of the receipts from sale of the March of Dimes plate will be transferred quarterly to the Eastern North Carolina Chapter of the March of Dimes Birth Defects Foundation for use in programs in North Carolina. A portion of receipts from sale of the School Technology plate will be transferred to the School Technology Fund established under G.S. 115C-102.6D. A portion of receipts from sale of the Scenic Rivers plate will be transferred to the Clean Water Management Trust Fund established in G.S. 113-45.3. The act became effective September 10, 1997.

Motor Vehicle Dealers

Motor Vehicle Dealers/Manufacturers License Law (S.L. 1997-319; HB 739): S.L. 97-319 makes several changes to the motor vehicle dealer and manufacturers licensing law.

Section 1 requires franchise agreements and forms to be consistent with State laws, and for revisions to the franchise agreement and the reasons for those revisions to be filed with the Commissioner of Motor Vehicles 60 days prior to the revision.

Section 2 provides the mechanism by which a dealer can file a complaint against the manufacturer or distributor for a violation of the licensing law and have a hearing on the complaint.

Section 3 gives the Commissioner flexibility in the time he has to render a decision in a hearing that is held to determine whether a new dealer can enter an existing dealer's market area. Current law requires a decision within 180 days of the time the existing dealer filed the protest. The bill provides that the Commissioner must attempt to render a decision within 180 days. In addition, a provision is added to subject satellite dealerships (where either new cars are sold or manufacturer's warranty work is performed) to the same market entry requirements as new dealerships. A 180-day decision period for cancellation of a motor vehicle franchise is also changed to require that the Commissioner attempt to render a decision within 180 days. Section 3 also prohibits the manufacturer or distributor from requiring the dealer to issue ownership interests in the dealership to a general manager or other persons involved in the dealership, unless the dealer principal or operator is an absentee owner; varying the price charged dealers in this State for new motor vehicles based on listed factors; require the

dealer to compensate the manufacturer or distributor for legal fees incurred when a dealer asserts its rights under the motor vehicle franchise law; or require the dealer to pay an additional fee, purchase ad displays, or remodel its facilities to receive any model or series of vehicles.

Section 4 prohibits manufacturers from denying dealer warranty claims if the dealer makes a good faith effort to perform the work in compliance with the manufacturer's procedures, the work was performed, and documentation is provided. Section 4 also provides for a stay of certain payments or charges to the dealer by the manufacturer while administrative proceedings involving manufacturer or distributor warranties are pending.

The act became effective October 1, 1997.

Modify Vehicle Dealer Equipment (S.L. 1997-429; SB 699): The act amends G.S. 20-288(d) to provide that the place of business of a motor vehicle dealer who sells only trailers or semitrailers of less than 2500 pounds unloaded weight does not have to meet the requirements set for an established office or salesroom of a motor vehicle dealer, but must have a place of business in this State where the required records are kept. The act became effective August 22, 1997.

Public Transportation

Regional Transportation Authorities (S.L. 1997-393; HB 993, as amended by S.L. 1997-456, Sec. 56.5; HB 115, Sec. 56.5, S.L. 1997-443, Sec. 32.27(b); SB 352, Sec. 32.27(b)) The act amends Chapter 160A (Cities and Towns) to allow the creation of additional regional transportation authorities for the area of any metropolitan planning organization of the State that, at the time of creation, consists of all or part of five contiguous counties - if at least two of the counties each have a population of at least 250,000 and are contiguous and if the other three counties each have a population of at least 100,000. The bill authorizes the city councils of the four largest cities within the area to create an RTA as specified in the act. It allows the new RTA, with the consent of the affected boards of county commissioners, to expand to include contiguous areas up to a total jurisdiction and service area of twelve counties. The act sets out the membership of the RTA, and grants the Authority the power to issue bonds and notes (pursuant to the Local Government Revenue Bond Act) for the purpose of financing public transportation systems; the purchase and lease of equipment; acquiring property by eminent domain; and requiring public utilities, railroads, and other public service corporations to relocate utility structures. The bill authorizes state and local government units to appropriate funds to the RTA for its operations, or to sell or otherwise convey property to the RTA. Real and personal property of the RTA is exempt from taxation; the interest on bonds or obligations issued by the RTA is exempt from State taxes. The act, which became effective August 14, 1997, was subsequently amended by S.L. 97-443; SB 352, Sec. 32.27 and again by S.L. 97-456; HB 115, Sec. 56.5. The amended act provides that the Major Investment Study (MIS) for which funds are appropriated to the Department of Transportation for 1997-98, will include a passenger rail proposal providing service between Asheville and Raleigh through Winston-Salem, generally following the I-40

corridor, and a passenger rail proposal providing for commuter rail services between Winston-Salem, Greensboro, High Point, and outlying communities. The MIS will be administered by the regional transportation authority created under this act, which includes Guilford and Forsyth Counties, with the approval of DOT, and in consultation with the Forsyth County Metropolitan Planning Organization (MPO), the Greensboro MPO, and the High Point MPO.

Trucks

Adjust License Weight (S.L. 1997-36; HB 266): S.L. 97-36 makes two changes to the motor vehicle law. First, the bill directs the Division of Motor Vehicles to issue "First in Flight" plates for vehicles licensed at 6,000 lbs. or less. Under current law, vehicles licensed at 4,000 lbs. or less are issued "First in Flight" plates, and those licensed at over 4,000 lbs. receive a "commercial" plate (unless another plate requirement applies). Registration fees for vehicles affected by this bill would continue to be based on the declared license weight, and are *unchanged* by this bill. Second, the bill clarifies that the Division of Motor Vehicles *may issue* personalized plates for commercial vehicles, which they have been doing anyway for several years. Current language in the section amended by this bill, G.S. 20-63(b), and another statute, G.S. 20-79.4(a), give contradictory indications about the Division's current authority to issue personalized commercial plates. The act becomes effective January 1, 1998, and applies to new or renewal vehicle registrations occurring on or after that date.

Tax at Rack Improvements (S.L. 1997-60; SB 98): See **TAXATION.**

Truckload Flag/Light Colors (S.L. 1997-178; HB 966): Prior law required loads that extended more than four feet beyond the bed or body of a vehicle to be marked with a *red* flag during day, and a *red* light at night. S.L. 97-178 authorizes *orange* flags or *amber* lights in the same situations. The act became effective June 12, 1997.

Light Duty Road Use (S.L. 1997-373; HB 967): G.S. 20-118 sets the weight limits for State Highways. In this statute, DOT is granted authority to designate light traffic roads, and set lower weight limits on those roads. Vehicles carrying specified agricultural products or solid waste are exempt from these lower light-traffic road weight limits while traveling to the *nearest* highway. Section 1 of S.L. 97-373 allows those exempt vehicles to travel to *either* of the *two* nearest highways, instead of the closest one, with weight in excess of the light-traffic weight limit. Sections 2 and 3 of S.L. 97-373 state that DOT may adopt a temporary or permanent rule to authorize issuance of special weight permits for vehicles transporting wood residuals on non-interstate highways. The act became effective July 29, 1997.

Motor Carrier Safety (S.L. 1997-456, Secs. 36, 37, and 38; HB 115, Secs. 36, 37, 38): These three sections of S.L. 97-456 clarify that DMV may stop, enter upon, and perform inspections of motor carriers' vehicles in operation in order to enforce federal motor carrier safety regulations, clarify the reference to the federal motor carrier regulations that

DMV is to enforce, and clarify that the purpose of DMV enforcement is to minimize the dangers of transporting "other commodities", in addition to hazardous ones. These sections became effective August 29, 1997.

Trucking Adjustment Act (S.L. 1997-466; HB 1096): S.L. 97-466 makes several changes affecting the trucking industry. Section 1 authorizes DMV, as of January 1, 1998, to issue permanent truck and truck-tractor plates, subject to annual registration fees. Section 2, effective October 1, 1997, exempts from light traffic road limits: (1) forest products originating and transported from a farm or from woodlands to first market without interruption or delay for further packaging or processing after initiating transport, and (2) treated sludge collected from a wastewater treatment facility. Section 3, effective October 1, 1997, increases the penalty for failure to comply with motor carrier registration or insurance verification requirements from $75 to $1000, and requires a hearing if the penalty is protested. Section 4, effective September 1, 1997, requires DMV to study the feasibility of establishing a staggered registration system of commercial motor vehicles under the International Registration Plan, and report by April 1, 1998. Section 5 directs the Joint Legislative Transportation Oversight Committee to study replacement of the highway use tax on large vehicles with higher registration fees; and elimination of certain overweight penalties, and make a report to the 1999 General Assembly.

Miscellaneous

Moped Definition (S.L. 1997-456, Sec. 29; HB 115, Sec. 29): Section 29 of S.L. 97-456 amends the definition of moped as follows: a vehicle with two or three wheels, no external shifting device, a motor that does not exceed 50cc displacement, and cannot travel greater that 20 mph. This section became effective August 29, 1997.

Speeding on School Grounds (S.L. 1997-341; SB 625): S.L. 97-341 authorizes local governments to enact ordinances making speeding on school grounds posted with appropriate signs an infraction, punishable by a penalty of not less than $25. Any public school system or private school affected must request or consent to the speed limit ordinance. S.L. 97-341 also changes the penalty for the infraction of speeding in a school zone on a street or highway from "up to $100" to "not less than $25." The act became effective July 25, 1997.

Clarify Left Turn Rules (S.L. 1997-405; SB 60): S.L. 97-405 amends G.S. 20-153(b) by removing a sentence that caused some confusion in the law regarding left turns and clarifies that left turns should be made from the leftmost available lane into the leftmost available lane. The act became effective August 18, 1997.

Aircraft/Ferry Acquisitions (S.L. 1997-443, Sec. 32.1; SB 352, Sec. 32.1): Sec. 32.1 of S.L. 97-443 requires the Board of Transportation to prepare an estimate of operational and capital costs prior to approval of the purchase of an aircraft from the equipment fund or a ferry in the Transportation Improvement Fund, and report the information to the

General Assembly and the Joint Legislative Commission on Governmental Operations. This section became effective July 1, 1997.

North Carolina Railroad Acquisition (S.L. 1997-443, Sec. 32.30; SB 352, Sec. 32.30): Sec. 32.20 of S.L. 97-443 authorizes the State Treasurer to invest up to $61 million to purchase the North Carolina Railroad, and requires the company to present a business plan to the Joint Legislative Transportation Oversight Committee by November 20, 1998. This section became effective July 1, 1997.

Board of Transportation (S.L. 1997-495, Sec. 88; SB 815, Sec. 88): Section 88 of S.L. 97-495 expands the number of members on the Board of Transportation appointed by the General Assembly from two to four. This section became effective September 11, 1997 and the terms of the two additional members expire June 30, 1999.

STUDIES

Legislative Research Commission

The Studies Act of 1997 (S.L. 1997-483; SB 32) authorizes the Legislative Research Commission to study the following: (1) Public Transit (Sec. 2.8); (2) Special Registration Plates (S.L. 1997-461, Sec. 5; SB 426, Sec. 5); and (3) Watercraft Safety (Sec. 2.1(21)).

Independent

The Studies Act of 1997 (S.L. 1997-483, Sec. 15.1; SB 32, Sec. 15.1) authorizes the Joint Legislative Transportation Oversight to study the following issues: (1) encouraging growth of trucking industry; (2) motorcycle helmets; (3) truck width and length; (4) unpaved secondary roads; (5) vehicle safety inspections; and (6) safe operation of trucks.

The Trucking Adjustment Act (S.L. 1997-466; HB 1096) authorizes the Joint Legislative Transportation Oversight Committee to study trucking industry growth issues

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